AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

6-8-79
Vol. 44 No. 112
Pages 33041-33390

federal register

Friday
June 8, 1979

Highlights

33389 **DC-10 Airplanes** DOT/FAA prohibits operation within airspace of United States; effective 6-6-79; comments by 8-3-79 (Part XII of this issue)

33069 **Fuel and Fuel Additives** EPA suspends enforcement of lead phase-down standard and proposes to amend lead phase-down schedule; comments by 7-20-79, hearing 6-20-79, requests to speak 6-10-79

33380 **Food Stamps** USDA/FNS amends rules and provides interpretations; effective 1-1-79 and 6-8-79, comments by 8-7-79, (Part XI of this issue)

33068 **Express Mail Metro Service** PS expands list to include four metropolitan areas affected by service; effective 6-18-79, commend period extended through 7-18-79

33052 **Crude Oil Price Ceilings** DOE/ERA issues Price Schedule No. 15 which provides for monthly increases for lower and upper tier oil; effective 6-1-79

33114 **Chlorofluorocarbon Propellants** HEW/FDA proposes essential uses; comments by 7-9-79

CONTINUED INSIDE

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

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Area Code 202–523–5240

Highlights

33194 **Specialty Steel Quotas** Special Representative for Trade Negotiations Office reallocates shortfalls of certain quota categories; reductions effective 6–8–79, increases effective 6–11–79

33099 **Natural Gas Policy** DOE/FERC proposes rules and holds hearing on implementing the incremental pricing provisions; comments by 7–9–79, hearing 6–27–79, requests to speak 6–22–79

33332 **Improving Government Regulations** EPA publishes Semi-Annual Agenda of Significant Regulations, (Part V of this issue)

33238 **Foods For Human Use** HEW/FDA proposes current good manufacturing practices; comments by 12–31–79, (Part II of this issue)

33316 **Federal and Federally Assisted Construction** Labor/ESA publishes general wage determinations, (Part IV of this issue)

33076 **Telephone System Construction** USDA/REA proposes outside plant construction contract revision; comments by 8–7–79

33344 **Industrial Energy Conservation Program** DOE proposes rules for operation of program, and includes proposed final energy efficiency improvement targets, and holds hearings; comments by 8–7–79, hearings 7–23, 7–24, 7–25, 7–26 and 7–31–79, requests to speak by 7–13–79, (Part VI of this issue)

33046 **Affirmative Employment Programs** OPM changes date by which Federal Equal Opportunity Recruitment Program Plans must be developed for headquarters level of each Executive agency; effective 6–8–79

33046, 33048 **Milk Program** USDA/FNS establishes guidelines for program for free milk for children; effective 7–1–79, (2 documents)

33234 **Sunshine Act Meetings**

Separate Parts of This Issue

33238 **Part II, HEW/FDA**
33250 **Part III, Commerce/NOAA**
33316 **Part IV, Labor/ESA**
33332 **Part V, EPA**
33344 **Part VI, DOE**
33362 **Part VII, SEC**
33368 **Part VIII, FEC**
33372 **Part IX, HUD**
33376 **Part X, Labor/ETA**
33380 **Part XI, USDA/FNS**
33389 **Part XII, DOT/FAA**

Contents

Federal Register
Vol. 44, No. 112
Friday, June 8, 1979

Agricultural Marketing Service
RULES
33049 Lemons grown in Ariz. and Calif.

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Farmers Home Administration; Food and Nutrition Service; Rural Electrification Administration.

Air Force Department
NOTICES
33142 Signal Corps female telephone operators in WWI; civilian or contractual personnel; determination of active military service and discharge; correction

Animal and Plant Health Inspection Service
RULES
Livestock and poultry quarantine:
33050 Exotic Newcastle disease
Viruses, serums, toxins, etc.:
33051 Avian pox vaccine safety test
NOTICES
Environmental statements; availability, etc:
33134 Gypsy Moth Laboratory, Otis AFB, Mass.

Blind and Other Severly Handicapped, Committee for Purchase From
NOTICES
33141, 33142 Procurement list, 1979; additions and deletions (2 documents)

Army Department
See Engineers Corps.

Civil Aeronautics Board
RULES
Charters:
33055 Foreign air carriers; elimination of charter tariffs
33056 Foreign air carrier terms, conditions, and limitations of permits; elimination of charter tariffs
33060 Overseas military personnel; elimination of charter tariffs
33054 Terms, conditions, and limitations of certificates; elimination of charter tariffs
33053 Trips and special services; elimination of charter tariffs
Public charters:
33060 Charter tariffs; elimination
Tariffs of air carriers and foreign air carriers; construction, publication, etc.:
33056 Charter tariffs; elimination
NOTICES
Hearings, etc.:
33135 Empire Airlines
33135 Former large irregular air service investigation (3 documents)
33135 Houston-Brownsville route authority
33134 Turks Air Ltd., et al.

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
33137 Massachusetts
33137 Oklahoma
33234 Sunshine Act

Commerce Department
See Economic Development Administration; Industry and Trade Administration; National Oceanic and Atmospheric Administration.

Community Planning and Development, Office of Assistant Secretary
RULES
Community development block grants:
33372 Urban development action grants; minimum standards of physical and economic distress for small cities; interim rule and request for comments

Customs Service
RULES
Liquidation of duties; countervailing duties:
33063 Textiles and textile products from Brazil

Defense Department
See Air Force Department; Engineers Corps.

Economic Development Administration
NOTICES
Environmental statements; availability, etc.:
33137 Civic/Convention Center, Little Rock, Ark.
Import determination petitions:
33137 The Atlas Co. et al.

Economic Regulatory Administration
RULES
Petroleum allocation and price regulations:
33052 Crude oil price ceilings; lower and upper tier; adjustments to reflect inflation impact
NOTICES
Consent orders:
33142 Alkek, Albert B.; extension of time

Employment and Training Administration
PROPOSED RULES
Comprehensive Employment and Training Act programs:
33376 Public service employment; waivers of time limitations
NOTICES
Comprehensive Employment and Training Act programs:
33166 Reallocation of funds; inquiry
Environmental statements; Job Corp centers; availability, etc.:
33165 Turner Air Force Base, Albany, Ga.
Unemployment compensation, emergency:
33166 Federal extended benefits; "on" and "off" indicators; various States (2 documents)

Employment Standards Administration
NOTICES
33316 Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and superseded decisions (Ala., Conn., Ky, N.J., Ohio, Pa., Va., W. Va.)
33326 Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions. (Fla., Kans., Mo., Pa., Tex.); correction

Endangered Species Committee
RULES
33127 Exemption applications process; interim rules and request for comment

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission; Southeastern Power Administration.
PROPOSED RULES
Energy conservation:
33344 Industrial programs; voluntary recovered materials utilization targets, etc.
33077 Federal photovoltaic utilization program, hearing; cancelled
NOTICES
Meetings:
33145 Environmental Advisory Committee
33145 Thermodynamics conference

Engineer Corps
NOTICES
Environmental statements; availability, etc.:
33142 Mingo Creek, Tulsa, Okla.

Environmental Protection Agency
RULES
Air programs; fuel and fuel additives:
33069 Lead phase-down standard; suspension of enforcement
PROPOSED RULES
Air programs; fuel and fuel additives:
33116 Lead phase-down standard
Air quality implementation plans; approval and promulgation; various States, etc.:
33116 South Dakota
Improving Government regulations:
33332 Regulatory agenda
NOTICES
Environmental statements; availability, etc.:
33146 Agency statements, weekly receipts
33151 Pesticide enforcement policy statements (PEPS); recission
Pesticides; emergency exemption applications:
33150 Dinoseb
Pesticides; temporary tolerances:
33150 Ethephon

Equal Employment Opportunity Commission
NOTICES
33234 Meetings; Sunshine Act

Farmers Home Administration
RULES
Business and industrial loan programs:
33050 Clearances; processing expedition

Federal Aviation Administration
RULES
33389 Special Federal Aviation Regulation No. 40; Operation Model DC–10 airplanes in United States prohibited

Federal Communications Commission
RULES
Radio broadcasting:
33070 "Public affairs" programs; retention of audio recordings; deletion of regulations
Radio services, special:
33071 Alaska-public fixed stations; station identification requirements
PROPOSED RULES
Radio stations; table of assignments:
33123 Arkansas
33124 California
33126 Louisiana
33120, 33122 Texas (2 documents)
Television stations; table of assignments:
33121 North Carolina
NOTICES
33152 Commission activities; major matters report, 1978; availability
Meetings:
33153 National Industry Advisory Committee
33234 Sunshine Act
33153 Programming report, annual; composite week dates
33153 Rulemaking proceedings filed, granted, denied, etc.; petitions by various companies

Federal Deposit Insurance Corporation
PROPOSED RULES
Securities of insured State nonmember banks:
33077 Disclosure regulations under Securities Exchange Act; conformance with SEC; advance notice
NOTICES
33234, 33235 Meetings; Sunshine Act (2 documents)

Federal Election Commission
RULES
33368 Freedom of Information; implementation

Federal Emergency Management Agency
RULES
Flood elevation determinations:
33065 California
33065 Idaho

Federal Energy Regulatory Commission
PROPOSED RULES
Natural Gas Policy Act of 1978:
33099 Incremental pricing provisions
NOTICES
Hearings, etc.:
33142, 33144 Montana-Dakota Utilities Co. (2 documents)

Federal Highway Administration
NOTICES
33219 Transportation operations, study of factors affecting; inquiry

Federal Maritime Commission
NOTICES
33235 Meetings; Sunshine Act

Federal Reserve System
NOTICES
33235 Meetings; Sunshine Act

Federal Trade Commission
RULES
33061 Ophthalmic goods and services; advertising; interpretation
PROPOSED RULES
Consent orders:
33097 Korvette's Inc.

Fish and Wildlife Service
RULES
Hunting:
33072 Waubay National Wildlife Refuge, S. Dak.
33073 Refuge revenue sharing with local governments
NOTICES
Environmental statements; availability, etc.:
33160 Canaan Valley National Wildlife Refuge, Tucker County, W. Va.; correction
33160 Environmental statements; categorical exclusions from NEPA compliance; project activities in fish and wildlife restoration programs

Food and Drug Administration
PROPOSED RULES
Administrative practices and procedures:
33114 Chlorofluorocarbon propellants in self-pressurized containers; essential uses
Food for human consumption:
33238 Good manufacturing practices
NOTICES
Meetings:
33154 Consumer participation; information exchange (5 documents)
33155 Miscellaneous External Drug Products Panel; change

Food and Nutrition Service
RULES
Child nutrition programs:
33048 Meals and free milk in schools; family-size income standards and eligibility requirements
33046 Milk program, special; free milk option
Food stamp program:
33380 Food Stamp Act of 1977; interpretations and amendments

Health, Education, and Welfare Department
See also Food and Drug Administration; National Institute for Occupational Safety and Health.
RULES
Procurement:
33069 Incremental funding of cost-reimbursement type contracts
NOTICES
Organization, functions, and authority delegations:
33155 Deputy General Counsel et al.; certification of true copies
Patent licenses, grants:
33155 University of Arizona

Heritage Conservation and Recreation Service
NOTICES
Historic Places National Register; additions, deletions, etc.:
33162 Michigan

Housing and Urban Development Department
See also Community Planning and Development, Office of Assistant Secretary.
RULES
33064 CFR Chapter removed; FIA regulations transferred to FEMA

Industry and Trade Administration
NOTICES
Scientific articles; duty free entry:
33139 George C. Marshall Space Flight Center et al.
33138 Massachusetts Institute of Technology
33138 Medical College of Wisconsin
33139 Northwestern University

Interior Department
See also Land Management Bureau; Fish and Wildlife Service; Heritage Conservation and Recreation Service; National Park Service; Reclamation Bureau.
PROPOSED RULES
33127 Fish and Wildlife Coordination Act; uniform procedures for federal agency compliance; hearings

International Trade Commission
NOTICES
33235 Meetings; Sunshine Act

Interstate Commerce Commission
RULES
Tariffs and schedules:
33071 Detention of motor vehicles; shipments of uncrated new furniture, fixtures, and appliances
NOTICES
33230 Fuel costs; expedited procedures for recovery
Motor carriers:
33222 Permanent authority applications
33219 Permanent authority applications; correction (2 documents)
33222 Transfer proceedings
Railroad car service orders; various companies:
33220 Burlington Northern Inc.
Railroad car service rules, mandatory:
33221, 33222 Exemptions (3 documents)
Railroad services abandonment:
33229 Boston & Maine Corp. (3 documents)
33220 Cape Fear Railways, Inc.
33230 Seaboard Coast Line Railroad Co.
Railroad operation, acquisition, construction, etc.:
33219 Auto-Train Corp.
33220 Brillion & Forest Junction Railroad Co., Inc.
Rerouting of traffic:
33230 All railroads

Labor Department
See also Employment and Training Administration; Employment Standards Administration; Labor Management Standards, Enforcement Office; Mine Safety and Health Administration; Occupational Safety and Health Administration.

NOTICES
Adjustment assistance:
33169 American Heat Reclaiming Corp.
33169 Appalachian Resources Co. et al.
33170 Arco Auto Carriers, Inc.
33170 Avtex Fibers, Inc.
33171 BBC Coal Co.
33171 Bellmore Coats
33172 Bergen Knitting Mills, Inc.
33172 Berkshire Leather Corp.
33172 Bethlehem Steel Corp.
33172 Blue Mt. Mining Co., Inc.
33173 Burroughs Corp.
33173 Chein Industries, Inc.
33174 Eleets Development Corp.
33174 Great Six Co.
33174 Gulton Industries, Inc.
33177 H. E. McLean & Sons, Inc.
33175 Hawley Coal Mining Corp.
33175 Irving Tanning Co.
33176 Jacobs Brothers Industries, Inc.
33176 Jay Lind Veal Corp.
33177 Lannom Manufacturing Co., Inc.
33177 Long-Airdox Co., Inc.
33178 Mercer Rubber Co.
33178 Mirando Manufacturing Co., Inc.
33179 Mr. J's Sportswear, Ltd.
33179 Paul Yates Mining Co.
33179 Schick, Inc.
33180 Sugar Corp of Puerto Rico
33180 Sunday's Workclothes, Inc., et al.
33180, T & R Auto Handling Corp. (2 documents)
33181
33181 United States Steel Corp.
33182 Vecillio & Grogan, Inc.
33183 Westforth Manufacturing Co., Inc.
33183 Weyenberg Shoe Manufacturing Co.
33183 Whitehall Manufacturing Corp.
33184 Winston Coal Co.
Meetings:
33169 Steel Tripartite Committee

Labor Management Standards Enforcement Office
RULES
33066 Labor organizations in Federal sector; Civil Service Reform Act requirements

Land Management Bureau
NOTICES
Alaska native selections; applications, etc:
33157 Becharof Corp.
33155, Emmonak Corp., correction (2 documents)
33159
Meetings:
33160 Las Cruces District Grazing Advisory Board
Withdrawal and reservation of lands, proposed, etc.:
33155 Alaska

Legal Services Corporation
NOTICES
33184 Grants and contracts; applications

Management and Budget Office
NOTICES
33192 Privacy Act; systems of records

Mine Safety and Health Administration
RULES
Respiratory protective devices:
33067 Self-contained breathing apparatus

National Aeronautics and Space Administration
NOTICES
Meetings:
33184 Space and Terrestrial Applications Advisory Committee

National Capital Planning Commission
NOTICES
33185 Environmental quality enhancement and protection for National Capital Region; proposed policies and procedures

National Credit Union Administration
PROPOSED RULES
33094 Liquidity reserves of insured credit unions

National Institute for Occupational Safety and Health
RULES
Mine Safety:
33067 Respiratory protective devices; self-contained breathing apparatus

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
33250 Alaska salmon fishery; fishery management plan
PROPOSED RULES
33127 Fish and Wildlife Coordination Act; uniform procedures for federal agency compliance; hearings
NOTICES
Coastal zone management programs:
33140 Massachusetts et al.
Meetings:
33140 Mid-Atlantic Fishery Management Council
33140 North Pacific Fishery Management Council et al.
33141 Pacific Fishery Management Council

National Park Service
NOTICES
Mining plans of operation; availability, etc.:
33162, Denali National Monument, Alaska (11
33163 documents)
33163, Wrangell-St. Elias National Monument, Alaska (4
33164 documents)

National Science Foundation
NOTICES
Meetings:
33190 Applied Science and Research Applications Policy Advisory Committee (2 documents)

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
33190 Northeast Nuclear Energy Co., et al.
33191 Stone & Webster Engineering Corp.
33191 Tennessee Valley Authority
33192 Toledo Edison Co., et al.
33236 Meetings; Sunshine Act
33192 Regulatory guides; issuance and availability

Occupational Safety and Health Administration
RULES
State plans; development, enforcement, etc.:
33066 Utah
NOTICES
State plans; development, enforcement, etc.:
33167 Hawaii
33167 Iowa
33168 Utah

Personnel Management Office
RULES
Freedom of information:
33046 Affirmative employment programs; Federal equal opportunity recruitment program plans development dates
33041 Availability; official information

Postal Service
RULES
Postal Service Manual:
33068 Express mail metro service; interim rule; additional metropolitan areas and extension of time

Railroad Retirement Board
NOTICES
33236 Meetings; Sunshine Act

Reclamation Bureau
NOTICES
Coordinated operations agreement, intent to initiate negotiations:
33164 Central Valley Project, Calif.

Rural Electrification Administration
PROPOSED RULES
Telephone borrowers:
33076 Telephone outside plant construction contract; contract and specifications

Securities and Exchange Commission
RULES
Interpretative releases:
33061 Accounting bulletins, staff; divestitures
33362 Securities; small offering exemptive rule; preliminary offering circular use
NOTICES
Hearings, etc.:
33198 Bradford National Clearing Corp., et al.
33198 Central & South West Fuels, Inc., et al.
33199 Connecticut Yankee Atomic Power Co.
33200 Lousiana Power & Light Co.
33217 New England Electric System
33210 New England Power Co.
33211 Northeast Utilities et al.
33212 Northern States Power Co.
33214 Piedmont-Forrest Corp.
33216 Western Massachusetts Electric Co.
33236 Meetings; Sunshine Act
Self-regulatory organizations; proposed rule changes:
33196 American Stock Exchange, Inc.
33199 Chicago Board Options Exchange, Inc.
33201, 33202 Midwest Stock Exchange, Inc. (3 documents)
33203-33206 National Association of Securities Dealers, Inc. (4 documents)
33194 New York Stock Exchange, Inc.

Small Business Administration
NOTICES
Applications, etc.:
33218 ESLO Capital Corp.
Disaster areas:
33219 West Virginia

Southeastern Power Administration
NOTICES
33145 Jim Woodruff Project; power rates and charges, proposed revision; inquiry

Trade Negotiations, Office of Special Representative
NOTICES
Import quotas:
33194 Specialty steel

Transportation Department
See Federal Aviation Administration; Federal Highway Administration.

Treasury Department
See Customs Service.

MEETINGS ANNOUNCED IN THIS ISSUE

CIVIL RIGHTS COMMISSION
33137 Massachusetts Advisory Committee, 7-18-79
33234 Oklahoma Advisory Committee, 7-12-79

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration—
33140 Mid-Atlantic Fishery Management Council, Bluefish Subpanel, 6-29-79
33140 North Pacific Fishery Management Council, Scientific and Statistical Committee, and an Advisory Panel, 6-26 through 6-29-79
33141 Pacific Fishery Management Council, Pink Shrimp Subpanel, 6-25 and 6-26-79

ENERGY DEPARTMENT
33145 Environmental Advisory Committee, Ad Hoc Subcommittee, 6-25-79
33145 Thermodynamics Conference, 6-14 and 6-15-79

FEDERAL COMMUNICATIONS COMMISSION
33153 National Industry Advisory Committee, Amateur Radio Services Subcommittee, 6-25-79

HEALTH, EDUCATION, AND WELFARE DEPARTMENT
Food and Drug Administration—
33154 Consumer exchange meetings, various dates, (5 documents)

INTERIOR DEPARTMENT
Land Management Bureau—

33160 Las Cruces District Grazing Advisory Board, 7–12–79

LABOR DEPARTMENT
Office of the Secretary—

33169 Steel Tripartite Committee, 6–25–79

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

33184 NASA Advisory Council, Space and Terrestrial Applications Advisory Committee, Informal Advisory Subcommittee on Materials Processing in Space, 6–22–79

NATIONAL SCIENCE FOUNDATION

33190 Applied Science and Research Applications Policy Advisory Committee, Applied Physical, Mathematical, and Biological Sciences and Engineering Sciences Subcommittee, 6–28 and 6–29–79

33190 Applied Science and Research Applications Policy Advisory Committee, Applied Social and Behavioral Sciences Subcommittee, 6–25 and 6–26–79

RESCHEDULED MEETINGS

HEALTH, EDUCATION, AND WELFARE DEPARTMENT
Food and Drug Administration—

33155 Miscellaneous External Drug Products Panel, 8–3 and 8–4–79

HEARINGS

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration—

INTERIOR DEPARTMENT
Fish and Wildlife Service—

33127 Hearings on proposed rules regarding fish and wildlife resources, June 1979

CANCELLED HEARINGS

ENERGY DEPARTMENT

33077 Hearing on Federal Photovoltaic Utilization Program, 6–14–79

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
294 33041
720 33046

7 CFR
215 33046
245 33048
271 33380
272 33380
273 33380
274 33380
276 33380
910 33049
1980 33050
Proposed Rules:
1701 33076

9 CFR
82 33050
113 33051

10 CFR
212 33052
Proposed Rules:
436 33077
445 33344

11 CFR
4 33368

12 CFR
Proposed Rules:
335 33077
742 33094

14 CFR
91 33389
121 33389
129 33389
207 33053
208 33054
212 33055
214 33056
221 33056
372 33060
380 33060

16 CFR
456 33061
Proposed Rules:
13 33097

17 CFR
211 33061
230 33362
239 33362

18 CFR
Proposed Rules:
154 33099
201 33099
204 33099
282 33099

19 CFR
159 33063

20 CFR
Proposed Rules:
676 33376

21 CFR
Proposed Rules:
2 33114
20 33238
110 33238

24 CFR
Ch. X 33064
570 33372
1917 (2 documents) 33065

29 CFR
451 33066
1952 33066

30 CFR
11 33067

39 CFR
111 33068

40 CFR
80 33069
Proposed Rules:
Ch. I 33332
52 33116
80 33116

41 CFR
3–50 33069

47 CFR
73 33070
81 33071
Proposed Rules:
73 (6 documents) 33120–33126

49 CFR
1307 33071
1310 33071

50 CFR
32 33072
34 33073
450 33127
452 33127
453 33127
674 33250
Proposed Rules:
410 33127

Rules and Regulations

Federal Register
Vol. 44, No. 112
Friday, June 8, 1979

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 294

Availability; Official Information

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: Part 294 is revised in its entirety to conform with applicable provisions of the Civil Service Reform Act of 1978 (Pub. L. 95–454), Reorganization Plan No. 1 of 1978 (43 FR 19807) and Reorganization Plan No. 2 of 1978 (943 FR 36037); to reflect the new organizational structure of the Office of Personnel Management; and to update the Part and make editorial changes where needed.

EFFECTIVE DATE: June 8, 1979.

FOR FURTHER INFORMATION CONTACT: Stuart D. Rick, Office of Management, Office of Personnel Management, 1900 E Street, NW, Washington, D.C. 20415, 202/632–4431.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management is expunging from its regulations implementing the Freedom of Information Act, 5 U.S.C. 552, matters which are now the responsibility of the Merit Systems Protection Board, the Special Counsel of the Merit Systems Protection Board, and the Equal Employment Opportunity Commission. Under Title II of the Civil Service Reform Act of 1978 (Pub. L. 95–454), which became effective January 11, 1979, and Section 202 of Reorganization Plan No. 2 of 1978 (43 FR 36037), the Merit Systems Protection Board handles most of the employee appeals which were handled by the Civil Service Commission. Among the responsibilities of the Special Counsel of the Merit Systems Protection Board, as set forth in Section 204(b) of Reorganization Plan No. 2 of 1978 and 5 U.S.C. 1206(e)(i)(c), is the investigation and prosecution of persons responsible for arbitrary and capricious withholding of information requested under the Freedom of Information Act, 5 U.S.C. 552(a)(4)(F). Under Reorganization Plan No. 1 of 1978 (43 FR 19807), Executive Order 12067 of June 30, 1978 (43 FR 28967), and Executive Order 12106 of December 28, 1978 (44 FR 1053), the Equal Employment Opportunity Commission and the Merit Systems Protection Board have authority for deciding Federal employee discrimination complaint appeals.

Subpart H of Part 294 has been modified, and Subpart L of Part 294 has been eliminated to conform with these changes. The Special Counsel of the Merit Systems Protection Board has published regulations (44 FR 6060) which deal with the investigation and prosecution of persons responsible for arbitrary and capricious withholding of information under the Freedom of Information Act.

In addition to these revisions, § 294.702(f) of Part 294 has been eliminated because the authority for disclosure discussed therein, Office of Management and Budget Circular No. A–38 revised, has been rescinded (40 FR 45484); § 294.703(a) of Part 294 has been eliminated because access by a person to his or her own Official Personnel folder is now controlled by Part 297 of Chapter I of this title; and § 294.1001 of Part 294 has been changed to show that Executive Order 11652 of March 8, 1972, as amended, and the National Security Council Directive of May 17, 1972, were revoked by Executive Order 12065 of June 28, 1978 (43 FR 28949).

Accordingly, 5 CFR Part 294 is amended to read as follows:

PART 294—AVAILABILITY OF OFFICIAL INFORMATION

Subpart A—General Provisions

Sec.

294.101 Purpose.
294.102 Definitions.
294.103 General policy.
294.104 Information available—Indexes; of certain records.
294.105 Places where information may be obtained.
294.106 Procedures for obtaining information.
294.107 Service charges for information.
294.108 Appeal of a denial of information.
294.109 Custody of information; subpenas.
294.110 Deceased employees.

Subpart B—The Public Information Function

294.201 Public information policy.

Subpart C—Office Operations

294.301 Policy and interpretations.

Subpart D—Medical Information

294.401 Medical information.

Subpart E—Examinations and Related Subjects

294.501 Examinations.

Subpart F—Investigations

294.601 Investigative reports.

Subpart G—Official Personnel Folder

294.701 Coverage.
294.702 Availability of information.
294.703 Access to folder.

Subpart H—Appeals

294.801 Appeals.

Subpart I—Retirement

Sec.

294.901 Retirement.

Subpart J—Classified Information

294.1001 Classified information.

Subpart K—Leave Records

294.1101 Leave records

Authority: 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

Subpart A—General Provisions

§ 294.101 Purpose.

The purpose of this part is to set forth the basic policies of the Office in regard to the availability or disclosure of information in the possession of or controlled by the Office.

§ 294.102 Definitions.

In this part: (a) "Information" means books, papers, manuals, records, photographs, and other documentary materials, regardless of physical forms or characteristics, made in or received by or under the control of the Office in pursuance of law or in connection with the discharge of official business;

(b) "Information available to the public" means information, including reasonably segregable nonexempt portions of information that may lawfully be withheld, which, on request, may be examined and copied, or of which copies may be obtained in accordance with this part by the public

regardless of interest and without specific justification; and

(c) "Disclose or disclosure" means making information available, on request, for examination and copying, or furnishing a copy of the information.

§ 294.103 General policy.

(a) When the Office receives requests for information under section 552 of title 5, United States Code, it will provide or disclose the requested information promptly, subject to the following conditions:

(1) The request reasonably describes the information sought.

(2) The request is filed according to the procedures specified in § 294.106.

(3) Any applicable fees for records search, copying, printed matter, or computer services have been paid or waived as specified in § 294.107.

(4) The requested material is not subject to one of the exemptions in section 552(b) of title 5, United States Code.

(b) If the requested information is subject to one of the exemptions, the Office may disclose it or may not, depending on the nature of the information. The Office shall not ordinarily disclose the following exempt materials:

(1) Material specifically authorized by an Executive Order to be kept secret in the interest of national defense or foreign policy and properly classified pursuant to criteria in such an Executive Order;

(2) Material related solely to the internal personnel rules and practices of the Office or another agency;

(3) Material specifically exempted from disclosure by statute;

(4) Commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memoranda or letters which would not be available by law to a party in litigation with an agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy (except that such files will be disclosed to the individuals to whom they pertain as specified in §§ 294.703 and 831.106(a) of this chapter); and

(7) Investigatory records (except that such records will be disclosed to the individuals to whom they pertain under the conditions specified in § 294.601).

(c) If part of the requested information is exempt from disclosure and part is not, the Office will disclose reasonable segregable portions of the material after deleting exempt portions.

§ 294.104 Information available—indexes; of certain records.

(a) Indexes of materials published and offered for sale or available for public inspection and copying shall be maintained and revised at least quarterly.

(b) A copy of this index is available at no cost from:

Mail, Files, and Distribution Section, Office Services Division, Office of Management, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

Indexing of these materials is for the convenience of the public and does not constitute a determination that all of the materials listed are within the category of those required to be indexed by 5 U.S.C. 552(a)(2).

§ 294.105 Places where information may be obtained.

(a) A request for information which the requester believes is located in the Office headquarters in Washington, D.C., should be addressed to the Associate Director, Assistant Director, or other head of the office indicated in the list in paragraph (b) of this section. The address for all such requests is:

Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

(b) The following lists the groups and offices of the Office in Washington, D.C., and their principal areas of responsibility:

Group of office	Subject matter
Associate Director for Executive Personnel and Management Development.	Senior Executive Service Administrative Law Judge Program, selection, development, and training of Federal executives.
Associate Director for Staffing Services	Nationwide recruiting and job information, examining services for entry and promotion, selection methods, position classification standards, qualification standards, examination rating reviews, test scoring services, reduction in force, background investigations of Federal employees and applicants for Federal employment, student employment programs.
Associate Director for Compensation	Employee compensation: Pay, leave, retirement, insurance, and benefits; incentive and performance pay guidelines.
Associate Director for Workforce Effectiveness and Development.	Productivity and quality of work life; development of Governmentwide occupational health programs; employee relations, discipline, and performance evaluation; incentive awards; job related training, training information, and training available to Government employees.
Assistant Director for Agency Compliance and Evaluation, Agency Relations.	Evaluation of personnel management in agencies, delegation agreements, classification and job grading reviews, Governmentwide statistical personnel information.
Assistant Director for Intergovernmental Personnel Programs.	Grants to State and local governments, intergovernmental assignments, and other improvements to State and local government personnel systems.
Assistant Director for Affirmative Employment Programs.	Selection and advancement within the Federal service without regard to race, religion, color, national origin, sex, age, or handicapping condition.
Assistant Director for Labor-Management Relations.	Technical information and policy guidance concerning management and employee unions in the Federal service.
Director, Office of Government Ethics	Executive Branch policy relating to ethics and conflict of interest.

(c) A request for information which the requester believes is located in a regional office, area office, or post of duty of the Office should be addressed to the Director, Office of Personnel Management, Regional Office, at the appropriate address indicated in the following list:

Richard B. Russell Federal Building, 75 Spring Street SW, Atlanta, Georgia 30303.

John W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109.

Federal Office Building, 29th Floor, 230 South Dearborn Street, Chicago, Illinois 60604.

1100 Commerce Street, Dallas, Texas 75242.

Denver Federal Center, Building 20, Denver, Colorado 80225.

New Federal Building, 26 Federal Plaza, New York, New York 10007.

William J. Green Jr., Federal Building, 600 Arch Street, Philadelphia, Pennsylvania 19106.

1256 Federal Building 1520 Market Street, St. Louis, Missouri 63103.

525 Market Street, 23rd Floor, San Francisco, Califonia 94105.

Federal Office Building, 26th Floor 915 Second Avenue, Seattle, Washington 98174.

(d) if a request for information is made to an Office group or office that does not have possession of the information, that group or office will promptly forward the request to the appropriate group or office and will notify the requester that it has done so. However, for purposes of applying the time limits in section 552 of title 5, United States Code, the request will not be considered received until it arrives in the group or office having possession of the requested information.

(e) Information, and the office to be contacted for such information, published and offered for sale, or available to the public or examining and copying, for the convenience of the public or pursuant to section 552, title 5, United States Code, subsection (a), paragraph (2) is found in the Office's index required by that paragraph.

(f) A request for information on a subject matter not specifically referred to in this paragraph or in the index, should be directed to:

Management Support Division, Office of Management, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

§ 294.106 Procedures for obtaining information.

(a) A request for information under section 552 of title 5, United States Code, may be made personally or in writing. Requests may be made by letter directed to the groups and offices of the office in § 294.105 or in person at the addresses listed in that section during business hours on a regular business day.

(b) Each request for information under section 552 of title 5, United States Code, should be clearly and prominently identified by means of a legend on the first page, such as "Freedom of Information Request." In addition, if sent by mail or otherwise submitted in an envelope or other cover, the outside should be clearly and prominently marked "FOI" or "Freedom of Information."

(c) A request under this part should reasonably describe the information being requested by including relevant data such as name, number, date, subject, title of publication or other identifying particulars sufficient to enable the information to be identified and located. Requests for information contained in personnel records from persons other than the individual to whom the record pertains will be processed subject to §§ 294.103(b)(6) and 831.106(a).

(1) Requests for information from Official Personnel Folders and similar files should contain such information as: name, date of birth, Social Security Account Number, agency where employed, and, if not presently employed, approximate dates of the most recent Federal employment. If presently employed, requests should be directed to the employing agency.

(2) Requests for information from investigatory files should contain: name, date and place of birth, and Social Security Account Number.

(3) Requests for information concerning the results of examinations should include name, date of birth, Social Security Account Number, and identification number together with date, place, and time of examination.

(d) If a request is for materials that have been published and are offered for sale, e.g., by the Superintendent of Documents, the requester will be advised of the appropriate group or office in the office where the materials may be reviewed and the location where the materials may be purchased.

(e) The Office will, except in unusual circumstances, make a determination to disclose or deny the requested information within ten working days after receipt of the request (excluding Saturdays, Sundays, and holidays) and shall notify the requester immediately of its determination and the fees required, if any, prescribed by § 294.107.

§ 294.107 Service charges for information.

(a) Reasonable quantities of information that have been printed or otherwise reproduced by the Office for the purpose of making it available to the public without charge, shall be furnished to a member of the public free of charge.

(b) Information made available to the public, other than that described in paragraph (a) of this section, may be furnished subject to exaction of a fair fee. The fee shall be paid by check or money order made payable to the Office of Personnel Management.

(c) Schedule of Fees—When a request is made for information under section 552 of title 5, United States Code, the Office will charge fees for searching and duplicating the information at the rates shown in the following schedule:

Photocopies, per page	$0.10
Printed material, per 25 pages or fraction thereof	.25
Manual records search, per hour	5.00
Automated records search:	
Programming per hour	14.00
Keypunching, per hour	8.75
Computer time, per hour	65.00
Duplication, per hour	47.00

(d) Unless the request specifically states that whatever cost is involved will be acceptable, or acceptable up to a specified amount which is sufficient to cover anticipated costs, a request that can reasonably be expected to involve assessed fees in excess of $5 will be deemed not received until the requester, after prompt notification of the anticipated cost of the request, agrees to bear it.

(e) When the anticipated fees exceed $50, a deposit of 20 percent of the amount anticipated must be made within 30 days after the requester is advised of that fact. Requested information will not be released until the deposit is received.

(f) Charges will be assessed in cases of unproductive or unsuccessful searches unless waived by the appropriate Office official. Services performed that are not required under the Freedom of Information Act, such as formal certification of records as true copies, may be subject to charges under the Federal User Charge Statute (31 U.S.C. 483a) or other applicable statutes, depending upon the services performed.

§ 294.108 Appeal of a denial of information.

(a) In the event of a disagreement concerning the availability or disclosure of information between a member of the public and an employee of the Office or an employee of another agency having custody of information controlled by the Office and authority to deny disclosure of such information, the requester may ask for reconsideration of the denial. The request shall be addressed to the General Counsel, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415, within ten working days after the requester receives notification of the denial. The General Counsel shall, except in unusual circumstances, notify the requester of the decision within 20 working days (excluding Saturdays, Sundays, and holidays) after receipt of the request for reconsideration. The request to the General Counsel is the only administrative appeal within the Office and the decision on appeal exhausts the administrative remedies within the Office. If the General Counsel upholds in whole or in part the denial of the request for records, the written notice shall inform the person making the request of the provisions for judicial review of that determination.

§ 294.109 Custody of information; subpenas.

(a) The Chief, Management Support Division, Office of Management, has official custody of the official records of the Office. A subpena or other judicial order for an official record from the Office should be served on the:

Chief, Management Support Division, Office of Management, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

(b) If a subpena or other judicial order for an official record is served on an employee of the Office other than the Chief, Management Support Division, Office of Management, the employee shall immediately inform the General Counsel of the Office who shall advise the employee accordingly.

(c)(1) If a subpena or other judicial order for information contained in an Official Personnel Folder in the physical custody of a Government agency other than the Office is served on a Government employee responsible for the Folder, the employee shall disclose such information as is allowed under this part. After producing the original documents for inspection by the court or counsel, the employee must not leave

them with the court, but must retain them, and obtain permission of the court to substitute certified or facsimile copies for the court record.

(2) In an unusual situation or a situation in which information not available under this part is sought, the Government employee who receives the subpena shall immediately forward it and the Official Personnel Folder containing the information sought to the:

General Counsel, Office of Personnel Management, Washington, D.C. 20415.

The Government employee shall inform the person who applied for the subpena that the subpena and the information sought have been sent to the Office pursuant to this subparagraph and, if necessary, request a postponement of the scheduled appearance.

§ 294.110 Deceased employees.

A right under this part to the disclosure of, and to control the disclosure of information personal to an employee, former employee, annuitant, or applicant passes after his death to the executor or administrator of his estate, or in the absence of an executor or administrator, to his next of kin.

Subpart B—The Public Information Function

§ 294.201 Public information policy.

(a) In addition to the basic policies of the Office relative to the disclosure of information when requested by a member of the public, the Office has an independent public information policy for bringing to the attention of the public through news releases, publications of the Office, or other methods, information concerning the functions of the Office as a Federal agency, and the programs administered by the Office.

(b) The Director, Office of Public Affairs, is responsible for the furtherance of the public information policy of the Office. In addition, each employee of the Office shall cooperate in carrying out this policy in accordance with the Administrative Manual.

Subpart C—Office Operations

§ 294.301 Policy and interpretations.

(a) Statements of Office policy and interpretations of the laws and regulations administered by the Office which have been adopted by the Office, whether or not published in the Federal Personnel Manual or the **Federal Register**, are information available to the public.

(b) Memoranda, correspondence, opinions, data, staff studies, information received in confidence, and similar documentary material, when prepared for the purpose of internal communication within the Office or between the Office and other agencies, organizations, or persons generally are not information available to the public.

Subpart D—Medical Information

§ 294.401 Medical information.

(a) Medical information about an applicant, employee, or annuitant is not made available to the public by the Office or other Government agency.

(b) Medical information about an applicant, employee, or annuitant may be disclosed by the Office or other Government agency to the applicant, employee, or annuitant, or a representative designated in writing, except that medical information concerning a mental or other condition of such a nature that a prudent physician would hesitate to inform a person suffering from it of its exact nature and probable outcome may be disclosed only to a licensed physician designated in writing for that purpose by the individual or his designated representative.

Subpart E—Examinations and Related Subjects

§ 294.501 Examinations.

(a) The Office makes information available to the public that will assist members of the public in understanding the purpose of, and in preparing for, civil service examinations. It makes information available to the public relative to the types of questions and the categories of knowledge or skill pertinent to a particular examination. The following materials are not available to the public: (1) Testing and examination materials used solely to determine individual qualifications; (2) test material, including test plans, item analysis data, criterion instruments, and other material the disclosure of which would compromise the objectivity of the testing process.

(b) Each employee entrusted with test material has a positive duty to protect the confidentiality of that material and to assure that it is released only as required to conduct an examination authorized by the Office.

(c) The applicant's answers in a written test may be reviewed by the applicant only in the presence of an employee of the Office in an appropriate office. The test booklet is not made available in connection with such review.

(d) Information concerning the results of examinations will be released only to the individual concerned, and to those parties explicitly designated by the individual.

(e) The names of applicants for civil service positions or eligibles on civil service registers, certificates, employment lists, or other lists of eligibles, or their ratings or relative standings are not information available to the public.

Subpart F—Investigations

§ 294.601 Investigative reports.

(a) The disclosure requirments of the Freedom of Information Act do not apply to matters that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and are in fact properly classified pursuant to such Executive Order.

(b) Investigatory records compiled for law enforcement purposes are exempt, but only to the extent that the production of such records would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life and physical safety of law enforcement personnel.

(c) All requests for investigative reports of investigations conducted by the Office of Personnel Management will be forwarded to the Deputy Associate Director for Personnel Investigations, Staffing Services, for processing. If the investigative file on the subject of investigation maintained by the Deputy Associate Director for Personnel Investigations contains investigatory information that orignated in another agency, the Deputy Associate Director for Personnel Investigations will refer a copy of the subject's request to that agency for its decision concerning release of the investigatory information that originated in that agency. Copies of reports of investigation conducted by the Office of Personnel Management on the subject of investigation will be furnished upon request to the subject of investigation or to his or her representative designated in writing, with the exception of any

material that is exempt from disclosure under paragraphs (a) and (b) of this section.

(d) The Office or other Government agency will disclose to the parties concerned any report of investigation under its control, or an extract of the report, to the extent the report is involved in a proceeding under Part 771 of this chapter except when the disclosure would violate the proscription against the disclosure of medical information in § 294.401. For the purposes of this paragraph, the parties concerned means the Government employee involved in the proceeding, his or her representative designated in writing, and the representative of the agency involved in the proceeding.

(e) The Office in suitability rating actions under Part 731 of this chapter will disclose to an applicant, eligible, or appointee, or a representative designated in writing, such information from reports of investigation as the Office determines is sufficient to enable him or her to respond to an interrogatory or other question without revealing the source of information obtained under an expressed or implied pledge of confidence. The Office will furnish a report of investigation to the Government agency concerned.

(f) The Office or other Government agency does not make a report of investigation or information from a report under its control available to the public, to witnesses, or, except as provided in paragraphs (a), (b), (c), and (d) of this section, to the parties concerned in the investigation.

Subpart G—Official Personnel Folder

§ 294.701 Coverage.

This subpart applies to the disclosure of information contained in the Official Personnel Folder (or an automated equivalent) established under Subpart B of Part 293 of this chapter. Information disclosed under this subpart may be made available by the Office or a Federal agency having custody of the folder.

§ 294.702 Availability of information.

(a) The following information about most present and former government employees is available to the public:

(1) Name;

(2) Present and past position titles;

(3) Present and past grades;

(4) Present and past salaries;

(5) Present and past duty stations (which include room numbers, shop designations, or other identifying information regarding buildings or places of employment).

(b) Disclosure of this information will not be made where the information requested is a list of present or past position titles, grades, salaries, and/or duty stations of Government employees which as determined by the agency official responsible for custody of that information, is:

(1) Selected in such a way as to constitute a clearly unwarranted invasion of personal privacy because the nature of the request calls for a response that would reveal more about the employees on whom information is sought than the five enumerated items; or

(2) Would otherwise be protected from mandatory disclosure under an exemption of the Freedom of Information Act.

(c) In addition to the information that may be made available under paragraph (a) of this section, the following information may be made available to a prospective employer of a Government employee or former Government employee:

(1) Tenure of employment;

(2) Civil service status;

(3) Length of service in the agency and the Government; and

(4) When separated, the date and reason for separation shown on the Notification of Personnel Action, Standard Form 50.

(d) In addition to the information to be made available under paragraphs (a) and (b) of this section, the home address of an employee shall be made available to a police or court official on receipt of a proper request stating that an indictment has been returned against the employee or that complaint, information, accusation, or other writ involving nonsupport or a criminal offense has been filed against the employee and the employee's address is needed for service of a summons, warrant, subpena, or other legal process.

(e) The General Services Administration, National Archives and Records Service, may make information from the Official Personnel Folder of an employee separated from the service available to a person engaged in research for historical or educational purposes or for similar purposes when the person has written permission from the Office to receive such information. This permission may be requested in writing from:

Assistant Director for Agency Compliance and Evaluation, Agency Relations, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

Requests for this type of information should include identifying information as described in § 294.106(c)(1) of this part, and verification from a publisher, educational research, or other similarly recognized institution that the information is being sought for historical, educational, or other similar purposes. Except as provided in § 294.703(a) of this part, information made available under this paragraph shall be in the form of an abstract of the former employee's service in the Government and, when he has been separated at least five years, an abstract of his educational experience background as reflected in his application for employment with the Government. Information that is derogatory to the former employee shall not be made available under this paragraph.

(f) Except as provided in paragraphs (a) through (e) of this section, information required to be included in an Official Personnel Folder by the instructions of the Office is not available to the public.

§ 294.703 Access to folder.

(a) On official request, an Official Personnel Folder may be disclosed to a representative of a Congressional committee or subcommittee, or an official of the legislative or judicial branch, or of the Government of the District of Columbia. However, before disclosure, all material that relates to loyalty or security under Executive Order 9835 or 10450 or any other authority, and all information covered under paragraph (a) (1) through (3) of this section, shall be removed from the folder. If a specific request for loyalty or security information is made by a Congressional committee or subcommittee, or any source outside the executive branch, the request shall be forwarded to the General Counsel, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415, for consultation with the Department of Justice pursuant to the President's Memorandum of March 24, 1969.

(b) An Official Personnel Folder shall be disclosed to an official of the executive branch who has a need for the information in the performance of his official duties.

Subpart H—Appeals

§ 294.801 Appeals.

(a) The Office, upon a request which identifies the individual from whose file the information is sought, shall disclose the following information from an appeal file to a member of the public, except when the disclosure would

constitute a clearly unwarranted invasion of personal privacy:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The status of the case;

(3) The decision on the case;

(4) The nature of the action appealed; and

(5) With the consent of the parties concerned, other reasonably identified information from the file.

(b) The Office will disclose to the parties concerned the information contained in an appeal file in proceedings under Part 511 of this chapter, except when the disclosure would violate the proscription against the disclosure of medical information in § 294.401. For the purpose of this section, "the parties concerned" means the Applicant for Government Employment, Government employee, or former Government employee involved in the proceedings, his representative designated in writing, and the representative of the agency or the Office involved in the proceeding.

Subpart I—Retirement

§ 294.901 Retirement.

The Office will disclose information from retirement files and records in accordance with § 831.106 of this chapter.

Subpart J—Classified Information

§ 294.1001 Classified information.

The Office will not disclose information classified under Executive Order 12065 of June 28, 1978, or other Executive Order, except to individuals authorized access to it under terms of that authority.

Subpart K—Leave Records

§ 294.1101 Leave records.

The annual and sick leave record of an employee, or information from these records, is not made available to the public by the Office or other Government agency. However, the leave record, or information from it, shall be disclosed to the employee concerned or, with his written consent, to a representative of the employee or any other person that he authorizes to have the record.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79-17945 Filed 6-7-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 720

Affirmative Employment Programs

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: This regulation changes the date by which Federal Equal Opportunity Recruitment Program Plans must be developed for the headquarters level of each Executive agency from July 1, 1979, to October 1, 1979. It also corrects the title of Subpart B as it appears in the table of contents for Part 720.

EFFECTIVE DATE: June 8, 1979.

FOR FURTHER INFORMATION CONTACT: Tom Dausch, Office of Affirmative Employment Programs, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20515, (202) 254-9470.

SUPPLEMENTARY INFORMATION: On April 13, 1979, the Office of Personnel Management issued final regulations to implement a Federal Equal Opportunity Recruitment Program (44 FR 22029 et seq.) pursuant to section 310 of the Civil Service Reform Act of 1978 and program guidelines established by the Equal Employment Opportunity Commission. Included in those regulations was a requirement for the headquarters level of each Executive agency to establish recruitment plans provided for in the regulations not later than July 1, 1979. That date was based on the Office of Personnel Management's plan to issue program guidance to agencies at the same time final regulations were published. Since there have been delays in obtaining needed data to include in the guidance material, the Office considers it unrealistic for most agencies to develop plans by July 1, 1979. Consequently, this amendment changes the deadline for development of headquarters level plans to October 1, 1979. There is no change with respect to component level plans which must still be developed no later October 1, 1979. Because this amendment constitutes a procedural rather than a substantive change, the Office deems it unnecessary to provide for a public comment period.

The amendment also changes the table of contents which had incorrectly carried over the title of Subpart B as it had appeared in proposed rules for the program, but which had been modified in the final regulations.

Accordingly, the Office of Personnel Management is amending 5 CFR Part 720 as set forth below:

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

The table of contents for Part 720 is amended to read as follows:

PART 720—FEDERAL EQUAL OPPORTUNITY RECRUITMENT PROGRAM

Subpart A—Principal Statutory Requirements

Sec.
720.101 Principal statutory requirements.

Subpart B—Federal Equal Opportunity Recruitment Program

720.201 Regulatory requirements.
720.202 Definitions.
720.203 Responsibilities of the Office of Personnel Management.
720.204 Agency programs.
720.205 Agency plans.
720.206 Selection guidelines.
720.207 Reports.

Appendix—Guidelines for the development of a Federal Recruitment Program to Implement 5 U.S.C. Section 7201, as amended.

Authority: 5 U.S.C. 7201; 42 U.S.C. 2000e.

Part 720, § 720.205, paragraph (g) is amended to read as follows:

§ 720.205 Agency plans.

* * * * *

(g) All plans required under this subpart must be developed not later than October 1, 1979.

[FR Doc. 79-17946 Filed 6-7-79; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 215

[Amendment 17]

Special Milk Program for Children; Free Milk Option in the Special Milk Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes guidelines under which School Food Authorities and child care institutions participating in the Special Milk Program shall implement their option to provide free milk to children meeting local eligibility criteria. It also makes a prototype free milk policy statement by a State for child care institutions an explicit regulatory requirement for States.

EFFECTIVE DATE: July 1, 1979.

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, School Programs Division, USDA–FNS, Washington, D.C. 20250, (202) 447–8130.

SUPPLEMENTARY INFORMATION: Section 5(a) of Public Law 95–627 amends section 3 of the Child Nutrition Act, authorizing the Special Milk Program, to provide the option to the School Food Authority to make free milk available to children eligible under local eligibility criteria. Since the Special Milk Program is also available to nonresidential child care institutions, it seems clear that it was the intent of Congress that this provision also be extended to them.

Previously, under the provisions of Public Law 95–166 and Amendment 16 to this part, schools and child care institutions were required to provide free milk to eligible children when the Special Milk Program operated at times other than meal services reimbursed by the Department or during such meal service periods to any child who elected not to take the free meal for which he or she was qualified.

This rule removes the requirements to serve free milk under these two circumstances and also removes time restrictions on service of free milk where the School Food Authority or institution has elected to provide this service.

The rule requires that, upon Program application and renewal, each School Food Authority and child care institution shall inform the State agency or FNSRO where applicable, of its decision whether or not to provide free milk. If electing to provide free milk, a School Food Authority or sponsoring institution must list the names of all schools and institutions participating in the Program who choose to serve free milk in their agreement with the State agency or FNSRO where applicable, and must submit an acceptable free milk policy statement. In such schools and institutions, free milk shall be made available to needy children at any time that milk under the Special Milk Program is made available to nonneedy children in the participating school or institution.

This rule also reflects a change made by section 5(a) of Pub. L. 95–627 in the price index used to calculate adjustments to milk reimbursement rates. Previously, these adjustments were based on the "series of food away from home" of the Consumer Price Index. This rule references the new index imposed by Pub. L. 95–627: the Producer Price Index for Fresh Processed Milk published by the Bureau of Labor Statistics of the Department of Labor. This legislatively mandated change was believed to be a more fair indicator to be used for annual reimbursement adjustments.

This rule also brings this part of the regulations into conformance with Part 245, Determining Eligibility for Free and Reduced Price Meals and Milk in Schools, by requiring States to issue a prototype free milk policy statement for participating child care institutions. This amendment is merely a technical change and imposes no new requirements on States.

The Department is issuing this amendment as a final rule because it is mandated by Pub. L. 95–627 and is nondiscretionary in that there are no alternatives to its implementation. This decision was made by Robert Greenstein, Acting Administrator, FNS.

Accordingly, Part 215 is amended as follows:

1. Section 215.1, the fifth and sixth sentences of section 3 of the Child Nutrition Act of 1966, as amended, are amended to read as follows:

§ 215.1 General purpose and scope.

* * * * *

Sec. 3 * * * Children who qualify for free lunches under the guidelines established by the Secretary shall, at the option of the school involved (or the local educational agency involved in the case of a public school) also be eligible for free milk upon their request. For the fiscal year ending June 30, 1975, and for subsequent school years, the minimum rate of reimbursement for a half-pint of milk served in schools and other eligibile institutions shall not be less than 5 cents per half-pint served to eligible children, and such minimum rate of reimbursement shall be adjusted on an annual basis each school year thereafter to reflect changes in the Producer Price Index for Fresh Processed Milk published by the Bureau of Labor Statistics of the Department of Labor. * * *

2. In § 215.7, Requirements for participation, paragraphs (b) and (d–2) are amended to read as follows:

§ 215.7 Requirements for participation.

* * * * *

(b) Any School Food Authority or child care institution participating in the Program may elect to serve free milk to children eligible for free meals. Upon application for the Program and thereafter at least annually, each School Food Authority or child care institution (i) shall be required by the State agency, or FNSRO where applicable, to state whether or not it wishes to provide free milk in the schools or institutions participating under its jurisdiction and (ii) if it so wishes to provide free milk, shall also submit for approval a free milk policy statement which, if for a school, shall be in accordance with Part 245 of this Chapter or, if for a child care institution, shall be in accordance with §215.13a of this part.

(d) * * *

(1) * * *

(2) If electing to provide free milk (i) serve milk free to all eligible children, at times that milk is made available to nonneedy children under the Program; and (ii) make no discrimination against any needy child because of his inability to pay for the milk.

* * * * *

3. Section 215.8, paragraph (b), is amended to read as follows:

§ 215.8 Reimbursement payments.

* * * * *

(b)(1) The rate of reimbursement per half-pint of milk purchased and (i) served in nonpricing programs to all children; (ii) served to all children in pricing programs by institutions and School Food Authorities not electing to provide free milk; and (iii) served to children other than needy children in pricing programs by institutions and School Food Authorities electing to provide free milk shall be the rate announced by the Secretary for the applicable school year. However, in no event shall the reimbursement for each half-pint (236 ml.) of milk served to children exceed the cost of milk to the school or child care institution. (2) The rate of reimbursement for milk purchased and served free to needy children in pricing programs by institutions and School Food Authorities electing to provide free milk shall be the average cost of milk, i.e., the total cost of all milk purchased during the claim period, divided by the total number of purchased half-pints.

4. Section 215.13a, paragraphs (a), (b), (c), and (e) are amended to read as follows:

§ 215.13a Determining eligibility for free milk in child care institutions.

(a) *General.* Child care institutions which operate pricing programs may elect to make free milk available, as set forth in § 215.7(d)(2), to children who meet the approved eligibility criteria. Such child care institutions shall determine the children who are eligible for free milk and assure that there is no physical segregation of, or other discrimination against, or overt identification of, children unable to pay the full price for milk.

(b) *Action by State agencies and FNSROs.* Each State agency, or FNSRO where applicable, upon application for the program by a child care institution operating a pricing program, and

annually thereafter, shall require the institution to state whether or not it wishes to serve free milk to eligible children at times that milk is provided under the Program. It shall annually require each child care institution electing to provide free milk to submit a free milk policy statement and shall provide such institutions with a prototype free milk policy statement and a copy of the State's family-size income standards for determining eligibility for free meals and milk under the National School Lunch and School Breakfast Programs to assist the institutions in meeting its responsibilities.

(c) *Action by institutions.* Each child care institution which operates a pricing program shall inform the State agency, or FNSRO where applicable, at the time it applies for Program participation and at least annually thereafter, whether or not it wishes to provide free milk. Institutions electing to provide free milk shall annually submit a written free milk policy statement for determining free milk eligibility of children under their jurisdiction, which shall contain the items specified in (d) of this section. Such institutions shall not be approved for Program participation of their agreements renewed unless the free milk policy has been reviewed and approved. Pending approval or a revision of a policy statement, the existing policy shall remain in effect.

* * * * *

(e) *Public announcement of eligibility criteria.* Each child care institution which elects to make free milk available under the Program shall annually make a public announcement of the availability of free milk to children who meet the approved eligibility criteria to the information media serving the area from which its attendance is drawn. The public announcement must also state that milk is available to all children in attendance without regard to race, color, or national origin.

* * * * *

(Catalog of Federal Domestic Assistance No. 10.556)

A copy of the detailed impact statement for this final rule may be viewed at the office of the person identified in the "address" portion of the preamble during regular business hours (8:30 am to 5:00 pm, Monday through Friday), and a copy may be obtained from that person.

(Sec. 5, Pub. L. 95-627, 92 Stat. 3619 (42 U.S.C. 1772))

Dated: June 4, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79-17965 Filed 6-7-79; 8:45 am]

BILLING CODE 3410-30-M

7 CFR Part 245

[Amdt. 13]

Determining Eligibility for Free and Reduced Price Meals and Milk in Schools

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation amends the language of Part 245 referring to the responsibilities of schools in the Special Milk Program in order to conform to Section 5 of Pub. L. 95-627 which gives School Food Authorities participating in the program the option of providing free milk to eligible children at the child's request. Part 215 of Chapter II, governing the Special Milk Program, requires that eligibility for free milk in schools be based upon the provisions of this part.

This final rule also amends Part 245 to implement section 8(2) of Pub. L. 95-627. This amendment requires each State agency, or FNSRO where applicable, to prescribe family-size income standards for free meals and milk at 125% of the Secretary's Income Poverty Guidelines. Previously, State agencies, or FNSROs where applicable, had flexibility to vary free eligibility between 100% and 125% of the Secretary's Income Poverty Guidelines.

This rule also amends Part 245 to remove obsolete provisions relating to nonprofit private schools in § 245.9.

EFFECTIVE DATE: This final rule will become effective on July 1, 1979.

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, School Programs Division, USDA-FNS, Washington, D.C. 20250, (202)447-8130.

SUPPLEMENTARY INFORMATION:

Free Milk Option

Under previous law and regulations, School Food Authorities participating in the Special Milk Program and operating a pricing program were required, under certain circumstances, to provide free milk to children eligible for free meals. Section 5 of Pub. L. 95-627 makes service of free milk under the program optional. Part 215, Special Milk Program regulations, will be amended to reflect this option and will require School Food Authorities offering free milk to develop a free milk policy statement which shall be in accordance with Part 245 of this chapter. This regulation, therefore, amends Part 245 to conform to the changes in Part 215 required by Pub. L. 95-627.

Standardized Eligibility Criteria

Each State agency is required to prescribe income standards for both free and reduced price meals and free milk by family size, for use by School Food Authorities and institutions in the State in determining eligibility for such benefits. Prior to the enactment of Pub. L. 95-627, the State standards for free meals and for free milk could not be less than the applicable family size income level prescribed by the Secretary's Guidelines nor exceed these Guidelines by more than 25 percent. Section 8 of Pub. L. 95-627 removes this flexibility of States to vary free eligibility standards by requiring States to set free standards at 125 percent of the Secretary's Guidelines, that is, at 25 percent above the Guidelines.

This nondiscretionary provision of Pub. L. 95-627 is designed to standardize eligibility criteria for all States for free meals at the maximum level; that is, at 125 percent of the Secretary's Income Poverty Guidelines.

Pub. L. 94-105 standardized reduced price meal eligibility at the maximum level; that is, at 195 percent of the Secretary's Income Poverty Guidelines.

Section 245.9 provides that certain nonprofit private schools are exempt from serving reduced price meals. This provision is in conflict with Pub. L. 94-105 which mandates service of reduced price meals in all schools participating in the National School Lunch or School Breakfast Programs. The wording in this section is therefore revoked to remove obsolete provisions, and § 245.9 is reserved.

The Department is issuing this amendment as a final rule because it is mandated by Pub. L. 95-627 and is nondiscretionary in that there are no alternatives to its implementation. This decision was made by Robert Greenstein, Acting Administrator, FNS.

Accordingly, Part 245 is amended as follows: (1) The first three sentences of § 245.1(a) are deleted and amended to read as follows:

§ 245.1 General purpose and scope.

(a) Section 9 of the National School Lunch Act, as amended, and Section 4 of the Child Nutrition Act of 1966, as amended, requires that schools participating in the National School Lunch Program (7 CFR Part 210) and the School Breakfast Program (7 CFR Part 220) and other schools utilizing

commodities donated by the Department shall serve free meals to any child who is a member of a household which has an annual income not above the applicable family-size income level set forth in income poverty guidelines prescribed by the Secretary. Each State agency is required to prescribe family-size income standards, which will be 25 percent above the Secretary's income poverty guidelines, to be used by schools in the State during each fiscal year in determining which children in the State are eligible for free meals. Section 3 of the Child Nutrition Act of 1966, as amended, provides that schools participating in the Special Milk Program may, at the option of the School Food Authority, make free milk available to children eligible for free meals. * * *

(2) The third and fourth sentences of § 245.3(a) are deleted. The second sentence of paragraph (b) and paragraph (c) are amended to read as follows:

§ 245.3 Eligibility standards and criteria.

* * * * *

(b) * * * Such criteria shall:

(1) For all schools under the jurisdiction of the School Food Authority, specify the uniform family-size income criteria to be used for determining eligibility for free and reduced price meals in schools participating in the National School Lunch or School Breakfast Programs and in commodity-only schools, and for determining eligibility for free milk when the School Food Authority has chosen to serve free milk in its schools participating in the Special Milk Program; * * *

(c) Each School Food Authority shall serve free and reduced price meals and, if so electing, free milk in the respective programs to children eligible under its eligibility criteria. Family income used by a School Food Authority in determining eligibility of an applicant shall be income as defined in the Secretary's Income Poverty Guidelines including the adjustments for special hardship conditions. When a child is not a member of a family as defined in § 245.2(b), the child shall be considered a family of one. In any school which participates in more than one child nutrition program (National School Lunch Program, School Breakfast Program, or Special Milk Program) or is a commodity-only school which also participates in the School Breakfast Program or Special Milk Program (in which the School Food Authority has elected to provide free milk), the eligibility shall be applied uniformly so that eligible children receive the same benefits in each program. If a child transfers from one school to another school under the jurisdiction of the same School Food Authority, his eligibility for free or reduced price meals or for free milk, if previously established, shall be transferred to, and honored by, the receiving school if it participates in the National School Lunch Program, School Breakfast Program, Special Milk Program and the School Food Authority has elected to provide free milk, or is a commodity-only school.

* * * * *

§ 245.9 [Reserved]

3. Section 245.9 is revoked and reserved.

4. Section 245.10, paragraph (a), the first sentence is amended to read as follows:

§ 245.10 Action by School Food Authorities.

(a) Each School Food Authority of a school desiring to participate in the National School Lunch Program, School Breakfast Program, or to provide free milk under the Special Milk Program, or to become a commodity-only school shall submit for approval to the State agency a free and reduced price policy statement. * * *

(Catalog of Federal Domestic Assistance No. 10.555)

A copy of the detailed impact analysis statement for this final rule may be viewed at the office of the person identified in the "address" portion of the preamble during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday), and a copy may be obtained from that person.

(Sec. 8, Pub. L. 95-627, 92 Stat. 3623, (42 U.S.C. 1758); sec. 5, Pub. L. 95-627, 92 Stat. 3619, (42 U.S.C. 1772))

Dated: June 4, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79-17962 Filed 6-7-79; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 202]

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 June 10–16, 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: June 10, 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 effectuate 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 June 5, 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 become 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.

§ 910.502 Lemon Regulation 202.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period June 10, 1979, through June 16, 1979, is established at 300,000 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: June 7, 1979.

D. S. Kuryloski,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-18150 Filed 6-7-79; 11:32 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1980

Business and Industrial Loan Programs; Processing of Clearances

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations pertaining to the Business and Industrial loan program. The intended effect of this action is to expedite the processing of clearances required in the program. This action results from internal administrative processing changes.

EFFECTIVE DATE: June 8, 1979.

FOR FURTHER INFORMATION CONTACT: Darryl H. Evans, Acting Director, Business Management and Development Division, telephone 202–447–4150.

SUPPLEMENTARY INFORMATION: Section 1980.451 Administrative B 3(c) of Subpart E of Part 1980, Chapter XVIII, Title 7, Code of Federal Regulations is amended to require submission of Form FmHA 449–4, "Statement of Personal History," by the State Director to the National Office for only those loans which the State Director believes a character evaluation check is advisable to protect the Government's interest. This action is necessitated by the fact that the Inspector General of U.S. Department of Agriculture does not have the staff to process all Forms FmHA 449–4 received and because increasing staff to process all of these statements is not cost effective. The State Director may process Form FmHA 449–4 for any project when he or she believes is in the best interest of the Government. Form FmHA 449–4 is still required to be completed by the applicant on all loans as part of the overall application package. The lender is responsible for assuring that Form FmHA 449–4 is completed accurately. This change will substantially reduce the processing workload and will reduce overall loan processing time.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 533 with respect to such rules. This amendment, however, is not published for proposed rulemaking since it deals with the agency's management of loan procedures. Therefore, public participation is unnecessary. The official responsible for this determination is Darryl H. Evans.

Accordingly, Section 1980.451 Administrative B 3(c) of Subpart E of Part 1980 is amended to read as follows:

§ 1980.451 Filing and processing applications.

* * * * *

Administrative

* * * * *

B. *The State Director:*

* * * * *

3. * * *

* * * * *

(c) Form FmHA 449–4 (5 copies) only for those loans which the State Director believes a character evaluation check is advisable. Applicants should be advised that these clearances will take approximately 60 days to process and that the National Office will take no action to expedite such processing.

* * * * *

(Authority: 7 U.S.C. 1989; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary of Agriculture for Rural Development, 7 CFR 2.70)

Note.—This document has been reviewed in accordance with FmHA Instruction 1901–G, "Environmental Impact Statement." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required."

This regulation has not been determined significant under the USDA criteria implementing Executive Order 12044.

A copy of the Impact Analysis Statement is available at the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S.D.A., Room 6348, South Agriculture Building, Washington, D.C. 20250.

Dated: May 23, 1979.

Gordon Cavanaugh,
Administrator, Farmers Home Administration.

[FR Doc. 79-17827 Filed 6-7-79; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 82

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Areas Released From Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to release a portion of Starr County in Texas, from the areas quarantined because of exotic Newcastle disease. Surveillance activity indicates that exotic Newcastle disease no longer exists in the area released from quarantine. No areas in the State of Texas remain under quarantine.

EFFECTIVE DATE: June 1, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. M. A. Mixson, USDA, APHIS, VS, Federal Building, Room 748, Hyattsville, MD 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION: This amendment releases a portion of Starr County in Texas, from the areas quarantined because of exotic Newcastle disease under the regulations in 9 CFR Part 82, as amended. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will no longer apply to the area released.

PART 82—PSITTACOSIS OR ORNITHOSIS IN POULTRY

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respect:

§ 82.3 [Amended]

In § 82.3(a), paragraph (8) relating to the State of Texas is deleted.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111–113, 115, 117, 120, 123–126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141.)

The amendment relieves certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease. It should be made effective immediately in order to permit affected persons to move poultry, mynah, psittacine birds, and birds of all other species under any form of confinement, and their carcasses and

parts thereof, and certain other articles, interstate from such area without unnecessary restrictions. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective on or before July 9, 1979.

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by J. K. Atwell, Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 1st day of June 1979.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 79-17597 Filed 6-7-79; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 113

Standard Requirements; Avian Pox Vaccine Safety Test; Revision

AGENCY: Animal and Plant Health Inspection Service (USDA).

ACTION: Final rule.

SUMMARY: This amendment revises the standard requirement for avian pox vaccines by adding a new safety test for vaccines that are recommended for use in birds 10 days of age or younger. Since issuance of the present standard requirement, new products have been developed that are recommended for use in birds as young as 1 day of age. This amendment updates the present standard by adding a safety test to evaluate these new products.

EFFECTIVE DATE: This amendment becomes effective July 9, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. R. J. Price, Biologics Licensing and Standards Staff, USDA, APHIS, VS, Room 827, Federal Building, Hyattsville, MD 20782, 301-436-8245.

SUPPLEMENTARY INFORMATION: The safety test provided in the present standard requirement for avian pox vaccines in § 113.161 was designed for the testing of vaccine that is recommended for use in birds 6 to 8 weeks of age. Since the issuance of this standard, new avian pox vaccines have been developed that are recommended for use in birds as young as 1 day of age. The safety test in the present standard has been found to be unsatisfactory for use in the evaluation of these new products, since it does not make provision for occasional deaths that are not attributable to the product that occur when conducting tests in birds less than 5 days of age. As a result, retests are frequently required.

This amendment provides a new two-stage safety test for these new products that is designed to be conducted in birds less than 5 days of age. This test provides a valid evaluation of safety and will result in less retesting of product than is required by the present standard.

Some editing changes are also being made for clarity and consistency in the safety test for products recommended for use in older birds.

On October 20, 1978, a notice of the proposed amendment to Part 113 was published in the **Federal Register** at 43 FR 49013.

Comments on this proposal were solicited and two responses were received. One response was favorable to the proposal as written. The other response contained suggestions that were considered appropriate and constructive. These suggestions have been incorporated in this final rule and are explained in the discussion of changes below.

After due consideration of all relevant matters, including the proposal set forth in the aforesaid notice, and pursuant to the authority contained in the Virus-Serum-Toxin Act of March 4, 1913 (21 U.S.C. 151-158), the amendment of Part 113, Subchapter E, Chapter I, Title 9 of the Code of Federal Regulations, as contained in the aforesaid notice is hereby adopted with the following exceptions:

In paragraph (d)(1)(i), "Twenty-five susceptible birds" has been changed to "Each of 25 susceptible birds." This editorial change has been made to clarify that the intent of this amendment is that each bird be inoculated with 10 doses of vaccine.

Editorial changes have also been made in paragraph (d)(1) (i) and (iv) by changing "vaccinated as recommended on the label with the equivalent of 10 doses" to "vaccinated with the equivalent of 10 doses of vaccine by each of all routes recommended on the label." This change reflects the language used in the present standard requirement and will clarify the intended method of administering the product for the test.

In the table for interpretation of results in paragraph (d)(1)(ii), "6 or less" has been changed to "5 or less." This change corrects an error in the proposed table, which would have resulted in the product being judged both satisfactory and unsatisfactory if six birds demonstrated severe clinical signs or death during the test period.

A printing error has been corrected in the heading for § 113.161 by capitalizing the first letter of each word.

1. The first letter in each word of the heading for § 113.161 is to be capitalized.

2. Section 113.161 is amended by revising paragraph (d)(1) to read:

§ 113.161 Avian Pox Vaccine.

* * * * *

(d) * * *

(1) *Safety test.* Final container samples of completed product from each serial shall be tested. Vaccines recommended for use in birds 10 days of age or younger shall be tested in accordance with paragraphs (d)(1) (i), (ii), and (iii) of this section.

(i) Each of 25 susceptible birds 5 days of age or younger, properly identified and obtained from the same source and hatch, shall be vaccinated with the equivalent of 10 doses of vaccine by each of all routes recommended on the label and observed each day for 14 days. Severe clinical signs or death shall be counted as failures. Two-stage sequential testing may be conducted if the first test (which then becomes stage one) has three failures.

(ii) The results shall be evaluated according to the following table:

Cumulative Totals

Stage	Number of birds	Failures for satisfactory serials	Failures for unsatisfactory serials
1	25	2 or less	4 or more.
2	50	5 or less	6 or more.

(iii) If unfavorable reactions occur which are not attributable to the product, the test shall be declared inconclusive and may be repeated or, in lieu thereof, the serial declared unsatisfactory.

(iv) Vaccines not recommended for use in birds 10 days of age or younger shall be tested for safety as follows:

Each of twenty-five 3- to 5-week-old, fowl-pox susceptible birds shall be vaccinated with the equivalent of 10 doses of vaccine by each of all routes recommended on the label and observed each day for 14 days. If any of the birds show severe clinical signs of disease or death during the observation period due to causes attributable to the product, the serial is unsatisfactory. If unfavorable reactions occur which are not attributable to the product, the test shall be declared inconclusive and may be repeated or, in lieu thereof, the serial declared unsatisfactory.

* * * * *

(21 U.S.C. 151 and 154, 37 FR 28477, 28646; 38 FR 19141.)

Done at Washington, D.C., this 4th day of June 1979.

Note.—This rule has been reviewed under the USDA criteria established to implement E.O. 12044, "Improving Government Regulations." Under those criteria, this action has been designated for Agency oversight. A Final Impact Analysis Statement has been prepared and is available from USDA, APHIS, VS, Room 827, Federal Building, Hyattsville, MD 20782.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 79-17821 Filed 6-7-79; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 212

[ERA-R-77-16]

Mandatory Petroleum Price Regulations; Adjustments to Lower and Upper Tier Crude Oil Price Ceilings to Reflect Impact of Inflation

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby issues Crude Oil Price Schedule No. 15 which provides for monthly increases in the ceiling prices for lower tier and upper tier crude oil. These increases will result in estimated first sale prices for the months of June, July, and August 1979 of $5.90, $5.94, and $5.98 per barrel (lower tier) and $13.15, $13.24, and $13.33 per barrel (upper tier), respectively. This action is intended to permit price increases that take into account the impact of inflation.

EFFECTIVE DATE: June 1, 1979.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street, N.W., Room B110, Washington, D.C., 20461, 202-634-2170.

Charles P. Little (Crude Oil Pricing Branch), Economic Regulatory Administration, 2000 M Street, N.W., Room 6128, Washington, D.C. 20461, 202-254-6296.

Ben McRae (Office of General Counsel), Department of Energy, 1000 Independence Avenue, SW., Room 6A-127, Washington, D.C. 20585, 202-252-6739.

SUPPLEMENTARY INFORMATION:

A. *Introduction.*
B. *Crude Oil Price Schedule No. 15.*

A. Introduction.

On February 27, 1979, we issued Crude Oil Price Schedule No. 14 (44 FR 12399, March 1, 1979). That schedule set forth the last in a series of price increases designed to implement part of the crude oil pricing policy as proposed in the National Energy Plan (NEP) issued by the President on April 20, 1977. That policy was to permit the prices for lower tier and upper tier crude oil to increase at no more than the rate of inflation through May 1979. We have not decided at this time to depart from that policy. Therefore, we are today issuing Crude Oil Price Schedule No. 15 which establishes ceiling prices for lower tier and upper tier crude oil for the months of June, July and August 1979 on the basis of the current rate of inflation.

B. Crude Oil Price Schedule No. 15.

Under Crude Oil Price Schedule No. 15 the May 1979 lower tier ceiling price (the May 15, 1973 posted price plus $2.17 per barrel, resulting in an average first sale price of approximately $5.86 per barrel), and the May 1979 upper tier price (the September 30, 1975 posted price plus $.39, resulting in an average first sale price of approximately $13.06 per barrel), are adjusted for inflation for June, July, and August 1979, based on the first revision of the GNP deflator published on May 21, 1979, which reflects an annual rate of inflation of 8.8 percent.

1. *Lower Tier Ceiling Prices*

Adjustments to ceiling prices for lower tier crude oil and the approximate average first sale prices pursuant to those ceiling prices in June, July, and August 1979 are determined pursuant to the following methodology:

A. ERA has computed a monthly adjustment factor of .00705 which when applied over a twelve-month period yields an effective annual rate of adjustment of 8.8 percent.
B. June 1979 adjustment = ($5.86) (.00705) per barrel = $.041 per barrel rounded to $.04 per barrel
C. July 1979 adjustment = ($5.86 + .04) (.00705) per barrel = $.042 per barrel rounded to $.04 per barrel
D. August 1979 adjustment = ($5.86 + .04 + .04) (.00705) per barrel = $.042 per barrel rounded to $.04 per barrel

Based upon the monthly adjustments computed above, estimated average lower tier ceiling prices for the months of June, July, and August 1979 are computed as follows:

June 1979 = $5.86 + .04 = $5.90
July 1979 = $5.90 + .04 = $5.94
August 1979 = $5.94 + .04 = $5.98

Using an average highest posted field price on May 15, 1973 of $3.69 per barrel and the monthly adjustments as computed above, lower tier prices for the next 3 months have been determined as follows:

Month	Ceiling price	Price[1]
June 1979.....	May 15, 1973 highest posted field price plus $2.21.	$5.90
July 1979.....	May 15, 1973 highest posted field price plus $2.25.	5.94
August 1979...	May 15, 1973 highest posted field price plus $2.29.	5.98

[1] Estimated average first sale price.

2. *Upper Tier Ceiling Prices*

Adjustments to ceiling prices for upper tier crude oil and the approximate average first sale prices pursuant to those ceiling prices in June, July, and August 1979 are determined pursuant to the following methodology:

A. Adjustment factor (explained above) = .00705
B. June 1979 adjustment = ($13.06) (.00705) per barrel = $.092 per barrel rounded to $.09 per barrel
C. July 1979 adjustment = ($13.06 + .09) (.00705) per barrel = $.093 per barrel rounded to $.09 per barrel
D. August 1979 adjustment = ($13.06 + .09 + .09) (.00705) per barrel = $.093 per barrel rounded to $.09 per barrel

Based upon monthly adjustments computed above, estimated average upper tier ceiling prices for the months of June, July, and August 1979 are computed as follows:

June 1979 = $13.06 + $.09 = $13.15
July 1979 = $13.15 + $.09 = $13.24
August 1979 = $13.24 + $.09 = $13.33

Using an average highest posted field price on September 30, 1975 of $12.67 per barrel and the monthly adjustments as computed above, upper tier prices for the next 3 months have been determined as follows:

Month	Ceiling price	Price [1]
June 1979	September 30, 1975 highest posted field price plus $0.48.	$13.15
July 1979	September 30, 1975 highest posted field price plus $0.57.	13.24
August 1979	September 30, 1975 highest posted field price plus $0.66.	13.33

[1] Estimated average first sale price.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended, Pub. L. 93–511, Pub. L. 94–99, Pub. L. 94–133, Pub. L. 94–163, and Pub. L. 94–385; Federal Energy Administration Act of 1974, Pub. L. 93–275, as amended, Pub. L. 94–385; Energy Policy and Conservation Act, Pub. L. 94–163, as amended, Pub. L. 94–385; E.O. 11790, 39 FR 23185; Department of Energy Organization Act, Pub. L. 95–91; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Part 212 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below, effective June 1, 1979.

Issued in Washington, D.C., June 1, 1979.

Richard B. Herzog,

Acting Administrator, Economic Regulatory Administration.

Section 212.77 is amended in the Appendix to add Schedule No. 15 of Monthly Price Adjustments, as follows:

§ 212.77 Adjustments to Ceiling Prices.

* * * * *

Appendix

* * * * *

Schedule No. 15 of Monthly Price Adjustments

[Effective June 1, 1979]

Month	Lower tier, May 15, 1973, posted price [1] (plus)	Upper tier, Sept. 30, 1975, posted price [2] (plus)
1976:		
February	1.35	−1.32
March	1.38	−1.25
April	1.41	−1.18
May	1.45	−1.11
June	1.48	−1.05
July	1.48	−1.05
August	1.48	−1.05
September	1.48	−1.05
October	1.48	−1.05
November	1.48	−1.05
December	1.48	−1.05
1977:		
January	1.48	−1.25
February	1.48	−1.25
March	1.48	−1.70
April	1.48	−1.70
May	1.48	−1.70
June	1.48	−1.70
July	1.48	−1.70
August	1.48	−1.70
September	1.51	−1.44
October	1.54	−1.18
November	1.57	−.92
December	1.59	−.87

Schedule No. 15 of Monthly Price Adjustments—Continued

[Effective June 1, 1979]

Month	Lower tier, May 15, 1973, posted price [1] (plus)	Upper tier, Sept. 30, 1975, posted price [2] (plus)
1978:		
January	1.61	−.82
February	1.63	−.77
March	1.66	−.71
April	1.69	−.65
May	1.72	−.59
June	1.75	−.52
July	1.78	−.45
August	1.81	−.38
September	1.86	−.28
October	1.91	−.17
November	1.96	−.06
December	1.99	.01
1979:		
January	2.02	.08
February	2.05	.15
March	2.09	.23
April	2.13	.31
May	2.17	.39
June	2.21	.48
July	2.25	.57
August	2.29	.66

[1] The price referred to in 10 CFR 212.73(b)(1) or in 212.73(c)(1), 212.73(c)(3), and 212.73(c)(4).
[2] The price referred to in 10 CFR 212.74(b)(1).

This schedule of monthly price adjustments was issued by the Economic Regulatory Administration on June 1, 1979, pursuant to 10 CFR 212.77. It restates without change the lower and upper tier price ceilings applicable to crude oil produced and sold in the months of February 1976 through May 1979, as determined under 10 CFR 212.73, 212.74, and 212.77. Both lower tier and upper tier ceiling prices, which were increased under Schedule No. 14 effective March 1, 1979, are further indicated in this schedule, effective June 1, 1979.

This schedule is effective only through August 31, 1979.

[FR Doc. 79-17914 Filed 6-5-79; 3:53 pm]

BILLING CODE 6450-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 207

[Regulation ER-1126, Amdt. 18; Docket 30654]

Charter Trips and Special Services; Elimination of Charter Tariffs

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., May 31, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB is eliminating charter tariff filing requirements. This is a conforming amendment to that rule, governing charter flights by U.S. airlines that have scheduled route authority.

DATES: Adopted: May 31, 1979. Effective: May 31, 1979.

Charter tariffs now on file with the Board may remain in effect until September 6, 1979.

FOR FURTHER INFORMATION CONTACT: Mark S. Kahan, Office of the General Counsel, Pricing and Entry Division, C.A.B., 1825 Connecticut Ave., N.W., Washington, D.C. 20428; 202–673–5205.

SUPPLEMENTARY INFORMATION: In ER–1125, also issued today, the Board is eliminating charter tariff filing requirements. Supplementary information is set out in that rule. Since this conforming amendment relieves a restriction and creates no additional burden, the Board finds that it may be effective immediately.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 207, *Charter Trips and Special Services,* as follows:

1. The Table of Contents is amended by redesignating § 207.4, adding new §§ 207.18 and 207.19 and deleting and reserving § 207.51, *Terms of service,* to read:

Part 207—CHARTER TRIPS AND SPECIAL SERVICES

Subpart A—General Provisions

Sec.

* * * * *

207.4 Payments to persons receiving commissions.

* * * * *

207.18 Baggage liability.

207.19 Transportation of persons who may need help during aircraft evacuation.

* * * * *

Subpart C—Provisions Relating to Single Entity Charters

* * * * *

207.51 [Reserved]

* * * * *

2. Section 207.4 is amended to read:

§ 207.4 Payments to persons receiving commissions.

Payments for a U.S.-originating charter flight made to any person to whom the carrier, directly or indirectly, has paid a commission or has agreed to pay a commission for that flight shall be considered payments to the carrier.

§ 207.4a [Amended]

3. In § 207.4a, *Written contracts with charterers,* paragraph (b) is revoked and paragraphs (a) (1) through (a) (7) are redesignated as paragraphs (a) through (g).

§ 207.13 [Amended]

4. In § 207.13, *Terms of Service,* paragraph (a) is revoked and reserved.

5. A new § 207.18 is added, to read:

§ 207.18 Baggage liability.

Air carriers shall not limit their baggage liability for interstate and overseas charter flights except as set forth in the following Board orders and any subsequent amendments of them: Order 77–2–9, dated February 2, 1977; Order 77–4–94, dated April 20, 1977; and Order 77–9–80, dated September 20, 1977. The tariff-filing requirements of those orders shall not apply. The orders are obtainable on request from the Publications Services Division, Civil Aeronautics Board, Washington, D.C. 20428.

6. A new § 207.19 is added, to read:

§ 207.19 Transportation of persons who may need help during aircraft evacuation.

Except as set forth in Part 121 of the Federal Aviation Regulations (14 CFR Part 121), air carriers shall not limit the availability, upon reasonable request, of air transportation and related services to a person who may require help from another person in expeditiously moving to an emergency exit for evacuation of an aircraft.

7. In § 207.23 "as set forth in the carrier's charter tariff on file with the Board" is deleted, so that the section reads:

§ 207.23 Agent's commission.

The carrier shall not pay its agent a commission or any other benefits, directly or indirectly, in excess of 5 percent of the total charter price, or more than the commission related to charter flights paid to an agent by a carrier certificated to render regular service on the same route, whichever is greater. The carrier shall not pay any commission whatsoever to an agent if the agent receives a commission from the charterer for the same service.

§ 207.51 [Revoked and Reserved]

8. In Subpart C, § 207.51 is revoked and reserved.

9. In the Statement of Supporting Information appended to Part 207, item #5 of Part I is amended to read:

PART I—TO BE COMPLETED BY AIR CARRIER * * *

* * * * *

5. Total charter price————————.

* * * * *

(Sections 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95–504, 72 Stat. 740, 743, 758, 771, 92 Stat. 1731, 1732; 49 U.S.C. 1302, 1324, 1373, and 1386.)

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79–17916 Filed 6–7–79; 8:45 am]

BILLING CODE 6320–01–M

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14 CFR Part 208

[Regulation ER–1127; Amdt. 17, Docket 30654]

Terms, Conditions, and Limitations of Certificates To Engage in Charter Air Transportation; Elimination of Charter Tariffs

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. May 31, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB is eliminating charter tariff filing requirements. This is a conforming amendment to that rule, governing charter flights by U.S. charter air carriers.

DATES: Adopted: May 31, 1979. Effective: May 31, 1979. Charter tariffs now on file with the Board may remain in effect until September 6, 1979.

FOR FURTHER INFORMATION CONTACT: Mark S. Kahan, Office of the General Counsel, Pricing and Entry Division, C.A.B., 1825 Connecticut Ave., N.W., Washington, D.C. 20428; 202–673–5205.

SUPPLEMENTARY INFORMATION: In ER–1125, also issued today, the Board is eliminating charter tariff filing requirements. Supplementary information is set out in that rule. Since this conforming amendment relieves a restriction and creates no additional burden, the Board finds that it may be effective immediately.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 208, *Terms, Conditions, and Limitations of Certificates to Engage in Supplemental Air Transportation,* as follows:

1. The Title and Table of Contents are amended by changing "Supplemental" to "Charter", by deleting "and Tariffs" from the third subheading of Subpart A, by adding new §§ 208.30 and 208.31, and by revising §§ 208.103 and 208.301, to read:

PART 208—TERMS, CONDITIONS, AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN CHARTER AIR TRANSPORTATION

Subpart A—General Provisions

Sec.

* * * * *

Operations

208.30 Baggage liability.

208.31 Transportation of persons who may need help during aircraft evacuation.

* * * * *

Subpart B—Provisions Relating to Military Charters

* * * * *

208.103 Terms of service.

* * * * *

Subpart D—Provisions Relating to Single Entity Charters

* * * * *

208.301 Terms of service.

* * * * *

2. A new § 208.30 is added, to read:

§ 208.30 Baggage liability.

Air carriers shall not limit their baggage liability for interstate and overseas charter flights except as set forth in the following Board orders and any subsequent amendments of them: Order 77–2–9, dated February 2, 1977; Order 77–4–94, dated April 20, 1977; and Order 77–9–80, dated September 20, 1977. The tariff-filing requirements of those orders shall not apply. The orders are obtainable on request from the Publications Services Division, Civil Aeronautics Board, Washington, D.C. 20428.

3. A new § 208.31 is added, to read:

§ 208.31 Transportation of persons who may need help during aircraft evacuation.

Except as set forth in Part 121 of the Federal Aviation Regulations (14 CFR Part 121), air carriers shall not limit the availability, upon reasonable request, of air transportation and related services to a person who may require help from another person in expeditiously moving to an emergency exit for evacuation of an aircraft.

§ 208.31b [Amended]

4. In § 208.31b, *Written contract with charterers,* paragraph (b) is revoked and the designation "(a)" is removed from paragraph (a) so that that paragraph becomes the entire section.

5. In § 208.32, the title is amended, paragraphs (a) and (b) are revoked and reserved, and paragraph (c) is amended, to read:

§ 208.32 Terms of service.

(a) [Reserved]

(b) [Reserved]

(c) Payments for a U.S.-originating charter flight made to any person to whom the carrier, directly or indirectly, has paid a commission or has agreed to pay a commission for that flight shall be considered payments to the carrier.

* * * * *

6. In § 208.32a, the first sentence is replaced by two new sentences, to read:

§ 208.32a Flight delays and substitute air transportation (foreign).

Charter air carriers shall comply with the following requirements for passenger service in foreign air transportation. These requirements shall be without prejudice and in addition to any other rights or remedies of passengers under applicable law:

* * * * *

7. In § 208.33, the first sentence is replaced by two new sentences and paragraph (d) is amended to read:

§ 208.33 Flight delays and substitute air transportation (interstate and overseas).

Charter air carriers shall comply with the following requirements for passenger service in interstate and overseas transportation. These requirements shall be without prejudice and in addition to any other rights or remedies of passengers under applicable law:

* * * * *

(d) The requirements in paragraphs (a), (b), and (c) of this section for immediate refunds or alternative transportation shall not apply to the extent that there is an unavoidable delay due solely to weather.

8. In Subpart B, *Provisions Relating to Military Charters*, § 208.103 is amended to read:

§ 208.103 Terms of service.

The provisions of § 208.32(d) shall apply to charters under this subpart.

9. In § 208.202, "as set forth in the carrier's charter tariff on file with the Board" is deleted, so that the section reads:

§ 208.202 Agent's commission.

The carrier shall not pay its agent a commission or any other benefits, directly or indirectly, in excess of 5 percent of the total charter price, or more than the commission related to charter flights paid to an agent by a carrier certificated to render regular service on the same route, whichever is greater. The carrier shall not pay any commission whatsoever to an agent if the agent receives a commission from the charterer for the same service.

10. In Subpart D, *Provisions Relating to Single Entity Charters*, § 208.301 is amended to read:

§ 208.301 Terms of service.

The provisions of §§ 208.32(c) and (d) shall apply to charters under this subpart.

11. In the Statement of Supporting Information appended to Part 208, item #5 of Part I is amended to read:

Statement of Supporting Information

PART I—TO BE COMPLETED BY AIR CARRIER * * *

* * * * *

5. Total charter price ————.

* * * * *

(Sections 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 740, 743, 758, and 771, 92 Stat. 1731, 1732; 49 U.S.C. 1302, 1324, 1373, and 1386)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-17917 Filed 6-7-79; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 212

[Regulation ER-1128; Amdt. 27; Docket 30654]

Charter Trips by Foreign Air Carriers; Elimination of Charter Tariffs

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. May 31, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The C.A.B. is eliminating charter tariff filing requirements. This is a conforming amendment to that rule, governing charter flights by foreign air carriers with route authority.

DATES: Adopted: May 31, 1979. Effective: May 31, 1979. Charter tariffs now on file with the Board may remain in effect until September 6, 1979.

FOR FURTHER INFORMATION CONTACT: Mark S. Kahan, Office of the General Counsel, Pricing and Entry Division, C.A.B., 1825 Connecticut Ave., N.W., Washington, D.C. 20428; 202-673-5205.

SUPPLEMENTARY INFORMATION: In ER-1125, also issued today, the Board is eliminating charter tariff filing requirements. Supplementary information is set out in that rule. Since this conforming amendment relieves a restriction and creates no additional burden, the Board finds that it may be effective immediately.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 212, *Charter Trips by Foreign Air Carriers*, as follows:

1. The Table of Contents is amended by redesignating § 212.3 and deleting and reserving § 212.51, *Terms of service*, to read:

PART 212—CHARTER TRIPS BY FOREIGN AIR CARRIERS

Subpart A—General Provisions

Sec.

* * * * *

§ 212.3 Payments to persons receiving commissions.

* * * * *

Subpart C—Provisions Relating To Single Entity Charters

* * * * *

212.51 [Reserved]

* * * * *

2. Section 212.3 is amended to read:

§ 212.3 Payments to persons receiving commissions.

Payments for a U.S.-originating charter flight made to any person to whom the carrier, directly or indirectly, has paid a commission or has agreed to pay a commission for that flight shall be considered payments to the carrier.

§ 212.3a [Amended]

3. In § 212.3a, *Written contracts with charterers*, paragraph (b) is revoked and paragraphs (a)(1) through (a)(7) are redesignated as paragraphs (a) through (g).

§ 212.10 [Amended]

4. In § 212.10, *Terms of service*, paragraph (a) is revoked and reserved.

5. In § 212.23, "as set forth in the carrier's charter tariff on file with the Board" is deleted, so that the section reads:

§ 212.23 Agent's commission.

The carrier shall not pay its agent a commission or any other benefits directly or indirectly, in excess of 5 percent of the total charter price, or more than the commission related to charter flights paid to an agent by a carrier certificated to render regular service on the same route, whichever is greater. The carrier shall not pay any commission whatsoever to an agent if the agent receives a commission from the charterer for the same service.

§ 212.51 [Reserved]

6. In Subpart C, § 212.51, *Terms of service*, is revoked and reserved.

7. In the Statement of Supporting Information appended to Part 212, item #5 of Part I is amended to read:

Statement of Supporting Information

PART I—TO BE COMPLETED BY AIR CARRIER * * *

* * * * *

5. Total charter price ————.

* * * * *

(Sections 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 740, 743, 758, and 771, 92 Stat. 1731, 1732; 49 U.S.C. 1302, 1324, 1373, and 1386)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-17918 Filed 6-7-79; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 214

[Regulation ER-1129; Amdt. 25; Docket 30654]

Terms, Conditions, and Limitations of Foreign Air Carrier Permits Authorizing Charter Transportation Only; Elimination of Charter Tariffs

Adapted by the Civil Aeronautics Board at its office in Washington, D.C., May 31, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The C.A.B. is eliminating charter tariff filing requirements. This is a conforming amendment to that rule, governing charter flights by foreign charter-only carriers.

DATES: Adopted: May 31, 1979. Effective: May 31, 1979. Charter tariffs now on file with the Board may remain in effect until September 6, 1979.

FOR FURTHER INFORMATION CONTACT: Mark S. Kahan, Office of the General Counsel, Pricing and Entry Division, C.A.B., 1825 Connecticut Ave., N.W., Washington, D.C. 20428; 202-673-5205.

SUPPLEMENTARY INFORMATION: In ER-1125, also issued today, the Board is eliminating charter tariff filing requirements. Supplementary information is set out in that rule. Since this conforming amendment relieves a restriction and creates no additional burden, the Board finds that it may be effective immediately.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 214, *Terms, Conditions, and Limitations of Foreign Air Carrier Permits Authorizing Charter Transportation Only*, as follows:

1. The Table of Contents is amended by revising § 214.13 and deleting and reserving § 214.41, *Terms of service*, to read:

PART 214—TERMS, CONDITIONS, AND LIMITATIONS OF FOREIGN AIR CARRIER PERMITS AUTHORIZING CHARTER TRANSPORTATION ONLY

Subpart A—General Provisions.

Sec.

* * * * *

214.13 Payments to persons receiving commissions.

* * * * *

Subpart B—Provisions Relating to Single Entity Charters

* * * * *

214.41 [Reserved]

* * * * *

§ 214.6 [Amended]

2. In § 214.6, *Record retention*, paragraph (b) is revoked and reserved.

3. Section 214.13 is amended to read:

§ 214.13 Payments to persons receiving commissions.

Payments for a U.S.-originating charter flight made to any person to whom the carrier, directly or indirectly, has paid a commission or has agreed to pay a commission for that flight shall be considered payments to the carrier.

§ 214.13a [Amended]

4. In § 214.13a, *Written contracts with charterers*, paragraph (b) is revoked and paragraphs (a)(1) through (a)(7) are redesignated as paragraphs (a) through (g).

§ 214.14 [Amended]

5. In § 214.14, *Terms of service*, paragraph (a) is revoked and reserved.

6. In § 214.15, "as set forth in the carrier's charter tariff on file with the Board" is deleted, so that the section reads:

§ 214.15 Agent's commission.

The carrier shall not pay its agent a commission or any other benefits, directly or indirectly, in excess of 5 percent of the total charter price, or more than the commission related to charter flights paid to an agent by a carrier certificated to render regular service on the same route, whichever is greater. The carrier shall not pay any commission whatsoever to an agent if the agent receives a commission from the charterer for the same service.

§ 214.41 [Reserved]

7. In Subpart B, § 214.41, *Terms of service*, is revoked and reserved.

8. In the Statement of Supporting Information appended to Part 214, item #5 of Part I is amended to read:

Statement of Supporting Information

PART I—TO BE COMPLETED BY AIR CARRIER * * *

* * * * *

5. Total charter price ————————.

* * * * *

(Sections 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 740, 743, 758, and 771, 92 Stat. 1731, 1732; 49 U.S.C. 1302, 1324, 1373 and 1386)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-17919 Filed 6-7-79; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 221

[Regulation ER-1125; Amendment No. 50; Docket 30654]

Construction, Publication, Filing and Posting of Tariffs of Air Carriers and Foreign Air Carriers; Elimination of Charter Tariffs

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., May 31, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: Air carriers and foreign air carriers must generally file tariffs with the CAB showing their rates, fares and charges (as well as practices affecting their rates, fares and charges). This rule exempts air carriers and foreign air carriers from having to file tariffs for their charter flights. It is in response to a petition for institution of a rulemaking filed by the National Air Carrier Association. The CAB is also keeping this docket open for answers on the question of eliminating the tariff filing requirement for operators or Overseas Military Personnel Charters.

DATES: Adopted: May 31, 1979. Effective: May 31, 1979. Charter tariffs now on file with the Board may remain in effect until September 6, 1979.

FOR FURTHER INFORMATION CONTACT: Mark S. Kahan, Office of the General Counsel, Pricing and Entry Division, C.A.B., 1825 Connecticut Ave., N.W., Washington, D.C. 20428; 202-673-5205.

SUPPLEMENTARY INFORMATION: In response to a petition by the National Air Carrier Association (NACA), the Board instituted this rulemaking to consider relieving air carriers from filing rates tariffs for their domestic and overseas charter flights, both passenger and cargo.[1] Concluding that it did not have legal authority to exempt foreign air carriers, the Board rejected NACA's request that the rule cover foreign charters as well.[2] The notice called for

[1] EDR-332/SPDR-60, 42 FR 43409, August 29, 1977. NACA is acting as attorney-in-fact for: Evergreen International Airlines, Inc.; McCulloch International Airlines, Inc.; Overseas National Airways, Inc.; Trans International Airlines, Inc.; and World Airways, Inc.

[2] The Board feared that exempting air carriers from filing tariffs for their foreign charters would give them an unfair advantage over their foreign competitors.

comments on the nature of the charter market and the need for tariffs. In addition, it specifically invited comment on the need for filing charter rules tariffs.[3] Comments were received from NACA, the Board's former Office of the Consumer Advocate (OCA) and various scheduled air carrier's [4] and tour operators.[5]

The scheduled carriers, ALSG and Maritz, Inc., all opposed the rule. The principal legal argument raised by these parties is that elimination of the tariff filing requirement would make it impossible for the Board to enforce the prohibition in Section 404 of the Federal Aviation Act against unjust and discriminatory rates.[6] They also essentially agreed on the economics of the charter market. They argued that charterers and air carriers have grossly disparate bargaining power; and that the tariff filing requirement is the only tool that helps redress that imbalance. In the absence of tariffs, only the large charterers, offering the inducement of volume, would be able to negotiate favorable contracts. The industry would become concentrated in the hands of the large carriers and tour operators, with no benefits being passed on to the consumer. The claim made by proponents of the proposed rule—that barriers to entry are significantly lower in the charter, as compared to the scheduled market—simply is not true; a free competitive market is not the reality for either one. Southern claimed that the large carriers will offer below-cost contracts on their small craft, thereby driving the small carriers out of business, and make up the profit on their large planes. The carrier feared that an impending charter capacity shortage will permit the large carriers to take advantage of the situation to squeeze profits. Frontier contended that, without tariffs, the scheluled carriers will not be able to respond quickly to low charter rates offered over their routes; the consumer will thus lose the benefit of certain deep discount fares.

Proponents of the proposed rule rejected the above characterization of the charter market. They claimed that tariffs do virtually nothing to redress the economic imbalance between charterer and carrier; that the tariff merely memorializes the terms of a previously negotiated contract; and that the carrier in nearly all cases retains the right unilaterally to increase the contract price when it files the tariff. At the same time, the tariff impedes negotiating flexibility and prevents the parties from responding to a change in circumstances within thirty days of the scheduled date of departure. While producing an almost exclusively negative effect on the market, tariffs impose large financial and time burdens on both the carriers and the Board.

Not all those who supported the proposed rule agreed that rules tariffs should also be eliminated. OCA believed that the rules portion of the tariff is an important consumer protection device. Since the passenger has no part in the negotiations, charter contracts might fail to make provision for such individual concerns as carrier liability for baggage damage. Suntours also favored retention of tariff rules. Like the tour operators who opposed the rule in its entirety, Suntours' principal concern was that, absent regulation, carriers will use their superior bargaining position to negotiate "Draconian" cancellation penalties.

As a final matter, Davis Agency asked that we also exempt indirect air carriers from filing tariffs for overseas military personnel charters (OMPC'S). This is the only type of charter for which the operator must still file a tariff. Davis argued that this is an anomalous situation and that no one has demonstrated a sound basis for the difference in treatment.

Supplemental Notice

In response to a comment by NACA that the Board does have legal authority to exempt foreign air carriers, we issued a Supplemental Notice of Proposed Rulemaking.[7] We called for comments on our authority over foreign carriers and we proposed to eliminate rules tariffs. We asked for suggestions on how to maintain minimum levels of consumer protection in the absence of tariffs. We further stated: "Along this line, if we adopt this rule, we specifically propose to adopt a rule requiring charter carriers to comply with the baggage liability rules set forth in Docket 27589, the *Domestic Baggage Liability Rules Investigation.*" Comments on the supplemental notice were received from NACA; American; United; Maritz, Inc.; Davis Agency; Pan American World Airways; British Airways; International Aviation Services d/b/a IAS Cargo Airlines (IAS); and Japan Air Lines Company (JAL).[8]

American, United, Maritz, Inc. and Davis basically repeated their earlier positions, with Davis claiming that the expanded scope of the revised rule argues even more strongly for elimination of the OMPC tariff filing requirement. Pan Am, British Airways, JAL and IAS addressed themselves both to the legal issue of the Board's authority to exempt foreign carriers [9] and to the broader economic and policy questions involving the nature of the charter market. JAL argued that the proposed rule would help erase the distinction between charter and scheduled services; the result would be a price war which would hurt the consumer. British Airways agreed that the charter carriers are being given an unfair advantage—especially in the cargo market, where charter and scheduled carriers compete directly for business. IAS claimed that it is in the cargo area that the rule is most needed; the average cargo charterer is a sophisticated shipper, aware of the going rates in his market, who does not need the so-called protection of tariffs.

Pan Am stated that elimination of rules tariffs would lead to gross discrimination in the terms and liabilities incorporated in the various charter contracts. NACA reversed its earlier position and came to support retention of the rules portion of tariffs. It claimed that any alternative consumer protection device would impose as great a burden on the carriers. It asked the Board to make clear that cancellation penalties are rates-related and, therefore, would not be subject to tariff filing.

After considering the legal and policy arguments contained in the pleadings, we have decided to adopt the rule as set forth in our Supplemental Notice of Proposed Rulemaking. We will exempt carriers from any tariff filing requirements for all charter operations.

Legal Authority for Exemption

Our earlier concerns about the legal predicate for the proposed rule have been mooted by enactment of the Airline Deregulation Act of 1978.[10] Specifically, Section 416(b) of the Federal Aviation Act has been amended: (1) to eliminate the requirement of finding an undue burden

[3] Rules tariffs describe the terms and conditions of transportation. They include such things as baggage liability, conditions for cancellation, and service of food and alcoholic beverages.

[4] Southern Airways; United Air Lines; Frontier Airlines; Northwest Airlines; and American Airlines.

[5] Suntours Limited; Amercian Express Company; Davis Agency; Air Charter Tour Operators of America; Del E. Webb World Travel Company; United Buying Service Travel; The American Leadership Study Groups (ALSG); and Maritz, Inc.

[6] These parties made a second legal argument—*i.e.*, that there is no undue burden associated with filing tariffs such as would justify the use of the Board's exemption power. As will be discussed below, this argument is now moot.

[7] EDR-332A/SPDR-60A, 43 FR 20520, May 12, 1978.

[8] Of all these commenters, only NACA, Davis and IAS supported any part of the proposed rule.

[9] See *infra*, at p. 6.

[10] P.L. 95-504, October 24, 1978.

on an air carrier to justify the exemption; and (2) to extend the Board's exemption authority to all persons.[11] The new Section 416(b) reads as follows:

> Except as provided in paragraph (2) of this subsection, the Board, from time to time and to the extent necessary, may exempt from the requirements of this title or any provision thereof, . . . any person or class of persons if it finds that the exemption is consistent with the public interest.[12]

This new language makes clear that—once we have found the proposed exemption to be in the public interest—we may extend it to any class of carriers which fits our public interest analysis.

We have also considered the position that we cannot legally exempt carriers from their filing requirements under Section 403 of the Act without also abrogating our duty to enforce the Section 404 requirement that carriers charge just and reasonable rates. We do not find that argument persuasive. In *FPC* v. *Texaco*,[13] the Supreme Court stated that a regulatory agency is free to use indirect means of regulation, so long as statutory objectives are preserved. Tariff filing is not a legally indispensable element of rate regulation.

As we discussed in considering our new general rules for all-cargo carriers,[14] tariffs are not a very effective means of ferreting out unreasonable and discriminatory rates. In that context we stated:

> . . . as a practical matter, most investigations of discriminatory rates begin not as a result of our monitoring of the carriers' tariffs, but in response to complaints from disadvantaged shippers, or competing carriers, who have learned of the rates they wish to complain against by word-of-mouth, not be reviewing our tariff files.[15]

We also find that we will be able to maintain surveillance over rates through the mechanism of the charter prospectus. The Public Charter rule [16] requires the filing of a prospectus which includes the charter price. Similarly, all carriers performing charters must file quarterly reports showing revenues received for each flight.[17] By these means, we will be able continually to monitor the rates being charged for charter flights, and will be able to take whatever steps might be necessary to redress unreasonable or discriminatory charges.

It must be emphasized, as we pointed out in EDR–332, that the board has in the past intervened to suspend charter prices most infrequently, even during periods in which general fare regulation was at its most intrusive. This situation reflects a long-held perception, not seriously challenged by the comments, that the competitive posture of charter carriers, and particularly the need to keep their rates well below those of scheduled carriers which we do regulate pervasively, precludes excessive charges. Rates-of-return earned by charter operations in the past have not been excessive, nor are they now. Our surveillance over their financial results and condition will remain without change. These considerations suggest that our regulatory scheme for charters, even with the exemption requested here, is more protective of consumers' interests than the indirect regulation approved, in principle, in *FPC* v. *Texaco*, supra. It is, moreover, entirely consistent with our clear statutory mandate [18] to rely first and foremost on actual and potential competition to foster optimum price and service options.

Economic Need for Tariffs

After considering all the comments filed in response to our notices of proposed rulemaking, we have concluded that it is in the public interest to exempt carriers from filing charter tariffs. The exemption covers all passenger and cargo charter flights of both foreign and domestic carriers.

Our conclusion does not indicate a lack of concern for the alleged instability and concentration of the charter market which some have claimed will result from the proposed rule. It is, rather, that the opponents have not produced persuasive evidence that those threatened evils will materialize. There are hundreds of tour operators in the United States. No commenter has marshalled any data to show that the elimination of tariffs will concentrate the industry in the hands of a few powerful giants. The comments submitted disagree radically on the nature of the charter market; these disagreements exist not only between scheduled and charter carriers, but even among the various tour operators. On the other hand, the burden that tariffs impose on the carriers is clear. Absent convincing evidence that harm will result, we find it in the public interest to eliminate that burden.

We have, in numerous other contexts, discussed and rejected the position that deregulation will open the airline industry to destructive, predatory competition.[19] If anything, we find less merit in this argument when applied to the charter industry where barriers to entry are lower.[20] Even should we prove wrong, however, we still retain ample authority to deal with predation and other methods of unfair competition if and when they materialize.[21]

The recent passage of the Deregulation Act contributes to this conclusion. Under the terms of the Act, domestic tariffs will be abolished by 1983. We believe that the charter industry is a good place to begin the gradual deregulation that Congress has mandated. There is widespread sentiment that charter tariffs are unnecessary; the charter market is more competitive than its scheduled counterpart; and the direct consumers are not individuals, but knowledgeable businesses with the economic strength to engage in arm's-length bargaining with the carrier.[22]

Rules Tariffs

We have reached the same conclusion regarding the rules portion of charter tariffs. The same considerations of increasing flexibility and giving greater range to the negotiations of the parties involved have led us to this decision. Also, as the comments indicate, there is great disagreement about where the line between rates and rules tariffs actually exists. Elimination of all charter tariff filing requirements will give the charterers the flexibility they seek, without opening the door to future litigation over whether a particular provision is a rate or a rule.

We remain concerned about protecting the rights of the passenger-consumer. The comments which we received on this specific issue indicate that the principal area for concern is over liability for baggage damage. As no one has taken exception to the course of action proposed in EDR–332A,[23] we will make final our plan to require charter carriers to comply with the rules set

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[11] The predecessor section authorized the Board to exempt only domestic air carriers.

[12] 49 U.S.C. § 1386(b)(1). Paragraph (2) contains exceptions to the exemption power in the case of certain labor legislation.

[13] 417 U.S. 380 (1974).

[14] 14 CFR Part 291.

[15] EDR–359, 43 FR 33733, August 1, 1978.

[16] 14 CFR Part 380.

[17] 14 CFR Part 217 applies to foreign air carriers. Domestic air carriers are governed by 14 CFR 241 (Section 25, Schedule T–6).

[18] See Sections 102(a)(3) and (4) and 1002(e)(5) of the Act.

[19] See, e.g., *Transcontinental Low-Fare Route Proceeding*, Order 79–1–75; *Oakland Service Investigation*, Order 78–4–121, pp. 24–32; *Chicago-Midway Low-Fare Route Proceeding*, Order 78–7–40; Improved *Authority to Wichita Case*, Order 78–12–106; *Las Vegas-Dallas/Fort Worth Case*, Order 78–7–116; and *Philadelphia-Bermuda Nonstop Proceeding*, Order 78–12–192.

[20] See *Oakland Service Case*, *supra*, at p. 31.

[21] See, e.g., Section 411 of the Federal Aviation Act and Section II of the Sherman Act. Order 79–1–101; Order 78–12–106; Order 78–7–116.

[22] See General Rules for All-Cargo Carrier, ER–1080, 43 FR 53628, November 16, 1978.

[23] See *supra*, at p. 1.

forth in the *Domestic Baggage Liability Rules Investigation*, Docket 27589.

Similarly, we do not intend the elimination of charter tariffs to affect carriers' duty to carry handicapped persons. Relevant aspects of Section 221.38(a)(8), which requires the filing of rules tariffs governing carriage of persons who may need assistance in moving to an emergency exit during an aircraft evacuation, are therefore also preserved in new sections that are being added to Parts 207 and 208. Section 221.38(a)(8) is not itself being deleted, however, because it continues to apply to tariffs for scheduled service.

Overseas Military Personnel Charters

We will not act on the Davis Agency's request to exempt charter operators from filing tariffs for OMPC's. Since its request was contained in a comment to which responses were not contemplated, there would be severe problems with notice and fairness in promulgating a final rule at this time. We have in the past found important distinctions between military and other charters; we would have to allow public comment before changing current regulations. We will, however, treat Davis's comment as a petition to institute a rulemaking and will keep this docket open for 30 days for the filing of answers in accordance with 14 CFR Section 302.38(a).

The Rule

This rule amends 14 CFR Part 221, the basic tariff regulation. Conforming amendments of Parts 207, 208, 212, 214, 372, and 380 are set out in ER–1125 through ER–1129 and SPR–159 through SPR–160. Those amendments are also adopted today.

Since this amendment relieves a restriction and creates no additional burden, the Board finds that it may be effective immediately. To ease the transition to a system without tariffs, however, carriers having charter tariffs on file with the Board will be allowed to maintain them in force until 90 days after publication of this rule. After that date, those charter rates and rules on file with the Board will not be effective as tariffs. During this transition period carriers may phase out their charter tariffs gradually.[24] Tariffs on file, however, must not mislead charterers or the public about their applicability or validity. Any carrier, therefore, intending to provide charter air transportation not in accordance with filed tariffs shall amend its tariff on file with the Board to indicate the extent to which that tariff is no longer in force, or to describe the exception that it wishes to make to that tariff.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 221, *Construction, Publication, Filing and Posting of Tariffs of Air Carriers and Foreign Air Carriers*, as follows:

Part 221 [Amended]

1. The Table of Contents is amended by deleting § 221.64, *Charter rates and charges*, and deleting and reserving § 221.178, *Service of charter tariff publications on charterers*.

2. In § 221.3, paragraph (a) is amended by inserting "Except as set forth in paragraph (d) of this section" at the beginning of the first sentence, and a new paragraph (d) is added, to read:

§ 221.3 Carrier's duty.

(a) *Must file tariffs.* Except as set forth in paragraph (d) of this section, every air carrier and every foreign air carrier shall file with the Board, and print, and keep open to public inspection, tariffs showing all rates, fares, and charges for air transportation between points served by it, and between points served by it and points served by any other air carrier or foreign air carrier, when through service and through rates shall have been established, and showing to the extent required by regulations of the Board, all classifications, rules, regulations, practices, and services in connection with such air transportation. Tariffs shall be filed, posted, and published in such form and manner, and shall contain such information as the Board shall by regulation prescribe. Any tariff so filed which is not consistent with section 403 of the act and such regulations may be rejected. Any tariff so rejected shall be void.

* * * * *

(d) *Exemption for charter operations.* Air carriers and foreign air carriers are exempted from the requirement of section 403 of the Act and any requirement of this chapter to file tariffs for their charter operations.

3. In § 221.4, the definition of "rates" is amended by removing the reference to charters, so that it reads:

§ 221.4 Definitions.

* * * * *

"Rates" means the amount per unit stated in the applicable tariff for the transportation of property, and includes "charge" unless the context otherwise requires.

* * * * *

§ 221.21 [Amended]

4. In § 221.21, *Specifications applicable to all tariff publications*, paragraph (i)(1) is revoked and reserved.

5. In § 221.38, paragraph (a)(4) is amended to read:

§ 221.38 Rules and regulations.

(a) *Contents.* * * *

(4) All other provisions and charges which in any way increase or decrease the amount to be paid on any shipment or by any passenger, or which in any way increase or decrease the value of the services rendered to the shipper or passenger.

* * * * *

6. Also in § 221.38, paragraph (a)(10) is revoked and the third sentence of paragraph (e) is amended by deleting "or charterer".

7. § 221.55 is amended by deleting the provisos so that it reads:

§ 221.55 Time fares, rates, or charges.

Fares, rates, or charges for air transportation shall not be stated to apply per hour or any other unit of time.

§ 221.64 [Revoked]

8. Section 221.64, *Charter rates and charges*, is revoked.

§ 221.70 [Amended]

9. In § 221.70, *Definite unit of rate*, paragraph (a)(1) is revoked and reserved.

§ 221.178 [Reserved]

10. Section 221.178, *Service of tariff publications on charterers*, is revoked and reserved.

In § 221.179, paragraph (a) is amended to read:

§ 221.179 Transmission of tariff filings to subscribers.

(a) Each carrier required to file tariffs in accordance with this part shall make available to any person so requesting a subscription service as described in paragraph (b) of this section separately for its passenger tariffs and its freight

[24] We recognize that some carriers, particularly those that have entered into contracts whose pricing provisions refer to filed tariffs, may wish to file new tariffs during the transition period to reflect changed costs of operation. In practice, such instances should be rare. Several carriers and charterers have already discontinued using such pricing terms in anticipation of our action today. Moreover, any such new tariffs would generally be filed on 60 days' notice and would therefore cover only a small portion of the transitional period. We would expect that the parties, in accordance with normal contractual principles, would re-negotiate sucn contracts as necessary. In order to expedite this shift to private contractual arrangements, and to avoid unnecessarily continuing the expiring tariff system during the 1979 summer season, we have decided that as of this date new charter tariff filings generally will not be accepted. If this approach threatens to work undue hardships on any parties, we will be prepared to deal with them on a case-by-case basis.

tariffs issued by it or by a publishing agent on its behalf.

* * * * *

(Sections 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 740, 743, 758, and 771, 92 Stat. 1731, 1732; 49 U.S.C. 1302, 1324, 1373, and 1386)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-17915 Filed 6-7-79; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 372

[Regulation SPR-159; Amendment No. 8; Docket 30654]

Overseas Military Personnel Charters; Elimination of Charter Tariffs

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. May 31, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The C.A.B. is eliminating charter tariff filing requirements. This is a conforming amendment to that rule, governing charter flights by foreign charter-only carriers.

DATES: Adopted: May 31, 1979. Effective: May 31, 1979. Charter tariffs now on file with the Board may remain in effect until September 6, 1979.

FOR FURTHER INFORMATION CONTACT: Mark S. Kahan, Office of the General Counsel, Pricing and Entry Division, C.A.B., 1825 Connecticut Ave., N.W., Washington, D.C. 20428; 202-673-05205.

SUPPLEMENTAY INFORMATION: In ER-1125, also issued today, the Board is eliminating charter tariff filing requirements. Supplementary information is set out in that rule. Since the conforming amendment relieves a restriction and creates no additional burden, the Board finds that it may be effective immediately.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 372, *Overseas Military Personnel Charters,* as follows:

§ 372.26 [Reserved]

1. The Table of Contents is amended by deleting and reserving § 372.26.

2. Section 372.26, *Prohibition on operations unless tariffs are observed,* is revoked and reserved.

(Sections 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 740, 743, 758, and 771, 92 Stat. 1731, 1732; 49 U.S.C. 1302, 1324, 1373, and 1386.)

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-17921 Filed 6-7-79; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 380

[Regulation SPR-160; Amendment No. 4; Docket 30654]

Public Charters; Elimination of Charter Tariffs

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., May 31, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The C.A.B. is eliminating charter tariff filing requirements. This is a conforming amendment to the Public Charter Rule.

DATES: Adopted: May 31, 1979; Effective: May 31, 1979. Charter tariffs now on file with the Board may remain in effect until September 6, 1979.

FOR FURTHER INFORMATION CONTACT: Mark S. Kahan, Office of the General Counsel, Pricing and Entry Division, C.A.B., 1825 Connecticut Ave., N.W., Washington, D.C. 20428; 202-673-5205.

SUPPLEMENTARY INFORMATION: In ER-1125, also issued today, the Board is eliminating charter tariff filing requirements. Supplementary information is set out in that rule. Since this conforming amendment relieves a restriction and creates no additional burden, the Board finds that it may be effective immediately.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 380, *Public Charters,* as follows:

1. The Table of Contents is amended by adding a new § 380.19 to Subpart B and by deleting and reserving § 380.41 of Subpart D, to read:

PART 380—PUBLIC CHARTERS

Sec.

* * * * *

Subpart B—General Conditions and Limitations

* * * * *

380.19 Old-rule charters.

* * * * *

Subpart D—Requirements Applicable to Direct Air Carriers

* * * * *

380.41 [Reserved]

* * * * *

2. A sentence is added at the end of § 380.1 so that the section reads:

§ 380.1 Applicability.

This part establishes the terms and conditions governing the furnishing of Public Charters in air transportation by direct air carriers and foreign air carriers and by Public Charter operators. This part also relieves such charter operators (other than foreign charter operators) from various provisions of title IV of the Federal Aviation Act of 1958, as amended, for the purpose of enabling them to provide Public Charters utilizing aircraft chartered from such direct carriers. It also contains a limited declination of exercise of jurisdiction over foreign charter operators. The provisions of this regulation shall not be construed as limiting any other authority to engage in air transportation issued by the Board. Nothing contained in this part shall be construed as repealing or amending any provisions of any of the Board's regulations, unless the context so requires. This part also applies to old-rule charters as set forth in § 380.19.

3. A new § 380.19 is added, to read:

§ 380.19 Old-rule charters.

(a) As used in this section, "old-rule charter" means a charter that is covered by a prospectus filed under Part 371, 378, or 378a of this title.

Note.—Those parts were revoked, effective January 1, 1979. The revocation specified that charters covered by prospectuses filed before that date could be performed on or after that date. 43 FR 36603-4, August 18, 1978.

(b) Direct air carriers performing old-rule charters are not required to have tariffs governing those charters on file with the Board.

4. In § 380.32, paragraph (b) is amended by deleting "as set forth in its tariffs" so that it reads:

§ 380.32 Specific requirements for operator-participant contracts.

Contracts between charter operators and charter participants shall state:

* * * * *

(b) The name of the direct air carrier, the dollar amounts of that carrier's liability limitations for participants' baggage, the type and capacity of the aircraft to be used for the flight, and the conditions governing aircraft-equipment substitutions.

§ 380.41 [Reserved]

5. Section 380.41, *Tariffs to be on file for charter trips,* is revoked and reserved.

(Secs. 101(3), 102, 204, 403, and 416 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504; 72 Stat. 737, 740, 743, 758, and 771; 92 Stat. 1731, 1732; 49 U.S.C. 1301, 1302, 1324, 1373, and 1386.)

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-17920 Filed 6-7-79; 8:45 am]

BILLING CODE 6320-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 456

Advertising of Ophthalmic Goods and Services; Interpretation of Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Interpretation of Trade Regulation Rule.

SUMMARY: In response to a request by the Illinois Attorney General, the Federal Trade Commission has issued an interpretation of its trade regulation rule concerning the Advertising of Ophthalmic Goods and Services (16 CFR Part 456). The interpretation says that a state may impose on ophthalmic advertising the affirmative disclosures permitted by § 456.5(a) of the rule by any legislative, administrative or judicial means it chooses. The interpretation also says that states may enforce laws of general applicability against ophthalmic advertising as long as the laws are not enforced in a discriminatory manner.

EFFECTIVE DATE: May 19, 1979.

FOR FURTHER INFORMATION CONTACT: Scott P. Klurfeld, Federal Trade Commission, 6th and Pennsylvania Avenue, N.W., Room 281, Washington, D.C. 20580. 202-523-3426.

Federal Trade Commission

Interpretation of 16 CFR Part 456

An interpretation of § 456.5 of the Commission's rule on Advertising of Ophthalmic Goods and Services (16 CFR Part 456) was requested by the Attorney General of the State of Illinois on April 17, 1979. The Commission's interpretation is contained in a letter, reprinted below.

William J. Scott, Esq.,
Attorney General of Illinois, 160 North LaSalle Street, Room 850, Chicago, Illinois 60601.

Attention: Robert Orman, Esq.

Dear Mr. Scott: This letter is in response to your request of April 17, 1979, for an interpretation of the Commission's Trade Regulation Rule on the Advertising of Ophthalmic Goods and Services (16 CFR Part 456).

In your letter you inquire as to whether the Commission believes that the Illinois Consumer Fraud and Deceptive Business Practices Act, or the Uniform Deceptive Trade Practices Act is preempted by the Commission's trade regulation rule referenced above.

Section 456.5(a) of the Commission's rule provides that a state may require by "law, rule or regulation" that certain affirmative disclosures appear in any dissemination of information concerning ophthalmic goods and services. Among the disclosures which may be required are whether an advertised price for ophthalmic goods includes an eye examination (§ 456.5(a)(3)) and all dispensing fees (§ 456.5(a)(4)). It is the position of the Federal Trade Commission that the use of the terms "law, rule or regulation" were not intended to define or limit the kinds of procedures through which state or local governmental entities may impose the disclosures permitted in § 456.5(a) of the Commission's rule. In other words, the State of Illinois may impose such limitations on ophthalmic advertising by any legislative, administrative, or judicial means without violating the Commission's rule. This would include case determinations under statutes such as little FTC Acts. In the Statement of Basis and Purpose which accompanied the rule, the Commission clearly evidenced its intention that states remain free to employ their general fraud and deception laws, including little FTC Acts, to control instances of deceptive advertising of ophthalmic goods, services and eye examinations. *See* 43 FR 23997 (June 2, 1978).

It is important that the distinction between the requirements of §§ 456.5(a) and 456.5(b) be made clear. In promulgating its rule, it was not the purpose of the Commission to police *deceptive* ophthalmic advertising. It was, instead, the Commission's purpose simply to remove restraints upon nondeceptive ophthalmic advertising. In permitting state or local governments to impose, at their discretion, the specific affirmative disclosure requirements itemized in § 456.5(a), the Commission concluded that such specific affirmative disclosure requirements might reasonably be imposed as a means of limiting deception. The Commission rule itself does not speak one way or the other to the question of whether a given advertisement would be deceptive if it omits the disclosures that the rule permits states to impose. The rule rather defers to the judgment of a state or locality that the specified disclosures are necessary, by providing that where such disclosures are imposed they shall not be deemed an impermissible burden upon ophthalmic advertising.

In § 456.5(b) of the Commission's rule, the Commission explicity exempted from preemption by the Commission's rule, any state law which applies to all advertising of consumer goods and services. In adopting this provision, the Commission intended to place ophthalmic advertising on the same footing as other advertising in your jurisdiction. It was not the Commission's intention to exempt ophthalmic advertising from laws of general applicability governing advertising in the State of Illinois or any other state.

Thus, laws such as the Illinois Consumer Fraud and Deceptive Business Practices Act and the Uniform Deceptive Trade Practices Act may be enforced by the state against ophthalmic advertising, and suits by the state under such acts against ophthalmic advertisements are not prohibited by the Commission's rule. However, should such a law of general applicability be employed (other than in those areas set forth in § 456.5(a) of the rule) in a discriminatory manner with the intent to or the effect of stifling or limiting ophthalmic advertising (e.g., by bringing such suits only against ophthalmic advertisers or a disparate number against ophthalmic advertisers) the Commission might consider such activity to be a violation of the trade regulation rule.

As per your request, we have enclosed a copy of the letter from Aaron Cohen and William Voelker to the Commission's staff requesting an opinion regarding Weisser Optical's advertisements. We have also enclosed a copy of the response of the Commission's staff to that letter. In that response the Commission's staff indicated that an advertisement, absent one of the permissive disclosures set forth in § 456.5(a) of the rule, was not deceptive. This staff opinion is not inconsistent with the Commission's rule, because, as noted above, the rule does not speak one way or the other to the question of whether a given advertisement would be deceptive if it omits the disclosures that the rule permits states to impose. While the Commission's rule does not preclude states or localities from imposing the affirmative disclosures set forth in § 456.5(a) on an across the board basis, where a specific determination of "deception" is to be made it must necessarily depend upon an assessment of all the circumstances surrounding the advertisement in question. The Commission itself has made no determination with respect to the merits of the staff opinion.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 79-17948 Filed 6-7-79; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 30]

Interpretative Releases Relating to Accounting Matters; Staff Accounting Bulletin No. 30

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This bulletin contains a description of the circumstances which, in the staff's view, indicate that a divestiture has not taken place for accounting purposes in connection with a sale of a subsidiary or other business operation. It also discusses the

accounting and reporting consequences of such a transaction.

DATE: June 5, 1979.

FOR FURTHER INFORMATION CONTACT: Howard P. Hodges, Jr., (202) 755–1744, Division of Corporation Finance, or Ernest L. Ten Eyck, (202) 472–3782, Office of the Chief Accountant, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The statements in Staff Accounting Bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval; they represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

George A. Fitzsimmons,

Secretary.

June 5, 1979.

Staff Accounting Bulletin No. 30

The circumstances described below involve a situation in which, in the view of the staff, it is inappropriate to account for a "sale" of a business operation as divestiture.

In Accounting Series Release No. 95 (ASR 95) the Commission discussed the issue of recognition of profit for real estate transactions where circumstances indicated that profits were not earned at the time the transactions were recorded. In the case of real estate, the question of whether a "sale" has taken place for accounting purposes is normally part of the consideration of the propriety of profit recognition on the transaction. In the case of a disposal of an ongoing business, or a related group of business activities, the question of whether a disvestiture has taken place for accounting purposes has independent significance because elimination of the operating results of the business from the financial statements of the seller may be misleading if the risks of ownership have not, in substance, been transferred to the buyer.

Economic substance rather than legal form should determine the accounting and reporting for a transaction. Where the economic substance indicates that the seller has not been divorced from the usual risks of ownership, the transaction should not be recorded as a divestiture for accounting purposes.

Even when it can be reasonably determined that recording such a transaction as a divestiture is appropriate, gain should be recognized only if it is also reasonable to conclude that such gain will be realized.

Topic 5: Miscellaneous Accounting

* * * * *

M. Accounting for divestiture of subsidiary or other business operation.

Facts: Company X transferred certain operations (including several subsidiaries) to a group of former employees who had been responsible for managing those operations. Assets and liabilities with a net book value of approximately $8 million were transferred to a newly formed entity—Company Y—wholly owned by the former employees. The consideration received consisted of $1,000 in cash and interest bearing promissory notes for $10 million, payable in equal annual installments of $1 million each, plus interest, beginning two years from the date of the transaction. The former employees possessed insufficient assets to pay the notes and Company X expected the funds for payments to come exclusively from future operations of the transferred business.

Company X remained contingently liable for performance on existing contracts transferred and agreed to guarantee, at its discretion, performance on future contracts entered into the newly formed entity. Company X also acted as guarantor under a line of credit established by Company Y.

The nature of Company Y's business was such that Company X's guarantees were considered a necessary predicate to obtaining future contracts until such time as Company Y achieved profitable operations and substantial financial independence from Company X.

Question: Company X proposes to account for the transaction as a divestiture, but to defer recognition of gain until the owners of Company Y begin making payments on the promissory notes. Does this proposed accounting treatment reflect the economic substance of the transaction?

Answer: No. The circumstances are such that the risks of the business have not, in substance, been transferred to Company Y or its owners.

In assessing whether the legal transfer of ownership of one or more business operations has resulted in a divestiture for accounting purposes, the principal consideration must be an assessment of whether the risks and other incidents of ownership have been transferred to the buyer with sufficient certainty.

When the facts and circumstances are such that there is a continuing involvment by the seller in the business, recognition of the transaction as a divestiture for accounting purposes is called into serious question. Such continuing involvement may take the form of effective veto power over major contracts or customers, significant voting power on the board of directors, or other involvement in the continuing operations of the business entailing risks or managerial authority similar to that of ownership.

Other circumstances may also raise questions concerning whether the incidents of ownership have, in substance, been transferred to the buyer. These include:

Absence of significant financial investment in the business by the buyer, as evidenced, for instance, by a token payment.

Repayment of debt which constitutes the principal consideration in the transaction is dependent on future successful operations of the business.

The continued necessity for debt or contract performance guarantees on behalf of the business by the seller.

In the above transaction, the seller's continuing involvement in the business and the presence of certain of the other factors cited evidence the fact that the seller has not been divorced from the risks of ownership. Accounting for this proposed transaction as a divestiture—even with deferral of the "gain"—does not reflect its economic substance and therefore is not appropriate.

Question: If the transaction is not to be treated as a divestiture for accounting purposes, what is the proper accounting treatment?

Answer: If, in the circumstances surrounding a particular transaction, a determination is made that a legal transfer of business ownership should not be recognized as a divestiture for accounting purposes, an accounting treatment consistent with that determination is required. In this instance, the assets and liabilities of the business which were the subject of the transaction should be segregated in the balance sheet of the selling entity under captions such as: "Assets of business transferred under contractual arrangements (notes receivable)," and "Liabilities of business transferred" or similar captions which appropriately convey the distinction between the legal form of the transaction and its accounting treatment.

A note to the financial statements, referenced to this caption, should describe the nature of the legal arrangements, relevant financing and other details and the accounting treatment.

Where, as in this instance, realization of the sale price is wholly or principally dependent on the operating results of the business operations which were the subject of the transaction, the

uncertainty associated with such realization should be reflected in the financial statements of the seller. Thus, absent a deterioration in the business, any operating losses of the divested business should be considered the best evidence of a change in valuation of the business in a manner somewhat analogous to equity accounting for an investment in common stock.[1] If the business suffered a loss during its initial period of operations after the transaction, that loss should be reflected in the financial statements of the seller by recording a valuation allowance and a corresponding charge to income. The amount of the valuation allowance (absent unusual circumstances) would be at least the amount of the loss attributable to the business, unless such loss has been previously provided for in accordance with Accounting Principles Board Opinion No. 30. Other evidence, however, (such as a question as to the ability of the business to continue as a going concern) might require that a higher valuation allowance be established.

This accounting treatment should be continued for each reporting period until either:

1. The net assets of the business have been written down to zero (or a net liability recognized in accordance with generally accepted accounting principles); or

2. Circumstances have changed sufficiently that it has become appropriate to recognize the transaction as a divestiture.

In the latter instance, it would normally also be appropriate to recaption any asset balance remaining on the balance sheet of the seller in keeping with the changed circumstances, e.g., "Notes receivable."

In the case where the business reports net income, such net income should not be recorded by the former owner, because the rewards of ownership (but not the risks) have been passed to Company Y. Any payments received on obligations of the buyer arising out of the transaction should be treated as a reduction of the carrying value of the segregated assets of the business.

Question: Should Company X recognize interim (quarterly) losses of the business even if it is projected that it will have a profit for the full year?

Answer: Yes. However, for quarters for which the business has net income, such net income may be recognized by Company X to the extent of any cumulative quarterly losses within the same fiscal year. Similarly, quarterly losses of the business need not be recognized by Company X except to the extent that they exceed any cumulative quarterly net income within the same fiscal year. Disclosure of this accounting treatment should be made in the notes to Company X's interim financial statements.

Question: If the accounting treatment described above is applied to the transaction, when should a gain or loss on the transaction be recognized?

Answer: Whether or not the transaction is treated as a divestiture for accounting purposes, generally accepted accounting principles require that losses on such transactions be recognized.

When it is determined that no divestiture should be recognized for accounting purposes, it follows that gain should not be recognized until:

1. The circumstances precluding treatment of the transaction as a divestiture have changed sufficiently to permit such recognition; and,

2. Any major uncertainties as to ultimate realization of profit have been removed, that is, the consideration received in the transaction can be reasonably evaluated.

As the Commission indicated in ASR 95 (quoting from the authoritative accounting literature): Profit is deemed to be realized when a sale in the ordinary course of business is effected, unless the circumstances are such that the collection of the sale price is not reasonably assured.[2]

The considerations discussed above regarding recognition of a divestiture for accounting purposes are also of importance in reaching a determination as to whether or not collection of the sale price is reasonably assured and profit recognition is therefore appropriate. In addition, circumstances such as the following tend to raise questions as to the propriety of profit recognition at any given time subsequent to the transaction:

1. Evidence of financial weakness of the buyer.

2. Substantial uncertainty as to the amount of future costs and expenses to be incurred by the seller.

3. Substantial uncertainty as to the amount of proceeds to be realized because of the form of consideration received; e.g., non-recourse debt, notes with optional settlement provisions, purchaser's stock, or other non-monetary consideration which may be of indeterminable value.

(Where satisfaction of the buyer's obligations to the seller remains dependent on earnings of the business divested, it will frequently be appropriate for the seller to continue to measure the uncertainty of ultimate collection by the operating losses of the business.)

The degree of uncertainty surrounding ultimate realization of the consideration is a matter which must be evaluated in the light of the attendant circumstances each time realization is evaluated. The degree of uncertainty is enhanced, however, by the presence of any of the factors referred to above, and such factors must be considered in reaching a determination with respect to recognition of gain.

[FR Doc. 79-17964 Filed 6-7-79; 8:45 am]
BILLING CODE 8010-01-M

[1] The staff recognizes that Accounting Principles Board Opinion No. 18 is specifically applicable only to the use of the equity method of accounting for investments in common stock. The principles enunciated in that Opinion are also relevant in these particular circumstances, however, notably paragraph 12, which states, in pertinent part:

The equity method tends to be most appropriate if an investment enables the investor to influence the operating or financial decisions of the investee. The investor then has a degree of responsibility for the return on its investment, and it is appropriate to include in the results of operations of the investor its share of the earnings or losses of the investee.

[2] Accounting Research Bulletin No. 43, Chapter 1, Section A. (American Institute of Certified Public Accountants, 1953).

This passage is also quoted in paragraph 12 of Accounting Principles Board Opinion No. 10 (American Institute of Certified Public Accountants, 1966), footnote 8, which states, in pertinent part:

The Board recognizes that there are exceptional cases where receivables are collectible over an extended period of time and, because of the terms of the transactions or other conditions, there is no reasonable basis for estimating the degree of collectibility. When such circumstances exist, and as long as they exist, either the installment method or the cost recovery method of accounting may be used.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 159

[T.D. 79-163]

Amendment of Waiver of Countervailing Duties—Certain Textiles and Textile Products from Brazil

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Amendment of Waiver of Countervailing Duties.

SUMMARY: This notice is to inform the public that the waiver of countervailing duties issued regarding imports of certain textiles and textile products from Brazil is being amended. This amendment affects only imports of certain leather wearing apparel which, until recently, were duty-free.

EFFECTIVE DATE: March 1, 1979.

FOR FURTHER INFORMATION CONTACT: Charles F. Goldsmith, Economist, Office of Tariff Affairs, Department of the Treasury, 15th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20220, telephone (202) 566–2323.

SUPPLEMETARY INFORMATION: On November 16, 1978, a notice of "Final Countervailing Duty Determination" (T.D. 78–446) regarding certain textiles and textile mill products from Brazil was published in the **Federal Register** (43 FR 53422). That notice advised the public that an investigation had determined that the Governement of Brazil pays or bestows bounties or grants under the countervailing duty law on the manufacture, production, or exportation of certain textiles and textile products. Concurrent with that determination, a "Waiver of Countervailing Duties" (T.D. 78–447, 43 FR 53425) was granted based on actions taken by the Government of Brazil to reduce substantially the adverse effects of the bounties or grants paid or bestowed and on satisfaction of the other criteria of section 303(d) of the Tariff Act of 1930, as amended by the Trade Act of 1974 (Pub. L. 93–618, January 3, 1975 (19 U.S.C. 1303(d)) (referred to as the "Act").

The Final Determination included leather wearing apparel imported under item number 791.76 of the Tariff Schedules of the United States Annotated (TSUSA). In accordance with section 303(a) (2) of the Act (19 U.S.C. 1303(a) (2)), because this merchandise was entered duty-free pursuant to the U.S. Generalized System of Preferences ("GSP") (authorized by Title V of the Trade Act of 1974, 19 U.S.C. 2461–2465), countervailing duties could be imposed only if the U.S. International Trade Commission (ITC) rendered an affirmative injury determination. Liquidation of the leather wearing apparel under consideration was suspended pending the determination of the ITC. At that time Treasury indicated that should the determination of the ITC be affirmative, it would then be appropriate to waive countervailing duties under section 303(d) of the Act.

On March 5, 1979, the ITC published its determination in the **Federal Register** that no injury resulted from the importation of the duty-free leather wearing apparel from Brazil ("Certain Leather Wearing Apparel from Colombia and Brazil," 44 FR 12113). Accordingly, the suspension of liquidation was to terminate and the liquidation of all entries of leather wearing apparel classified under TSUSA item number 791.76 entered on or after November 16, 1978, would have proceeded without regard to countervailing duties, but for the action taken by the President which removed leather wearing apparel classified under TSUSA item number 791.76 from the GSP. By Executive Order 12124, published in the **Federal Register** of March 2, 1979 (44 FR 11729), the duty-free status of leather wearing apparel classified under TSUSA item number 791.76 was thus terminated effective March 1, 1979.

As a result, imposition of countervailing duties on such leather wearing apparel from Brazil is no longer controlled by section 303(a)(2) of the Act. In the Final Determination of November 16, 1978 (cited above), the Department stated that if the ITC's determination of injury regarding such leather wearing apparel were affirmative, the collection of countervailing duties would be waived. Further, the reasons supporting the granting of the concurrent waiver (cited above) for then-dutiable textiles and textile products apply equally to the then-duty free leather wearing apparel classified under TSUSA item number 791.76. Indeed, had such leather wearing apparel been dutiable in November of 1978, it would have been included within the scope of the waiver then issued. Accordingly, I hereby amend the waiver with respect to Certain Textiles and Textile Products from Brazil to include the formerly duty-free leather wearing apparel classified under TSUSA item number 791.76.

§ 159.47 [Amended]

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f)), is amended by inserting after the entry from Brazil under "textiles", the number of this Treasury Decision in the column so headed and the words "amendment of waiver" in the column headed "action."

(R.S. 251, secs. 303, as amended, 624; 46 Stat. 687, 759, 88 Stat. 2051, 2052 (19 U.S.C. 66, 1303), as amended, 1624).

Robert H. Mundheim,

General Counsel of the Treasury.

[FR Doc. 79-17943 Filed 6-7-79; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Chapter X

[Docket No. R-79-674]

Transfer of Federal Insurance Administration Regulations

AGENCY: U.S. Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: Reorganization Plan No. 3 of 1978 established the Federal Emergency Management Agency (FEMA). The plan was activated effective April 1, 1979, by Executive Order 12127 of March 31, 1979, "Federal Emergency Management Agency." The plan transfers to FEMA the functions of the Federal Insurance Administration which was a part of the U.S. Department of Housing and Urban Development. The existing regulations of the Federal Insurance Administration have been transferred to Title 44, Chapter I, Subchapter B of the Code of Federal Regulations. Therefore, Chapter X of Title 24 is hereby vacated.

EFFECTIVE DATE: June 28, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Burton Bloomberg, Director, Office of Regulations, Room 5218, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410. Phone (202) 755–6207.

SUPPLEMENTARY INFORMATION: Establishment of the organization of FEMA, including delegation of authority to the position of Associate Director for Insurance and Hazard Mitigation, which also carries the Title of Federal Insurance Administrator, was published on April 6, 1979 (44 FR 20962).

Establishment of Title 44, Chapter I, Subchapter B, for the redesignated regulations, was published on Wednesday, May 2, 1979 (44 FR 25797).

The Federal Insurance Administration regulations were previously published under Title 24, Chapter X, Subchapters A, B, and C of Code of Federal Regulations, and have been redesignated as Title 44, Chapter I, Subchapter B of the Code of Federal Regulations. This redesignation was published in the May 31, 1979 edition of the **Federal Register** at 44 FR 31176.

Because this rule effects a change which is editorial in nature, it has been determined that a period for notice and comment is not necessary.

Transfer of Regulations

CHAPTER X [Vacated]

Regulations formerly appearing in 24 CFR Chapter X are transferred to 44 CFR Chapter I. Accordingly, Chapter X of Title 24 is hereby vacated.

Authority: Reorganization Plan No. 3 of 1978 (43 FR 41943) and Executive Order 12127, dated March 31, 1979 (44 FR 19367).

Issued at Washington, D.C., June 1, 1979.

Jay Janis,

Acting Secretary, Department of Housing and Urban Development.

[FR Doc. 79-17912 Filed 6-7-79; 8:45 am]

BILLING CODE 4210-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

24 CFR Part 1917

[Docket No. FI-4744]

Final Flood Elevation Determinations for the City of the Town of Los Altos Hills, Santa Clara County, Calif., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of the Town of Los Altos Hills, Santa Clara County, California.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the City of the Town of Los Altos Hills, California.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of the Town of Los Altos Hills, Santa Clara County, California, are available for review at Town Hall, 26379 Fremont Road, Los Altos Hills, California.

FOR FURTHER INFORMATION CONTACT:
Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of the Town of Los Altos Hills, California.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Adminstration has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Adobe Creek	Edith Road	174
	Burke Road	192
	O'Keefe Lane	264
	Foothill College Road	307
	El Monte Avenue	328
	Rhus Ridge Drive	379
	Francemont Drive	421
Barron Creek	Fremont Road (downstream crossing).	145
	Ortega Drive	172
	Fremont Road (upstream crossing).	220
	La Paloma Road	
	Todd Lane—20 feet upstream from centerline.	245
Purissima Creek	Purissima Road (downsteam crossing).	252
	Viscaina Road	303
	Purissima Road (upstream crossing).	332
Matadero Creek	Old Page Mill Road	193
	Interstate 280	212
	Page Mill Road	244
	Moon Lane	270
	Lupine Road—20 feet upstream from centerline.	286
Arastradero Creek	Page Mill Road	254
Hale Creek	Magdelena Avenue	221
	Dawnridge Drive	270
Concepcion Drainage	Fremont Road	207
	Alto Verde Lane	225
	Roble Veneno Lane	247

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Adminstrator, 44 FR 20963).

Issued: April 24, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

FR Doc. 79-17669 Filed 6-7-79; 8:45 am]

BILLING CODE 4210-23-M

24 CFR Part 1917

[Docket No. FI-5045]

Final Flood Elevation Determinations for Bingham County, Idaho, Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in Bingham County, Idaho.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for Bingham County, Idaho.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for Bingham County, Idaho, are available for review at Bingham County Courthouse, Blackfoot, Idaho.

FOR FURTHER INFORMATION CONTACT:
Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for Bingham County, Idaho.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90)

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Depth, in feet above ground
Sand Creek	1000 feet northwest of intersection of Wolverine Road and Bithell Lane.	2

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Snake River	U.S. Highway 26 Bridge—100 feet*.	4481
Aberdeen Wasteway	Central Avenue—50 feet*	4387
Twin Buttes Drainageway.	Wearyrick Road—centerline	4439
	600 feet north of intersection of Union Pacific Railroad and 800 West Street.	4456
		4456
Blackfoot River	U.S. Highway 91 Bridge—50 feet*.	4490

*Upstream of centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: April 24, 1979.

Gloria M. Jimenez

Federal Insurance Administrator.

[FR Doc. 79-17670 Filed 6-7-79; 8:45 am]

BILLING CODE 4210-23-M

DEPARTMENT OF LABOR

Office of Labor-Management Standards Enforcement

29 CFR Part 451

Labor Organizations as Defined in the Labor-Management Reporting and Disclosure Act of 1959

AGENCY: Office of the Assistant Secretary for Labor-Management Relations.

ACTION: Final rule.

SUMMARY: A change in the language of 29 CFR 451.3(a)(4) is necessary to reflect the fact that labor organizations in the federal sector are now subject to the Civil Service Reform Act of 1978, which supersedes Executive Order 11491.

DATE: This change is effective on June 8, 1979.

FOR FURTHER INFORMATION CONTACT: Herb Raskin (202) 523–7373.

SUPPLEMENTARY INFORMATION: The standards of conduct provisions in Section 18 of E.O. 11491, as amended, have been replaced by the standards of conduct provisions in Section 7120 of the Civil Service Reform Act.

The standards of conduct provisions in the Civil Service Reform Act which prescribe procedures and principles required of labor organizations composed of federal government employees, are substantially the same as in E.O. 11491, as amended.

Since this amendment is necessary in order that 29 CFR 451.3(a)(4) be consistent with the change made by the passage of the Civil Service Reform Act, I find that it is unnecessary to issue a proposal and that there is good cause to make the amendment final and effective immediately. Section 451.3 is amended by deleting the fourth sentence in paragraph (a)(4) and adding the following:

§ 451.3 Requirements of Section 3(i).

(a) * * *

(4) * * * (A labor organization is subject to Title VII of the Civil Service Reform Act if it is composed entirely of employees of the agencies which are set forth in section 7103 of that Act. Those agencies include, with certain exceptions, all agencies of the Executive Branch as well as the Government Printing Office, the Library of Congress, and certain nonappropriated fund instrumentalities.) * * *

* * * * *

Signed in Washington, D.C., this 4th day of June 1979.

R. C. DeMarco,

Acting Assistant Secretary.

[FR Doc. 79-17944 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-29-M

Occupational Safety and Health Administration

29 CFR Part 1952

Approved State Plans for Enforcement of State Standards; Approval of Supplements to Utah Plan

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document brings Utah Occupational Safety and Health Regulations, Chapter A, Part 04, "Recordkeeping and Reporting Occupational Injuries and Illnesses", and Part 05, "Rules of Practice for Temporary and Permanent Variance . . ." into accord with OSHA regulations § 1904.3–9, 11–13, 20 and 21; § 1952.4(a), and § 1905.1, 2 and 10. The regulations in Part 04 implement Sections 35–9–8(3) and 35–9–17 of the Utah Code Annotated. The Rules of Practice in Part 05 set forth administrative procedures to grant variances and other relief under section 35–9–6 of the Act. General information pertaining to employer-employee rights, obligations and procedures are included.

EFFECTIVE DATE: June 8, 1979.

FOR FURTHER INFORMATION CONTACT: Charles Boyd, Project Officer, Office of State Programs, 2100 M Street N.W., Washington, D.C. 20210, (202) 653–5377.

SUPPLEMENTARY INFORMATION:

Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) for review of changes and progress in the development and implementation of State plans which have been approved under section 18(c) of the Act and 29 CFR Part 1902. On January 10, 1973, a notice was published in the **Federal Register** of the approval of the Utah plan and of the adoption of Subpart E of Part 1952 containing the decision (38 FR 1178). On April 7, 1978, the State of Utah submitted a supplement to the plan involving Federal Program changes to the plan (see subpart C of 29 CFR Part 1953).

Description of Supplements

Part 04 establishes regulations requiring that employers maintain a log of all occupational injuries and illnesses within its establishment, and post an annual summary of such injuries and illnesses. Part 04 also provides penalties for falsification of or failure to keep records, and directs the Administrator for the Utah Occupational Safety and Health Act to develop and maintain a statistical program consisting of periodic surveys of occupational injuries and illnesses.

Part 05 prescribes procedures governing the granting of variances. It sets forth rules for submission of applications, hearings, inspections, public notices, and revocation.

Location of Plan Supplements for Inspection and Copying

A copy of the plan and its supplements may be inspected and copied at the Technical Data Center, Occupational Safety and Health Administration, Department of Labor Building, 3rd St. and Constitution Ave., Washington, D.C. 20210; Occupational Safety and Health Administration, Room 15010, Federal Building, 1916 Stout Street, Denver, Colorado 80202; or, Utah Industrial Commission, 350 East Fifth South, Salt Lake City, Utah 54111.

Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary of Labor for Occupational Safety and Health may prescribe alternative procedures to expedite the review process of any other good cause which may be consistent with applicable law. The Assistant Secretary finds that good cause exists for not publishing Utah's revisions to the plan for public comments because the changes are generally identical to the Federal regulations.

Decision

After careful consideration, the Utah Plan supplements described above are hereby approved under Part 1953 of this chapter. This decision incorporates the requirements of the Act and the implementing regulations applicable to State plans generally.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Washington, D.C. this 30th day of May 1979.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 79-18056 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-26-M

Mine Safety and Health Administration

30 CFR Part 11

Respiratory Protective Apparatus; Tests for Permissibility; Fees

AGENCY: Mine Safety and Health Administration (MSHA), Department of Labor, and National Institute for Occupational Safety and Health (NIOSH), Center for Disease Control, Public Health Service, Department of Health, Education, and Welfare.

ACTION: Final rule.

SUMMARY: This document extends the cut-off dates for use of certain self-contained breathing apparatus approved under the former Bureau of Mines approval program. This equipment has not been proven to be unsafe for continued use and many users have indicated that it would create an economic hardship for them to have to replace a major portion of their equipment by the current cut-off date.

EFFECTIVE DATE: June 8, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. Alan D. Stevens, Chief, Testing and Certification Branch, Division of Safety Research, NIOSH, 944 Chestnut Ridge Road, Morgantown, WV, 26505. Phone: 304-599-7331 or FTS 923-7331.

SUPPLEMENTARY INFORMATION: Part 11 of Title 30, Code of Federal Regulations, provides for the testing of occupational respirators and the issuance of joint approvals for those meeting certain requirements for performance and respiratory protection. The joint approval program is conducted by the National Institute for Occupational Safety and Health (NIOSH), Center for Disease Control, Public Health Service, HEW, and the Mine Safety and Health Administration (MSHA), Department of Labor.

Prior to the promulgation of Part 11 in 1972, respirator approvals were issued by the Bureau of Mines (BOM), Department of the Interior. Under Part 11, dates were established which were designed to eliminate the older BOM-approved respirators from workplaces in an orderly and reasonable manner, to be replaced with respirators approved under Part 11. Self-contained breathing apparatus (SCBA) approved under BOM Approval Schedules 13 through 13E, inclusive, and purchased before June 30, 1975, were approved for use until March 31, 1979.

On October 13, 1978, a notice of proposed rulemaking was published in the **Federal Register** (43 FR 47212) to amend 30 CFR Part 11 by extending the approved use dates for certain BOM-approved SCBA, as follows:

(1) Schedules 13D and 13E devices equipped with a remaining service life indicator (low pressure warning) that does not require preadjustment by the wearer would be extended to March 31, 1982, and (2) certain listed Schedule 13 devices would be approved for use in mine rescue operations until further notice.

Discussion of Comments

A period of 30 days was given for the public to submit comments concerning the proposal. The majority of the comments were from fire service organizations and were in favor of the proposed extension. Many public fire and rescue organizations have been placed under severe budgetary restraints as a result of the current trend in tax reduction. They cited these restraints as the basis for continued use of existing equipment which has not been proven to be unsafe. A number of requests for a longer extension period also cited these budgetary restraints.

While most of the comments supported the extension, several criticized the proposal from the standpoint that there was insufficient justification for limiting the use of certain devices to mine rescue efforts only. Some comments claimed extensive experience (up to 30 years) with particular devices, in uses other than mine rescue, without indication of adverse effects on users.

The prospect of technological advances in occupational respirators in the near future, and the consequent obsolescence of newly acquired replacement equipment appeared in several comments favoring an extension.

Many comments asserted the impossibility of obtaining replacement equipment before April 1979. One comment urged an extension of only 1 year based on equipment availability.

The proposed extension requirement of an end-of-service-life indicator that does not require preadjustment by the wearer was intended to promote user safety and to eliminate SCBA which warn the user of low air supply by restricting the user's breathing. Such restriction may not be noticed under stress conditions. Comments indicated that there are devices in use in large numbers which effectively warn the wearer of the end of service life by means of an audible alarm, without restricting the wearer's breathing. NIOSH and MSHA do not have sufficient data to prove that SCBA equipped with audible end-of-service-life indicators are unsafe for use.

Based on the comments concerning the long life and safe use of BOM-approved SCBA, and because improved Part 11 performance requirements for respirators are under development, NIOSH and MSHA have decided to alter the proposed rule. Until further notice, those devices approved under BOM Approval Schedules 13 through 13E which are equipped with audible end-of-service-life indicators are approved for uses other than mine rescue. BOM Schedules 13 through 13E SCBA that are approved for continued use in mine rescue operations are listed by approval number (see table) and are the same as proposed. Meanwhile, NIOSH and MSHA will continue to review and evaluate BOM-approved equipment and institute revocation of the approval of

any equipment that does not protect the worker.

PART 11—RESPIRATORY PROTECTIVE APPARATUS; TESTS FOR PERMISSIBILITY; FEES

Accordingly, Part 11 of Title 30, Code of Federal Regulations, is amended as set forth below:

Dated: April 30, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

Dated: May 24, 1979.

Joseph A. Califano, Jr.,

Secretary of Health, Education, and Welfare.

1. Section 11.2 is revised to read as follows:

§ 11.2 Approved respirators and gas masks.

(a) Respirators, combinations of respirators, and gas masks shall be approved for use in hazardous atmospheres where they are maintained in an approved condition and are the same in all respects as those devices for which a certificate of approval has been issued under this part.

(b) Self-contained breathing apparatus, supplied-air respirators and gas masks approved under the former Bureau of Mines approved program shall continue to be accepted for use in hazardous atmospheres according to the schedule set forth below: *Provided* they (1) were fabricated, assembled or built under an approval or any modification thereof issued by the U.S. Bureau of Mines, Department of the Interior; and (2) were purchased on or before the date specified therein; and (3) are maintained in an approved condition according to this part.

Type of device	Use	Bureau of Mines approved devices	Purchased on or before	Approved for use until
Self-contained breathing apparatus	Mine rescue efforts only	Approval Nos. 1303, 1303S, 1307, 13D-14, 13D-15, 13D-16, 13E-25, and 13E-26.	June 30, 1975	Further notice.
	Other than mine rescue as permitted or required by regulation.	Schedule 13 through 13-E devices that are equipped with an audible end of service life indicator.	June 30, 1975	Further notice.
Supplied air respirators	As permitted or required by regulation.	Schedule 19B (dated April 19, 1955).	June 30, 1975	March 31, 1980.
Gas Masks	As permitted or required by regulation.	Schedule 14F (dated April 23, 1955).	At any time	Further notice.

§ 11.2-1 [Deleted]
§ 11.2-2 [Redesignated]

2. Section 11.2-1 is deleted from the Code of Federal Regulations and § 11.2-2 is redesignated as § 11.2-1.

[FR Doc. 79-18005 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-43-M

POSTAL SERVICE

39 CFR Part 111

Express Mail Metro Service—Additional Metropolitan Areas

AGENCY: Postal Service.

ACTION: Notice and Partial Revision of interim regulations with comments invited for consideration in final rule making.

SUMMARY: Pursuant to prior notice in the **Federal Register** on April 19, 1979 (44 FR 23396), the Postal Service hereby gives notice that temporary implementation of Express Mail Metro Service will be expanded to include the metropolitan areas of Baltimore, Maryland, St. Louis, Missouri, San Francisco, and Los Angeles, California, and Washington, District of Columbia, on June 18, 1979. Minor changes to the interim regulations published in the **Federal Register** on April 27, 1979 (44 FR 24844), will be made to accommodate the additional metropolitan areas.

EFFECTIVE DATE: June 18, 1979, and until final regulations are issued. Comment Date: The "Comment Date" and procedures for comment cited in the **Federal Register** on April 27, 1979 (44 FR 24844), for interim regulations is extended through July 18, 1979. Written comments should be received on or before July 18, 1979.

ADDRESS: Written comments should be directed to the General Manager, Expedited Mail Services Division, Customer Services Department, Room 5986, 475 L'Enfant Plaza, SW., Washington, D.C. 20260. copies of all written comments received will be available for public inspection and photocopying between 9:00 a.m. and 4:00 p.m. Monday through Friday at the above location.

FOR FURTHER INFORMATION CONTACT: Walter (Cap) Neilson, 202/245-5624.

SUPPLEMENTARY INFORMATION: The revision to the interim regulations takes effect when the temporary implementation is expanded to the new metropolitan areas on June 18, 1979. Although exempt from the notice and comment requirement of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rule making by 39 U.S.C. 410(a), the Postal Service ordinarily invites comments from the public whenever it proposes a new or amended regulation such as this, which might eventually have a substantial effect on the public. In this case, however, publishing these rules as proposals, with a comment delay of 30 days would delay the very limited revision of these interim regulations.

Accordingly, the Postal Service finds it unnecessary and contrary to the public interest to follow its customary practice of publishing this change as a proposed rule for comment before it becomes effective. See 5 U.S.C. 553(d). However, we reiterate that comments are welcomed on the published rules, and that any proposed changes will be considered and acted upon as appropriate.

In view of the considerations discussed above, the Postal Service adopts the following revision to the interim regulations published on April 27, 1979 (44 FR 24844):

Part 182—Classification

Change 182.51 of the Postal Service Manual to read as follows:

182.5 Express Mail Metro Service.

.51 Availability of Service.

Express Mail Metro Service is available at designated retail postal facilities for same day and next day delivery within designated metropolitan areas. A metropolitan area consists of the city delivery area of one or more post offices. Names and locations of these designated facilities and post offices are in Notice 77, *Express Mail Metro Service Directory*, available at participating post offices. Service to or from post offices not listed is prohibited.

An appropriate amendment to 39 CFR 111.3 to reflect this change will be published if the Postal Service proposal

on Express Mail Metro Service is approved.

(39 U.S.C. 401, 403, 404, 3621, 3623, 3641)

W. Allen Sanders,

Acting Deputy General Counsel.

[FR Doc. 79-17942 Filed 6-7-79; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL 1243-1]

Regulation of Fuel and Fuel Additives; Lead Phase-Down Regulations

Cross Reference.—For a document suspending the enforcement of the 0.8 gram per gallon (gpg) lead phase-down standard (40 CFR 80.20(a)(1)(i)) for all refineries between June 8, 1979 and October 1, 1979, see FR Doc. 79-17971 appearing under the Environmental Protection Agency in the proposed rules section of this issue. Refer to the table of contents at the front of this issue under "Environmental Protection Agency" to find the correct page number.

BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

41 CFR Part 3-50

Incremental Funding of Cost-Reimbursement Type Contracts

AGENCY: Department of Health, Education, and Welfare

ACTION: Final rule.

SUMMARY: The Office of the Secretary, Department of Health, Education, and Welfare is amending the Departmental procurement regulations to incorporate a revised Subpart 3-50.6, Incremental Funding of Cost-Reimbursement Type Contracts.

The amendments are being made to expand the use of the incremental funding concept to cover other types of nonpersonal services such as studies, surveys, and socio-economic demonstration projects. The regulation is presently applicable only to research and development services.

Since the subpart was being revised to incorporate the amendments, the Department also reviewed it for simplicity and clarity. This resulted in the elimination of some portions of the subpart and a rewrite of other portions to present a more concise and comprehensive regulation.

EFFECTIVE DATE: June 8, 1979.

FOR FURTHER INFORMATION CONTACT: E. S. Lanham, Division of Procurement Policy and Regulations Development, Office of Grants and Procurement, OASMB-OS, HEW, Washington, D.C. 20201 (202-245-6347).

SUPPLEMENTARY INFORMATION: It is the general policy of the Department to allow time for interested parties to participate in the rulemaking process. However, since the amendments concern internal administrative procedures and, to the extent that portions pertain to the public, the simplification and clarification of existing regulations, the public rulemaking process was deemed unnecessary in this instance.

The provisions of these amendments are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

Therefore, 41 CFR Chapter 3 is amended as set forth below.

Dated: June 1, 1979.

E. T. Rhodes,

Deputy Assistant Secretary for Grants and Procurement.

Under Part 3-50, Administrative Matters, Subpart 3-50.6, Incremental Funding of Cost-Reimbursement, Research and Development Contracts, is cancelled in its entirety. In its place, the following Subpart 3-50.6, Incremental Funding of Cost-Reimbursement Type Contracts, is added. In addition, the table of contents for Part 3-50 is amended to add the following:

PART 3-50—ADMINISTRATIVE MATTERS

Subpart 3-50.6—Incremental Funding of Cost-Reimbursement Type Contracts

Sec.
3-50.600 Scope of subpart.
3-50.601 Applicability.
3-50.602 Definition.
3-50.603 Policy.
3-50.604 General.
3-50.605 Solicitation notification.
3-50.606 Contract clauses.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3-50.6—Incremental Funding of Cost-Reimbursement Type Contracts

§ 3-50.600 Scope of subpart.

This subpart provides policies and procedures for the use of incremental funding in cost-reimbursement type contracts.

§ 3-50.601 Applicability.

This subpart is applicable to cost-reimbursement type contracts for the procurement of research and development services and other types of nonpersonal services such as studies, surveys, and socio-economic demonstration projects. This subpart does not apply to construction services, architect-engineer services, or services subject to the Service Contract Act of 1965, as amended.

§ 3-50.602 Definition.

An incrementally funded cost-reimbursement contract is a contract in which the total work effort is to be performed over a multiple year period and funds are allotted, as they become available, to cover discernible phases or increments of performance. The incremental funding technique allows for contracts to be awarded for periods in excess of one year even though the total estimated amount of funds expected to be obligated for the contract are not available at the time of the contract award.

§ 3-50.603 Policy.

It is Departmental policy that contracts for projects of multiple year duration be fully funded, whenever possible, to cover the entire project. However, incrementally funded contracts may be used when:

(a) A project, which is part of an approved program, is anticipated to be of multiple year duration, but funds are not currently available to cover the entire project;

(b) The project represents a valid need of the fiscal year in which the contract is awarded and of the succeeding fiscal years of the project's duration, during which additional funds may be obligated by increasing the allotment to the contract;

(c) The project is so significant to the approved program that there is reasonable assurance that it will command a high priority for proposed appropriations to cover the entire multiple year duration; and

(d) The statement of work is specific and is defined by separate phases or increments so that, at the completion of each, progress can be effectively measured.

§ 3-50.604 General.

The following are general guidelines applicable to incrementally funded contracts:

(a) The estimated total cost of the project (all planned phases or increments) is to be taken into consideration when determining the

requirements which must be met before entering into the contract; i.e., justification for noncompetitive procurement, approval of award, etc. (See § 1–1.403).

(b) The RFP and resultant contract are to include a statement of work which describes the total project covering the proposed multiple year period of performance and indicating timetables consistent with planned phases or increments and corresponding allotments of funds.

(c) Offerors will be expected to respond to RFPs with technical and cost proposals for the entire project indicating distinct break-outs of the planned phases or increments.

(d) Negotiations will be conducted based upon the total project, including all planned phases or increments, and the multiple year period of performance.

(e) Sufficient funds must be obligated under the basic contract to cover no less than the first year of performance, unless the contracting officer determines it is advantageous to the Government to fund the contract for a lesser period. In that event, the contracting officer shall ensure that the obligated funds are sufficient to cover a complete phase or increment of performance representing a material and measurable part of the total project, and the contract period shall be reduced accordingly.

(f) Because of the magnitude of the scope of work and multiple year period of performance under an incrementally funded contract, there is a critical need for careful program planning. Program planning must provide for appropriate surveillance of the contractor's performance and adequate controls to ensure that projected funding will not impinge on program's ability to support, within anticipated appropriations, other equally important contract or grant programs.

(g) An incrementally funded contract must contain precise requirements for progress reports to enable the project officer to effectively monitor the contract. The project officer should be required to prepare periodic performance evaluation reports to facilitate program's ultimate decision to allot additional funds under the contract.

§ 3–50.605 Solicitation notification.

The request for proposals must inform prospective offerors of the Department's intention to enter into an incrementally funded contract. Therefore, the contracting officer shall include the following provision in the request for proposals whenever the use of incremental funding is contemplated:

Incremental Funding

(a) Sufficient funds are not presently available to cover the total cost of the complete multiple year project described in this solicitation. However, it is the Government's intention to negotiate and award a contract using the incremental funding concepts described in the clause entitled "Limitation of Funds." Under that clause, which will be included in the resultant contract, initial funds will be obligated under the contract to cover the first year of performance. Additional funds are intended to be allotted to the contract by contract modification, up to and including the full estimated cost of the contract, to accomplish the entire project. While it is the Government's intention to progressively fund this contract over the entire period of performance up to and including the full estimated cost, the Government will not be obligated to reimburse the Contractor for costs incurred in excess of the periodic allotments, nor will the Contractor be obligated to perform in excess of the amount allotted.

(b) The "Limitation of Funds" clause to be included in the resultant contract shall supersede the "Limitation of Cost" clause found in the General Provisions.

§ 3–50.606 Contract clauses.

(a) The contracting officer shall include the "Limitation of Funds" clause in § 1–7.202–3(b) in all solicitations and resultant contracts which will be, or are proposed to be, incrementally funded. (See §§ 1–7.202–3(c) and 1–7.402–2(c).) When using the "Limitation of Funds" clause in the solicitation and resultant contract, the contracting officer shall insert the following legend between the clause title and the clause text:

(This clause supersedes the "Limitation of Cost" clause found in the General Provisions of this contract.)

(b) The contracting officer shall include a clause reading substantially as follows in the Special Provisions of the resultant contract:

Consideration

Estimated Cost and Fixed Fee. (1) It is estimated that the total cost to the Government for full performance of this contract will be $———, of which the sum of $——— represents the estimated reimbursable costs and $——— represents the fixed fee.

(2) Total funds currently available for payment and allotted to this contract are $———, of which $——— represents the estimated reimbursable costs and $——— represents the fixed fee. For further provisions on funding, see the "Limitation of Funds" clause.

(3) It is estimated that the amount currently allotted will cover performance of Phase I which is scheduled to be completed by———(date).

(4) The Contracting Officer may allot additional funds to the contract without the concurrence of the Contractor.

[FR Doc. 79–17953 Filed 6–7–79; 8:45 am]

BILLING CODE 4110–12–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[FCC 79–328]

Radio Broadcast Services; Deletion of Rules Requiring Retention of Audio Recordings of Certain Public Affairs Programs

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: In accordance with a Court order, the Commission deletes the rules requiring retention of audio recordings of public affairs programs in which issues of public importance are discussed.

EFFECTIVE DATE: June 15, 1979.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Philip Cross, Steve Crane, John Reiser, Broadcast Bureau (202) 632–9660.

SUPPLEMENTARY INFORMATION:

Order

Adopted: May 29, 1979.

Released: June 1, 1979.

In the matter of amendment of Part 73 of the Commission's rules and regulations to delete §§ 73.127, 73.591 and 73.622.

1. Sections 73.127 (AM), 73.591 (NCE–FM) asnd 73.622 (TV) require the licensee of each such station which, after August 6, 1973, received assistance pursuant to Part IV of the Communications Act of 1934, as amended (Section 399(b)), to retain for 60 days an audio recording of each of its broadcasts of any public affairs program in which any issue of public importance is discussed.

2. Section 399(b) was held unconstitutional, and Commission rules promulgated thereunder were ordered vacated, in *Community Service Broadcasting of Mid-America, Inc., et al. v. F.C.C.*, D.C. Circuit No. 76–1081, opinion on rehearing *en banc*, issued August 25, 1978.

3. Therefore, it is ordered, That, pursuant to Sections 4 and 303 of the Communications Act of 1934, as amended, Part 73 of the Commission's rules and regulations is amended to

delete §§ 73.127, 73.591 and 73.622 in their entirety, effective June 15, 1979.

4. For further information on this *Order*, contact Philip Cross, Steve Crane or John Reiser, Broadcast Bureau, (202) 632–9660.

Federal Communications Commission.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; (47 U.S.C. 154, 303).).

William J. Tricarico,

Secretary.

[FR Doc. 79–17806 Filed 6–7–79; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 81

Station Identification of Alaska-Public Fixed Stations

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: The Commission is editorially amending Part 81 of its rules to insert a provision governing station identification of Alaska-public fixed stations. This rule section was inadvertently overlooked in a previous consolidation of the rules. The Field Operations Bureau requires this amendment to aid in its enforcement efforts.

EFFECTIVE DATE: June 15, 1979.

ADDRES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Penny Wells, Private Radio Bureau (202) 632–7175.

SUPPLEMENTARY INFORMATION:

Order

Adopted: May 30, 1979.

Released: June 5, 1979.

In the matter of editorial amendment of Subpart Q of Part 81 of the rules to provide for station identification of Alaska-Public Fixed Stations.

1. Part 81 of the Commission's rules is entitled "Stations on Land in the Maritime Services and Alaska-Public Fixed Stations," and is divided into subparts. Some subparts are devoted to delineation of the functions of different types of stations. One important provision of each of these subparts which is mandated by Article 19 of the International Radio Regulations concerns the authorized means of station identification. However, when the rules relating to Alaska-public fixed stations were transferred from Part 85 to Subpart Q of Part 81,[1] the section on station identification was inadvertently overlooked. The Field Operations Bureau, which relies upon accurate station identification to carry out its enforcement functions, recently noticed the deletion and suggested that a corrective rulemaking procedure be instituted.

2. The language to be added to Subpart Q closely parallels that of Section 81.310, Identification of Station, in the subpart relating to public coast stations operating by telephony.

3. Accordingly, the Commission's rules are being amended to insert a provision governing station identification of Alaska-public fixed stations. Authority for this amendment is contained in Sections 4(i) and 303(b) and (r) of the Communications Act of 1934, as amended. Since the amendment is essentially editorial in nature, the public notice, procedure and effective date provisions of 5 U.S.C. 553 do not apply.

4. In view of the above, it is ordered, that the rule addition set forth in the attached Appendix is adopted effective June 15, 1979.

Federal Communications Commission.

(Secs. 4, 303, 48 Stat., as amended, 6, 1082; (47 U.S.C. 154, 303).)

R. D. Lichtwardt,

Executive Director.

Appendix

Part 81 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA-PUBLIC FIXED STATIONS

Section 81.706, formerly Reserved, is added to read as follows:

§ 81.706 Station identification.

(a) All emissions from an Alaska-public fixed station shall be clearly identified:

(1) By voice transmission of the official call sign; or

(2) By voice transmission of the approximate geographic location of the station as approved by the Commission. The Commission will not approve duplicative geographic station identifiers.

(b) Station identification shall be made on completion of each communication with any other station and at the beginning and end of each transmission made for any other purpose.

[FR Doc. 79–17809 Filed 6–7–79; 8:45 am]

BILLING CODE 6712–02–M

[1] Parts 2 and 83 were also amended. See Docket No. 18632, released October 26, 1971, 32 FCC 2d 237 (1971).

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1307, 1310

[Ex Parte NO. MC–88 (Sub-No.2)]

Detention of Motor Vehicles—Shipments of Uncrated New Furniture, Fixtures, and Appliances

AGENCY: Interstate Commerce Commission.

ACTION: Modification of final rule.

SUMMARY: Exemption from Existing Uniform Detention Rules granted for: shipments of uncrated or uncartoned new furniture, fixtures or applicances (whether or not moving in mixed trailerloads with cartoned or crated furniture, fixtures, or appliances) which require inside strapping, wrapping, bracing and other loading devices similar to those needed for household goods; provided that rates for uncartoned or uncrated lading are applicable to any mixed trailerload.

DATES: Exemption shall be effective on or before July 9, 1979.

FOR FURTHER INFORMATION CONTACT: Janice Rosenak or Harvey Gobetz, (202) 275–7693 or (202) 275–7656.

SUPPLEMENTARY INFORMATION: In our decision 126 M.C.C. 803 (1977) as modified in a decision served September 15, 1977 at 42 FR 51586, we adopted regulations providing for nationwide detention charges. Exemption from these regulations was made for shipments of household goods, among others. By order served August 31, 1977, we stayed the effect of these regulations with respect to shipments of uncrated, uncartoned new furniture, fixtures, and appliances requiring inside strapping, wrapping, bracing, and other loading devices similar to the household goods moving industry.

Evidence received indicates that transportation conditions of these shipments are similar to those for household goods. In addition, when the higher uncartoned rate for mixed trailerload of uncartoned and cartoned lading is applied the carrier is compensated for the required special handling and resulting delay. Accordingly, the regulations published at sections 1307.35(e) and 1310.15(f) are modified as follows:

1. In § 1307.5 the introductory portion of paragraph (e) is redesignated as paragraph (e)(1) and (e)(2) and revised. Present paragraphs (e)(1) and (e)(2) are redesignated as paragraphs (e)(3) and (e)(4) respectively.

§ 1307.35 Terminal and special services.

* * * * *

(e) *Detention of vehicles.* (1) The following rules apply to all shipments except:

(i) Shipments of household goods;

(ii) *Whole or mixed shipments of uncartoned or uncrated new furniture, fixtures, or applicances which require inside strapping, wrapping, bracing and other loading devices similar to those needed for household goods; provided that the uncrated trailerload rate applies;*

(iii) Commodities transported in bulk in tank truck, dump trucks, vehicles pneumatically unloaded and other self-unloading mechanized vehicles;

(iv) Heavy and specialized commodities or articles requiring special equipment or handling outside the scope of the certificates of general-commodities motor common carriers;

(v) Livestock other than ordinary;

(vi) Articles picked up or delivered to railroad care in railroad owned or leased equipment having prior subsequent transportation by rail;

(vii) Shipments to consignor and consignees of waterborne commerce at marine terminal facilities to the extent that the marine operator would be liable to the motor common for truck detention under any applicable detention rule promulgated pursuant to the authority of the Federal Maritime Commission.

(2) All common carriers of property by motor vehicle subject to Interstate Commerce Act excepting those specifically excluded, supra, shall publish the below rule entitled "Detention-Vehicles With Power Units" and all such carriers engaging in the practice of spotting shall also publish the below rule entitled "Detention-Vehicles Without Power Units." The wording of the following rules may not be varied except where clearly warranted by exceptional circumstances, and where appropriate, the word "rule" may be substituted for the word "item".

* * * * *

2. In § 1310.15, the introductory portion of paragraph (f) is redesignated as paragraph (f)(1) and (f)(2) and revised. Present paragraphs (f)(1) and (f)(2) are redesignated and new paragraphs (f)(3) and (f)(4) respectively.

§ 1310.15 Terminal and other services—changes and allowances (rule 15).

* * * * *

(f) The following rules apply to all shipments except: *Detention of vehicles.* (1) The following rules apply to all shipments except:

(i) Shipments of household goods;

(ii) *Whole or mixed shipments of uncartoned or uncrated new furniture, fixtures, or applicances which require inside strapping, wrapping, bracing and other loading devices similar to those needed for household goods; provided that the uncrated trailerload rate applies;*

(iii) Commodities transported in bulk in tank truck, dump trucks, vehicles pneumatically unloaded and other self-unloading mechanized vehicles;

(iv) Heavy and specialized commodities or articles requiring special equipment or handling outside the scope of the certificates of general-commodities motor common carriers;

(v) Livestock other than ordinary;

(vi) Articles picked up or delivered to railroad care in railroad owned or leased equipment having prior subsequent transportation by rail;

(vii) Shipments to consignor and consignees of waterborne commerce at marine terminal facilities to the extent that the marine operator would be liable to the motor common for truck detention under any applicable detention rule promulgated pursuant to the authority of the Federal Maritime Commission.

(2) All common carriers of property by motor vehicle subject to Interstate Commerce Act excepting those specifically excluded, supra, shall publish the below rule entitled "Detention-Vehicles With Power Units" and all such carriers engaging in the practice of spotting shall also publish the below rule entitled "Detention-Vehicles Without Power Units." The wording of the following rules may not be varied except where clearly warranted by exceptional circumstances, and where appropriate, the word "rule" may be substituted for the word "item".

* * * * *

Dated: May 25, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp, and Christian.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-17975 Filed 6-7-79; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Opening of Waubay National Wildlife Refuge, South Dakota, To Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to hunting of Waubay National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: Gun: November 24, 1979, through December 2, 1979.

Archery: December 3, 1979, through December 31, 1979.

FOR FURTHER INFORMATION CONTACT: Robert R. Johnson, Waubay National Wildlife Refuge, Waubay, South Dakota 57273, Phone Number (605) 947-4695.

SUPPLEMENTARY INFORMATION:

§ 32.32 Special regulations; big game; for individual wildlife refuge areas

Hunting is permitted on the Waubay National Wildlife Refuge, South Dakota, only on the areas designated by signs as being open to hunting. This area, comprising 4,591 acres, is delineated on maps available at the refuge headquarters. Hunting shall be in accordance with all applicable State regulations subject to the following conditions:

1. No hunting within the 60-acre safety zone surrounding refuge headquarters.

2. All refuge roads and trails within the open hunting area, other than public roads, will be closed to vehicles. All gates and trails, however, will be open to foot traffic.

3. Campfires are prohibited.

4. All deer taken on the area must be checked in at refuge checking station located at the old CCC camp site.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50 Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

Note.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

The Refuge Recreation Act of 1962 (16 U.S.C. 460K) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires (1) that any recreational use permitted will not interfere with the

primary purpose for which the area was established; and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which the Waubay National Wildlife Refuge was established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Dated: May 31, 1979.

Robert R. Johnson,

Refuge Manager.

[FR Doc. 79-17954 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 34

Participation of Local Governments in Revenue From Areas Administered by the United States Fish and Wildlife Service

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking provides the basis for making revenue sharing payments to counties for lands administered by the U.S. Fish and Wildlife Service under provisions of Pub. L. 95-469, approved October 17, 1978. This rule makes revenue sharing applicable to all Service administered lands; makes payments available for any governmental purpose; and provides for the computation for payments to county and local governments.

EFFECTIVE DATE: July 9, 1979.

FOR FURTHER INFORMATION CONTACT: Bernard J. Schaefer, Assistant Chief, Division of Realty, Telephone 202-343-4026.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published in the **Federal Register** on January 19, 1979, and provided for a 30-day comment period. Six comments were received from counties, three from townships and/or township associations, and one from a city. Three commentors asked for clarification as to which unit of local government is to receive the payment. Two commentors asked for clarification of the passthrough requirement in § 34.5(c), and one commentor asked for more latitude in making the passthrough determination and suggested that payments of $5,000 or less be exempt from the passthrough requirement. One commentor objected to "reserve area" payments being exempt from passthrough, based on the wording of the statute.

As to which unit of local government is eligible to receive the payment, the definition in § 34.3(c) provides the basis and has been expanded for clarity. The criteria is that entity of local government, which is the primary taxing authority, that levies and collects general purpose real property taxes in which areas administered by the Fish and Wildlife Service are located. This may be a county, parish, organized or unorganized borough, township, municipality, or other unit of local government depending on the circumstances in a particular State.

Section 34.5(c) relating to the passthrough requirement has been expanded so as to give counties more latitude and to provide examples as to how the passthrough payments may be determined. The statute does not specify that minimum amounts may be exempt from passthrough, therefore, the regulation is not changed in this regard. The Service agrees that reserve area payments should not be exempt from passthrough and this provision has, accordingly, been removed from the regulation. Editorial changes and corrections have been made as necessary.

The principal author of this final rulemaking is Richard E. Corthell, Division of Realty, Fish and Wildlife Service.

It is determined that the publication of this final rulemaking is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to Section 102(2)(c) of the National Environmental Protection Act of 1969 (42 U.S.C. 4332(2)(c)).

The Department of the Interior has determined that this document is not a significant regulatory action requiring the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR 14.

Accordingly, Part 34, Title 50, Code of Federal Regulations is revised as follows:

Sec.

34.1 Purpose.
34.2 Authority.
34.3 Definitions.
34.4 Eligibility of areas.
34.5 Distribution of revenues.
34.6 Schedule of appraisals.
34.7 Fair market value appraisals.
34.8 Appropriations authorized.
34.9 Protests.

Authority: 16 U.S.C. 715s, as amended.

§ 34.1 Purpose.

The purpose of the regulations contained in this part is to prescribe the procedures for making payments in lieu of taxes to counties for areas administered by the Secretary through the United States Fish and Wildlife Service in accordance with the Revenue Sharing Act.

§ 34.2 Authority.

(a) The Act of October 17, 1978, Public Law 95-469, amended the Act of June 15, 1935, as amended by the Act of August 30, 1964 (78 Stat. 701; 16 U.S.C. 715s), by revising the formula and extending the revenue sharing provisions to all fee and reserve areas that are administered solely or primarily by the Secretary through the United States Fish and Wildlife Service. Payments under this Act may be used for any governmental purpose.

(b) Pursuant to Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d), and the regulations issued pursuant thereto, which are contained in 43 CFR Part 17, counties must file an assurance with the Department, comply with the terms of the assurances, and comply with regulations contained in 43 CFR Part 17 in order to continue to receive this Federal financial assistance.

§ 34.3 Definitions.

(a) The term "fee area" means any area which was acquired in fee by the United States and is administered, either solely or primarily, by the Secretary through the Service.

(b) The term "reserve area" means any area of land withdrawn from the public domain and administered, either solely or primarily, by the Secretary through the Service. For the purpose of these regulations, reserve areas also include lands in Hawaii, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, which were initially administered by the United States through Act of Congress, Executive Order, Public Land Order or Proclamation of the President and administered, either solely or primarily, by the Secretary through the Service.

(c) The term "county" means any county, parish, organized or unorganized borough, township or municipality, or other unit of local government that is the primary collector for general purpose real property taxes where fee areas and/or reserve areas are located. For the purpose of sharing revenues, the Commonwealth of Puerto Rico, Guam,

and the Virgin Islands shall each be treated as a county.

(d) The term "fund" means the revenues received by the Service from (1) the sale or disposition of animals, salmonoid carcasses and eggs, products of the soil (including, but not limited to, timber, hay, and grass), minerals, shells, sand, and gravel; (2) leases for public accommodations or facilities incidental to, but not in conflict with, the basic purpose of such areas; and (3) other privileges, including industrial leases at Crab Orchard National Wildlife Refuge, Illinois, as authorized by Section 8 of Pub. L. 95–616, approved October 27, 1978. The Service may pay from such fund any necessary expenses incurred in connection with the revenue producing and revenue sharing activity. The fund shall also include any appropriations authorized by the Act to make up any difference between the total amount of receipts after payments of expenses and the total amount of payments due the counties.

(e) The term "net receipts" means the amount of revenue collected by the Service from an area (including fee land and/or reserve land) after the deduction of necessary expenses incurred in producing the particular revenues.

(f) The term "fair market value" means the amount in terms of money for which in all probability a property would be sold if exposed for sale in the open market by a seller who is willing but not obligated to sell, allowing a reasonable time to find a buyer who is willing but not obligated to buy, both parties having full knowledge of all the uses to which the property is adapted, and for which it is capable of being used.

§ 34.4 Eligibility of areas.

In order to receive payments under the Act, a county must qualify under the definition in § 34.3(c) above and there must be located within the county, areas of land owned in fee title by the United States and administered by the Secretary of the Interior through the Fish and Wildlife Service, including wildlife refuges, waterfowl production areas, wildlife ranges, wildlife management areas, fish hatcheries, research centers or stations, and administrative sites, and these areas must be solely or primarily administered by the Service. In addition to this Act, reserve areas administered solely or primarily by the Service are entitlement lands under section 6(a) of the Act of October 29, 1976 (Pub. L. 94–565, 31 U.S.C. 1601–1607), for which regulations are published in Title 43, Part 1880, Code of Federal Regulations.

§ 34.5 Distribution of revenues.

The Act provides that the Secretary, at the end of each fiscal year, shall pay to each county out of the fund:

(a) For reserve areas, an amount equal to 25 per centum of the net receipts, collected by the Secretary in connection with the operation and management of such area, provided that when any such area is situated in more than one county, the distributive share to each from the aforesaid receipts shall be proportional to its acreage of such reserve area.

(b) For fee areas, whichever of the following is greater:

(1) An amount equal to 75¢ per acre for the total acreage of the fee area located within such county.

(2) An amount equal to three-fourths of one per centum of the fair market value, as determined by the Secretary, of that portion of the fee area (excluding any improvements thereto made after the date of Federal acquisition) which is located within such county. For those areas of fee land within the National Wildlife Refuge System as of September 30, 1977, the amount of payment based on fair market value will not be less than the amount paid on the adjusted cost basis as in effect at that time. Actual cost, or appraised value in case of donation, will be used for lands acquired during fiscal year 1978. For those areas of fee lands added to lands administered by the Service after September 30, 1978, by purchase, donation, or otherwise, fair market value shall be determined by appraisal as of the date said areas are administered by the Service.

(3) An amount equal to 25 per centum of the net receipts collected by the Secretary in connection with the operation and management of such fee area during such fiscal year; but if a fee area is located in two or more counties, the amount each such county is entitled to shall be the amount which bears to such 25 per centum, the same ratio as that portion of the fee area acreage which is within such county bears to the total acreage of such fee area.

(c) In accordance with section 5(A) of the act, each county which receives a payment under (a) and (b) above, with respect to any fee area or reserve area, shall distribute that payment to those units of local government which have incurred the loss or reduction of real property tax revenues because of the existence of such area in accordance with the following guidelines.

The local units of government entitled to this distribution will be those such as, but not limited to, cities, towns, townships, school districts, and the county itself in appropriate cases, which levy and collect real property taxes separately from the county or other primary taxing authority or those for which a tax is separately stated on a consolidated tax bill of the primary taxing authority in areas wherein eligible lands are located. The amount of distribution or passthrough to which each unit of local government shall be entitled shall be in the same proportion as its current tax loss bears to the current whole tax loss.

This proportion may be determined: from representative tax bills for the area; by construction by using assessments and millage rates; or by other suitable methods to achieve an equitable result. An example using the representative tax bill method is:

Typical Tax Bill for the Area

County	$80 or	80%
School District	20 or	20%
Total	100 or	100%

The county would receive the total payment, keep 80 percent and pass through 20 percent to the school district. An example using the construction method is:

For a typical acre

Assessed value—		
$100 × 80 mills County	$8	80%
$100 × 20 mills School District	$2	20%
Total	$10	100%

Here again, the county would receive the total payment, keep 80 percent and pass through 20 percent to the school district.

Counties shall distribute the payment to eligible local units of government within 90 days from receipt of the payment. In the event a county cannot make the required distribution for reasons of State or local law, or otherwise, the Service will make the payments directly to local units of government upon return of the check and information upon which to make the payments.

(d) Each county which receives a payment under these regulations shall maintain a record for a period of three years as to how the payment was distributed to units of local government under (c) above. The record shall be available for inspection by the regional director, should a dispute arise as to the distribution of payments. See § 29.21–2(c) for a listing of the regional directors of the Service.

§ 34.6 Schedule of appraisals.

The Secretary shall make fair market value appraisals of areas administered by the Service within five years after October 17, 1978, beginning with areas established earliest. All areas for which payments were not authorized prior to fiscal year 1979 (i.e.; fish hatcheries, administrative sites, and research

stations) shall be included in the areas appraised during the first fiscal year. Once appraised, areas shall be reappraised on a schedule of at least once every five years. Until areas are appraised, the fair market value for the purposes of this regulation shall be the adjusted cost as of September 30, 1978, except that fee lands added to such areas after that date shall be on the basis of fair market value.

§34.7 Fair market value appraisals.

Fee areas administered by the Service will be appraised in accordance with standard appraisal procedures in order to estimate the fair market value of each area as a whole. The evaluation will be premised on an appropriate determination of highest and best use in accordance with existing or potential zoning, the present condition of the land and the general economic situation in the vicinity. Standard appraisal techniques will involve a market data comparison of these areas with similar properties which have sold recently in the local market. These techniques may also include consideration of potential income and development of the cost approach for special use properties having limited marketability. An appropriate evaluation of these areas will also take into consideration a discount for size as recognized by the market for large properties where applicable. The appraisals will be accomplished by the regional director, using Service staff appraisers or private appraisers contracted by the Service.

The Act requires that improvements placed upon the land after the date of Federal Acquisition be excluded from the fair market value. The only structures that will be included in the appraisal are those that were present at the time of Federal acquisition and have not been the subject of substantial renovation or modification with Federal funds. Evaluation of improvements will be based on their contributory value to the area as determined by the highest and best use study. Lands occupied by improvements not subject to appraisal will be valued as though unimproved.

The appraisals will be reviewed by the Serivce's review appraisers and the determination of the regional director as to fair market value shall be final and conclusive and shall be the basis for computation of revenue sharing payments.

§ 34.8 Appropriations authorized.

The Act authorizes appropriations to the fund for any fiscal year when the aggregate amount of payments required to be made exceeds the net receipts in the fund.

§ 34.9 Protests.

(a) Computation of payments shall be based on Federal records concerning land, real property improvements, and accounting of net receipts from areas administered solely or primarily by the Service.

(b) Any affected county may protest the results of the computations of its payments to the regional director in charge of the State and county affected. See § 29.21–2(c) for a listing of the regional directors of the Service.

(c) Any protesting county shall submit sufficient evidence to show error in the computation or the data from which the computations are made.

(d) All protests to the regional director shall be filed within 90 days from the date of receipt of the payment.

(e) The regional director shall consult with the affected county to resolve conflicts in the computations and/or data. The regional director shall make a determination as to the correct payment, which determination shall be final and conclusive.

Dated: June 4, 1979.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

[FR Doc. 79–17822 Filed 6–7–79; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 44, No. 112
Friday, June 8, 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.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

[7 CFR Part 1701]

Telephone Outside Plant Construction Contract; Revision of Existing Contract and Specifications

AGENCY: Rural Electrification Administration.

ACTION: Proposed rule.

SUMMARY: REA proposes to revise REA Bulletin 381–2 to announce (1) A general revision of the Telephone System Construction Contract, Labor and Materials, REA Form 511, (2) changes in the contract's associated specifications, REA Forms 511a, 511d, 511f and 511g, and (3) the renumbering of the 511 forms to 515, 515a, 515c, 515d, 515f and 515g. The last revision of the contract and specifications was October 1973. Since that date, significant changes have been made in the telephone industry, in construction materials, engineering designs and procedures, testing requirements and construction methods. There is a need to revise the 511 forms to incorporate these changes into the REA outside plant construction contract and specifications. This action will make it possible for REA telephone borrowers to continue to provide their subscribers with the most modern and efficient telephone service.

DATE: Public comments must be received by REA no later than August 7, 1979.

ADDRESS: Submit written data, views or comments to the Director, Telephone Operations and Standards Division, rural Electrification Administration, Room 1355–S, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Peters, Chairman, Engineering Review Committee, telephone number 202–447–2525.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 USC 901 et seq.), REA proposes to issue a revision of REA Bulletin 381–2. Copies of the proposed revisions of Bulletin 381–2 and REA Forms 515, 515a, 515c, 515d, 515f and 515g may be secured in person or by written request from the Director, Telephone Operations and Standards Division, at the address above.

All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Director, Telephone Operations and Standards Division, during regular business hours, at the address above.

An impact analysis for this proposed action has been prepared and is available upon request.

The principal changes in the contract and specifications are:

A. REA Form 515, Telephone System Construction Contract (Labor and Materials):

1. Notice and Instructions to Bidders has been divided into two parts. The first part, Notice to Bidders, gives a general outline of the scope of the construction project, requires attendance at a Pre-bid Conference and requires the submission of Bidder qualifications. The second part, Instructions to Bidders, has been reworded to clearly outline the scope of the construction project and restates the requirement for attendance at the Pre-bid Conference.

2. Section 13 of the Contractor's Proposal has been reworded to exclude Saturdays and legal holidays as well as Sundays from the determination of the construction time limit.

3. Article II. Section 1, Paragraph (b) has been reworded to allow the sequence of construction to be designated by work sector numbers.

4. Article II, Section 2, Paragraph (a), has been reworded to require a construction superintendent to be present at the project during working hours when construction is being performed.

5. Article III, Section 1, Paragraph (a) has been changed to (1) allow for the payment of 95 percent of submitted invoices for completed Assembly units including cleanup, (2) pay 80 percent or $500,000, whichever is lesser, for cable and wire delivered to the project once cable placement begins and (3) pay up to 80 percent of the cable and wire material costs over $500,000 after $100,000 or more of cable and wire materials have been incorporated in the project.

6. Article III, Section 1, paragraph (d) and (e), changed to allow interest charges for late payment to be based on the prime rate at the Chase Manhattan Bank in New York.

7. Article V, *Engineering, Construction and Inspection Details,* has been added to include information in the contract that was formerly included in an attactment to the contract.

8. Article VII, Section 1, *Definitions,* has been expanded to include definitions of (1) Cleanup, (2) Work Sector, (3) Construction Corridor, (4) Reduced Construction Corridor, (5) Restricted Construction Corridor, (6) Unobtained Construction Corridor, and (7) Construction Sheets.

9. Table 3.2, *Schedule of Acceptance Tests and Measurements,* has been expanded to include a new test, Shield Ground for Single Jacketed Cables.

B. REA Form 515a, Specifications and Drawings for Construction of Direct Buried Plant.

1. Metric and English units are used.

2. New assembly units BC, BFC, BFCT, BM–76 and BM–90 have been added.

3. Assembly units BJ, BJF, BM–32, BM–40, BM–65, BM–70, BWF, BWL, HB and T have been deleted.

4. Section BA has been expanded to include sawn wood posts.

5. Sections BD and BDF have been combined into a new unit BD.

6. Sections BG and BGF have been combined into a new unit BG.

7. Part III, Section 4:

a. Paragraph 4.103 has been changed to require plows with removable gates.

b. Paragraph 4.107 defines when a ripping unit (BM–76) will be specified.

c. Paragraph 4.108 defines when a rock unit (BM–71) will be specified.

d. Paragraph 4.2 has been rewritten to clarify the handling of buried cable and wire.

e. Paragraph 4.3 has been expanded to permit alternate methods of achieving the minimum depth in rock.

f. Paragraph 4.4 has been expanded to require the electrical testing of all splices and terminations of cable and wire pairs in buried splice cases.

8. Under the *List of Construction Drawings and Plans* these changes were made:

a. Assembly units BM65–1 and BM65–3, and guide drawings 940, 942, 958 and 970 were deleted.

b. Guide drawings 1001, 1003, 1004, 1005, 1009, 1010, 1011 and 1012 were added.

C. REA Form 515c, Specifications and Drawings for Conduit and Manhole Construction:

1. There was no change made in this specification other than the renumbering of the form.

D. REA Form 515d, Specifications and Drawings for Underground Cable Installation:

1. Sections HC and HFC have been combined into a new Section HC.

2. Sections UG and UGF have been combined into a new Section UG.

E. REA Form 515f, Specifications and Drawings for Construction of Pole Lines, Aerial Cables and Wires:

1. New Assembly units CF, PC and PM–90 have been added.

2. The Bridged Tap Isolator, Building-Out Capacitor, and Junction Impedance Compensator Assembly Units have been deleted.

F. REA Form 515g:

1. Title changed to *Specifications and Drawings for Service Entrance and Station Protector Installations.*

2. Sections BKB, BKBF and K have been combined into a new Section SE.

3. The following Assembly Units Drawings and Plans have been deleted:

BM65–1, BM70, P1–1F, P1–1F2, P1–1F6, P1–7F, P1–7F2, and PM–26.

4. Section S has been deleted.

5. The following Drawings and Plans have been added:

816, 963–1, and 963–2.

The new REA Form 515 is to be used on all outside plant projects bid after January 1, 1980.

On issuance of revised REA Bulletin 381–2, Appendix A to Part 1701 will be modified accordingly.

Dated: May 30, 1979.

John H. Arnesen,

Acting Assistant Administrator—Telephone.

[FR Doc. 79–17496 Filed 6–7–79; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF ENERGY

[10 CFR Part 436]

Federal Photovoltaic Utilization Program

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking; cancellation of a public hearing.

SUMMARY: The Department of Energy (DOE) hereby cancels the public hearing scheduled for Thursday, June 14, 1979, in Washington, D.C., concerning DOE's proposed monitoring and assessment rules for the Federal Photovoltaic Utilization Program. This hearing is cancelled due to lack of any public interest in making oral presentations at the hearing. As stated in the notice of proposed rulemaking issued on May 2, 1979 (44 FR 27194, May 9, 1979), written comments on the proposed rules must be received by 4:30 p.m. on July 9, 1979.

FOR FURTHER INFORMATION CONTACT: Elaine Smith, Federal Photovoltaic Utilization Program Manager, Office of Conservation and Solar Applications, Department of Energy, Room 1210, 20 Massachusetts Avenue, N.W., Washington, D.C. 20545 (202) 376–5931.

Issued in Washington, D.C., June 6, 1979.

Kelly C. Sandy III,

Executive Director, Conservation & Solar Applications.

[FR Doc. 79–18081 Filed 6–7–79; 10:10 am]

BILLING CODE 6450–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

[12 CFR Part 335]

Securities of Insured Nonmember State Banks; Advance Notice of Proposed Rulemaking

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The proposal would amend the Federal Deposit Insurance Corporation's ("FDIC") securities disclosure regulations issued under the Securities Exchange Act of 1934 (15 U.S.C. 78l(i)) ("Act") in order to bring them into substantial similarity with those of the Securities and Exchange Commission ("SEC"). Section 12(i) of the Act requires that the FDIC issue substantially similar regulations to those of the SEC or publish its reasons for not doing so. This proposal is intended to comply with Section 12(i), to update the regulation, and to make the regulation more understandable. It covers the following: (1) Acquisition statements; (2) shareholder proposals; (3) stock appreciation rights; (4) form S–K simplification; (5) corporate governance; (6) management remuneration; (7) management indebtedness; (8) changes in independent accountants; and (9) auditor fees.

DATES: Comments must be received on or before August 7, 1979.

ADDRESS: Interested persons are invited to submit written data, views or arguments regarding the proposed regulations to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. All written comments will be made available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Gerald J. Gervino, Attorney, or Louis E. Wright, Financial Analyst, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429 (202) 389–4422 or 389–4651.

SUPPLEMENTARY INFORMATION: The FDIC would make the following changes:

A. Filing and Disclosure Requirements Relating to Beneficial Ownership

1. *Filings by previously exempt persons.*—The Domestic and Foreign Investment Disclosure Act of 1977, Pub. L. No. 95–213, Title II, 91 Stat. 1494 (1977), authorized the SEC to "close the gaps which exist in the present scheme for requiring disclosure of persons whose beneficial ownership exceeds 5 percent of a class of certain equity securities," SEC Rel. No. 34–15348, 43 FR 55751 (November 29, 1978). The SEC has adopted a new paragraph (c) to its Rule 13d–1 which requires filings by: (1) Those persons who acquired beneficial ownership of their securities prior to December 22, 1970, (2) those persons who acquired not more than 2 percent of a class of securities within a 12-month period, who are exempt from Rule 13d–1(a) by Section 13(d)(6)(B) of the Act, and (3) those persons who acquired securities through a stock-for-stock exchange registered under the Securities Act of 1933, 15 U.S.C. 77(a) *et seq.* (1970), who are exempt from Rule 13d–1(a) by Section 13(d)(6)(A) of the Act.

Rule 13d–1(c) also would require any person "otherwise" not required to report pursuant to Rule 13d–1(a) but who is a beneficial owner of more than 5 percent of a specified class of equity securities to report on Schedule 13G. A person could fall under this category if, for example, he acquired beneficial ownership of more than 5 percent of a class of securities which at the time of acquisition was not registered pursuant to Section 12(g) of the Act but which subsequently became registered. However, an exemption has been added to Rule 13d–1(c) to indicate that the "or otherwise" language does not cover issuers who acquire their own securities. This filing is to be made on a modified version of the SEC's "short form"

Schedule 13G previously available only to institutional shareholders.

The SEC was also required to tabulate and make available the information received concerning share ownership to the public. The SEC has added cover pages to its forms in order to obtain data in a form suitable for its computer system.

The FDIC feels that cover sheets are unnecessary for its purposes, since its staff can enter such information while reviewing the filings. The FDIC intends to make a tabulation of share ownership available to the public in the future.

The FDIC proposes to adopt this SEC change as an amendment to § 335.4(h)(2) of its regulations by revising paragraphs (i) and (ii) and by adding new paragraphs (iii), (iv) and (v). A new Form F–11A discussed below would include SEC modifications designed to fit this purpose.

2. *Short form acquisition notices and pledges.*—On April 21, 1978, the SEC adopted a new Schedule 13G to provide a new replacement short form schedule which sets forth disclosure requirements for reporting beneficial ownership and related information on certain equity securities by certain institutional investors. SEC Rel. No. 34–14692, 43 Fed. Reg. 18484 (April 28, 1978). Under the amended SEC rules, it is available as a short form for institutional investors, such as certain brokers, dealers, banks, investment companies, investment advisors, employee benefit plans, pension funds, parent holding companies, groups and insurance companies. As noted above, this schedule has subsequently been revised for use by other persons.

On June 30, 1978, the SEC amended the short form rules with respect to holding companies and revised the definition of "beneficial ownership" for Williams Act purposes with respect to pledges that are investment advisors. SEC. Rel. No. 34–14910, 43 FR 29767 (July 11, 1978).

The FDIC proposes to adopt these changes by appropriate amendments to § 335.4(h) of its regulations as set forth below.

B. Shareholder Proposals

On December 6, 1978, the SEC adopted an amendment to its shareholder proposal rule (17 CFR 240.14a–8) which would allow a shareholder proponent an opportunity to bring alleged false and misleading statements to the attention of management and the SEC where they are contained in a management statement opposing the shareholder's proposal. SEC Rel. No. 34–15384, 43 FR 58522 (December 14, 1978). The FDIC would adopt the amendment substantially in the form adopted by the SEC by amending § 335.5(k)(5) as set forth below.

C. Stock Appreciation Rights

On December 27, 1976, the SEC amended its Rule 16b–3 to provide an exemption from Sections 16(a) and 16(b) of the Act for certain transactions in stock appreciation rights. SEC Rel. No. 34–13097, 42 FR 758 (January 4, 1977). The SEC amended its rules on June 22, 1977. SEC Rel. No. 34–13659, 42 FR 33285 (June 30, 1977). The FDIC would adopt the rule substantially as last amended by the SEC by revising § 335.6(r) as set forth below.

D. Form S–K Simplification

On December 23, 1977, the SEC amended its new Regulation S–K which is designed to integrate the common requirements of its various forms into one source to which all the various forms were cross-referenced. Thus, a filing person would only need to be familiar with requirements for one type of item regardless of which form he is filing. SEC Rel. No. 5893, 42 Feg. Reg. 65554 (December 30, 1977). The regulation was amended on July 28, 1978, SEC Rel. No. 34–15006, 43 FR 34402 (August 3, 1978) and on December 4 and 19, 1978. SEC Rel. Nos. 34–15380 and 34–15418, 43 FR 58181, 60418 (December 13 and 27, 1978).

Rather than adopt a new separate form for the presentation of common disclosure items, the FDIC proposes that common items be contained in its Form F–5 and cross-referenced thereto from the other forms. Thus, the benefits of a common form may be obtained without the addition of another form.

In connecton with the adoption of Regulation S–K, the SEC made a number of modifications to its disclosure items. Those modifications which were found consistent with the banking industry are contained in this proposal. The FDIC would adopt the substance of Regulation S–K which appears applicable to the banking industry by amending §§ 335.41, 335.42, 335.43 and 335.51 of its regulations as set forth below.

E. Acquisition Statements

In connection with the SEC rulemaking set out in Section A above, the SEC amended its Schedule 13D and adopted a new Schedule 13G. The FDIC would amend its Form F–11 and adopt a new Form F–11A to conform its regulations with the SEC changes. Accordingly, § 335.47 would be amended and § 335.48 would be added as set out below.

F. Corporate Governance

On December 6, 1978, the SEC amended its regulations in order to provide shareholders with information to assist their more informed assessment of the structure, composition and functioning of issuers' boards of directors. It also required management to provide information about the terms of settlement of proxy contests. Specific improvements in information available to shareholders was sought concerning (1) the structure, composition and functioning of issuers' boards of directors; (2) resignation of directors; and (3) attendance at board and committee meetings. SEC Rel. No. 34–15384, 43 FR 58522 (December 14, 1978).

The SEC amendments are based upon a broad study which began in April of 1977 which included public hearings. SEC Rel. No. 14970 (July 18, 1978), 43 FR 31945 (July 24, 1978). The amendments require disclosure of certain significant economic and personal relationships which exist between a director, an issuer, and its officers including family relationships and business transactions. An issuer must disclose (1) whether it has a standing audit, compensation or nominating committee, (2) the functions its committees actually performed, (3) the number of committee meetings held during the issuer's last fiscal year, (4) the fact that a director attends fewer than 75 percent of the aggregate number of meetings of the board and of the committees on which he sits, and (5) disagreements with resigning or retiring directors, when requested by the director.

The FDIC would substantially adopt the above SEC amendments by amending §§ 335.51 and 335.43 and by reference §§ 335.41 and 335.42 as set forth below.

G. Management Remuneration

1. *The SEC Rule.*—On December 4, 1978, the SEC amended its rules with respect to management remuneration. SEC Rel. No. 34–15380, 43 FR 58181 (December 13, 1978).

Disclosure is now required for the five highest paid officers (rather than three highest paid officers). However, the disclosure floor has been raised by 25 percent from $40,000 to $50,000 in recognition of inflationary effects on remuneration. Thus, larger issuers will be required to disclose more information while smaller issuers will enjoy more privacy.

The SEC has expanded the tabular format to include all cash, cash-

equivalent and contingent forms of remuneration. Cash-equivalent remuneration includes the spread of below market price of securities acquired upon the exercise of an option or its equivalent, the cost of premiums for special officers of director insurance or the cost of special health benefits.

Also included are certain personal benefits which are not directly related to job performance including indirect benefits. These include, among others, issuer payments for: (1) Home repairs and improvements; (2) housing and other living expenses (including domestic service) provided at principal and/or vacation residences of management personnel; (3) personal use of company property, such as automobiles, planes, yachts, apartments, hunting lodges or company vacation houses; (4) personal travel expenses; (5) personal entertainment and related expenses; and (6) legal, accounting and other professional fees for matters unrelated to the business of the issuer. Other personal benefits which may be forms of remuneration are the following: the ability of management to obtain benefits from third parties, such as favorable bank loans and benefits from suppliers, because the corporation compensates, directly or indirectly, the bank or supplier for providing the loan or services to management; and the use of the corporate staff for personal purposes.

The SEC has adopted a conditional exclusion for certain personal benefits if an issuer cannot determine without unreasonable effort or expense the specific amount of personal benefits or the extent to which benefits are personal rather than business. If the issuer concludes such benefits do not exceed $10,000 and its board of directors concludes that their omission does not render the table materially misleading, they may be omitted. Footnote disclosure is required where personal benefits exceed 10 percent of an officer or director's remuneration or $25,000, whichever is less. Contingent remuneration is separated from cash and cash-equivalent remuneration in a separate column. This includes retirement and deferred compensation, incentive plans, stock purchase plans, profit sharing and thrift plans, and similar contingent plans.

2. *The FDIC Simplification.*—The FDIC's staff, along with the staff of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System, has simplified the instructions to the remuneration table in order to take into account the less complex remuneration provisions generally found in the banking industry and the relatively smaller staffs of publicly held issuer banks.

Thus, the more highly technical instructions have been shortened and put into more commonly used English. Seldom incurred provisions have been deleted or shortened.

The most important change relates to the inclusion of a $5,000 exemption for personal benefits in lieu of the SEC's $10,000 conditional exclusion. It is felt that a small clear exemption will promote more uniform disclosure among similar issuers. In addition, if a bank cannot determine the actual cost of personal benefits without unreasonable effort or expense, it must include a reasonable estimate of the cost to the bank. Where an allocation of the personal portion of a benefit cannot be made, the aggregate cost and an estimate of the percentage that is personal must be made. A statement of the bank's policies and practices regarding personal benefits must be provided.

In other respects not noted above, the FDIC proposal is substantially similar to the SEC requirements.

While the FDIC favors the approach described above, it is specifically inviting comments as to the advisability of adopting the SEC rule in substantially the form adopted by the SEC. Thus, references should be made to the above SEC release.

3. *Proposed Amendments.*—The FDIC would adopt the above changes by amending Items 7 (a) and (b) of § 335.51 of its regulations, as set forth below.

H. Indebtedness of Management

The FDIC proposes to amend its regulations concerning indebtedness of management to require that the percentage of equity capital accounts an officer or director's disclosed indebtedness represents be stated and also the percentage of all directors and officers. The FDIC feels this information represents a valuable addition to the absolute dollar amount in allowing shareholder evaluation of management indebtedness.

The list of enumerated conditions which must be met in order to determine whether an insider extension of credit is made on substantially the same terms as those prevailing for non-insiders has been expanded to include repayment terms. The FDIC feels that favorable repayment terms are a sufficiently important basis for preference to an insider that they should be included in the list. The collectability standard has been expanded to provide as examples, the fact of a delinquency or of a restructuring. The upper dollar exclusion has been lowered from $10 million to $5 million. The former exclusion is considered to be too high to allow meaningful disclosure.

The FDIC would amend Item 7(d) of § 335.51 to implement this proposal.

I. Changes in Independent Accountants

On May 26, 1978, the SEC amended its rules regarding the filing of current reports and proxy statements to require disclosure of whether a decision to change the independent accountant of the registrant was recommended or approved by the audit or similar committee of the board of directors. SEC Rel. No. 34–14808, 43 FR 24288 (June 5, 1978).

Currently, Item 10 of Form F–3, 12 CFR 335.43, requires an insured state nonmember bank to report changes in its independent accountant, including the date of change, reports of disagreements with the former accountant, descriptions of adverse opinions by the former accountant, and a letter from the former accountant commenting on the information submitted by the bank in response to Item 10. Item 8 of Form F–5, 12 CFR 335.51, requires the reporting bank to identify the accountant selected for the current year and, if different, for the fiscal year most recently completed, and to describe changes in accountants and disagreements with accountants that have occurred since the most recent annual meeting, including views of the accountant that conflict with the bank's view of the disagreement. In light of the Commission's action requiring disclosure of whether a change of independent accountant was recommended or approved by the audit or other committee of the Board of Directors, the FDIC has determined that similar amendments to §§ 335.43 and 335.51 of its regulations are appropriate and, accordingly, is proposing such amendments as set forth below.

J. Services and Fees of Independent Auditors

The SEC has adopted amendments to its rules requiring disclosure in proxy statements of (1) services provided during the last fiscal year by a principal independent accountant, the percentage relationship which the aggregate fees for all non-audit services bear to the audit fee and the percentage relationship that the fees for each non-audit service bear to the audit fees; and (2) whether the board of directors or its audit or similar committee has approved each such service. SEC Rel. No. 34–14904, 43 FR 29110 (July 6, 1978).

Currently, Item 8 of Form F–5, 12 CFR 335.51, does not specifically require the disclosure of information regarding the provision of and fees concerning non-financial services performed for an insured state nonmember bank by its independant accountants or the approval of such services by the bank's board of directors. In light of the SEC action requiring such disclosure by its registrants, the FDIC has determined that similar disclosures would be appropriate and that such information would be useful to investors in the stock of insured state nonmember banks.

In order to accomplish this, it is proposed that § 335.51 be amended by adding a new paragraph (f) to Item 8, as set forth below.

K. Other SEC Amendments

On March 3, 1978, the SEC adopted a proposal relating to industry segment reporting. SEC Rel. No. 34–14524, 43 FR 9599 (March 9, 1978). Since banking is a single industry and banks are generally not allowed to engage in non-banking activities, the FDIC finds this proposal unnecessary with respect to insured State nonmember banks.

The SEC periodically publishes a large number of changes througout its regulations. Many of these changes apply only to specific non-banking institutions such as insurance or extractive industries. Some relate to companies subject to other securities laws under which banks are exempted. Others impose requirements which obviously are not intended to apply to banking. The FDIC is not formally considering such amendments since they obviously should not be applicable to insured State nonmember bank issuers.

L. Competition and Costs

The FDIC requests comments concerning the inpact these amendments may have upon competition. It also requests comments upon any increase in cost or additional burden the amemdments may impose, which would not be outweighed by the benefits provided the bank, its shareholders and the public. The FDIC is specifically requesting information from banks concerning projected start-up costs and continuing costs. To the extent feasible, these estimates should be allocated among the various new areas of regulation.

Dated: June 4, 1979.

Federal Deposit Insurance Corporation

Hoyle L. Robinson,

Executive Secretary.

It is proposed to amend 12 CFR Part 335, as follows:

1. Section 335.4(h) would be amended by revising paragraphs (h)(2), (h)(3), (h)(5), (h)(6), (h)(7) and (h)(8) as follows:

§ 335.4 Registration statements and reports.

* * * * *

(h) * * *

(2)(i) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a bank of a class which is registered pursuant to Section 12 of the Act (except non-voting securities) is directly or indirectly the beneficial owner of more than five (5) percent of such class shall, within 10 days after such acquisition, send to the bank at its principal office, by registered or certified mail, and to each exchange where the security is traded, and file with the Corporation, a statement containing the information required by Form F–11. Six copies of the statement, including all exhibits, shall be filed with the Corporation.

(ii)(A) A person who would otherwise be obligated under paragraph (i) of this § 335.4(h)(2) to file a statement on Form F–11 may, in lieu thereof, file with the Corporation, within 45 days after the end of the calendar year in which such person became so obligated, six copies, including all exhibits, of a short form ownership statement on Form F–11A and send one copy each of such form to the bank at its principal office, by registered or certified mail, and to the principal national securities exchange where the security is traded: *Provided,* That it shall not be necessary to file a Form F–11A unless the percentage of the class of equity security beneficially owned as of the end of the calendar year is more than five (5) percent: *And provided further,* That

(*1*) Such person has acquired such securities in the ordinary course of his business and not with the purpose nor with the effect of changing or influencing the control of the bank, nor in conection with or as a participant in any transaction having such purpose or effect, including any transaction subject to § 335.4(h)(5)(ii); and

(*2*) Such person is

(*i*) A broker or dealer registered under Section 15 of the Act;

(*ii*) A bank as defined in Section 3(a)(6) of the Act;

(*iii*) An insurance company as defined in Section 3(a) (19) of the Act;

(*iv*) An investment company registered under Section 8 of the Investment Company Act of 1940;

(*v*) An investment adviser registered under Section 203 of the Investment Advisers Act of 1940;

(*vi*) An employee benefit plan, or pension fund which is subject to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA") or an endowment fund;

(*vii*) A parent holding company: *Provided,* The aggregate amount held directly by the parent, and directly and indirectly by its subsidiaries which are not persons specified in paragraph (ii)(A)(*2*)(*i*) through (*vi*) of this § 335.4(h)(2), does not exceed one percent of the securities of the subject class;

(*viii*) A group, provided that all the members are persons specified in paragraph (ii)(A)(*2*)(*i*) through (*vii*) of this § 335.4(h)(2); and

(*3*) Such person has promptly notified any other person (or group within the meaning of Section 13(d)(3) of the Act) on whose behalf it holds, on a discretionary basis, securities exceeding five percent of the class, of any acquisition or transaction on behalf of such other person which might be reportable by the person under Section 13(d) of the Act. This paragraph only requires notice to the account owner of information which the filing person reasonably should be expected to know and which would advise the account owner of an obligation he may have to file a statement pursuant to Section 13(d) of the Act or an amendment thereto.

(B) Any person relying on § 335.4(h)(2)(ii)(A) and § 335.4(h)(3)(ii) shall, in addition to filing any statement required thereunder, file a statement on Form F–11A within ten days after the end of the first month in which such person's direct or indirect beneficial ownership exceeds ten percent of a class of equity securities specified in § 335.4(h)(2)(i) computed as of the last day of the month, and thereafter within ten days after the end of any month in which such person's beneficial ownership of securities of such class, computed as of the last day of the month, increased or decreased by more than five percent of such class of equity securities. Six copies of such statement, including all exhibits, shall be filed with the Corporation and one each sent, by registered or certified mail, to the bank at its principal office and to the principal national securities exchange where the security is traded. Once an amendment has been filed reflecting beneficial ownership of five percent or

less of the class of securities, no additional filings are required by this paragraph (ii)(B) unless the person thereafter becomes the beneficial owner of more than ten percent of the class and is required to file pursuant to this provision.

(C)(*1*) Notwithstanding paragraphs (ii)(A) to (ii)(B) of this § 335.4(h)(2) and § 335.4(h)(3)(ii), a person shall immediately become subject to § 335.3(h)(2)(i) and § 335.4(h)(3)(i) and shall promptly, but not more than 10 days later, file a statement on Form F–11 if such person:

(*i*) Has a reported that the person is the beneficial owner of more than five percent of a class of equity securities in a statement on Form F–11A pursuant to paragraph (ii)(A) or (ii)(B) of this § 335.4(h)(2), or is required to report such acquisition but has not yet filed the form;

(*ii*) Determines that the person no longer has required or holds such securities in the ordinary course of business or not with the purpose nor with the effect of changing or influencing the control of the bank, nor in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to § 355.4(h))5)(ii); and (*iii*) Is at that time the beneficial owner of more than five percent of a class of equity securities described in § 335.4(h)(2)(i).

(*2*) For the ten-day period immediately following the date of the filing of a Form F–11 pursuant to this pursuant to this paragraph (ii)(C), such person shall not (*i*) Vote or direct the voting of the securities described in § 335.4(h)(2)(ii)(C)(*1*)(*i*); nor, (*ii*) Acquire an additional beneficial ownership interest in any equity securities of the bank, nor of any person controlling the bank.

(D) Any person who has reported an acquisition of securities in a statement of Form F–11A pursuant to paragraph (ii)(A) or (ii)(B) of this § 335.4(h)(2) and thereafter ceases to be a person specified in paragraph (ii)(A)(*2*) of this § 335.4(h)(2) shall immediately become subject to § 335.4(h)(2)(i) and § 335.4(h)(3)(i) and shall file, within ten days thereafter, a statement on Form F–11 in the event such person is a beneficial owner at that time of more than five percent of the class of equity securities.

(iii) Any person who, as of December 31, 1979, or as of the end of any calendar year thereafter, is directly or indirectly the beneficial owner of more than five percent of any equity security of a class specified in paragraph (h)(2)(iv) and who is not required to file a statement under paragraph (h)(2)(i) by virtue of the exemption provided by Section 13(d)(6)(A) or (B) of the Act, or because such beneficial ownership was acquired prior to December 20, 1970, or because such person otherwise (except for the exception provided by Section 13(d)(6)(C) of the Act) is not required to file such statement, shall, within 45 days after the end of the calendar year in which such person became obligated to report under this paragraph, send to the bank at its principal office, by registered or certified mail, and file with the Corporation, a statement containing the informaion required by Form F–11A. Six copies of the statement, including all exhibits, shall be filed with the Corporation.

(iv) For the purposes of Section 13(d) and 13(g), any person, in determining the amount of outstanding securities of a class of equity securities, may rely upon information set forth in the bank's most recent quarterly or annual report, and any currrent report subsequent thereto, filed with the Corporation pursuant to the Act, unless the person knows or has reason to believe that the information contained therein is inaccurate.

(v)(A) Whenever two or more persons are required to file a statement containing the information required by Form F–11 or Form F–11A with respect to the same securities, only one statement need be filed; *Provided,* That (*1*) Each person on whose behalf the statement is filed is individually eligible to use the form on which the information is filed;

(*2*) Each person on whose behalf the statement is filed is responsible for the timely filing of such statement and any amendments thereto, and for the completeness and accuracy of the information concerning such person contained therein; such person is not responsible for the completeness or accuracy of the information concerning the other persons making the filing, unless such person knows or has reason to believe that such information is inaccurate; and

(*3*) Such statement identifies all such persons, contains the required information with regard to each such person, indicates that such statement is filed on behalf of all such persons, and includes, as an exhibit, their agreement in writing that such statement is filed on behalf of each of them.

(B) A group's filing obligation may be satisfied either by a single joint filing or by each of the group's members making an individual filing. If the group's members elect to make their own filings, each filing should identify all members of the group but the information provided concerning the other persons making the filing need only reflect information which the filing person knows or has reason to know.

(3)(i) Form F–11—If any material change occurs in the facts set forth in the statement required by § 335.4(h)(2)(i) including, but not limited to, any material increase or decrease in the percentage of the class beneficially owned, the person or persons who were required to file such statement shall promptly file or cause to be filed with the Corporation and send or cause to be sent to the bank at its principal office, by registered or certified mail, and to each exchange on which the security is traded, an amendment disclosing such change. An acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more of the class of securities shall be deemed "material" for purposes of this § 335.4(h)(3); acquisitions or dispositions of less than such amounts may be material, depending upon the facts and circumstances. The requirement that an amendment be filed with respect to an acquisition which materially increases the percentage of the class beneficially owned shall not apply if the acquisition is exempted by Section 13(d)(6)(B) of the Act. Six copies of each amendment shall be filed with the Corporation.

(ii) Form F–11A—Notwithstanding paragraph (i) of this § 335.4(h)(3), and provided that the person or persons filing a statement pursuant to § 335.4(h)(2)(ii) continue to meet the requirements set forth therein, any person who has filed a short form statement on Form F–11A shall amend such statement within 45 days after the end of each calendar year to reflect, as of the end of the calendar year, any changes in the information reported in the previous filing on that form, or if there are no changes from the previous filing, a signed statement to that effect under cover of Form F–11A. Six copies of the amendment, including all exhibits, shall be filed with the Corporation and one each sent, by registered or certified mail, to the bank at its principal office and to the principal national securities exchange where the security is traded. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required unless the person thereafter becomes the beneficial owner of more than five percent of the class and is required to file pursuant to § 335.4(h)(2).

Note.— For persons filing a short form statement pursuant to §335.4(h)(2)(ii), see also §§335.4(h)(2)(ii)(B), (C) and (D).

* * * * *

(5) * * *

(iv) * * *

(C) * * *

(1) * * *

(*2*) The pledgee is a person specified in § 335.4(h)(2)(ii)(A)*(2)*, including persons meeting the conditions set forth in paragraph *(vii)* thereof; and

* * * * *

(6)(i) A person who becomes a beneficial owner of securities shall be deemed to have acquired such securities for purposes of Section 13(d)(1) of the Act, whether such acquisition was through pruchase or otherwise. However, executors or administrators of a decedent's estate generally will be presumed not to have acquired beneficial ownership of the securities in the decedent's estate until such time as the executors or administrators are qualified under local law to perform their duties.

(ii)(A) When two or more persons agree to act together for the prupose of acquiring, holding, voting or disposing of equity securities of a bank, the group formed thereby shall be deemed to have acquired beneficial ownership, for purposes of Sections 13(d) and 13(g) of the Act, as of the date of such agreement, of all equity securities of that bank beneficially owned by any such person.

(B) Notwithstanding the previous paragraph, a group shall be deemed not to have acquired any equity securities beneficially owned by the other members of the group solely by virture of their concerted actions relating to the purchase of equity securities directly from a bank in a transaction not involving a public offering; *Provided,* That *(1)* All the members of the group are persons specified in § 335.4(h)(2)(ii)(A)*(2)*;

(*2*) The pruchase is in the ordinary course of each member's business and not with the prupose nor with the effect of changing or influencing control of the bank, nor in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to § 335.4(h)(5)(ii);

(*3*) There is no agreement among, or between any members of the group to act together with respect to the bank or its securities except for the purpose of facilitating the specific purpose involved; and

(*4*) The only actions among or between any members of the group with respect to the bank or its securities subsequent to the closing date of the non-public offering are those which are necessary to conclude ministerial matters directly related to the completion of the offer or sale of the securities.

(*7*) The acquisition of securities of a bank by a person who, prior to such acquisition, was a beneficial owner of more than five percent of the outstanding securities of the same class as those acquired shall be exempt from Section 13(d) of the Act: *Provided,* That (i) The acquisition is made pursuant to preemptive subscription rights in an offering made to all holders of securities of the class to which the preemptive subscription rights pertain;

(ii) Such person does not acquire additional securities except through the exercise of the person's pro rata share of the preemptive subscription rights; and

(iii) The acquisition is duly reported, if required, pursuant to Section 16(a) of the Act and the rules and regulations thereunder.

(8) Each bank having securities registered pursuant to section 12(g) of the Act, upon being notified by a national securities association registered pursuant to section 15A of the Act that a class of the bank's securities is to be quoted on an interdealer quotation system, which is sponsored and governed by the rules of such association, shall thereafter notify such association promptly of (i) any increase or decrease in the amount of securities of such class outstanding which exceeds five percent of the amount of such class last reported to the association and (ii) any change in the name of the bank. The obligation to report pursuant to this paragraph (h)(8) of this section shall continue unfil notification is received from the association that all classes of securities are no longer quoted on such interdealer quotation system.

* * * * *

2. In § 335.5, paragraph (c)(1), Note 2 would be amended by deleting the term "§335.*7*(d)." and inserting in its place the term "§ 335.*7*(f).".

3. In § 335.5, paragraph (k) would be amended by adding a new Subparagraph (5) as follows:

§ 335. Proxy statements and other solicitations under section 14 of the Act.

* * * * *

(k) * * *

(5) If the management intends to include in the proxy statement a statement in opposition to a proposal received from a proponent, it shall—not later than ten calendar days prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to § 335.5(f), or, in the event that the proposal must be revised to be includable, not later than five calendar days after receipt by the bank of the revised proposal—promptly forward to the proponent a copy of the statement in opposition to the proposal. In the event the proponent believes that the statement in opposition contains materially false or misleading statements within the meaning of § 335.5(h) and the proponent wishes to bring this matter to the attention of the Corporation, the proponent should promptly provide the staff with a letter setting forth the reasons for this view and at the same time promptly provide management with a copy of such letter.

4. Section 335.6 would be amended by revising paragraph (r) as follows:

§ 335.6 Reports of directors, officers, and principal stockholders.

* * * * *

(r) *Exemption from Section 16(b) of the acquisitions of shares of stock and stock options and stock appreciation rights under certain stock incentive, stock option of similar plans.* Any acquisition of shares of stock (other than stock acquired upon the exercise of an option, warrant or right) pursuant to a plan as defined in Subparagraph (4)(i) hereof, or any acquisition, expiration, cancellation of surrender to the bank of a stock option or stock appreciation right pursuant to such a plan by a director or officer of the bank shall be exempt from the operation of Section 16(b) of the Act if the plan meets the following conditions:

(1) *Approval by security holders.* The plan has been approved, directly or indirectly

(i) By the affirmative votes of the holders of a majority of the securities of the bank present, or represented, and entitled to vote at a meeting duly held in accordance with the applicable laws of the State or other jurisdiction in which the bank was incorporated or

(ii) By the written consent of the holders of a majority of the securities of the bank entitled to vote: *Privided, however,* That if such vote or written consent was not solicited substantially in accordance with the rules and regulations, if any, in effect under section 14(a) of the Act at the time of such vote or written consent, the issuer shall furnish in writing to the holders of record of the securities entitled to vote for the plan substantially the same information concerning the plan which would be required by the rules and regulations in effect under Section 14(a) of the Act at the time such informaiton is furnished, if proxies to be voted with respect to the approval or disapproval of

the plan were then being solicited, on or prior to the date of the first annual meeting of security holders held subsequent to the later of

(A) The first registration of an equity security under Section 12 of the Act or

(B) The acquisition of an equity security for which exemption is claimed.

Such written information may be furnished by mail to the last known address of the security holders of record within 30 days prior to the date of the mailing. Six copies of such written information shall be filed with, or mailed for filing to, the Corporation not later than the date on which it is first sent or given to security holders of the bank. For the purposes of this paragraph, the term "bank" includes a predecessor corporation if the plan or obligations to participate thereunder were assumed by the bank in connection with the succession. In addition, any amendment to the plan shall be similarly approved if the amendment would

(*1*) Materially increase the benefits accruing to participants under the plan;

(*2*) Materially increase the number of securities which may be issued under the plan; or

(*3*) Materially modify the requirements as to eligibility for participation in the plan.

(2) *Disinterested administrators.* If the selection of any director or officer of the bank to whom stock may be allocated or to whom stock options or stock appreciation rights may be granted pursuant to the plan, or the determination of the number or maximum number of shares of stock which may be allocated to any such director or officer or which may be covered by stock option or stock appreciation rights granted to any such director or officer pursuant to the plan is subject to the discretion of any person, then such discretion shall be exercised only as follows:

(i) With respect to the participation of directors—

(A) By the board of directors of the bank, a majority of which board and a majority of the directors acting in the matter are disinterested persons;

(B) By, or only in accordance with the recommendation of, a committee of three or more persons having full authority to act in the matter, all of the members of which committee are disinterested persons; or

(C) Otherwise in accordance with the plan, if the plan

(*1*) Specifies the number or maximum number of shares of stock which directors may acquire or which may be subject to stock options or stock appreciation rights granted to directors pursuant to the plan and the terms upon which and the times at which, or the periods within which, such stock may be acquired or such options or rights may be acquired and exercised; or

(*2*) Sets forth, by formula or otherwise, effective and determinable limitations with respect to the foregoing based upon earnings of the bank, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time to time or similar factors.

(ii) With respect to the participation of officers who are not directors;

(A) By the board of directors of the bank or a committee of three or more directors—

(B) By, or only in accordance with the recommendations of, a committee of three or more persons having full authority to act in the matter, all of the members of which committee are disinterested persons; or

(C) Otherwise in accordance with the plan, if the plan

(*1*) Specifies the number or maximum number of shares of stock which officers may acquire or which may be subject to stock options or stock appreciation rights granted to the officers pursuant to the plan and the terms upon which, and the times at which, or the period within which, such stock may be acquired or such options or rights may be acquired and exercised; or

(*2*) Sets forth, by formula or otherwise, effective and determinable limitations with respect to the foregoing based upon earnings of the bank, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time to time or similar factors.

(iii) The provisions of this paragraph shall not apply with respect to any option or right granted, or other equity security acquired, prior to the date of the first registration of an equity security under Section 12 of the Act.

(3) *Plan limitations.* The plan effectively limits as to each participant or as to all participants the aggregate dollar amount of stock or the aggregate number of shares of stock which may be allocated, or which may be subject to stock options or stock appreciation rights issued pursuant to the plan. The limitations may be established on an annual basis or for the duration of the plan—whether or not the plan has a fixed termination date—and may be determined either by fixed or maximum dollar amounts; fixed or maximum number of shares; or by formulas based upon earnings of the bank, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time to time, or similar factors which will result in an effective and determinable limitation. Such limitations may be subject to any provision for adjustment of the plan, of stock allocable, or options outstanding thereunder to prevent dilution or enlargement of rights.

(4) *Definitions.* Unless the context otherwise requires, all terms used in this § 335.6(r) shall have the same meaning as in the Act or elsewhere in this Part 335. In addition the following definitions apply:

(i) The term "plan" shall mean an option, bonus, appreciation, profit sharing, retirement, incentive, thrift, savings, or similar plan which meets the following conditions:

(A) The plan must be set forth in a written document describing the means or basis for determining the eligibility of individuals to participate and either the price at which the securities may be offered or the method by which the price or the amount of the award is to be determined; and

(B) The plan must provide with respect to any option or similar right (including a stock appreciation right) offered pursuant to the plan that such option or right is not transferable other than by will or the laws of descent and distribution and that it is exercisable during the employee's lifetime only by the person or by the person's guardian or legal representative.

(ii) The term "exercise of an option, warrant or right" contained in the parenthetical clause of the first paragraph of this § 335.6(r) shall not include

(A) The making of an election to receive under any plan, compensation in the form of stock or credits therefor, provided that such election is made either prior to the making of the award or prior to the fulfillment of all conditions to the receipt of the compensation and provided further, that such election is irrevocable until at least six months after termination of employment;

(B) The subsequent crediting of such stock;

(C) The making of any election as to the time for delivery of such stock after termination of employment, provided that such election is made at least six months prior to any such delivery;

(D) The fulfillment of any condition to the absolute right to receive such stock; or

(E) The acceptance of certificates for shares of such stock.

(iii) The term "disinterested person" used in paragraphs (2) and (5) of this § 335.6(r) shall mean an administrator of a plan who is not at the time he exercises discretion in administering the plan eligible and has not at any time within one year prior thereto been eligible for selection as a person to whom stock may be allocated or to whom stock options or stock appreciation rights may be granted pursuant to the plan or any other plan of the bank or any of its affiliates entitling the participants therein to acquire stock, stock options or stock appreciation rights of the bank or any of its affiliates.

(5) *Cash settlements of stock appreciation rights.* Any transaction involving the exercise and cancellation of a stock appreciation right issued pursuant to a plan (whether or not the transaction also involves the related surrender and cancellation of a stock option), and the receipt of cash in complete or partial settlement of that right, shall be exempt from the operation of Section 16(b) of the Act, as not comprehended within the purpose of that section, if all the following conditions are met:

(i) *Information about the bank.* (A) The issuer of the stock appreciation right has been subject to the reporting requirements of Section 13 of the Act for at least a year prior to the transaction and has filed all reports and statements required to be filed pursuant to that section during that year;

(B) The issuer of the stock appreciation right on a regular basis releases for publication quarterly and annual summary statements of operations. This condition shall be deemed satisfied if the specified financial data appears (*1*) on a wire service, (*2*) in a financial news service, (*3*) in a newspaper of general circulation, or (*4*) is otherwise made publicly available.

(ii) *Limitation on the right and any related option.* Neither the stock appreciation right nor any related stock option shall have been exercised during the first six months of their respective terms, except that this limitation shall not apply in the event death or disability of the grantee occurs prior to the expiration of the six-month period.

(iii) *Administration of the plan.* (A) the plan shall be administered by either the board of directors, a majority of which are disinterested persons and a majority of the directors acting on plan matters are disinterested persons, or by a committee of three or more persons, all of whom are disinterested persons;

(B) the board or committee shall have sole discretion either:

(*1*) To determine the form in which payment of the right will be made (i.e., cash, securities, or any combination thereof), or

(*2*) To consent to or disapprove the election of the participant to receive cash in full or partial settlement of the right. Such consent or disapproval may be given at any time after the election to which it relates;

(C) Any election by the participant to receive cash in full or partial settlement of the stock appreciation right, as well as any exercise by the participant of a stock appreciation right for such cash, shall be made during the period beginning on the third business day following the date of release of the financial data specified in paragraph (5)(i)(B) of this § 335.6(r) and ending on the twelfth business day following such date. This paragraph (5)(iii)(C), however, shall not apply to any execise by the participant of a stock appreciation right for cash where the date of exercise:

(*1*) Is automatic or fixed in advance under the plan;

(*2*) Is at least six months beyond the date of grant of the stock appreciation right; and

(*3*) Is outside the control of the participant.

(iv) *Compliance with other conditions of § 335.6(r).* The plan under which the stock appreciation rights and any related options are granted shall meet the conditions specified above in §§ 335.6(r) (1), (2), (3), and (4).

(v) *Limit of the exemption.* Nothing in this paragraph (5) provides an exemption from Section 16(b) for the acquisition of stock upon the exercise of a stock appreciation right or a stock option.

5. In § 335.6 paragraphs (r), (s), (t), and (u) would be redesignated as paragraphs (s), (t), (u), and (v).

6. In § 335.41, Items 5, 6, 7, 8, 9, and 10 would be amended by revising to read as follows:

§ 335.41. Form for registration of securities of a bank pursuant to section 12(b) or section 12(g) of the Securities Exchange Act of 1934 (form F–1).

* * * * *

Item 5—Security Ownership of Certain Beneficial Owners and Management. Set forth the same information as is required to be furnished by Items 5 (d), (e) and (g) of Form F–5 at § 335.51.

Note.—The information required by Item 5(e) of Form F–5 need not be included for any nominee for election as a director.

Item 6—Directors and Principal Officers. Set forth the same information as is required to be furnished by Items 6 (a), (b), (c), (d), (e) and (f) of Form F–5 at § 335.51.

Note.—The information required by Items 6 (a), (d), (e) and (f) of Form F–5 need not be included for any nominee for election of a director.

Item 7—Remuneration of Directors and Officers. Set forth the same information as is required to be furnished by Items 7 (a) and (b) of Form F–5 at § 335.51.

Item 8—Management Options To Purchase Securities. Set forth the same information as is required to be furnished by Item 7(c) of Form F–5 at § 335.51.

Item 9—Interest of Management and Others in Certain Transactions. (a) Set forth the same information, for the past three years, as is required to be furnished by Items 7 (d), (e) and (f) of Form F–5 at § 335.51.

Note.—The information required by Items 7 (d), (e) and (f) of Form F–5 need not be included for any nominee for election as a director.

(b) If the bank was organized within the past five years, furnish the following information:

(1) State the names of the promoters, the nature and amount of anything of value (including money, property, contracts, options or rights of any kind) received or to be received by each promoter directly or indirectly from the bank, and the nature and amount of any assets, services or other consideration therefor received or to be received by the bank.

(2) As to any assets acquired or to be acquired by the bank from a promoter, state the amount at which acquired or to be acquired and the principle followed, or to be followed in determining the amount. Identify the persons making the determination and state their relationship, if any, with the bank or any promoter. If the assets were acquired by the promoter within two years prior to their transfer to the bank, state the cost thereof to the promoter.

Item 10—Legal Proceedings. Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the bank or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

Instructions. 1. Notwithstanding Instruction 2 to this item, administrative or judicial proceedings arising under Section 8 of the Federal Deposit Insurance Act shall be deemed material and shall be described.

2. No information need be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the equity capital accounts of the bank and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same

issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Any material proceedings to which any director, officer or affiliate of the bank, any owner of record or beneficially of more than 5 percent of any class of voting securities of the bank, or any associate of any such director, officer or security holder is a party adverse to the bank or any of its subsidiaries or has a material interest adverse to the bank or any of its subsidiaries, also shall be described.

4. Notwithstanding the foregoing, if a receiver, fiscal agent or similar officer has been appointed for the bank or its parent, in a proceeding under the Bankruptcy Act or in any other proceeding under State or Federal law in which a court or governmental agency has assumed jurisdiction over substantially all of the assets or business of the bank or its parent, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession but subject to the supervision and orders of a court or governmental body, identify the proceeding, the court or governmental body, the date jurisdiction was assumed, the identity of the receiver, fiscal agency or similar officer and the date of the person's appointment.

5. Discuss the extent of insurance coverage if appropriate to the type of proceeding.

* * * * *

7. In § 335.42, Items 5, 8, 12, 13, 14, 15 and 16 would be amended by revising to read as follows:

§ 335.42 Form for annual report of bank (Form F-2).

* * * * *

Item 5—Legal Proceedings. Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the bank or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeedings and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

Instructions. 1. Notwithstanding Instruction 2 to this item, administrative or judicial proceedings arising under Section 8 of the Federal Deposit Insurance Act shall be deemed material and shall be described.

2. No information need be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the equity capital accounts of the bank and its subsidiaries on a consolidated basis. However, if any proceedings presents in large degree the same issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Any material proceedings to which any director, officer or affiliate of the bank, any owner of record or beneficially of more than 5 percent of any class of voting securities of the bank, or any associate of any such director, officer or security holder is a party adverse to the bank or any of its subsidiaries or has a material interest adverse to the bank or any of its subsidiaries, also shall be described.

4. Notwithstanding the foregoing, if a receiver, fiscal agent or similar officer has been appointed for the bank or its parent, in a proceeding under the Bankruptcy Act or in any other proceeding under State or Federal law in which a court or governmental agency has assumed jurisdiction over substantially all of the assets or business of the bank or its parent, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession but subject to the supervision and orders of a court or governmental body, identify the proceeding, the court or governmental body, the date jurisdiction was assumed, the identity of the receiver, fiscal agent or similar officer and the date of the person's appointment.

5. Discuss the extent of insurance coverage if appropriate to the type of proceeding.

* * * * *

Item 8—Principal Officers of the Bank. Set forth the same information as is required to be furnished by 6(b), (c), (d), (e) and (f) of Form F-5 at § 335.51.

Note.—The information required by Items 6(e) and (f) of Form F-5 need not be included for directors or persons nominated or chosen to become a director.

* * * * *

Item 12—Security Ownerhsip of Certain Beneficial Owners and Management. Set forth the same information as is required to be furnished by Items 5(d), (e) and (g) of Form F-5 at § 335.51.

Note.—The information required by Item 5(e) of Form F-5 need not be included for any nominee for election as a director.

Item 13—Directors of the Bank. Set forth the same information as is required to be furnished by items 6(a), (d), (e) and (f) of Form F-5 at § 335.51.

Note.—The information required by Items 6(e) and (f) of Form F-5 need not be included for principal officers.

Item 14—Remuneration of Directors and Officers. Set forth the same information as is required to be furnished by Items 7(a) and (b) of Form F-5 at § 335.51.

Item 15—Management Options to Purchase Securities. Set forth the same information as is required to be furnished by Item 7(c) of Form F-5 at § 335.51.

Item 16—Interest of Management and Others in Certain Transactions. Set forth the same information as is required to be furnished by Items 7(d), (e) and (f) of Form F-5 at § 335.51.

Note.—The information required by Items 7(d), (e) and (f) of form F-5 need not be included for any nominee for election as a director.

* * * * *

8. In § 335.43, Instruction 6 of Item 2, Item 3, Item 9(d), Item 10(e), Item 11, Item 12, Item 13 and Exhibits 7, 8, 9, and 10 would be amended by revising or adding as follows:

§ 335.43 Form for current report of a bank (form F-3).

* * * * *

Item 2— * **

*Instructions. * * **

6. Attention is directed to the requirements at the end of this form with respect to the filing of financial statements for businesses acquired and to the filing of copies of the plans of acquisition or disposition as exhibits to the report.

Item 3—Legal Proceedings. Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the bank or any of its subsidiaries is a part of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

Instructions. 1. Nothwithstanding Instruction 2 to this item, administrative or judicial proceedings arising under Section 8 of the Federal Deposit Insurance Act shall be deemed material and shall be described.

2. No information need be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the equity capital accounts of the bank and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Any material proceedings to which any director, officer of affiliate of the bank, any owner of record or beneficially of more than 5 percent of any class of voting securities of the bank, or any associate of any such director, officer or security holder is a party adverse to the bank or any of its subsidiaries or has a material interest adverse to the bank or any of its subsidiaries, also shall be described.

4. Notwithstanding the foregoing, if a reciever, fiscal agent or similar officer has been appointed for the bank or its parent, in a proceeding under the Bankruptcy Act or in any other proceeding under State of Federal law in which a court or governmental agency has assumed jurisdiction over substantially all of the assets or business of the bank or its parent, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession but subject to the supervision and orders of a court or governmental body, identify the proceeding, the court or governmental body, the date jurisdiction was assumed, the identity of the receiver, fiscal agent or similar officer and the date of the person's appointment.

5. Discuss the extent of insurance coverage if appropriate to the type of proceeding.

* * * * *

Item 9— * **

Describe the terms of any settlement between the bank and any other participant (as defined in § 335.5(j)) terminating any solicitation subject to § 335.5(i), including the cost or anticipated cost to the bank.

Instructions. * * *

5. If the bank has furnished to its security holders proxy soliciting material containing the information called for by paragraph (d), the paragraph may be answered by reference to the information contained in such material.

6. If the bank has published a report containing all of the information called for by this item, the item may be answered by a reference to the information contained in such report, provided copies of such report are filed as an exhibit to the report on this form.

Item 10— * *

(e) State whether the decision to change accountants was recommended or approved by

(1) Any audit or similar committee of the board of directors, if the bank has such a committee; or

(2) The board of directors, if the bank has no such committee.

Item 11—Resignations of Bank's Directors. (a) If a director has resigned or declined to stand for re-election to the board of directors since the date of the last annual meeting of shareholders because of a disagreement with the bank on any matter relating to the bank's operations, policies or practices, and if the director has furnished the bank with a letter describing such disagreement and requesting that the matter be disclosed, the bank shall state the date of such resignation or declination to stand for re-election and summarize the director's description of the disagreement.

(b) If the bank believes that the description provided by the director is incorrect or incomplete, it may include a brief statement presenting its views of the disagreement.

(c) The bank shall file a copy of the director's letter as an exhibit with all copies of this Form F–3.

Item 12—Other Materially Important Events. The bank shall, at its option, report under this item any events that it deems of material importance to security holders, even though information as to such events is not otherwise called for by this form.

Item 13—Financial Statements and Exhibits. List below the financial statements and exhibits, if any, filed as a part of this report.

(a) Financial statements.

(b) Exhibits.

Signatures

* * * * *

Exhibits * * *

7. Copies of the text of any proposal described in answer to Item 9.

8. Copies of any published report furnished in response to Item 9. (See Item 9, Instruction 6.)

9. Letters from the bank and the independent accountants furnished pursuant to Item 10.

10. Letters from directors furnished pursuant to Item 11.

* * * * *

9. In § 335.44, paragraph H(e) would be amended as follows:

§ 335.44 Form for quarterly report of bank (form F–4) to be filed pursuant to section 335.4(i).

* * * * *

H. *Financial statements.* * * *

(e) The financial information to be included in this report should be prepared in conformity with the accounting principles and practices reflected in the financial statement included in the annual report filed with the Corporation for the preceding fiscal year, except for any subsequent regulatory revisions and changes required to be reported by § 335.7(e)(8).

11. Section 335.47 would be amended as follows:

§ 335.47 Form for acquisition statement to be filed pursuant to § 335.4(h)(2)(i) and amendments thereto filed pursuant to § 335.4(h)(3)(i) of Part 335 (form F–11).

Federal Deposit Insurance Corporation

Washington, D.C. 20429

Form F–11

Acquisition statement to be filed pursuant to § 335.4(h)(2)(i) and amendments thereto filed pursuant to § 335.4(h)(3)(i) of Part 335 (Amendment No. —)

_____

(Name and address of issuing bank

_____

(Title of class of securities)

_____

(CUSIP Number)

_____

(Name, address and telephone number of person authorized to receive notices and communications)

(Date of event which requires filing of this statement)

If the filing person has previously filed a statement on Form F–11A to report the acquisition which is the subject of this Form F–11, and is filing this form because of § 335.4(h)(2)(ii)(C) or (D), check the following box [ ].

(Continuing on following pages)

Page 1 of — pages

Note.—Six copies of this form including all exhibits, should be filed with the Corporation. See § 335.4(h)(2)(i) for other parties to whom copies are to be sent.

Special Instructions for Complying With Form F–11

Under Sections 13(d) and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Corporation is authorized to solicit the information required to be supplied by this form by certain security holders of certain banks.

Disclosure of the information specified in this form is mandatory, except for Social Security or I.R.S. identification numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Corporation can utilize it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statements or provisions. Social Security or I.R.S. identificatin numbers, if furnished, will assist the Corporation in identifying security holders and, therefore, in promptly processing statements of beneficial ownership of securities.

Failure to disclose the information requested by this form, except for Social Security or I.R.S. identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder.

General Instructions

A. The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

B. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or subitem of the statement unless it would render such answer incomplete, unclear or confusing. Matter incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required.

C. If the statement is filed by a general or limited partnership, syndicate, or other group, the information called for by Items 2–6, inclusive, shall be given with respect to (i) each partner of such general partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member if such syndicate or group; and (iv) each person controlling such partner or member. If the statement is filed by a corporation or if a person referred to in (i), (ii), (iii) or (iv) of this instruction is a corporation, the information called for by the above mentioned items shall be given with respect to (a) each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of such corporation. Executive officer shall mean the president, secretary, treasurer, and any vice president in charge of a

principal business function (such as sales, administration or finance) and any other person who performs or has the power to perfom similar policy making functions for the corporation.

Item 1—Security and Bank. State the title of the class of equity securities to which this statement relates and the name and address of the principal office of the bank.

Item 2—Identity and Background. If the person filing this statement or any person enumerated in Instruction C of this statment is a corporation, general partnership, limited partnership, syndicate or other group of persons, state its name, the state or other place of its organization, its principal business, the address of its principal business, the address of its principal office and the information required by (d) and (e) of this item. If the person filing this statement or any person enumerated in Instruction C is a natural person, provide the information specified in (a) through (f) of this Item with respect to such person(s).

(a) Name;

(b) Residence or business address;

(c) Present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment is conducted;

(d) Whether or not, during the last five years, such person has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give the dates, nature of conviction, name and location of court, any penalty imposed, or other disposition of the case;

(e) Whether or not, during the last five years, such person was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, Federal or State securities laws or finding any violation with respect to such laws;and, if so, identify and describe such proceedings and summarize the terms of such judgment, decree or final order; and

(f) Citizenship.

Item 3—Source and Amount of Funds or Other Consideration. State the source and the amount of funds or other consideration used or to be used in making the purchases, and if any part of the purchase price is or will be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, trading or voting the securities, a description of the transaction and the names of the parties thereto. Where material, such information should also be provided with respect to prior acquisitions not previously reported pursuant to this regulation. If the source of all or any part of the funds is a loan made in the ordinary course of business by a bank, as defined in Section 3(a)(6) of the Act, the name of the bank shall not be made available to the public if the person at the time of filing the statement so requests in writing and files such request, naming such bank, with the Corporation. If the securities were acquired other than by purchase, describe the method of acquisition.

Item 4—Purpose of Transaction. State the purpose or purposes of the acquisition of securities of the bank. Describe any plans or proposals which the reporting persons may have which related or would result in:

(a) The acquisition by any person of additional securities of the bank, or the disposition of securities of the bank;

(b) An extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the bank or any of its subsidiaries;

(c) A sale or transfer of a material amount of assets of the bank or of any of its subsidiaries;

(d) Any change in the present board of directors or management of the bank, including any plans or proposals to change the number or term of directors or to fill any existing vacancies on the board;

(e) Any material change in the present capitalization or dividend policy of the bank;

(f) Any other material change in the bank's business or corporate structure;

(g) Changes in the bank's charter, bylaws or instruments corresponding thereto or other actions which may impede the acquisition of control of the bank by any person;

(h) Causing a class of securities of the bank to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association;

(i) A class of equity securities of the bank becoming eligible for termination of registration pursuant to Section 12(g)(4) of the Act; or

(j) Any action similar to any of those enumerated above.

Item 5—Interest in Securities of the Bank. (a) State the aggregate number and percentage of the class of securities identified pursuant to Item 1 (which may be based on the number of securities outstanding as contained in the most recently available filing with the Corporation by the bank unless the filing person has reason to believe such information is not current) beneficially owned (identifying those shares which there is a right to acquire) by each person named in Item 2. The above mentioned information should also be furnished with respect to persons who, together with any of the persons named in Item 2, comprise a group within the meaning of Section 13(d)(3) of the Act.

(b) For each person named in response to Paragraph (a), indicate the number of shares as to which there is sole power to vote or to direct the vote, shared power to vote or to direct the vote, sole power to dispose or to direct the disposition, or shared power to dispose or to direct the disposition. Provide the applicable information required by Item 2 with respect to each person with whom the power to vote or to direct the vote or to dispose or direct the disposition is shared.

(c) Describe any transactions in the class of securities reported on that were effected during the past sixty days or since the most recent filing on Form F–11, whichever is less, by the persons named in response to paragraph (a).

Instruction. The description of a transaction required by Item 5(c) shall include, but not necessarily be limited to (1) the identify of the person covered by Item 5(c) who effected the transaction, (2) the date of the transaction, (3) the amount of securities involved, (4) the price per share or unit, and (5) where and how the transaction was effected.

(d) If any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities, a statement to that effect should be included in response to this item and, if such interest relates to more than five percent of the class, such person should be identified. A listing of the shareholders of an investment company registered under the Investment Company Act of 1940 or the beneficiaries of an employee benefit plan, pension fund or endowment fund is not required.

(e) If applicable, state the date on which the reporting person ceased to be the beneficial owner of more than five percent of the class of securities.

Instruction. For computations regarding securities which represent a right to acquire an underlying security, see § 335.4(h)(5)(iv)(A)(*1*).

Item 6—Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Bank. Describe any contracts, arrangements, understandings or relationships (legal or otherwise) among the persons named in Item 2 and between such persons and any person with respect to any securities of the bank, including but not limited to transfer or voting of any of the securities, finder's fees, joint ventures, loan or option arrangements, puts or calls, guarantees of profits, division of profits or losses, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, understandings or relationships have been entered into. Include such information for any of the securities that are pledged or otherwise subject to a contingency the occurrence of which would give another person voting power or investment power over such securities except that disclosure of standard default and similar provisions contained in loan agreements need not be included.

Item 7—Material to be Filed as Exhibits. The following shall be filed as exhibits: Copies of written agreements relating to the filing of joint acquisition statements as required by § 335.4(h)(2)(v) and copies of all written agreements, contracts, arrangements, understandings, plans, or proposals relating to (1) The borrowing of funds to finance the acquisition as disclosed in Item 3; (2) the acquisition of bank control, liquidation, sale of assets, merger, or change in business or corporate structure, or any other matter as disclosed in Item 4; and (3) the transfer or voting of the securities, finder's fees, joint ventures, options, puts, calls, guarantees of loans, guarantees against loss or of profit, or the giving or withholding of any proxy as disclosed in Item 6.

Signature. After reasonable inquiry and to the best of my knowledge and belief, I certify

that the information set forth in this statement is true, complete, and correct.

Date

Signature

Name/Title

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the filing person), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement, provided, however, that a power of attorney for this purpose which is already on file with the Corporation may be incorporated by reference. The name and any title of each person who signs the statement shall be typed or printed beneath the person's signature.

Attention: International misstatements or omissions of fact constitute Federal criminal violations (See 18 U.S.C. 1001).

12. A new § 335.48 would be added to read as follows:

§ 335.48 Short form ownership statement to be filed pursuant to § 335.4(h)(2)(ii) and amendments thereto filed pursuant to § 335.5(h)(3)(ii) of Part 335 (form F–11A).

Federal Deposit Insurance Corporation

Washington, D.C. 20429

Form F–11A

Short form ownership statement to be filed pursuant to § 335.4(h)(2)(ii) and amendments thereto filed pursuant to § 335.4(h)(3)(ii).

(Amendment No.)

(Name and address of issuing bank)

(Title of class of securites)

(CUSIP Number)

(Continued on following pages)

Page 1 of pages

Special Instructions for Complying With Form F–11A

Under Sections 13(d), 13(g) and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Corporation is authorized to solicit the information required to be supplied by this schedule by certain security holders of certain banks.

Disclosure of the information specified in this schedule is mandatory, except for Social Security or I.R.S. identification numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Corporation can utilize it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. Social Security or I.R.S. identification numbers, if furnished, will assist the Corporation in identifying security holders and, therefore, is promptly processing statements of beneficial ownership of securities.

Failure to disclose the information requested by this schedule, except for Social Security or I.R.S. identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder.

General Instructions

A. Statements containing the information required by this form shall be filed not later than February 14 following the calendar year covered by the statement or within the time specified in § 335.4(h)(2)(ii)(B), if applicable.

B. Information contained in a form which is required to be filed by the Securities and Exchange Commission's rules under Section 13(f) of the Act (15 U.S.C. 78m(f)) for the same calendar year as that covered by a statement on this form may be incorporated by reference in response to any of the items of this form. If such information is incorporated by reference in this form, copies of the relevant pages of such form shall be filed as an exhibit to this form.

C. The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

Item 1(a)—Name of the bank issuer:

Item 1(b)—Address of Bank's Principal Executive Offices:

Item 2(a)—Name of Person Filing:

Item 2(b)—Address of Principal Business Office, or if None, Residence:

Item 2(c)—Citizenship:

Item 2(d)—Title of Class of Securities:

Item 2(e)—CUSIP Number:

Item 3—If this statement is filed pursuant to § 335.4(h)(2)(ii), or § 335.4(h)(3)(ii), check whether the person filing is a:

(a) [ ] Broker or Dealer registered under Section 15 of the Act

(b) [ ] Bank as defined in Section 3(a)(6) of the Act

(c) [ ] Insurance Company as defined in Section 3(a)(19) of the Act

(d) [ ] Investment Company registered under Section 8 of the Investment Company Act

(e) [ ] Investment Adviser registered under Section 203 of the Investment Advisers Act of 1940

(f) [ ] Employee Benefit Plan, Pension Fund which is subject to the provisions of the Employee Retirement Income Security Act of 1974 or Endowment Fund; see § 335.4(h)(2)(ii)(A)(*2*)(*vi*)

(g) [ ] Parent Holding Company, in accordance with § 335.4(h)(2)(ii)(A)(*2*)(*vii*) (Note: See Item 7)

(h) [ ] Group, in accordance with § 335.4(h)(2)(ii)(A)(*2*)(*viii*)

Item 4—Ownership:

If the percent of the class owned, as of December 31 of the year covered by the statement, or as of the last day of any month described in § 335.4(h)(2)(ii)(B), if applicable, exceeds five percent, provide the following information as of that date and identify those shares which there is a right to acquire.

(a) Amount Beneficially Owned:

(b) Percent of Class:

(c) Number of shares as to which such person has:

(i) sole power to vote or to direct the vote———

(ii) shared power to vote or to direct the vote———

(iii) sole power to dispose or to direct the disposition of———

(iv) shared power to dispose or to direct the disposition of———

Instruction: For computations regarding securities which represent a right to acquire an underlying security see § 335.4(h)(5)(iv)(A).

Item 5—Ownership of Five Percent or Less of a Class.

If this statement is being filed to report the fact that as of the date hereof the reporting person has ceased to be the beneficial owner of more than five percent of the class of securities, check the following [ ].

Instruction: Dissolution of a group requires a response to this item.

Item 6—Ownership of More than Five Percent on Behalf of Another Person.

If any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities, a statement of that effect should be included in response to this item and, if such interest relates to more than five percent of the class, such person should be identified. A listing of the shareholders of an investment company registered under the Investment Company Act of 1940 or the beneficiaries of employee benefit plan, pension fund or endowment fund is not required.

Item 7—Identification and Classification of the Subsidiary Which Acquired the Security

Being Reported on By the Parent Holding Company.

If a parent holding company has filed this schedule, pursuant to § 335.4(h)(2)(ii)(A)*(2)(vii)* so indicate under Item 3(g) and attach an exhibit stating the identity and the Item 3 classification of the relevant subsidiary. If a parent holding company has filed this schedule pursuant to § 335.4(h)(2)(iii), attach an exhibit stating the identification of the relevant subsidiary.

Item 8—Identification and Classification of Members of the Group.

If a group has filed this schedule, pursuant to § 335.4(h)(2)(ii)(A)*(2)(viii)*, so indicate under Item 3(h) and attach an exhibit stating the identity and Item 3 classification of each member of the group. If a group has filed this schedule pursuant to § 335.5(h)(2)(iii), attach an exhibit stating the identity of each member of the group.

Item 9—Notice of Dissolution of Group.

Notice of dissolution of a group may be furnished as an exhibit stating the date of the dissolution and that all further filings with respect to transactions in the security reported on will be filed, if required, by members of the group, in their individual capacity. See Item 5.

Item 10—Certification.

The following certification shall be included if the statement is filed pursuant to § 335.4(h)(2)(ii):

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were acquired in the ordinary course of business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer of such securities and were not acquired in connection with or as a participant in any transactions having such purpose or effect.

Signature. After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete, and correct.

Date

Signature

Name/Title

The original statement shall be signed by each person on whose behalf the statement is filed or the person's authorized representative. If the statement is signed on behalf of a person by the person's authorized representative (other than an executive officer or general partner of the filing person), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement, provided, however, that a power of attorney for this purpose which is already on file with the Corporation may be incorporated by reference. The name and any title of each person who signs the statement shall be typed or printed beneath the person's signature.

Note.—Six copies of this statement, including all exhibits, should be filed with the Corporation.

Attention: Intentional misstatements or omissions of fact constitute Federal criminal violations (See 18 U.S.C. 1001).

* * * * *

10. In § 335.51, Items 3(b), 5(d), 5(e), 5(f), 5(g), 6, 7, 8(e) and 8(f) would be amended by revising and adding as follows:

§ 335.51. Form for proxy statement; statement where management does not solicit proxies (form F–5).

* * * * *

Item 3 * * *

(b) * * *

(6) If any such solicitation is terminated pursuant to a settlement between the bank and any other participant in such solicitation, describe the terms of such settlement, including the cost or anticipated cost thereof to the bank.

Instructions: 1. With respect to solicitations subject to § 335.5(i), costs and expenditures within the meaning of this Item 3 shall include fees for attorneys, accountants, public relations or financial advisers, solicitors, advertising, printing, transportation, litigation and other costs incidental to the solicitation, except that the bank may exclude the amount of such costs represented by the amount normally expended for a solicitation for an election of directors in the absence of a contest, and costs represented by salaries and wages of regular employees and officers, provided a statement to the effect is included in the proxy statement.

2. The information required pursuant to Paragraph (6) of Item 3(b) should be included in any amended or revised proxy statement or other soliciting materials relating to the same meeting or subject matter furnished to security holders by the bank subsequent to the date of settlement.

* * * * *

Item 5 * * *

(d) Furnish the following information to the extent known by the persons on whose behalf the solicitation is made, as of the most recent practicable date, in substantially the tabular form indicated, with respect to any person (including any "group" as that term is used in Section 13(d)(3) of the Securities Exchange Act of 1934) who is known to the bank to be the beneficial owner of more than five percent of any class of the bank's voting securities. Show in Column (3) the total number of shares beneficially owned and in Column (4) the percent of class so owned. Of the number of shares shown in Column (3), indicate by footnote or otherwise, the amount known to be shares with respect to which such listed beneficial owner has the right to acquire beneficial ownership, as specified in § 335.4(h)(5)(iv)(A).

(1) Title of Class	(2) Name and Address of Beneficial Owner	(3) Amount and Nature of Beneficial Ownership	(4) Percent of Class

(e) Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the bank or any of its parents or subsidiaries other than directors qualifying shares, beneficially owned by all directors and nominees, naming them and directors and officers of the bank as a group, without naming them. Show in Column (2) the total number of shares beneficially owned and in Column (3) the percent of class so owned. Of the number of shares shown in Column (2), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in § 335.4(h)(5)(iv)(A).

(1) Title of Class	(2) Amount and nature of beneficial ownership	(3) Percent of class

(f) If, to the knowledge of the persons on whose behalf of solicitation is made, a change in control of the bank has occurred since the beginning of its last fiscal year, state the name of the person(s) who acquired such control, the amount and the source of the consideration used by such person or persons; the basis of the control, the date and a description of the transaction(s) which resulted in the change of control and the percentage of voting securities of the bank now beneficially owned directly or indirectly by the person(s) who acquired control; and the identity of the person(s) from whom control was assumed. If the source or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by Section 3(a)(6) of the Act, the identity of such bank shall be omitted provided a request for confidentiality has been made pursuant to Section 13(d)(1)(B) of the Act by the person(s) who acquired control. In lieu thereof, the material shall indicate that the identity of the bank has been so omitted and filed separately with the Corporation.

Instructions. 1. State the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control, and the names of the lenders or pledgees.

2. Any arrangements or understandings among members of both the former and new control groups and their associates with respect to election of directors or other matters shall be described.

(g) Describe any arrangements, know to the bank including any pledge by any person of securities of the bank or any of its parents, the operation of which may at a subsequent date result in a change in control of the bank.

Instructions. 1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the bank or its subsidiaries, plus securities deemed outstanding pursuant to § 335.4(h)(5)(iv)(A).

2. For the purpose of this item, beneficial ownership shall be determined in accordance with § 335.4(h)(5). Include such additional subcolumns or other appropriate explanation of Column (3) necessary to reflect amounts as to which the beneficial owner has (1) sole voting power, (2) shared voting power, (3) sole investment power, (4) shared investment power.

3. The bank shall be deemed to know the contents of any statements filed with the Corporation pursuant to Section 13(d) of the Act. When applicable, a bank may rely upon information set forth in such statements unless the bank knows or has reason to believe that such information is not complete or accurate or that a statement or amendment should have been filed and was not.

4. For purposes of furnishing information pursuant to paragraph (a), the bank may indicate the source and date of such information.

5. Where more than one beneficial owner is known to be listed for the same securities, appropriate disclosure should be made to avoid confusion.

6. Paragraph (g) does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the bank.

Item 6—Directors and Principal Officers. If action is to be taken with respect to election of directors, furnish the following information, in tabular form to the extent practicable, with respect to each person nominated for election as a director and each person whose term of office will continue after the meeting.

(a) *Identification of directors.* List the names and ages of all directors of the bank, and all persons nominated or chosen to become directors; indicate all positions and offices with the bank held by each such person; state the term of office as director and any period(s) during which the person has served as such; briefly describe any arrangement or understanding between the person and any other person or persons (naming such person(s)) pursuant to which the person was or is to be selected as a director or nominee.

Instructions. 1. Do not include arrangements or understandings with directors or officers of the bank acting solely in their capacities as such.

2. No nominee or person chosen to become a director or who has not consented to act as such should be named in response to this item. In this regard, see § 335.5(d).

3. No information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

4. In connection with action to be taken concerning the election of directors, if fewer nominees are named than the number fixed by or pursuant to the governing instruments, state the reasons for this procedure and that the proxies cannot be voted for a greater number of persons than the number of nominees named.

5. With regard to proxy statements in connection with action to be taken concerning the election of directors, if the solicitation is made by persons other than management, information should be given as to nominees of the persons making the solicitation. In all other instances, information should be given as to directors and persons nominated for election or chosen by management to become directors.

(b) *Identification of principal officers.* List the names and ages of all principal officers of the bank and all persons chosen to become principal officers; indicate all positions and offices with the bank held by each such person; state the person's term of office as officer and the period during which the person has served as such and briefly describe any arrangement or understanding between the person and any other person pursuant to which the person was selected as an officer.

Instructions. 1. Do not include arrangements or understandings with directors or officers of the bank acting solely in their capacities as such.

2. No person chosen to become a principal officer who has not consented to act as such should be named in response to this item.

(c) *Identification of certain significant employees.* Where the bank employs persons such as special consultants or attorneys who are not principal officers, but who make or are expected to make significant contributions to the business of the bank, such persons should be identified and their background disclosed to the same extent as in the case of principal officers.

(d) *Family relationships.* State the nature of any family relationship between any director, principal officer, or person nominated or chosen by the bank to become a director or principal officer.

Instruction. The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(e) *Business experience.* (1) Give a brief account of the business experience during the past five years of each director, person nominated or chosen to become a director or principal officer, and each person named in answer to paragraph (c), including the person's principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. When a principal officer or person named in response to paragraph (c) has been employed by the bank or a subsidiary of the bank for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of his prior business experience. The requirement is information relating to the level of the person's professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

(2) *Directorships.* Indicate any other directorships held by each director or person nominated or chosen to become a director in any company with a class of securities registered pursuant to Section 12 of the Exchange Act.

(f) *Involvement in certain legal proceedings.* Describe any of the following events which occurred during the past five years and which are material to an evaluation of the ability or integrity of any director, person nominated to become a director or principal officer of the bank:

(1) A petition under the Bankruptcy Act or any State insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of such person, or any partnership in which the person was a general partner at or within two years before the time of such filing, or any corporation or business association of which the person was a principal officer at or within two years before the time of such filing;

(2) The person was convicted in a criminal proceeding or is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses);

(3) The person was the subject of any order, judgment, or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction permanently or temporarily enjoining the person from, or otherwise limiting the following activities:

(i) Acting as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(ii) Engaging in any type of business practice; or

(iii) Engaging in any type of activity in connection with the purchase or sale of any security or in connection with any violation of Federal or State securities laws.

(4) Such person was the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any Federal or State authority barring, suspending or otherwise limiting for more than 60 days the right of such person to engage in any activity described in subparagraph (3), above, or to be associated with persons engaged in any such activity.

(5) Such person was found by a court of competent jurisdiction in a civil action or by a government authority to have violated any Federal or State securities law, and the judgment in such civil action or finding by the government authority has not been subsequently reversed, suspended, or vacated.

Instructions. 1. For purposes of computing the five year period referred to in this paragraph, the date of a reportable event shall be deemed the date on which the final order, judgment or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees have lapsed. With respect to bankruptcy petitions, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final.

2. If any event specified in this Subparagraph (f) has occurred and information in regard thereto is omitted on the ground that it is not material, the bank may furnish to the Corporation, at the time

preliminary materials are filed pursuant to § 335.5(f), as supplemental information and not as part of the proxy statement materials to which the omission relates, a description of the event and a statement of the reasons for the omission of information in regard thereto.

3. The bank is permitted to explain any mitigating circumstances associated with events reported pursuant to this paragraph.

4. No information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

(g) *Relationships with affiliates and others.* Describe any of the following relationships that exist:

(1) The nominee or director has during the past five years had a principal occupation or employment with any of the bank's parents, subsidiaries or other affiliates;

(2) The nominee or director is related to a principal officer of any of the bank's parents, subsidiaries or other affiliates by blood, marriage or adoption (except relationships more remote than first cousin);

(3) The nominee or director is, or has within the last two full fiscal years been, an officer, director or employee of, or owns, or has within the last two full fiscal year owned, directly or indirectly, in excess of one (1) percent equity interest in any firm, corporation or other business or professional entity;

(i) Which has made payments to the bank or its subsidiaries for property or services during the bank's last full fiscal year in excess of one (1) percent of the bank's consolidated gross revenues for its last full fiscal year;

(ii) Which proposes to make payments to the bank or its subsidiaries for property or services during the current fiscal year in excess of one (1) percent of the bank's consolidated gross revenues for its last full fiscal year;

(iii) To which the bank or its subsidiaries was indebted at any time during the bank's last fiscal year in an aggregate amount in excess of one (1) percent of the bank's total consolidated assets at the end of such fiscal year, or $5,000,000, whichever is less;

(iv) To which the bank or its subsidiaries has made payments for property or services during such entity's last fiscal year in excess of one (1) percent of such entity's gross revenues for its last full fiscal year;

(v) To which the bank or its subsidiaries proposes to make payments for property services during such entity's current fiscal year in excess of one (1) percent of such entity's consolidated gross revenues for its last full fiscal year;

(vi) In order to determine whether payments made or proposed to be made exceed one (1) percent of the consolidated gross revenues of any entity other than the bank for such entity's last full fiscal year, it is appropriate to rely on information provided by the nominee or director;

(vii) In calculating payments for property and services the following may be excluded:

(A) Payments where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a public utility at rates or charges fixed in conformity with law or governmental authority;

(B) Payments which arise solely from the ownership of securities of the issuer and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received;

(viii) In calculating indebtedness for purposes of Subparagraph (iii) above, debt securities which have been publicly offered, admitted to trading on a national securities exchange, or quoted on the automated quotation system of a registered securities association may be excluded.

(4) That the nominee or director is a member or employee of, or is associated with, a law firm which the issuer has retained in the last two full fiscal years or proposes to retain in the current fiscal year;

(5) That the nominee or director is a director, partner, officer or employee of any investment banking firm that has performed services for the bank other than as a participating underwriter in a syndicate in the last two full fiscal years or which the bank proposes to have perform services in the current year; or

(6) That the nominee or director is a control person of the bank other than solely as a director of the bank.

(7) In addition, the bank should disclose any other relationships it is aware of between the director or nominee and the bank or its management which are substantially similar in nature and scope to those relationships listed above.

Note.—In the Corporation's view, where significant business or personal relationships exist between the director or nominee and the bank or its management, including, but not limited to, those as to which disclosure would be required pursuant to this Item 6(g), characterization of a director or nominee by any "label" connoting a lack of relationship to the bank and its management may be materially misleading.

(h) *Committees.* (1) State whether or not the bank has standing audit, nominating and compensation committees of the board of directors, or committees performing similar functions. If the bank has such committees, however designated, identify each committee member, state the number of committee meetings held by each such committee during the last fiscal year and describe briefly the functions performed by such committees.

If the bank has a nominating or similar committee, state whether the Committee will consider nominees recommended by shareholders and, if so, describe the procedures to be followed by shareholders in submitting such recommendations.

(i) *Director attendance.* State the total number of meetings of the board of directors (including regularly scheduled and special meetings) which were held during the last full fiscal year. Name each incumbent director who during the last full fiscal year attended fewer than 75 percent of the aggregate of (1) the total number of meetings of the board of directors (held during the period for which he has been a director) and (2) the total number of meetings held by all committees of the board on which he served (during the periods that he served).

(j) *Director resignations.* If a director has resigned or declined to stand for re-election to the board of directors since the date of the last annual meeting of shareholders because of a disagreement with the bank on any matter relating to the bank's operations, policies or practices, and if the director has furnished the bank with a letter describing such disagreement and requesting that the matter be disclosed, the bank shall state the date of resignation or declination to stand for re-election and summarize the director's description of the disagreement.

If the bank believes that the description provided by the director is incorrect or incomplete, it may include a brief statement presenting its views of the disagreement.

Item 7—Remuneration and Other Transaction With Management and Others. Furnish the information called for by this item if action is to be taken with respect to (i) the election of directors, (ii) any bonus, profit sharing or other remuneration plan, contract or arrangement in which any director, nominee for election as a director, or officer of the bank will participate, (iii) any pension or retirement plan in which any such person will participate, or (iv) the granting or extension to any such person of any options, warrants or rights to purchase any securities, other than warrants or rights issued to security holders, as such, on a pro rata basis. However, if the solicitation is made on behalf of persons other than the management, the information required need be furnished only as to nominees for election as directors and as to their associates.

(a) *Current remuneration.* Furnish the information required in the table below in substantially the tabular form specified, concerning all remuneration of the following persons and groups for services in all capacities to the bank during the bank's last fiscal year:

(1) *Five principal officers or directors.* Each of the five most highly compensated principal officers or directors of the bank as to whom the total remuneration required to be disclosed in Columns C1 and C2 below would exceed $50,000, naming each such person; and

(2) *All principal officers and directors.* All principal officers and directors of the bank as a group, stating the number of persons in the group without naming them.

(3) *Specified tabular format: Remuneration table:*

(A) Name of individual or number of persons in group	(B) Capacities in which served	(C) Cash and cash equivalent forms of remuneration		(D) Aggregate of contingent forms of remunerations
		(C1) Salaries, fees, directors' fees, commissions, and bonuses	(C2) Securities or property insurance benefits or reimbursement, personal benefits	

Instructions to Item 7(a). 1. Columns A and B. Persons subject to this item.

(a) This item applies to any person who was a principal officer, or director of the bank at any time during the fiscal year. However, information need not be given for any portion of the period during which such person was not a principal officer, or director of the bank, provided a statement to that effect is made.

(b) The terms "principal officer" and "officer" of a bank are defined in § 335.2(s).

(c) For the purposes of this Item 7, the term "bank" shall include the bank and all its subsidiaries.

2. *Column C* (a) Column C1 shall include all cash remuneration distributed or accrued in the form of salaries, fees, directors' fees, commissions and bonuses.

(b) Column C2 should include the following: (i) *Securities or property.* Where any of the specified persons or group (A) exercises any option, right or similar election in connection with any contract, agreement, plan or arrangement, or (B) becomes entitled without further contingencies to retain securities or property, state the spread between the acquisition price, if any, and the fair market price of all securities or property acquired under any contract, agreement, plan or arrangement. The fair market price of any such securities or property shall be determined as of the date during the fiscal year that either of the events in (A) or (B) of this paragraph occurs, or if both events are contemplated, the date of the latter event.

(ii) *Personal benefits.* (A) The value of personal benefits which are not directly related to job performance, which are furnished by the bank directly or through third parties to each of the specified persons and group, or benefits furnished by the bank to other persons which directly benefit the specified persons. Such personal benefits shall include the cost of any premiums or benefits paid by the bank for any life or health insurance policy or health plan of which the bank is not the sole beneficiary. Such benefits shall be valued on the basis of the aggregate actual cost to the bank. Information need not be furnished for any such benefit provided by the bank which does not discriminate in favor of officers or directors and which is available generally to all salaried employees.

(B) No disclosure need be included as to any person named in the remuneration table if the aggregate amount of all personal benefits to such persons did not exceed $5,000. If disclosure of such amounts is not made, a statement to that effect should be added in a footnote to the table.

(C) If the bank cannot determine the actual cost of personal benefits for a specified person without unreasonable effort or expense, include a reasonable estimate of the cost of the personal benefit to the bank. If the bank cannot reasonably allocate the extent to which the benefit is personal, include the aggregate cost to the bank and estimate the percentage of cost attributable to personal use. If an estimate is made, disclose the factors upon which the estimate is based.

(D) Please provide in a statement following the table a description of the bank's policies and practices with respect to providing personal benefits to officers, directors or principal shareholders. Describe the type of benefits provided and the basis for selection of the recipients.

3. *Column D.* Column D shall include remuneration of the specified persons and group in whole or in part for services rendered during the fiscal year (including the forms of remuneration described in paragraphs (a) through (c) below) if the distribution of such remuneration or the unconditional vesting or measurement of benefits thereunder is subject to future events.

(a) *Pension or retirement plans; annuities; employment contracts; deferred compensation plans.* (i) As to each of the specified persons and group, the amount expensed for financial reporting purposes by the bank for the year which represents the contribution, payment or accrual for the account of any such person or group under any existing pension or retirement plans, annuity contracts, deferred compensation plans or any other similar arrangements. Such amounts should be reflected as remuneration for the fiscal year under all such plans or arrangements, including plans qualified under the Internal Revenue Code, unless, in the case of a defined benefit or actuarial plan, the amount of the contribution, payment or accrual in respect of a specified person is not and cannot readily be separately or individually calculated by the regular actuaries for the plan.

(ii) If amounts are excluded from the table pursuant to the previous provision, include a footnote to the table (A) stating such fact; (B) disclosing the percentage which the aggregate contributions to the plan bears to the total remuneration of plan participants covered by such plan; and (C) briefly describing the remuneration covered by the plan.

(b) *Incentive and compensation plans and arrangements.* (i) With respect to stock options, stock appreciation rights plans, phantom stock plans and any other incentive or compensation plan or arrangement pursuant to which the measure of benefits is based on objective standards or on the value of securities of the bank or another person, granted, awarded or entered into at any time in connection with services to the bank, include as remuneration of each of the specified persons and group any attributable amount expensed by the bank for financial reporting purposes for the fiscal year as remuneration for any such specified person or group.

(ii) Where amounts are expensed and reported in the remuneration table, and amounts are credited in a subsequent year in connection with the same plan or arrangement for any proper reason, including a decline in the market price of the securities, such credit may be reflected as a reduction of the remuneration reported in Column D. If amounts credited are reflected in the table, include a footnote stating the amount of the credit and briefly describe such treatment.

(iii) The term "Options" as used in this Item 7 includes all options, warrants or rights, other than those issued to security holders as such on a pro rata basis.

(c) *Stock purchase plans; profit sharing and thrift plans.* Include the amount of any contribution, payment or accrual for the account of each of the specified persons and group under any stock purchase, profit sharing, thrift or similar plan, which has been expensed during the fiscal year by the bank for financial reporting purposes. Amounts reflecting contributions under plans qualified under the Internal Revenue Code may not be excluded on a pro rata basis.

4. *Other permitted disclosure.* The bank may provide additional disclosure through a footnote to the table, through additional columns, or otherwise, describing the components of aggregate remuneration in such greater detail as is appropriate.

5. *Definition of "plan".* The term "plan" as used in this Part 335 includes all plans, contracts, authorizations, or arrangements, whether or not set forth in any formal document.

[End of Instructions to Item 7(a)]

(b) *Proposed remuneration.* Briefly describe all remuneration payments proposed to be made in the future, pursuant to any existing plan or arrangement to the persons and group specified in Item 7(a). As to defined benefit or actuarial plans, with respect to which amounts are not included in the table pursuant to Instruction 3(a) to Item 7(a), include a separate table showing the estimated annual benefits payable upon retirement to persons in specified remuneration and years-of-service classifications.

Instruction. Information need not be furnished with respect to any group life, health, hospitalization, or medical reimbursement plans which do not discriminate in favor of officers or directors of the bank and which are available generally to all salaried employees.

(c) *Options, warrants or rights.* Furnish the following information as to all options to purchase any securities from the bank which were granted to or exercised by the following

persons since the beginning of the bank's last fiscal year, and as to all options held by such persons as of the latest practicable date (i) each director or officer named in answer to paragraph (a)(1), naming each such person; and (ii) all directors and officers of the bank as a group, without naming them;

(1) As to options granted during the period specified state (i) the title and aggregate amount of securities called for: (ii) The average option price per share; and (iii) if the option price was less than 100 percent of the market value of the security on the date of grant, such fact and the market price on such date shall be disclosed.

(2) As to the options exercised during the period specified, state (1) the title and aggregate amount of securities purchased;

(ii) the aggregate purchase price; and (iii) the aggregate market value of the securities purchase on the date of purchase.

(3) As to all unexercised options held as of the latest practicable date (state date), regardless of when such options were granted, state (i) the title and aggregate amount of securities called for; and (ii) the average option price per share.

Instructions. 1. The term "options" as used in this paragraph (c) includes all options, warrants or rights, other than those issued to security holders as such on a pro rata basis. Where the average option price per share is called for, the weighted average price per share shall be given.

2. The extension, regranting or material amendment of options shall be deemed the granting of options within the meaning of this paragraph.

3. (i) Where the total market value on the granting dates of the securities called for by all options granting during the period specified does not exceed $10,000 for any officer or director named in answer to paragraph (a)(1), or $40,000 for all officers and directors as a group, this item need not be answered with respect to options granted to such person or group.

(ii) Where the total market value on the dates of purchases of all securities purchased through the exercise of options during the period specified does not exceed $10,000 for any such person or $40,000 for such group, this item need not be answered with respect to options exercised by such person or group.

(iii) Where the total market value as of the latest practicable date of the securities called for by all options held at such time does not exceed $10,000 for any such person or $40,000 for such group, this item need not be answered with respect to options held as of the specified date by such person or group.

4. If the options relate to more than one class of securities the information shall be given separately for each such class.

5. The information called for by this Item 7(c) may be furnished in the form of the table set forth in the Option Disclosure Instruction at the end of § 335.51.

(d) *Indebtedness of management.* (1) State as to each of the following specified persons ("specified persons"), who was indebted to the bank at any time since the beginning of its last fiscal year: (i) The largest aggregate amount of indebtedness (in dollar amounts and as a percentage of total equity capital accounts at the time), including extensions of credit or overdrafts, endorsements and guarantees outstanding at any time during such period; (ii) the nature of the indebtedness and of the transaction in which it was incurred; (iii) the amount thereof outstanding as of the latest practicable date; and (iv) the rate of interest paid or charged thereon:

(A) Each director or principal officer of the bank;

(B) Each nominee for election as a director;

(C) Each security holder who is known to the bank to own of record or beneficially more than five percent of any class of the bank's voting securities ("principal security holder"); and

(D) Each associate of any such director, principal officer or nominee or principal security holder.

Instructions. 1. Include the name of such person whose indebtedness is described and the nature of the relationship by reason of which the information is required to be given.

2. Generally, no information need be given under this Item 7(d) unless any of the following are present:

(a) The extension(s) of credit were not made on substantially the same terms, including interest rates, collateral and repayment terms as those prevailing at the time for comparable transactions with other than the specified persons.

(b) The extension(s) of credit were not made in the ordinary course of business.

(c) The extension(s) of credit have involved or presently involve more than a normal risk of collectibility or other unfavorable features including the restructuring of an extension of credit, or a delinquency as to payment of interest or principal.

(d) The aggregate amount of extensions of credit outstanding at any time from the beginning of the last fiscal year to date to a specified person together with his associates, exceeded 10% of the equity capital accounts of the bank at that time or $5 million, whichever is less.

(2) If aggregate extensions of credit to the specified persons as a group, exceeded 20 percent of the equity capital accounts of the bank at any time since the beginning of the last fiscal year, (i) the aggregate amount of such extensions of credit shall be disclosed, and (ii) a statement shall be included, to the extent applicable, that the bank has had and expects to have in the future, banking transactions in the ordinary course of its business with directors, officers, principal stockholders, and their associates, on the same terms, including interest rates and collateral on loans, as those prevailing at the same time for comparable transactions with others and did not involve more than the normal risk of collectibility or present other unfavorable features. For the purpose of determining "aggregate extensions of credit" in this paragraph, transactions which are exempted from disclosure pursuant to this item may be excluded.

(3) If any indebtedness required to be described arose under Section 16(b) of the Act and has had not been discharged by payment, state the amount of any profit realized, that such profit will inure to the benefit of the bank and whether suit will be brought or other steps taken to recover such profit. If in the opinion of counsel a question reasonably exists as to the recoverability of such profit, it will suffice to state all facts necessary to describe the transaction, including the prices and number of shares involved.

(e) *Transactions with management.* Describe briefly any transactions since the beginning of the bank's last fiscal year or any presently proposed transactions, to which the bank was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the bank, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or principal officer of the bank;

(2) Any nominee for election as a director;

(3) Any security holder who is known to the bank to own of record or beneficially more than five percent of any class of the bank's voting securities; and

(4) Any associate of any of the foregoing persons.

Instructions. No information need be given in response to this Item 7(e) as to any remuneration or other transaction reported in response to Item 7(a), (b), (c), or (d), or as to any transaction with respect to which information may be omitted pursuant to Instruction 3(a)(i) to Item 7(a), the instruction to Item 7(b), Instruction 3 to Item 7(c) or Instruction 2 to Item 7(d).

2. No information need be given in answer to this item 7(e) as to any transaction where:

(a) The rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

(b) The transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

(c) The amount involved in the transaction or series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, does not exceed $40,000; or

(d) The interest of the specified person arises solely from the ownership of securities of the bank and the specified person receives no extra or special benefit not shared on a pro rata basis by all holders of securities of the class.

(3) It should be noted that this item calls for disclosure of indirect, as well as direct, material interests in transaction. A person who has a position or relationship with a firm, corporation, or other entity, which engages in a transaction with the bank or its subsidiaries may have an indirect interest in such transaciton by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this Item 7(e) where:

(a) The interest arises only (i) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in subparagraphs (1) through (4) above, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

(b) The interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in (1) through (4) above had an interest of less than 10 percent; or

(c) The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest), or a creditor interest in another person which is a party to the transaction with the bank or any of its subsidiaries and the transaction is not material to such other person.

4. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be indicated.

5. In describing any transaction involving the purchase or sale of assets by or to the bank or any of its subsidiaries, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller wihtin two years prior to the transaction the cost thereof to the seller. Indicate the principle followed in determining the banks purchase or sale price and the name of the persons making such determination.

6. Include the name of each person whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transactions shall be indicated.

7. Information shall be furnished in answer to this item with respect to transactions not excluded above which involve remuneration from the bank or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than 10 percent of any class of equity securities of another corporation furninshing the services to the bank.

8. The foregoing instructions specify certain transactions and interests as to which information may be omitted in answering this item. There may be situations where, although the foregoing instructions do not expressly authorize nondisclosure, the interest of a specified person in the particular transaction or series of transactions is not a material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this item. The materiality of any interest or transaction, is to be determined on the basis of the significance of the information to investors in light of all of the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction to each other and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

(f) *Transactions with pension or similar plans.* Describe briefly any transactions since the beginning of the bank's last fiscal year or presently proposed transactions, to which any pension, retirement, savings or similar plan provided by the bank, or any of its parents or subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the bank, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or principal officer of the bank;

(2) Any nominee for election as a director;

(3) Any security holder who is known to the bank to own of record or beneficially more than five (5) percent of the outstanding voting securities of the bank;

(4) Any associate of any of the foregoing persons; and

(5) The bank or any of its subsidiaries.

Instructions. 1. Instructions 2, 3, 4 and 5 to Item 7(e) shall apply to this Item 7(f).

2. Without limiting the general meaning of the term "transaction" there shall be included in answer to this Item 7(f) any remuneration received or any loans received or outstanding during the period, or proposed to be received.

3. No information need be given in answer to paragraph (f) with respect to

(a) Payments to the plan, or payments to beneficiaries, pursuant to the terms of the plan;

(b) Payment of remuneration for services not in excess of five (5) percent of the aggregate remuneration received by the specified person during the bank's last fiscal year from the bank; or

(c) Any interest of the bank which arises solely from its general interest in the success of the plan.

(g) *Legal proceedings.* Briefly describe any material legal proceeding to which any director, any nominee for election as a director, principal officer of the bank, any owner of record or beneficially of more than five (5) percent of any class of voting securities of the bank, or any associate of any such director, nominee, officer or security holder is a party adverse to the bank.

Item 8. * * *

(e) If any change in accountants has taken place since the date of the proxy statement for the most recent annual meeting of shareholders, state whether such change was recommended or approved by

(1) Any audit or similar committee of the board of directors, if the bank has such a committee; or

(2) The board of directors, if the bank has no such committee.

(f) For the fiscal year most recently completed, describe each professional service provided by the principal accountant and state the percentage relationship which the aggregate of the fees for all non-audit services bear to the audit fees, and, except as provided below, state the percentage relationship which the fee for each non-audit service bears to the audit fees. Indicate whether, before each professional service provided by the principal accountant was rendered, it was approved by, and the possible effect on the independence of the accountant was considered by, (1) any audit or similar committee of the board of directors and (2) for any service not approved by an audit or similar committee, the board of directors.

Instructions. 1. For purposes of this subsection, all fees for services provided in connection with the audit function (e.g., reviews of quarterly reports, filings with the corporation, and annual reports) may be computed as part of the audit fees. Indicate which services are reflected in the audit fees computation.

2. If the fee for any non-audit service is less than three (3) percent of the audit fees, the percentage relationship need not be disclosed.

3. Each service should be specifically described. Broad general categories such as "tax matters" or "management advisory services" are not sufficiently specific.

4. Describe the circumstances and give details of any services provided by the bank's independent accountant during the latest fiscal year that were furnished at rates or terms that were not customary.

5. Describe any existing direct or indirect understanding or agreement that places a limit on current or future years' audit fees, including fee arrangements that provide fixed limits on fees that are not subject to reconsideration if unexpected issues involving accounting or auditing are encountered. Disclosure of fee estimates is not required.

* * * * *

[FR Doc. 79-17977 Filed 6-7-79; 8:45 am]

BILLING CODE 6714-01-M

NATIONAL CREDIT UNION ADMINISTRATION

[12 CFR Part 742]

Liquidity Reserves of Insured Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Proposed rule.

SUMMARY: The National Credit Union Administration proposes to simplify and broaden its liquidity reserve regulations because of significant declines in credit union liquidity. The National Credit Union Administration proposes to repeal the Share Draft Liquidity Reserve required under 12 CFR 701.34(c)(5)(xiv) and establish a general liquidity reserve requirement for federally insured credit unions. The proposed regulation would

require all federally insured credit unions to maintain liquid asset holdings in amounts not less than 5% of total member accounts and notes payable. The liquidity reserve could be held in interest earning forms and be depleted if share outflows necessitate. For almost all federally insured credit unions, the regulation would entail no significant asset adjustments and no special reporting or compliance requirements.

DATE: Comments must be received on or before July 25, 1979.

ADDRESS: Send comments to Robert S. Monheit, Senior Attorney, Office of General Counsel, National Credit Union Administration, 2025 M Street N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Robert H. Dugger, Acting Director, Policy Analysis Office, 1375 K Street, NW., or Robert M. Fenner, Assistant General Counsel, Office of General Counsel, at the above address. Telephone: (202) 633–6775 (Mr. Dugger), (202) 632–4870 (Mr. Fenner).

SUPPLEMENTARY INFORMATION:

Introduction

The National Credit Union Administration (NCUA) proposes to repeal its regulation requiring Federal credit unions to maintain a specific liquidity reserve on share draft accounts. This action should not be interpreted as indicating that NCUA feels such reserves are not needed. On the contrary, NCUA encourages credit unions to continue to maintain such reserves to accommodate share draft outflows.

In the interest of flexibility and simplicity, and in view of a continuing decline in credit union liquidity, NCUA proposes a liquidity reserve regulation which would require all federally insured credit unions to maintain liquid asset holdings in amounts not less than 5% of total shares and notes payable. Reserve eligible assets would include any combination of: (a) cash, (b) shares or deposits with maturities of 6 months or less in corporate central credit unions or federally insured banks or savings and loan associations, (c) U.S. Government obligations with remaining maturities of one year or less, or (d) shares in the National Credit Union Administration Central Liquidity Facility. To enable credit unions to utilize these assets, the liquidity reserve could be depleted to meet share outflows. This Administration has concluded that the 5% reserving requirement is the minimum prudent level of liquidity in view of current economic conditions. However, the 5% requirement, if adopted, will be reviewed on a continuing basis and modified appropriately to reflect new economic circumstances.

The proposed regulation would involve no additional reporting burdens on credit unions. Compliance would be determined from current State and Federal reports and examinations.

The proposed regulation would be promulgated under sections 116(b) and 201(b)(6) of the Federal Credit Union Act (12 U.S.C. 1762(b), 1781(b)(6)). These provisions authorize the NCUA Administrator to require insured credit unions to maintain such reserves as may be necessary to protect the interests of their members.

Need for the Regulation

With the advent of Federal share insurance in 1970, the expansion of credit union powers in 1977, and the enactment of the Central Liquidity Facility in 1978, credit unions have probably experienced more change in the past nine years than any other type of financial institution. The turbulent economic events of the 1970's coupled with important changes in credit union operations have resulted in significant decreases in credit union liquidity and capitalization.

The need for adequate liquidity in credit unions is no different than in other financial institutions. Conceptually, liquidity represents an asset resource available to satisfy significant and, perhaps, unexpected outflows of funds. An analogous function is performed by loan loss and other equity capital accounts—they constitute a liability resource to accommodate reductions in asset values.

In a very important respect, capital and liquidity are tightly linked. To the extent that liquidity is available, outflows of share funds to meet member demands can be satisfied without liquidating valuable investment and loan assets. If it were not for liquidity, significant share outflows could force untimely sales of valuable assets possibly leading to insolvency and credit union failures. To the extent capital is available to absorb losses, member demands for funds can be satisfied by selling assets even after credit union liquidity has been exhausted.

Table 1 depicts the liquidity of federally insured credit unions expressed as a ratio of very liquid assets to total share accounts and to total liabilities since 1971. The same table also portrays the availability since 1971 of federally insured credit union capital, expressed as the ratio of loan loss reserves and retained earnings accounts to total assets. As the data show, liquidity and capital ratios were relatively steady until recent years when they began to decline markedly. These trends are likely to continue if current national economic patterns are maintained.

Considered alone, these trends and others discussed below should not be viewed with alarm. To a degree they represent acceptable adjustments to the changing nature of credit union operations and United States financial markets. Considered together, however, they suggest the need for action to assure an adequate degree of liquidity by preventing adjustment processes from going too far.

In Table 2 the borrowed funds/total assets ratio since 1971 is presented. This ratio depicts the amount of credit union assets supported by funds obtained from non-share account sources. In the same table, the volume of loans supported by share account funds is depicted. These ratios reflect somewhat different aspects of credit union dependence on outside funds. Rising trends in these ratios along with an average loan maturity increase from about 26 months at year-end 1976 to 33 months at year-end 1978 suggest declining credit union liquidity.

The public's increasing sensitivity to differences in interest rates paid on savings and transaction accounts is also of importance. This interest sensitivity, which used to be characteristic only of large share accounts, now pervades the accounts of moderate income households. For example, accounts with balances in excess of $5,000 were 28% of shares at the end of 1970. By yearend 1977, they had increased 558% and represented some 51% of total shares. This means that today the majority of savings in credit unions is interest sensitive. Such interest sensitivity has brought about Money Market Certificates for large account holders and several high yielding savings vehicles for small account holders and is the source of increasing share account volatility.

Growing interest sensitivity may lead to substantial erosion of Regulation Q constraints on the rates commercial banks and savings and loan associations can pay on savings and transaction accounts. To the extent this occurs, it will diminish a competitive advantage of credit unions—the freedom to pay more on regular share accounts than banks or savings and loan associations can pay on savings accounts. Such a trend could contribute significantly to further share accoun: volatility.

Table 1.—*Liquid Asset and Capital to Asset Ratios at Federally-Insured Credit Unions, 1971-78*

Year	Narrow definitions [1]		Broad definitions [2]		Total capital [4] as a percent of total assets
	Liquid assets as a percent of—		Liquid assets as a percent of—		
	Total shares	Total liabilities [3]	Total shares	Total liabilities [3]	
1971	15.8	14.9	19.0	17.9	7.5
1972	15.6	14.7	20.7	19.6	7.2
1973	13.8	12.8	19.2	17.8	7.0
1974	14.5	13.4	19.0	17.5	7.0
1975	15.9	14.7	22.6	20.9	6.6
1976	14.1	13.0	22.0	20.3	6.3
1977	11.5	10.6	20.6	19.0	6.0
1978 [5]	8.3	7.5	15.1	13.6	5.7

[1] Under the Narrow Definition, liquid assets are defined as the sum of cash, shares, deposits and certificates in other credit unions and financial institutions, and common trust investments. This definition reflects the fact that a very high proportion of credit union government security holdings have long maturities and cannot be liquidated without significant losses.

[2] Under the Broad Definition, liquid assets includes the Narrow Definition plus total investments in U.S. Government and Federal Agency securities.

[3] Represents total shares plus notes payable and all other liabilities.

[4] Total capital represents the sum of total reserves and retained earnings.

[5] Preliminary.

Table 2.—*Loan-to-Share and Borrowed Funds Ratios of Federally-Insured Credit Unions, 1971-78*

Year	Loans outstanding as a percent of total shares	Borrowed funds as a percent of total assets
1971	88.1	2.3
1972	86.5	2.3
1973	89.1	3.7
1974	89.5	4.1
1975	86.0	3.9
1976	88.5	4.3
1977	90.9	5.3
1978 [1]	97.6	7.1

[1] Preliminary.

Explanation

The proposed liquidity reserve regulation would require each federally insured credit union to hold liquid assets totaling not less than five percent of the credit union's member accounts and notes payable. (Section 742.3) The five percent requirement is not intended to suggest that greater liquidity levels are excessive. On the contrary, five percent is regarded by NCUA as the minimum prudent level of liquidity.

The term "member account" as used in the regulation (§ 742.3) is defined in section 101(5) of the Federal Credit Union Act (12 U.S.C. 1752(5)) and encompasses share and share certificate accounts (including those of public units and other nonmembers) held by Federal credit unions, and such accounts or similar accounts held by federally insured state-chartered credit unions. Thus, the base for determining minimum liquidity requirements consists of the total of all share accounts and notes payable.

The term "liquid assets" includes cash, deposits in corporate central credit unions with remaining maturities of 6 months or less, deposits in federally insured banks and savings and loan associations with remaining maturities of 6 months or less, U.S. government obligations (of a type authorized for investment by Federal credit unions under 12 U.S.C. 1757(7)) with remaining maturities of 1 year or less and shares in the National Credit Union Administration Central Liquidity (§ 742.2(a)).

Shares in corporate central credit unions and the Central Liquidity Facility are included as reserve eligible assets because of the special roles these entities play in providing liquidity to the credit union system. The definition of a corporate central credit union, for this purpose, (Section 742.2(b)) is consistent with that contained in the recently proposed Central Liquidity Facility regulations (44 FR 26115).

Short term deposits in federally insured banks and savings and loan associations are included as reserve eligible assets because of their traditional function as liquidity sources. Excluding shares and deposits in insured credit unions (other than corporate centrals) may appear to be unfair. However, NCUA believes the exclusion is necessary, inasmuch as share holdings between insured credit unions do not contribute to the liquidity of the system as a whole.

The proposed maximum maturity limit of one year for U.S. Government obligations is based on NCUA's estimate of the maturity range of such securities which can be liquidated at any time without suffering losses due to market interest rate fluctuations.

The regulation would allow a credit union to deplete its liquidity reserve to satisfy share or deposit outflows. If its liquidity reserve falls below the 5% minimum, however, the credit union would be required to replenish its reserve within 60 days, unless an extension of time is granted by NCUA. (Section 742.4).

Reporting

The liquidity reserve regulation would impose no additional reporting burdens on credit unions. Credit union compliance with the regulation would be determined from current state and Federal reports and examinations.

Request for Comments

NCUA is providing a comment period of approximately 45 days for this proposal. Comments will be received until July 25, 1979. During that time, NCUA encourages written comment on all aspects of the proposal.

Regulatory Analysis

In accordance with NCUA's Report on Implementation of Executive Order 12044—Improving Government Regulations, a draft analysis of the liquidity reserve regulation is available upon request.

June 4, 1979.

(12 U.S.C. 1762(b), 12 U.S.C. 1766(a), 12 U.S.C. 1781(b)(6))

Lawrence Connell,

Administrator.

Accordingly, it is proposed that

§ 701.34 [Repealed]

1. 12 CFR 701.34(c)(5)(xiv) (Share Draft Liquidity Reserves) be repealed.

2. A new Part 742 (12 CFR Part 742) be added to read as follows:

PART 742—LIQUIDITY RESERVES OF INSURED CREDIT UNIONS

Sec.
742.1 Purpose.
742.2 Definitions.
742.3 Liquidity reserve.
742.4 Depletion and replenishment.

Authority: 12 U.S.C. 1762(b), 12 U.S.C. 1766(a), 12 U.S.C. 1781(b)(6).

PART 742—LIQUIDITY RESERVES OF INSURED CREDIT UNIONS

§ 742.1 Purpose.

The purpose of this part is to establish a liquidity reserve requirement that enhances the ability of insured credit unions to meet member demands for liquid funds and avoid asset losses.

§ 742.2 Definitions.

As used in this part:

(a) "Liquid assets" means the following unpledged assets:

(i) Cash on hand;

(ii) Share or deposit accounts with remaining maturities of 6 months or less maintained in corporate central credit unions or institutions insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation;

(iii) Investments in obligations of the United States or an agency thereof which are authorized for Federal credit unions under 12 U.S.C. 1757(7) and which have a remaining maturity of 1 year or less;

(iv) Shares in the National Credit Union Administration Central Liquidity Facility.

(b) "Corporate central credit union" means a credit union operated primarily to serve other credit unions and in which the total dollar amount of shares and deposits received from other credit unions plus loans to other credit unions exceeds 50 percent of the total dollar amount of all shares and deposits plus loans to members.

§ 742.3 Liquidity reserve.

Each credit union insured by the National Credit Union Share Insurance Fund shall maintain a daily reserve of liquid assets equalling, at a minimum, 5% of the total dollar value of its member accounts (as defined at 12 U.S.C. 1752(5)) and notes payable.

§ 742.4 Depletion and replenishment.

The liquidity reserve may be depleted below the level required by this Part only to meet outflows of shares or deposits. In the event of such depletion, the insured credit union shall immediately notify the appropriate National Credit Union Administration Regional Office and shall replenish its liquidity reserve to the required level within 60 days, unless an extension is approved by the Administration.

[FR Doc. 79-17723 Filed 6-7-79; 8:45 am]

BILLING CODE 7535-01-M

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 792 3032]

Korvette's, 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 a New York City department store chain, among other things, to cease failing to provide its stores with statutorily required warranty material; and to make the terms of written warranties on consumer products available to prospective purchasers prior to sale. The firm would be further required to develop and implement a program to instruct its sales personnel about the availability and location of warranty information; and maintain adequate business records for a period of two years.

DATE: Comments must be received on or before August 7, 1979.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Leroy Richie, Director, 8R, New York Regional Office, Federal Trade Commission, 2243–EB Federal Bldg., 26 Federal Plaza, New York, N.Y. 10007. (212) 264–1207.

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)).

[File No. 792 3032]

Korvette's, Inc.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Korvette's, Inc., a corporation, and it now appearing that Korvette's, 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 Korvette's, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Korvette's, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 450 West 33rd Street, in the City of New York, State of New York.

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 fact 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 part of the public 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 and related material pursuant to Rule 2.34, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider approriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

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 the 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. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of 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. It 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. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

The definitions of terms contained in Section 101 of the Magnuson-Moss Warranty Act, Pub. L. No. 93–637, 15 U.S.C. 2301 (Supp. 1975) and in Rule 702 (16 CFR 702.1) promulgated there under shall apply to the terms in this order.

I

It is ordered, That respondent Korvette's, Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or indirectly through any corporation, subsidiary, division or any other device in connection with its business as a seller and warrantor of consumer products distributed in commerce as "seller", "warrantor", and "consumer product" are defined in Rule 702 (16 CFR 702.1) of the Magnuson-Moss Warranty Act (15 U.S.C. 2301) do forthwith cease and desist from:

A. Failing, in the further course and conduct of its business as warrantor of consumer products actually costing more than $15.00, to provide its department stores with the warranty materials required by 16 CFR 702.3(b)(1) which are necessary for such stores to comply with requirements for sellers of consumer products, as set forth in 16 CFR 702.3(a).

B. Failing, in its course of business as a seller of consumer products, to make the terms of written warranties on consumer products actually costing more than $15.00 and manufactured on or after January 1, 1977, available to the consumer prior to sale through utilization of one or more means specified in 16 CFR 702.3(a)(1).

II

It is further ordered, That for those departments in which respondent chooses to use a binder system to comply with seller's duties under 16 CFR 702.3(a), respondent shall:

A. Maintain a permanently affixed binder system in each such department which provides the consumer with ready access; and either

B. Label and display such binders in a manner reasonably calculated to elicit the consumer's attention and accessible for consumer use without the assistance of store personnel; or

C. Place permanently affixed signs, not smaller than 8½ inches by 11 inches advising the consumer of the availability of the binders, in a prominent location in each such department. The content of these permanently affixed signs is included in this order as Appendix A.

III

It is further ordered, That respondent shall:

A. Deliver a copy of this order to cease and desist to all present regional and store managerial employees engaged in the sale of consumer products on behalf of respondent.

B. Instruct all present and future regional and store managerial employees engaged in the sale of consumer products on behalf of respondent as to their specific obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and under this order relating to the requirements about the availability and location of warranty information for customers.

C. Develop and implement a program to instruct its sales personnel about the availability and location of warranty information.

D. Maintain, for a period of not less than two (2) years from the effective date of the order, adequate business records to be furnished upon request to the staff of the Federal Trade Commission, relating to the manner and form of its continuing compliance with the terms and provisions of this order.

E. Notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

F. Within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

APPENDIX A— Compare Warranties Before You Buy!

There's a binder with warranties in this department. If you can't find the warranty binder, ask for it.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Korvette's, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint in this matter charges Korvette's with having engaged in unfair or deceptive practices in violation of the Magnuson-Moss Warranty Act, the Pre-Sale Availability Rule promulgated by the Commission thereunder, as well as the Federal Trade Commission Act, for failing to comply with this pre-sale availability rule regarding written warranty terms on consumer products.

It is alleged in the complaint that Korvette's as a "warrantor", which gives written warranties to consumers for products actually costing the consumer more than $15.00, failed to perform the requirements of the Pre-Sale Availability Rule. As a "warrantor" of warranted consumer products, Korvette's must provide its stores with warranty materials on all such products, in order that its stores may make such warranty terms available to prospective buyers for their review prior to sale.

It is further alleged that Korvette's as a "seller", which sells or offers for sale, for purposes other than resale or use in the ordinary course of the buyer's business consumer products actually costing the consumer more than $15.00, also failed to meet the requirements of Pre-Sale Availability Rule. As a "seller" of warranted consumer products, Korvette's must make such warranty materials available for prospective buyers' review prior to sale by one of more of the following methods:

(1) Clearly and conspicuously displaying the text of the written warranty in close conjunction with the product;

(2) Maintaining a binder system readily available to the consumer along with conspicuous signs noting the location of binders where the binders themselves are not in plain view;

(3) Displaying the warranty package in such a way that the text of the warranty is visible; and

(4) Placing a sign with the warranty terms in close proximity to the product.

The proposed order directs that Korvette's not only cease and desist from violations of these provisions but requires affirmative action on its part to foster and promote future compliance in this regard.

Carol M. Thomas,

Secretary.

[FR Doc. 79–17947 Filed 6–7–79; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Parts 154, 201, 204 and 282]

[Docket No. RM79-14]

Proposed Regulations Implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978

Issued June 5, 1979.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking and Opportunity for Written and Oral Presentations of Data, Views, and Arguments.

SUMMARY: The Federal Energy Regulatory Commission (FERC) hereby gives notice of a proposed rulemaking and public hearing for the purpose of implementing the incremental pricing provisions of the Natural Gas Policy Act of 1978. The regulations included in this proposal provide the regulatory framework for the calculation and billing of incremental pricing surcharges to non-exempt industrial boiler fuel facilities. The proposed regulations also set forth the procedures by which an industrial facility may obtain an exemption from the incremental pricing program.

DATES: Comments by July 9, 1979. Requests to speak by June 22, 1979. Hearing date: June 27, 1979, 10:00 a.m.

ADDRESSES: All comments and requests to speak to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (Reference Docket No. RM79-14). *Hearing Location:* Federal Energy Regulatory Commission, Hearing Room A, 825 North Capitol Street, NE., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Norman A. Pedersen, Office of Commissioner George R. Hall, 825 North Capitol Street NE., Room 9006, Washington, D.C. 20426, (202) 275-4147.

Warren C. Edmunds, Office of Pipeline and Producer Regulations, 825 North Capitol Street NE., Room 7303, Washington, D.C. 20426, (202) 275-4415.

Nancy E. Williams, Office of General Counsel, 825 North Capitol Street NE., Room 8100 F, Washington, D.C. 20426, (202) 275-0422.

Notice of Proposed Rulemaking and Opportunity for Written and Oral Presentations of Data, Views, and Arguments—Background

Title II of the Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95-621) requires that interstate pipelines and local distribution companies pass through certain portions of their natural gas acquisition costs to industrial users in the form of surcharges. These surcharges may not, however, raise the ultimate cost of gas to the user above the cost of the fuel oil which could be used as an alternative to natural gas.

The incremental pricing program is to be implemented in two phases. The only facilities affected during the first phase will be those using natural gas as fuel for large industrial boilers. Title II requires that the regulations implementing this first phase be promulgated by November 9, 1979.

During the second phase of the program, incremental pricing may be extended to a broader class of industrial users than those affected by the first stage. The regulations implementing the second phase must be promulgated by May 9, 1980 and will be subject to Congressional review.

The Commission has determined that the regulations needed to implement the first phase of incremental pricing should be promulgated in two rulemaking dockets, Docket Nos. RM79-14 and RM79-21. Informal public conferences in these two dockets were held in February and April, 1979, to assist the Commission in the implementation of the incremental pricing program.

A Notice of Proposed Rulemaking and Opportunity for Written and Oral Presentations of Data, Views and Arguments was issued in Docket No. RM79-21 on May 11, 1979 (44 FR 29090, May 18, 1979). The Notice set forth proposed regulations for the determination of the alternative fuel price ceilings on incremental pricing surcharges. Public hearings on the proposal contained in the May 11th Notice will be held in several cities during the month of June.

The proposal contained in this Notice is intended to implement the provisions of Title II which were not addressed in the May 11th Notice in Docket No. RM79-21. Briefly, the regulations set forth below contain the regulatory provisions governing the actual calculation and billing of incremental pricing surcharges, as well as the accounting provisions necessary for the successful implementation of the program. Additionally, the proposed regulations establish procedures by which facilities can obtain exemptions from incremental pricing.

The regulatory set forth below are quite detailed. This preamble will highlight certain issues which received significant attention in the course of the informal conferences held in this docket in February and April.

The Commission has utilized a number of ideas from various proposals offered at the conferences. The Commission would again like to express its appreciation to all those who participated in the conferences. The discussions which took place were invaluable in the formulation of the proposals in this docket and in Docket No. RM79-21.

II. The Proposed Mechanism: The Reducing PGA Approach

The February, 1979 informal conference was called to discuss a proposal developed by Commission staff for the calculation and billing of the incremental pricing surcharges. That proposal was included in the January 12, 1979, Notice (44 FR 6133, January 31, 1979) convening the February conference.

The January proposal was criticized at the conference because, under it, incremental pricing surcharges would not be billed until 4 to 10 months after the actual incurrence of the costs which are to be passed through by way of surcharges. This would result in high carrying costs which would ultimately be borne by high-priority users as well as industrial users.

Several alternative proposals for the calculation and billing of incremental pricing surcharges were proposed at the February conference. The April conference in this docket was convened to discuss those proposals in more detail. The incremental pricing mechanism contained in the regulations set forth below is based on an approach suggested at the April conference by the United Distribution Companies (UDC), Northern Natural Gas Company (Northern) and Natural Gas Pipeline Company of America (Natural).

Under this approach, each interstate pipeline company which files purchased gas adjustment (PGA) rate changes would, prior to each PGA period, project its total gas acquisition costs for the period. That total would be reduced by the amount which the pipeline projects it will recover during the period through incremental pricing surcharges. The total projected gas acquisition cost, as reduced, would be used to derive the pipeline's PGA rate for the PGA period in the manner prescribed in the pipeline's PGA provision.

In order to project the costs which will be recovered through incremental pricing surchanges during a forthcoming PGA period, an interstate pipeline would estimate both the amount of incremental gas acquisition costs it

would incur during the period and the proportion of those costs which it could pass through to non-exempt industrial boiler fuel users in the form of incremental pricing surcharges.

For purposes of computing the projected gas acquisition costs, the Commission proposes to amend its current regulations to allow purchasers to take into account increased costs which are anticipated due to calling price increases permitted under the NGPA ceiling price regulations.

The estimation of the costs which could be passed through as incremental pricing surchanges would be derived from projections of the maximum surcharge absorption capability ("MSAC") of each non-exempt industrial boiler fuel facility ultimately served by the pipeline, either through direct sales or through sales-for-resale. Each natural gas supplier would estimate the MSAC of each industrial facility it serves directly, following the formula set forth in the regulations. The supplier would then determine, for each of the pipelines supplying it, its capability to absorb a surcharge from the pipeline and would report its surcharge absorption capability to the pipeline. This reporting would continue along a chain or resales until the most "upsteam" supplying pipeline had received reports from all of its customers.

That pipeline would add to the total MSAC reported to it the projected MSAC for its own direct sales. This total would then be compared to the pipeline's estimated incremental acquisition costs for the coming PGA period. The lesser figure would be used to reduce the total acquisition costs which the pipeline would otherwise include in its PGA filing with the Commission.

The reduced PGA rate of a pipeline would be used during the succeeding PGA period. Each month of the PGA period, the pipeline's customers would be billed this reduced PGA rate as well as an incremental pricing surcharge.

Surcharges would be based on actual usage, actual rates and actual alternative fuel price ceilings established for the month in question. The incremental pricing surcharge which would be collected by a pipeline from each of its sale for resale customers would be the MSAC of the sale for resale customer for the previous month, as reported by the customer, or, if less than the MSAC, the customer's pro rata share of the total incremental gas costs incurred by the pipeline during that month.

The incremental pricing surcharge to be billed to each non-exempt industrial boiler fuel facility directly served by a natural gas supplier would be, in turn, the MSAC of the facility for the previous billing month or, if less than the MSAC, the facility's pro rata share of the total incremental gas costs incurred by the natural gas supplier during the previous calendar month.

Under the proposed regulations, incremental pricing surcharges would be stated as a flat dollar amount rather than on an Mcf basis. Any amounts remaining in the unrecovered incremental gas costs account which could not be passed through as a surcharge would be cleared to account 191 for recovery in the pipeline's next PGA period.

The proposal set forth below incorporates the suggestion made by the Natural Gas Pipeline Company of America to allow distributors to bill non-exempt industrial boiler fuel facilities at the level of the alternative fuel price ceiling applicable to the facility. If a local distribution company elects to so bill such a facility, the supplier would, in a later billing, adjust for any overrecovery.

The Commission believes that the potentially greatest obstacle to the successful operation of the UDC/Northern/Natural method of incremental pricing is the very short time permitted for reporting MSAC's up a chain of sale for resale customers. In order to allow for additional time to complete all reporting, the Commission proposes that the billing month for a non-exempt industrial boiler fuel facility end on or about the 20th day of each month. The Commission specifically requests comments on this proposal and, especially, on whether the chain of reporting can be accomplished between the 20th day of a month and the date all information must be available in order to bill on the normal billing date the following month.

III. The Proposed Mechanism: An Alternative

The primary alternative to the "reduced PGA" approach would be to structure an incremental pricing mechanism along the lines suggested by the Interstate Natural Gas Association of America (INGAA) at the February and April conferences. The approach was described in detail in the appendix to the March 16, 1979, Notice convening the April conference. Briefly, under the INGAA approach, every month each interstate pipeline would: (1) bill all customers its normal PGA rate reflecting the full amount of its purchased gas costs, (2) bill non-exempt end users an incremental pricing surcharge, and (3) extend a pro rata credit to all exempt end users in the amount of the total incremental surcharges billed.

Incremental pricing surcharges would be computed each month on the basis of either: (1) the aggregate MSAC for the previous month (if the amount recorded in the incremental gas costs account at the beginning of the current month were greater than such aggregate MSAC) or (2) a pro-rata share of the amount recorded in the incremental gas costs account (if the amount charged to the incremental gas costs account at the beginning of the current month were less than the aggregate MSAC for the previous month).

The Commission, on the basis of the material presented to it, and its study and analysis, prefers the "reduced PGA" approach proposed by UDC, Northern and Natural. It is the Commission's view that such an approach has the advanage of being a less burdensome regulatory program for all affected parties.

The Commission notes, however, that it has given and will continue to give serious attention to the approach sponsored by INGAA. Those who believe that the Commission should adopt the INGAA approach in preference to the approach proposed here are invited to provide comments and arguments to that effect. Those who would advocate Commission adoption of still other alternatives are invited to present them in as much detail as possible.

IV. Exemptions

A. *Exemptions under §§ 206(a), (b) and (c) of the NGPA.*—Subsections 206(a), (b) and (c) of the NGPA provide that small existing industrial boiler fuel users, agricultural users, schools, hospitals and certain other facilities shall be exempt from incremental pricing. Section 282.204 of the proposed regulations would establish a procedure by which those exemptions could be obtained.

These regulations would be interim in nature for small boiler fuel facilities and agricultural users. Section 206 requires that by May 9, 1980, the Commission prescribe permanent exemption rules for these users. The permanent rules are to contain certain statutorily prescribed refinements of the interim rules.

Basically, under the proposed regulations, the exemptions permitted by subsections 206(a), (b) and (c) would be obtained by an industrial boiler fuel facility by filing an affidavit with the Commission and sending a copy to the facility's natural gas supplier. A copy of

the proposed Exemption Affidavit is attached to the regulations below as Appendix A.

The Commission believes that affidavits for exemption should be updated on a regular basis so that if a facility no longer uses gas for exempt purposes, the facility would lose its exemption from incremental pricing. The Commission requests comments on how this updating should be done. The proposed regulations would require that annual reaffirmations of an affidavit for exemption be filed with the Commission. Another possible approach would be to make exemptions expire automatically when a change of circumstances occurs with respect to the facility.

B. *Exemptions under section 206(d) of the NGPA.*—Under subsection 206(d) of the NGPA, the Commission may provide for the exemption of either individual industrial facilities or categories of such facilities which are not exempt from incremental pricing under subsections 206 (a), (b) and (c) of the Act. Any such action by the Commission is required to be submitted to the Congress for its review prior to the action taking effect. Either House of the Congress can veto a proposed exemption.

Section 282.206 of the proposed regulations would establish procedures whereby any interested person would be able to petition under subsection 206(d) of the NGPA for an exemption, in whole or in part, of any individual incrementally priced industrial facility or category of such facility.

During the informal conferences which were convened by staff in connection with the preparation of this Notice of Proposed Rulemaking, some participants suggested exemptions which the Commission could adopt under subsection 206(d). The suggestions generally fell into four categories:

An exemption for gas used in small boilers which have been constructed since November 9, 1978, and for gas used in boilers which were in existence on November 9, 1978, which used more than an average of 300 Mcf per day for boiler fuel during a calendar month of 1977, but which have used less than 300 Mcf per day since 1977;

A partial or complete exemption for gas used in industrial facilities which have the capabilities to use coal as an alternative fuel;

An exemption for gas used in industrial facilities which have the capability to use oil as an alternative fuel and which provide a load-balancing function on gas distribution systems; and

An exemption for gas used in industrial facilities in states where the prices of natural gas are at or above the FERC alternative fuel price ceilings on incremental pricing.

The Commission will, in several weeks, issue a Notice of Proposed Rulemaking in Docket No. RM79–48 regarding a new small boiler exemption. The Commission, at this time, does not intend to institute rulemakings with regard to the other three subsections 206(d) exemption proposals, however.

It is the Commission's view that an exemption for facilities which have the capability to burn coal rather than gas would have the effect of encouraging the consumption of gas rather than coal, and that such a result would be contrary to both national energy policy and the policies embodied in the National Energy Act of 1978.

It is also the Commission's view that an exemption for load-balancing customers which have the capability to burn oil is unnecessary. The Commission has proposed in Docket No. RM79–21 a method for determining alternative fuel price ceilings on incremental pricing that should minimize any load-shifting from gas to oil which otherwise might have occurred under incremental pricing. Thus, the benefits to a system of load-balancing customers who have the capability to burn oil will not be lost.

Finally, regarding the state-wide exemption proposal, the Commission believes it would be premature to attempt to determine at this stage whether any state can assure the Commission that it has a ratemaking program or procedure in effect which would accomplish the ends of incremental pricing as mandated by the NGPA. Any state program must be measured against the incremental pricing program established by this Commission, and particularly the alternative fuel price ceiling aspect of the program. Thus, only after final rules are adopted on, at least, the alternative fuel price ceiling will the Commission have established the point of comparison for state programs or plans which are described as satisfying the objectives of Title II of the NGPA.

As mentioned, comments regarding the coal exemption, the oil exemption and state-wide exemptions have, to this point, been made only in the highly informal context of the conferences convened prior to this Notice of Proposed Rulemaking. In order to provide interested persons with a further opportunity to present to the Commission their views regarding these three exemption proposals, the Commission will provide an opportunity for further comments to be filed on the question of whether or not the Commission should establish a rulemaking proceeding with respect to any one of them.

Comments on establishing a rulemaking on the coal exemption should be filed in Docket No. RM79–45. Comments on establishing a rulemaking on the oil exemption should be filed in Docket No. RM79–46. Comments will be due by August 1, 1979.

Comments urging the Commission to establish one or more rulemaking proceedings on statewide exemption proposals should be filed in Docket No. RM79–47. The final date for filing comments in this docket will be September 1, 1979, in order to permit the parties to have before them the final rules to be issued in Docket No. RM79–21 and this docket.

Issues regarding subsection 206(d) exemptions, aside from questions regarding the procedures set forth in the proposed § 282.206, will not be further considered by the Commission in this proceeding, Docket No. RM79–14.

V. Time Line

The following is a brief time-line of the events which would take place under the incremental pricing regulations contained in this proposal and the companion docket to this proposal, Docket No. RM79–21. Comments are requested on all aspects of this time-line. [Minor conforming changes to the regulations proposed in RM79–21 will have to be made to comport with this time-line.)

August 1, 1979—Commission issues final regulations.

September 1, 1979—Regulations become effective. Exemption affidavits and alternative fuel price ceiling affidavits available through the Office of Public Information.

September 14, 1979—Natural gas suppliers mail exemption affidavits and alternative fuel price ceiling affidavits to all industrial boiler fuel facilities which were not determined to be exempt from an examination of the natural gas supplier's own records.

October 1, 1979—In accordance with the natural gas suppliers' requests as contained in the suppliers' mailings of September 14, exemption affidavits are returned to natural gas suppliers by industrial boiler fuel facilities claiming an exemption in whole or in part.

October 15, 1979—Local distribution companies notify supplying pipelines of their projected MSAC's for the period commencing January 1, 1980.

November 1, 1979—Interstate pipelines file revised PGA provisions and incremental pricing surcharge provisions; pipelines determine projected MSAC's.

December 1, 1979—Interstate pipelines file reduced PGA tariff sheets and estimated incremental pricing surcharge tariff sheets for the period commencing January 1, 1980.

January 1, 1980—Effective date of tariff sheet filed December 1, 1979. Incremental gas acquisition costs begin to be booked by natural gas suppliers.

January 15, 1980—Natural gas suppliers file lists of non-exempt industrial boiler fuel facilities with the Federal Energy Regulatory Commission.

December 15, 1980—Natural gas suppliers mail exemption reaffirmation affidavits and alternative fuel price ceiling reaffirmation affidavits to exempt industrial boiler fuel facilities and non-exempt boiler fuel facilities.

December 31, 1980—Industrial boiler fuel facilities return exemption reaffirmation affidavits and alternative fuel price ceiling reaffirmation affidavits to the Commission and the natural gas supplier.

January 15, 1981—Updated lists of non-exempt industrial boiler fuel facilities are filed with the Commission.

VI. Direct Sales

The regulations set forth below propose the use of unregulated contract rates for the calculations of MSAC's of interstate pipelines' direct sale customers. The reason for this approach is that the Commission did not have jurisdiction over such sales under the Natural Gas Act,[1] and the Commission has found minimal support in the provisions of the NGPA to permit it to take jurisdiction with respect to such sales.

It can be argued, however, that the Congressional intent underlying Title II was not only to protect high priority consumers from increased gas acquisition costs, but to maximize that protection by, among other things, maximizing the surcharges to direct non-exempt customers. This Congressional intent could arguably establish a new basis for jurisdiction.

The regulations below, thus, reflect use of the contract rate merely for purposes of generating comments and further discussion. The proposal does not reflect a conclusion that the contract rate approach is the only one available to the Commission. There are several conceivable alternative approaches. In each approach, the higher determinant of the MSAC would be the established applicable alternative fuel price ceiling. The number which would be used for the lower determinant could be:

(1) The unit cost allocated to non-jurisdictional service in the pipeline's last rate proceeding;

(2) The sum of (i) the unit cost allocated to non-jurisdictional service in the pipeline's last rate proceeding and (ii) 50 percent of the difference between the allocated unit cost and the alternative fuel price ceiling;

(3) The sum of (i) the unit cost allocated to non-jurisdictional service in the pipeline's last rate proceeding and (ii) the difference existing on June 1, 1979, between the contract rate and that allocated unit cost;

(4) The contract rate, as determined under the terms of the existing contract as that contract was in efect on June 1, 1979; or

(5) The product of (i) the unit cost allocated to non-jurisdictional service in the pipeline's last rate proceeding and (ii) the ratio of the contract rate as of June 1, 1979, to the unit cost allocated to non-jurisdictional service in the pipeline's last rate proceeding prior to June 1, 1979.

Each of these possible approaches raises jurisdictional issues. As for the first approach, the outermost limit on interstate pipeline rates to direct sale customers is the cost of alternative fuels. Thus, defining direct sale MSAC's as the difference between the level of allocated costs and the level of the alternate fuel price would effectively dictate to a pipeline its markup in a direct sale.

Methods two through five above would at least allow the pipeline a range in which it could negotiate a retail price. In no case would the pipeline's potential markup over allocated costs be reduced to zero or would the retail rate be specifically determined.

Public comment is invited regarding the merits of all of the proposed methods for determining direct sale MSAC's. It is requested that comments address the jurisdictional implications of the proposed methods. As indicated above, the method of determining direct sale MSAC's on the basis of contract rates will be reviewed in light of the comments received, and may be revised as appropriate in light of those comments.

VII. Submetering

The January 12, 1979, staff proposal in this docket provided, in effect, that all natural gas used at a nonexempt industrial boiler fuel facility would be subject to incremental pricing unless the non-exempt boiler fuel usage was separately metered.

A number of commenters opposed the staff proposal. Several commenters contended that installing submeters would entail large capital expenditures to perform a task—quantifying volumes consumed for exempt or process uses in a non-exempt facility—which can be done by means not requiring new capital investment. Further, it was argued that such an expenditure may be rendered moot in whole or in part by the 18-month rule required by Section 202 of Title II. Lastly, it was claimed that the requisite number of meters could not be obtained and installed by the anticipated January 1, 1980, implementation date for incremental pricing.

A submetering requirement would also raise secondary questions as to who should bear the cost—the end user, the distributor, or the pipeline—inasmuch as the incremental pricing program is intended to benefit exempt users.

Several commenters acknowledged that submetering may be necessary, or would at least be preferable to the alternatives which were suggested. The most viable of these alternatives would be to utilize certified estimates in place of actual volume usage as recorded by meters.

The Commission has determined, based on all of the information available to it, that the original staff proposal on submetering, modified to a certain extent, should be retained in this proposal. The slight modification would permit either exempt (including process) or non-exempt uses to be metered, so long as a total volume of non-exempt usage is derivable from meter readings.

Based on the trade press,[2] and staff's study and observations, we believe that considerable in-plant submetering already is being done. In an era of ever-rising energy costs, many companies have determined that they want to know where and in what quantities energy (in any form) is being used.

Further, it appears that submeters can be purchased and installed at reasonable cost. For many industrial applications, a meter installation for loads up to 1000 Mcf per day, for example, would total less than $5000.[3] If such a meter enabled a non-exempt user to reduce its gas bill by as little as 10 cents per Mcf by having 1000 Mcf per day exempted from incremental pricing by submetering, the cost of the meter would be recovered in 50 days or less.

On the question of the availability of submeters, we request additional comment and statistical data on how widespread the use of submetering aleady is, on the numbers of meters that

[1] *Panhandle Eastern Pipe Line Company* v. *Public Service Commission of Indiana*, 332 U.S. 507 (1947); *City of Hastings* v. *F.P.C.* 221 F. 2d 31 (D.C. Cir. 1954), *cert. denied*, 349 U.S. 920 (1955).

[2] *E.g., Modern Industrial Energy*, April 1979, p. 12, 13; *Energy User News*, Aug. 14, 1978, p. 1, 10, 11; *Plant Energy Management*, Sept/Oct 1978, p. 40, 42; *Gas Industries*, Sept. 1978, p. 22, Oct. 1977, p. 22, 23.

[3] For example, according to its May 1978 price list, an American Meter Company Model 11M, aluminum housing CVM positive displacement meter capable of measuring over 1100 Mcf per day at 50 psig line pressure would cost less than $2000, F.O.B. Erie, PA. Installation and shipping costs should not result in a drastically increased total cost.

would be needed, and the time required to obtain and install such meters.

For purposes of incremental pricing, it is immaterial whether the exempt or non-exempt volumes are directly measured. If one is measured, the other can be determined. Thus, comments on the number (and cost) of meters should consider the question in terms of accomplishing the metering task in the most efficient manner.

As to the ownership of the submeters, the Commission currently believes that the end user should bear the cost. The end-user is the potential beneficiary of submetering since it would thereby acquire an exemption for non-boiler fuel uses. End-user ownership of meters would avoid the problem of a utility having its property on the end-user's site and would avoid the myriad of regulatory problems inherent in utility ownership. End-user ownership should also tend to maximize the tax benefits generated by the purchase and installation of submeters.

As mentioned above, the most viable alternative to submetering for purposes of identifying volumes which should not be subject to an incremental pricing surcharge would be to use estimates of gas consumption. Some commenters suggested, however, that if used, estimates should be subjected to review by Data Verification Committees (DVC's). Proponents of DVC's cited their useful role in minimizing litigation and resolving disputes in pipeline curtailment cases. DVC opponents raised the spectre of the on-going cost and administrative burden of establishing and maintaining DVC's, in addition to the question of whether they could complete their tasks prior to the expected January 1, 1980, implementation date for the incremental pricing program.

The Commission does not currently view the use of estimates and DVC's as a viable long-term alternative to submetering. The ongoing commitment of professional talent for an indefinite period of time to accomplish the same task that can be—and in many cases already is being—done by meters, would appear to be an overly burdensome regulatory solution.

To the extent, however, that meters cannot be acquired and installed by January 1, 1980, some short-term use of estimates may be needed. One possible approach would be to permit estimates for the period January–March of 1980, based on actual meter readings for 30 days of continuous use at some point during calendar year 1979. Under this approach, a facility could utilize one meter to measure the usage of several boilers until such time as meters could be installed as needed on a permanent basis. Commenters are requested to describe, in as much detail as possible, whether and how a short-term estimating procedure should be implemented.

VIII. Environmental Issues

The staff has completed its environmental assessment of this proposed rulemaking. Staff has concluded, based on the information currently available, that the proposed regulations would not be a major Federal action significantly affecting the quality of the human environment.

This environmental assessment has been made part of the public record in this docket and in Docket No. RM79–21. It is available for inspection in the Commission's Office of Public Information.

The Commission requests comments on any environmental issues which are believed relevant to this rulemaking and on what is believed to be the scope of the Commission's responsibility in this area. Comments relating to environmental issues should, if possible, be substantiated with detailed analysis.

IX. Comments Requested

The Commission requested comments on all aspects of the proposed regulations set forth below. The Commission particularly invites comments on the issues identified above and on approaches to those issues other than the ones reflected in the regulations below.

X. Comment Procedures

A. *Written Comments*

Interested persons are invited to submit written comments, data, views, or arguments with respect to this proposal. Comments should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and should reference Docket No. RM79–14. An original and 14 copies should be filed. All comments received prior to 4:30 p.m. EDT, July 9, 1979, will be considered by the Commission prior to promulgation of final regulations. All written submissions will be placed in the public file which has been established in this docket and which is available for public inspection in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during regular business hours.

B. *Public Hearing*

A public hearing concerning this proposal will be held in Washington, D.C. on June 27, 1979. The hearing will be held at the Federal Energy Regulatory Commission, Hearing Room "A", 825 North Capitol Street, N.E., Washington, D.C. 20426, and will begin at 10:00 a.m. Any person interested in this proceeding or representing a group or class of persons interested in this proceeding may make a presentation at this hearing provided that a written request to participate is submitted to the Secretary of the Commission at the address given above by June 22, 1979. Requests to participate should include a reference to Docket No. RM79–14, should indicate the amount of time desired, and should include a telephone number where the person making the request may be reached. A list of the participants in the hearing will be available in the Commission's Office of Public Information on June 25, 1979 and will be available at the site of the hearing on the morning of the hearing. The presiding officer is authorized to limit oral presentations at the hearing both as to length and as to substance. Participants should, if possible, bring 150 copies of their testimony to the hearing.

The hearing will not be a judicial or evidentiary-type hearing. There will be no cross-examination of persons making statements. The presiding officer will question such persons and any interested person may submit questions to the presiding officer to be asked of persons making statements. The presiding officer will determine whether the question is relevant and whether the time limitations permit it to be presented. Any further procedural rules will be announced by the presiding officer at the hearing. Transcripts of the hearing will be available in the public file for this proceeding, Docket No. RM79–14, in the Commission's Office of Public Information.

The Commission proposes to make these amendments, when adopted, effective on September 1, 1979. As noted above, Title II of the NGPA requires that final requlations be in place by November 9, 1979. In order that both the regulations set forth below and the regulations to be adopted in Docket No. RM79–21 can be implemented with the least disruption to currently followed reporting and accounting practices, the Commission proposes to adopt these regulations prior to the November 9th deadline.

(Natural Gas Act as amended, 15 U.S.C. 17 *et seq.*; the Natural Gas Policy Act of 1978, Pub.

L. 95–621, 92 Stat. 3350, 15 U.S.C. 3301, *et seq.*; the Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.*; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, it is proposed to amend Title 18 of the Code of Federal Regulations in Parts 154, 201, 204 and by the addition of a new Part 282, to read, in part, as set forth below.

By Direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 154—RATE SCHEDULES AND TARIFFS

1. Section 154.38 is amended in paragraph (d) by revising subparagraph (1) and clause (iv) (*a*) of subparagraph (4) to read as follows:

§ 154.38 Composition of rate schedule.

* * * * *

(d) *Statement of rate.* (1) Except as permitted in §§ 154.52, 154.82, and Part 282, all rates shall be clearly stated in cents or in dollars and cents per unit. Only the rates and charges to be used in current billing shall be included in the rate schedules. * * *

(4) * * *

(iv)(*a*) Rate changes which reflects both the projected [2] cost of purchased gas and a revised surcharge to clear the amounts accrued in the deferred account for both producer and pipeline suppliers shall be computed and filed not more frequently than semi-annually.

* * * * *

PART 201—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT (CLASS A AND CLASS B)

2. Part 201, account 191 is amended in paragraph A to read as follows:

191 Unrecovered purchased gas costs.

A. This account shall include purchased gas costs related to Commission approved purchased gas adjustment clauses when such costs are not included in the utility's rate schedules on file with the Commission. This account shall also include such other costs as authorized by the Commission. Costs of purchased gas subject to passthrough under the incremental pricing requirements of the Commission shall be excluded from this account and included in account 192.1, Unrecovered Incremental Gas Costs.

* * * * *

[2] Pipeline companies may reflect in their rates during their normal PGA period monthly changes in the ceiling rates permitted producers of natural gas under the Natural Gas Policy Act of 1978.

3. Part 201 is amended to add a new account 192.1 to read as follows:

192.1 Unrecovered incremental gas costs.

A. This account shall include the unrecovered costs of purchased gas which are subject to passthrough by means of an incremental pricing surcharge. This account shall also include any other costs authorized by the Commission.

B. This account shall be debited and account 805.2, Incremental Gas Cost Adjustments, shall be credited for unrecovered costs of purchased gas subject to incremental pricing.

C. This account shall be credited and account 805.2 debited for those costs included in this account which are passed through by means of incremental pricing surcharges.

D. Those costs accumulated in this account for gas received during a calendar month which are not subject to passthrough by incremental pricing surcharges because of alternative fuel price ceilings shall be transferred to account 191, Unrecovered Purchased Gas Costs, no later than the end of the month in which the applicable surcharges are billed.

E. Separate subaccounts shall be maintained for the accumulation of incremental gas costs each calendar month and the passthrough or transfer of such costs so as to keep each period separate.

4. Part 201 is amended to add a new account 192.2 to read as follows:

192.2 Unrecovered incremental surcharges.

A. This account shall include any incremental pricing surcharges passed through to the company by pipeline suppliers.

B. This account shall be debited and account 805.2, Incremental Gas Cost Adjustments, shall be credited with the amount of each incremental pricing surcharge as incurred.

C. This account shall be credited and account 805.2 shall be debited with the amounts included in this account which are passed through to customers.

5. Part 201 is amended to add a new account 805.2 to read as follows:

§ 805.2 Incremental gas cost adjustments.

A. This account shall be credited with the costs of purchased gas which are subject to passthrough by means of incremental pricing surcharges.

B. This account shall also be credited with any incremental pricing surcharges passed through to the company by pipeline suppliers.

C. This account shall be debited with amounts from account 192.1, Unrecovered Incremental Surcharges, which are passed through by means of incremental pricing surcharges.

D. This account shall also be debited with amounts from account 192.2, Unrecovered Incremental Surcharges, which are passed through by means of incremental pricing surcharges.

PART 204—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT (CLASS C AND CLASS D)

6. Part 204, account 191 is amended in paragraph A to read as follows:

191 Unrecovered purchased gas costs.

A. This account shall include purchased gas costs related to Commission approved purchased adjustment clauses when such costs are not included in the utility's rate schedules on file with the Commission. This account shall also include such other costs as authorized by the Commission. Costs of purchased gas subject to passthrough under the incremental pricing requirements of the Commission shall be excluded from this account and included in account 192.1, Unrecovered Incremental Gas Costs.

* * * * *

7. Part 204 is amended to add a new account 192.1 to read as follows:

192.1 Unrecovered incremental gas costs.

A. This account shall include the unrecovered costs of purchased gas which are subject to passthrough by means of incremental pricing surcharges. This account shall also include any other costs authorized by the Commission.

B. This account shall be debited and account 731.2, Incremental Gas Cost Adjustments, shall be credited for unrecovered costs of purchased gas subject to incremental pricing.

C. This account shall be credited and account 731.2 debited for those costs included in this account which are passed through by means of incremental pricing surcharges.

D. Those costs accumulated in this account for gas received during a calendar month which are not subject to passthrough by incremental pricing surcharges because of alternative fuel price ceilings shall be transferred to account 191, Unrecovered Purchased Gas Costs, no later than the end of the month in which the applicable surcharges are billed.

E. Separate subaccounts shall be maintained for the accumulation of incremental gas costs each calendar month and the passthrough or transfer of such costs so as to keep each period separate.

8. Part 204 is amended to add a new account 192.2 to read as follows:

192.2 Unrecovered incremental surcharges.

A. This account shall include incremental pricing surcharges passed through to the company by its pipeline suppliers.

B. This account shall be debited and account 731.2, Incremental Gas Cost Adjustments, shall be credited with the amount of each incremental pricing surcharge as incurred.

C. This account shall be credited and account 731.2 shall be debited with the amounts included in this account which are passed through to customers.

9. Part 204 is amended to add a new account 731.2 to read as follows:

§ 731.2 Incremental gas cost adjustments.

A. This account shall be credited with the costs of purchases gas which are subject to passthrough by means of incremental pricing surcharges.

B. This account shall also be credited with any incremental pricing surcharges passed through to the company by its pipeline suppliers.

C. This account shall be debited with amounts from account 192.1, Unrecovered Incremental Gas Costs, which are passed through by means of incremental pricing surcharges.

D. This account shall also be debited with amounts from account 192.2, Unrecovered Incremental Surcharges, which are passed through by means of incremental pricing surcharges.

10. Subchapter I of Chapter 1 is amended by adding a new Part 282 to read as follows:

PART 282—INCREMENTAL PRICING

Subpart A—General Rules and Definitions

Sec.

282.101 Purpose.
282.102 Applicability and effective date.
282.103 Definitions.

Subpart B—Exemptions

282.201 General rule.
282.202 Definitions.
282.203 Exempt end-uses.
282.204 Obtaining an exemption.
282.205 Annual reinstatement of exemptions.
282.206 Petitions for exemptions under § 206(d).

Subpart C—Determination of Costs Subject to Incremental Pricing

282.301 Costs subject to incremental pricing.
282.302 Gas qualifying under more than one provision.
282.303 First sale acquisition cost.
282.304 Incremental pricing threshold.

Subpart D [Proposed in notice of proposed rulemaking issued May 11, 1979 (44 FR 29090, May 18, 1979)]

Subpart E—Incremental Pricing Accounts and Surcharges

282.501 General rule.
282.502 Accounting.
282.503 PGA reduction.
282.504 Incremental pricing surcharge.
282.505 Recovery of amounts in excess of maximum surcharge absorption capabilities.

Subpart F—Filing Requirements

282.601 FERC gas tariff provisions.
282.602 Tariff sheets.
282.603 Informational filings.

Authority: This part is issued under the Natural Gas Act, as amended, 15 U.S.C. 717 *et seq.;* the Natural Gas Policy Act of 1978, Pub. L. 95–621, 92 Stat. 3350, 15 U.S.C. 3301, *et seq.;* the Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.;* E.O. 12009, 42 FR 46267.

Subpart A—General Rules and Definitions [1]

§ 282.101 Purpose.

The purpose of this part is to set forth an incremental pricing rule in accordance with Title II of the Natural Gas Policy Act of 1978. The rule requires that certain costs of acquiring natural gas be passed through as a surcharge on sales of natural gas used as specified in the rule.

§ 282.102 Applicability and effective date.

(a) *Uses.* Natural gas used as boiler fuel in industrial boiler fuel facilities on and after January 1, 1980, shall be subject to incremental pricing under this part.

(b) *Costs.* Costs described in Subpart C and incurred by natural gas suppliers on or after January 1, 1980 shall be subject to this part.

(c) *Natural gas suppliers.* Interstate pipelines and local distribution companies shall be subject to this part.

(d) *Effective date.* The provisions of this part shall be effective September 1, 1979.

§ 282.103 Definitions.

For purposes of this part:

[1] For convenience of the reader, most of Subpart A as it appears here was included in the Notice of Proposed Rulemaking issued in Docket No. RM79–21 on May 11, 1979 (44 FR 29090, May 18, 1979). Commenters are asked to comment on Subpart A in this docket rather than in Docket No. RM79–21.

(a) "Natural gas supplier" means an interstate pipeline or a local distribution company.

(b) "Industrial facility" means any facility which primarily changes raw or unfinished materials into another form or product.

(c) "Non-exempt industrial boiler fuel facility" means any industrial boiler fuel facility other than any such facility which has been exempted from the provisions of this part in accordance with Subpart B.

(d) "No. 2 fuel oil" means No. 2 oil as defined in the standard specification for fuel oils published by the American Society for Testing and Materials, ASTM D 396–78.

(e) "No. 6 fuel oil" means No. 6 oil as defined in the standard specification for fuel oils published by the American Society for Testing and Materials, ASTM D 396–78.

(f) "Low sulfur fuel oil" means any oil containing 1 percent (1%) or less sulfur content by weight.

(g) "High sulfur fuel oil" means any oil containing more than 1 percent (1%) sulfur content by weight.

(h) "British thermal unit" or "Btu" shall have the meaning set forth in § 270.102.

Subpart B—Exemptions

282.201 General rule.

(a) *Statutory exemptions.* Natural Gas used for purposes described in § 282.203 shall be exempt from incremental pricing as provided in subsections 206(a), (b) and (c) of the NGPA. Exemptions for such gas may be obtained in the manner prescribed in § 282.204. Adjustments under authority of subsection 502(c) of the NGPA as may be necessary to prevent special harship, inequity, or unfair distribution of burdens may be obtained as provided in § 1.41.

(b) *Discretionary exemptions.* Petitions for an exemption under authority of subsection 206(d) of the NGPA may be filed in the manner prescribed in § 282.206.

§ 282.202 Definitions.

For the purposes of this subpart:

(1) "Qualifying cogeneration facility" means a cogeneration facility which meets the requirements prescribed in § ——.

(2) "School" means a facility the primary function of which is the delivery of instruction to regularly enrolled students in attendance at such facility. Facilities used for both educational and non-educational activities are not included under this definition unless the

latter activities are merely incidental to the delivery of instruction.

(3) "Hospital" means a facility the primary function of which is the delivery of medical care to patients who remain at the facility. Outpatient clinics or doctor's offices are not included in this definition. Nursing homes and convalescent homes are included in this definition.

(4) "Similar institution" means a facility the primary function of which is the same as the primary function of the facility to which it is compared.

(5) "Agricultural use" means any use of natural gas which is certified by the Secretary of Agriculture under 7 CFR § 2900.3 as an "essential agricultural use" pursuant to section 401(c) of the NGPA.

§ 282.203 Exempt end-uses.

Natural gas used for the following purposes shall be exempt from incremental pricing under this part:

(a) All gas used for boiler fuel by an industrial boiler fuel facility which was:

(1) In existence on November 9, 1978; and

(2) Did not consume more than an average of 300 Mcf per day for boiler fuel during any calendar month of calendar year 1977;

(b) All gas used for an agricultural use;

(c) All gas used in a qualifying cogeneration facility;

(d) All gas used for the generation of electricity by an electric utility; and

(e) All gas used in a school, hospital, or similar institution.

§ 282.204 Obtaining an exemption.

(a) *General.* This section establishes procedures by which owners or operators of industril boiler fuel facilities may obtain an exemption for natural gas used for the purposes described in § 282.203.

(b) *Determination of industrial boiler fuel facilities.* On or before September 14, 1979, each natural gas supplier shall determine which facilities served directly by it are industrial boiler fuel facilities.

(c) *Exemption on the basis of company records.* (1) On or before September 14, 1979, each natural gas supplier shall determine from an examination of its records which industrial boiler fuel facilities, as identified under paragraph (b), were in existence on November 9, 1978, and either:

(i) Did not use more than an average of 300 Mcf per day during any calendar month of calendar year 1977; or

(ii) Did not use more than an average of 300 Mcf per day for boiler fuel during any calendar month of calendar year 1977.

(2) Natural gas used by an industrial boiler fuel facility for which an affirmative determination is made under subparagraph (1) shall be exempt from incremental pricing under this part.

(d) *Exemption on the basis of affidavit.* (1) *Commission to provide exemption affidavits.* As of the effective date of this part, exemption affidavits as described in subparagraph (3) will be available to natural gas suppliers for purposes of subparagraph (2) and to any other interested person upon request from the Office of Public Information, Federal Energy Regulatory Commission, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

(2) *Availability of exemption affidavits from natural gas suppliers.* (i) *Initial service.* Not later than September 14, 1979, each natural gas supplier shall mail or otherwise supply an exemption affidavit, as described in subparagraph (3), to the owner or operator of each industrial boiler fuel facility on such natural gas supplier's system which the natural gas supplier did not determine to be exempt pursuant to paragraph (c).

(ii) *Response date.* Natural gas suppliers which supply exemption affidavits under clause (i) shall request that executed affidavits be filed on or before October 1, 1979, in accordance with subparagraph (4).

(iii) *Ongoing availability.* After September 14, 1979, natural gas suppliers shall make exemption affidavits available at their principal place of business on an ongoing basis during regular business hours.

(3) *Contents of exemption affidavit.* (i) The exemption affidavit will provide the owner or operator of an industrial boiler fuel facility with an opportunity to respond to the following questions:

(A) Did the customer's facility, on the basis of records, documents, or data in the customer's possession, consume no more than an average of 300 Mcf per day for boiler fuel during any calendar month of calendar year 1977?

(B) Is all of the natural gas consumed at the customer's facility used as boiler fuel for an agricultural use?

(C) Is the customer's facility, in its entirety, a qualifying cogeneration facility?

(D) Is the customer's facility, in its entirety, a school, hospital, or similar facility?

(E) Is the customer's facility, in its entirety, used for the generation of electricity by an electric utility?

(F) Is a portion, though not all, of the gas consumed at the customer's facility used as boiler fuel for an agricultural use?

(G) Is the customer's facility, in part but not in its entirety, a qualifying cogeneration facility?

(H) Is the customer's facility, in part but not in its entirety, a school, hospital, or similar facility?

(I) Is the customer's facility, in part but not in its entirety, used for the generation of electricity by an electric utility?

(ii) The exemption affidavit will notify the customer that, if he affirmatively responds to any of the questions (F) through (I), volumes of natural gas used in the customer's facility will be exempt from incremental pricing only to the extent that the customer maintains submeters and records as required by subparagraph (6).

(iii) The exemption affidavit will indicate the record retention obligation which may be incurred by the customer under subparagraph (8) of this paragraph.

(iv) The exemption affidavit will contain such other information as may be necessary for completion and return of the affidavit.

(4) *Filing of exemption affidavits.* In order to obtain an exemption from incremental pricing, an owner or operator of an industrial boiler fuel facility shall file an executed exemption affidavit, signed and dated by a responsible official, under oath, with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, and send a copy of the executed affidavit to the natural gas supplier serving the industrial boiler fuel facility.

(5) *Effect of filing an exemption affidavit.* (i) If the owner or operator of an industrial boiler fuel facility affirmatively responds to any of the questions (A) through (E), as set out in subparagraph (3), and files the affidavit in accordance with subparagraph (4), then natural gas used in the facility shall be exempt from incremental pricing under this part.

(ii) If the owner or operator of an industrial boiler fuel facility affirmatively responds to any of the questions (F) through (I) as set out in subparagraph (3), and files the affidavit in accordance with subparagraph (4), then natural gas used in the industrial boiler fuel facility shall be exempt from incremental pricing to the extent determined in accordance with the applicable provision of subparagraph (6).

(6) *Determination of extent of partial exemption.* (i) If the owner or operator of an industrial boiler fuel facility affirmatively responds to question (F) as set out in subparagraph (3), the volume of natural gas used in the facility which shall be exempt from incremental pricing shall be determined on the basis of and to the extent there are submeter reading records for each billing month, as signed under oath by a responsible company official, that show the extent to which gas is consumed for an agricultural use and that are made available to the facility's natural gas supplier as required by the supplier for billing purposes.

(ii) If the owner or operator of an industrial boiler fuel facility affirmatively responds to any of the questions (G) through (I), the volume of natural gas used in the facility which shall be exempt from incremental pricing shall be determined on the basis of and to the extent there are submeters which permit determination of the volume of exempt usage and which are available to be read by the facility's natural gas supplier as required for billing purposes.

(7) *Effective date of exemption.* (i) If the owner or operator of an industrial boiler fuel facility files an exemption affidavit with the Commission and sends a copy to the facility's natural gas supplier in accordance with subparagraph (4) on or before December 31, 1979, the facility shall be exempt from incremental pricing under this part as of January 1, 1980.

(ii) If the owner or operator of an industrial boiler fuel facility files an exemption affidavit with the Commission and sends a copy to the facility's natural gas supplier in accordance with subparagraph (4) on or after January 1, 1980, the facility shall be exempt from incremental pricing under this part as of the beginning of the first full billing month following the date the exemption affidavit is filed with the Commission and received by the facility's natural gas supplier.

(8) *Record retention.* If the owner or operator of an industrial boiler fuel facility obtains an exemption as a result of affirmatively responding to question (A) as set out in subparagraph (3), the owner or operator shall retain all records, documents or data which formed the basis of the response.

(e) *Public availability of exemption information.* (1) *Executed exemption affidavits.* (i) Copies of executed exemption affidavits which are filed with the Commission shall be available for public inspection at the Office of Public Information, Federal Energy Regulatory Commission, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426.

(ii) Each natural gas supplier shall maintain copies of all executed exemption affidavits which it has received and shall make such copies available for public inspection at its principal place of business during regular business hours.

(2) *Lists of non-exempt facilities.* (i) On or before January 15, 1980, each natural gas supplier shall file with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, a list of all industrial boiler fuel facilities on each supplier's system which did not qualify for an exemption under paragraph (c) or (d) as of December 31, 1979.

(ii) On or before January 15th of each year after 1980, each natural gas supplier shall file a revised list of the non-exempt industrial boiler fuel facilities on such supplier's system. A revised list shall indicate all additions to or deletions from the prior year's list and shall reflect determinations and reaffirmations made pursuant to § 282.205.

(iii) Lists of non-exempt facilities filed in accordance with clause (i) or (ii) shall be available for public inspection through the Office of Public Information, Federal Energy Regulatory Commission, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426.

(iv) Each natural gas supplier shall make lists filed in accordance with clause (i) or (II) available for public inspection at its regular place of business during regular business hours.

(f) *Protests.* Any interested person may protest the exemption of an industrial boiler fuel facility form incremental pricing. The procedures set forth in § 1.10 shall govern the filing of such a protest.

§ 282.205 Annual reinstatement of exemptions.

(a) *Review of exemption determinations by natural gas suppliers.* On or before December 31, 1980, and December 31st of every year thereafter, each natural gas supplier shall review the determinations made by its pursuant to § 282.204(b) in order to ascertain whether all such determinations remain accurate.

(b) *Filing of reaffirmations of eligibility for exemption.* On or before December 31st of 1980 and of every year thereafter, the owner or operator of each industrial boiler fuel facility which has been exempted in part or in whole from the incremental pricing program during the immediately preceding calendar year through the filing of an exemption affidavit pursuant to § 282.204(d) or a reaffirmation of such affidavit, as set forth herein, shall, if appropriate, file a reaffirmation of eligibility for exemption from the incremental pricing program, signed and dated by a responsible official, under oath, with the Secretary, Federal Energy Regulatory Commission, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426, and send a copy of the executed reaffirmation affidavit to the natural gas supplier serving the industrial boiler fuel facility.

(c) *Effect of not filing a reaffirmation.* (1) If a natural gas supplier does not receive by December 31st of 1980 and every year thereafter a reaffirmation of eligibility with respect to an industrial boiler fuel facility which it has treated as a partially or wholly exempt facility during the immediately preceding calendar year, the natural gas supplier shall add the facility to the list of non-exempt industrial boiler fuel facilities which it files with the Commission under § 282.204(e)(2)(ii) and shall treat the facility as a non-exempt facility beginning with the next full billing month following the December 31 date.

(2) An industrial boiler fuel facility may file an entirely new exemption affidavit rather than a reaffirmation affidavit in order to reflect a change of circumstances in the operations of the facility.

(d) *Commission to provide reaffirmation affidavits.* Affidavits for the reaffirmation of eligibility for exemption from the incremental pricing program will be available to natural gas suppliers and to any other interested person upon request from the Office of Public Information, Federal Energy Regulatory Commission, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426.

(e) *Natural gas suppliers to make reaffirmation affidavits available.* (1) *Initial service.* On or before December 15, 1980 and December 15 of each following year, each natural gas supplier shall mail or otherwise supply a reaffirmation affidavit to the owner or operator of each industrial boiler fuel facility which has been exempted in whole or in part from the incremental pricing program during the immediately preceding calendar year through the filing of either an exemption affidavit pursuant to § 282.204(d) or a reaffirmation of eligibility affidavit pursuant to paragraph (b).

(2) *Ongoing availability.* Natural gas suppliers shall make reaffirmation affidavits available at their principal place of business on an ongoing basis during regular business hours.

§ 282.206 Petitions for exemptions under § 206(d).

(a) *General rule.* Any interested person may petition under authority of subsection 206(d) of the NGPA for the exemption, in whole or in part, of any non-exempt industrial boiler fuel facility or category thereof.

(b) *Filing requirements.* A petition for an exemption under authority of subsection 206(d) shall:

(1) Conform to the requirements of § 1.7;

(2) Contain sufficient information and data to permit review of the petition on the merits; and

(3) Provide an analysis of any environmental issues which are relevant to the request for an exemption.

(c) *Notice.* Public notice of the filing of a petition for an exemption under authority of subsection 206(d) shall be given with opportunity for comment by interested persons.

(d) *Denial without prejudice.* A petition for an exemption under authority of subsection 206(d) which is not acted upon within 60 days of the date for submission of comments shall be deemed denied without prejudice.

Subpart C—Determination of Costs Subject to Incremental Pricing

§ 282.301 Costs subject to incremental pricing.

The costs specified in this section are acquisition costs which shall be subject to the passthrough provisions of this part.

(a) *New natural gas.* In the case of new natural gas (as defined in section 102(c) of the NGPA), any portion of the first sale acquisition cost of such natural gas which exceeds the incremental pricing threshold applicable for the month in which the delivery of such natural gas occurs shall be subject to this part.

(b) *Natural gas under intrastate rollover contract.* In the case of natural gas delivered under a rollover contract which was not committed or dedicated to interstate commerce on November 8, 1978, any portion of the first sale acquisition cost of such natural gas which exceeds the incremental pricing threshold applicable for the month in which the delivery occurs shall be subject to this part.

(c) *New, onshore production well gas.* In the case of natural gas produced from any new, onshore production well (as defined in section 103(c) of the NGPA), any portion of the first sale acquisition cost of such natural gas which exceeds the incremental pricing threshold applicable for the month in which the delivery of such natural gas occurs shall be subject to this part.

(d) *LNG imports.* (1) Subject to the provisions in subparagraph (2), in the case of liquefied natural gas imported into the United States, any portion of the first sale acquisition cost of such natural gas (whether or not liquefied when acquired) which exceeds the incremental pricing threshold applicable for the month in which such liquefied natural gas enters the United States shall be subject to this part.

(2) Costs of liquefied natural gas imported into the United States shall not be subject to this part if:

(i) The importation of the liquefied natural gas was authorized under section 3 of the Natural Gas Act on or before May 1, 1978;

(ii) An application for such authority was pending under section 3 of the Natural Gas Act on such date, except as set forth in subparagraph (3) below; or

(iii) In connection with the granting of any authority under the Natural Gas Act to import such liquefied natural gas, the Secretary of the Department of Energy or the Commission, in accordance with the Department of Energy Organization Act (or any delegation or assignment thereunder), determines that a contract binding on the importer or other substantial financial commitment of the importer was made on or before such date, except as set forth in subparagraph (3) below.

(3) Clauses (ii) and (iii) of subparagraph (2) shall not apply with respect to any liquefied natural gas imports if, in connection with the granting of any authority under the Natural Gas Act to import such liquefied natural gas, the Secretary of the Department of Energy or the Commission, in accordance with the assignment of functions under the Department of Energy Organization Act, determines that the portion of the costs of such imports as described in subparagraph (1) shall be subject to this part.

(e) *Natural gas (other than LNG) imports.* (1) Subject to subparagraph (2), in the case of natural gas (other than liquefied natural gas) imported into the United States, any portion of the first sale acquisition cost of such imported natural gas which exceeds the maximum lawful price, per million Btu's, computed under section 102 of the NGPA (relating to new natural gas) for the month in which such natural gas enters the United States without regard to section 110 of the NGPA, shall be subject to this part.

(2) Subject to subparagraph (3), subparagraph (1) shall only apply to costs of volumes of natural gas (other than liquefied gas) imported into the United States which exceed both:

(i) The maximum delivery obligations for the month in which such delivery of natural gas occurs, as specified by contracts entered into on or before May 1, 1978 and in effect when such delivery occurs; and

(ii) The volume of natural gas imported into the United States by the interstate pipeline involved during the corresponding month of calendar year 1977.

(3) Subparagraph (2) notwithstanding, subparagraph (1) shall apply to the portion of first sale acquisition costs, as described in subparagraph (1), of volumes of natural gas (other than liquefied natural gas) imported into the United States which exceed the volume of natural gas imported into the United States by the interstate pipeline involved during calendar year 1977 if, in connection with the granting of any authority under the Natural Gas Act to import such natural gas, the Secretary of the Department of Energy or the Commission, in accordance with the assignment of functions under the Department of Energy Organization Act, determines that subparagraph (1) shall apply with respect to such natural gas imports.

(f) *Stripper well natural gas.* In the case of stripper well natural gas (as defined in section 108(b) of the NGPA) any portion of the first sale acquisition cost of such natural gas which exceeds the maximum lawful price, per million Btu's, computed under section 102 of the NGPA (relating to new natural gas) for the month in which the delivery of such gas occurs without regard to section 110 of the NGPA, shall be subject to this part.

(g) *High-cost natural gas.* In the case of high-cost natural gas (as defined in section 107(c) of the NGPA), any portion of the first sale acquisition cost of such natural gas which exceeds 130 percent of—

(1) The weighted average per barrel cost of No. 2 fuel oil landed in the greater New York City metropolitan area, as published by the energy Information Administration of the Department of Energy, during the month preceding the month in which delivery of such natural gas occurs, divided by,

(2) A Btu conversion factor of 5.8 million Btu's per barrel—shall be subject to this part.

(h) *Alaska Natural Gas Transportation System.* In the case of natural gas produced from the Prudhoe Bay Unit of Alaska (as defined in section 2 of the NGPA), and transported

through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976, the following amounts shall be subject to this part:

(1) Any portion of the first sale acquisition cost of natural gas which is not described in subparagraph (2) and which exceeds the maximum lawful price, per million Btu's computed under section 109 of the NGPA (relating to other categories of natural gas) for the month in which delivery of such natural gas occurs without regard to section 110 of the NGPA; and

(2) Any amount paid to any person (other than the producer of such natural gas or an affiliate of such producer) for, or attributable to, any compressing, gathering, processing, treating, liquefying, or transporting of such natural gas, or any similar service provided with respect to such natural gas, before the delivery of such natural gas to such system.

(i) *Increased state severance taxes.* (1) Subject to the provisions of subparagraph (2), any portion of the cost of natural gas at any first sale attributable to any increase in the amount of state severance taxes (as defined in section 110(c) of the NGPA) which results from a provision of state law enacted on or after December 1, 1977, shall be subject to this part.

(2) Subparagraph (1) shall not apply to any increase in state severance taxes resulting from a change in the method of computation of such tax by reason of any provision of state law enacted on or after December 1, 1977, if;

(i) As of the effective date of such change in method of computation, such increase does not result in an increase in the level of such tax, expressed as a percentage of the weighted average first sale price of natural gas produced in such state, above the percentage of such average first sale price which such tax constituted on the day before such effective date; and

(ii) Such provision of law is equally applicable to natural gas produced in the state and delivered to interstate commerce and to natural gas produced in the state and not so delivered.

(3) The price to be used in determining the weighted average first sale price for purposes of subparagraph (2) shall be the price paid at the first sale which is used by the State in administering such tax (or an imputed value, if the state uses an event other than a first sale in administering such tax).

(j) *Transactions under section 311(b) of the NGPA.* In the case of any sale under section 311(b) of the NGPA by an intrastate pipeline to an interstate pipeline or a local distribution company, any portion of the amount paid, per million Btu's, by the purchaser to the intrastate pipeline which exceeds the incremental pricing threshold for the month in which the acquisition of the natural gas occurs shall be subject to this part.

(k) *Pipeline produced gas.* (1) In the case of any natural gas produced by an interstate pipeline which is priced in its overall cost of service without regard to the cost of producing the gas, any portion of the first sale acquisition cost imputed under § 282.303 shall be subject to this part if it would have been subject to this part under paragraphs (a) through (h) had the gas been produced by an independent producer and purchased by the interstate pipeline at the imputed level.

(2) Gas produced by interstate pipelines which is treated, for rate purposes, on a cost of service basis shall not be subject to this part.

(3) Costs of gas produced by producers affiliated with interstate pipelines shall be treated as production by an independent producer and shall be subject to this part, except to the extent that different treatment has been found appropriate under the Natural Gas Act.

(l) *Surcharges paid to other pipelines.* The amount of any incremental pricing surcharge (described in § 282.504) paid by any interstate pipeline for natural gas acquired by such pipeline from another pipeline shall be subject to this part.

§ 282.302 Gas qualifying under more than one provision.

If natural gas qualifies under more than one paragraph of § 282.301, the paragraph which reflects a determination made in acordance with section 101(b)(5) of the NGPA and regulations promulgated thereunder shall be applicable for purposes of determining the portion of the first sale acquisition costs of such natural gas which shall be subject to passthrough under this part.

§ 282.303 First sale acquisition cost.

(a) *General rule.* For purposes of this part, the first sale acquisition cost of natural gas is:

(1) the price paid, per million Btu's, in any first sale of such natural gas, in the case of any natural gas produced in the United States and acquired in such first sale; or

(2) the price paid for such natural gas, per million Btu's, at the point of entry to the United States, in the case of natural gas or liquefied natural gas imported into the United States.

(b) *State severance taxes.* Any amount of state severance taxes paid at any first sale shall not be included in determining the price paid for purposes of paragraph (a).

(c) *Pipeline produced gas.* A first sale acquisition cost shall be imputed to gas produced by an interstate pipeline which is priced in its overall cost of service without regard to the cost of producing the gas. The imputed cost shall be the maximum lawful price which would have been paid under Title I of the NGPA if the gas had been produced by an independent producer. The determination of this maximum lawful price shall be made by the body which, by terms of the NGPA and the regulations promulgated thereunder, would have made the determination if the gas had been produced by an independent producer.

§ 282.304 Incremental pricing threshold.

(a) *General rule.* For purposes of this part, the incremental pricing threshold applicable for any month shall be:

(1) $1.48 per million Btu's in the case of March 1978; and

(2) in the case of any month thereafter, the amount, per million Btu's, determined under this section for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor (as defined in section 101(a) of the NGPA) applicable for such month.

(b) *Publication.* Not later than 5 days before the beginning of each month, commencing with January, 1980, the Commission shall issue the incremental pricing threshold applicable for such month. As soon as possible thereafter, such incremental pricing threshold shall be published in the **Federal Register.**

Subpart D [Proposed in notice of proposed rulemaking issued May 11, 1979 (44 FR 29090, May 18, 1979)]

Subpart E—Incremental Pricing Accounts and Surchares

§ 282.501 General rule.

(a) Each natural gas supplier shall, on a monthly basis, accumulate in an unrecovered incremental gas costs account, as provided in § 282.502, the costs described in paragraph (a) through (k) of § 282.301 as being subject to passthrough under this part.

(b) Each interstate pipeline shall derive a reduced PGA rate for each PGA period, as provided in § 282.503.

(c) Each month, in accordance with § 282.504, each natural gas supplier shall bill incremental pricing surcharges to the sale for resale customers and the

non-exempt industrial boiler fuel facilities on the supplier's system.

(1) Surcharges shall be calculated to recover the lesser of the total incremental gas costs, as defined in § 282.504, which were incurred by the supplier during the prior month or an amount equivalent to the maximum surcharge absorption capability of the supplier's customers.

(2) The maximum surcharge absorption capability of a non-exempt industrial boiler fuel facility shall be the difference between the cost to the facility for its use of natural gas, calculated on the basis of the rates of its natural gas suppliers before inclusion of incremental pricing surcharges, and the cost of that same volume of natural gas priced at the alternative fuel price ceiling applicable to the facility.

(d) Each month, in accordance with § 282.505, the amount accumulated in the natural gas supplier's unrecovered incremental gas costs account which cannot be recovered by way of incremental pricing surcharges shall be transferred from that account to account 191, Unrecovered Purchased Gas Costs.

§ 282.502 Accounting.

(a) *General rule.* For purposes of incremental pricing, each natural gas supplier shall establish an unrecovered incremental gas costs account, an unrecovered incremental surcharges account and an incremental gas cost adjustments account.

(b) *Establishment of accounts.* (1) *Unrecovered incremental gas costs account.* Each natural gas supplier shall establish an unrecovered incremental gas costs account.

Such account shall be designated account 192.1, Unrecovered Incremental Gas Costs, for interstate pipeline following the Uniform System of Acounts, Parts 201 and 204 of this chapter. The underlying records of such account shall be maintained to permit identification of:

(i) Each purchase that gave rise to costs being charged to the account;

(ii) The paragraph of § 282.301 under which the costs associated with such purchase qualify for inclusion in the account; and

(iii) Any other charges to the account.

(2) *Unrecovered incremental surcharges account.* The unrecovered incremental surcharges account shall be designated account 192.2, Unrecovered Incremental Surcharges, for interstate pipelines following the Uniform System of Accounts, Parts 201 and 204 of this chapter. The underlying records of this account shall be maintained so as to permit identification of each incremental pricing surcharge debited to the account in accordance with paragraph (e).

(3) *Incremental gas cost adjustments account.* Each natual gas supplier shall establish an incremental gas cost adjustments account. Such account shall be designated account 805.2, Incremental Gas Cost Adjustments, for interstate pipelines following the Uniform System of Accounts, Part 201 of this chapter. Such account shall be designated account 731.2, Incremental Gas Cost Adjustments, for interstate pipelines following the Uniform System of Accounts, Part 204 of this chapter.

(c) *Debiting the unrecovered incremental gas costs account.* The unrecovered incremental gas costs account shall be debited and the incremental gas cost adjustment account shall be credited with:

(1) Costs described in paragraphs (a) through (k) of § 282.301 which are incurred during each calendar month; and

(2) Any other costs as permitted by order of the Commission.

(d) *Crediting the unrecovered incremental gas costs account.* (1) The unrecovered incremental gas costs account shall be credited and the incremental gas cost adjustments account shall be debited when costs included in the unrecovered incremental gas costs account are recovered by means of incremental pricing surcharges.

(2) The unrecovered incremental gas costs account shall be credited with any amount which was accumulated in the account for gas received during a calendar month but which, due to the alternative fuel price ceilings established pursuant to § 282.404, cannot be collected by way of incremental pricing surcharges to be billed during the subsequent month. Such amount may be transferred to account 191 immediately, but no later than the end of the month in which the applicable surcharges are billed.

(e) *Debiting the unrecovered incremental surcharges account.* A natural gas supplier's unrecovered incremental surcharges account shall be debited and the incremental gas cost adjustment account shall be credited with any incremental pricing surcharge which is billed to it by its supplier in accordance with a tariff sheet filed by such supplier in accordance with § 282.602.

(f) *Crediting the unrecovered incremental surcharges account.* The unrecovered incremental surcharges account shall be credited and the incremental gas cost adjustments account shall be debited for those amounts which are recovered by means of an incremental pricing surcharge.

§ 282.503 PGA reduction.

(a) *General rule.* (1) An interstate pipeline company which files purchased gas adjustment (PGA) rate changes with the Commission under authority of § 154.38(d) shall, each PGA period, reduce its total projected gas acquisition cost by the amount which it projects it will recover during the next PGA period through incremental pricing surcharges. The total projected gas acquisition cost, as reduced, shall be used to derive the pipeline's PGA rate for the coming PGA period in the manner prescribed in the pipeline's effective PGA provision.

(2) The amount which an interstate pipeline projects it will recover through incremental pricing surcharges during a PGA period shall be the lesser of:

(i) The costs subject to incremental pricing, as described in paragraphs (a) through (l) of § 282.301, which the pipeline projects it will incur during the coming PGA period; or

(ii) The total of the projected maximum surcharge absorption capabilities (MSAC) of each of the non-exempt industrial boiler fuel facilities directly served by the pipeline, as computed in accordance with paragraph (b), plus the total of the projected MSAC's of the pipeline's sale for resale customers, as determined by each of the customers in accordance with paragraph (c) and reported to the pipeline in accordance with paragraph (d).

(b) *Projected MSAC of a non-exempt industrial boiler fuel facility.* (1) The projected MSAC of a non-exempt industrial boiler fuel facility for a coming PGA period shall be calculated by a natural gas supplier in accordance with the following formula:

$$M = [(A_1 - R_1)\,V_1] + [(A_2 - R_2)\,V_2] + \cdots + [(A_n - R_n)\,V_n]$$

where:

M = Projected MSAC of the non-exempt industrial boiler fuel facility.

A = Projected alternative fuel price ceiling for the non-exempt industrial boiler fuel facility, plus taxes, as determined in accordance with subparagraph (2).

R = Projected rate per million Btu's (excluding any incremental pricing surcharge), plus taxes, at which the non-exempt industrial boiler fuel facility will purchase natural gas, as determined in accordance with subparagraph (3).

V = Projected volume of natural gas (at 1,000 Btu's per cubic foot) that the non-exempt industrial boiler fuel facility will purchase from the natural gas supplier and use for boiler fuel, as estimated for each of the months "1" through "n" of the PGA period.

n = Last month of the PGA period.

(2)(i) As a value for "A" for each of the months "1" through "n" of the coming PGA period, a natural gas supplier shall use the most recently established alternative fuel price ceiling applicable to the facility, plus taxes, unless the supplier elects to estimate the applicable alternative fuel price ceilings for each of the months of the PGA period. In that case, the estimated ceilings, plus taxes, may be used as values for "A".

(ii) If a local distribution company desires assistance in estimating applicable alternative fuel price ceilings for each of the months of the coming PGA period, the interstate pipeline which supplies the local distribution company shall provide such assistance.

(3)(i) *Local distribution company.* As a value for "R" for each of the months "1" through "n" of the coming PGA period, a local distribution company shall use its effective rate per million Btu's at the time of projection, plus taxes but exclusive of any incremental pricing surcharges, unless the local distribution company elects to adjust such rate to reflect general rate changes which it is known will occur during the PGA period under authority of a state or local regulatory body. If the local distribution company elects to adjust the rate, the values used for "R" may reflect the adjustments for the months of the PGA period for which the adjustments are appropriate.

(ii) *Interstate pipeline.* As a value for "R" for each of the months "1" through "n" of the coming PGA period, an interstate pipeline shall use its effective contract rate per million Btu's at the time of projection, plus taxes but exclusive of any incremental pricing surcharges, unless the pipeline elects to adjust such rate to reflect rate changes which it is known will occur during the PGA period.

(c) *Projected MSAC of a sale for resale customer.* With respect to each of its natural gas suppliers, the projected MSAC of a sale for resale customer shall be derived by adding the sum of the projected MSAC's of the non-exempt industrial boiler fuel facilities served directly by the sale for resale customer, as determined in accordance with paragraph (b), to the sum of the projected MSAC's of the customer's own sale for resale customers, as reported in accordance with paragraph (d), and multiplying the resulting total by the percentage reflecting the ratio between:

(i) The volume of natural gas (at 1,000 Btu's per cubic foot) which the customer estimates it will purchase from the supplier during the coming PGA period; and

(ii) The total of:

(A) The volume of natural gas (at 1,000 Btu's per cubic foot) which the customer estimates it will purchase from interstate pipelines;

(B) The volume of natural gas (at 1,000 Btu's per cubic foot) which is included in any of the categories specified in paragraphs (a) through (k) § 282.301 and which the customer estimates it will purchase from sources other than interstate pipelines; and

(C) If the sale for resale customer is an interstate pipeline, the estimated volume of pipeline produced natural gas (at 1,000 Btu's per cubic foot) to which a first sale acquisition cost will be imputed under paragraph (c) of § 282.303.

(d) *Reporting.*—(1) *Pipeline to request information.* Prior to the beginning of each of its PGA periods, each interstate pipeline shall request that each of its sale for resale customers report to it the customer's projected MSAC in a timely fashion.

(2) *Pipeline customers to report.* Each natural gas supplier shall respond to the requests of interstate pipelines for projected MSAC's for a coming PGA period in a timely fashion.

(iii) *Scheduling by the Commission.* In those instances where the Commission finds that natural gas suppliers have not arranged for the reporting of information in accordance with this section, the Commission shall prescribe by order an appropriate schedule for the expeditious transmission of the information necessary for interstate pipelines to make their regular PGA filings with the Commission.

§ 282.504 Incremental pricing surcharge.

(a) *General rule.* Each natural gas supplier shall include an incremental pricing surcharge, stated as a dollar amount, in its monthly bills to the non-exempt industrial boiler fuel facilities and sale for resale customers on its system. Surcharges billed to non-exempt industrial boiler fuel facilities shall be determined in accordance with paragraph (c). Surcharges billed to sale for resale customers shall be determined in accordance with paragraph (d). Such surcharges shall recover, subject to the limitation of the alternative fuel price ceilings described in § 282.404, the total incremental gas costs as defined in paragraph (b), which were incurred by the natural gas supplier during the previous month.

(b) *Definitions.* For purposes of this section:

(1) "Total incremental gas costs" means the sum of the following:

(i) the amount of the costs accumulated in a natural gas supplier's unrecovered incremental gas cost account for a period; and

(ii) any incremental pricing surcharges imposed on the natural gas supplier by its own supplier(s) for that period.

(2) "Billing month" means, for a non-exempt industrial boiler fuel facility, the period between the meter reading on or about the twentieth day of one month and the meter reading on or about the twentieth day of the following month, *provided that* for the month of January 1980, the billing month shall commence January 1, 1980.

(c) *Surcharges on non-exempt industrial boiler fuel facilities.* (1) *General rule.* The incremental pricing surcharge to be billed for the previous billing month by a natural gas supplier for each of the non-exempt industrial boiler fuel facilities which it directly serves shall, subject to subparagraph (4), be the lesser of:

(i) The MSAC of the non-exempt industrial boiler fuel facility for the previous billing month, as determined in the manner described in subparagraph (2); or

(ii) The non-exempt industrial boiler fuel facility's pro rata share of the total incremental gas costs incurred by its natural gas supplier during the previous calendar month, as determined in the manner described in subparagraph (3) of this paragraph.

(2) *MSAC of a non-exempt industrial boiler fuel facility.* (i) The MSAC of a non-exempt industrial boiler fuel facility for the previous billing month shall be determined in accordance with the following formula:

$$M = [(A - R)(V)]$$

where:

M=MSAC of the non-exempt industrial boiler fuel facility.

A=Alternative fuel price ceiling applicable to the non-exempt industrial boiler fuel facility for the billing month, plus taxes.

R=Rate per million Btu's (excluding any incremental pricing surcharge), plus taxes, at which the non-exempt industrial boiler fuel facility purchased gas from the natural gas supplier during the billing month.

V=Volume of natural gas (at 1,000 Btu's per cubic foot) supplied by the natural gas supplier to the non-exempt industrial boiler fuel facility for boiler fuel use during the billing month, as determined in accordance with clause (ii).

(ii) The volume of natural gas supplied by a natural gas supplier to a non-exempt industrial boiler fuel facility for boiler fuel use during a billing month shall be deemed to be the total volume of natural gas supplied to the facility during the billing month, unless the

natural gas supplier serving the facility distinguishes the volumes used for boiler fuel from the volumes not so used on the basis of submeter readings. If volumes used for boiler fuel are so identified, such volumes shall be used for purposes of determining the MSAC of the non-exempt industrial boiler fuel facility in accordance with clause (i).

(3) *Pro rata share of total incremental gas costs.* A non-exempt industrial boiler fuel facility's pro rata share of the total incremental gas costs incurred by its natural gas supplier during the previous calendar month shall be determined by multiplying the total incremental gas costs by a percentage reflecting the ratio between:

(i) The MSAC of the non-exempt industrial boiler fuel facility for the previous billing month, as determined in accordance with subparagraph (2); and

(ii) The sum of the MSAC's of the non-exempt industrial boiler fuel facilities on the natural gas supplier's system, as determined for the previous billing month in accordance with subparagraph (2), plus the sum of MSAC's reported to the natural gas supplier by its sale for resale customers for the previous month.

(4) *Optional billing procedures for local distribution companies.* A local distribution company may elect to bill non-exempt industrial boiler fuel facilities served by it at the level of the alternative fuel price ceilings which are applicable to such facilities.

(i) If a local distribution company bills a non-exempt industrial boiler fuel facility at the level of the applicable alternative fuel price ceiling for service during the previous billing month and the MSAC of the non-exempt boiler fuel facility for such billing month exceeds the facility's pro rata share of the total incremental gas costs incurred by the local distribution company during the previous calendar month, then such local distribution company shall either refund the excess to the facility during the month after the bill was rendered or shall make such other disposition of such amount as may be ordered by a state or local regulatory authority having jurisdiction over the local distribution company.

(ii) An election made by a local distribution company in accordance with clause (i) shall be subject to review and action by a state or local regulatory authority which has jurisdiction over such company.

(d) *Surcharges on sale for resale customers.* (1) *General rule.* The incremental pricing surcharge to be collected by a natural gas supplier from each of its sale for resale customers shall be the lesser of:

(i) The MSAC of the sale for resale customer for the previous month, as determined by the customer in the manner described in subparagraph (2) of this paragraph and reported to the natural gas supplier pursuant to paragraph (e); or

(ii) The sale for resale customer's pro rata share of the total incremental gas costs incurred by its natural gas supplier during the previous month, such share being determined in the manner described in subparagraph (3) of this paragraph.

(2) *MSAC of a sale for resale customer.* With respect to each of its natural gas suppliers, the MSAC of a sale for resale customer shall be derived by adding the sum of the MSAC's of the non-exempt industrial boiler fuel facilities served directly by the sale for resale customer, as determined for the previous billing month in accordance with subparagraph (2) of paragraph (c), to the sum of the MSAC's of the customer's own sale for resale customers, as reported for the previous month in accordance with paragraph (e), and multiplying the resulting total by the percentage reflecting the ratio between:

(i) The volume of natural gas (at 1,000 Btu's per cubic foot) purchased by the customer from the natural gas supplier during the previous month; and

(ii) The total of:

(A) The volume of natural gas (at 1,000 Btu's per cubic foot) which the customer purchased from interstate pipelines during the previous month;

(B) The volume of natural gas (at 1,000 Btu's per cubic foot) which is included in any of the categories specified in paragraphs (a) through (k) of § 282.301 and which the customer purchased from sources other than interstate pipelines during the previous month; and

(C) If the sale for resale customer is an interstate pipeline, the volume of pipeline produced natural gas (at 1,000 Btu's per cubic foot) to which a first sale acquisition cost has been imputed under paragraph (c) of § 282.303.

(3) *Pro rata share of total incremental gas costs.* A sale for resale customer's pro rata share of the total incremental gas costs incurred by its natural gas supplier during the previous month shall be determined by the ratio between:

(i) The MSAC reported to the natural gas supplier by the sale for resale customer for the previous month in accordance with paragraph (e); and

(ii) The sum of the MSAC's of the non-exempt industrial boiler fuel facilities on the natural gas supplier's system, as determined for the previous billing month, in accordance with subparagraph (2) of paragraph (c), plus the sum of the MSAC's reported to the natural gas supplier by its sale for resale customers for the previous month in accordance with paragraph (e).

(e) *Reporting.*—(1) *Pipeline to request information.* Each interstate pipeline shall request that, each month, each of its sale for resale customers report its MSAC to the pipeline in a timely fashion for the monthly billing of incremental pricing surcharges.

(2) *Pipeline customers to report.* Each month each natural gas supplier shall respond to the requests of interstate pipelines for its MSAC.

(3) *Suppliers to customers.* Each month each natural gas supplier shall inform each of its sale for resale customers of the amount of the incremental pricing surcharge which will be billed to such customer. Such information shall be conveyed within sufficient time so as to enable the last customer in a chain of sale for resale customers to bill incremental pricing surcharges to its customers in a timely fashion.

(f) *Scheduling by the Commission.* In those instances where the Commission finds that natural gas suppliers have not arranged for the reporting of information in accordance with this section, the Commission will prescribe by order an appropriate schedule for the transmission of the information necessary for the monthly billing of incremental pricing surcharges.

§ 282.505 Recovery of amounts in excess of the maximum surcharge absorption capabilities.

(a) The amount accumulated in a natural gas supplier's unrecovered incremental gas costs account for gas received during a calendar month which, due to alternative fuel price ceilings, cannot be recovered through incremental pricing surcharges shall:

(1) In the case of interstate pipelines, be collected under the Commission's provisions governing recovery of unrecovered gas costs as set forth in § 154.38(d)(4); and

(2) In the case of local distribution companies, be recovered in the manner permitted by the appropriate state or local authority.

Subpart F—Filing Requirements

§ 282.601 FERC gas tariff provisions.

(a) *Incremental pricing surcharge provision.* Each interstate pipeline shall establish an incremental pricing surcharge provision in its FERC Gas Tariff. The incremental pricing surcharge provision shall provide for the

pass-through of costs in accordance with the requirements of this part.

(b) *Revised PGA provision.* Each interstate pipeline shall revise its PGA provision, as established in accord with § 154.38(d), to provide for a reduced PGA rate in accordance with the requirements of this part.

(c) *Filing dates.* The incremental pricing surcharge provision and revised PGA provision shall be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 and served on all parties by November 1, 1979. The provision shall become effective on December 1, 1979, unless disapproved in whole or in part by the Commission.

§ 282.602 Tariff sheets.

(a) *General rule.* (1) On or before December 1, 1979, for the period January 1, 1980 to the effective date of the pipeline's next normally scheduled PGA filing, each interstate pipeline shall file concurrently:

(i) A tariff sheet reflecting a reduced PGA rate as determined in accordance with § 282.503; and

(ii) For informational purposes only, and so labeled, a tariff sheet reflecting projected incremental pricing surcharges, as determined on the basis of data used in deriving the reduced PGA rates referenced in clause (i), for each of the non-exempt industrial boiler fuel facilities and sale for resale customers on the pipeline's system.

(2) Revisions to the tariff sheets filed pursuant to subparagraph (1) shall be filed in accordance with each interstate pipeline's normal PGA schedule, as necessary to revise the previously effective tariff sheets.

(b) *Form and filing requirements.* Any tariff sheet filed pursuant to paragraph (a) shall be subject to the provisions and requirements of Part 154 of this chapter.

(c) *Service.* The interstate pipeline which files tariff sheets pursuant to paragraph (a) shall concurrently serve copies on each sale for resale customers subject to the tariff sheets and each interested state commission.

(d) *Material to be submitted.* (1) Tariff sheets filed pursuant to paragraph (a) shall be accompanied by a report containing computations showing the derivation of the reduced PGA rate and the incremental pricing surcharges set forth in such tariff sheets.

(2) Tariff sheets filed pursuant to paragraph (a) shall be accompanied by a supplement to the statement of a pipeline's current cost of purchased gas as required by § 154.38(d).

(i) Such supplement shall identify, for the prior PGA period, each source of supply by API well identification number, contract date and FERC rate schedule number. Where multiple wells are metered through a common delivery point or where production from multiple wells is sold under a single contract, the supplement shall identify each well that produces gas which is subject to this part. Such supplement shall identify the price paid for gas from each well identified in accordance with this paragraph.

(ii) Such supplement shall show for account 192.1, for the prior PGA period:

(A) Total monthly debits to such account;

(B) Total monthly credits to such account resulting from the recovery of costs by means of incremental pricing surcharges; and

(C) The monthly amount credited to clear the account to account 191 and the date the clearing entry was made.

(iii) Such supplement shall show for account 192.2, for the prior PGA period:

(A) The incremental pricing surcharges debited to the account each month by the pipeline; and

(B) The total monthly credits to the account resulting from the recovery of costs by means of incremental pricing surcharges.

(e) *Additional information.* The Commission may, upon receipt of a tariff sheet filed pursuant to this section, require the submission of additional information as it deems necessary and appropriate.

§ 282.603 Informational filings.

(a) *General rule.* For informational purposes, each month commencing March 1, 1980, each interstate pipeline company shall tender to this Commission a statement setting forth the incremental pricing surcharge actually billed to each non-exempt industrial boiler fuel facility and sale for resale customer on its system in the preceding month.

(b) *Address.* The informational filings required by paragraph (a) shall be addressed to Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Appendix A

Federal Energy Regulatory Commission, Washington, D.C. 20426.

Docket No. RM79-14

Exemptions From Incremental Pricing for Certain Categories of Industrial Boiler Fuel Use of Natural Gas

Participation is Voluntary.

Copies of executed exemption affidavits filed with the Commission shall be available through the Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Please Read Before Completing This Affidavit

Purpose

The Natural Gas Policy Act of 1978 (NGPA) provides that natural gas used as boiler fuel by any industrial boiler fuel facility will be subject to incremental pricing surcharges unless otherwise exempted. The statute also provides for certain exemptions from these incremental pricing surcharges. To be wholly or partially exempt from incremental pricing surcharges the boiler fuel must be consumed for one of the statutorily exempt uses. This affidavit serves the purpose of identifying those natural gas uses within your facility which are entitled to a full or partial statutory exemption from incremental pricing surcharges but which could not be identified as exempt through review of the records of your natural gas supplier. If a facility has not been identified as totally or partially exempt from incremental pricing surcharges through review of your natural gas supplier's records or through the filing of this affidavit in accordance with the general instructions below, all gas sold to the facility will be subject to incremental pricing surcharges.

General Instructions

If you claim an exemption from incremental pricing surcharges for all, or a portion, of the gas used by your facility which has been identified by your natural gas supplier as a potentially non-exempt industrial boiler fuel facility, this affidavit should be completed and signed, under oath, by a responsible official associated with the facility. A separate affidavit must be filed for each facility for which a total or partial exemption from incremental pricing surcharges is claimed.

The original and five copies of this affidavit should be submitted to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Also, one copy must be submitted to your natural gas supplier. Additionally, each industrial facility shall retain such records, documents and data which formed the basis for the exemption claimed on this affidavit. Definitions which may be helpful in completing this affidavit are provided below.

If you have any questions concerning this affidavit contact Mr. Warren Edmunds on (202) 275-4415.

Definitions

(1) "Natural gas supplier" means an interstate pipeline or a local distribution company.

(2) "Boiler fuel use" means the use of any fuel for the generation of steam or electricity.

(3) "Industrial facility" means any facility which primarily changes raw or unfinished materials into another form or product.

(4) "Non-exempt industrial boiler fuel facility" means any industrial boiler fuel facility other than any such facility which has been exempted from the provisions of this part in accordance with Part 282 of the Commission's rules and regulations.

(5) "Agricultural use" means any use of natural gas which is certified by the Secretary of Agriculture under 7 CFR 2900.3 as an "essential agricultural use" pursuant to section 401(c) of the NGPA.

(6) "Qualifying cogeneration facility" means a cogeneration facility which meets the requirements prescribed in § —— of the Commission's rules and regulations.

(7) "School" means a facility the primary function of which is the delivery of instruction to regularly enrolled students in attendance at such facility. Facilities used for both educational and non-educational acitivities are not included under this definition unless the latter activities are merely incidental to the delivery of instruction.

(8) "Hospital" means a facility the primary function of which is the delivery of medical care to patients who remain at the facility. Outpatient clinics or doctor's offices are not included in this definition. Nursing homes and convalescent homes are included in this definition.

(9) "Similar institution" means a facility the primary function of which is the same as the primary function of the facility to which it is compared.

1.0 Name of Company or Organization: ——

* * * * *

2.0 Name of Facility: ——

* * * * *

3.0 Address: ——

Number Street

City/Town County State Zip Code

* * * * *

4.0 Name of Natural Gas Supplier: ——

* * * * *

5.0 Did your facility, on the basis of records, documents or data in your possession, consume less than an average of 300 Mcf per day as boiler fuel during all calendar months during calendar year 1977?

(a) ☐ Yes.....Sign and return affidavit.
(b) ☐ No.....Continue to 6.0

* * * * *

6.0 Is all of the natural gas consumed as boiler fuel at your facility for an agricultural use?

(a) ☐ Yes.....Sign and return affidavit.
(b) ☐ No.....Continue to 7.0

* * * * *

7.0 Is your facility, in its entirety, any of the following:

(a) A qualifying co-generation facility?
☐ Yes ☐ No

(b) A school, hospital, or similar facility?
☐ Yes ☐ No

(c) Used for generation of electricity by an electric generation station owned by an electric utility?
☐ Yes ☐ No

If the answer is "yes" to any of the above, sign and return this affidavit. If the answer is "no", continue to 8.0.

* * * * *

8.0 Is a portion, though not all, of the gas consumed at your facility used as boiler fuel for an agricultural use?

(a) ☐ Yes.....See "NOTICE" below.
(b) ☐ No.....Continue to 9.0

* * * * *

9.0 Is your facility, in part, but not in its entirety, any of the following:

(a) A qualifying co-generation facility?
☐ Yes ☐ No

(b) A school, hospital, or similar facility?
☐ Yes ☐ No

(c) Used for the generation of electricity by an electric generation station owned by an electric utility?
☐ Yes ☐ No

If the answer is "yes" to any of the above, see "NOTICE" below, sign and return this affidavit. If the answer is "no" to all questions in items 5.0 through 9.0, you should not return this affidavit.

* * * * *

Notice

If you have responded affirmatively to question 8.0, the volume of natural gas used in your facility which shall be exempt from incremental pricing shall be determined on the basis of and to the extent there are submeter reading records for each billing month, as signed under oath by a responsible company official; which show the extent to which gas is consumed for an agricultural use and which are made available to the facility's natural gas supplier as required by the supplier.

If you have responded affirmatively to any part of question 9.0, the volume of natural gas which shall be exempt from incremental pricing shall be determined on the basis of and to the extent there are submeters which permit determination of the volume of exempt usage and which are available to be read by the facility's natural gas supplier.

Dated: ——

Person completed this affidavit:

Name

Title

Phone number

Subscribed and sworn to before me this ——day of ——.

Notary Public

Appendix B

Federal Energy Regulatory Commission, Washington, D.C. 20426.

Docket No. RM79–14

Reaffirmation of Eligibility for Exemption From Incremental Pricing Program

Name of Company or Organization: ——

Address: ——

—— hereby affirms that the Affidavit for Exemption filed on behalf of the above-named company on ——, ——, remains accurate as of the date below.

Dated: ——

Authorized Official

Title

Phone number

Subscribed and sworn to before me this —— day of ——.

Notary Public

[FR Doc. 79-17726 Filed 6-7-79; 8:45 am]

BILLING CODE 6450-01

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 2]

[Docket No. 76N-0460]

Chlorofluorocarbon Propellants in Self-Pressurized Containers; Proposed Essential Uses

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This document proposes to add to the list of products containing a chlorofluorocarbon for an essential use a polymyxin B sulfate-zinc bacitracin-neomycin sulfate skin wound antibiotic for human use and a topical anesthetic drug for human use where a cannulae is used for application. The action is based upon two citizen petitions requesting that these products be added to the list of uses considered essential and establishing that the products provide unique health benefits unavilable without the use of the chlorofluorocarbon.

DATE: Comments by July 9, 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: 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 March 17, 1978 (43 FR 11301), the Food and Drug Adminstration (FDA) issued a final rule (21 CFR 2.125) prohibiting nonessential uses of chlorofluorocarbons as propellants in self-pressurized containers in certain products subject to

the Federal Food, Drug, and Cosmetic Act. This action and an earlier action to require a warning statement on the labels of products containing chlorofluorocarbon propellants (published in the **Federal Register** of April 29, 1977 (42 FR 22018)) were taken in response to recent scientific research indicating that the release of chlorofluorocarbons may result in the depletion of stratospheric ozone. A reduction of stratospheric ozone would increase the amount of biologically damaging ultraviolet radiation reaching the earth and, as a result, might increase the incidence of skin cancer and produce other adverse effects. These two previous rulemaking actions contain a detailed discussion of the scientific issues pertaining to chlorofluorocarbon use.

Section 2.125 provides that any food, drug, device, or cosmetic in a self-pressurized container that contains a chlorofluorocarbon propellant is adulterated and/or misbranded in violation of the act and that any drug product for human or animal use in a self-pressurized container that contains a chlorofluorocarbon propellant is a new drug on new animal drug. The regulation exempts certain products containing chlorofluorocarbons in self-pressurized containers from the adulteration and misbranding provisions if FDA determines that the products provide a unique health benefit that would not be available without the use of a chlorofluorocarbon. These products are referred to in the regulation as essential uses of chlorofluorocarbon.

Under § 2.125(f), a person may petition the agency to request additions to the list of uses considered essential. To demonstrate that the use of a chlorofluorocarbon is essential, the petition must be supported by an adequate showing that (1) there are no technically feasible alternatives to the use of a chlorofluorocarbon in the product, (2) the product provides a substantial health, environmental, or other public benefit unobtainable without use of the chlorofluorocarbon, and (3) the use does not involve a significant release of chlorofluorocarbons into the atmosphere or, if it does, the release is warranted by the benefit conveyed.

Two petitions have been received requesting additions to the list of uses considered essential. These two petitions, submitted under § 2.125(f) and Part 10 (21 CFR Part 10) are on file and may be seen in the office of the Hearing Clerk, FDA, at the address above. One petition was submitted by the Borroughs Wellcome Company. It requests that § 2.125(e) be amended to include Neosporin Aerosol, a polymyxin B sulfate-zinc bacitracin-neomycin sulfate antibiotic powder for human use intended for the treatment of open skin wounds and burns, as an essential use of chlorofluorocarbon. The petition contains a detailed discussion supporting the position that there are no technically feasible alternatives to the use of chlorofluorocarbons in Neosporin Aerosol. It includes data showing that only a chlorofluorocarbon propellant can provide the safe delivery of pure, undiluted antibiotic in a dry state with the degree of fineness that is necessary in the topical treatment of an open wound or burn. Also, the petition states that the product provides a substantial health benefit that would not be obtainable without the use of the chlorofluorocarbon. In this regard, the petition contains data to support the use of this product in the treatment of an open wound and asserts that this form of treatment is superior to other forms because it provides uniform distribution on the wound and does not lead to maceration of the tissue. The petition also asserts that the use of this product would not involve a significant release of chlorofluorocarbons into the atmosphere because only 900 milligrams of chlorofluorocarbons would be released per 1-second spray.

The second petition was submitted on behalf of Cetylite Industries, Inc. This petition requests that § 2.125(e) be amended to include Cetacaine Aerosol, a topical anesthetic drug for human use containing benzocaine, tetracaine hydrochloride, and butyl aminobenzoate, as an essential use of chlorofluorocarbons. The petition contains a detailed discussion supporting the position that there are no technically feasible alternatives to the use of a chlorofluorocarbon propellant in Cetacaine Aerosol. It includes data showing why the compound FC–152(a), the only commercially available hydrofluorocarbon that may be used as an aerosol propellant, would increase the pressure in the container to such an extent that the delivery rate would be increased to an unacceptable level. In addition, FC–152(a) is much more flammable than the present propellant formulation. The petition also states that the product provides a substantial health benefit that could not be obtainable without the use of the chlorofluorocarbon. In this regard, the petition contains data to support the use of Cetacaine Aerosol as an anesthetic applied topically to the laryngeal and pharyngeal areas before the performance of diagnostic procedures, and contends that this method of delivery is presently superior to other methods such as swabs or bulb sprays. The petition also asserts that the use of Cetacaine Aerosol would not involve a significant release of chlorofluorocarbons into the atmosphere because each bottle contains approximately 32.5 grams of propellants and is sufficient for approximately 80 patient applications.

The agency tentatively agrees that the use of Neosporin Aerosol and Cetacaine Aerosol provides special benefits for patients in the treatment of skin wounds and for patients requiring a topical anesthetic to the laryngeal and pharyngeal areas, respectively. Further, the agency tentatively agrees that the benefits these two products provide would be unavailable without the use of chlorofluorocarbons. Therefore, the Commissioner proposes to amend § 2.125(e) to include a polymyxin B sulfate-zinc bacitracin-neomycin sulfate skin wound antibiotic powder for topical use on humans and anesthetic drugs for topical use on accessible mucous membranes of humans where a cannulae is used for application, as essential uses of chlorofluorocarbons.

The proposed OTC drug monograph for topical antibiotic products (published in the **Federal Register** of April 1, 1977 (42 FR 17642)) tentatively classified the combination of neomycin sulfate, polymyxin B sulfate, and zinc bacitracin as Category III. Neosporin Aerosol contains this combination of ingredients. The agency advises, therefore, that any finding as to Neosporin Aerosol's essentiality under § 2.125(e) will be a conditional one, pending final classification of the triple antibiotic combination.

Also, with respect to Cetacaine Aerosol, a request for a hearing about its effectiveness as a combination drug product is currently being reviewed by FDA. This request was made by Cetylite Industries, Inc., and was in response to a notice (DESI 8076 (Docket No. 75N–0203) published in the **Federal Register** of December 9, 1975 (40 FR 57379)) in which the agency offered an opportunity for a hearing on a proposal to withdraw approval of a combination drug product containing two of the three ingredients also contained in Cetacaine Aerosol. Therefore, until a final ruling is made on this request, any finding as to Cetacaine Aerosol's essentiality under § 2.125(e) will be conditional.

The agency recognized that final determination of this action would not be completed by the December 15, 1978 effective date of the final rule prohibiting the manufacture and

packaging of products containing chlorofluorocarbons for nonessential uses. Accordingly, the agency notified the petitioners by letter that the continued manufacture and packaging of their respective products will be permitted, at least until this rulemaking action is completed. This was done because the finding that the uses of these products are essential uses of chlorofluorocarbon is likely, and to have required cessation of manufacturing in the interim would have prematurely interrupted their availability.

The potential environmental effects of this action have been carefully considered, and FDA has concluded that the action will not significantly affect the quality of the human environment. This action is one of a type for which the agency has determined that the preparation of an environmental impact statement is not required, except in rare and unusual circumstances (see 21 CFR 25.1(f)(1)(i)). Thepreparation of an environmental impact analysis report for this action is not required pursuant to 21 CFR 25.1(g).

Accordingly, 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 (21 CFR 5.1), it is proposed that Part 2 be amended in § 2.125 by adding new paragraph (e)(7) and (8) to read as follows:

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

* * * * *

(e) * * *

(7) Polymyxin B sulfate-zinc bacitracin-neomycin sulfate soluble antibiotic powder without excipients, for topical use on humans.

(8) Anesthetic drugs for topical use on accessible mucous membranes of humans where a cannulae is used for application.

* * * * *

Interested persons may, on or before July 9, 1979, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: May 29, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-17433 Filed 6-7-79; 8:45 am]

BILLING CODE 4110-03-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1243-3]

Approval and Promulgation of State Implementation Plans; South Dakota

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This action proposes to approve a revision to the South Dakota State Implementation Plan (SIP) submitted by the Governor of South Dakota and received by EPA on April 16, 1979. The revision grants a variance to the existing coal-fired steam-heat generating facility located on the South Dakota State University (SDSU) campus. This variance is not expected to have any severe impacts on the ambient air based on the report by Briant L. Davis, et. al., from the Institute of Atmospheric Sciences, South Dakota School of Mines and Technology in Rapid City, South Dakota.

DATES: Comments must be received on or before July 9, 1979.

ADDRESSES: The proposed South Dakota revision is available for public inspection at the office of the South Dakota Department of Environmental Protection, Joe Foss Building, Pierre, South Dakota 57501. Copies of the revision, an evaluation of the revision and public comments will be available at the offices of the EPA listed below.

Environmental Protection Agency, Air Programs Branch, 1860 Lincoln Street, Denver, Colorado 80295.

Environmental Protection Agency, Public Informaiton Reference Unit, Room 2922 (EPA Library), 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: David Kircher, Chief, Planning & Operations Section, Air Programs Branch, U.S. Environmental Protection Agency, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295.

SUPPLEMENTARY INFORMATION: The State of South Dakota is required by Section 110 of the Federal Clean Air Act (CAA), to have a SIP for the control of air pollution within its boundaries. At present the city of Brookings does not violate the National Ambient Air Quality Standards and a report by Briant L. Davis, et. al., entitled "Air Quality Measurements and Diffusion Modeling of the Heating Plant Plume at South Dakota State Unviersity, Brookings, South Dakota," concludes that the area will not be in violation in the future. As a result of this determination, the State granted to the south Dakota State University heating plant a variance to regulations ARSD 34:10:05:05, 34:10:03:01, and successor provisions setting a new emission limit at .8 lbs. particulate/MBTU.

The Administrator hereby issues this notice setting forth as proposed rulemaking, pursuant to approval of Section 110 of the Clean Air Act and 40 CFR Part 51 approval of the South Dakota revision received on April 16, 1979.

Authority: Section 110 of the Clean Air Act, as amended (42 U.S.C. 1857c–5); Section 301 as amended (42 U.S.C. 1857g).

Dated: May 31, 1979.

Alan Merson,

Regional Administrator.

[FR Doc. 79-17969 Filed 6-7-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 80]

[FRL 1243-1]

Regulation of Fuel and Fuel Additives; Lead Phase-Down Regulations

AGENCY: Environmental Protection Agency.

ACTION: Notice of Suspension of Enforcement and Notice of Proposed Rulemaking.

SUMMARY: EPA will suspend enforcement of the 0.8 gram per gallon (gpg) lead phase-down standard (40 CFR 80.20(a)(1)(i)) for all refineries between June 8, 1979 and October 1, 1979. In addition, EPA proposes to amend the lead phase-down schedule to give refiners an option of: (1) Meeting the 0.5 gpg standard on October 1, 1979, or (2) meeting a 0.8 gpg standard from October 1, 1979, to October 1, 1980, conditioned

upon producing an increased percentage of unleaded gasoline until October 1, 1980, and meeting a 0.5 gpg standard effective October 1, 1980.

DATES: Comments must be received by July 20, 1979. Hearing date will be June 20, 1979, at Washington, D.C. Requests to speak by June 10, 1979.

ADDRESSES: Send comments to Docket Number EN–79–14, EPA, Washington, D.C. 20460. Comments should be identified with the docket number EN–79–14. Comments will be available for public inspection at the Central Docket Section (Docket No. EN–79–14), Room 2903B, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, from 8:00 a.m. to 4:30 p.m. Monday through Friday. Requests to speak should be sent to Director, Mobile Source Enforcement Division (EN–340), EPA, 401 M Street, SW., Washington, D.C. 20460, or by calling Robert A. Weissman at (202) 755–2816. Hearings will be held at the GSA Auditorium, 18th and F Streets NW., Washington, D.C., on June 20, 1979, at 9:30 a.m.

FOR FURTHER INFORMATION CONTACT: Robert A. Weissman, Attorney, Mobile Source Enforcement Division, at (202) 755–2816.

SUPPLEMENTARY INFORMATION: On September 28, 1976, the Environmental Protection Agency (EPA) published amended regulations which postponed the dates by which gasoline manufacturers would be required to control the average lead content in gasoline produced at each refinery. The amended regulations provided for a lead content of 0.8 grams per gallon (gpg) effective January 1, 1978, and a lead content of 0.5 gpg effective October 1, 1979. The amendments were to permit sufficient time for refiners to install the equipment necessary to meet the reduced lead level without causing a gasoline shortage.

The regulations provided that the 0.8 gpg standard could be suspended if a refiner showed good faith efforts to achieve the 0.8 gpg standard at the earliest practicable date and the 0.5 gpg standard no later than October 1, 1979. Based on submission of compliance schedules detailing planned construction or blending component or feedstock process and exchange agreements, EPA granted suspensions to that portion of the refining industry producing over 75% of the nation's gasoline production.

Permitting the use of lead in excess of the standards will make it possible for refiners to make more leaded gasoline as well as more unleaded gasoline. The recent interruption of crude oil supplies from Iran and the tightness in gasoline supplies leads us to believe that further temporary relaxation of the lead phase-down standard is warranted. Therefore, EPA plans to suspend enforcement of the interim standard (40 CFR 80.20(a)(1)(i)), until October 1, 1979, and relax the 0.5 gpg standard to 0.8 gpg until October 1, 1980, for those refiners who produce increased percentages of unleaded gasoline.

EPA is particularly concerned that, if shortages of unleaded gasoline should occur, motorists might use leaded gasoline in vehicles requiring unleaded fuel. Use of leaded fuel in a vehicle requiring unleaded will deactivate emission control systems, causing an increase in automobile exhaust emissions. We continue to believe that a 0.5 gpg lead standard should be achieved as rapidly as possible for purposes of public health. However, a delay in imposing that standard will help offset the irreversible loss of billions of dollars worth of investment in emission control systems that would likely result from widespread fuel switching if shortages of unleaded gasoline were to occur. Many refiners are already allocating gasoline supplies to their customers, and some expect the situation to worsen.

For those refineries which are presently subject to the 0.8 gpg standard or which will be subject to that standard for some period of time prior to October 1, 1979, a suspension of enforcement is hereby granted by EPA. The suspension of enforcement is effective immediately and terminates on October 1, 1979. This will permit greater flexibility in the production of gasoline for this summer.

EPA proposes to amend the lead phase-down regulation to permit refiners to choose between two alternatives. A refiner, for any refinery not otherwise subject to relief as a small refinery, may elect to meet a lead standard of 0.5 gpg for each quarter beginning October 1, 1979 (Option 1). As the alternative, a refiner may register with EPA (for all or some refienries) an election to meet a 0.8 gpg standard each quarter from October 1, 1979, through September 30, 1980, and a 0.5 gpg standard each quarter beginning October 1, 1980 (Option 2).

To qualify for option 2 a refiner will be required, for those refineries registered for option 2, to: 1) state for each refinery gasoline production and octane by grade for each calendar quarter from January 1, 1978, through June 30, 1979, 2) state for each refinery projected gasoline production and octane by grade at compliance with a 0.8 gpg standard for each quarter from October 1, 1979, through September 30, 1980, 3) actually produce, on a quarterly basis for the total gasoline produced on an aggregate basis at those registered refineries, unleaded gasoline as a percentage of total gasoline equal to that percentage in the comparable quarter one year previous plus 8% *or* actually produce, on a quarterly basis, unleaded gasoline as a percentage of total gasoline greater than 45%, and 4) report, for each calendar quarter from July 1, 1979, through September 30, 1980, gasoline production and octane by grade.

It is the intent of EPA to allow the relaxation of the phase-down standard only where it will result in added percentage of unleaded gasoline. EPA may require that an adequate supply of unleaded gasoline be available based on EPA's authority to control the introduction into commerce of leaded gasoline, as found in *Amoco Oil Company* v. *EPA*, 501 F.2d 722 (D.C. Cir. 1974). Conditioning relaxation of the health based lead phase-down standard on a showing that greater production of unleaded gasoline will ensue is necessary to insure that additional supplies of unleaded gasoline will be produced, to help protect against increased fuel switching due to shortages of unleaded gasoline.

Refiners electing Option 2 for any refineries must submit a registration form as indicated in Format 1 in the Appendix. Unless otherwise notified by EPA within sixty days of submission of the registration form, the refiner will be considered bound by its election of the 0.8 gpg option. In that event, any noncompliance with either the 0.8 gpg interim standard or noncompliance with the production ratio requirements will be subject to civil penalties. EPA intends to publish penalty guidelines in the near future to address the extent of penalties that will be assesssed for noncompliance with both the lead standards and the production requirements, and will take comments at that time on what factors should be considered in penalty mitigation.

Because this proposal results in a relaxation of an existing regulatory standard, EPA has determined that this document does not contain a major proposal requiring an Economic Impact Analysis under Executive Orders 11821, 11949, 12044, and section 317 of the Clean Air Act, as amended.

Comments

EPA solicits comments on the proposed rule allowing refiners to choose between two regulatory options. Comments should address the increases in ambient lead levels likely to result

from this proposed rule. Comments are also solicited on whether a refiner which registers refineries for the 0.8 gpg standard should have the opportunity to withdraw the registration and comply with the 0.5 gpg standard. (Sections 211 and 301 of the Clean Air Act, as amended, 42 U.S.C. 7545, 7602).

Dated June 4, 1979.

Douglas Costle,

Administrator.

It is proposed that 40 CFR Part 80 is amended as follows:

§ 80.20 [Amended]

1. In § 80.20, subparagraph (a)(1)(ii), by inserting the words "except as provided in paragraph (a)(6) of this section." immediately following the words "after October 1, 1979."

2. In § 80.20, adding new paragraphs (a)(6), (a)(7), (a)(8) and (a)(9) to read as follows:

§ 80.20 Controls applicable to gasoline refiners.

(a) * * *

* * * * * *

(6) The provisions of subparagraph (a)(1)(ii) will not apply to any refinery for which a refiner submits, not later than August 1, 1979, a valid registration form indicating a commitment to achieve a 0.8 gram per gallon standard by October 1, 1979, and a 0.5 gram per gallon standard by October 1, 1980. The Administrator may, if the registration form is unclear, incomplete, or otherwise inadequate, notify the refinery that the registration is invalid. If the Administrator has not so notified the refinery within 60 days of receipt of the registration form, the registration will be deemed complete. A registration form must contain the following information to be considered valid:

(i) Name, location, and crude capacity in barrels per calendar day (as certified by the Department of Energy, Office of Refinery Operations) of each refinery owned or controlled by the refiner.

(ii) For each quarter January 1, 1978, through June 30, 1979, the following information for each refinery:

—Total gasoline production (bpcd)
—Unleaded gasoline production (bpcd) (all grades)
—Octane of unleaded gasoline (RON, AKI) (all grades)
—Clear pool octane (RON, AKI)

(iii) For each quarter October 1, 1979, through September 30, 1980, assuming compliance with a 0.8 gpg standard, the following information:

—Projected total gasoline production (bpcd)
—Projected unleaded gasoline production (bpcd) (all grades)
—Projected octane of unleaded gasoline (RON, AKI) (all grades)
—Projected clear pool octane (RON, AKI)

(7) In the manufacture of gasoline, no gasoline refiner who has submitted a valid registration form for refineries in accordance with paragraph (a)(6), shall in aggregate at those refineries produce unleaded gasoline as a percentage of total gasoline for each quarter, October 1, 1979, through September 30, 1980, that is less than that percentage in the comparable quarter October 1, 1978, through September 30, 1979, plus 8%, *unless* the production of unleaded gasoline as a percentage of total gasoline is greater than 45%.

(8) Each refiner who has submitted a valid registration form in accordance with paragraph (a)(6) shall for each quarter July 1, 1979, through September 30, 1980, submit to the Administrator a report showing the following information for each refinery:

—Total gasoline production (bpcd)
—Unleaded gasoline production (bpcd) (all grades)
—Unleaded gasoline production as a percentage of total gasoline production
—Octane of unleaded gasoline (RON, AKI) (all grades)
—Clear pool octane (RON, AKI).

Reports shall be submitted within 15 days after the close of the reporting period.

(9) In the manufacture of gasoline at any refinery for which a refiner has submitted a valid registration form in accordance with paragraph (a)(6), no gasoline refiner shall exceed the average lead content specified below for each 3-month period:

(i) 0.8 grams of lead per gallon after October 1, 1979,

(ii) 0.5 grams of lead per gallon after October 1, 1980.

BILLING CODE 6560-01-M

FORMAT I

REGISTRATION FORM
PROJECTIONS OF GASOLINE AND PETROCHEMICAL
FEEDSTOCK PRODUCTION

Name of Refiner
Name of Refinery
Location of Refinery
Crude Capacity of Refinery (bpcd as certified by Department of Energy, Office of Refinery Operations)

Name of Person to Contact
Telephone

I. Historical Production — Jan-Mar 1978 | Apr-June 1978 | July-Sept 1978 | Oct-Dec 1978 | Jan-Mar 1979 | Apr-June 1979

1. Total Gasoline Production (bpcd)
2. Unleaded Gasoline Production (bpcd)
3. Octane of Unleaded Gasoline (RON, AKI)
4. 2nd Grade of Unleaded Gasoline Production (bpcd)
5. Octane of 2nd Grade of Unleaded Gasoline (RON, AKI)
6. Clear Pool Octane (RON, AKI)
7. Unleaded Gasoline Production as a Percentage of Total Gasoline Production

II. Under Compliance with the 0.8 gpg Regulatory Lead Standard — Oct-Dec 1979 | Jan-Mar 1980 | Apr-June 1980 | July-Sept 1980

1. Total Gasoline Production (bpcd)
2. Unleaded Gasoline Production (bpcd)
3. Octane of Unleaded Gasoline (RON, AKI)
4. 2nd Grade Unleaded Gasoline Production (bpcd)
5. Octane of 2nd Grade Unleaded Gasoline (RON, AKI)
6. Clear Pool Octane (RON, AKI)
7. Unleaded Gasoline Production as a Percentage of Total Gasoline Production

Signature _____

Name _____

Title _____

The business may, if it desires, assert a business confidentiality claim covering part or all of the information submitted. If no such claim accompanies the information when it is received by EPA, it may be handled pursuant to 40 CFR Part 2.

[FR Doc. 79-17971 Filed 6-7-79; 8:45 am]
BILLING CODE 6560-01-C

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[BC Docket No. 79-130; RM-3132; RM-3167]

FM Broadcast Stations in Fort Neches, Tex., and Bridge City, Tex.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of a Class A channel to Port Neches or Bridge City, Texas, in response to petitions filed by Ralph H. McBride and Harold D. and Linda Richardson. The proposed channel could provide for additional full-time local service in the area.

DATES: Comments must be filed on or before July 23, 1979, and reply comments must be filed on or before August 13,1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Louis C. Stephens, Broadcast Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), *Table of Assignments,* FM Broadcast Stations. (Port Neches and Bridge City, Texas), BC Docket No. 79-130, RM-3132, RM-3167.

Adopted: May 23, 1979.
Released: May 31, 1979.

1. The Commission invites comments on proposals for the assignment of FM Channel 221A to Port Neches or Bridge City, Texas. Only seven miles apart, these cities are too close to permit the assignment of the same channel to both.

2. Ralph H. McBride, of Port Neches, asks that we assign Channel 221A to Port Neches, a city in Jefferson County, Texas. The 1970 U.S. Census reports Port Neches' population as 10,894 and Jefferson County's as 246,402. The only radio station assigned to Port Neches is KSUZ, which operates daytime-only on AM frequency 1150 kHz.

3. Harold D. and Linda Richardson propose that Channel 221A be assigned to Bridge City, Texas (1970 pop. 8,164), located in Orange County (1970 pop. 71,170). No radio station is now assigned to Bridge City.

4. Port Neches and Bridge City are both located in the "Golden Triangle" area lying between Beaumont, Orange and Port Arthur, which, petitioners state, has cultural, industrial, and other characteristics different from those nearby larger citites.

5. The proposed assignments would preclude use of Channel 221A in eleven other communities of greater than 1,000 population now lacking AM stations or FM channel assignments. Eight of these are part of the Port Arthur-Beaumont-Orange urbanized area which has a total of eight commercial FM stations. The remaining three, Newton, Texas, Merryville, Louisiana, and DeQuincy, Louisiana, are more than 32 kilometers (20 miles) from this or any other urbanized area. Petitioners should indicate what, if any, channels are available to those three communities.

6. We find in petitioners' submissions sufficient showing of probable need for additional full-time local radio service in the area to warrant the institution of these proceedings to invite comments as to whether the public interest would be seved by assigning FM Channel 221A to either Port Neches or Bridge City, Texas, and, if so, which assignment would be preferable.

7. Accordingly, we propose to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules to provide either as follows:

City	Channel No.	
	Present	Proposed
Port Neches, Texas		221A
or		
Bridge City, Texas		221A

8. Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

9. Interested parties may file comments on or before July 23, 1979, and reply comments on or before August 13, 1979.

10. For further information concerning this proceeding, contact Louis C. Stephens, Broadcast Bureau, (202) 632-6302. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Philip L. Verveer,

Chief, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g), and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission' rules, it

is proposed to amend the FM table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rulemaking* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rulemaking to which this Appendix is attached. Proponent(s) will expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rulemaking which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rulemaking* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 79-17807 Filed 6/7/79; 8:45 am]

BILLING CODE 6712-01-M

[47 CFR Part 73]

[BC Docket No. 79-127; RM-3112]

Television Broadcast Station in High Point N.C.; Proposed changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of UHF television Channel 67 to High Point, North Carolina, in response to a petition filed by Clyde Parker. The proposal would provide for a second commercial television station in High Point.

DATES: Comments must be filed on or before July 23, 1979, and reply comments on or before August 13, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.606(b), *Table of Assignments.* Television Broadcast Stations. (High Point, North Carolina), BC Docket No. 79-127, RM-3112.

Adopted: May 23, 1979.

Released: May 31, 1979.

1. Before the Commission is a petition for rulemaking (Public Notice No. 1121, issued May 19, 1978), submitted by Clyde Parker ("petitioner"). The petition seeks amendment of § 73.606(b) of the Commission's rules, the Television Table of Assignments, by removing the reservation of Channel *32 at High Point, North Carolina, which limits it to noncommercial educational use only. Public Broadcasting Service ("PBS"), Corporation for Public Broadcasting ("CPB"), and Southern Broadcasting Company ("Southern"), licensee of Station WGHP-TV, High Point, North Carolina, opposed the proposal and petitioner responded.

2. High Point (pop. 63,204), in Guilford County (pop. 288,590) [1], is located in central North Carolina, and is part of the Greensboro-Winston-Salem-High Point television market. High Point is currently assigned Channel 8 (WGHP-TV) and Channel*32 (presently unoccupied and unapplied for); Greensboro is assigned Channel 2 (WFMY-TV) and Channels 48 and 61 (both unoccupied although both have applications on file); and Winston-Salem is assigned Channel 12 (WXII),

[1] Population figures are taken from the 1970 U.S. Census.

Channel *26 (WUNL–TV), and Channel 45 (CP granted for WGNN–TV).

3. Regarding the need for use of this channel by a commercial station, peitioner asserts that the commercial facilities in the Greensboro-Winston-Salem-High Point market only provide viewers with network programming from the three major networks. He notes that there is no independent television station licensed to the area and states that if Channel 32 is available for commercial use, he would use it to provide for a new and diversified source of television programming to a large area and population which would not otherwise receive such service.

4. Petitioner asserts that educational interests in the community have neither made constructive efforts to utilize Channel 32 in the past, nor does he believe that there is evidence of an indication to do so in the future. He claims that the apparent lack of interest in Channel 32 is due to the proliferation of educational television channels in the State of North Carolina. On this basis he asks us to proceed with deleting the reservation.

5. The opposing parties respond by stating that the underlying concept behind the reservation of channels was to make sure that the frequencies would be available in the future. This they think is important so that the unique programming which the Commission foresaw that public broadcasting would provide, could be made available to as much of the public as possible. They contend that these reservations should not be removed except in the most unusual circumstances.[2]

6. We believe that petitioner's proposal to bring a first independent television service to High Point is worth exploring. However, we do not believe the public interest would be served by deleting the educational reservation of the present assignment, especially since another channel can be assigned. Becausse of the availability of Channel 67 for assignment to High Point, there is no need to discuss further the dispute between the parties nor to consider a possible change in the vacant Greensboro channels to assign either of them to High Point.

7. Comments are invited on the following proposal to amend the Television Table of Assignments with regard to the city of High Point, North Carolina:

City	Channel No.	
	Present	Proposed
High Point, N.C.	8–, *32+	8–, *32+, 67+

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

9. Interested parties may file comments on or before July 23, 1979, and reply comments on or before August 13, 1979.

10. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau (202) 632–7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Philip L. Verveer,

Chief, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 79-17808 Filed 6-7-79; 8:45 am]

BILLING CODE 6712-01-M

[2] They suggested originally that petitioner apply for one of the vacant Greensboro channels (48 and 61), but both have applications on file and petitioner correctly points out that neither channel is available for use in High Point since the 15-mile rule makes this option available only to communities not listed in the Table of Assignments.

[47 CFR Part 73]

[BC Docket No. 79-129; RM-3276]

FM Broadcast Station in Bandera, Tex.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of a Class A FM channel to Bandera, Texas, in response to a petition filed by Paloma Broadcasting Corporation. The proposed channel could provide for a first local aural broadcast service to Bandera.

DATES: Comments must be filed on or before July 23, 1979, and reply comments on or before August 13, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Bandera, Texas), BC Docket No. 79-129, RM-3276.

Adopted: May 23, 1979.

Released: May 31, 1979.

1. *Petitioner, Proposal, Comments.* (a) A petition for rule making [1] was filed by Paloma Broadcasting Corporation ("petitioner"), proposing the assignment of Channel 252A to Bandera, Texas, as its first FM assignment. No responses to the petition were filed.

(b) The channel can be assigned in compliance with the minimum distance separation requirements provided the transmitter site is located at least 9 kilometers (6 miles) north of Bandera.

(c) Petitioner states that it will apply for the channel, if assigned.

2. *Community Data.*—(a) *Location.* Bandera, seat of Bandera County, is located approximately 74 kilometers (46 miles) northwest of San Antonio, Texas.

(b) *Population.* Bandera—891; Bandera County-4,747.[2]

(c) *Local Aural Broadcast Service.* There is no local aural broadcast service in Bandera.

3. *Economic Considerations.* Petitioner states that Bandera is a favorite hunting, fishing and recreational area for tourists in addition to having numerous dude ranches. It notes that Bandera County leads the State of Texas in goat and sheep raising and that over 95% of Bandera's $3.5 million grossed yearly has been in agricultural sales. Petitioner asserts that the proposed station will respond to the needs of the citizens of the community with regular weather reports, local discussion forums and broad coverage of local, state and national news.

4. Since Bandera is located within 320 kilometers (199 miles) of the U.S.-Mexico border, the proposed assignment of Channel 252A to Bandera requires coordination with the Mexican Government before it can be adopted.

5. In view of the apparent need for a first local aural broadcast service in Bandera, the Commission believes it appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the Rules, as it pertains to Bandera, Texas, as follows:

City and Channel No.	
Bandera, Tex.;	Present: —; Proposed: 252A.

6. Authority to institute rule making proceedings, shwoings required, cut-off procedures and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before July 23, 1979, and reply comments on or before August 13, 1979.

8. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Philip L. Verveer,

Chief, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g), and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, Section 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission rules.—

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 79-17810 Filed 6-7-79; 8:45 am]

BILLING CODE 6712-01-M

[47 CFR Part 73]

[BC Docket No. 79-131; RM-3288]

FM Broadcast Station in Fordyce, Ark.; Proposed changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of a Class A FM channel to Fordyce, Arkansas, in response to a petition filed by KBJT, Inc. The proposed channel could be used to provide a first full-time local aural broadcast service to Fordyce.

DATES: Comments must be filed on or before July 24, 1979, and reply comments must be filed on or before August 14, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

[1] Public Notice of the petition was given on December 18, 1978, Report No. 1155.

[2] Population figures are taken from the 1970 U.S. Census.

FOR FURTHER INFORMATION CONTACT:
Mildred B. Nesterak, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Adopted: May 24, 1979.

Released: May 31, 1979.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Fordyce, Arkansas), BC Docket No. 79–131, RM–3288.

1. The Commission has before it for consideration a petition for rule making,[1] filed by KBJT, Inc. ("petitioner"), requesting the assignment of FM Channel 288A to Fordyce, Arkansas, as that community's first FM assignment. No responses to the proposal have been received.

2. Fordyce (pop. 4,690), in Dallas County (pop. 10,022),[2] is located approximately 104 kilometers (65 miles) south of Little Rock, Arkansas. Fordyce is served locally by daytime-only AM Station KBJT. Channel 288A can be assigned to Fordyce in compliance with the minimum distance separation requirements. Petitioner informs us that it will apply for the channel, if asigned.

3. Petitioner states that the area's economy is based on forest products and allied industries. It notes that the Georgia-Pacific and Phelps-Dodge plants are located in Fordyce, each employing over 300 people. In support of its petition, petitioner has submitted detailed information with respect to the form of government, school system, housing and medical facilities. It claims that the proposed assignment would provide a three-county area with its first local nighttime aural service, bringing them local coverage of nighttime sporting events, election returns and severe weather warnings.

4. In light of the above information and the fact that the proposed FM channel could provide Fordyce with its first full-time local aural broadcast service, the Commission believes it appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the Commission's rules, with respect to Fordyce, Arkansas, as follows:

City and Channel No.	
Fordyce, Ark.;	Present: —; Proposed: 288A.

5. Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or befoe July 24, 1979, and reply comments on or before August 14, 1979.

7. Further information concerning this proceeding may be obtained by contacting Mildred B. Nesterak, Broadcast Bureau, (202) 632—7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Philip L. Verveer,

Chief, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The Proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a cetificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 79–17811 Filed 6–7–79; 8:45 am]

BILLING CODE 6712–01–M

[1] Public Notice of the petition was given on January 3, 1979, Report No. 1157.

[2] Population figures are taken from the 1970 U.S. Census.

[47 CFR Part 73]

[BC Docket No. 79–132; RM–3340]

FM Broadcast Station in Oakhurst, Calif.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of a first Class A FM channel to Oakhurst, California. Petitioners, Randolph L. Johnston and James T. Dee, state the proposed channel could bring a first local aural broadcast service to Oakhurst and the surrounding area.

DATES: Comments must be filed on or before July 24, 1979, and reply comments on or before August 14, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:
Mildred B. Nesterak, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Adopted: May 24, 1979.

Released: May 31, 1979.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Oakhurst,

California), BC Docket No. 79–132, RM–3340.

1. *Petitioner, Proposal, Comments.* (a) Notice of Proposed Rule Making is given concerning amendment of the FM Table of Assignments (§ 73.202(b) of the Commission's rules) as it relates to Oakhurst, California.

(b) Petition for rulemaking [1] was filed on behalf of Randolph L. Johnston and James T. Dee ("petitioners"), seeking the assignment of Channel 296A to Oakhurst, California, as its first FM assignment. No responses to the petition were received.

(c) Channel 296A could be assigned to Oakhurst in conformity with the minimum distance separation requirements.

(d) Petitioners state they will promptly apply for and build a station if the channel is assigned.

2. *Community Data*—(a) *Location.* Oakhurst, an unincorporated community in Madera County, is located approximately 80 kilometers (50 miles) northeast of Fresno, California.

(b) *Population.* Oakhurst—5,500 [2]; Madera County—41,519.[3]

(c) *Local Aural Broadcast Service.* There is no local aural broadcast service in Oakhurst.

3. *Economic Data.* Petitioners state that approximately three-quarters of Madera County's 1970-1978 population growth [4] occurred in unincorporated areas of which Oakhurst is included. They claim that business has grown steadily the past 18 years with the taxable retail sales for the county in 1977 amounting to $151.9 million. Petitioners assert that the population growth in Oakhurst is attributed to an influx of people from other areas because of the community's mountain environment and recreational attractions.

4. *Other Considerations.* Petitioners state that because the town is located in a valley surrounded by mountains, radio reception is intermittent and FM reception is hampered by multipath distortion. They note that there are no radio stations in eastern Madera County, the nearest service coming from an FM station in adjacent Mariposa County, 40 kilometers (25 miles) to the northwest. Petitioners point out that the only radio service in Madera County is 80 kilometers (50 miles) to the southwest. They assert that an FM station in Oakhurst would provide a first local aural service in an area that has shown steady growth during the past several years.

5. We are willing to consider whether there is a need for a first local aural boradcast service in Oakhurst which could bring service to an area with few radio services. The proposal is being advanced for the purpose of determining whether such an assignment is warranted. There is a need for petitioners to submit additional information which would assist the Commission in determining whether the proposed channel assignment would be in the public interest. Petitioners are therefore requested to submit the following information:

(a) Information which demonstrates whether Oakhurst in fact is a community. This information should include a description of governmental structure, and social and economic activities.

(b) Information as to the permanent population of the unincorporated area in which petitioners claim Oakhurst is situated, the unofficial boundary of the community and the location of the community relative to any neighboring incorporated communities.

(c) Information which would indicate the need for a station at Oakhurst.

6. In view of the foregoing, the Commission proposes to amend the FM Table of Assignments (§ 73.202(b) of the rules), with respect to the community listed below:

City	Channel No.	
	Present	Proposed
Oakhurst, Calif.		296A

7. Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—Showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before July 24, 1979, and reply comments must be filed on or before August 14, 1979.

9. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632–7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Philip L. Verveer,

Chief, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See

[1] Public Notice of the petition was given on March 19, 1979, Report No. 1168.

[2] Petitioner's estimate. There is no Census figure listed for Oakhurst. Thus, its population must be under 1,000 as all communities over 1,000 are listed even if unincorporated.

[3] 1970 U.S. Census.

[4] Security Pacific Bank, Monthly Survey of Business Conditions, November 30, 1978.

§ 1.420 (a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 79-17812 Filed 6-7-79; 8:45 am]

BILLING CODE 6712-01-M

[47 CFR Part 73]

[BC Docket No. 79-128; RM-3277]

FM Broadcast Station in Haynesville, La.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of a Class A FM channel to Haynesville, Louisiana. The proposed channel, which could provide the community with its first full-time local aural broadcast service, was requested in a petition filed by Robillard Communications, Inc.

DATES: Comments must be filed on or before July 23, 1979, and reply comments must be filed on or before August 13, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: May 23, 1979.

Released: May 31, 1979.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Haynesville, Louisiana), BC Docket No. 79-128, RM-3277.

1. The Commission has under consideration a petition for rulemaking [1] seeking the amendment of § 73.202(b) of the Commission's rules, the Table of FM Assignments. The petition was filed on behalf of Robillard Communications, Inc. ("petitioner"), proposing the assignment of FM Channel 288A to Haynesville, Louisiana. The channel could be assigned in conformity with the minimum distance separation requirements without affecting the present assignments in the FM Table. Petitioner states that it will apply for the channel, if assigned.

2. Haynesville (pop. 3,055) in Claiborne Parish (pop. 17,024),[2] is located approximately 80 kilometers (50 miles) northeast of Shreveport, Louisiana. Haynesville is served locally by daytime-only AM Station KLUV.

3. In support of its proposal, petitioner asserts that Haynesville is the second largest community in the parish. We are told that the leading industry in Haynesville is oil and gas, with agriculture, dairy and the raising of beef cattle also contributing to the economy. Petitioner has submitted detailed demographic data with respect to Haynesville in order to demonstrate its need for a first FM assignment.

4. In view of the fact that the proposed FM channel assignment would provide Haynesville an opportunity to acquire a first full-time local aural broadcast service, the Commission believes it appropriate to propose amending the FM Table of Assignments, Section 73.202(b) of the Rules, with regard to the community listed below:

City	Channel No.	
	Present	Proposed
Haynesville, Louisiana		288A

5. Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required before a channel will be assigned.

6. Interested parties may file comments on or before July 23, 1979, and reply comments on or before August 13, 1979.

7. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

[1] Public Notice of the petition was given on December 18, 1978, Report No. 1155.

[2] Population figures are taken from the 1970 U.S. Census.

Federal Communications Commission.

Phillip L. Verveer,

Chief, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for

examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 79-17813 Filed 6-7-79; 8:45 am]

BILLING CODE 6712-01-0M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 410]

Public Hearings; Fish and Wildlife Coordination Act; Proposed Rulemaking

AGENCY: National Oceanic and Atmospheric Administration, Commerce Fish and Wildlife Service, Interior.

ACTION: Public Hearings.

SUMMARY: Proposed rules which would standardize agency procedures and interagency relationships in the analysis of the impacts of federal, or federally-approved, water-related projects upon fish and wildlife resources were published in the **Federal Register** at 44 FR 29300, May 18, 1979. This document announces public hearings to receive written and oral testimony on the proposed rules implementing the Fish and Wildlife Coordination Act. It is not to engage in a question/answer session or dialgue between the hearing panel and those who testify. Questions may be asked by members of the panel solely for the purpose of clarifying testimony by a witness.

Oral presentations should be limited to not more than 10 minutes. Written documents may be presented to the Hearing Officer for entry into the official record. Witnesses who submit written testimony in addition to making oral presentations should summarize the written testimony.

DATES: Hearings will be held:

June 26, 1979—San Francisco, California

June 27, 1979—Arlington, Texas

June 27, 1979—Twin Cities, Minnesota

June 27, 1979—Denver, Colorado

June 27, 1979—New Orleans, Louisiana

June 28, 1979—Washington, D.C.

ADDRESSES: These comments will be received at the following locations, dates and times:

June 26, 1979: San Francisco, California, Golden Gate National Recreation Area, Fort Mason, Building 201, Bay and Franklin Streets.

Starting time: 9:00 a.m.

Write: Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232.

Telephone: (503) 231-6158.

June 27, 1979: Arlington, Texas—Quality Inn—Cibola, U.S. Highway 80, 1601 E. Division Street.

Starting time: 1:00 p.m.

Write: Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuqerque, New Mexico 87103.

Telephone: (505) 766-2914.

June 27, 1979: Twin Cities, Minnesota—Federal Building, Fort Snelling, Room 564-568.

Starting time: 1:00 p.m.

Write: Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

Telephone: (612) 725-3510.

June 27, 1979: Denver, Colorado—Bureau of Reclamation Auditorium, Entrance W-1, Building 56, Denver Federal Center.

Starting time: 9:00 a.m.

Write: Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

Telephone: (303) 234-3990.

June 28, 1979: Washington, D.C.—Department of Commerce Auditorium, 14th at Constitution Ave., N.W.

Starting time: 9:00 a.m.

Write: Mr. E. Erdhein, Hearing Officer, Office of General Counsel, NOAA, 3300 Whitehaven St., N.W., Page Building II, Washington, D.C. 20235.

Telephone: (202) 634-4224.

June 27, 1979: New Orleans—Hotel Monteleone, 214 Royal St.

Starting time: 10:00 a.m.

Write: Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, N.E., P.O. Box 95067, Atlanta, Georgia 30347.

Telephone: (404) 881-4781.

FOR FURTHER INFORMATION CONTACT: Karl F. Stutzman, 202-343-4767.

Lynn A. Greenwalt,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 79-17951 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-55-M

ENDANGERED SPECIES COMMITTEE

50 CFR Parts 450, 452 and 453

Interim Final Rules on Endangered Species Review Board and Endangered Species Committee

NOTE.—This document inadvertently appearing in the Proposed Rules section should have appeared in the Rules and Regulation section.

AGENCY: Endangered Species Committee.

ACTION: Interim Final Rules and Request for Public Comments.

SUMMARY: These regulations describe the functions and the procedures of Endangered Species review boards (review boards) and the Endangered Species Committee (the Committee) under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.* (the Act). According to section 7(a) of the Act, each Federal agency must, in consultation with the Secretary, insure that its actions do not jeopardize the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of critical habitats. An exemption from these requirements may be granted by the Committee, however.

In accordance with section 7(g) of the Act, review boards are responsible for initially examining applications for exemption. If a review board makes certain threshold determinations, it is required to prepare and submit a report to the Committee. The Committee then makes the final determination whether or not to grant an exemption.

These rules cover the exemption application processing period from the appointment of a review board to the final determination by the Committee. Rules covering procedures for applying for an exemption and for initial review and handling of an exemption application, including appointment of a review board, have previously been proposed as 50 CFR Part 403. 44 FR 7777 (Feb. 7. 1979).

DATES: Effective date: June 8, 1979. Comments on these regulations must be submitted by September 4, 1979.

ADDRESS: Please send comments to the Chairman, Endangered Species Committee, c/o Office of Policy Analysis, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Raphaelle Semmes, Office of Policy Analysis, Department of the Interior, Room 4160, Interior Building, 18th & C

Streets, N.W., Washington, D.C. 20240, 202–343–5978.

SUPPLEMENTARY INFORMATION:

The Exemption Process

The Endangered Species Act Amendments of 1978 (Pub. L. 95–632), enacted on November 10, 1978, establish a procedure for obtaining exemptions from Section 7 of the Endangered Species Act of 1973 (now renumbered 7(a)). Section 7(a) requires Federal agencies to insure, in consultation with the Secretary of the Interior or Commerce, that their actions do not jeopardize the continued existence of endangered or threatened species or destroy or adversely modify critical habitats. Applications for exemption from this requirement may be made by a Federal agency, by the Governor of a State in which a proposed action would occur, or by a person whose permit or license application has been denied primarily because of section 7(a) considerations. An application is to be directed to the appropriate Secretary, who determines if it is properly presented. It is then evaluated by a review board and, if certain criteria are met, decided upon by the Endangered Species Committee.

These regulations implement section 7(g) paragraphs (4) to (12); section 7(e); and sections 7 (h) through (l) of the Act.

Review Boards. A review board is to be established for each exemption application. Review boards make threshold determinations on the application and develop a comprehensive record and report for the Endangered Species Committee. They consist of three members: one member appointed by the Secretary; one member (who shall be a resident of the State, if any, in which the agency action would be, or is being carried out) appointed by the President; and an Administrative Law Judge. Within 60 days of appointment, or a longer period mutually agreed upon by the exemption applicant and the Secretary, a review board must determine by majority vote:

(1) Whether any required biological assessment was conducted;

(2) Whether the Federal agency and permit or license applicant, if any, refrained from making any irreversible or irretrievable commitment of resources that forecloses any reasonable or prudent alternatives that would avoid an irresolvable conflict;

(3) Whether the Federal agency and permit or license applicant, if any, carried out consultation responsibilities in good faith, and have made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives that would have avoided an irresolvable conflict; and

(4) Whether the finding of an irresolvable conflict between the proposed action and the requirements of section 7(a) is supported by substantial evidence.

If a review board makes affirmative determinations on all four questions, the application will be forwarded to the Endangered Species Committee. If a review board determines that the application fails to meet these requirements and the deficiency is subsequently corrected, a new application can be made to the Secretary. Any determination by the review board that the exemption applicant has not met one of the threshold requirements is final agency action and may be appealed to Federal court.

If the review board determines that all four requirements are met, it must submit a report to the Committee within an additional 180 days, discussing:

(1) The availability of reasonable and prudent alternatives to the proposed action, and the nature and extent of the benefits of the agency action and of alternative courses of action consistent with conserving the species or the critical habitat;

(2) A summary of the evidence concerning whether or not the proposed action is in the public interest and is of national or regional significance; and

(3) Appropriate and reasonable mitigation and enhancement measures which should be considered by the Committee in granting an exemption.

Section 7(g) authorizes a review board to take testimony, receive evidence, request information, use the United States mails as a Federal agency, detail Federal agency personnel, and obtain administrative support services from the General Services Administration. It requires that any review board hearings be conducted in accordance with the adjudicatory procedures of the Administrative Procedure Act, to the extent practicable within the time limits and other constraints of the exemption process. It further requires all review board meetings and records to be open to the public.

Endangered Species Committee. Sections 7(e) and 7(h) require the Endangered Species Committee to review all applications submitted to it by a review board and to determine whether or not to grant exemptions. The Endangered Species Committee is composed of:

(1) The Secretary of the Interior, who is the Chairman;

(2) The Secretary of the Agriculture;

(3) The Secretary of the Army;

(4) The Chairman of the Council of Economic Advisors;

(5) The Administrator of the Environmental Protection Agency;

(6) The Administrator of the National Oceanic and Atmospheric Administration; and

(7) A person nominated by the Governor of each affected State, or if no State is affected an otherwise qualified individual, and appointed by the President, for each exemption application.

The Committee must determine whether or not to grant an exemption within 90 days after receiving the review board's report. An exemption requires an affirmative vote of five or more Committee members voting in person. To grant an exemption, the Committee must:

A. Determine that—

(1) There are no reasonable and prudent alternatives to the proposed action;

(2) The benefits of the action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat and the action is in the public interest;

(3) The action is of regional or national significance; and

B. Establish reasonable mitigation and enhancement measures that are necessary and appropriate to minimize the adverse effects of the agency action upon the species or critical habitat concerned.

Any final determination by the Committee on (A) and (B) is final agency action and subject to judicial review under Chapter 7 of title 5 of the United States Code.

If an exemption is granted by the Committee, the exemption applicant, in implementing the agency action, must carry out and pay for the mitigation and enhancement measures ordered by the Committee. The exemption applicant also must report to the Council on Environmental Quality annually until the mitigation and enhancement measures are completed.

Sections 7(e) and 7(h) authorize the Committee to hold hearings, take testimony, receive evidence, request information, use the United States mails as a Federal agency, detail Federal agency personnel, obtain administrative support services from the General Services Administration, promulgate and amend rules, regulations and procedures, issue and amend orders, and issue subpenas. All meetings and records of the Committee shall be open to the public.

Description of Rulemaking

The scope of these regulations is limited to procedures for the period between the submission of an application to a review board and the Committee's determination whether or not to grant an exemption. These regulations do not cover procedures for filing or initial review and handling of exemption applications, which are set out in proposed 50 CFR Part 403 (44 FR 7777 (Feb. 7, 1979).)

The regulations establish procedures for information gathering by review boards and by the Endangered Species Committee, including procedures for conduct of review board and Committee hearings. Procedures are also established for the review board and Committee decision process. Opportunities for public involvement, both before review boards and the Committee, are provided.

An issue which arose during drafting of these regulations on which comment is solicited concerns review board determinations of irresolvable conflicts.

Review boards are directed by section 7 (g) of the Act to determine that a proposed action involves an irresolvable conflict with section 7(a) of the Act before referring an exemption application to the Committee.

Ordinarily, the acting agency and the Fish and Wildlife Service or National Marine Fisheries Service will have developed a record on the jeopardy question during previous consultation on the proposed agency action. In some cases, usually involving permit or license applications, the acting agency will have held a full adversary hearing on the issue.

Because of the short time for review board consideration of the irresolvable conflict issue (60 days) * and because the statute provides that a review board use adjudicatory procedures only "to the extent practicable within the time required for action", the interim regulations anticipate that a board will ordinarily rely on the previously developed record on this issue. In particular, where there has been a previous adversary hearing on the issue, a review board will not conduct its own hearing, unless intervening circumstances require that the earlier record be supplemented. Comment is invited on the alternative of always limiting review to the agency record.

The regulations also provide that the review board will adopt the "substantial evidence" test of review, which shows considerable deference to the findings and judgment of the acting agency and the appropriate Service on the irresolvable conflict issue. This is consistent with the duty of those agencies to make the basic decision on the matter and reflects the deference which the findings would receive if subject to challenge in court. The Committee expects that, if a review board finds that an irresolvalbe conflict finding is not supported by substantial evidence, the acting agency and the appropriate Service will reinitiate consultation on the issue.

*The Environmental Protection Agency, as a member of the committee, adds: "If both the responsible agency and the review board were to assemble different records de novo on this question, severe procedural confusion would result. The responsible agency and the review board might reach different results, and it would be very difficult to assess which one was right because the records would be different. In addition, to generate two records on the same topic would be clearly inefficient."

Adoption and Request for Comments

These regulations are published as interim final regulations, and will remain in effect for 240 days from the date of publication. Permanent regulations will be published before the expiration of the 240-day period.

Because these regulations relate to agency procedure and practice, the Administrative Procedure Act does not require that they be subject to notice-and-comment rulemaking. Consistent with the Adminsitration's policy of encouraging public involvement, however, public comments on the interim regulations are requested. These comments must be submitted by September 4, 1979.

Because a review board will commence consideration of two exemption applications on or about June 4, 1979, there is a need for these regulations to be effective immediately. Good cause for waiver of the normal thirty-day period between publication and the effective date therefore exists.

It has been determined that this document does not contain a proposal which is required to be developed as a "significant rule" under criteria established by Executive Order 12044 (March 23, 1978) ("Improving Government Regulations").

The primary authors of these regulations are Jan Chrisman, Byron Swift and Deborah Williams, Office of the Solicitor, Department of the Interior.

These regulations are issued under the authority of the Endangered Species Act, as amended. 16 U.S.C. 1531 *et seq.* Accordingly, chapter IV of Title 50 is retitled "Joint Regulations (***); Endagered Species Committee Regulations" and is amended to designate present parts 401 and 402 as Subchapter A, reserve Subchapter B and add a Subchapter C with parts 450, 452 and 453 as set forth below:

Subchapter C—Endangered Species Exemption Process

PART 450—GENERAL PROVISIONS

Sec.

450.01 Definitions.

Authority: Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, as amended.

§ 450.01 Definitions.

The following definitions apply to terms used in this subchapter.

(1) "Act" means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531, *et seq.*

(2) "Agency action" means all actions of any kind authorized, funded or carried out, in whole or in part, by Federal agencies.

(3) "Alternative courses of action" means all reasonable alternatives, including both no action and alternatives extending beyond original project objectives and acting agency jurisdiction.

(4) "Benefits" means all benefits of an agency action, both tangible and intangible, including but not limited to economic, environmental and cultural benefits.

(5) "Biological assessment" means the report prepared pursuant to section 7(c) of the Act, 16 U.S.C. 1536(c).

(6) "Biological opinion" means the written statement prepared pursuant to section 7(b) of the Act, 16 U.S.C. 1536(b).

(7) "Chairman" means the Chairman of the Endangered Species Committee, who shall be the Secretary of the Interior.

(8) "Committee" means the Endangered Species Committee established pursuant to section 7(e) of the Act, 16 U.S.C. 1536(e).

(9) "Critical Habitat" refers to those areas listed as Critical Habitat in 50 CFR Parts 17 and 226.

(10) "Destruction or adverse modification" is defined at 50 CFR 402.02.

(11) "Federal agency" means any department, agency or instrumentality of the United States.

(12) "Irresolvable conflict" means a situation in which a proposed agency action, together with any cumulative effects, would violate section 7(a) of the Act, 16 U.S.C. 1536(a).

(13) "Jeopardize the continued existence of" is defined at 50 CFR 402.02.

(14) "Mitigation and enhancement measures" means measures, including live propagation, transplantation and habitat acquisition and improvement, necessary and appropriate (i) to minimize the adverse effects of a proposed action on listed species or their critical habitats and/or (ii) to improve the conservation status of the species beyond that which would occur without the action. The measures must be likely to protect the listed species or the critical habitat, and be reasonable in their cost, the availability of the technology required to make them

effective, and other considerations deemed relevant by the Committee.

(15) "Permit or license applicant" means any person whose application to an agency for a permit or license has been denied primarily because of the application of section 7(a) of the Act, 16 U.S.C. 1536(a).

(16) "Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any public body or officer, employee, agent, department, or instrumentality thereof.

(17) "Proposed action" means the action proposed by the Federal agency or by a permit or license applicant, for which exemption is sought.

(18) "Secretary" means the Secretary of the Interior or the Secretary of Commerce, or his or her delegate, depending upon which Secretary has responsibility for the affected species as determined pursuant to 50 CFR 402.01.

(19) "Service" means the United States Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

(20) "To the extent that such information is available to the applicant" means all pertinent information the applicant has on the subject matter at the time the application is submitted, and all other pertinent information obtainable from the appropriate Federal agency pursuant to a Freedom of Information Act request.

PART 452—ENDANGERED SPECIES REVIEW BOARDS

Sec.

452.01 Purpose and scope.
452.02 Definitions.
452.03 Threshold review and determinations.
452.04 Preparation and submission of informational report.
452.05 Review board hearings.
452.06 Other meetings.
452.07 Open meetings and records.
452.08 Parties and intervenors.
452.09 Separation of fuctions and ex parte communications.
452.10 Additional review board powers.

Authority: Endangered Species Act of 1973, 16 U.S.C. 1531, et seq., as amended.

§ 452.01 Purpose and scope.

This part prescribes the procedures to be used by endangered species review boards when examining applications for exemption from section 7(a) of the Endangered Species Act.

§ 452.02 Definitions.

Definitions applicable to this part are contained in 50 CFR 450.01.

§ 452.03 Threshold review and determinations.

(a) *Initiation of Review.* Upon receiving an exemption application, a review board shall promptly initiate its review of the application.

(b) *Notice.* Upon receiving an exemption application, a review board shall promptly publish a notice in the **Federal Register** containing: (1) a brief description of the exemption application; (2) the time and place for parties to file written submissions; (3) a date by which all motions to intervene must be filed; and (4) the time, place and location of planned review board meetings or hearings on its threshold determinations.

(c) *Threshold Determinations.* Within 60 days after its appointment, or a longer time agreed upon between the exemption applicant and the Secretary, the review board shall conclude its review and, by majority vote, determine:

(1) Whether any required biological assessment was conducted;

(2) Whether the Federal agency and permit or license applicant, if any, have refrained from making any irreversible or irretrievable commitment of resources which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative which will avoid jeopardizing the continued existence of an endangered or threatened species or result in the adverse modification or destruction of a critical habitat;

(3) Whether the Federal agency and permit or license applicant, if any, have carried out consultation responsibilities in good faith and have made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed action which will avoid jeopardizing the continued existence of an endangered or threatened species or result in the adverse modification or destruction of critical habitat;

(4) Whether the finding of irresolvable conflict which resulted in the exemption application is supported by substantial evidence.

(d) *Burden of Proof.* The exemption applicant has the burden of proof on its position on the threshold determinations.

(e) *Negative Finding.* If a review board makes a negative finding on any threshold determination, the review board shall notify the exemption applicant and all other parties in writing of its finding and grounds therefor. The exemption process shall terminate when the applicant receives such written notice. A negative finding by the review board shall constitute final agency action for purposes of judicial review under Chapter 7 of Title 5 of the United States Code.

(f) *Positive Finding.* If the review board makes a positive finding on each of the threshold determinations, it shall notify the exemption applicant and all other parties in writing that the application qualifies for consideration by the Endangered Species Committee.

(g) *Secretary of State Opinion.* The review board process shall terminate immediately if the Secretary of State, pursuant to section 7(i) of the Act, certifies in writing to the Committee that granting an exemption and carrying out the proposed action would violate an international treaty obligation or other international obligation of the United States.

§ 452.04 Preparation and submission of the information report.

(a) *Preparation of the Report.* If the review board has made a positive finding on each of the threshold determinations, it shall proceed to gather information according to procedures set out in 50 CFR 452.05 through .07 and prepare a report for the Endangered Species Committee:

(1) Discussing the availability of reasonable and prudent alternatives to the proposed action;

(2) Discussing the nature and extent of the benefits of the proposed action;

(3) Discussing the nature and extent of the benefits of alternative courses of action consistent with conserving the species or the critical habitat;

(4) Summarizing whether the proposed action is of national or regional significance;

(5) Summarizing whether the proposed action is in the public interest; and

(6) Discussing appropriate and reasonable mitigation and enhancement measures which should be considered by the Committee in granting an exemption.

(b) *Submission of Report.* The review board shall submit its report and the record of its proceedings to the Committee within 180 days after making its threshold determinations.

(c) *Applicant Responsibility.* In review board proceedings conducted pursuant to this section, the exemption applicant has the burden of going forward with evidence concerning the criteria for exemption.

§ 452.05 Review board hearings.

(a) *Hearings.* (1) A review board may hold such hearings as it determines are necessary in making its threshold determinations. If the issue of

irresolvable conflict has previously been the subject of a hearing required to be conducted under 5 U.S.C. 554, 556, and 557, however, the review board's determination of irresolvable conflict shall be based solely on a review of the record, unless the review board determines intervening circumstances require that the record be supplemented.

(2) A hearing shall be held to aid the review board in preparing its informational report under 50 CFR 452.04.

(b) *Prehearing conferences.* (1) The review board may, on its own motion or the motion of a party or intervenor, hold a prehearing conference to consider: (i) the possibility of obtaining stipulations, admissions of fact or law and agreement to the introduction of documents; (ii) the limitation of the number of witnesses; (iii) questions of law which may bear upon the course of the hearings; (iv) prehearing motions, including motions for discovery; and (v) any other matter which may aid in the disposition of the proceedings.

(2) The review board may issue a statement of the actions taken at the conference and the agreements made. Such statement shall control the subsequent course of the hearing unless modified for good cause by a subsequent statement.

(c) *Notice of Hearings.* Unless announced in the notice published upon receipt of an exemption application pursuant to 50 CFR 452.03(b), review board hearings and prehearing conferences will be announced by a notice in the **Federal Register** stating: (1) the time, place and nature of the hearing or prehearing conference; and (2) the matters of fact and law to be considered. Such notices will ordinarily be published at least 15 days before the scheduled hearing.

(d) *Conduct of Hearings.* (1) *General conduct.* To the extent practicable within the time required for action by the review board, and except to the extent inconsistent with requirement of section 7(g) of the Endangered Species Act, the conduct of all review board hearings shall be in accordance with 5 U.S.C. 554, 555 and 556 (other than section (b)(3) of section 556).

(2) *Presence of members.* Absent unforeseen circumstances, the review board members shall be physically present during the hearings.

(3) *Evidence.* (i) *Admissibility.* Relevant, material, and reliable evidence shall be admitted. Immaterial, irrelevant, unreliable, and unduly repetitious parts of an admissible document may be segregated and excluded so far as practicable.

(ii) *Official notice.* When a review board finding rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, opportunity to disprove such noticed fact shall be granted to any party making a timely motion.

(4) *Motions, objections, rebuttal and cross-examination.* Motions and objections may be filed with the review board, rebuttal evidence may be submitted, and cross-examination may be conducted, as required for a full and true disclosure of the facts, by parties, witnesses under subpena, and their respective counsel.

(i) *Objections.* Objections to evidence shall be timely, and the party making them may be required to state briefly the grounds relied upon.

(ii) *Offers of proof.* When an objection is sustained, the examining party may make a specific offer of proof and the review board may receive the evidence in full. Rejected exhibits, adequately marked for identification, shall be retained in the record for consideration by any reviewing authority.

(iii) *Motions.* Motions and petitions shall state the relief sought, the basis for relief and the authority relied upon. If made before or after the hearing itself, these matters shall be in writing and shall be filed and served on all parties. If made at the hearing, they may be stated and responded to orally; but the review board may require that they be reduced to writing. Oral argument on motions and deadlines by which to file responses to written motions will be at the discretion of the review board.

§452.06 Other meetings.

(a) In addition to hearings and prehearing conferences held pursuant to § 452.05, a review board may hold such other meetings as it determines are necessary.

(b) Unless announced in the notice published upon receipt of an exemption application pursuant to 50 CFR 452.02(b), such meetings shall be announced by a notice in the **Federal Register** stating: (1) the time and place of the meeting; and (2) the nature or purpose of the meeting. Such notices will ordinarily be published at least 15 days before the scheduled meeting.

§452.07 Open meetings and records.

All review board meetings and hearings and all review board records shall be open to the public.

§452.08 Parties and intervenors.

(a) *Parties.* The parties shall consist of the exemption applicant, the Federal agency responsible for the agency action in question, the Service, and intervenors whose motions to intervene have been granted.

(b) *Intervenors.* (1) A review board shall provide an opportunity for intervention in its proceedings. A motion to intervene must state the petitioner's name and address, identify its representative, if any, set forth the interest of the petitioner in the proceeding and show that the petitioner's participation will assist in the determination of the issues in question.

(2) A review board shall grant leave to intervene if it determines that an intervenor's participation would contribute to the fair determination of issues before the board. In making this determination, the review board may consider whether an intervenor represents a point of view not adequately represented by a party or another intervenor.

§ 452.09 Separation of functions and ex parte communications.

(a) *Separation of Functions.* A review board and its members shall not:

(1) Be responsible for or subject to the supervision or direction of any person engaged in the performance of the endangered species consultation at issue;

(2) Allow an agency employee or agent engaged in performance of the endangered species consultation at issue, or a factually related matter, to participate or advise in a determination under this part except as a witness or counsel in public proceedings.

(b) *Ex Parte Communications.* As provided in 5 U.S.C. 557(d), review board members and staff shall not communicate with parties or their respective counsel concerning the merits of issues before the review board without reasonable prior public notice and opportunity to participate.

§ 452.10 Additional review board powers.

(a) *Request assistance.* (1) The review board may request and receive:

(i) Administrative support services, on a reimbursable basis, from the Administrator of the General Services Administration;

(ii) Personnel, from any Federal agency, on a nonreimbursable basis, to assist the review board in carrying out its duties.

(2) The review board should minimize reliance on personnel provided on a reimbursable basis by the GSA and maximize use of personnel provided by heads of Federal agencies on a nonreimbursable basis.

(b) *Use of the mails.* A review board may use the United States mails in the same manner and under the same conditions as a Federal agency.

(c) *Request information.* Subject to the Privacy Act of 1974, a review board may request of any person information necessary to carry out review board duties. Any Federal agency or the exemption applicant shall furnish such information to the review board.

(d) *Request subpenas.* A review board may request the Committee to issue subpenas for the attendance and testimony of such witnesses, and the production of such relevant papers, books, and documents as are necessary for consideration of an exemption application.

(e) *Take depositions.* A review board may take depositions or have depositions taken as necessary to carry out its functions.

(f) *Delegate Functions.* A review board may delegate its functions under paragraphs (a) through (e) of this section to any member.

(g) *Consolidated and Joint Proceedings.* (1) When two or more exemption applications are referred to the same review borad, the board may consolidate proceedings on the application, if consolidation would expedite or simplify consideration of the issues.

(2) When two or more review boards are considering related exemption applications, the review boards may conduct joint proceedings, if joint proceedings would expedite or simplify consideration of the issues.

PART 453—ENDANGERED SPECIES COMMITTEE

Sec.

453.01 Purpose.
453.02 Definitions.
453.03 Committee review and final determinations.
453.04 Committee information gathering.
453.05 Committee meetings.
453.06 Additional committee powers.

Authority.—Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, as amended.

§ 453.01 Purpose.

This part prescribes the procedures to be used by the Endangered Species Committee when examining applications for exemption from section 7(a) of the Endangered Species Act of 1973, as amended.

§ 453.02 Definitions.

Definitions applicable to this part are contained in 50 CFR 450.01.

§ 453.03 Committee review and final determinations.

(a) *Initiation.* Upon receiving a review board's report and record, the Committee shall promptly initiate its review of the application.

(b) *Final Determinations.* Within 90 days of receiving a review board's report and record, the Committee shall grant an exemption from the requirements of section 7(a) of the Act for an agency action if, by a vote of not less than five of its members voting in person:

(1) It determines on the record, based on the report of the review board and on such other testimony or evidence as it may receive, that—

(i) There are no reasonable and prudent alternatives to the proposed action;

(ii) The benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest; and

(iii) The action is of regional or national significance; and

(2) It establishes such reasonable mitigation and enhancement measures as are necessary and appropriate to minimize the adverse effects of the proposed action upon the endangered species, threatened species, or critical habitat concerned.

(c) *Decision and Order.* The Committee's final determinations shall be written and shall be based on the whole public record of testimony, evidence and other written comments submitted to the Committee. If the Committee determines that an exemption should be granted, the Committee shall issue an order granting the exemption and specifying required mitigation and enhancement measures. The Committee shall publish its decisions in the **Federal Register** as soon as practicable.

(d) *Permanent Exemptions.* Under section 7(h)(2)(B) of the Act, an exemption granted by the Committee shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action, provided that a biological assessment has been conducted, unless the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of the species. If the Secretary so finds, the Committee shall determine within 30 days after such finding whether to continue the exemption for the agency action notwithstanding the Secretary's finding. During the 30 day period, the holder of the exemption shall refrain from any action which would result in extinction of the species.

(e) *Review by the Secretary of Defense.* If the Secretary of Defense certifies in writing that an exemption for the agency action is necessary for reasons of national security, the Committee shall grant the exemption, notwithstanding any other provision in this part.

§ 453.04 Committee information gathering.

(a) *Written Submissions.* When the Chairman or four Committee members decide that written submissions are necessary to enable the Committee to make its final determinations, the Chairman shall publish a notice in the **Federal Register** inviting written submissions from interested persons. The notice shall include: (1) the address to which such submissions are to be sent; (2) the deadline for such submissions; and (3) a statement of the type of information needed.

(b) *Information Gathering Proceedings.* (1) When the Chairman or four Committee members decide that oral presentations are necessary to enable the Committee to make its final determinations, an information gathering proceeding shall be held.

(2) The information gathering proceeding shall be conducted by (i) the Committee or (ii) a member of the Committee or other person, designated by the Chairman or by four members of the Committee.

(3) *Notice.* The Chairman shall publish in the **Federal Register** a general notice of an information gathering proceeding, stating: (1) the time, place and nature of the information gathering proceeding; and (2) the type of information needed. The Federal Register notice shall be published at least 15 days prior to the proceeding.

(4) *Procedure.* The information gathering proceedings shall be open to the public and conducted in an informal manner. All information relevant to the Committee's final determinations shall be admissible, subject to the imposition of reasonable time limitations on oral testimony.

(5) *Transcript.* Information gathering proceedings will be recorded verbatim and a transcript thereof will be available for public inspection. Any person may obtain a copy of the transcript upon payment of the actual cost of duplication.

§ 453.05 Committee meetings.

(a) The Committee shall meet at the call of the Chairman or five of its members.

(b) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that in no case shall any representative be considered in determining the existence of a quorum for the transaction of a Committee function which involves a vote by the Committee on the Committee's final determinations.

(c) All meetings and records of the Committee shall be open to the public.

(d) The Chairman shall publish a notice of all Committee meetings in the **Federal Register**. The notice will ordinarily be published at least 15 days prior to the meeting.

§ 453.06 Additional committee powers.

(a) *Request and receive assistance.* The Committee may request and receive:

(1) Administrative support services on a reimbursable basis, from the Administrator of the General Services Administration; and

(2) Personnel from any Federal agency on a nonreimbursable basis, to assist the Committee in carrying out its duties.

(b) *Use The Mails.* The Committee may use the mails in the same manner and under the same conditions as a Federal agency.

(c) *Secure Information.* Subject to the Privacy Act, the Committee may secure information directly from any Federal agency when necessary to enable it to carry out its duties.

(d) *Subpenas.* (1) For the purpose of obtaining information necessary for the consideration of an application for an exemption, the Committee may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents;

(2) The Chairman shall receive review board subpena requests and may issue the subpenas on behalf of the Committee to aid the review board.

(e) *Rules and orders.* The Committee may issue such rules and orders as are necessary to carry out its duties.

(f) *Delegate Authority.* The Committee may delegate its authority under paragraphs (a) through (d) of this section to any member.

Dated: June 2, 1979.

Cecil D. Andrus,

Secretary of the Interior and Chairman, Endangered Species Committee.

[FR Doc. 79-17949 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-10-M

Notices

Federal Register
Vol. 44, No. 112
Friday, June 8, 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

Animal and Plant Health Inspection Service

Gypsy Moth Laboratory; Issuance of Negative Declaration

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of Availability of Environmental Analysis and Negative Declaration.

SUMMARY: This gives notice that Animal and Plant Health Inspection Service is not preparing an environmental impact statement concerning the continued use of Building 1398, on Otis Air Force Base, Massachusetts, as a Gypsy Moth Laboratory. The environmental assessment of this action indicates that the existing facility has not caused significant adverse local, regional, or national impacts on the environment in the past nor are there any adverse environmental impacts anticipated in the future. No significant controversy has been associated with this project. As a result of these findings, it has been determined that the preparation and review of an environmental impact statement is not needed for this action.

ADDRESSES: A limited number of copies of the environmental analysis are available upon request from the Energy and Environmental Staff, Architectural Engineering Branch, Administrative Services Division, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 522, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782.

Copies are available for public inspection during regular working hours at the following location: Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Building 1398, Otis Air Force Base, MA 02542.

FOR FURTHER INFORMATION: Contact Kenneth J. Dunn, Energy and Environmental Staff, (301) 436–8237.

SUPPLEMENTARY INFORMATION: Animal and Plant Health Inspection Service has been a tenant on Otis Air Force Base since 1960. Since 1976, the Gypsy Moth Laboratory, through a permit agreement with the Corps of Engineers, has occupied Building 1398 on the base. Prior to renewal of this permit, analyses of the environmental impacts of the existing facility are required. This negative declaration has been filed with the U.S. Environmental Protection Agency and with various Federal, State and local agencies.

No administrative action or implementation of permit renewal will be taken until June 25, 1979.

This notice has been reviewed under the U.S. Department of Agriculture criteria established to implement the EO 12044, Improving Government Regulations. A determination has been made that this notice should not be classified significant under those criteria. The environmental assessment referred to in the notice meets the requirements of EO 12044 and Secretary's Memorandum 1955 for an impact analysis statement. The environmental assessment is available from the Energy and Environmental Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Hyattville, MD 20782.

Done at Washington, D.C., this 25th day of May, 1979.

Francis J. Mulhern,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 79-17436 Filed 6-7-79; 8:45 am]

BILLING CODE 3410-34-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 for foreign air carrier permits under Subpart Q of 14 CFR Part 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 conjunction 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 31, 1979	35715	Turks Air Limited, c/o Gerry Levenber, Esq., Van Ness, Feldman & Sutcliffe, 1220 Nineteenth Street, NW., Suite 500, Washington, D.C. 20036. Application of Turks Air Limited requests the Board pursuant to Section 402 of the Act for renewal of its foreign air carrier permit authorizing it to engage in: (a) Non-scheduled foreign air transportation of property only between a point or points in the Turks and Caicos Islands on the one hand and Miami, Florida on the other; and (b) Property only off-route charter services. Answers due on June 28, 1979.
May 29, 1979	35680	United Air Lines, Inc., O'Hare International Airport, P.O. Box 66100, Chicago, Illinois 60666. Application of United Air Lines, Inc. requests the Board pursuant to Section 401(e)(7) of the Act and Subpart Q to reissue its certificate of public convenience and necessity for Route 51 without restriction (14) or in the alternative, amend said certificate so as to remove restriction (14) therefrom. Answers due on June 12, 1979.

Subpart Q Applications—Continued

Date filed	Docket No.	Description
June 4, 1979	35741	Ozark Air Lines, Inc., Lambert-St. Louis International Airport, St. Louis, Missouri 63145. Application of Ozark Air Lines, Inc. requests the Board pursuant to Section 401 of the Act for amendment of its certificate of public convenience and necessity for Route 107 so as to authorize it to engage in nonstop scheduled air transportation of persons, property, and mail and between Dallas/Fort Worth, on the one hand, and Honolulu and Hilo, Hawaii, on the other hand. Answers due on June 15, 1979.

Phillis T. Kaylor,

Secretary.

[FR Doc. 79-17937 Filed 6-7-79; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 33363]

Former Large Irregular Air Service Investigation; Cancellation of Hearing

The hearing on the application of Land-Air Corp., heretofore set for July 13, 1979 in the Federal Office Building and Court House, Room 5417, 200 N.W. 4th Street, Oklahoma City, Oklahoma (44 FR 27225, 9 May 1979) is cancelled.

Dated at Washington, D.C., June 4, 1979.

Rudolf Sobernheim,

Administrative Law Judge.

[FR Doc. 79-17939 Filed 6-7-79; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 33361]

Former Large Irregular Air Service Investigation (Application of Air Specialties Corp., Formerly Totem Air Service, Inc.); Rescheduled Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the hearing in the above-entitled proceeding previously scheduled to be held on June 6, 1979 (44 FR 26959, May 8, 1979), will, upon request of the applicant, be held instead on June 26, 1979, at 9:30 a.m. (local time), in Hearing Room 1003B, Universal Building North, 1875 Connecticut Avenue, N.W., Washington, D.C., before me.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to the prehearing conference report served November 9, 1978, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., June 1, 1979.

Marvin H. Morse,

Administrative Law Judge.

[FR Doc. 79-17940 Filed 6-7-79; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 33363]

Former Large Irregular Air Service Investigation; Continuance of Hearing

The hearing on the application of Galaxy Airlines, Inc., heretofore set for June 6, 1979 (44 FR 24333, 25 April 1979), is continued to and will be held on June 12, 1979, commencing at 9:00 AM at the place heretofore set.

Dated at Washington, D.C., June 6, 1979.

Rudolf Sobernheim,

Administrative Law Judge.

[FR Doc. 79-17941 Filed 6-7-79; 8:45 am]

BILLING CODE 6320-01-M

[Order No. 79-5-235; Docket No. 35176]

Houston-Brownsville & Texas International Airlines; Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause (79-5-235).

SUMMARY: The Board is proposing to grant Houston-Brownsville authority to Texas International Airlines (Docket 35176) and any other fit, willing and able applicant the fitness of which can be established by officially noticeable material. 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 July 5, 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 35707, which we have entitled the *Houston-Brownsville Show Cause Proceeding.*

In addition, copies of such filings should be served on Texas International Airlines.

FOR FURTHER INFORMATION CONTACT: Charles Stohr, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C., 20428, (202) 673-5348.

SUPPLEMENTARY INFORMATION: The complete text of Order 79-5-235 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 79-5-235 to that address.

By the Civil Aeronautics Board, May 31, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-17938 Filed 6-7-79; 8:45 am]

BILLING CODE 6320-01-M

[Order No. 79-5-243; Docket No. 34803]

Oneida County Aviation, Inc.;Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79-5-243, Docket 34803.

SUMMARY: The Board is proposing to grant the application of Oneida County Aviation, Inc. d/b/a/ Empire Airlines, for a certificate of public convenience and necessity for authority between Utica/Rome, N.Y. on the one hand, and Buffalo, Washington, D.C., New York city, Newark, N.J. and Boston on the other, between Utica, Syracuse, Albany and Hartford, Ct., and between Syracuse and New York City. The grant would be contingent upon a finding that Empire is fit, willing and able to perform properly the proposed transportation and to conform with the provisions of the Act and the applicable rules and regulations of the Board. Empire is not a certificated carrier, and is currently flying these routes under exemption or unused authority.

DATES: All persons having objections to the Board's proposed action should file, and serve upon all parties, a statement of objections, together with a summary of the testimony, statistical data and other material expected to be relied upon to support the stated objections:

(a) Where the objections are on grounds other than fitness, no later than July 9, 1979;

(b) Where objections are on fitness grounds, by such time as shall be designated by the Administrative Law Judge assigned to the case. Responses to the evidence request set forth below shall be filed no later than June 22, 1979.

ADDRESSES: All objections should be filed in Docket 34803, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Mark W. Atwood, B-72, Bureau of Pricing and Domestic Aviation, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428 (202) 673-5333.

SUPPLEMENTARY INFORMATION: Objections should be served upon Empire Airlines.

The complete text of Order 79-5-243 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 79-5-243 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

Evidence To Be Submitted Before Hearing

The applicant is to supply the following information to the extent that it has not been supplied in the exhibits to its Petition for an Order To Show Cause. To the extent that such information has been supplied, the response to this request should be crossreferenced to the corresponding exhibit.

A. Identity, Citizenship, and Relationships

1. Name and address.

2. Type of organization and the name of the state under the laws of which it is organized.

3. Statement that the applicant is a citizen of the United States as defined in section 101(16) of the Federal Aviation Act.

4. List the names and addresses and brifly indicate the expertise and responsibilities of all directors, officers and key management personnel of the applicant.

(a) Is each a U.S. citizen? If not, give citizenship;

(b) Set forth for each, the amount of applicant's stock held by class, the number of options and warrants held, including value and the exercise dates and price;

(c) Each should submit a statement describing the shares of stock (if 5 percent or more of total voting stock is owned), officerships and directorships, or other interests held in any (1) air carrier, (2) foreign air carrier, (3) person substantially engaged in the business of aeronautics, (4) common carrier, or (5) person whose principal business (in purpose or in fact) is the holding of a stock in or control of (1), (2), (3) or (4).

5. State the name, address, citizenship and principal business of each person holding 5 percent or more of applicant's total voting stock, together with the amount and percentages held, and the name, address, citizenship and principal business of any person for whose account, if other than the holder, such interest is held; if any of these people are related by blood or marriage, include the relationship;

(a) Is any person or is any subsidiary [1] of any person listed in 5, (1) an air carrier, (2) foreign air carrier, (3) person substantially engaged in the business of aeronautics, (4) common carrier, (5) officer or director of (1)-(4)? If so, describe.

6. List any person included in 4 or 5 above, who has the power to substantially influence the management of the applicant.

7. List all subsidiaries of the applicant, briefly describing the relationship to the applicant and principal business.

8. Describe the shares of stock or other interests the applicant or any of its subsidiaries holds in any (1) air carrier, (2) foreign air carrier, (3) person substantially engaged in the business of aeronautics, (4) common carrier, or (5) person whose principal business (in purpose or in fact) is the holding of stock in or control of (1)-(4).

B. Financial Information

1. Supply copies of 10K reports filed with the SEC for the past two years, if such reports were filed.

2. To the extent not supplied under B.1, supply for the most recent twelve-month period and the preceding calendar year (audited if possible, otherwise notarized), separating out for (b) and (c) transport and nontransport activities;

(a) balance sheet;

(b) profit and loss statement;

(c) cash flow statement.

C. Operational Information

1. Provide a brief chronological narrative of the ownership and operations, including:

(a) CAB, State, and FAA authority under which the applicant has conducted operations;

(b) For the past three calendar years, total aircraft hours, aircraft miles, revenue passenger-miles, and revenue ton-miles flown;

(c) Types of aircraft used, types of service performed, and major (*e.g.*10) markets served.

2. Provide a list of aircraft currently operated indicating aircraft type, capacity, and whether owned or leased.

3. Describe equipment (other than aircraft), ground facilities, and personnel currently utilized.

D. Proposed Operations

1. Describe plans for acquisition or lease of additional aircraft to be used in proposed operations, including number and type of aircraft, and financial plans contemplated for the acquisition or lease of such aircraft.

2. Provide for the first normalized year of operations an illustrative traffic forecast indicating, in the aggregate, estimated revenue hours and revenue miles by type of aircraft, number of passengers and number of tons of cargo carrier, and major markets in which above traffic will be generated.

3. Provide for the first normalized year of operations an illustrative pro-forma balance sheet (as at the end of the period), profit and loss statement on a fully-allocated cost basis, and statement of sources and uses of funds. Provide, to the extent practical, derivation of unit costs used in estimating operating expenses.

4. Describe any assistance agreements the applicant will rely upon for managerial or technical expertise.

E. Compliance Disposition

1. Provide a description of each formal or docketed complaint lodged against the applicant, any predecessor or affiliate thereof (or against any other transportation company over which the applicant or predecessor exercises or has ever exercised control) in the past five years regarding compliance with the Federal Aviation Act or the rules, regulations and requirements issued under that Act. Indicate the final disposition, if any, of the matters.

2. State whether any of the persons and/or companies listed in Item A above, either as a partner, officer, director or stockholder has been affiliated with, controlled, or participated in control of any air carrier which during such association, was found to have committed knowing, willful violations of the Act, or of any order, rule, or regulation issued under

[1] As used in this request, a subsidiary means any business of which the applicant owns 10 percent or more of the total voting stock, and any subsidiaries of the applicant's subsidiary.

the Act. If so, list the orders covering the period from ten years ago to date.

3. Indicate any action taken by the FAA under 14 CFR 13.15 (involving civil penalities of $250 or more per violation), 13.17, 13.19, and 13.23 and the disposition of each.

4. Has the applicant, any predecessor, or any of the persons listed in A.4, 5, or 6 ever been convicted of a felony, anti-trust violation, or fraud (criminal or civil) within the past ten years or is such an action pending? If so, identify the proceeding and provide a description, including current status or final disposition.

5. Provide a description of any civil actions brought against the applicant, or any predecessor or affiliate thereof (or against any other transportation company over which the applicant or predecessor exercised or has ever exercised control) arising out of its air transportation operations. Describe the current status or final disposition.

By the Civil Aeronautics Board, May 31, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-17936 Filed 6-7-79; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

Massachusetts Advisory Committee; Agenda and Notice of 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 Massachusetts Advisory Committee (SAC) of the Commission will convene at 4 p.m. and will end at 6 p.m., on July 18, 1979, at 34½ Beacon Street, Boston, Massachusetts.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the New England Regional Office, c/o 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., June 5, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-17841 Filed 6-7-79; 8:45 am]

BILLING CODE 6335-01-M

Oklahoma Advisory Committee; Agenda and Notice of 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 Oklahoma Advisory Committee (SAC) of the Commission will convene at 9:30 am and will end at 5:30 pm, on July 12, 1979, at the Hilton Inn (West) Room 201, 401 S. Meridian, Oklahoma City, Oklahoma 73108.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southwestern Regional Office of the Commission, Heritage Plaza, 416 South Main, San Antonio, Texas 78204.

The purpose of this meeting is to discuss planning; and orientation meeting for the full Oklahoma Advisory Committee.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 5, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-17842 Filed 6-7-79; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Economic Development Administration

Environmental Impact Statement for the City of Little Rock, Ark., Civic/Convention Center

On April 17, 1979, the Economic Development Administration (EDA) published in the **Federal Register** (44 FR 22797) a Notice of Intent to prepare an Environmental Impact Statement for a Civic/Convention Center which was proposed to be constructed in Little Rock, Arkansas. EDA was to be the "lead" agency in the preparation of the Environmental Impact Statement.

The City of Little Rock, Arkansas has withdrawn its request for EDA grant assistance for construction of the Civic/Convention Center. EDA will, therefore, not prepare an Environmental Impact Statement on the proposed Civic/Convention Center, and the public is now informed that EDA is no longer financially involved with the Civic/Convention Center proposal.

Dated: June 4, 1979.

Robert T. Hall,

Assistant Secretary for Economic Development.

[FR Doc. 79-17825 Filed 6-7-79; 8:45 am]

BILLING CODE 3510-24-M

Notice of Petitions by 11 Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from eleven firms: (1) The Atlas Company, 17 East Queen Street, Ephrata, Pennsylvania 17522, a producer of women's and children's pants (accepted May 23, 1979); (2) Newark Boneless Meat Products, Inc., 26 Coventry Road, Livingston, New Jersey 07039, a processor or meat (accepted May 23, 1979); (3) Bordentown Industries, Inc., 1 Reiner Place, Englewood Cliffs, New Jersey 07632, a producer of women's coats and jackets (accepted May 24, 1979); (4) Crawfton Coat Company, Inc., 1453 75th Street, North Bergen, New Jersey 07047, a producer of women's coats (accepted May 24, 1979); (5) Merit Enterprises, Inc., 140 Thomas Street, Newark, New Jersey 07114, a producer of small electric appliances (accepted May 24, 1979); (6) Hahn, Inc., 1625 N. Garvin Street, Evansville, Indiana 47711, a producer of lawn mowers, garden tillers, and other equipment (accepted May 29, 1979); (7) Imperial Reading Corporation, 1920 Atherholt Road, Lynchburg, Virginia 24501, a producer of children's jeans, shirts and tops (accepted May 29, 1979); (8) United Canning Corporation, 12505 South Avenue Extension, P. O. Box 156, North Lima, Ohio 44452, a producer of canned mushrooms (accepted May 29, 1979); (9) Oldani Enterprises, Inc., 1015 Locust Street, St. Louis, Missouri 63101, a producer of women's shirts, slacks, blouses and dresses (accepted May 31, 1979); (10) Acme Garment Company, 5th and Elm Streets, Wentzville, Missouri 63385, a producer of women's skirts, pants, shorts, blouses, jackets and vests (accepted May 31, 1979); and (11) Fearing Manufacturing Company, 490 E. Villaume, South Saint Paul, Minnesota 55075, a producer of livestock identification tags and crayons, and calf nursing bottles (accepted June 1, 1979).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93-618) and Section 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than June 18, 1979.

Jack W. Osburn, Jr.,

Chief, Trade Act Certification Division, Office of Eligibility and Industry Studies.

[FR Doc. 79-17741 Filed 6-7-79; 8:45 am]

BILLING CODE 3510-24-M

Industry and Trade Administration

Massachusetts Institute of Technology; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. at 666 11th Street NW., Room 735, Washington, D.C.

Docket Number: 79-00113. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. Article: Double-Flash Photographic System. Manufacturer: University of Sheffield, United Kingdom. Intended use of article: The article is intended to be used to investigate the rate of fuel nitrogen emission under atmospheres of varying temperature, composition and relative velocity. The experiments will be conducted to determine the size and velocity of an atomized liquid fuel under pyrolysis and combustion conditions and their relationship to nitrogen oxide pollution. The article will also be used for educational purposes in the courses Graduate Thesis (10 ThG), Graduate Research Project(10.91).

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides the abilities to (1) create an image of sufficient magnification to be accurately measured for observing particles of sizes of the order of 10 microns; (2) precisely set the time interval between two successive sparks within the time interval 20 μs to 3 ms; (3) delay initiation of timing for as much as 200 μs after the shutter has opened; (4) delay the first spark after initiation for as much as 100 μs; (5) independently time inter-spark time interval and observe spark output intensity; (6) differentiate between images formed by the two sparks; (7) generate point source spark sources for ease of collimation; (8) align both light sources upon the same axis in order to illuminate an object observable with restricted access; and (9) differentiate by a narrow field of focus, a chosen plane of observation. The National Bureau of Standards advises in its memorandum dated May 15, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus or combination of domestic instruments of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-17765 Filed 6-7-79; 8:45 am]

BILLING CODE 3510-25-M

Medical College of Wisconsin; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. at 666 11th Street N.W. (Room 735), Washington, D.C.

Docket Number: 79-00104. Applicant: The Medical College of Wisconsin, Inc., 8701 Watertown Plank Road, P.O. Box 26509, Milwaukee, WI 53226. Article: Jasco Model 500C Automatic Recording Spectropolarimeter. Manufacturer: Japan Spectroscopic Co., Ltd., Japan. Intended use of Article: The article is intended to be used for circular dichroism spectroscopy of the following systems, and the changes therein induced by alterations in experimental parameters:

(a) The conformational attributes of proteins and synthetic polypeptides;

(b) The structure and function of heme proteins; and

(c) Complexes between drugs and nucleic acids.

The experimental approaches for each project are, respectively, (a) induction of the order-disorder transformations, (b) ligation and redox processes of the heme groups, and (c) characterization of the stability and specificity of drug-nuclei acid interactions. The article will also be used in the course Biochemistry 222, Protein Chemistry for training of Ph.D. candidates.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article can provide circular dichroism spectoscopy in the 180-1000 nanometer range. The Department of Health, Education, and Welfare advises in its memorandum dated April 19, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-17766 Filed 6-7-79; 8:45 am]

BILLING CODE 3510-25-M

Northwestern University; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. at 666 11th Street, N.W. (Room 735) Washington, D.C.

Docket Number: 79–00111. Applicant: Northwestern University, 619 Clark Street, Evanston, Illinois 60201. Article: High Resolution Fourier Transform Multinuclear Magnetic Resonance Spectrometer System, Model JNM/FX–90Q and Accessories. Manufacturer: JEOL Ltd., Japan. Intended Use of Article: The article is intended to be used for a variety of chemistry studies including the following:

(1) Studies of inorganic complexes by multinuclear NMR spectroscopy,
(2) Investigation of metalloporphyrins in which the metals are iron, cobalt manganese, and chromium,
(3) Actinide Organometallic Chemistry,
(4) Syntheses of uranium hexamethyoxide and mixed methoxy uranium (VI) fluorides from uranium hexafluoride,
(5) Magnetic resonance spectra of metal nucleic in transition metal cluster complexes,
(6) Biorganic applications, i.e., study of the environment of transition metal ions in porphyrins and related systems,
(7) Determination of imidzole pK_a'S in different polymer matrices,
(8) Structure-function studies in mitochondrial cytochrome *c*,
(9) Effect of inversional motion on spin-lattice relaxation,
(10) Nitrogen-15 relaxation by Spin (Internal Rotation), and
(11) Kinetics of Processes with Long Correlation times.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States at the time the foreign article was ordered.

Reasons: The foreign article provides the capability for measuring T_{1rho}, the spin-lattice relaxation time in the rotating frame. The National Bureau of Standards advises in its memorandum dated May 10, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79–17767 Filed 6–7–79; 8:45 am]

BILLING CODE 3510–25–M

George C. Marshall Space Flight Center, Ala., et al; Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, Bureau of Trade Regulation, U.S. Department of Commerce, Washington, D.C 20230, on or before June 28, 1979.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comment.

A copy of each application is on file, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, at 666–11th Street, N.W. (Room 735), Washington, D.C.

Docket number: 79–00242. Applicant: George C. Marshall Space Flight Center—National Aeronautics and Space Administration, Alabama 35812. Article: Spacelab. Manufacturer: European Space Agency (ESA), (ERNO) West Germany. Intended use of article: The article is a reusable general-purpose laboratory which will be flown to and from space in the cargo bay of the Orbiter and remaine attached to the Orbiter during all phases of the mission. The space missions will involve the disciplines of space processing, advanced technology, earth viewing, life sciences, astronomy, astrorhysics, solar physics, and terrestrial physics. In addition, the article will be used to fly experiments specifically for high school students from both the U.S. and Europe. Application received by Commissioner of Customs: April 4, 1979.

Docket number: 79–00264. Applicant: Utah State University, Department of Range Science, UMC 52, Logan, Utah 84322. Article: CO^2 Infrared Gas Analyzer. Manufacturer: Analytical Development Co., United Kingdom. Intended use of article: The article is intended to be used for photosynthetic studies of arid land plants, particularly in the field under natural environmental conditions. These experiments will involve measurement of net photosynthesis and respiration of plants as a function of various environmental factors as well as the different species of plants which will be assayed. Measurements of photosynthesis and respiration involve determinations of the changes in concentrations of carbon dioxide in a small chamber surrounding the plant. In addition to the primary use of the article in research, some use of the article will also be made in teaching of an advanced graduate course Plant Ecophysiology (Range Science 621). Application received by Commissioner of Customs: May 7, 1979.

Docket number: 79–00265. Applicant: Letterman Army Medical Center—Department of Pathology, Building 1100, Presidio of San Francisco, San Francisco, CA 94120. Article: Electron Microscope, Model EM 10A and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article will be used to study human tissues removed surgically or at autopsy. Research will involve studying ultrastructurally all unusual tumors and many other pathologic states. In addition, the article will be used for post doctoral training of ten residents in the medical specialty of pathology. Application received by Commissioner of customs: May 7, 1979.

Docket number: 79–00266. Applicant: The University of Texas Health Science Center at Houston—Medical School, P.O. Box 20036, 6431 Fannin Street, Houston, Texas 77025. Article: Temperature-Jump Spectrometer and Accessories. Manufacturer: Messanlagen Studien-gesellschaft mbH, West Germany. Intended use of article: The article is intended for investigation of the kinetics of the folding-unfolding reactions of globular proteins. These are large, biologically important polymers of amino acids which fold into different types of three dimensional structures depending on the sequence of the amino acids in the particular protein under study. Kinetic methods (stopped flow and fast temperature jumps) will be

used to study the rates a which particular steps infolding (unfolding) take place. It is hoped that these studies will lead to an understanding of how sequence is related to folding. Application received by Commissioner of Customs: May 7, 1979.

Docket number: 79–00268. Applicant: U.C.L.A., Department of Biology, Los Angeles, CA 90024. article: CED Model 509 Dual 308K Byte Floppy Disc Systems and Accessories. Manufacturer: Cambridge Electronic Design (CED), United Kingdom. Intended use of article: The article will be used in conjunction with a CAI Alpha minicomputer to control stimuli, acquire and analyze data during acute studies of the auditory system in lower vertebrates. It will be used in the study of neural mechanisms involved in processing species-specific sounds for the purpose of understanding normal auditory function; this in turn, may serve as baseline data for studies of auditory pathology, including deafness of cochlear origin, tinnitus, etc. The preparation used will be the anesthetized frog, in which the electrical activity of the auditory nerve is recorded and stored on the floppy disc system for subsequent analysis. The disc, then will form an integral part of the recording and analyzing appartus. Application received by Commissioner of Customs: May 7, 1979.

Docket Number: 79–00269. Applicant: University of Southern California, Electrical Engineering Dept., University Park, Los Angeles, CA 9007. Article: Pulsed CO2 TEA Laser, Model TEA 103. Manfacturer: Lumonics Ltd., Canada. Intended Use of Article: the article is intended to be used to optically pump molecules in order to create population inversions between energy states of the pumped molecules. The article will be used by graduate students in order to carry out the original research required for the Ph.D. degree. Application reveived by Commissioner of Customs: May 7, 1979.

Docket Number: 79–00271. Applicant: University of Florida—College of Pharmacy, Box J–4, JHMHC, Gainesville, Fla. 32610. Article: Dianorm R–4–Equilibrium Dialysis Apparatus and Accessories. Manufacturer: Diachema AG, Switzerland. Intended use of Article: The article is intended to be used for studies of enzymes, proteins and nucleic acids. The quantitative aspects of the interaction of the macromolecules will be investigated, as a function of concentration, pH, ionic strength, etc. The objectives of the investigations are to understand the mechanism of binding of the drugs to the molecules and to correlate the observations with in vivo data obtained from animals and humans. The article will also be used by graduate students, satisfying the research requirements for their Ph.D. degree and by post doctoral fellows in their research program. Application Received by Commissioner of Customs: May 1979.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79–17768 Filed 6–7–79; 8:45 am]

BILLING CODE 3510–25–M

National Oceanic and Atmospheric Administration

Availability of Evaluation Findings for the Massachusetts, Rhode Island, and Wisconsin Coastal Management Programs

Section 312 of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.) requires that the Office of Coastal Zone Management (OCZM) conduct a continuing evaluation of the performance of each coastal State under its Federally approved coastal management program.

On-site evaluations of the Massachusetts, Rhode Island and Wisconsin programs were conducted by Office of Coastal Zone Management in February, 1979.

All three States were found to be adhering to their management programs as a result of which positive results are occurring with respect to resource protection, management of development, increased recreational access and permit simplification.

Notice is hereby given of the availability of these evaluation findings to interested parties. A copy of the written findings made by the Assistant Administrator for Coastal Zone Management for each of these States may be obtained on request from: Carol Sondheimer, Chief, Policy and Program Evaluation, Office of Coastal Zone Management, Page Building 1, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, telephone (202) 634–4245.

Dated: June 4, 1979.

Robert L. Carnahan,

Acting Assistant Administrator for Administration.

[FR Doc. 79–17955 6–7–79; 8:45 am]

BILLING CODE 3510–12–M

Mid-Atlantic Fishery Management Council's Bluefish Subpanel; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Mid-Atlantic Fishery Management Council was established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94–265), and the Council has established a Bluefish Subpanel (AP) which will meet to discuss the Bluefish Fishery Management Plan (FMP).

DATES: The meeting will convene on Friday, June 29, 1979, at 10 a.m. and will adjourn at approximately 3 p.m. The meeting is open to the public.

ADDRESS: The meeting will take place at the Best Western Airport Motel, Philadelphia International Airport, Route No. 291, Philadelphia, Pennsylvania (215) 365–7000.

FOR FURTHER INFORMATION CONTACT: Mid-Atlantic Fishery Management Council, North and New Streets, Room 2115, Federal Building, Dover, Delaware 19901, Telephone: (302) 674–2331.

Dated: June 5, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79–17967 Filed 6–7–79; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council and Scientific and Statistical Committee and Advisory Panel; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The North Pacific Fishery Management Council was established by Section 302 of the Fishery Conservation and Management Act (FCMA) of 1976 (Public Law 94–265), and the Council has established a Scientific and Statistical Committee (SSC) and an Advisory Panel (AP) to hold joint and separate meetings, June 26–29, 1979.

DATES: The Council meeting will convene on Thursday, June 28, 1979, at 8:30 a.m. and will adjourn on Friday, June 29, 1979, at 5 p.m. at the Elks Lodge, Homer, Alaska. The SSC meeting will convene on Tuesday and Wednesday, June 26 and 27, 1979, at 9 a.m. and will adjourn at 5 p.m. on both days at the Land's End, Homer, Alaska. The AP meeting will convene on Wednesday, June 27, 1979, at 9:30 a.m. and will adjourn at 5 p.m. at the Elks Lodge, Homer, Alaska. The SSC and AP will

meet jointly, as necessary, on Thursday, June 28, 1979. The meetings may be lengthened or shortened depending on progress on the agenda. The meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: North Pacific Fishery Management Council, P.O. Box 3136DT, Anchorage, Alaska 99510, Telephone: (907) 274–4563.

PROPOSED AGENDAS:

Council

(1) Consider amendment to the Fishery Management Plan (FMP) for Groundfish in the Gulf of Alaska to close some areas to joint venture operations; (2) First Council consideration of changes in definitions of fishery management units for all FMP's in the Gulf of Alaska and the Bering Sea; (3) Consideration of an amendment to the FMP for Groundfish in the Bering Sea/Aleutian Islands closing an area in the central Bering Sea to foreign trawling to protect herring and salmon; (4) Develop recommendations to National Marine Fisheries Service (NMFS) for release of groundfish reserves in the Gulf of Alaska; (5) Hear a report on the Tanner crab fishery in the Bering Sea with the possibility that some action may be required to amend the FMP for Tanner Crab off Alaska if resource conditions warrant; (6) Develop final recommendations for changes to the FCMA of 1976; (7) Review an application from the Soviet Processor/Trawler PRIAMURYE for a permit to support American fishermen in the Gulf of Alaska groundfish fishery; (8) Discussion of the concept of optimum yield (OY) as developed by the Pacific Fishery Management Council; (9) Report from the Working Group on Socio-economic Data Needs in the North Pacific Council fishery FMP's; (10) Report from the Working Group developing guidelines for estimating Domestic Annual Harvesting (DAH) and Processing capacity; (11) Internal audit review report; (12) First consideration of 1980 operating budget for the North Pacific Council; (13) Reports of ongoing fisheries and management problems from NMFS, Alaska Department of Fish and Game (ADF&G), United States Coast Guard (USCG), the AP, and the SSC; (14) A preliminary report from the Council Working Group on Incidental Species on the use of a fourth category of species for FMP's, those species that are unutilized or unwanted and occur as an incidental catch in other fisheries; (15) Report on the Council Chairmen's Meeting of June 19th and 20th; (16) Preliminary report from the Limited Entry Work Group; (17) Council recommendation for reduction of amount of Groundfish (Pollock, Pacific Cod, etc.) set aside for U.S. harvest in 1979, based on the latest survey of U.S. processing intent; and (18) Hold a public comment period on June 28, 1979, at 3:30 p.m.

Scientific and Statistical Committee

(1) Discussion of possible herring/salmon savings trawl closures; (2) Consideration and nomination of a new SSC member; (3) Discussion of State/Federal Regulations; (4) Proposed FCMA changes; (5) Discussion of OY Decision Paper; (6) Discussion on Limited Entry; (7) Review of report on Socio-economic Data Needs Committee; and (8) Discussion of King Crab FMP.

Advisory Panel

(1) Discussion of amendment to the FMP for Groundfish in the Gulf of Alaska to close some areas to joint venture operations; (2) Discussion of an amendment to the FMP for Groundfish in the Bering Sea/Aleutian Islands closing an area in the central Bering Sea to foreign trawling to protect herring and salmon; (3) Discussion on release of groundfish reserves in the Gulf of Alaska; (4) Report from the Working Group developing guidelines for estimating DAH and Processing Capacity; (5) Report from the Working Group on Socio-economic Data Needs in the North Pacific Council FMP's; (6) A preliminary report from the Council Working Group on Incidental Species on the use of a fourth category or species for FMP's, those species that are unutilized or unwanted and occur as an incidental catch in other fisheries.

Dated: June 5, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-17966 Filed 6-7-79; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council's Pink Shrimp Subpanel; Public Meeting

AGENCY: National Marine fisheries Service, NOAA.

SUMMARY: The Pacific Fishery Management Council was established by Section 302 of the Fishery Conservation and Management Act of 1976 (Public Law 94–265), and the Council has established a Pink Shrimp Subpanel which will meet to review sections of the second draft of the Pink Shrimp Fishery Management Plan (FMP).

DATES: The meeting will convene on Monday, June 25, 1979, at 1 p.m.; Tuesday, June 26, 1979, at 8 a.m. and will adjourn at approximately 5 p.m. on both days. The meeting is open to the public.

ADDRESS: The meeting will take place at the Oregon Department of Fish and Wildlife, 508 S.W. Mill Street, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Pacific Fishery Management Council, 526 S.W. Mill Street, Second Floor, Portland, Oregon 97201, Telephone: (503) 221–6352.

Dated: June 5, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-17968 Filed 6-7-79; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1979; Addition

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

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1979 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: June 8, 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 16, 1979 the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (44 FR 22504) of proposed addition 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 5120

Screwdriver, Flat-tip, 5120-00-278-1269, 5120-00-289-9662, 5120-00-287-2504, 5120-00-287-2505, 5120-00-278-1267, 5120-00-541-3004, 5120-00-288-7803, 5120-00-236-2127, 5120-00-278-1270, 5120-00-227-7356, 5120-00-260-4837, 5120-00-227-7334, 5120-00-278-1268, 5120-00-293-0314, 5120-00-337-2465, 5120-00-540-0563, 5120-00-180-0708, 5120-00-222-8866, 5120-00-596-8502, 5120-00-278-1273, 5120-00-062-0813, 5120-00-293-3311, 5120-00-222-8852, 5120-00-596-9364, 5120-00-293-0315, 5120-00-293-3309, 5120-00-227-7377, 5120-00-180-3490, 5120-00-236-2140, 5120-00-062-8454, 5120-00-720-4969.

E. R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 79-17818 Filed 6-7-79; 8:45 am]

BILLING CODE 6820-33-M

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 a service provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: June 8, 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 20, 1979 the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (44 FR 23555) 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 service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following service is hereby deleted from Procurement List 1979:

SIC 7399

Packaging Service, Portsmouth Naval Shipyard, Portsmouth, New Hampshire.

E. R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 79-17819 Filed 6-7-79; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Determinations of Active Military Service and Discharge: Civilian or Contractual Personnel (Signal Corps Female Telephone Operators Unit (WW I))

Correction

In FR Doc. 17241, appearing at page 32019, in the issue of Monday June 4, 1979, on page 32020, 21st line, "evidence of membership and character" should read "evidence of membership and character of"

BILLING CODE 1505-01-M

Department of the Army

Intent To Prepare Draft Environmental Impact Statement for a Proposed Flood Control Project, Mingo Creek, Tulsa, Okla.

AGENCY: U.S. Army Corps of Engineers, DOD, Tulsa District.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS)

SUMMARY: 1. The primary purpose for this project is to provide 100-year flood protection on 2,200 acres of urban land in the city of Tulsa, Oklahoma.

2. Reasonable Alternatives. The alternatives evaluated include: no action, flood plain acquisition, flood proofing, channelization, levees, detention, and combination of alternatives.

3. Scoping Process.

a. Public Involvement. A comprehensive public involvement program was developed as a means of disseminating information and soliciting public views. A variety of techniques including formal public meetings, informal public information sessions, committees, the newsletter, "Waterlogue", and periodic statements to the local news media were employed to involve organizations, Federal, State, and local agencies, citizen committees, and the interested public in the planning studies.

b. Significant Issues Requiring Indepth Analysis. None.

c. Assignments. U.S. Fish and Wildlife Service prepared a Coordination Act Report dated 23 March 1979.

d. Environmental Review and Consultation Requirements. The draft statement will be circulated for review, and all comments will be incorporated into the final environmental statement.

4. Scoping meeting will not be held.

5. Estimated date when the DEIS will be available. July 1979.

ADDRESS: Mr. Buell O. Atkins, Chief, Environmental Resources Branch, U.S. Army Corps of Engineers, Tulsa District, P.O. Box 61, Tulsa, OK 74121, (918) 581-7857.

Dated: May 30, 1979.

Robert G. Bening,

Colonel, CE, District Engineer.

[FR Doc. 79-17820 Filed 6-7-79; 8:45 am]

BILLING CODE 3710-39-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Albert B. Alkek Consent Order; Extension of Comment Period

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Extension of Comment Period for Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby extends to June 15, 1979 the comment period on the Consent Order executed between Albert B. Alkek of Victoria, Texas, and the Office of Enforcement (ERA). The original notice of action taken was published in 44 FR 24913 (April 27, 1979).

DATES: Comments by June 15, 1979.

ADDRESS: Send comments to: Thomas M. Holleran, Chief, Crude Oil Branch, Office of Enforcement Policy & Planning, 2000 M Street, N.W., Room 5128, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Thomas M. Holleran, Chief, Crude Oil Branch, Office of Enforcement Policy & Planning, 2000 M Street, N.W., Room 5128, Washington, D.C. 20461 (202-254-8580).

Issued in Washington, D.C. on the 1st day of June 1979.

Barton Isenberg,

Assistant Administrator for Enforcement, Economic Regulatory Administration.

[FR Doc. 79-17828 Fied 6-7-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. GP79-19]

Montana-Dakota Utilities Co.; Protest and Petition for Relief

June 4, 1979.

Take notice that on May 16, 1979, Holly Sugar Corporation (Holly), P.O. Box 1052, Colorado Springs, Colorado

80901, filed in Docket No. GP79–19 a protest of the actions of Montana-Dakota Utilities Co. (MDU) and petition for relief pursuant to Sections 1.6 and 1.7 of the Commission's Rules of Practice and Procedure (18 CFR 1.6 and 1.7) and Section 281.110 of the Interim Curtailment Rule issued pursuant to the Natural Gas Policy Act of 1978 (NGPA), all as more fully set forth in the protest and petition which are on file with the Commission and open to public inspection.

Holly is a manufacturer of sugar, operating several plants at which sugar is processed from sugarbeets, among them one situated near the Town of Worland, Washakie County, Wyoming, and one near Sidney, Richland County, Montana. Holly states that MDU has furnished natural gas at the Sidney and Worland plants under negotiated industrial interruptible contracts and that until 1976, it used natural gas at said plants as its sole energy source except for negligible quantities of oil, the required stand-by fuel, during peak load interruptions.

In 1976 MDU instituted an allocation plan (the Plan) and Holly alleges that at MDU's instance, several of MDU's major customers, including Holly, entered into a stipulation and agreement, approving the Plan, by the terms of which an order of priority was established and customers with lowest priority (4) agreed to a program the effect of which would be to reduce their annual consumption each year thereafter by 20 percent cumulatively. Standard contracts thereafter were offered such customers on a fiscal year July 1–June 30 basis. By agreement, dated June 1, 1978, for the term July 1, 1978–June 30, 1979, Holly states that it was restricted to 40 percent of its base year (1976) consumption of priority 4 usage as defined in the Plan. The plan is pending before the Commission.

Holly asserts that in comments filed April 2, 1979, pursuant to a conference in Docket No. RP76–91 to consider the effect of the NGPA upon current curtailment plans, MDU stated:

> Since the volumetric limitations under the present contracts serve as a cap through June 30, 1979, MDU believes it is in harmony with the intent of the Commission's interim rule to maintain the same "cap" for the remaining four months during which the Interim Curtailment Rule is to be in effect—*i.e.*, July 1, 1979 through October 31, 1979.
>
> Consequently, new contracts embracing the period July 1, 1979 through October 31, 1979 will establish volumetric limitations at the present level, which is 40 percent of requirements, that is during that four-month period, the contract volume will be 4/12 of 40 percent of Base Period Requirements.

Holly states that reflecting such intention, MDU wrote Holly on April 30, 1979, as follows:

> Section 2.2(a) of our FERC Gas Tariff, First Revised Volume No. 1, requires that Montana-Dakota Utilities Co. shall notify all customers whose base period requirements cannot by completely met, of the percent of service which such customer will receive during the following Supply Year. In compliance with that requirement, we wish to advise you that for the Supply Year 1979–80 (beginning July 1, 1979, and ending June 30, 1980), the curtailment rate will be eighty percent (80%) of your Priority 4 Base Period Requirements as contained in the tariff. You will, therefore, be allotted twenty percent (20%) of the Priority 4 base period requirement volume plus one hundred percent (100%) of the Priority 2 base period requirement for the 1979–80 Supply Year.
>
> A new contract covering the 1979–80 Supply Year, setting forth the new volumes allotted to your plant, will be prepared and submitted to you in the near future. The new contract will incorporate the effect of exemptions or special conditions legally imposed by regulatory bodies, if any, which may affet the volumes applicable to your plant.

Holly alleges that, as an agricultural producer, it is entitled to priority 2 treatment under the U.S. Department of Agriculture's Interim Rule issued pursuant to Section 401 of the NGPA, but that, in reaching a contrary conclusion on April 2, 1979, that its present contract represents a "cap," MDU reasoned as follows:

> Section 281.107(c)(1) provides that MDE's supply obligation is:
>
> "* * * the *lesser* of:
>
> "(i) the volume certified by the Secretary of Agriculture as essential agricultural volumetric requirements and calculated under 7 C.F.R. § 2900.4";
>
> "(ii) the volume which may be delivered by the interstate pipeline to the direct sale customer without causing the interstate pipeline to exceed any volumetric limitations set out in the contract between the interstate pipeline and such direct sale customer (without regard to any contract provision which would otherwise restrict delivery because of supply or capacity shortage of the interstate pipeline)."

Again, it is clear that the volumetric requirements calculated under Agriculture's rule exceed the volumetric limitations under the present contracts (*i.e.*, 40 percent of Base Period Requirements). Hence, under the Commission's rule, the volumetric limitations set forth in the contracts are a "cap" on MDU's supply obligation to essential agricultural use establishments. Accordingly, there is no authority for or requirement under the Commission's rule that "adjustments" exceed such limitation.

Holly contends that the problem with the above reasoning is that Section 281.107(c)(1) refers only to "*the* contract" (emphasis added). And that *the* contract between it and MDU expires June 30, 1979. Holly maintains that after that, there is no reason for denying it the right to seek priority 2 volumetric entitlement unless Holly has subjected itself to some further contractual limitation by MDU in the meantime, which Holly states, it has not and will not do. Holly asserts that without executing such a contract, it may get no gas and that either it must abandon its rights to full entitlement under Section 401 of the NGPA by signing a new restrictive agreement for the coming season with a 20 percent "cap" or it must abandon its rights to service altogether.

Holly protests MDU's action in offering it, as of July 1, 1979, either a contract restricting it to 20 percent of its priority 4 usage or nothing at all, as either (or both) a misconstruction of the Interim Rules or an abandonment of its facilities servicing Holly without requisite approval of the Commission as mandated by Section 7(b) of the Natural Gas Act.

Holly prays that the Commission issue a declaratory order clarifying the following issues:

(1) regarding the aforementioned reference to "the contact," in the Interim Rule, whether such reference refers to unsigned future as well as currently effective contracts between supplier and customer or to currently effective curtailment plans regardless of the existence of individual contracts between supplier and customer;

(2) whether MDU's Plan, aforementioned, is a currently effective curtailment plan;

(3) whether MDU's Plan aforementioned, represents "the contract" referred to in the Interim Rule;

(4) whether MDU's action in offering Holly only a contract as of July 1, 1979 containing volumetric limitations in accordance with the Plan represents an abandonment under Section 7(b) of the Natural Gas Act; and

(5) whether MDU is authorized by Section 401 of the NGPA and the Interim Rule to offer Holly a new contract allowing it only 20 percent of its base period entitlement or whether MDU should offer Holly a contract containing the full volumetric limits to which it would have been entitled had the Plan not been instituted.

Based on the Commission's clarification of the foregoing, Holly prays that the Commission issue its order to MDU, requiring MDU to offer

Holly, as of July 1, 1979, contracts at both its Worland and Sidney plants with volumetric limits of natural gas no less than its full base year entitlement.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 15, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-17746 Filed 6-7-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. GP79-21]

Montana-Dakota Utilities Co.; Petition for Declaratory Order

June 4, 1979.

Take notice that on May 16, 1979, The Great Western Sugar Company (Great Western), 1530 16th Street, Denver, Colorado 80217, filed in Docket No. GP79-21 a petition pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure (18 CFR 1.7(c)) for a declaratory order with regard to the interpretation by Montana-Dakota Utilities Co. (MDU) of Section 281.107(c)(1)(ii) of the Commission's Interim Curtailment Rule issued pursuant to the Natural Gas Policy Act of 1978 (NGPA) and stating that a pipeline's supply obligation to a direct essential agricultural user under Section 281.107(c)(1)(ii) is determined by the full contractual volumes without regard to any limitation thereon resulting from curtailment, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Great Western owns and operates two factories, one located in Billings, Montana, and the other in Lovell, Wyoming, which use natural gas furnished by MDU in connection with the processing of sugar beets into refined sugar and dried beet pulp for use as a livestock feed. As such, Great Western asserts, it qualifies as an essential agricultural user of natural gas under the regulations issued by the Secretary of Agriculture pursuant to the authority delegated under Section 401 of the NGPA.

Great Western states that MDU has filed tariff sheets as part of its FERC Gas Tariff to provide on an interim basis a plan for the delivery of natural gas for essential agricultural and high priority uses in accordance with Section 401 of the NGPA and that Section 281.107(c)(1) as incorporated into MDU's tariff provides as follows:

"(c) *Essential agricultural supply obligation.*

"(1) *Direct essential agricultural supply obligation.*

"The direct essential agricultural supply obligation of an interstate pipeline for a particular curtailment period with respect to an essential agricultural user which is a direct sale customer of the interstate pipeline is the lesser of:

"(i) The volume certified by the Secretary of Agriculture as essential agricultural volumetric requirements and calculated under 7 CFR § 2900.4; or

"(ii) The volume which may be delivered by the interstate pipeline to the direct sale customer without causing the interstate pipeline to exceed any volumetric limitations set out in the contract between the interstate pipeline and such direct sale customer (without regard to any contract provisions which would otherwise restrict delivery because of supply or capacity shortage of the interstate pipeline)."

Great Western asserts that in comments on the impact of NGPA submitted in Docket No. RP76-91, MDU noted that one of the Commission criteria for determining the volumetric entitlement of large direct essential agricultural users was the volumes certified by the Secretary of Agriculture and that MDU observed that under the Secretary's rule:

"* * * the volumetric requirements certified are the *higher* of (1) the highest volume of gas actually used during the most recent three years (corrected to include amounts of process (fn. omitted) and feedstock gas not used because of curtailment or plant shutdown) or (2) the maximum volume the customer would be entitled to purchase under MDU's curtailment plan *in effect on February 28, 1979.* Because of the large volume * * * customers had, during the past three years, contracts representing various reduced levels of service (*i.e.*, below full 'Base Period Requirements' as set forth in the Tariff), it is apparent that the actual volumes of gas used (corrected for feedstock and process gas not used because of curtailment) will produce the higher calculation of requirements under Agriculture's rule, *i.e.*, the requirements calculated under (1) will exceed the volulmetric limitations specified in the contracts in effect February 28, 1979." (Emphasis in orignial) (App., p. 5)

Great Western then indicates that further quoting the provision of Section 281.107(c)(1)(ii) set out *supra*, p. 2, MDU then went on to state (App., p. 6):

* * * it is clear that the volumetric requirements calculated under Agriculture's rule exceed the volumetric limitations under the present contracts (*i.e.*, 40 percent of Base Period Requirements). Hence, under the Commission's rule, the volumetric limitations set forth in the contracts are a 'cap' on MDU's supply obligation to essential agricultural use establishments. Accordingly, there is no authority for or requirement under the Commission's rule that 'adjustments' exceed such limitation.

Since the volumetric limitations under the present contracts serve as a cap through June 30, 1979, MDU believes it is in harmony with the intent of the Commission's interim rule to maintain the same 'cap' for the remaining four months during which the Interim Curtailment Rule is to be in effect—*i.e.*, July 1, 1979 through October 31, 1979.

Consequently, new contracts embracing the period July 1, 1979 through October 31, 1979 will establish volumetric limitations at the present level, which is 40 percent of requirements, that is during that four-month period the contract volume will be 1/12 of 40 percent of Base Period Regulations.[1]

Great Western submits that MDU's interpretation of Section 281.107(c)(1)(ii) as imposing a "cap" limiting its obligations to essential agricultural users to 40 percent of base period requirements grossly misconstrues the force and thrust of that provision. Great Western further submits that there is no basis for MDU's position that the volumetric limitations of 40 percent of base period requirements contained in its present contracts would continue in effect for the four months remaining after June 1979 that the Commission's Interim Rule is to be effective; to the contrary, Great Western alleges, the present contracts expire June 30, 1979, and new contracts are required for the post-June 30 period. Similarly unjustified, Great Western contends, is MDU's asserted belief that maintenance of the same "cap" for the post-June 30 period would be "in harmony with the intent of the Interim Rule," since there is nothing in the Interim Rule suggesting a Commission purpose that the same volumetric limitation levels be maintained from period to period within the time frame covered by the Rule. In any case, Great Western contends, assuming *arguendo* that, as MDU urges, the Commission intends the post-June 30 period to be treated the same as the prior period, MDU's conclusion that the

[1] The 40 percent calculation applies only to the Base Period Requirements in the category being curtailed, namely, Priority 4.

40 percent base period requirement operates as a volumetric limitation upon its obligations to direct essential agricultural users such as Great Western is belied by the parenthetical phrase in Section 281.107(c)(1)(ii) "without regard to any other provision which would otherwise restrict delivery because of supply or capacity shortage of the interstate pipeline."

Great Western states that in line with certain curtailment provisions in MDU's tariff, the contracts which MDU's customers enter into with MDU annually expressly provide the level of curtailment which MDU determines for the oncoming year beginning July 1, and, thus, MDU's annual contracts with Great Western not only make clear that they were being entered into in a curtailment context, but the total volumes specifically provided were patently a predetermined percentage of Great Western's agreed-upon base period requirements. Great Western submits that since the 40 percent of base period requirements provided in MDU's contracts with its category 4 customers is an integral part of MDU's curtailment plan purported based on the gas supply shortage on the MDU system, it is clear that under the parenthetical phrase in Section 281.107(c)(1)(ii) the 40 percent limitation is to be disregarded in determining volumetric limitations for the purpose of that Section.

Accordingly, Great Western petitions the Commission to issue an order declaring that a pipeline supply obligation to a direct essential agricultural user under Section 281.107(c)(1)(ii) is determined by the full contractual volumes without regard to any limitation resulting from curtailment.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 15, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules or Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-17747 Filed 6-7-79; 8:45 am]

BILLING CODE 6450-01-M

Thermodynamics Conference

Notice is hereby given that a conferece to discuss the current state-of-the-art and-technology and to delineate logical steps in the construciton of a program of thermodynamic research useful in fulfilling the mission of Fossil Fuel Extraction Division will be held June 14–15, 1979, at the Hilton Hotel, Tulsa, Oklahoma. The conference will be open to the public and begin at 8:00 a.m.

The Chairman is Dr. Herman L. Finke, Department of Energy, Fossil Energy, Fossil Fuel Extraction Division, Washington, D.C. The Chairman is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business.

Seating will be made available on a first-come, first-served basis.

Copies of the proceedings of the conference will be made available following their certification by the Chairman and Program Director/Fossil Energy at the Department of Energy's Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, upon payment of appropriate charges.

Issued in Washington, D.C. on June 5, 1979.

Donald M. Kerr,

Acting Assistant Secretary for Enregy Technology.

[FR Doc. 79-17952 Filed 6-7-79; 8:45 am]

BILLING CODE 6450-01-M

Environmental Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given that the Ad Hoc Subcommittee of the Environmental Advisory Committee will meet Monday, June 25, 1979, at 9:00 a.m., Room 4222C, Department of Energy, 20 Massachusetts Avenue NW., Washington, D.C. If Subcommittee business is not concluded by the afternoon of June 25, the meeting will continue on June 26, 1979, at 9:00 a.m., Room 4234, 20 Massachusetts Avenue NW., Washington, D.C.

The purpose of the Environmental Advisory Committee is to advise the Department of Energy on the overall activities which pertain to the goals of restoring, protecting and enhancing environmental quality and assuring public health and safety.

The subcommittee will address the use and significance of demand projections in the formulation of national energy policy.

The meeting is open to the public. The Chairwoman of the Subcommittee is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to the meeting should inform the Advisory Committee Management Office, (202) 252-5187, at least 5 days prior to the meeting and reasonable provision will be made to include their presentation on the agenda.

Transcripts of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. In addition, any person may purchase a copy of the transcript from the reporter.

Issued at Washington, D.C., on June 4, 1979.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 79-17816 Filed 6-7-79; 8:45 am]

BILLING CODE 6450-01-M

Southeastern Power Administration

Intent to Revise Rates and Charges

AGENCY: Southeastern Power Administration (SEPA), Department of Energy.

ACTION: Proposed rate revision.

SUMMARY: SEPA proposes to revise its rate schedule applicable to the sale of energy from the Jim Woodruff Project to the Florida Power Corporation, continuing in effect the present rate schedule applicable to the sale of capacity and energy to preference customers. A decrease in revenue of approximately 13 percent is proposed for the period beginning with approval and ending August 19, 1982. It is the purpose of this Notice to (1) invite interested persons to submit written comments, and to (2) advise that a public comment forum will be held to permit interested persons the

opportunity to present views, data or arguments in oral and/or written form regarding the proposed rates.

DATES: Written comments are due on or before July 2, 1979. The public comment forum will be held in Tallahassee, Florida, on June 26, 1979.

ADDRESSES: Five copies of written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635.

The public comment forum will be held beginning at 10:00 a.m., June 26, 1979, in Room 41 at the U.S. Courthouse, 110 East Park Avenue, Tallahassee, Florida 32301.

FOR FURTHER INFORMATION CONTACT: Curtis H. Bell, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635, 404–283–3261.

SUPPLEMENTARY INFORMATION: Revision in the rate to Florida Power Corporation is appropriate for reasons of equity and the reduced revenue level is appropriate in order that payout may be accomplished throughout the entire 50-year repayment period. Proposed monthly rates applicable to customers purchasing power from the Jim Woodruff Project are as follows:

Preference Customers

Capacity/kw	$1.50
Energy/kwh (mils)	4.50

Florida Power Corporation

Energy: a rate equal to 60 percent of the calculated saving in the cost of fuel per kwh to the Company determined as follows:

Energy Rate = 60% × Fm/Sm (Computed to the nearest $0.00001 (1/100 mil) per kwh)

Where: Fm = Company fuel cost in the current period as defined in Federal Power Commission Order 517 issued November 13, 1974, Docket No. R–479.

Sm = Company sales in the current period reflecting only losses associated with wholesale sales for resale. Sale shall be equated to the sum of (a) generation, (b) purchases, (c) interchange-in, less (d) intersystem sales, less estimated wholesale losses (based on average transmission loss percentage for preceding calendar year).

Method of Application: The energy rate applied during the current billing month will be based on costs and equated sales for the second month preceding the billing month.

Copies of proposed rate schedules are available upon request and studies and other information used in developing the proposed rates are available for inspection and/or copying at the headquarters' offices of Southeastern Power Administration.

Additionally, a finding has been made based upon an Environmental Review that the proposed revised rates will not have a significant effect upon the quality of the human environment. The Environmental Review is likewise available for inspection and/or copying at SEPA headquarters.

The public comment forum will not be adjudicative in nature. A SEPA designated official will preside, SEPA representatives will give background information and explanations supporting the proposed revised rates and charges and answer questions relevant thereto, and those making oral presentations may be questioned by the presiding official and other participating SEPA representatives. Any further procedural rules needed for the proper conduct of the forum will be announced prior to the forum by the presiding official. Forum proceedings will be transcribed. Copies of the transcript may be purchased from the reporter. Written comments, written answers to questions, and any other documents submitted to SEPA and not included in the forum transcript will be available for inspection and/or copying at the SEPA headquarters' offices in Elberton, Ga., between the hours of 8 a.m. and 5 p.m., Monday through Friday. The forum transcript will likewise be available for inspection at the SEPA headquarters' offices. Issued in Elberton, Ga., May 23, 1979.

Kenelm E. Rucker,

Acting Administrator.

[FR Doc. 79-17817 Filed 6-7-79; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1243-7]

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 28 to June 1, 1979.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this Notice is calculated from June 8, 1979 and will end on July 23, 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 originating 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 28 to June 1, 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 or 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: June 5, 1979.

William N. Hedeman, Jr.,

Director, Office of Environmental Review.

APPENDIX I

EIS's Filed With EPA During the Week of May 28 to June 1, 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.

Forest Service

Draft

Elk Wild and Scenic River Study, Routt County, Colo., May 30: Proposed is the inclusion of 35 miles of the Elk River and 7,400 acres of adjacent land of the Routt National Forest in Routt County, Colorado, in the National Wild and Scenic Rivers System, of the area recommended for inclusion 17 miles of river and 3,800 acres will be classified as wild; 12 miles of river and 2,700 acres will be classified as scenic; and 6 miles of river and 900 acres will be classified as recreational. (DES-02-11-79-02-LEG) (EIS Order No. 90541.)

Final

Mammoth-Mono Planning Unit, Inyo NF, Mono, Madera, Fresno Counties, Calif., May 29: The proposed action involves the selection of a management plan for the Mammoth-Mono Planning Unit (MMPU) of the Inyo National Forest. The plan will replace or continue the multiple use management plan, which will be in effect until the unit plan is selected. The proposed action does not involve the planning of private lands. The project purpose is to resolve management problems and to respond to physical biological, social, and economic changes that have occurred since the multiple use management plan was approved in 1970. The entire MMPU is within the counties of Mono, Madera and Fresno, California. (USDA-FS-R5-FES(ADM)-05-04-78-07) Comments made by: EPA, DOI, COE, DOT, DOE, HEW, AHP, DLAB, State and local agencies, individuals and businesses. (EIS Order No. 90534.)

U.S. ARMY CORPS OF ENGINEERS

Contact: Mr. Richard Makinen, Office of Environmental Policy, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue NW., Washington, D.C. 20314, (202) 272-0121.

Final

Texas City and Vicinity Hurricane Flood Protection, Galveston County, Tex., May 29: The proposed action is the completion of the authorized Texas City and Vicinity Hurricane-Flood Protection Project, Galveston County, Texas. Completion of the system involves incorporating 4.3 miles of reservoir and canal containment levees into the project at the northwest terminus and incorporating, by enlargement and extension, a locally constructed levee at the southwest terminus of the project. (Galveston District) Comments made by: EPA, DOI, DOC, AHP, USDA, HUD, DOE, DOT, State and local agencies. (EIS Order No. 90532.)

Jarvis Creek Navigation Improvements, Northumberland County, Va., May 31: Proposed is the improvement of navigation at Jarvis Creek by dredging a channel about 2,000 feet long with a bottom width of 80 feet and total depth of 10 feet. Approximately 57,000 cubic yards of highly organic marine silts and clay will be removed by hydraulic pipeline dredge and disposed of in a 10-acre confined upland site. The alternatives considered include: maintenance of emergency channel; reduced dimensions; relocation of processing facilities and vessels; track hauling of seafood; and a deepwater pier with rehandling to existing processing facilities. This project is locatd in Northumberland County, Virginia. (Norfolk District) Comments made by: DOC, EPA, DOI, USDA, HUD, State Agencies. (EIS Order No. 90546.)

Draft Supplement

Shidler Lake, Salt Creek, Section 404, (DS-1), Osage County, Tex., May 31: This statement supplements final EIS, No. 51660, filed 11-13-75 concerning the construction of Shidler Dam, a multipurpose project on Salt Creek, Osage County, Oklahoma. This supplement is an evaluation of the effects of discharge of dredged or fill material into the waters of Salt Creek during the construction of an earthern dam and the relocation of a section of a county road. (Tulsa District) (EIS Order No. 90548.)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Deputy Assistant Secretary, Environmental Affairs, Department of Commerce, Washington, D.C. 20230, (202) 377-4335.

Economic Development Administration

Draft

National Public Works and Economic Development Act, Legislative, May 29: Proposed is the National Public Works and Economic Development Act (NPWEDA) of 1979. It is proposed that the programs of the Public Works and Economic Development Act of 1965, which expires in September 1979, be combined with additional economic development toole which would be exercised by EDA. Assistance under NPWEDA would be targeted at urban and rural areas which have not shared in the National economic growth. The legislation will provide: planning capabilities to enable areas to realize their potentials; essential public services and facilities to supply the infrastructure to support economic development; and financial incentives to attract new private investment. (EIS order No. 90539.)

Nat'l Oceanic and Atmospheric Admin.

Final

Alaska Coastal Zone Management Program (CZM), Alaska, May 30: proposed is a coastal zone management plan for the State of Alaska. The program will develop new coastal policies, rules, responsiblilities, obligations and relationships with an established approach of shared local and State coastal management responsibility. Some features of the program include: 1) protection of coastal lands and water habitats; 2) a common basis for coastal decisions; 3) definition of division of responsibililty; 4) specific management for areas of extraordinary coastal values; and 5) overall attention for energy, timber, mining, and commerce resources. Comments made by: DOI, COE, USN, EPA, HUD, AHP, DOT, NRC, FERC, State and local agencies, groups and individuals. (EIS order No. 90543.)

DEPARTMENT OF DEFENSE, AIR FORCE

Contact: Dr. Carlos Stern, Deputy for Environment and Safety, Department of the Air Force, Room 4C885, Pentagon, Washington, D.C. 20330, (202) 697-9297.

Draft

Bold Eagle 80, Joint Readiness Exercise, Santa Rosa, Okaloosa, Walton Counties, Fla., May 31: Proposed is the fifth annual large scale JCS coordinated joint readiness exercise, Bold Eagle 80, at Eglin AFB located in Santa Rosa, Okaloosa, and Walton Counties, Florida. Exercise elements will include approximately 20,000 troops, 390 aircraft (and helicopter), 3600 self-propelled wheeled vehicles and 195 tracked vehicles. The action is designed to exercise selected organizations in large unit deployment and in the procedures and tactics to be used as part of a joint force. A portion of the Blackwater River State Forest is also proposed for uncoventional warfare activities. (EIS order No. 90549.)

Final

Pave Paws Radar System Operation, Otis AFB, Barnstable County, Mass., May 31: Proposed is the operation of the Pave Paws Radar System located at Otis Air Force Base, Barnstable County, Massachusetts. Pave Paws is a new surveillance and tracking radar and its primary purpose is to detect, track and provide early warning of sea-launched ballistic missiles. Also, Pave Paws will be used to assist the USAF Space Track System to track objects orbiting the earth. With Pave Paws in operation, older radar systems located in Maine and North Carolina will be retired. (HQ-AFSC-TR-79-04-Part 1) Comments made by: DOT, DOE, HEW, DOC, DOI, HUD, EPA, State and local agencies, groups, individuals and businesses. (EIS order No. 90545.)

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Carl W. Penland, Acting Director, Environmental Affairs Division, General Services Administration, 18th and F Streets NW., Washington, D.C. 20405, (202) 566-1416.

Final

Customs Services Cargo Inspection Facility, Detroit, Wayne County, Mich., May 29: The proposed action is to acquire and convert an existing truck terminal warehouse facility into a United States customs service cargo inspection facility at the Ambassador Bridge border station, Detroit, Wayne County, Michigan. The facility will provide space for approximately 20 customs service employees on a site to be acquired. The facility will include approximately 5,350 square feet of office space, a truck dock inspection warehouse of approximately 14,100 square feet and parking for a minimum of 40 trucks and a minimum of 24 other vehicles. The site area will be approximately 172,000 square feet. (EMI78002) Comments made by: FERC, USDA, COE, DOI, TREA, EPA, State and local agencies, businesses. (EIS order No. 90537.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256 Interior Bldg., Department of the Interior, Washington, D.C. 20240, (202) 343–3891.

Fish and Wildlife Service

Final

Canaan Valley National Wildlife Refuge, Tucker County, W. Va., May 30: The U.S. Fish and Wildlife Service proposed to acquire approximately 28,000 acres of mixed wetlands, upland and farmland habitat for the purpose of preserving and maintaining a unique natural ecosystem in Tucker County, West Virginia. The area, generally known as the Canaan Valley, would become a unit of the National Wildlife Refuge System to be acquired under the existing authority of the Fish and Wildlife Act of 1956. (FES–79–22) Comments made by: FERC, DOT, DOI, EPA, State agencies, groups. (EIS order No. 90544.)

Bureau of Land Management

Draft

Jackson and Klamath Units, Timber Management Plan, Jackson, Josephine, Klamath, Oreg., May 30: Proposed is a ten-year timber management plan for the 488,258 acres of public land in the Jackson and Klamath sustained yield units of the Medford district in the counties of Jackson, Josephine and Klamath, Oregon. The proposed annual timber harvest is 20.55 million cubic feet. Treatments specified by the proposal include road construction harvest by two-stage shelterwood, clearcut, and single tree selection methods; slash disposal; site preparation; planting of trees; herbicide application; precommercial thinning; fertilization; and commercial thinning. (DES–79–29). (EIS order No. 90540.)

NUCLEAR REGULATORY COMMISSION

Contact: Mr. Voss A. Moore, Assistant Director for Environmental Projects, Nuclear Regulatory Commission, P–518, Washington, D.C. 20555, (301) 492–8446.

Draft

New Engalnd Power Units 1 & 2, Construction Permit, Washington County, Rhode Island, May 31: Proposed is the issuance of a construction permit for the New England Power Units 1 and 2 located near Block Island Sound in Charleston, Washington County, Rhode Island. The units will employ two pressurized-water reactors rated at 3411 MWT per unit. Each steam turbine generator will have a rating of 1164 MWE of electric power capacity. The net electrical output is about 1150 MWE per unit. The exhaust steam will be cooled by once-through flow of water obtained from and discharged to Block Island Sound. (NUREG–0529). (EIS order No. 90547.)

Final Supplement

Pilgrim Nuclear Station, Unit 2, Alternative Sites, Plymouth County, Mass., May 29: This statment supplements a final EIS (No. 41534), filed 10–7–74. The purpose of this supplement is to comply with the Atomic Safety and Licensing Appeal Board which concluded that the analysis of alternative sites for the generating station was inadequate under NEPA. The proposed action is the issuance of a construction permit to Boston Edison Company for the construction of Pilgrim Nuclear Power Station, Unit 2, located in Plymouth County, Massachusetts. (NUREG–0549) Comments made by: USDA, HEW, DOC, EPA, FERC, DOI, State agencies. (EIS order No. 90536.)

OHIO RIVER BASIN COMMISSION

Contact: Mr. Fred J. Krumholtz, Chairman, Suite 208–20, Ohio River Basin Commission, 36 East Fourth Street, Cincinnati, Ohio 45202, (513) 684–3831.

Final d

Water and Land Resource Plan, Ohio River Basin, several counties, May 29; Proposed is a regional water and land resource plan for the Ohio River Basin in the States of Illinois, North Carolina, Indiana, Kentucky, New York, Maryland, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. The plan consists of: 1) 1,233, PL–566 and RC&D projects; 2) 3 navigation projects; 3) 7 reservoir projects; 4) 45 local flood protection projects; 5) 793 municipal water quality control measures; 6) 107 recreation areas; 7) 9 State wild and scenic rivers; 8) 101 natural areas; 9) 69 fish and wildlife areas; 10)2 hydroelectric power projects, 11) nine state wild and scenic rivers, and 12) 102 natural areas. Comments made by: USDA, USA, DOC, EPA, HEW, HUD, DOI, DOT, State and local agencies. (EIS order No. 90535.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street SW., Washington, D.C. 20590, (202) 426–4357.

Federal Highway Administration

Draft

Alton Beltline Extension, IL–140 to Broadway Blvd., Madison County, Ill., May 30: Proposed is the construction, on a new alignment, of the Alton Beltline Extension (FAP Route 785 S) located in Madison County, Illinois, the project will extend for two miles from the Alton Beltline Highway's present terminus at College Avenue (IL–140) in northeast Alton to Broadway in southeast Alton, near the city's common corporate boundary with east Alton. Project features include the reconstruction of the "Thousand Island" intersection, replacement of the present two-lane Milton Road bridge over Wood River Creek, and relocation of Milton Road over come-in place. (FHWA–IL–EIS–79–02–D) (EIS order No. 90542.)

Final

FAP 412, I–80 to U.S. 51, Illinois River Crossing, LaSalle, McLean Counties, Ill., May 31: Proposed is the construction of a portion of FAP Route 412, between I–55 near Normal, McLean County to I–80, LaSalle County, Illinois. The total length of the project is approximately 60 miles and includes a major river crossing at the Illinois River. All proposed construction is on a new alignment. This statement finalizes a portion of the project proposed in the draft EIS, No. 40635, filed 4–22–74, titled F.A. 412, LaSalle and Lee Counties. A separate final EIS will be issued pending further analysis of the effect on farm lands. (FHWA–IL–EIS–76–02–F) Comments made by: AHP, USDA, DOC, COE, HEW, DOI, EPA, DOT, State and local agencies, individuals. (EIS order No. 90551.)

Final

IL–143 (FAP Route 50), Relocation/ Reconstruction, Madison County, Ill., May 29: Proposed is the relocation of IL–143 within the urban area of Wood River, and the reconstruction of IL–143 in rural areas between Wood River and Edwardsville in Madison County, Illinois, from the intersection of IL–3 and FAP 155, a distance of approximately six miles. The two basic alternatives considered in the study were: 1) no build and 2) construction of a four–lane highway within the approved corridor. (FHWA–ILL–EIS–77–03–F) Comments made by: DOI, DOT, EPA, USDA, State agencies. (EIS order No. 90533.)

Urban Mass Transportation Administration

Draft

Transit System Improvements, Los Angeles, Los Angeles County, Calif., June 1: Proposed are improvements to the Los Angeles regional core transit system in Los Angeles County, California. In addition to no build, improvements which are considered fall into two catagories of five alternatives each. The first category, rapid rail, consists of alternatives for a line-haul rail rapid transit facility supplemented by a network of feeder buses. The second category, all bus, consisting of line haul and feeder buses, has alternatives ranging from an exclusive grade separated aerial to simple incremental improvements. (EIS order No. 90553.)

North Shore Transit Improvements, Boston, Suffolk County, Mass., May 29: Proposed is the North Shore Transit Improvement Project in the city of Boston, Suffolk County, Massachusetts. Six alternatives are considered. The first alternative concerns no action other than certain improvements already planned, and includes the sub-alternative of upgrading of the local bus system. The remaining alternatives are: 1)

Upgrading of the Wonderland to Lynn Center, 2) extension of the Blue Line from Wonderland to Lynn Center, 3) upgrade the Commuter Rail System, and 4) upgrade the Line-Haul Bus. (UMTA–MA–29–9001) (EIS order No. 90538.)

VETERANS ADMINISTRATION

Contact: Mr. Willard Sitler, Director, Environmental Affairs Office (66), Veterans Administration, 810 Vermont Avenue, Washington, D.C. 20420, (202) 389–2526.

Draft

VA Medical Center, Hospital Replacement, Portland, Multnomah County, Oreg., June 1: Proposed is the construction of a replacement hospital for the VA Medical Center located in Portland, Multnomah County, Oregon. The plan is to construct a new 600-bed facility either at the existing site adjacent to a university medical school or at a nearby site adjacent to a private hospital. The proposed expansion would double the size of the existing facility and increase the number of beds to 600. The sites considered are at Marquam Hill or adjacent to Emanuel Hill. (EIS order No. 90552.)

EIS's Filed During the Week of May 28 to June 1, 1979

[Statement Title Index—by State and County]

State	County	Status	Statement title	Accession No.	Date filed	Original agency No.
Alaska		Final	Alaska Coastal Zone Management program (CZM)..	90543	05–30–79	DOC
California	Fresno	Final	Mammoth-Mono Planning Unit, Inyo NF	90534	05–29–79	USDA
	Los Angeles	Draft	Transit System Improvements Los Angeles	90553	06–01–79	DOT
	Madera	Final	Mammoth-Mono Planning Unit, Inyo NF	90534	05–29–79	USDA
	Mono	Final	Mammoth-Mono Planning Unit, Inyo NF	90534	05–29–79	USDA
Colorado	Routt	Draft	Elk Wild and Scenic River Study	90541	05–30–79	USDA
Florida	Okaloosa	Draft	Bold Eagle 80, Joint Readiness Exercise	90549	05–31–79	USAF
	Santa Rosa	Draft	Bold Eagle 80, Joint Readiness Exercise	90549	05–31–79	USAF
	Walton	Draft	Bold Eagle 80, Joint Readiness Exercise	90549	05–31–79	USAF
Illinois	La Salle	Final	FAP 412, I–80 to U.S. 51, Illinois River Crossing	90551	05–31–79	DOT
	Madison	Draft	Alton Beltline Extension, IL–140 to Broadway Blvd ..	90542	05–30–79	DOT
		Final	IL–143 (FAP Route 50), Relocation/Reconstruction.	90533	05–29–79	DOT
	McLean	Final	FAP 412, I–80 to U.S. 51, Illinois River Crossing	90551	05–31–79	DOT
Massachusetts	Barnstable	Final	Pave Paws Radar System Operation, Otis AFB	90545	05–31–79	USAF
	Suffolk	Draft	North Shore Transit Improvements, Boston	90538	05–29–79	DOT
	Plymouth	Supple	Pilgrim Nuclear Station, Unit 2, Alternative Sites	90536	05–29–79	NRC
Michigan	Wayne	Final	Customs Service Cargo Inspection Facility, Detroit ..	90537	05–29–79	GSA
Legislative		Draft	National Public Works and Economic Development Act.	90539	05–29–79	DOC
Oklahoma	Osage	Supple	Shidler Lake, Salt Creek, Section 404, (DS–1)	90548	05–31–79	COE
Oregon	Jackson	Draft	Jackson and Klamath Units, Timber Management Plan.	90540	05–30–79	DOI
	Josephine	Draft	Jackson and Klamath Units, Timber Management Plan.	90540	05–30–79	DOI
	Klamath	Draft	Jackson and Klamath Units, Timber Management Plan.	90540	05–30–79	DOI
	Multnomah	Draft	VA Medical Center, Hospital Replacement, Portland	90552	06–01–79	VA
Rhode Island	Washington	Draft	New England Power Units 1 and 2, Construction Permit.	90547	05–31–79	NRC
Several	Several	Final	Water and Land Resource Plan, Ohio River Basin	90535	05–29–79	ORBC
Texas	Galveston	Final	Texas City and Vicinity Hurricane Flood Protection ..	90532	05–29–79	COE
Virginia	Northumberland	Final	Jarvis Creek Navigation Improvements	90546	05–31–79	COE
West Virginia	Tucker	Final	Canaan Valley National Wildlife Refuge	90544	05–30–79	DOI

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
U.S. DEPARTMENT OF AGRICULTURE					
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.	Elk River Wild and Scenic, River Study, Colorado.	Draft 90541	06/08/79. See Appendix I.	Extension	08/23/79
NUCLEAR REGULATORY COMMISSION					
Mr. Voss A. Moore, Assistant Director for Environmental Projects, Nuclear Regulatory Commission, P–518, Washington, D.C. 20555, (301) 492–8446.	New England Power Units, 1 and 2.	Draft 90547	06/08/79. See Appendix I.	Extension	08/06/79

Appendix III.—*EIS's Filed 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
None.				

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.
GENERAL SERVICES ADMINISTRATION			
Mr. Carl W. Penland, Acting Director, Environmental Affairs Division, General Services Administration, 18th and F Streets, NW, Washington, D.C. 20405, (202) 566-1416.	Historic Assessment for Three Possible Sites for the Proposed Federal Building and Parking Structure, Savannah, Georgia.	05/31/79	90550

Appendix VI.—*Official Correction*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Correction
None.				

[FR Doc. 79-17980 Filed 6-7-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1242-7; PP 8G2066/T207]

Pesticide Programs; Extension of a Temporary Tolerance for Ethephon

The Environmental Protection Agency (EPA) in response to a pesticide petition (PP 8G2066) submitted to the Agency by Union Carbide Agricultural Products Co., Inc., Brookside Ave., Ambler, PA 19002, established a temporary tolerance for residues of the plant regulator ethephon ((2-chloroethyl)phosponic acid) in or on the raw agricultural commodity cottonseed at 0.5 part per million (ppm). This temporary tolerance is scheduled to expire July 14, 1979.

Union Carbide Agricultural Products Co., Inc., requested a one-year extension of this temporary tolerance both to permit continued testing to obtain additional data and to permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of an experimental use permit (264-EUP-55) that has been extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that an extension of the temporary tolerance would protect the public health. Therefore, the temporary tolerance has been extended on condition that the pesticide is used in accordance with the experimental use permit with the following provisions.

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. Union Carbide Agricultural Products Co., Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary tolerance expires June 15, 1980. Residues not in excess of 0.5 ppm remaining in or on cottonseed after this expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary tolerance. This temporary tolerance may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicate such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to Mr. Robert Taylor, Product Manager 25, Registration Division (TS-767), Office of Pesticide Programs, 401 M St., SW, Washington, DC 20460 (202/755-7013).

(Section 408(j) of the Federal Food, and Cosmetic Act [21 U.S.C. 346a(j)])

Dated: May 29, 1979.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 79-17973 Filed 6-7-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1242-6; OPP-180296]

Idaho and Washington State Departments of Agriculture; Issuance of Specific Exemptions To Use Dinoseb To Control Broadleaf Weeds in Lentils

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

ACTION: Issuance of specific exemptions.

SUMMARY: EPA has granted specific exemptions to the Idaho and Washington State Departments of Agriculture to use dinoseb for the control of various broadleaf weeds on 40,000 acres of lentils in the northern counties of Idaho and 70,000 acres of lentils in Spokane and Whitman Counties, Washington. The specific exemptions expire on June 15, 1979.

FOR FURTHER INFORMATION CONTACT: Emergency Response Section,

Registration Division (TS–767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Room: E–124, Washington, D.C. 20460, Telephone: 202/426–2691. It is suggested that interested persons telephone before visiting EPA Headquarters so that the appropriate files may be made conveniently available for review purposes.

SUPPLEMENTARY INFORMATION:

According to Idaho and Washington, the broadleaf weeds, mustard, lambsquarter, borage, and nightshade are the major problems threatening lentil production. Lack of weed control in lentils not only reduces yield, but also increases weed problems in succeeding rotational crops. Idaho and Washington state that herbicide treatment must be made within a few days after planting and before crop emergence.

There are currently no EPA-registered herbicides for pre-emergence control of broadleaf weeds in lentils. Dinoseb (2-sec-butyl-4-6-dinitrophenol), alkanolamine salts of the ethanol series, is currently registered as a pre-emergence treatment for control of broadleaf weeds in peas, potatoes, strawberries, and other crops at rates of up to nine pounds active ingredient (a.i.) per acre. Idaho and Washington proposed to use one application of a product called Premerge 3 (EPA Reg. No. 464–490) at the rate of three pounds a.i. per acre in at least twenty gallons of water. This application will be made to 40,000 acres of lentils in the northern counties of Idaho and 70,000 acres in Whitman and Spokane Counties, Washington, by State-licensed commercial applicators or qualified growers.

The tolerance petition to establish residue levels for the use of dinoseb on lentils has not been granted pending resolution of the nitrosamine question. However, EPA has estimated that the maximum concentration for the nitrosamine impurity DENA available for public exposure from the proposed use is 0.028 part per billion based on the proposed tolerance of 0.1 part per million (ppm) and assuming that the impurity is absorbed and stored in the same ratio as dinoseb. This maximum quantity is an unmeasurable quantity which would not pose a quantifiable risk to human health. The maximum concentration for the nitrosamine impurity DENA available for applicator hazard is estimated to be an acceptable risk situation provided the applicators wear protective clothing.

No unreasonable adverse risk to the environment is expected to result from this use of dinoseb.

Idaho and Washington estimated that a potential loss in yield of twenty-five percent is expected if the weeds are not controlled; this amounts to a loss in yield of 350 pounds per acre. The dollar loss could be as high as $5,600,000 in Idaho and $9,800,000 in Washington, according to the two States.

After reviewing the application and other available information, EPA has determined that (a) pest outbreaks of various broadleaf weeds have occurred or are about to occur; (b) there is no pesticide presently registered and available for pre-emergence use to control these weeds in lentils in Idaho and Washington State; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the weeds are not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, Idaho and Washington have been granted specific exemptions to use the pesticide noted above until June 15, 1979 to the extent and in the manner set forth in the applications. The specific exemptions are also subject to the following conditions:

1. The product Premerge 3 Dinitro Amine Herbicide [dinoseb (2-sec-butyl-4,6-dinitrophenol) as the alkanol salts (of the ethanol series)], EPA Reg. No. 464–490, manufactured by Dow Chemical, is authorized;

2. Application shall be made by ground at a rate of one gallon Premerge 3 in at least twenty gallons of water per acre (three pounds a.i./acre);

3. A maximum of 40,000 acres of lentil crop in Idaho and 70,000 acres in Washington in the areas named above may be treated;

4. A maximum of 40,000 gallons Premerge 3 (120,000 lbs. a.i. dinoseb) may be applied in Idaho. In Washington, a maximum of 70,000 gallons Premerge 3 (210,000 lbs. a.i. dinoseb) may be applied;

5. One application of Premerge 3 shall be made after planting but before emergence of the lentils;

6. Application shall be made by State-licensed commercial applicators or State-certified growers. In Idaho, University of Idaho personnel, and in Washington, Washington State University Extension Service personnel shall make all recommendations of pesticide applications and apprise applicators and growers of dosages and other program criteria;

7. A residue level of dinoseb not exceeding 0.1 ppm in or on lentils, lentil hay, or lentil forage has been evaluated as adequate to protect the public health;

8. Idaho and Washington are not to graze or feed treated crops to livestock unless at least 6 weeks have elapsed from the time of pesticide application;

9. All label precautions shall be followed;

10. The EPA shall be informed immediately of any adverse effects to man or the environment resulting from this program;

11. Idaho and Washington shall each be responsible for insuring that all provisions of its specific exemption are followed;

12. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action; and

13. Final reports summarizing the results of these programs shall be submitted to EPA by December 31, 1979.

(Section 18 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: June 4, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 179–17974 6–7–79; 8:45 am]

BILLING CODE 6560–01–M

[FRL 1243–2]

Pesticides and Toxic Substances Enforcement

On September 30, 1978, the President signed into law S. 1678, the Federal Pesticide Act of 1978 (Pub. L. 95–396, 92 Stat. 819; hereafter "FPA"), which amends the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (Pub. L. 92–516, 86 Stat. 973; Pub. L. 94–140, 89 Stat. 751; 7 USC 136 *et seq;* hereafter referred to as "FIFRA"). As a result of the new amendments, certain of the Pesticide Enforcement Policy Statements (PEPS), which established an administrative mechanism to permit certain pesticide uses which otherwise would have been in violation of FIFRA, are no longer necessary. The purpose of this Notice is to announce the rescission of the affected PEPS and to discuss some of the amendments in the FPA that affect pesticide enforcement policy.

(1) Rescission of Pesticide Enforcement Policy Statements (PEPS) Nos. 1, 2, 5, and 7

On May 5, 1975, the Environmental Protection Agency (EPA) published in the **Federal Register** a document entitled "Institution of Pesticide Enforcement

Policy Statements" (40 *Fed. Reg.* 19526 (1975)). It was the Agency's purpose in instituting this series of Pesticide Enforcement Policy Statements (PEPS) to inform the general public and persons engaged in the formulation, distribution, sale, application or other use of pesticides, of the policies adopted by the Agency in the enforcement of the provisions of the FIFRA. The PEPS were prepared and published by EPA's Office of Enforcement.

Federal regulation of the use of pesticides was established for the first time with the enactment of the 1972 amendments, specifically through the provisions of FIFRA section 3(d)(1), section 4 and section 12(a)(2)(G). Section 12(a)(2)(G) made it unlawful for any person to use a registered pesticide in a manner inconsistent with its labeling. However, as set forth in the legislative history, Congress intended that EPA enforce the prohibition of section 12(a)(2)(G) in a "common sense manner" and left open in many instances exactly what constituted a "use inconsistent with [a pesticide's] labeling."

The FPA broadens the construction of section 12(a)(2)(G) of FIFRA by adding a new subsection 2(ee) which for the first time defines the term "to use any registered pesticide in a manner inconsistent with its labeling." According to the language of the new subsection, it is a violation of section 12(a)(2)(G) to use a registered pesticide "in a manner not permitted by the labeling" with the exception of four specific areas. The areas specifically excluded from enforcement under § 12(a)(2)(G) include: (a) the use of a pesticide at less than label dosage (PEPS 1) [1]; (b) the use of a pesticide for the control of target pests not named on the labeling, if still consistent with site included on the labeling (PEPS 2 and 5); and, (c) the use of any application method not prohibited by labeling (PEPS 7).[2]

Thus, the new section 2(ee) defines by law certain uses which will not be considered inconsistent with labeling that previously were defined by PEPS. The new definition provides exemptions from the strict label language for users/applicators only. Persons who distribute or sell pesticides still may not make oral or written claims for a product which substantially differ from any claims made for the product as a part of the statement required in connection with its registration under section 3 of FIFRA (eg., claims for use not listed on the labeling), or they will be subject to enforcement action under section 12(a)(1)(B).

(2) Actions affecting pesticide users; rescission of PEPS No. 6

The Office of Enforcement issued a policy statement on March 25, 1976 which stated that pesticide applicators who supply and apply registered pesticides in the course of performing pest control services (hereafter "for hire applicators") were considered sellers and distributors of pesticides. Section 2(e)(1) of the FIFRA has been amended so as to generally exclude "for hire applicators" from being considered sellers or distributors of pesticides where they provide the service of controlling pests without delivering any unapplied pesticide to any person so served. "For hire applicators" are no longer considered sellers or distributors (and thus subject to the higher civil penalties in § 14(a)(1)) unless: (a) they hold or apply an unregistered pesticide, or (b) they deliver any unapplied pesticide to the customer. In either of the above situations a "for hire applicator" would be considered a seller or distributor for any violation of FIFRA, and subject to the higher penalties set forth in sections 14(a)(1) and 14(b)(1). Because of the Congressionally mandated change in the status of "for hire applicators," PEPS No. 6, "Use and Labeling of Service Containers for the Transportation or Temporary Storage of Pesticides" is no longer applicable to the activities of the "for hire applicator."

(3) Continuation of Pesticide Enforcement Policy Statements (PEPS) Nos. 3 and 4

Two of the existing PEPS are not affected by the amendments in the FPA and, therefore, are not rescinded by this Notice. They are PEPS No. 3, entitled "Certain Enforcement Policies To Be Followed During the Phased Implementation of FIFRA Section 3" (41 *Fed. Reg.* 13984 (1976)), and PEPS No. 4, entitled "Preventive Pest Control Treatments in the Absence of Target Pests" (41 FR 28005 (1976)).

(4) Commercial Applicators

The FPA also amends the definition of "commercial applicator" in section 2(e)(3) of FIFRA. The new definition provides that the term "commercial applicator" means any applicator (except a private applicator) who uses or supervises the use of a restricted use pesticide, whether or not that applicator is certified. Such persons who violate FIFRA while using *restricted* use pesticides are considered commercial applicators and subject to the higher penalties of section 14(a)(1) and 14(b)(1). On the other hand, any person (excluding those persons subject to the penalty provisions of section 14(a)(1)), as described in section 2 of this Notice) who holds or applies a pesticide registered for *general* use, or a dilution of a pesticide registered for general use and who violates FIFRA, would be subject to the lower penalties as set forth in sections 14(a)(2) and 14(b)(2) of FIFRA.

(5) Definition of "Producer"

The FPA amends the definition of "producer" to add the following:

The dilution by individuals of formulated pesticides for their own use and according to the directions on registered labels shall not of itself result in such individuals being included in the definition of "producer" for the purposes of this Act.

This amendment makes statutory the Agency's long-standing policy of not considering persons who dilute pesticides as producers unless they engage in the sale and/or distribution of the pesticide.

This notice hereby rescinds PEPS Nos. 1, 2, 5, 6, and 7.

Dated: June 4, 1979.

Jeffrey G. Miller,

Acting Assistant Administrator for Enforcement.

[FR Doc. 79-17970 Filed 6-7-79; 8:45 am]

BILLING CODE 6560-01-M

[1] While PEPS No. 1 excluded certain products which could not be used at less than label dosage—viz. rodenticides, termite control products, and sanitizer/disinfectants—the new definition of section 12(a)(2)(G) does not.

[2] It should be noted that while the FPA amends existing Federal law concerning pesticide misuse, it does not affect State laws. Therefore, before proceeding with any pesticide use in accordance with the exceptions now allowed by the new amendments, pesticide users and applicators should make certain that they will not be in violation of State law.

FEDERAL COMMUNICATIONS COMMISSION

Major Matters Report Available

The Federal Communications Commission prepares an annual report on "Major Matters Before the Commission" to help keep the Congress, the public, and members of the FCC staff apprised of pending proceedings which the Commission considers to be of major significance.

The FCC's 1978 report on major matters, sent to the Congress on April 11, 1979, has been reproduced for distribution to members of the public.

The 1978 report was prepared in a more "plain English" format to make the document more useful to Congress and the public. The report provides a discussion poriton, a list of relevant references, and the names of staff

contact persons for each of 87 Commission proceedings.

Copies of the report may be picked up from the Commission's Press Distribution Room (Room 207), 1919 M Street, N.W., Washington, D.C. 20554. Copies may also be requested by writing to or telephoning the Commission's Office of Public Affairs, 1919 M Street, N.W., Room 202, telephone (202) 632–7260.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 79–17780 Filed 6–7–79; 8:45 am]

BILLING CODE 6712-01-M

National Industry Advisory Committee, Amateur Radio Services Subcommittee; Meeting

Pursuant to the provisions of Public Law 92–463, announcement is made of a public meeting of the Amateur Radio Services Subcommittee of the National Industry Advisory Committee to be held Monday, June 25, 1979. The Subcommittee will meet at the Federal Communications Commission Annex Building, Room A–110, 1229 20th Street, N.W., Washington, D.C. at 9:00 AM.

Purpose: To consider emergency communications matters.

Agenda: As follows:

Items:

1. Chairman's opening remarks.
2. Consideration of prototype Amateur Radio Service communications plan for assistance to local government during emergencies.
   a. Review.
   b. Recommendation to the Commission.
3. Consideration of the Connecticut Emergency Broadcast System Amateur Radio Service Interface Plan as a prototype for use by other states.
   a. Review.
   b. Recommendation to the Commission.
4. Objectives, organization and structure of the Amateur Radio Services Subcommittee.
5. Old business.
6. New business.
7. Adjournment.

Any member of the general public may attend or file a written statement with the Committee either before or after the meeting. Any member of the public wishing to make an oral statement must consult with the Committee prior to the meeting. Those desiring more specific information about the meeting may telephone the Emergency Communications Division, FCC, (202) 632–7232.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 79–17781 6–7–79; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1178]

Petitions for Reconsideration of Actions in Rulemaking Proceedings Filed

June 4, 1979.

Docket or RM No.	Rule No.	Subject	Date received
21392, RM-2816, RM-2991	73.606(b)	Amendment of Section 73.606(b), Table of Assignments, Television Broadcast Stations. (Lexington, Kentucky, and Portsmouth, Ohio). Filed by B. Jay Baraff and James A. Koerner, Attorneys for Cincinnati Christian Communications, Inc.	May 29, 1979.
		Filed by William P. Bernton, Attorney for Frederic Gregg, Jr.	May 29, 1979.

NOTE.—Oppositions to petitions for recosideration must be filed on or before June 25, 1979. Replies to an opposition must be filed within 10 days after time for filing oppositions has expired.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 79–17782 Filed 6–7–79; 8:45 am]

BILLING CODE 6712-01-M

[FCC 79–322]

1980 Composite Week Dates for AM and FM Licensees for Program Log Analysis

June 4, 1979.

The following date will constitute the composite week for use in the preparation of: (1) program log analysis submitted with renewal applications for commercial AM and FM station licenses which have expiration dates in calendar year 1980; and (2) assignment of license and transfer of control applications for AM and FM stations which are filed in calendar year 1980.

Sunday July 2, 1978
Monday April 23, 1979
Tuesday September 26, 1978
Wednesday February 7, 1979
Thursday November 9, 1978
Friday January 26, 1979
Saturday March 24, 1979

Commercial television licensees and permittees with license expiraton dates of February 1 and April 1, 1980 will use, in answering Questions 5, 11 and 12 of revised Section IV of FCC Form 303, the composite week dates previously used in preparing the 1978 Annual Programming Report. Stations whose licenses expire on June 1 and thereafter during calendar year 1980 will use a composite week that will be issued in November, 1979. The composite week dates to be used in the preparation of the 1979 Annual Programming Report (FCC Form 303–A), required to be filed February 1, 1980 will also be issued in November, 1979.

Action by the Commission May 29, 1979. Commissioners Ferris (Chairman), Lee, Quello, Washburn, Forgarty, Brown and Jones.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 79–17783 Filed 6–7–79; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[79-332]

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming consumer exchange meeting to be chaired by Frederick R. Carlson, District Director, Newark District Office, East Orange, New Jersey.

DATE: The meeting will be held 1:30 p.m., Wednesday, June 27, 1979.

ADDRESS: The meeting will be held at the Food and Drug Administration, 20 Evergreen Place, 2nd Floor, East Orange, NJ 07018.

FOR FURTHER INFORMATION CONTACT: Lillie Dortch-Wright, Consumer Affairs Officer, Food and Drug Administration, 20 Evergreen Place, East Orange, NJ 07018, 201–645–3265 or 201–645–6365.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's Newark District Office, and to contribute to the agency's policymaking decisions on vital issues.

Dated: May 31, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-17615 Filed 6-7-79; 8:45 am]

BILLING CODE 4110-03-M

[79-341]

Consumer Participation Open Meeting

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The food and Drug Administration (FDA) announces a forthcoming consumer exchange meeting to be chaired by E. Pitt Smith, District Director, Buffalo District Office, Buffalo, NY.

DATE: The meeting will be held at 1:30 p.m., Thursday, June 14, 1979.

ADDRESS: The meeting will be held at the U.S. Courthouse and Federal Building, 100 S. Clinton St., Syracuse, NY 13260.

FOR FURTHER INFORMATION CONTACT: Lois M. Meyer, Consumer Affairs Officer, Buffalo District, Food and Drug Administration, 599 Delaware Ave., Buffalo, NY 14202, 716–846–4483.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's Buffalo District Office, and to contribute to the agency's policymaking decisions on vital issues.

Dated: May 31, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-17617 Filed 6-7-79; 8:45 am]

BILLING CODE 4110-03-M

[79-339]

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming consumer exchange meeting to be chaired by E. Pitt Smith, District Director, Buffalo District Office, Buffalo, NY.

DATE: The meeting will be held at 10 a.m., Tuesday, June 12, 1979.

ADDRESS: The meeting will be held at the Federal Building & Courthouse, 100 State St., Rochester, NY 14014.

FOR FURTHER INFORMATION CONTACT: Lois M. Meyer, Consumer Affairs Officer, Buffalo District Office, Food and Drug Administration, 599 Delaware Ave., Buffalo, NY 14202, 716–846–4483.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's Buffalo District Office, and to contribute to the agency's policymaking decisions on vital issues.

Dated: May 31, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-17618 Filed 6-7-79; 8:45 am]

BILLING CODE 4110-03-M

[79-340]

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming consumer exchange meeting to be chaired by E. Pitt Smith, District Director, Buffalo District Office, Buffalo, NY.

DATE: The meeting will be held at 10 a.m., Wednesday, June 13, 1979.

ADDRESS: The meeting will be held at Federal Building, Huron and Delaware Ave., Buffalo, NY 14202.

FOR FURTHER INFORMATION CONTACT: Lois M. Meyer, Consumer Affairs Officer, Buffalo District, Food and Drug Administration, 599 Delaware Ave., Buffalo, NY 14202, 716–846–4483.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's Buffalo District Office, and to contribute to the agency's policymaking decisions on vital issues.

Dated: May 31, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-17619 Filed 6-7-79; 8:45 am]

BILLING CODE 4110-03-M

[79-342]

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming consumer exchange meeting to be chaired by E. Pitt Smith, District Director, Buffalo District Office, Buffalo, NY.

DATE: The meeting will be held at 10 a.m., Thursday, June 28, 1979.

ADDRESS: The meeting will be held at the U.S. Federal Building and Courthouse, Mezzanine Conference Room, 15 Henry St., Binghamton, NY 13902.

FOR FURTHER INFORMATION CONTACT: Lois M. Meyer, Consumer Affairs Officer, Buffalo District, Food and Drug Administration, 599 Delaware Ave., Buffalo, NY 14202, 716–846–4483.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's Buffalo District Office, and to contribute to the agency's policymaking decisions on vital issues.

Dated: May 31, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-17621 Filed 6-7-79; 8:45 am]

BILLING CODE 4110-03-M

[79-338]

Miscellaneous External Drug Products Panel; Meeting Change

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Miscellaneous External Drug Products Panel meeting, announced by notice in the **Federal Register** of May 22, 1979 (44 FR 29727), for June 10 and 11, 1979, has been changed to August 3 and 4, at 9 a.m. in Conference Rm. B, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

FOR FURTHER INFORMATION CONTACT: John T. McElroy, Bureau of Drugs (HFD-510), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1430.

Dated: May 31, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-17620 Filed 6-7-79; 8:45 am]

BILLING CODE 4110-03-M

Office of the Assistant Secretary for Health

University of Arizona; Notice of Intent To Grant Exclusive Patent License

Pursuant to section 6.3, 45 CFR, Part 6, and 41 CFR 101-4, notice is hereby given of an intent to grant to The University of Arizona an exclusive license to manufacture, use, and sell an invention of Thomas C. Cetas, Ph.D., entitled "Birefringent Crystal Thermometer." A copy of U.S. patent application Serial Number 794,142, which was filed on the invention on May 5, 1977, may be obtained upon written request to the Acting Chief, Patent Branch, Department of Health, Education, and Welfare, 5A03 Westwood Building, National Institutes of Health, Bethesda, Maryland 20205.

The proposed license will have a duration of five (5) years, will not be royalty-bearing, and will contain other terms and conditions to be negotiated by the parties in accordance with Department of Health, Education, and Welfare (HEW) patent regulations. HEW will grant the license unless, within sixty (60) days of this Notice, the Acting Chief of the Patent Branch, named hereinabove, receives in writing any of the following, together with supporting documents:

(1) A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or

(2) An application for a nonexclusive license to manufacture, use, or sell the invention in the United States is submitted in accordance with 41 CFR 101-4-104-2, and the applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Assistant Secretary for Health of the Department of Health, Education, and Welfare will review all written responses to this Notice.

Authority: 45 CFR 6.3 and 41 CFR 101-4.

Dated: June 1, 1979.

Charles Miller,

Acting Assistant Secretary for Health.

[FR Doc. 79-17838 Filed 6-7-79; 8:45 am]

BILLING CODE 4110-85-M

Office of the Secretary

Office of the General Counsel; Delegation of Authority To Certify True Copies

Under the authority delegated by the Secretary to the Assistant Secretary for Management and Budget (43 FR 58870) and redelegated to me by the Assistant Secretary for Management and Budget (44 FR 1473):

1. I hereby redelegate to the following the authority to certify true copies of any books, records, papers or other documents on file within the Department, or extracts from such, to certify that true copies are true copies of the entire file of the Department, to certify the complete original record, or to certify the nonexistence of records on file within the Department, and to cause the Seal of the Department to be affixed to such certifications.

These same officials are authorized to cause the Seal to be affixed to agreements, awards, citations, diplomas, and similar documents.

To whom delegated:

Deputy General Counsel.

Assistant General Counsel, Division of Business and Administrative Law.

Executive Assistant to the General Counsel.

The Regional Attorneys.

Secretary to the General Counsel.

Secretary to the Deputy General Counsel

Legal Administrative Aide, Immediate Office of the General Counsel.

2. The above redelegations supersede the redelegations made under previous authority (35 FR 922 dated 1/22/70 and 38 FR 22997 dated 8/28/73).

These authorities may not be redelegated.

Dated: May 31, 1979.

F. Peter Libassi,

General Counsel.

[FR Doc. 79-17836 Filed 6-7-79; 8:45 am]

BILLING CODE 4110-12-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Alaska Native Claims Selection

Correction

In FR Doc. 79-10547, published at page 20800, on Friday, April 6, 1979, make the following corrections:

1. On page 20800, in the third column, in the paragraph beginning "T. 30 N., R. 79 W.", in between the 22nd and 23rd lines add: "Sec. 21 and 22, excluding Yukon River (Kwikluak Pass);";

2. On page 20801, in the third column, in the first paragraph beginning "T. 31 N., R. 82 W.", in the 33rd line, "Secs. 20 and 23, . . ." should be corrected to read "Secs. 20 to 23, . . .".

BILLING CODE 1505-01-M

[AA-23139]

Alaska; Proposed Withdrawal of Lands

Notice of proposed withdrawal and reservation of lands, appearing in the **Federal Register** of December 5, 1978, at pages 57134 through 57137, F.R. Doc. No. 34051, is hereby amended as follows:

1. The following described lands are hereby added to the Department of Agriculture's Notice of Proposed Withdrawal of Lands:

College Fiord—Prince William Sound—Nellie Juan Area

Seward Meridian

T. 2 N., R. 3 W., all lands within the national forest boundary,
T. 9 N., R. 13 E.,
T. 10 N., Rs. 13 and 14 E.

Copper River Meridian

T. 5 S., R. 7 W., all lands south of the hydrographic divide,
T. 11 S., R. 9 W.,

Russell Fiord—Yakutat Forelands Area

Copper River Meridian

T. 24 S., R. 39 E., all land in Nunatak Fiord Drainage.

Admiralty Island Area

Copper River Meridian

T. 40 S., R. 64 E., all land southwest of Saginaw Channel.

West Chichagof—Yakobi

Copper River Meridian

T. 45 S., R. 55 E.

Admiralty Island Area

Copper River Meridian

T. 49 S., Rs. 67 through 70 E.

Stikine—Leconte Area

Copper River Meridian

T. 61 S., Rs. 82 and 83 E., all land except Kadin and Rynda Islands.

Tebenkof Bay Area

Copper River Meridian

T. 62 S., Rs. 71 and 72 E.
T. 62 S., R. 73 E., all land in Tebenkof Bay drainage.

Coronation Island—Warren Island—Maurille Island Area

Copper River Meridian

T. 69 S., Rs. 72 through 75 E.

Copper River Area

Copper River Meridian

T. 13 S., R. 1 W., all lands within the national forest south of the hydrographic divide,
T. 14 S., R. 1 W.,
T. 14 S., R. 2 W., all land south and east of hydrographic divide between Mt. Kelly and the ridgetop north of Humpback Creek and extending into Saltwater,
T. 15 S., Rs. 1 and 2 W.,
T. 15 S., R. 3 W., all land south and east of the hydrographic divide in Orca Inlet,
T. 16 S., Rs. 1 through 3 W.,
T. 16 S., R. 4 W., all land on the mainland including land on Mummy Island,
T. 17 S., Rs. 1 through 4 W.,
T. 18 S., Rs. 1 and 2 W.,
T. 19 S., R. 1 W.,
T. 13 S., R. 1 E., all land within the national forest boundary,
T. 14 S., Rs. 1 and 2 E., all lands within the national forest boundary,
T. 15 S., Rs. 1 through 9 E., all lands within the national forest boundary,
T. 16 S., Rs. 1 through 8 E.,
T. 16 S., R. 9 E., all land within the national forest boundary,
T. 17 S., Rs. 1 through 8 E.,
T. 17 S., R. 9 E., all land within the national forest boundary,
T. 18 S., Rs. 1 through 8 E.,
T. 18 S., R. 9 E., all land within the national forest boundary,
T. 19 S., Rs. 1 through 8 E.,
T. 19 S., R. 9 E., all land within the national forest boundary,
T. 20 S., Rs. 4 through 8 E.,
T. 20 S., R. 9 E., all land within the national forest boundary,
T. 21 S., Rs. 6 through 8 E.,
T. 21 S., R. 9 E., all land within the national forest boundary,
T. 22 S., Rs. 5 through 9 E.,
T. 23 S., Rs. 5 and 6 E.,
T. 24 S., Rs. 4 and 5 E.,

South Baranof Area

Copper River Meridian

T. 57 S., R. 65 E., all land located south of the hydrographic divide south of Lake Irina,
T. 57 S., R. 66 E., all land south of the hydrographic divide just north of Lake Diana,
T. 57 S., R. 67 E., all land south of the hydrographic divide extending southerly to Mt. Race, thence northeasterly,
T. 57 S., R. 68 E., all land south of the hydrographic divide just north of Long Lake and easterly from that hydrographic divide to saltwater,
T. 58 S., R. 64 E., all land east of a line beginning at a point on the south line of T. 58 S., R. 64 E., midway between President Bay and Seven Fathom Bay, thence northeasterly to Mt. Sharp, thence easterly along the hydrographic divide to the east line of T. 58 S., R. 64 E.,
T. 58 S., R. 65 E., all land east of hydrographic divide west of West Crawfish Inlet,
T. 58 S., Rs. 66 through 68 E.,
T. 59 S., R. 64 E., all land except the islands west of the main channel leading into West Crawfish Inlet,
T. 59 S., Rs. 65 through 68 E.,
T. 60 S., Rs. 64 through 68 E.,
T. 61 S., Rs. 66 and 67 E.,
T. 61 S., R. 68 E., all land west and north of the hydrographic divide dividing the Rezanof Lake and Deep Cover watersheds and all land east of the hydrographic divide dividing the Deep Cove and Banner Lake Watersheds,
T. 61 S., R. 69 E., all land north of the hydrographic divide between the Deep Cove and Patterson Bay drainages,
T. 62 S., R. 66 E.,
T. 62 S., R. 67 E., all land west of the hydrographic divide just west of Snipe Bay,
T. 62 S., R. 68 E., all land west of the hydrographic divide northwest of Antipatr Lake.

Petersburg Creek-Duncan Canal Area

Copper River Meridian

T. 57 S., R. 76 E., S½, all lands in Duncan Canal drainage.
T. 57 S., R. 77 E., S½,
T. 57 S., R. 78 E., all land in Petersburg Creek drainage,
T. 58 S., R. 76 E., all lands in Duncan Canal drainage,
T. 58 S., R. 77 E.,
T. 58 S., Rs. 78 and 79 E., all land in Petersburg Creek drainage,
T. 59 S., R. 76 E., all land in Duncan Canal drainage,
T. 59 S., R. 77 E.,
T. 59 S., R. 78 E., all land west of Radio Tower Peak,
T. 60 S., R. 76 E., all lands in Duncan Canal drainage,
T. 60 S., R. 77 E.,
T. 60 S., R. 78 E., Sections 30 and 31,
T. 61 S., Rs. 77 and 78 E., all lands in Duncan Canal drainage.

Boundary Spires Area

Copper River Meridian

T. 52 S., Rs. 79 through 81 E., all lands south of the hydrographic divide,
T. 53 S., R. 79 E., all lands east of the hydrographic divide north of North Baird Glacier,
T. 53 S., Rs. 80 through 83 E.,
T. 54 S., R. 79 E., all lands east of the hydrographic divide,
T. 54 S., Rs. 80 through 83 E.,
T. 55 S., Rs. 79 and 80 E., all lands in Scenery Cove drainage,
T. 55 S., R. 81 E.,
T. 55 S., R. 82 E., all lands west of a protracted line drawn between Devils Thumb on the international divide and the national forest boundary and the south boundary of T. 56 S., R. 82 E.,
T. 56 S., Rs. 79 through 81 E., except those lands in Thomas Bay drainage,
T. 56 S., R. 82 E., all lands west of a protracted line drawn between Devils Thumb on the international boundary and the point of the intersection of the national forest boundary and the south boundary of this township,
T. 57 S., R. 81 E., all land east of a line beginning on a ridge running south from Patterson Peak approximately 2 miles east of the west boundary of the township; thence southerly to a prominent point in the approximate center of said township; thence southeasterly to a ridge extending west from Rogers Peak; thence along said ridge to Rogers Peak,
T. 57 S., R. 82 E., W½,
T. 58 S., R. 82 E., W½, all land north of the hydrographic divide north of Le Conte Bay.

Devilpaw-Tonki Cape Areas

Seward Meridian

T. 20 S., R. 17 W.,
T. 20 S., R. 20 W., Sections 21, 22, 27, 28, 29, 31, 32, 33, and 34,
T. 20 S., R. 21 W., Sections 35 and 36, and all land on Devilpaw Mountain peninsula including Teck, Hogg, Bear, and Grassy Islands and all lands west except Alligator Island,
T. 20 S., R. 22 W., all land except unnamed island approximately three miles off shore,
T. 21 S., Rs. 16 and 17 W., all land except Sealion Rks.,
T. 21 S., R. 18 W., all land in Tonki Bay drainage,
T. 21 S., R. 20 W., Section 4, W½, Secs. 5 through 8, Sec. 9 W½, Sec. 16 NW¼, Secs. 17 through 20, 30, 31, and 32,
T. 21 S., Rs. 21 and 22 W.,
T. 22 S., R. 16 W., all land west of Marmot Strait,
T. 22 S., R. 17 W.,
T. 22 S., R. 18 W., all land in Tonki Bay drainage and unnamed drainage in SW¼ draining into Izhut Bay,
T. 23 S., R. 17 W.,
T. 23 S., R. 18 W., all land east of Izhut Bay.

Corrections

2. In F.R. Doc. No. 34051 appearing at page 57134 in the issue for Tuesday, December 5, 1978, under "Collete Fiord-Prince William Sound-Nellie Juan Area-Copper River Meridian," the description "T. 10 W., Rs. 10 and 11 W.," is corrected to read "T. 10 S., Rs. 10 and 11 W."

In F.R. Doc. No. 34051 appearing at page 57134 in the issue for Tuesday, December 5, 1978, under "College Fiord-Prince William Sound-Nellie Juan Area-Copper River Meridian," the description "T. 11 S., R. 10 and 11 W.," is corrected to read "T. 11 S., R. 11 W."

In F.R. Doc. No. 34051 appearing at page 57136 in the issue for Tuesday, December 5, 1978, under "Russell Fiord-Yakutat Forelands Area Copper River Meridian," the description "T. 23 S., R. 38 E., all land south and west of the hydrographic divide" is corrected to read "T. 23 S., R. 38 E."

In F.R. Doc. No. 34051 appearing on page 57135 in the issue for Tuesday, December 5, 1978, the description under:

Endicott

Copper River Meridian

"T. 37 S., R. 60 E., all land east of Glacier Bay National Monument in the Endicott River drainage.," is corrected to read "T. 37 S., Rs. 60 and 61 E., all land east of Glacier Bay National Monument in the Endicott River drainage."

West Chichagof—Yakobi

Copper River Meridian

"T. 43 S., R. 54 S.," is corrected to read "T. 43 S., R. 54 E."

"T. 45 S., R. 56 E., all land south and west of the center line of Lisianski Inlet," is corrected to read "T. 45 S., Rs. 56 and 57 E., all land south and west of the center line of Lisianski Inlet."

Karta Area

Copper River Meridian

"T. 72 E., R. 82 E.," is corrected to read "T. 72 S., R. 82 E."

The title "TRACY ARM—FIORDS TERROR" is corrected to read "TRACY ARM—FORD'S TERROR".

3. Areas described in F.R. Doc. No. 34051 appearing at pages 57134 through 57136 in the issue for Tuesday, December 5, 1978, are more clearly redescribed as follows:

Russell Fiord—Yakutat Forelands Area

Copper River Meridian

T. 22 S., R. 34 E., description should read: T. 22 S., R. 34 E., all lands southeast of Disenchantment Bay,

T. 22 S., R. 37 E., description should read: T. 22 S., R.37 E., all lands in S½ west of the hydrographic divide,

T. 24 S., R. 38 E., description should read: T. 24 S., R. 38 E., all land in Nunatak Fiord drainage,

T. 25 S., Rs. 37 through 39 E., description should read: T. 25 S., Rs. 37 through 39 E., all land in Russell and Nunatak Fiord drainages,

T. 26 S., R. 38 E., description should read: T. 26 S., R. 38 E., Sections 6, 7, 18, 19, 30, and 31,

T. 29 S., R. 41 E., description should read: T. 29 S., R. 41 E., Section 31,

T. 31 S., R. 43 E., description should read: T. 31 S., R. 43 E., Sections 29 through 32,

T. 32 S., R. 41 E., description should read: T. 32 S., R. 41 E., all land on the north side of Dry Bay,

T. 43 S., R. 58 E., description should read: T. 43 S., R. 58 E., all land northwest of the hydrographic divide between Mud Bay and Neka River.

West Chichagof—Yakobi

Copper River Meridian

T. 52 S., R. 60 E., description should read: T. 52 S., R. 60 E., all land north of the line through the center of Salisbury Sound and Kakul Narrows,

Keku Strait (Rocky Pass) Area

Copper River Meridian

T. 58 S., R. 75 E., description should read: T. 58 S., R. 75 E., all land west of a line running from Hamilton Creek in Section 6 to a high point in the SE corner of Section 32,

T. 60 S., R. 75 E., description should read: T. 60 S., R. 75 E., all lands west of a line running from the north boundary southerly through the forks of Keku Creek to a prominent point in Section 20, thence easterly, through prominent points in Sections 22 and 28, thence south to the SE corner of Section 33.

Stikine—Laconte

Copper River Meridian

T. 62 S., R. 86 E., description should read: T. 62 S., R. 86 E., Sections 1 through 6,

T. 62 S., R. 87 E., description should read: T. 62 S., R. 87 E., Sections 3 through 9.

Coronation Island-Warren Island-Maurille Island

Copper River Meridian

T. 68 S., Rs. 72 through 75 E., description should read: T. 68 S., Rs. 72 through 75 E., all land except Spanish Islands and Kosciusko Island.

4. The following described lands are deleted from the Notice of Proposed Withdrawal of Lands appearing in the December 5, 1978, **Federal Register** at pages 57134 and 57136 under:

Russell Fjord-Yakutat Forelands Area

Copper River Meridian

T. 24 S., R. 39 E., W½SW¼.

T. 32 S., R. 42 E., a one-mile-strip along the north boundary of the township.

T. 32 S., R. 43 E., NW¼NW¼.

Stikine-Leconte

Copper River Meridian

T. 60 S., R. 83 E., all land on Kadin Island and Rynda Island.

South Prince of Wales Area

Copper River Meridian

Tps. 78, 79, 80 S., R. 85 E.

Tps. 81 and 82 S., Rs. 84 and 85 E.

T. 83 S., Rs. 86 and 87 E.

5. Areas described in F.R. Doc. 34051 at page 57136 in the issue for Tuesday, December 5, 1978, under "South Prince of Wales Area," are deleted and redescribed as follows:

South Prince of Wales Area

Copper River Meridian

Tps. 78 and 79 S., Rs. 86 and 87 E., all lands in Klakas Inlet drainage.

T. 80 S., Rs. 86 through 88 E., all lands in Klakas Inlet drainage and west of Prince of Wales hydrographic divide.

Tps. 81 and 82 S., R. 86 E., all lands on the east side of Cordova Bay.

T. 81 S., Rs. 87 through 89 E., all lands west of the hydrographic divide between Cordova Bay and Clarence Strait.

T. 82 S., R. 87 E.

T. 82 S., Rs. 88 and 89 E., all lands west of the hydrographic divide west of Nichols Bay.

T. 83 S., R. 88 E.

T. 83 S., R. 89 E., all lands west of the major hydrographic divide west of Nichols Bay.

6. Lands added, corrected, or more clearly redescribed by this amendment are subject to the terms and conditions specified in the Notice of Proposed Withdrawal published in the **Federal Register** of December 5, 1978, at pages 57134 through 57137, F.R. Doc. 34051.

By letter dated April 9, 1979, the U.S. Department of Agriculture requested the addition, correction, and redescription of certain land described in the December 5, 1978, **Federal Register**. The deleted lands will be relieved of their segregative effect by this amendment upon publication in the **Federal Register**. However, these lands remain subject to any other existing withdrawals or reservations.

Arnold E. Petty,

Acting Associate Director.

May 31, 1979.

[FR Doc. 79-17803 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-84

[AA-6660-A through AA-6660-G]

Alaska Native Claims Selections

On December 24, 1968, the State filed general purposes grant selection applications pursuant to section 6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, section 6(b) (1970)) for certain lands in the Bristol Bay area. Applications AA-5149,

AA–5150, AA–5153 and AA–5154 selected lands in Ts. 24 and 25 S., Rs. 49 and 50 W., Seward Meridian. On January 12 and June 16, 1972, each application was amended to include all lands in the townships, excluding patented lands.

The Bureau of Indian Affairs filed an application on December 12, 1968, to withdraw all unreserved public lands in Alaska for the determination and protection of the rights of the Alaska Natives. Subsequently, on January 17, 1969, Public Land Order 4582 was issued to affirm the withdrawal of all unreserved lands in Alaska from all forms of appropriation and disposition under the public land laws except locations for metalliferous minerals. Public Land Order 4582 further provided that applications filed by the State of Alaska after December 12, 1968, and prior to January 4, 1969, must be embraced in leases, licenses, permits, or contracts issued pursuant to the Mineral Leasing Act of 1920 or the Coal Leasing Act of 1914 in order to be a valid selection application.

Since the lands selected in State selection applications AA–5149, AA–5150, AA–5153 and AA–5154 filed on December 24, 1968 were not entirely within lands embraced in leases, etc., these applications must be and are hereby rejected as to the following described lands:

Seward Meridian, Alaska (Unsurveyed)

State Selection AA–5149

T. 25 S., R. 50 W.
Secs. 10 to 15, inclusive, all;
Secs. 22 to 27, inclusive, all;
Secs. 34, 35 and 36, all.
Containing approximately 9,735 acres.

State Selection AA–5150

T. 25 S., R. 49 W.
Sec. 7, all;
Secs. 18 and 19, all;
Secs. 30 and 31, all.
Containing approximately 3,086 acres.

State Selection AA–5153

T. 24 S., R. 50 W.
Secs. 1, 2 and 3, all;
Secs. 10 to 15, inclusive, all;
Secs. 22 to 28, inclusive, all;
Secs. 33 to 36, inclusive, all.
Containing approximately 12,800 acres.

State Selection AA–5154

T. 24 S., R. 49 W.
Secs. 6 and 7, all;
Secs. 18 and 19, all;
Secs. 30 and 31, all.
Containing approximately 3,812 acres.
Aggregating approximately 29,433 acres.

The State selected lands rejected above were not valid selections and will not be charged against the village corporation as State selected lands.

Section 11(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 696; 43 U.S.C. 1601, 1610(a) (1976)) (ANCSA), withdrew the lands surrounding the Native village of Egegik, including lands in the subject State selection applications for Native selection. Becharof Corporation filed selection applications AA–6660–A on January 15, 1974 and AA–6660–B through AA–6660–G on November 1, 1974, under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act for lands within the subject State selections.

Section 12(a)(1) of the Alaska Native Claims Settlement Act provides that village selections shall be made from lands withdrawn by Sec. 11(a).

Section 11(a)(2) further withdrew for possible selection by the Native corporation those lands within the townships described in Sec. 11(a)(1) that have been selected by, or tentatively approved to, but not yet patented to the State under the Alaska Statehood Act.

Section 12(a) further provided, however, that no village corporation may select more than 69,120 acres from lands withdrawn by Sec. 11(a)(2).

The lands described below were properly selected by Becharof Corporation in village selection application AA–6660–C; accordingly, State selection application AA–5149, is hereby rejected, as to the following described lands:

Seward Meridian, Alaska (Unsurveyed)

State Selection AA–5149

T. 25 S., R. 50 W.,
Sec. 9, all;
Secs. 16 and 17, all;
Secs. 20 and 21, all;
Secs. 28 and 29, all;
Secs. 32 and 33, all.
Containing approximately 5,805 acres.

The total amount of State selected lands rejected to permit the conveyance hereafter given totals approximately 5,805 acres, which is less than the 69,120 acres permitted by Sec. 12(a)(1) of the Alaska Native Claims Settlement Act. Further action on the subject State selection applications as to those lands not rejected herein will be taken at a later date.

As to the lands described below, the applications submitted by Becharof Corporation, as amended, are properly filed, and meet the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquistion of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a), aggregating approximately 88,649 acres, is considered proper for acquisition by Becharof Corporation and is hereby approved for conveyance pursuant to Sec. 14(a) of the Alaska Native Claims Settlement Act:

Seward Meridian, Alaska (Unsurveyed)

T. 24 S., R. 47 W.,
Secs. 1 and 2, all;
Secs. 3 to 11, inclusive, excluding Egegik River;
Sec. 12, all;
Secs. 13 and 14, excluding Egegik River;
Sec. 16, excluding Egegik River;
Secs. 17 to 20, inclusive, all;
Secs. 21 to 24, inclusive, excluding Egegik River;
Sec. 25, excluding Native allotment A–054671 and Egegik River;
Secs. 26 and 27, excluding Egegik River;
Secs. 28 to 35, inclusive, all;
Sec. 36, excluding Egegik River;
Containing approximately 17,947 acres.
T. 25 S., R. 47 W.,
Secs. 11 to 14, inclusive, all;
Secs. 23, 24 and 25, all.
Containing approximately 4,570 acres.
T. 23 S., R. 49 W.,
Sec. 1, inclusive, excluding Egegik River;
Sec. 2, excluding U.S. Survey 554 and Egegik River;
Secs. 3 and 4, excluding Egegik River;
Sec. 5, excluding U.S. Survey 548 and Egegik River;
Sec. 6, excluding U.S. Survey 485, U.S. Survey 551, U.S. Survey 2367, U.S. Survey 4900, U.S. Survey 4941 and Egegik River;
Sec. 7, excluding U.S. Survey 4900;
Sec. 8, all;
Secs. 9 to 12, inclusive, excluding Egegik River;
Sec. 13, all;
Secs. 14 and 15, excluding Egegik River;
Secs. 16 to 36, inclusive, all.
Containing approximately 19,992 acres.
T. 24 S., R. 49 W.,
Secs. 6 and 7, all;
Secs. 18 and 19, all;
Secs. 30 and 31, all.
Containing approximately 3,812 acres.
T. 25 S., R. 49 W.,
Secs. 7 and 18, all;
Sec. 19, all;
Secs. 30 and 31, all.
Containing approximately 3,086 acres.
T. 23 S., R. 50 W.,
Sec. 1 (fractional), excluding U.S. Survey 485, U.S. Survey 551, U.S. Survey 892, U.S. Survey 2022, U.S. Survey 2366, U.S. Survey 4900, U.S. Survey 4941 and Native allotment A–061975;
Sec. 2 (fractional), excluding U.S. Survey 5305 Lot 1 and Native allotment A–058973;
Sec. 3 (fractional), excluding U.S. Survey 549, U.S. Survey 550, U.S. Survey 4907, U.S. Survey 5246 Lots 1 and 2, and Native allotment A–058973;
Sec. 4 (fractional), excluding U.S. Survey 550 and U.S. Survey 5246 Lot 2;
Sec. 7 (fractional), all;
Sec. 12 (fractional), excluding U.S. Survey 2482 and U.S. Survey 4900;
Secs. 13 and 14 (fractional), all;

Secs. 18 and 19 (fractional), all;
Secs. 21, 22 and 23 (fractional), all;
Secs. 24 to 36, inclusive, all.
Containing approximately 10,902 acres.
T. 24 S., R. 50 W.,
Secs. 1, 2 and 3, all;
Secs. 10 to 15, inclusive, all;
Secs. 22 to 28, inclusive, all;
Secs. 33 to 36, inclusive, all.
Containing approximately 12,800 acres.
T. 25 S., R. 50 W.,
Secs. 9 to 17, inclusive, all;
Secs. 20 to 29, inclusive, all;
Secs. 32 to 36, inclusive, all.
Containing approximately 15,540 acres.
Aggregating approximately 88,649 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f) (1976)); and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b) (1976)), the following public easements, referenced by easement maps attached to this document, copies of which will be found in case file AA–6660–EE, are reserved to the United States. All easements are subject to applicable Federal, State, or municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a 25 foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

50 Foot Trail—The uses allowed on a 50 foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, small and large all-terrain vehicles, track vehicles and four-wheel drive vehicles.

a. (EIN 1 C3, D1, D9) An easement for an existing access trail twenty-five (25) feet in width from Egegik Bay parallel to the shoreline of Bristol Bay and Egegik Bay in Sec. 1, T. 23 S., R. 50 W., Seward Meridian, southwesterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

b. (EIN 1a C3, D1) An easement for an existing access trail fifty (50) feet in width from Egegik in Sec. 1, T. 23 S., R. 50 W., Seward Meridian, southeasterly roughly parallel to the left bank of the Egegik River to Becharof Lake. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

The grant of lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g) (1970))), contract, permit, right-of-way or easement, and the right of the lessee, contractee, permittee or grantee to the complete enjoyment of all rights, privileges and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of ANCSA, any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law:

3. Those rights for water pipeline purposes as have been granted to the New England Fish Company, its successors or assigns, by right-of-way, A–012179, located in Secs. 1 and 12, T. 23 S., R. 50 W., Seward Meridian, under the Act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959); and

4. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c) (1976)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Becharof Corporation is entitled to conveyance of 92,160 acres of land selcted pursuant to Sec. 12(a) of the Alaska Native Claims Settlement Act. To date, approximately 88,649 acres of this entitlement have been approved for conveyance; the remaining entitlement of approximately 3,511 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of the Alaska Native Claims Settlement Act, conveyance to the subsurface estate of the lands described above shall be granted to Bristol Bay Native Corporation when conveyance is granted to Becharof Corporation for the surface estate, and shall be subject to the ame conditons as the surface conveyance.

Only the following inland water body, within the described lands, is considered to be navigable:

Egegik River.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks in the ANCHORAGE TIMES. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510 with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until July 9, 1979 to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the adverse parties to be served are:

Becharof Corporation, Egegik, Alaska 99579.

Bristol Bay Native Corporation, P. O. Box 198, Dillingham, Alaska 99576.

State of Alaska, Division of Lands, 323 East Fourth Avenue, Anchorage, Alaska 99501.

Ann Johnson,

Acting Chief, Branch of Adjudication.

[FR Doc. 79–17804 Filed 6–7–79; 8:45 am]

BILLING CODE 4310–84–M

[F–14856–A]

Alaska Native Claims Selection; Correction

The purpose of this Notice is to correct the language in paragraph 2 of the decision dated April 6, 1969, as published in the **Federal Register** issue for Friday, April 6, 1979 (FR Vol. 44, at page 20802, column 2), which now reads as follows:

2. "Pursuant to section 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688), temporary camping, loading, or unloading shall be limited to 24 hours." Paragraph 2 is hereby corrected to read as follows:

2. Pursuant to section 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b) (Supp. V, 1975)), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F–14856–EE, are reserved to the United States. All easements are subject to applicable Federal, State, or municipal corporation regulation. The following is a listing of uses allowed for each type of easement identified. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. Gross Vehicle Weight (GVW).

One Acre Site—The uses allowed for a site easement are: vehicle parking (e.g., aircraft, boats, ATV's, snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading, or unloading shall be limited to 24 hours.

All other terms and conditions of the April 6, 1979 decision remain unchanged.

Arnold E. Petty,

Acting Associate Director.

May 31, 1979.

[FR Doc. 79–17805 Filed 6–7–79; 8:45 am]

BILLING CODE 4310–84–M

Las Cruces District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 94–579, that a meeting of the Las Cruces District Grazing Advisory Board will be held on Thursday, July 12, 1979.

The meeting will begin at 10 a.m. in the Varsity Room of Howard Johnson's Los Pueblos Motel at 2600 S. Valley Drive, in Las Cruces, New Mexico.

The agenda for the meeting will include: (1) Election of board members, (2) Scope and responsibilities of the Board, (3) Policy regarding use of range improvement funds, (4) Current and proposed use of range improvement funds, (5) Arrangements for the next meeting.

The meeting will be open to the public and interested persons may make oral statements to the Board during the allotted time period between 2 and 2:30 p.m., or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 1705 N. Valley, Las Cruces, New Mexico 88001, by July 10, 1979. The district manager may establish a time limit for oral statements depending on the number of persons wishing to make statements.

Summary minutes of the Board meeting will be maintained in the Las Cruces BLM District Office and be available for public inspection and reproduction (during regular business hours) for 30 days following the meeting.

Dated: June 1, 1979.

Daniel C. B. Rathbun,

District Manager.

[FR Doc. 79–17956 Filed 6–7–79; 8:45 am]

BILLING CODE 4310–84–M

Fish and Wildlife Service

[INT–FES–79–22]

Canaan Valley National Wildlife Refuge, Tucker County, W. Va.; Availability of Final Environmental Statement

Correction

In FR Doc. 79–17256, appearing on page 32047 in the issue for Monday, June 4, 1979, the docket number given, "INT–DES–79–22," is incorrect. The correct docket number appears in the heading above.

BILLING CODE 1505–01–M

Categorical Exclusions

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice.

SUMMARY: This notice establishes interim categorical exclusions for compliance with the National Envionmental Policy Act (NEPA) and the regulations issued by the Council on Environmental Quality (CEQ) on November 29, 1978 (43 FR 55978). These exclusions are limited to the determination of project activities under the Federal Aid in Fish and Wildlife Restoration programs.

EFFECTIVE DATE: June 8, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Charles K. Phenicie, Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone 703–235–1526.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 22, 1979 (44 FR 17598), a notice of proposed categorical exclusions was published and pulic comment was requested. A total of 50 responses were received during the period allowed for comment. All comments were given due consideration. As a result of comments received, the following changes are made:

1. The general statement is revised to:

(a). Clarify that the exclusions are applicable to projects or project components.

(b). Provide Regional Directors the latitude to require preparation of environmental assessments or statements for otherwise excluded actions when considered necessary or desirable.

2. Routine maintenance is revised to clarify that the exclusion is limited to activities which do not alter or expand existing capacity, use or purpose, or result in changes in the vegetative community. also, project activities which are designed to maintain existing habitat or vegetative communities are not excluded.

3. The exclusion for planning projects was rewritten to clarify that no statement or assessment was required to approve a planning activity but that the NEPA process would be followed in plan development and approval.

AUTHORSHIP: The author of the original proposal was Mr. William H. Massmann, Division of Federal Aid, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone 703–235–1526. The revisions were authored by Dr. Robert J. Sousa at the same address and telephone.

Categorical Exclusions

Notice is hereby given that the following actions conducted by the States under the Federal Aid in Fish and Wildlife Restoration programs individually or cumulatively have no significant impact on the quality of the human environment. Therefore, under provisions of Sections 1507.3 and 1508.4 of the regulations for implementing the procedural provisions of the National Environmental Policy Act (40 CFR Parts 1500–1508), the following actions are excluded from the requirement for preparation of an environmental assessment or statement. These exclusions will apply until superseded.

The classes of actions excluded are applicable to projects or components of projects carried out under the Federal Aid in Fish Restoration Act (16 U.S.C. 777 et seq.) and the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669 et seq.). However, Regional Directors of the U.S. Fish and Wildlife Service may require environmental assessments or statements on excluded actions if, in their view, environmental review and analysis prior to decision is in the best

interests of the Service in carrying out the National Environmental Policy Act.

1. Surveys and Inventories

The purpose of surveys and inventories is to determine periodically the numbers and conditions of fish and wildlife and their habitats, or the harvest or other uses of these resourses. Surveys range from direct observation of animals or measures of habitat conditions to indirect determinations relying on sampling procedures. Surveys of wildlife users determine their desires and needs, and may further show economic, sociological, esthetic, or scientific values.

While most surveys rely on direct or indirect counts of fish or wildlife, some may require their capture for more complete identification or examination for age, condition, productivity, health, and general fitness. Population estimates may require the tagging of some animals. Where fish or wildlife are taken into possession for the purposes stated above, and either released into the wild or killed, individual animals are affected. The numbers affected are so small that there is no effect on the population or species, either in the contiguous area or broader areas of the range; therefore, the effect is not major or significant in terms of NEPA.

Habitat surveys may require sampling plots of vegetation, brose plants, soils, minerals, or the ground surface for animal signs. In streams or lakes, the physical or chemical constituents of the water are measures. The identification of detrimental conditions in habitats is often a vital element in habitat surveys. For economic reasons, sample sizes and numbers are kept small and to a minimum by statistical means and have no major or significant effects on the environment.

The data acquired from surveys and inventories generally form the basis for management recommendations. Depending on the purpose and nature of the surveys, recommendations may pertain to programs which provide public recreation or other benefits, or they may specify measures to provide needed stimulation or restraint of population growth for the benefit of the habitat or of other species. Deteriorating or adverse habitat conditions may be alleviated or corrected, and lethal conditions may be eliminated. User surveys may suggest that a redirection of efforts between species or habitats would be helpful.

2. Routine Maintenance

Routine maintenace is the repair, renovation, and upkeep of facilities and improvements at the same location for the same purpose. Excluded activities include work on existing drainage ditches, roads, bridges, small dams, dikes, and levees unless such activities would alter or expand the existing capacity, use, or purpose or result in changes in the existing vegetative community. Also excluded are maintenance of parking lots, buildings target ranges, picnic and camping areas, fences, signs, trails, boat ramps, nesting structures and major equipment items.

Routine maintenance does not include "maintenance" of a habitat type or vegetative community requiring activities such as forestry and farming operations, grazing, or land treatment activities to control natural plant succession.

3. Hunter Education

The purpose of the hunter education program is to provide public instruction for the safe and ethical conduct of fish and wildlife recreation. This includes developing a respect for and understanding of property (both public and private), wildlife management, legal and moral obligations in the harvest of wildlife, and training in the safe and proficient use of sporting firearms and archery equipment. Hunter education is performed either in the classroom or at indoor and outdoor target ranges.

As discussed in the Environmental Impact Statement for the Federal Aid Program (page III–44), target ranges are subject to occupational Safety and Health Administration regulations to protect public health and safety. Neither classroom nor target range instruction affects the quality of the human environment.

Acquisition of land, target range construction, and construction of auxiliary structures are not covered by this exclusion.

4. Coordination

Coordination projects provide for administrative and clerical services over the States' Federal Aid projects. This administrative function involves the development of work plans and provisions for technical direction of program employees, correlating Federal Aid financed activities with other State operations, and maintaining records essential to the program. Coordination activities do not affect the quality of the human environment since they are administrative projects.

5. Research Studies

With the exception of developmental technologies, animal sacrifice, environmental disruption, and public health or safety, research studies are not major Federal actions and will not significantly affect the quality of the human environment.

Research—the acquisition of facts needed for most effective conservation and management of fish and wildlife—covers a broad spectrum of activities. For example, one project may monitor the intercontinental migrations of birds while another may examine the intracellular effects of a virus on fish. Under the Federal Aid program, research and surveys are often treated together since they are so similar in many respects. A major distinction is that research seeks new knowledge concerning an objective which is generally obtainable in a single study. In contrast, surveys apply established methodologies in a routine manner, often repeated at intervals, to fill a recurring need for information. Research provides data on fish or wildlife concerning ecological needs, nutritional problems, diseases and parasites, effects of land management practices, population dynamics, behavioral activities, movements, and information on a host of other subjects.

The research studies that may affect the quality of the human environment and which, therefore, will require an environmental assessment or statement are:

(a) Studies aimed at developing new technologies which, if applied, could significantly affect the environment. Examples of such studies would be the development of specific farm cultural practices for wide application to benefit wildlife. The development of water management practices for wide application in the conservation or augmentation of stream flows is another;

(b) Studies which involve significant mortality of animals or the introduction of nonindigenous animals on an experimental basis. Examples of such studies include investigations of animal diseases in which the pathological effects of the illness must be studied on a large number of wild specimens in order to understand the diseases and to develop treatments. The experimental introduction of African Nile perch into heated reservoirs to determine their ability to control overpopulations of carp and gizzard shad is another example;

(c) Studies that would require a significant disruption of the physical environment or the introduction of toxicants into the environment. Examples of such studies would include the experimental plantings of loblolly pines to determine the most desirable

habitat for the red-cockaded woodpecker or the experimental treatment of portion of a reservoir with fish toxicant to obtain an estimate of the total fish population; and

(d) Studies which could affect public health or safety. The use of radioisotopes to mark animals or trace a certain food item could create a health problem if not carefully done, and the use of certain animal traps or snares would require special precautions to prevent human accidents. Such studies would require environmental assessments or statements.

The four exceptions to the exclusion do not include fish or wildlife taken into possession for banding, radio tagging, marking, aging, or other types of examination before releasing them into the wild. They also do not include minor sacrifice of animals essential to research. Minor as used here means that the sacrifice will have no measurable effect on any wild population from which the individual(s) is taken or on the population of any associated species.

6. Technical Guidance

Some projects are for the purpose of providing consultation or guidance to other agencies, corporations, political entities, or to individuals for the purpose of improving fish or wildlife resources. Such consultations often involve assisting others in planning future developments in ways to minimize destruction of wildlife habitat or to benefit fish or wildlife. The consultations would not affect the human environment. In those cases where a substantial development is planned, the project itself would be the subject of an environmental assessment or statement.

7. Migratory Bird Banding Projects

Under their Federal Aid programs, many of the States cooperate with the Fish and Wildlife Service in obtaining vital information on waterfowl and other migratory birds. Some of this information is obtained by banding predetermined quotas of birds. Although occasional mortalities may occur during bird banding operations, these are not significant in that the mortalities will have no effect on overall populations.

8. Planning Projects

A project designed to authorize Federal assistance for planning does not affect the quality of the human environment. States may participate in the Federal Aid programs on the basis of an approved comprehensive fish and wildlife management plan. Plans of lesser scope are also prepared which range from groups of animals and users such as fish and fishermen to management plans for individual fish or wildlife areas. The latter group does not serve the legislated option for program participation but serves to facilitate program administration.

The NEPA process shall be integrated early into the planning process, including public involvement in decisions which affect the quality of the human environment, and identification and assessment of reasonable alternatives to proposed actions. As a plan is submitted for adoption by State decisionmakers and for approval by Federal officials, the program proposed by the plan must be accompanied by an appropriate NEPA document.

Dated: June 4, 1979.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

[FR Doc. 79-17826 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-55-M

Heritage Conservation and Recreation Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before June 8, 1979. Pursuant to § 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic Preservation, U.S. Department of the Interior, Washington, DC 20243. Written comments or a request for additional time to prepare comments should be submitted by June 18, 1979.

Charles A. Herrington,

Acting Keeper of the National Register.

MICHIGAN

Wayne County

Detroit, *Dunbar Hospital,* 580 Frederick Ave.

[FR Doc. 79-17811 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-03-M

National Park Service

Mining Plan of Operations at Denali National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Bill Snyder has filed a plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Denali National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: May 9, 1979.

James J. Berens,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17749 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Denali National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Gary B. Golay has filed a plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Denali National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: May 4, 1979.

Howard R. Wagner,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17750 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Denali National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Larry Goolsberg and David Anstett have filed a plan of operations in support of proposed mining activities on lands embracing their Mining Claim Group within the Denali National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: May 4, 1979.

Howard R. Wagner,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17751 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Denali National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Jim Dale has filed plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Denali National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: April 18, 1979.

Howard R. Wagner,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17752 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Denali National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Eric Wieler has filed plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Denali National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: April 18, 1979.

Howard R. Wagner,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17753 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Denali National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Sam Koppenberg has filed plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Denali National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: April 18, 1979.

Howard R. Wagner,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17754 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Denali National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Jon T. Millhouse has filed plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Denali National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: April 18, 1979.

Howard R. Wagner,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17756 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Denali National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Forrest Charlton has filed plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Denali National Monument. The plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: April 18, 1979.

Howard R. Wagner,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17757 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Denali National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, George Bailey has filed plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Denali National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: April 18, 1979.

Howard R. Wagner,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17758 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Denali National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Richard C. Reynders has filed plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Denali National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: April 18, 1979.

Howard R. Wagner,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17759 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Denali National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Cemco, Inc. has filed plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Denali National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: April 18, 1979.

Howard R. Wagner,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17760 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Wrangell-St. Elias National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Jo and Harley King and Russell Welborn

have filed a plan of operations in support of mining activities on lands embracing their Mining Claim Group within the Wrangell-St. Elias National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: May 9, 1979.

James J. Berens,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17761 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Wrangell-St. Elias National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, William McFarland has filed a plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Wrangell-St. Elias National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: May 9, 1979.

James J. Berens,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17762 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Wrangell-St. Elias National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Tim Jacobson has filed a plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Wrangell-St. Elias National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: May 4, 1979.

Howard R. Wagner,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17763 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Wrangell-St. Elias National Monument; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Melvin N. Barry has filed plan of operations in support of proposed mining activities on lands embracing his Mining Claim Group within the Wrangell-St. Elias National Monument. This plan is available for public inspection during normal business hours at the Alaska Area Office, National Park Service, 540 West 5th Avenue, Anchorage, Alaska.

Dated: April 18, 1979.

Howard R. Wagner,

Acting Area Director, Alaska Area Office.

[FR Doc. 79-17764 Filed 6-7-79; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Negotiation of a Coordinated Operations Agreement With the State of California; Intent to Initiate Negotiations for a Coordinated Operations Agreement, Central Valley Project, Calif.

The Department of the Interior, through the Bureau of Reclamation, and the State of California, through the Department of Water Resources, intend to initiate negotiations of a new coordinated operations agreement for the Federal Central Valley Project (CVP) and the State Water Project (SWP). The coordinated operations agreement will be entered into pursuant to the Reclamation Act of 1902 (32 Stat. 388).

The initial features of the CVP were authorized under the provisions of the Reclamation Act of December 5, 1924, which was approved on December 2, 1935, by the President of the United States. Congressional reauthorization of the project under Reclamation law was provided in section 2 of the Rivers and Harbors Act of August 26, 1937 (50 Stat. 859), and by the Rivers and Harbors Act of October 17, 1940 (54 Stat. 1198). Congress further reauthorized the project by the Act of October 14, 1949 (63 Stat. 852) and the Act of September 26, 1950 (64 Stat. 1036). Additional units were authorized by the Congress as integral parts of the project by the Acts of August 12, 1955 (69 Stat. 719); June 3, 1960 (74 Stat. 156); September 2, 1965 (79 Stat. 615); August 19, 1967 (81 Stat. 167); and August 27, 1967 (81 Stat. 173). The SWP was authorized for construction by passage of the Porter-Cologne Act in the State general election of 1960.

In 1959, the Bureau of Reclamation and the Department of Water Resources entered into negotiations for an agreement concerning coordinated operations of the two projects in an attempt to resolve CVP–SWP Sacramento Valley and Sacramento-San Joaquin Delta water right issues. These negotiations resulted in an agreement dated May 16, 1960, entitled "Agreement Between the United States of America and the Department of Water Resources of the State of California for the Coordinated Operation of the Federal Central Valley Project and the State Feather River and Delta Diversion Projects." The objective of this agreement was for the Department of Water Resources and the United States to dedicate and utilize their respective existing and future water conservation facilities to provide the maximum benefits to the people of California and the Nation. The coordinated and cooperative operation of the SWP and the CVP facilities is essential to maximizing these benefits.

Between 1960 and 1971, additional negotiating sessions where held with exchanges of proposals and counterproposals being made which led to a draft of the Supplemental Coordinated Operating Agreement in 1971. This agreement, as yet unsigned, was prompted by article 16 of the May 16, 1960, Agreement, which specifically recognized the need for additional criteria for the actual operation of the two projects on a coordinated basis.

Because there have been many changes in critical areas since 1960 which affect the operations of the two projects, there is a need to renegotiate the previous agreements. Meetings for this purpose are expected to begin in June 1979. The public is invited to attend these meetings as observers. Written comments on the form of a proposed agreement may be submitted not later than 30 days after the draft is declared available to the public.

For further information about scheduled meetings and copies of the proposed coordinated operations agreement, please contact Mr. James N. Moore, Repayment Branch, Division of Water and Power Resources Management, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, telephone No. (916) 484–4680. All meetings scheduled by the Bureau of Reclamation with the State of California for the purpose of negotiating terms and conditions of a proposed coordinated operations agreement shall be open to the public as observers. Advance notice of such meetings shall be furnished only to those parties having

previously furnished a written request for such notice to the office identified above at least one week prior to any meeting. All written correspondence concerning the proposed coordinated operations agreement shall be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

Dated: June 6, 1979.

R. Keith Higginson,

Commissioner of Reclamation.

[FR Doc. 79-18080 Filed 6-7-79; 9:03 am]

BILLING CODE 4310-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Corps; Proposed Expansion of Job Corps Center at Turner Air Force Base, Albany, Ga.; Determination of Negative Environmental Impact

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice-Finding of Negative Environmental Impact.

SUMMARY: The purpose of this notice is to announce a determination by the Department under the National Environmental Policy Act and 40 CFR Part 1500 that the proposed expansion of the Job Corps center at Turner Air Force Base, Albany, Georgia, with the addition of 57 acres and 34 buildings, does not constitute a major Federal action which will significantly affect the environment.

FOR FURTHER INFORMATION CONTACT: Raymond E. Young, Director, Job Corps, Room 6100, Patrick Henry Building, 601 D Street, N.W., Washington, D.C. 20213, Telephone: (202) 376-6995.

SUPPLEMENTARY INFORMATION: Title IV, Part B of the Comprehensive Employment and Training Act (CETA), as ameded, 29 U.S.C. § 923 *et seq.*, directs the Secretary of Labor to establish Job Corps centers to provide occupational training to disadvantaged youths 16 through 21 years of age. Regulations pertaining to the Job Corps program are published at 29 CFR Part 97a. Pursuant to his authority the Secretary is expanding the Job Corps center at the Turner Air Force Base Complex.

Pursuant to 40 CFR Part 1500, the Department of Labor has conducted an environmental assessment as part of a site utilization study and has determined that preparation of an environmental impact statement is not required since the establishment of this Job Corps center is not a major Federal action which will significantly affect the quality of the human environment within the meaning of 40 CFR Section 1500.6(c). The established Turner Job Corps center, a training center with residential, nonresidential and educational facilities for approximately 700 disadvantaged youth, men, and women, ages 16 through 21, who need and can benefit from intensive employment-related services will be expanded to 1200. The function of the center and the expanded staff of approximately 350 will be to provide skill training in selected vocational courses and continuing and/or remedial education in academic subjects.

It is intended that the additional facilities be used for essentially the same purposes as used by the previous occupant, specifically residential living and instruction.

The center will remain a self-contained facility located off of Turner Field Road, approximately 4½ miles northwest of downtown Albany, Georgia. The additional property to be utilized consists of approximately 57 acres of land consisting of 34 buildings, of which approximately 20 buildings will be occupied for the program.

Domestic water and sewage collection systems to all existing buildings are provided through the base utility systmes. These utility systems, provided by the City of Albany, to the site, are adequate to meet the load capacity and standards for the proposed site utilization.

The proposed Job Corps center will be operated in compliance with the Job Corps Environmental Standards published at 29 CFR 97a.116, and with applicable Federal, State and local regulations concerning environmental health.

The established Job Corps center and the proposed expansion will be compliance with the water quality and related standards of the State and local government, and with the standards established pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, with Executive Order 11752, and with regulations and guidelines of the United States Environmental Protection Agency.

The center installation will be maintained so as to conform to Federal air quality standards, including those found in Executive Order 11752.

My determination is that the continued operation of the center with the addition of 34 buildings will have no adverse impact upon traffic, transportation systems, pedestrian or vehicular congestion, police protection services, fire protection services, public safety, legal services, or upon the aesthetics or residential quality of the nearby area. I further determine that the aforementioned expansion of the Center will have no adverse effects upon ecological systems, population distribution, air or water pollution, municipal services, or health or life support systems. Accordingly, I hereby determine that the expansion of such Job Corps center will not have a significant adverse impact upon the quality of the human environment of the nearby area, or the greater Albany community.

The Job Corps center will be operated with the pass-leave procedures required by Job Corps Regulations and operational procedures. I find that in light of the increase in enrollment level and utilization of the pass-leave procedures, that congestion in the area will not increase.

There will be no material impact upon transportation or traffic within the area.

It is further determined that the expansion of the Center is not likely to have a significant adverse impact upon use of police services or the public safety. Adequate provisions are planned to carefully screen prospective enrollees so as to minimize the possibility of disciplinary problems or Center related public safety problems.

Adequate staffing personnel and protection will be provided at the Albany Job Corps center in accordance with Job Corps' operating procedures and regulations.

I further find that fire protection services in the area will not be adversely affected and that systems in the facilities will be upgraded to further reduce risk of fire from the present risk level.

Additionally, local health services will not be adversely affected because basic dental, medical and other health related services will be provided on site with Job Corps' own facilities and personnel.

In conclusion, it is my determination, after careful review and consideration of the nature of Job Corps' proposed action, in light of Job Corps' purposes, objectives and operational procedures, that the impact upon the surrounding community, of the establishment of the Center at the site will not be significant. It is my careful determination that the environmental assessment conducted by the Department of Labor, pursuant to 40 CFR Part 1500, clearly indicates that preparation of an environmental impact statement is not required since the expansion of the Job Corps center is not a mjaor Federal action which will

significantly affect the quality of the human environment within the meaning of 40 CFR Section 1500.6(c).

Signed at Washington, D.C. this 17th day of April 1979.

Raymond E. Young,

Director, Office of Job Corps and Young Adult Conservation Corps.

[FR Doc. 79-17844 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-30-M

Reallocation of Funds Under the Comprehensive Employment and Training Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Thirty-Day Notice of Intent to Reallocate Funds Under Title II–D of the Comprehensive Employment and Training Act (CETA).

SUMMARY: Pursuant to 20 CFR 676.47, the Secretary announces the intent of the Department to reallocate $913,618 in CETA Title II–D funds from the Lafayette Parish, Louisiana, CETA prime sponsor. The Secretary invites all interested parties to submit comments regarding this proposed action. Comments are due on or before July 9, 1979.

COMMENTS SHOULD BE SUBMITTED TO: Mr. Robert Anderson, Administrator, Office of Comprehensive Employment Development, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213, Attention: TDCR.

SUPPLEMENTARY INFORMATION: The Department has determined that the prime sponsor has not utilized the available funds and that it does not have current plans which call for the effective use of these funds within a reasonable period of time.

Robert Anderson,

Administrator, Office of Comprehensive Employment Development.

[FR Doc. 79-17846 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-30-M

Extended Benefits; Ending of Extended Benefit Period in the State of Idaho

This notice announces the ending of the Extended Benefit Period in the State of Idaho, effective on June 9, 1979.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (Title II of the Employment Security Amendments of 1970, Public Law 91–373; 26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State or the nation, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. This Act is impelemtned by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered "on" when unemployment in the State or in all States collectively reaches the high levels set in the Act. During an Extended Benefit Period individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when unemployment in the State is no longer at the high levels set in the Act. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator.

An Extended Benefit Period commended in the State of Idaho on February 25, 1979, and has now triggered off.

Determination of "Off" Indicator

The head of the employment security agency of the State of Idaho has determined, in accordance with the State law and 20 CFR § 615.12(e), that the average rate of insured unemployment in the State for the period consisting of the week ending on May 19, 1979, and the immediately preceding twelve weeks, has decreased so that for that week there was an "off" indicator in that State. Therefore, the Extended Benefit Period in that State terminates with the week ending on June 9, 1979.

Information for Claimants

Persons who wish information about their rights to Extended Benefits in the State of Idaho should contact the nearest local office of the Idaho Department of Employment.

Signed at Washington, D.C., on June 5, 1979.

Ernest G. Green,

Assistant Secretary for Employment and Training.

[FR Doc. 79-17849 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-30-M

Extended Benefits; Ending of Extended Benefit Period in the State of Pennsylvania

This notice announces the ending of the Extended Benefit Period in the State of Pennsylvania, effective on June 9, 1979.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (Title II of the Employment Security Amendments of 1970, Public Law 91–373; 26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State or the nation, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. This Act is implemented by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered "on" when unemployment in the State or in all States collectively reaches the high levels set in the Act. During an Extended Benefit Period individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "Off" when unemployment in the State is no longer at the high levels set in the Act. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator.

An Extended Benefit Period commenced in the State of Pennsylvania on March 11, 1979, and has now triggered off.

Determination of "off" Indicator

The head of the employment security agency of the State of Pennsylvania has determined, in accordance with the State law and 20 CFR § 615.12(e), that the average rate of insured

unemployment in the State for the period consisting of the week ending on May 19, 1979, and the immediately preceding twelve weeks, has decreased so that for that week there was an "off" indicator in that State. Therefore, the Extended Benefit Period in that State terminates with the week ending on June 9, 1979.

Information for Claimants

Persons who wish information about their rights to Extended Benefits in the State of Pennsylvania should contact the nearest local office of the State Department of Labor and Industry.

Signed at Washington, D.C., on June 5, 1979.

Ernest G. Green,

Assistant Secretary for Employment and Training.

[FR Doc. 79-17849 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Hawaii 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 January 4, 1974, notice was published in the **Federal Register** (39 FR 1010) of the approval of the Hawaii plan and the adoption of Subpart Y to Part 1952 containing the decision.

The Hawaii 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 comparable to Federal standard changes and State initiated standards continue to be adopted. Accordingly Hawaii has revised these standards and promulgated them in accordance with applicable State procedures.

Section 1952.310(a) of Subpart Y sets forth the State's procedure for the adoption of at least as effective state standards. By a letter dated January 19, 1979 from Joshua C. Agsalud, Director—Department of Industrial Relations, to Gabriel J. Gillotti, Regional Administrator—OSHA Region IX; and a letter dated April 3, 1979 from Harold W. Barks, Manager Technical and Office Services—Hawaii DOSH, to W. E. (Bill) Stock, Senior Technical Specialist—OSHA Region IX, and incorporated as part of the Plan, the State submitted proof documents concerning the adoption of Federal standard changes, and State initiated changes to 29 CFR Part 1910. These changes include a group of standard revocations, and the promulgation of the permanent standard for 1,2-Dibromo-3-Chloropropane (DBCP).

These standard changes, which are contained in Hawaii Occupational Safety and Health Standards—Rules and Regulations—Revision #4, were promulgated by the State after public hearings.

2. *Decision.* The State submission has been reviewed with the comparable Federal standards. It has been determined that the State standards are at least as effective as the related Federal standards. The detailed standards comparison is available for review at the locations indicated below.

3. *Location of Supplement for Inspection and Copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 450 Golden Gate Avenue, Room 9470, San Francisco 94102; and the offices of the Department of Labor and Industrial Relations, Room 308, 825 Mililani Street, Honolulu, Hawaii 96813; and the Technical Data Center, Room N2439R; 3rd and 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 Hawaii plan as a proposed change and making the 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 repetitious.

This decision is effective June 8, 1979. (Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at San Francisco, California this 11th day of May, 1979.

Gabriel J. Gillotti,

Regional Administrator.

[FR Doc. 79-17847 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-26-M

Iowa 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 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 July 20, 1973, notice was published in the **Federal Register** (38 FR 19368) of the approval of the Iowa plan and the adoption of Subpart J to Part 1952 containing the decision.

The Iowa plan provides for the adoption of Federal standards as State standards (by reference or after comments and public hearing). Section 1952.163 of Subpart J sets forth the State's schedule for the adoption of Federal standards. By letter dated November 29, 1978, from Walter Johnson, Deputy Commissioner of Labor, to Vernon A. Strahm, Regional Administrator for Occupational Safety and Health Administration and incorporated as part of the plan, the State submitted State standards comparable to 1) 29 CFR 1910.401, 402, 410, 411, 420, 421, 422, 423, 424, 425, 426, 427, 430, 440, and 441 as published in **Federal Register** (42 FR 37668) dated July 22, 1977; 2) 29 CFR 1910.1044 as published in **Federal Register** (43 FR 11527) dated March 17, 1978; 3) 29 CFR 1910.19(e), 1910.1000, and 1910.1018 as published in the **Federal Register** (43 FR 19624) dated May 5, 1978; 4) 29 CFR 1910.1046(a) as published in **Federal Register** (43 FR 27434) dated June 23, 1978; 5) 29 CFR 1910.19(f), 1910.1000, and 1910.1043 as published in the **Federal Register** (43 FR 27394) dated June 23, 1978; 6) 29 CFR 1910.1018, 1910.19, 1910.1043, and 1910.1046 as published in **Federal Register** (43 FR 28472-28473) dated June 30, 1978; 7) 29 CFR 1910.20 as published in **Federal Register** (43 FR

31330) dated July 21, 1978; 8) Miscellaneous Corrections as published in **Federal Register** (43 FR 53032) dated August 8, 1978; 9) 29 CFR 1926.605(e) as published in **Federal Register** (43 FR 37668) dated July 22, 1977; 10) 29 CFR 1928.21(b) as published in **Federal Register** (42 FR 37668) dated July 22, 1977; 11) 29 CFR 1928.21(b) as published in **Federal Register** (42 FR 38569) dated July 29, 1977; 12) 29 CFR 1928.21(a)(5) as published in **Federal Register** (43 FR 27463) dated June 23, 1978; 13) 29 CFR 1928.21 and 1928.113 as published in **Federal Register** (43 FR 28474) dated June 30, 1978; 14) Miscellaneous Corrections as published in **Federal Register** (43 FR 35036) dated August 8, 1978. These standards, which are contained in Chapter 88 of the Code of Iowa (1975), were promulgated after public comment requested on September 1, 1978, hearings held on October 25, 1978, resolution adopted by Iowa Bureau of Labor on November 3, 1978, pursuant to Chapter 17a of the Code. The standards will be effective on January 18, 1978, and were published by the State on November 29, 1978.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards it has been determined that the State standards are identical to the Federal standards.

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 Associate Assistant Secretary for Regional Programs, OSHA, Room N3608, 200 Constitution Avenue NW., Washington, D.C. 20210; Technical Data Center, OSHA, Room N2439, 200 Constitution Avenue, NW., Washington, D.C. 20210; Office of the Regional Administrator, OSHA, Room 3000 Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106; and Iowa Bureau of Labor, 307 E. Seventh Street, Second Floor, Des Moines, Iowa 50319.

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 Iowa State 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 and are therefore deemed to be at least as effective.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective June 8, 1979. (Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Kansas City, Missouri this 14th day of May 1979.

Vernon A. Strahm,

Regional Administrator.

[FR Doc. 79–17850 Filed 6–7–79; 8:45 am]

BILLING CODE 4510–26–M

Utah 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 the Regional Administrator) under the delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On January 10, 1973, notice was published in the **Federal Register** (38 FR 1178) of the approval of the Utah Plan and the adoption of Subpart E to Part 1952 containing the decision.

The Utah Plan provides for the adoption of Federal Standards as State Standards by:

1. Advisory Committee recommendation.

2. Publication in newspapers of general/major circulation with a 30-day waiting period for public comment and hearing(s).

3. Commission order adopting the standards and designating an effective date.

4. Providing certified copies of Rules and Regulations or Standards to the Office of the State Archivist.

Section 1952.113 of Subpart E sets forth the State's schedule for adoption of Federal Standards. By letter dated March 3, 1979, from Ronald L. Joseph, Administrator, Utah Occupational Safety and Health Division, to Curtis A. Foster, Regional Administrator, and incorporated as part of the Plan, the State submitted rules and regulations concering 29 CFR 1910.1045 Occupational Exposure to Acrylonitrile (Vinyl Cyanide); 29 CFR 1910.19, Special Provisions for Air Contaminants; Paragraph (c) Acrylonitrile Section 1910.1045 and 29 CFR 1910.1000, Air Contaminants, Table Z–1, deleting the line "Acrylonitrile—20—50 from table Z–1, (43 FR 45810) Tuesday, October 3, 1978. These standards, which are contained in the Utah Occupational Safety and Health Rules and Regulations for General Industry, were promulgated per the requirements of Utah Code annontated 1953, Title 63–46–1, and in addition, published in newspapers of general/major circulation throughtout the State. No public comment was received and no hearings held.

The Standards for 29 CFR 1910.1045 Occupational Exposure to Acrylonitrile (Vinyl Cyanide); 29 CFR 1910.19, Special Provisions for Air Contaminants; Paragraph (c) Acrylonitrile Section 1910.1045 and 29 CFR 1910.1000, Air Contaminants, Table Z–1, deleting the line "Acrylonitrile—20—50 from table Z–1, were adopted by the Industrial Commission of Utah, Archives File Nuber 3137 on January 26, 1979, pursuant to Title 35–9–6 Utah code annotated 1953.

2. *Decision.* The State submission having been reviewed in comparison with the Federal Standards, it has been determined that the State Standards are idential to the 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 normal business hours at the following locations: Office of the Regional Administrator, Room 1554, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; Utah State Industrial Commission, UOSHA Offices at 448 South 400 East, Salt Lake City, Utah 84111; and the Technical Data Center, Room N2439R, 3rd Constitution Avenue, NW., Washington, D.C. 20210.

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 Utah State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

The Standards were adopted in accordance with the procedural requirements of State law which permitted public comments, and further public participation would be repetitious.

This decision is effective June 8, 1979.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Denver, Colorado, this 26th day of March 1979.

Curtis A. Foster,

Regional Administrator.

[FR Doc. 79-17851 6-7-79; 8:45 am]

BILLING CODE 4510-26-M

Office of the Secretary

Steel Tripartite Committee; Meeting

The Steel Tripartite Committee was established under the Federal Advisory Committee Act, 5 U.S.C. App. (1976) to advise the Secretary of Labor and Secretary of Commerce on international and domestic issues affecting the U.S. Steel industry and labor.

Notice is hereby given that the Steel Tripartite Committee will meet at 2:00 p.m. on June 25, 1979, in the Secretary's Conference Room S-2508, U.S. Department of Labor, 200 Constitution Avenue, Washington, D.C. 20210.

Items to be discussed are the impact of the Multilateral Trade Negotiations on the U.S. steel industry and labor, the status of the recommendations of the Interagency Steel Task Force, and the future work of the Steel Tripartite Committee. The public is invited to attend. A limited number of seats will be available to the public on a first-come basis.

For additional information contact: Mr. David L. Mallino, Executive Secretary, Steel Tripartite Committee, Labor Management Services Administration, U.S. Department of Labor, Washington, D.C. 20210, Telephone (202) 523-7481 or Mr. A. M. Brueckmann, Director, Iron and Steel Division, Office of Basic Industries and Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, Telephone (202) 377-4412.

Official records of the meeting will be available for public inspection at N5653, U.S. Department of Labor, Washington, D.C., 20210.

Signed at Washington, D.C., this 8th day of June 1979.

Howard D. Samuel,

Deputy Under Secretary For International Affairs, U.S. Department of Labor.

[FR Doc. 79-17845 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5084]

American Heat Reclaiming Corp., Lykins, Pa.; 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 30, 1979 in response to a worker petition received on March 30, 1979 which was filed by the International Union of Electrical, Radio, and Machine Workers on behalf of workers and former workers producing spiral heat exchangers, place heat exchangers and welding sheet steel. The investigation revealed that the plant produces welding sheet steel for internal use only. 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.

The ratio of imports to shipments of all heat exchangers has remained under 1 percent since 1974. Imports of spiral heat exchangers were negligible during that time.

Since American heat and its parent company hold the patent on the design and sale of spiral heat exchangers, decreases in company sales of this type of exchanger are attributable to customer demand declines.

Following the transfer of production of plate heat exchangers from American Heat to a corporate affiliate in March 1978, quantity of corporate sales of this type of exchanger increased during the period March 1978 through February 1979 as compared to the period March 1977 through February 1978.

As a result of this transfer of production, employment at American Heat is on the decline, while employment at the corporate affiliate is currently increasing.

Conclusion

After careful review, I determine that all workers of American Heat Reclaiming Corporation, Lykins, 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 29th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17852 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

Appalachian Resources Co.; Charleston, W. Va.; 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 18, 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 18, 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 4th day of June 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
Appalachian Resources Co. (workers)	Charleston, W. Va	5/29/79	5/24/79	TA-W-5,497	Mining of coal.
Brownsville Manufacturing Co. (I.L.G.W.U.)	Brownsville, W. Va	5/29/79	5/17/79	TA-W-5,498	Ladies sportwear (blouses, vests . . .).
CSE Mine Service (workers)	Beckley, W. Va	5/29/79	5/16/79	TA-W-5,499	Repair and distribute health and safety equipment for coal mining industry.
E.A. Coal Co. Inc., (U.M.W.A.)	Raleigh County, W. Va	5/29/79	5/15/79	TA-W-5,500	Coal used for steel making and coke.
Eastern Associated Coal Corp., Keystone #4 Mine (U.M.W.A.).	Sophia, W. Va	5/29/79	5/17/79	TA-W-5,501	Mining of coal.
Eastern Associated Coal Corp., Keystone Preparation Plant (U.M.W.A.).	Sophia, W. Va	5/29/79	5/17/79	TA-W-5,502	Cleaning of coal.
Genesco Inc. Ainsbrooke Division (I.L.G.W.U.)	Florence, Ala	5/29/79	5/22/79	TA-W-5,503	Knitted fabrics.
Georgia Pacific Corp., Woodland Division, Pulp and Paper Mill (U.P.W.I.U.).	Woodland, Maine	5/29/79	5/16/79	TA-W-5,504	High grade pulp and quality specialty paper.
Glen Allen Manufacturing Co. Inc. (A.C.T.W.U.).	Glen Allen, Ala	5/29/79	5/17/79	TA-W-5,505	Men's pants.
McAllen IND's Inc. (A.C.T.W.U.)	Glen Allen, Ala	5/29/79	5/17/79	TA-W-5,506	Men's and boys' trousers.
McIndustries Inc. (A.C.T.W.U.)	Brilliant, Ala	5/29/79	5/17/79	TA-W-5,507	Men's pants.
Mullins Coal Co. Inc. (workers)	Chapmanville, W. Va	5/29/79	5/18/79	TA-W-5,508	Mining of coal.
Poole Silver Co. (workers)	Fall River, Mass	5/29/79	5/24/79	TA-W-5,509	Silver-plated holloware.

[FR Doc. 79-17853 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5303]

Arco Auto Carriers, Inc., Little Ferry-Ridgefield, 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 26, 1979, in response to a worker petition received on April 12, 1979, which was filed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America on behalf of workers and former workers of Arco Auto Carriers, Ridgefield, New Jersey, engaged in delivering cars to the metropolitan areas. The investigation revealed that the legal title of the firm is Arco Auto Carriers, Incorporated, and that the proper location of the firm is Little Ferry-Ridgefield, New Jersey.

Arco Auto Carriers, Incorporated, Little Ferry-Ridgefield, New Jersey is engaged primarily in providing the service of transporting automobiles and utility vehicles from railheads to nearby automobile dealers.

Thus, workers of Arco Auto Carriers, Incorporated, Little Ferry-Ridgefield, New Jersey 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 a parent firm, a firm otherwise related to Arco Auto Carriers, 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.

Arco Auto Carriers, Incorporated and its customers have no controlling interest in one another. The subject firm, although affiliated with the Troyler Corporation, a producer of trailers, rarely transports the products of that company.

All workers engaged in transporting automobiles and utility vehicles at Arco Auto Carriers, Incorporated, Little Ferry-Ridgefield, New Jersey are employed by that firm. All personnel actions and payroll transactions are controlled by Arco Auto Carriers, Incorporated. All employee benefits, are provided and maintained by Arco Auto Carriers, Incorporated. Workers are not, at any time, under employment or supervision by customers of Arco Auto Carriers, Incorporated. Thus, Arco Auto Carriers, 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 Arco Auto Carriers, Incorporated, Little Ferry-Ridgefield, 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 31st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17854 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5145]

Avtex Fibers, Inc., Aston, Pa.; 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 3, 1979 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing rayon fibers at the Aston, Pennsylvania plant of Avtex Fibers, Incorporated. The investigation revealed that the plant produces predominantly fabricated glass tubing and metal spinnerettes used in the production of rayon staple fiber and yarn. The investigation also revealed that the intention of the petitioner is to confine the investigation to workers employed in the glass department. It is concluded that all of the requirements have been met with respect to fabricated glass tubing.

There are two production departments at the Aston, Pennsylvania plant of Avtex Fibers, one producing fabricated glass tubing, and the other producing spinnerettes. There have not been any employment declines in the spinnerette department.

Imports of rayon and acetate staple fibers and yarns increased in 1977 to 82 million compared to 69 million pounds in 1976.

All of the glass tubing produced at the Aston plant is transferred to the Front Royal, Virginia or Nitro, West Virginia plants of Avtex Fibers. Most of the fabricated glass tubing produced at the Aston plant is used in the production of rayon tire yarn at the Front Royal, Virginia plant.

Workers at the Nitro, West Virginia and Front Royal, Virginia plants of Avtex Fibers, Incorporated have been certified eligible to apply for adjustment assistance: Nitro, West Virginia (TA–W–2645) on May 10, 1978 and Front Royal, Virginia (TA–W–4184) on January 12, 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 rayon staple fiber and yarn produced at the Nitro, West Virginia and Front Royal, Virginia plants of Avtex Fibers, Incorporated contributed importantly to the decline in sales or production and to the total or partial separation of workers engaged in employment related to the production of fabricated glass tubing at the Aston, Pennsylvania plant of Avtex Fibers, Incorporated. In accordance with the provisions of the Act, I make the following certification:

"All workers of the Aston, Pennsylvania plant of Avtex Fibers, Incorporated engaged in the production of fabricated glass tubing who became totally or partially separated from employment on or after September 1, 1978 and before December 31, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. All workers who became separated after December 31, 1978 are denied eligibility to apply for adjustment assistance."

Signed at Washington, D.C. this 31st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17855 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5113]

BBC Coal Co., McDowell County, W. Va.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974 (19 U.S.C. 2273), 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 on behalf of workers and former workers mining coal at the BBC Coal Company, BBC Truck Mine, McDowell County, West Virginia.

During the course of the investigation, it was revealed that the correct name of the company is the BBC Coal Company and that it mines metallurgical coal.

The Notice of Investigation was published in the **Federal Register** on April 13, 1979 (44 FR 22206). No public hearing was requested and none was held.

The BBC Coal Company began mining coal during July, 1978. Due to the short term of BBC Coal's operation and to the difficulties associated with starting up a new mine, there is not sufficient information in this case upon which to base a determination. In addition, worker qualifying requirements in section 231 of the Act may not be met at this time. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 1st day of June, 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-17856 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5043]

Bellmore Coats, Lindenhurst, N.Y.; 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 group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on March 28, 1979 in response to a worker petition received on March 22, 1979 which was filed on behalf of workers and former workers producing women's sportswear, raincoats and coats at Bellmore Coats, Lindenhurst, New York. The investigation revealed that the plant produces ladies' jackets and coats. 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 subdivisions have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A Departmental survey was conducted with manufacturers for whom Bellmore Coats produced ladies' coats and jackets. The survey revealed that only one of Bellmore's manufacturers increased its purchases of ladies' coats and jackets from foreign sources. This manufacturer, however, also increased its contract work with Bellmore during 1978 and in the first quarter of 1979 as compared to the first quarter of 1978. Several manufacturers, who ceased doing business with Bellmore Coats in 1979, indicated that they will be meeting their needs for coat and jacket production from domestic sources.

Conclusion

After careful review, I determine that all workers of Bellmore Coats, Lindenhurst, 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 25th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-77857 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4540]

Bergen Knitting Mills, Inc., Union City, N.J.; Revised Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

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 Februry 22, 1979, applicable to workers and former workers of Bergen Knitting Mills, Inc., Union City, New Jersey. The Notice of Certification was published in the **Federal Register** on March 2, 1979, (44 FR 11864).

On the basis of additional information, the Office of Trade Adjustment Assistance, on its own motion, reviewed the Department's determination with regard to the petition filed on behalf of workers and former workers at Bergen Knitting Mills, Inc. The original certification applies to the workers producing men's, ladies' and children's sweaters at Bergen Knitting Mills. The eligibility to apply for adjustment assistance of the workers of William Two Sweaters, Ltd., Union City, New Jersey, a direct selling office of Bergen Knitting Mills, was not specifically addressed in the Department's Notice of Determination. William Two Sweaters is affiliated with Bergen Knitting Mills by virtue of common ownership, and the fact that sales and employment at William Two are closely tied to production at Bergen. It is concluded that the two entities constitute a single firm for purposes of section 222 of the Trade Act of 1974 and 29 CFR 90.2.

The certification is revised to cover all workers at Bergen Knitting Mills and William Two Sweaters who were adversely affected by the decline in sales and employment resulting from increased import competition.

The revised certification applicable to TA-W-4540 is hereby issued as follows:

All workers of Bergen Knitting Mills, Inc., Union City, New Jersey, and William Two Sweaters, Ltd., New York, New York, 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 31st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17858 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5196]

Berkshire Leather Corp., Gloversville, N.Y.; 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 10, 1979 in response to a worker petition received on April 6, 1979 which was filed on behalf of workers and former workers inspecting, packaging and shipping sport gloves at the Berkshire Leather Corporation, Gloversville, New York. 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.

Berkshire Leather Corporation is in the business of inspecting, packaging and shipping leather gloves imported from a Philippine company of which Berkshire owns 100 percent stock. The workers at Berkshire have never been engaged in producing these gloves. Some workers are involved in cut and sew operations of glove samples; however, activity at Gloversville is related primarily to the final stages of processing the imported gloves. Therefore, increasing imports of gloves are not a factor in any declines in employment at Berkshire.

Conclusion

After careful review, I determine that all workers of Berkshire Leather Corporation, Gloversville, 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 30th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17859 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5086]

Bethlehem Steel Corp., Bethlehem, Pa.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974 (19 U.S.C. 2273), an investigation was initiated on March 30, 1979 in response to a worker petition received on March 28, 1979 which was filed on behalf of a group of workers and former workers at the general offices of Bethlehem Steel Corporation in Bethlehem, Pennsylvania.

During the course of the investigation, it was established that all workers at the general offices of Bethlehem Steel Corporation in Bethlehem, Pennsylvania and New York, New York were previously certified as eligible to apply for adjustment assistance under TA-W-4275. The notice of revised certification was issued on May 29, 1979.

Since all workers separated, totally or partially, from the general offices of Bethlehem Steel Corporation on or after October 10, 1977 (impact date) and before May 29, 1981 (expiration date of the revised certification) are covered, a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 30th day of May 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-17860 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5117 and TA-W-5131]

Blue Mt. Mining Co., Inc., and Kencoal Mining Corp., McDowell County, 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 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 mining coal at the Blue Mt. Mine of Blue Mt. Mining Company, Incorporated, McDowell County, West Virginia and the Kencoal Mine of Kencoal Mining Corporation, McDowell County, 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.

Evidence developed during the course of the investigation revealed that Blue Mt. Mining Company, Inc. which closed in June 1978 was, and Kencoal Mining Corporation which succeeded it in July 1978 is an exclusive contractor for Hawley Coal Mining Corporation. All metallurgical coal mined by and for Hawley Coal Mining Corporation is exported to France. Hawley Coal Mining Corporation has not domestic customers.

Conclusion

After careful review, I determine that all workers of Blue Mt. Mining Company, Incorporated, McDowell County, West Virginia and Kencoal Mining Corporation, McDowell County, 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 31st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17861 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5205-5207]

Burroughs Corp., Plymouth, Mich., et. al.; Negative Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents 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 10, 1979 in response to a worker petition received on April 9, 1979 which was filed by the United Automobile, Aerospace and Agricultural Implement Workers on behalf of workers and former workers producing computers at the Plymouth, Michigan plant, printers at the Detroit (Tireman Avenue), Michigan plant and sorters at the Wayne, Michigan plant of Burroughs Corporation. The investigation revealed that the Plymouth plant producers mini-computers, the Tireman Avenue plant produces printers and sorters and the Wayne plant produces encoders. In the following determinations, without regard to whether any of the other criteria have been met for workers at the Plymouth, Michigan plant (TA-W-5205) the Detroit (Tireman Avenue), Michigan plant (TA-W-5206) and the Wayne, Michigan plant (TA-W-5207), the following criterion was not 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 petitions allege that imports by the Burroughs Corporation of wire harnesses, PC cards and other parts contributed importantly to employment and production declines at the Plymouth and Wayne plants. The Burroughs Corporation transferred wire harness production from the petitioning plants to an offshore corporate facility during the period from 1969 to 1975; all production transfers occurred by 1975.

Section 223 (b)(1) of the Trade Act of 1974 states that a certification under this section shall not apply to any worker whose last total or partial separation from the subject firm occurred more than twelve months prior to the date of filing under Title II, Chapter 2 of the Trade Act of 1974. The date of the petition is April 5, 1979. Therefore, workers laid off prior to April 5, 1978 are not eligible for program benefits under Title II, Chapter 2, Subchapter B of the Trade Act of 1974.

Burroughs Corporation does not import any other component parts which are or have been produced at the Plymouth or Wayne plants nor does Burroughs import any minicomputers, encoders, sorters or printers.

Employment declines at the Plymouth plant occurred as a result of labor-saving technological developments in the company's minicomputer designs. Plant production of minicomputers increased from 1977 to 1978 and increased in the first quarter of 1979 compared to the first quarter of 1978.

Employment declines at the Wayne plant are attributable to labor-saving technological developments in the company's encoder designs and to product line problems with new model encoder production. Plant production of encoders increased from 1977 to 1978. Scheduled production for the first quarter of 1979 was substantially higher than actual production in the first quarter of 1978.

Production and sales of printers and sorters at the Tireman Avenue plant increased from 1977 to 1978 and increased in the first quarter of 1979 compared to the first quarter of 1978. Production worker employment levels increased over this same period of time. Any declines in production at the plant were from quarter to quarter and were the result of normal business fluctuations.

Conclusion

After careful review, I determine that all workers of the Plymouth, Michigan plant, the Detroit (Tireman Avenue), Michigan plant and the Waye, Michigan plant of the Burroughs 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 30th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17862 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4925]

Chein Industries, Inc., Burlington, 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 13, 1979 in response to a worker petition received on March 8, 1979 which was filed by the United Steelworkers of America on behalf of workers and former workers producing

pressed and stamped metal products such as housewares at Chein Industries, Incorporated, Burlington, New Jersey. The investigation revealed that the corporate title is Chein Industries, Incorporated. The investigation further revealed that the plant primarily produces housewares (cannister sets, bread boxes, straight-sided wastebaskets, nostalgia tins, and step-on cans), and toy trap drum sets. 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.

Sales of all housewares by Chein Industries, Incorporated increased in 1978 compared with 1977. Customers who were surveyed indicated that they did not purchase imported housewares in 1977, 1978, or during the first two months of 1979.

Customers who were surveyed indicated that they did not purchase imported toy trap drum sets in 1977, 1978, or during the first quarter of 1979.

Conclusion

After careful review, I determine that all workers of Chein Industries, Incorporated, Burlington, 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 31st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17863 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5121]

Eleets Development Corp., Raleigh County, W. Va.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was inititated 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 mining coal at the Eleets Development Corporation, Raleigh County, West Virginia.

Due to the short term of operation of Eleets Development Corporation, there is not sufficient information in this case upon which to base a determination. In addition, worker qualfying requirements in section 231 of the Act may not be met by any employee of Eleets Development Corporation. Consequently, the inviestigation has been terminated.

Signed at Washington, D.C. this 30th day of May 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-17864 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5066 and TA-W-5067]

The Great Six Co., Minneapolis, Minn., et al.; 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 29, 1979 in response to a worker petition received on March 22, 1979 which was filed on behalf of workers and former workers producing women's dress coats at The Great Six Company, Minneapolis, Minnesota and North Country Outerwear, Brainerd, Minnesota. The investigation revealed that the plants produced women's coats, raincoats and jackets. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses' and children's coats and jackets increased absolutely and relative to domestic production in each year from 1974 through 1977. U.S. imports increased absolutely in 1978 compared to 1977.

U.S. imports of women's, girls' and infants' raincoats increased absolutely in 1977 compared to 1976 and in 1978 compared to 1977.

A Department of Commerce survey of the customers of The Great Six Company and North Country Outerwear indicated that several customers increased their reliance on imported women's coats, raincoats and jackets and decreased their purchases from The Great Six Company and North Country Outerwear.

All production employees of The Great Six Company, Minneapolis, Minnesota were permanently dismissed by March 31, 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 women's coats, raincoats and jackets produced at The Great Six Company, Minneapolis, Minnesota and North Country Outerwear, Brainerd, Minnesota contributed importantly to the decline in sales or production and to the total or partial separation of workers of those firms. In accordance with the provisions of the Act, I make the following certification:

All workers of The Great Six Company, Minneapolis, Minnesota who became totally or partially separated from employment on or after March 19, 1978 and before April 30, 1978 and all workers of North Country Outerwear, Brainerd, Minnesota who became totally or partially separated from employment on or after March 19, 1978 and before January 26, 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 25th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17865 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5073]

Gulton Industries, Inc., Piezo Products Division, Metuchen, 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 29, 1979 in response to a worker petition received on March 26, 1979 which was filed by the International Union of Electrical, Radio and Machine Workers on behalf of workers and former workers producing miniature chassis used in watches, and elements used in phonographs, citizens band radios and burglar alarms at Gulton Industries, Inc., Piezo Products Division, Metuchen, New Jersey. 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.

Evidence developed during the course of the investigation revealed that sales, which are based on orders received, and employment within the Piezoelectric Ceramic Element and Hybrid Microcircuit Departments increased in 1978 compared to 1977 and in the first quarter of 1979 compared to the same period in 1978.

The petition was filed on behalf of workers producing miniature chassis used in watches (produced by the Hybrid Microcircuit Department) and elements used in phonographs, CB radios and burglar alarms (produced by the Piezoelectric Ceramic Element Department).

Production of watch chassis by the Hybrid Microcircuit Department was discontinued by December 1977 (more than one year prior to the date of the petition). Since that time the Department has produced printheads. Compared to the same quarter of the previous year, sales and employment within the Hybrid Microcircuit Department increased in three consecutive quarters from the third quarter of 1978 through the first quarter of 1979.

Compared to the same quarter of the previous year, sales and employment within the Piezoelectric Ceramic Element Department increased in four consecutive quarters from the second quarter of 1978 through the first quarter of 1979.

Conclusion

After careful review, I determine that all workers of the Piezo Products Division of Gulton Industries, Inc., Metuchen, 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 25th day of May 1979.

James F. Taylor,

Director, Office of Management, Administraton, and Planning.

[FR Doc. 79-17866 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5123—5126]

Hawley Coal Mining Corp. et al., McDowell County, 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 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 mining coal at the Pocahontas Empire Bottom Creek Mine (TA-W-5123), Blue Boy No. 6 Mine (TA-W-5125), and No. 10 Bradshaw Mine (TA-W-5126), and cleaning coal at the Pocahontas Empire Preparation Plant (TA-W-5124) of Hawley Coal Mining Corporation, McDowell County, 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.

Evidence developed in the course of the investigation revealed that Hawley Coal Mining Corporation was sold by Belco Petroleum Corporation in 1976. Since that time, all metallurgical coal mined by the three mines of Hawley Coal Mining Corporation and its four contractors has been exported to France. Hawley Coal Mining Corporation has no domestic customers.

Conclusion

After careful review, I determine that all workers of the Pocahontas Empire (Bottom Creek) Mine and Preparation Plant, the Blue Boy No. 6 Mine and No. 10 Bradshaw Mine of Hawley Coal Mining Corporation, McDowell County, 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 31st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17867 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5106]

Irving Tanning Co., Leather Division of the Seagrave Corp., Hartland, Maine; Certification Regarding Eligibility To Apply for Worker Adjusment 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 adjstment 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 intitiated 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 tanning leather for shoes and accessories at the Irving Tanning Company, Leather Division of the Seagrave Corporation, Hartland, Maine. It is concluded that all of the requirements have been met.

U.S. Imports of tanned cattle hides decreased both absolutely and relatively in 1977 compared to 1976 and increased both absolutely and relatively in 1978 compared to 1977.

The Department conducted a survey of customers who decreased purchases from the Irving Tanning Company. Customers responding to the survey accounted for a marjority of the subject firm's decline in sales from 1977 to 1978. Customers representing a significant proportion of the subject firm's sales decline increased purchases of imported leather.

In the first quarter of 1979 customers continued to decrease purchases from the subject firm while increasing purchases of imports.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with leather for shoes and accessories produced at the Irving Tanning Company, Leather Division of the Seagrave Corporation, Hartland, Maine 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 Irving Tanning Company, Leather Division of the Seagrave Corportation, Hartland, Maine who became totally or partially separated from employment on or after March 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 30th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17868 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5361]

Jacobs Brothers Industries, Inc., Moonachie, 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 May 8, 1979 in response to a worker petition received on May 3, 1979 which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing children's and women's outerwear at Jacobs Brothers Industries, Incorporated, Moonachie, New Jersey. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses' and children's costs and jackets increased from 2,252 thousand dozen in 1976 to 2,723 thousand dozen in 1977. Imports increased again in 1978 to 3,036 thousand dozen. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977.

U.S. imports of women's, girls' and infants' raincoats increased from 242 thousand dozen in 1977 to 465 thousand dozen in 1978.

A survey of some of the customers purchasing children's and women's ski jackets, pants coats and raincoats from Jacobs Brothers Industries, Incorporated revealed that several of the customers had reduced purchases from Jacobs Brothers and increased purchases of imports 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 women's and children's outerwear including ski jackets, pants coats and raincoats produced at Jacobs Brothers Industries, Incorporated, Moonachie 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 Jacobs Brothers Industris, Incorporated, Moonachie, New Jersey 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 30th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17869 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

Jay Lind Veal Corp.; New York, N.Y.; 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 addres shown below, not later than June 18, 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 18, 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 29th 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
Jay Lind Veal Corp. (workers)	New York, N.Y	5/21/79	5/16/79	TA-W-5,486	Lamb and veal products.

[FR Doc. 79-17870 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5100]

Lannom Manufacturing Co., Inc., Ball Division, Tullahoma, Tenn.; 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 investigtion was initiated on March 30, 1979 in response to a worker petition received on March 29, 1979 which was filed on behalf of workers and former workers producing baseballs and softballs at Worth Sports Company, Tullahoma, Tennessee. The investigation revealed that Worth Sports Company is the sales and marketing division of Lannom Manufacturing Company and that the petition was filed on behalf of workers and former workers producing baseballs and softballs at the Ball Division of Lannom Manufacturing Company, Incorporated, Tullahoma, Tennessee. It is concluded that all of the requirements have been met.

U.S. imports of baseballs and softballs increased in absolute terms each year from 1975 through 1978. Imports exceeded domestic production by sevenfold in 1977.

Lannom Manufacturing Company is one of the few baseball and softball manufacturers which continues to maintain some domestic production operations (cores, slugs, and covers). A customer survey revealed several major customes who increased purchases of baseballs and softballs manufactured entirely offshore while decreasing purchases from the subject firm.

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 baseballs and softballs produced at the Ball Division of Lannom Manufacturing Company, Incorporated, Tullahoma, Tennessee 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 Ball Division, Lannom Manufacturing Company, Incorporated, Tullahoma, Tennessee who became totally or partially separated from employment on or after March 4, 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 29th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

FR Doc. 79-17871 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5212]

Long-Airdox Co., Inc., Oak Hill, 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 10, 1979 in response to a worker petition received on April 9, 1979 which was filed by Local 772 of the United Auto Workers Union on behalf of workers and former workers producing underground mining machinery at the Long-Airdox Company, Incorporated, Oak Hill, 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.

Mining machinery cannot be considered to be like or directly competitive with coke as alleged on the petition. Imports of mining machinery must be considered in determining import injury to workers producing mining machinery at the Long-Airdox Company, Oak Hill, West Virginia.

United States imports of mining machinery declined both absolutely and relative to domestic production in 1978 compared to 1977. In 1978, the value of exports exceeded that of imports by over four and one half times. Sales and production also increased in 1978 compared to 1977 and in the first quarter of 1979 compared to the first quarter of 1978.

Conclusion

After careful review, I determine that all workers of the Long-Airdox Company, Incorporated, Oak Hill, 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 31st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17872 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

H. E. McLean & Sons, Inc., et al.; 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 18, 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 18, 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 31st 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
H. E. McLeane & Sons, Inc. (company)	St. Louis, Mo	5/24/79	5/9/79	TA-W-5,487	Materials, colors and adhesives for men, women and children's shoes.
McNeil Garment Corp. (workers)	Mansfield, La	5/24/79	5/21/79	TA-W-5,488	Blue jeans and other fashion jeans for misses and juniors.
Meyer D. Mehrman & Son (company)	Allentown, Pa	5/24/79	5/21/79	TA-W-5,489	Manufacturers of men's and ladies' tailored garments.
National Tanning & Trading Corp. (company)	Peabody, Mass	5/25/79	5/22/79	TA-W-5,490	Tanning and finishing of leather hides.
Poliplast (company)	Lawrence, Mass	5/25/79	5/17/79	TA-W-5,491	Molding and finishing work in shoe bottoms.
Sheldon Hall Clothes, Inc. (company)	Allentown Pa	5/24/79	5/21/79	TA-W-5,492	Contractors of men's and ladies' tailored garments.
Universal Shirt Co., Inc. (A.C.T.W.U.)	Elizabeth, N.J	5/23/79	5/18/79	TA-W-5,493	Girls' and children's tops and shirts.
Universal Sportswear (A.C.T.W.U.)	Elizabeth, N.J	5/23/79	5/18/79	TA-W-5,494	Men's and boy's outerwear.
Verable & Billups Corp., Perry Branch Mine #1 (workers).	Chapmanville, W. Va	5/25/79	5/21/79	TA-W-5,495	Mining of coal.
WEW Coal Co., Inc. (workers)	Fayetteville, W. Va	5/25/79	5/5/79	TA-W-5,496	Mining of coal.

[FR Doc. 79-17873 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5259]

Mercer Rubber Co., Hamilton Square, N.J.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 18, 1979 in response to a worker petition received on April 12, 1979, which was filed by the Independent Rubber Workers Union on behalf of workers and former workers producing conveyor belts, hand made hoses, and rubber expasion joints at Mercer Rubber Company, Hamilton Square, New Jersey.

The Notice of Investigation was published in the **Federal Register** (44 FR 24947-8). No public hearing was requested and none was held.

A representative for 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 1st day of May 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-17874 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5290]

Mirando Manufacturing Co., Inc., Elizabeth, 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 25, 1979 in response to a worker petition received on April 23, 1979 which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing men's leather jackets at Mirando Manufacturing Company, Incorporated, Elizabeth, New Jersey. It is concluded that all of the requirements have been met.

Imports of men's, boys', women's, misses', juniors', and children's leather coats and jackets increased absolutely and relative to domestic production in 1978 compared to 1977.

Mirando's only customer (manufacturer) increased purchases of imports during 1978 compared to 1977 and in the first quarter of 1979 compared to the same period 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 leather jackets produced at Mirando Manufacturing Company, Incorporated, Elizabeth, 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 Mirando Manufacturing Company, Incorporated, Elizabeth, New Jersey who became totally or partially separated from employment on or after April 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 31st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17875 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5048]

Mr. J's Sportswear, Ltd., Brooklyn, N.Y.; 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 28, 1979 in response to a worker petition received on March 7, 1979 which was filed on behalf of workers and former workers producing women's sportswear, coats and suits at Mr. J's Sportswear, Limited, Brooklyn, New York. The investigation revealed that the company produced women's coats, jackets and women's suit jackets. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses', and children's coats and jackets increased absolutely and relative to domestic production each year from 1974 through 1977. U.S. imports increased absolutely in 1978 compared to 1977.

U.S. imports of women's, misses', and children's suits increased absolutely in 1978 compared to 1977.

A Departmental survey of the customers of Mr. J's Sportswear, Limited indicated that several customers increased their reliance on imported women's, misses' and children's coats and jackets and decreased their purchases from Mr. J's Sportswear, Limited 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 women's coats, jackets and suit jackets produced at Mr. J's Sportswear, Limited, Brooklyn, New York 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 Mr. J's Sportswear, Limited, Brooklyn, New York who became totally or partially separated from employment on or after September 29, 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 25th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17876 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5143]

The Paul Yates Mining Co., Nancy Key Mine, Mercer County, W. Va.; Termination of Investigation

Pursuant to section 223 of the Trade Act of 1974, an investigaton 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 mining coal at the Nancy Key Mine of the Paul Yates Mining Company, Mercer County, West Virginia.

The Paul Yates Mining Company had been in actual operation less than ten months, and the company's Nancy Key Mine had been in operation less than five months at the time of the investigation. Due to the short term of operation of the Paul Yates Mining Company and of its Nancy Key Mine, it is not possible to determine trends of sales and production and to statistically measure the impact of imports. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 31st day of May 1979.

Marvin M. Fooks,

Director, Office of Adjustment Assistance.

[FR Doc. 79-17877 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5054-5065]

Schick, Inc., Lancaster, Pa., et al.; 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 as prescribed in Section 222 of the Act.

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 which were filed on behalf of workers and former workers engaged in employment related to the production of hair dryers, curling, irons, hair curlers sets, facial saunas and electric shavers at locations of Schick, Incorporated listed in the Appendix to this document.

The investigation revealed that the plant produces primarily hair dryers, curling irons, and hair curlers sets. It is concluded that all of the requirements have been met.

U.S. imports of electric hair setters increased absolutely and relatively from 1976 to 1977 and from 1977 to 1978.

U.S. imports of electric hair dryers increased absolutely and relatively from 1976 to 1977 and from 1977 to 1978.

U.S. imports of electric hair appliances, which includes curling irons, increased absolutely and relatively from 1976 to 1977 and then declined absolutely and relatively from 1977 to 1978.

A Department survey of Schick Incorporated customers indicated increasing reliance on imported hair dryers, curling irons and hair curler sets by respondents. The survey revealed that customers representing a significant proportion of Schick's sales of hair dryers, curling irons and hair curler sets in 1977 and 1978 decreased purchases from the subject firm from 1977 to 1978 and in the first quarter of 1979 compared to the first quarter of 1978 and increased purchases of imported hair dryers, curling irons and hair curler sets during the 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 hair dryers, curling irons and hair curler sets produced by Schick, Incorporated 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 locations of Schick, Incorporated listed in the Appendix, who became totally or partially separated from employment on or after March 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 29th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

Appendix

Case Number, and Schick, Inc., Facility Location

TA-W-5054, Lancaster, PA
TA-W-5055, Philadelphia, PA
TA-W-5056, Los Angeles, CA
TA-W-5057, Hempstead, L.I., NY
TA-W-5058, Chicago, IL
TA-W-5059, Dallas, TX
TA-W-5060, North Attleboro, MA
TA-W-5061, Decatur, GA
TA-W-5062, Oak Brook, IL
TA-W-5063, Overland Park, KS
TA-W-5064, Lafayette, CA
TA-W-5065, Laguna Niguel, CA

[FR Doc. 79-17878 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5168]

Sugar Corp. of Puerto Rico, Central Aguirre, Aguirre, P.R.; 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 6, 1979 in response to a worker petition received on April 3, 1979 which was filed by three workers on behalf of workers and former workers producing raw sugar at Central Aguirre, Puerto Rico. The investigation is expanded to include Taller Aguirre. Taller Aguirre (tractor maintenance shop) is part of the Central Aguirre and together with Taller Reunion, Deseada, Isidora and Destino form part of a unit of support equipment for the mill. It is concluded that all of the requirements have been met.

Imports of cane and beet sugar increased in 1977 from 1976 decreased in 1978 from 1977 and increased in the first 5 months of 1979 compared with similar period in 1978.

During 1978 the Sugar Corporaton of Puerto Rico sold raw sugar at the going U.S. Market price, which is lower than the Corporation's cost of production.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with raw sugar produced at the Sugar Corporation of Puerto Rico, Central Aguirre, Aguirre, Puerto Rico, contributed importantly to the decline in sales or production and to the total or partial separation of workers of that mill. In accordance with the provisions of the Act, I make the following certification:

All workers of the Sugar Corporation of Puerto Rico, Central Aguirre, and Taller Aguirre, Aguirre, Puerto Rico, who become totally or partially separated from employment on or after March 23, 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 31st day of May 1979.

James S. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17879 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5265, et. al.]

Sunday's Workclothes, Inc. et al.; Hauppauge, N.Y.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974 (19 U.S.C. 2273), investigations were initiated on April 18, 1979 in response to worker petitions received on April 11, 1979 and April 16, 1979 which were filed on behalf of workers and former workers producing ladies' and juniors' sportswear at the Hauppauge, New York facility of Sundays's Workclothes, Inc. (TA-W-5265); Headline Sportswear, Inc. (TA-W-5269); and Arrived Sportswear, Inc. (TA-W-5267)

The Department's investigation revealed that Sunday's Workclothes, Headline Sportswear, and Arrived Sportswear were established in the fourth quarter of 1977 as subsidiaries of Going On Sportswear, an apparel manufacturer. These subsidiaries were established for the purpose of importing ladies' sportswear. Sunday's Workclothes, Headline Sportswear and Arrived Sportswear have no employees. In essence, employees of the three subsidiaries (Sunday's Workclothes, Headline Sportswear, and Arrived Sportswear) and Going On Sportswear were identical. Only the names of the firms were different. Workers at Going On Sportswear are covered under an existing investigation (TA-W-5268) which was instituted in response to a petition received on April 10, 1979. Since Sunday's Workclothes, Headline Sportswear and Arrived Sportswear have no employees, and utilize workers of Going On Sportswear who are covered by an existing petition, these investigations have been terminated.

Signed at Washington, D.C. this 1st day of June 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc 79-17880 Filed 6-7-79; 8:45 am]

BILLING CODE 6510-28-M

[TA-W-5279]

T & R Auto Handling Corp., Mahwah, 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 23, 1979, in response to a worker petition received on April 12, 1979, which was filed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America on behalf of workers and former workers of T & R Auto Handling Corporation, Mahwah, New Jersey, engaged in loading cars on railcars.

T & R Auto Handling Corporation, Mahwah, New Jersey is engaged in providing the service of loading and unloading motor vehicles on and off railroad cars. The company is partially owned by Freight Consolidation Services, Incorporated.

Thus, workers of T & R Auto Handling Corporation, Mahwah, New Jersey 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 a parent firm, a firm otherwise related to T & R Auto Handling Corporation 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.

T & R Auto Handling Corporation and its customers have no controlling interest in one another. Freight Consolidation Services, Incorporated, with which T & R Auto Handling Corporation, is affiliated, does not produce an article.

All workers engaged in loading and unloading motor vehicles on and off railroad cars at T & R Auto Handling Corporation, Mahwah, New Jersey are employed by that firm. All personnel actions and payroll transactions are controlled by T & R Auto Handling Corporation. All employee benefits are provided and maintained by T & R Auto Handling Corporation. Workers are not, at any time, under employment or supervision by customers of T & R Auto Handling Corporation. Thus, T & R Auto Handling Corporation, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of T & R Auto Handling Corporation, Mahwah, 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 31st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17881 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5329]

T & R Auto Handling Corp., Newark, 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 30, 1979, in response to a worker petition received on April 12, 1979, which was filed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America on behalf of workers and former workers of T & R Handling Corporation, Newark, New Jersey, engaged in the unloading of motor vehicles. The investigation revealed that the legal title of the company is T & R Auto Handling Corporation.

T & R Auto Handling Corporation, Newark, New Jersey is engaged in unloading motor vehicles from railroad cars. The subject firm is partially owned by Freight Consolidated Services, Incorporated.

Thus, workers of T & R Auto Handling Corporation, Newark, New Jersey 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 a parent firm, a firm otherwise related to T & R Auto Handling Corporation 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.

T & R Auto Handling Corporation and its customers have no controlling interest in one another. Freight Consolidation Services, Incorporated, with which T & R Auto Handling Corporation is affiliated, does not produce an article.

All workers engaged in unloading motor vehicles from railroad cars at T & R Auto Handling Corporation, Newark, New Jersey are employed by that firm. All personnel actions and payroll transactions are controlled by T & R Auto Handling Corporation. All employee benefits are provided and maintained by T & R Auto Handling Corporation. Workers are not, at any time, under employment or supervision by customers of T & R Auto Handling Corporation. Thus, T & R Auto Handling Corporation, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of T & R Auto Handling Corporation, Newark, 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 31st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17882 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-3090, et al.]

United States Steel Corp., Canisteo District, Coleraine, Minn., et al.; Negative Determination Regarding Application for Reconsideration

By letters of September 14, 1978, and February 2, 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 all workers engaged in the mining and beneficiation of iron ore at the U.S. Steel Corporation's Minnesota Ore Operations at the Canisteo District, Coleraine, Minnesota; Virginia-Eveleth District, Virginia, Minnesota; and the Hibbing-Chisholm District, Hibbing, Minnesota. The determination was published in the **Federal Register** on August 25, 1978, (43 FR 38134).

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 supported by their local U.S. Congressman from Minnesota claims that imports of iron ore from Canada increased at U.S. Steel facilities at Chicago's South Works, Gary, Indiana, and Lorain, Ohio, in 1977 and especially in the first quarter of 1978 thereby preventing the recall of its workers after the strike ended in December 1977. The affected workers were not called back to work until the Canadian iron ore strike which began in March 1978. The petitioner also claimed that the denial is inconsistent with the Department's certification of Erie Mining Company workers (TA-W-2794 and 2795). Lastly, the petitioning union claims that the Department's use of the ore depletion rationale in its denial notice is specious since U.S. Steel has every intention of utilizing the natural ore mines in the future.

The Department's review of its original determination revealed that the import criterion of the Trade Act of 1974 was not met by the workers. While imports of iron ore, pellets and sinter declined absolutely in 1977 compared to 1976, they increased relative to domestic production. However, this was primarily

due to a strike within the domestic mining industry in 1977 which seriously affected domestic production. Declines in employment and production at the petitioning mining districts were found to have come about as a result of the depletion of the ore in these mines. As the production of natural ore at these mines decreased, U.S. Steel has increased employment in taconite production at its nearby Minntac facility.

The Department does not consider as valid the petitioning union's claim of increased Canadian exports of iron ore to U.S. Steel facilities especially during 1977 and the first quarter of 1978 thereby preventing the miners from returning to work after their strike (August 1, 1977, to December 16, 1977). Canadian iron ore shipments to the U.S. Steel plants in question have actually decreased each year since 1976. There were no Canadian ore exports to the South Works in Chicago, Gary and Lorain facilities in the first quarter of 1978.

The Department's further investigation has shown that in those U.S. Steel works using Minnesota natural ore, there has been an increasing switch to pellets from U.S. Steel's Minntac pellet plant. Pellets from Minntac in 1978 were replacing Minnesota natural ore at U.S. Steel facilities in Illinois, Ohio and Indiana and also in the Monogahela Valley.

The Department's negative determination in the subject case in not inconsistent with the one made in the case of a petition filed on behalf of workers at the Erie Mining Company, Hoyt Lakes, Minnesota, TA-W-2794 and 2795. The Department's review revealed that the Erie Mining Company's declines in employment and in the production and sales of iron ore pellets in 1976 and 1977 were the result of increased imports of iron ore pellets by a major customer which reduced the need for iron ore pellets produced by the Erie Mining Company. In the subject case, there is no element of a switch to imports but rather a switch to iron ore pellets from the natural ore which supports the Department's basis for its initial denial because of the increasing economic exhaustion of the natural ore.

The Department does not agree with the petitioning union's claim that the ore depletion rationale, mentioned in the Department's initial denial, is specious since the combined iron ore shipments from the three natural ore districts have decreased from 1975 through 1978 while the taconite pellet shipments from Mintac have increased. Similarly, average annual employment at the three petitioning mining districts declined each year since 1976, even excluding the strike period, while it increased each year at Minntac. Officials from the company and the U.S. Bureau of Mines have also indicated that most of the high grade natural ore has been extracted from the Mesabi Iron Ore Range.

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 31st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17883 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5137—5140B]

Mining Division Vecillio and Grogan, Inc., Beckley, W. Va.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Whitby Strip Mine, Raleigh County, West Virginia (TA-W-5137)
Whitby Auger Mine, Raleigh County, West Virginia (TA-W-5138)
Sullivan Mine #1, Raleigh County, West Virginia (TA-W-5139)
Sullivan Mine #2, Raleigh County, West Virginia (TA-W-5140)
Mining Division Office, Beckley, West Virginia (TA-W-5140A)
Mining Division Field Office, Stoco, West Virginia (TA-W-5140B)

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 2, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers producing metallurgical coal at the following facilities of Vecillio and Grogan, Incorporated Mining Division: Whitby Strip Mine, Whitby Auger Mine, Sullivan Mine #1, and Sullivan Mine #2, all located in Raleigh County, West Virginia. The investigation was expanded to include the Mining Division's main office in Beckley, West Virginia and field office in Stoco, West Virginia. It is concluded that all of the requirements have been met.

U.S. imports of metallurgical coal are negligible. However, coke is metallurgical coal in a later stage of processing, and is therefore "directly competitive" with metallurgical coal. U.S. imports of coke increased on an absolute basis and relative to domestic production in 1977 as compared to 1976 and in 1978 as compared to 1977.

The Department of Labor conducted a survey of customers of the major coal distributor which bought and resold Vecillio and Grogan's metallurgical coal. From 1977 to 1978 some major customers surveyed decreased purchases of metallurgical coal from that distributor and increased purchases of imported coke.

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 Vecillio and Grogan, Incorporated, Mining Division contributed importantly to the decline in sales or production and to the total or partial separation of workers of that division. In accordance with the provisions of the Act, I make the following certification:

All workers of the Whitby Strip Mine, Raleigh County, West Virginia; the Whitby Auger Mine, Raleigh County, West Virginia; the Sullivan Mine #1, Raleigh County, West Virginia; the Sullivan Mine #2, Raleigh County, West Virginia, and the Beckley and Stoco, West Virginia offices of the Mining Division of Vecillio and Grogan, Incorporated who became totally or partially separated from employment on or after March 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 31th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17884 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4718]

Westforth Manufacturing Co., Inc., Williamsport, Pa.; Revised Notice of Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

On May 17, 1979, the Department made an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Westforth Manufacturing Company, Inc., Williamsport, Pennsylvania. This determination was published in the **Federal Register** on May —, 1979, (44 FR——

On the basis of new information supplied by the management of Peters Sportswear Company, Inc., Philadelphia, Pennsylvania, a further investigation was made by the Director of the Office of Trade Adjustment Assistance. The investigation revealed that a worker group included in the Department's denial of Westforth Manufacturing in fact performed function separate from those of the remainder of the plant.

Westforth Manufacturing is a wholly-owned subsidiary of Peters Sportswear. On March 16, 1979, the Department denied eligibility to apply for adjustment assistance to the workers of Westforth Manufacturing and certified the workers of Peters Sportswear. The basis for the denial of Westforth Manufacturing was that sales and production at the firm had increased absolutely from 1976 through 1978.

The workers in the shipping and contract inspection departments in the warehouse of Westforth Manufacturing produced exclusively for Peters Sportswear. They did not participate in contracts Westforth Manufacturing had with companies other than Peters Sportswear. Production and employment in these two departments were dependent upon conditions at Peters Sportswear.

Conclusion

In view of the above, it is concluded that imports of articles like or directly competitive with men's and boys' outercoats and jackets and leather coats and jackets produced by Peters Sportswear Company, Inc., contributed importantly to the separations of workers and to the decline in sales in the shipping and contract inspection departments of Westforth Manufacturing Company, Inc., Williamsport, Pennsylvainia.

The revised notice of determination applicable to TA-W-4718 is hereby issued as follows:

All workers engaged in shipping and contract inspection at the Westforth Manufacturing Company, Inc., Williamsport Pennsylvania, who became totally or partially separated from employment on or after August 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 30th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc 79-17885 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5110]

Weyenberg Shoe Manufacturing Co., Waterloo, 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 April 4, 1979 in response to a worker petition received on April 3, 1979 which was filed by the Boot and Shoe Workers Union on behalf of workers and former workers producing men's shoes at the Waterloo, Wisconsin plant of the Weyenberg Shoe Manufacturing Company. It is concluded that all of the requirements have been met.

U.S. imports of men's dress and casual footwear increased absolutely and relative to domestic production in 1977 compared to 1976 and increased relative to domestic production in 1978 compared to 1977. Imports as a percentage of production exceeded 75 percent in 1976, 1977, and 1978.

Weyenberg owns and operates two men's footwear plants abroad in Ireland. Weyenberg increased imports of men's footwear in 1978 compared to 1977 and in the first quarter of 1979 compared to the first quarter 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 shoes produced at the Waterloo, Wisconsin plant of the Weyenberg Shoe Manufacturing Company contribute 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 Waterloo, Wisconsin plant of the Weyenberg Shoe Manufacturing Company who became totally or partially separated from employment or or after March 9, 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 31th day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17886 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5161]

Whitehall Manufacturing Corp., Whitehall, N.Y.; 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 5, 1979 in response to a worker petition received on March 28, 1979 which was filed on behalf of workers and former workers producing men's shirts at the Whitehall, New York plant of Whitehall Manufacturing Corporation. The investigation revealed that the correct name of the subject firm is Whitehall Manufacturing Corporation and that the plant is located in Whitehall, New York. 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.

The Department of Labor conducted a survey of the manufacturer for whom Whitehall Manufacturing performed contract sewing of shirts and of most of Whitehall Manufacturing's own customers. The survey revealed that the manufacturer did not employ foreign contractors or purchase imported men's shirts, and that most of Whitehall Manufacturing's own customers who were surveyed did not increase purchases of imported men's shirts during a period in which they decreased purchases from Whitehall. Those customers that did reduce purchases from Whitehall and increase purchases of imports represented an insignificant proportion of total company sales.

Conclusion

After careful review, I determine that all workers at the Whitehall, New York plant of Whitehall Manufacturing 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 31st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17887 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5191]

Winston Coal Co., Davy, 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 mining coal at the Winston Coal Company, Davy, West Virginia. 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.

Winston Coal Company produces metallurgical coal exclusively for its parent company. The parent company's total sales of metallurgical coal increased in terms of quantity in 1978 compared with 1977 and in the first quarter of 1979 compared with the like quarter of 1977. A United Mine Worker's Mine Worker's strike in the first quarter of 1978 precludes the use of this period for comparison. The parent company's production of metallurgical coal at company-operated mines increased in terms of quantity in 1978 compared with 1977 and in the first two months of 1979 compared with the like period of 1977.

Most of the coal sold by the parent company in 1978 and the first quarter of 1979 was exported.

Conclusion

After careful review, I determine that all workers of Winston Coal Company, Davy, 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 31st day of May 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-17888 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-28-M

LEGAL SERVICES CORPORATION

Grants and Contracts

June 6, 1979.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly . . . such grant, contract or project."

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by:

Southern Arizona Legal Aid in Tucson, Arizona to serve Native Americans on or near the Ak-Chin, Fort McDowell, Gila River and Salt River Reservations.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at:

Legal Services Corporation, Denver Regional Office, 1726 Champa Street, Suite 500, Denver, CO 80202.

Dan J. Bradley,

President.

[FR Doc. 79-17814 Filed 6-7-79; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (79-59)]

NASA Advisory Council (NAC)-Space and Terrestrial Applications Advisory Committee (STAAC) Meeting

The ad hoc Informal Advisory Subcommittee on Materials Processing in Space (MPS) of the NAC-STAAC will meet in Room 226A of NASA Headquarters, 600 Independence Avenue, SW., Washington, D.C., from 9:00 a.m. to 3:00 p.m. on June 22, 1979. The morning session of the meeting is open to the public. Members of the public will be admitted to the meeting on a first-come, first-served basis up to the room's seating capacity of 15 persons, and will be required to sign a visitors' register.

From 9:00 a.m. to 12:00 noon, the Subcommittee will review plans and progress in the MPS program's Floating Zone Experiment System project and will discuss the program's Five Year Plan for 1981-85. The approved agenda for this part of the meeting is as follows:

June 22, 1979

Time and Topic

9:00 a.m.—Introductory Remarks.
9:30 a.m.—Presentation on the Floating Zone Experiment System.
10:30 a.m.—Presentation of MPS Program Five Year Plan.
11:30 a.m.—Discussion.
12:00 noon—Adjourn.

At 1:00 p.m., the Subcommittee will reconvene to recommend candidates for membership on an ad hoc peer review panel to perform scientific evaluations of technical proposals received by the MPS program, taking account of the discipline areas covered in the program's plans, the areas of expertise of the candidates considered, and the need to avoid conflicts of interest on the part of investigators who are known to be preparing proposals. Public

discussion of the professional qualifications of candidates for membership in the panel would invade the privacy of these scientists and other individuals associated with their research. Since the afternoon session of the Subcommittee meeting will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(6) as described above, it has been determined that this session should be closed to the public.

The STAAC ad hoc Informal Advisory Subcommittee was established to advise NASA on the Materials Processing in Space program's accomplishments, ongoing research and long range plans. The Subcommittee has six members representing the scientific and industrial communites and is chaired by Dr. Martin Glicksman. For further information, contact Dr. James H. Bredt, Executive Secretary of the NAC–STAAC ad hoc Informal Advisory Subcommittee on Materials Processing in Space, Code EM–7, NASA Headquarters, Washington, D.C., 20546 (202/755–8573).

Arnold W. Frutkin,

Associate Administrator for External Affairs.

June 5, 1979.

[FR Doc. 79-17815 Filed 6-7-79; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL CAPITAL PLANNING COMMISSION

Proposed Revised Policies and Procedures for the Protection and Enhancement of Environmental Quality in the National Capital Region

The National Capital Planning Commission will consider, at its June 28, 1979 meeting, the adoption of the following proposed revised Environmental Policies and Procedures.

Interested organizations, agencies, and citizens are requested to submit their views in writing to the Commission prior to June 26, 1979, addressed to:

Daniel H. Shear, Secretary, National Capital Planning Commission, Washington, D.C. 20576.

Sec. 1. Purpose

All Federal agencies must direct, to the fullest extent possible their policies, plans, and programs to protect and enhance environmental quality. In view of the unique Federal presence at the seat of government, a special effort should be made by the Federal and District of Columbia governments in the National Capital Region to implement the National Environmental Policy Act, as amended (NEPA). These procedures supplement the Council on Environmental Quality's regulations for implementing the procedural provisions of NEPA and describe the way the National Capital Planning Commission, beginning at the earliest possible point, considers the environmental aspects of proposed actions. The Commission's goal is to avoid or minimize adverse environmental effects.

Sec. 2. Definitions

Underlined words are defined as follows:

"Commission" means the National Capital Planning Commission created by the *Planning Act.*

"Comprehensive Plan" means the Comprehensive Plan for the National Capital prepared and adopted pursuant to the *Planning Act.*

"Council" means the Council of the District of Columbia, as defined in Section 103 of the *Home Rule Act.*

"EIS" means environmental impact statement prepared pursuant to Section 102(2)(C) of *NEPA.*

"Environmental assessment" means a document that briefly discusses the environmental consequences of a proposed action and alternatives prepared for the purposes set forth in 40 CFR 1508.9.

"Environs" means the territory surrounding the District of Columbia within the Region.

"EPA" means the United States Environmental Protection Agency.

"Executive Director" means the director employed by the *Commission* pursuant to Section 2(c) of the *Planning Act.*

"Home Rule Act" means the District of Columbia Self-Government and Governmental Reorganization Act (December 24, 1973, 87 Stat. 774).

"Mayor" means the Mayor of the District of Columbia, as defined in Section 103 of the *Home Rule Act.*

"NEPA" means the National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.).

"Planning Act" means the National Capital Planning Act of 1952, as amended (40 U.S.C. 71–71i, 72, 73, 74; D.C. Code, secs. 1–1001 to 1–1013).

"Redevelopment Act" means the District of Columbia Redevelopment Act of 1945, as amended (D.C. Code, secs. 5–701 to 5–719).

"Region" means the National Capital Region as defined in Section 1(b) of the *Planning Act.*

"Zoning Act" means the Act of June 20, 1938, 52 Stat. 797, as amended (D.C. Code, secs. 5–413 to 5–428).

"Zoning Commission" means the Zoning Commission created by Section 1 of the Act of March 1, 1920, 41 Stat. 500, as amended (D.C. Code, sec. 5–412).

"Zoning Regulations" means the regulations, including the maps, and amendments thereto, promulgated by the *Zoning Commission* pursuant to the *Zoning Act.*

Sec. 3. Principal Functions—Major Decision Points

This section describes the major decision points for the *Commission's* principal functions. It does not contain an exhaustive list of the *Commission's* functions.

A. *Federal Elements of the Comprehensive Plan*

The *Commission's* comprehensive planning process begins when the Commission staff starts to prepare a specific Federal element (e.g. Federal land use, Federal employment, foreign missions and international agencies). The *NEPA* process usually starts with the preparation of a study or planning report on the proposed element and a related environmental analysis. The degree of specificity of the report varies depending on the subject matter of the element and on the *Commission's* direction to the staff. The report is circulated for agency and public review and comment. Generally the major decision points on a Federal element of the *Comprehensive Plan* are:

1. *First major decision point.*—In the case of a study report, after analyzing alternative policies and comments, the *Commission* selects, from among the alternative policies, that alternative for which the staff should prepare a draft proposed element.

2. *Second major decision point.*—After the staff has prepared a draft proposed element and related planning report, the *Executive Director* determines the type of environmental document to be prepared on the proposed element.

3. *Third major decision point.*—When the staff has prepared the appropriate environmental document, the draft proposed element is presented to the *Commission.* When satisfactory to the Commission, it authorizes the proposed element (accompanied by the planning report and the environmental document) to be circulated for agency and public review and comment.

4. *Fourth major decision point.*— After the circulation period has ended and comments analyzed, the proposed element is presented to the *Commission* for adoption. If an *EIS* is required, the proposed element is presented to the *Commission* for adoption not earlier than thirty days after the filing with *EPA* of the final *EIS.*

B. *District Elements of the Comprehensive Plan*

The District of Columbia government shall submit to the *Commission* an *environmental assessment* on each District element. It should be submitted as early as possible in the District's planning process, not later than the submission by the *Mayor* of the proposed element to the *Council.*

1. *First major decision point.*—When the *Mayor* submits the proposed element and *environmental assessment,* the *Executive Director* shall determine the appropriate environmental document required for Commission action. If the *Executive Director* determines that an *EIS* is required for *Commission* action on the proposed element, the District government, with *Commission* cooperation, shall provide the information set forth in Appendix B necessary to assist the *Commission* in the preparation of an *EIS.*

2. *Second major decision point.*—After the element has been adopted by the *Council* and submitted to the *Commission* pursuant to Section 2(a)(3) of the *Planning Act,* the *Commission* reviews the element with regard to its impact on the interests or functions of the Federal Establishment in the National Capital and may take such action or actions as it deems appropriate pursuant to Section 2(a)(4) of the *Planning Act.* The environmental document submitted for the first major decision point may be used for the second major decision point if no substantial changes have been made in the element. If substantial changes have been made, the appropriate environmental information will be supplemented or amended by the District government. If an *EIS* is required, the *Commission* shall not take action pursuant to Section 2(a)(4) of the *Planning Act* earlier than thirty days after the filing with *EPA* of the final *EIS.* The element shall not be deemed to have been submitted to the *Commission* until thirty days after the filing with *EPA* of the final *EIS.*

C. *Federal, Federally Assisted, and District of Columbia Projects*

1. *Federal developments and projects requiring Commission approval.*—A Federal agency shall consult with the *Commission* at the earliest possible time with respect to a plan for a development or a project requiring *Commission* review and approval as set forth in Sec. 7 of these procedures and shall permit the *Commission* to participate with it in determining the appropriate environmental document for such development or project. For each action listed under Sec. 7, the sponsoring agency's submission to the *Commission* must include an *EIS* or an *environmental assessment.* Prior to *Commission* action on an agency's submission, the *Commission* shall take responsibility for the scope and contents of the environmental document.

For all actions listed under Sec. 7, the following are major decision points:

a. *First major decision point.*—At the time of initial consultation with the *Commission* by the sponsoring agency, the *Executive Director* and the sponsoring agency shall determine the appropriate environmental document required for *Commission* action. If the determination is made that an *EIS* is required, the sponsoring agency, with Commission cooperation, will be required to prepare an EIS.

b. *Other major decision points.*—The number and nature of other major decision points depend on the type of submission by the sponsoring agency (e.g., master plan, location and program, development concepts, preliminary site and building plans) in accordance with the *Commission's* Site and Building Plan Requirements. Some decisions can be accomplished in one step while others can only be accomplished in a series of steps. In each instance, the appropriate environmental document must be completed prior to *Commission* action. The environmental document submitted for the first major decision point may be used for other major decision points if sufficient for such other major decision points and no substantial changes have been made in the proposal. If substantial changes have been made, the appropriate environmental document will be supplemented or amended by the sponsoring agency.

2. *Non-Federal developments and projects requiring Commission approval.*—Non-Federal agencies shall consult with the *Commission* at the earliest possible time as to the environmental document necessary with respect to a plan for a development or a project requiring *Commission* review and approval as set forth in Sec. 7 of these procedures. For each action listed under Sec. 7, the sponsoring agency's submission to the *Commission* must include an *environmental assessment* generally in the format set forth in the "Outline for Preparation of Environmental Assessments" (Appendix A) or in the format set forth in the "Outline for Information Necessary for the Preparation of Environmental Impact Statements" (Appendix B), as determined by the *Commission.*

For all actions listed under Sec. 7, the following are decision points:

a. *First major decision point.*—At the time of the initial submission by the sponsoring agency, the *Executive Director* shall determine the appropriate environmental document required for *Commission* action. If the Executive Director determines that the environmental information submitted is not sufficient for the making of a determination, more information will be requested from the agency. If the *Executive Director* determines that an *EIS* is required for *Commission* action, the *Commission* will prepare an *EIS* based on the environmental document submitted by the agency.

b. *Other major decisions points.*—The number and nature of other major decision points depend on the type of submission by the sponsoring agency (e.g., master plan, location and program, development concepts, preliminary site and building plans, Capper-Cramton Act general development plans, urban renewal plans) in accordance with the *Commission's* Site and Building Plan Requirements or Urban Renewal Requirements, as the case may be. Some decisions can be accomplished in one step while others can only be accomplished in a series of steps. In each instance, the appropriate environmental document must be completed prior to *Commission* action. The environmental document submitted for the first major decision point may be used for other major decision points if sufficient for such other major decison points and no substantial changes have been made in the proposal. If substantial changes have been made, the appropriate environmental document will be supplemented or amended by the sponsoring agency.

3. *Federal and non-Federal developments and projects requiring Commission review and comment.*—The *Commission* shall require that the sponsoring agency include, as part of its submission, and *EIS* or *environmental assessment* of the development or project.

Sec. 4. Federal Involvement

The *Commission* shall consult with appropriate Federal and non-Federal agencies and with interested private persons and organizations when its involvement is reasonably foreseeable. Sponsoring agencies are urged to contact the *Commission* staff at the earliest possible time in the preparation of District elements of the *Comprehensive Plan* and in the siting and initial planning and design of proposed new developments within the *Region.* The *Commission* staff is available at all times to advise and

consult with sponsoring agencies prior to formal submission of plans for *Commission* review. The Environmental Affairs Office of the *Commission* is available to advise agencies of studies or other informaton foreseeably required for later *Commission* action.

Sec. 5. Delegations to Executive Director

In conjunction with carrying out these procedures, the *Commission* delegates to the *Executive Director* the functions of:

(1) Determining whether to prepare and *EIS* or make a "Finding of No Significant Impact";

(2) Obtaining the information required for the preparation of a draft *EIS* or an *environmental assessment;*

(3) Preparing a draft *EIS;*

(4) Circulating a draft *EIS* for review and comment to *EPA*, affected and interested public agencies, and the general public;

(5) Integrating agency and public comments, where appropriate, into and preparing the final *EIS;* and

(6) Distributing the final *EIS* to *EPA* and all agencies and individuals who commented on the draft *EIS.*

Sec. 6. Actions Which Normally Required Commission Preparation of Environmental Impact Statements

There are no actions which the Commission has determined always require an *EIS.* However, with respect to plans for developments or projects for which a Federal agency has determined always require an *EIS,* the *Commission* will take responsibility for the scope and contents of such EISs.

Sec. 7. Actions Which Normally Require Environmental Assessments But Not Necessarily Environmental Impact Statements

Based on a review of the typical classes of actions it undertakes, the Commission has determined those actions which will normally require an *environmental assessment* but not necessarily and *EIS* prior to its action. For the following actions, the Executive Director will use the environmental document prepared pursuant to Sec. 3C of these procedures to determine whether an *EIS* should be prepared:

a. certify to the *Council,* together with findings and recommendations, whether a District element of the *Comprehensive Plan,* or amendment thereto, adopted by the *Council* pursuant to Section 2(a)(3) of the *Planning Act,* has a negative impact on the interests or functions of the Federal Establishment in the National Capital pursuant to Section 2(a)(4)(A) of the *Planning Act;*

b. determine whether a modification, submitted by the *Council* pursuant to Section 2(a)(4)(B) of the *Planning Act,* to the District element of the *Comprehensive Plan,* or amendment thereto, as to which the *Commission* has certified a negative impact on the interests or functions of the Federal Establishment in the National Capital pursuant to Section 2 (a)(4)(A) of the *Planning Act,* has been made in accordance with the *Commission's* findings and recommendations;

c. determine whether a modified element of, or amendment to, the Comprehensive Plan, submitted by the Council pursuant to Section 2(a)(4)(C) of *Planning Act,* has a negative impact on the interests or functions of the Federal Establishment in the National Capital;

d. adopt Federal elements of the *Comprehensive Plan* and amendments thereto pursuant to Section 4(a) of the *Planning Act;*

e. approve the location, height, bulk, number of stories, and size, and the provision for open space in and around District of Columbia public buildings in the central area of the District as concurrently defined by the *Commission* and *Council,* pursuant to Section 5(c) of the *Planning Act;* [1]

f. acquire lands in the District of Columbia and adjacent areas in Maryland and Virginia for the National Capital park, parkway, and playground systems pursuant to Section 11 of the *Planning Act* and, in connection with acquisitions in Maryland and Virginia, make agreements with State officials as to the arrangements for such acquisitions;

g. make a comprehensive or general plan of the District of Columbia pursuant to Section 6(a) of the *Redevelopment Act;*

h. adopt the boundaries of urban renewal areas pursuant to Section 6(b)(1) of the *Redevelopment Act;*

i. adopt urban renewal plans for urban renewal areas pursuant to Section 6(b)(2) of the *Redevelopment Act;*

j. adopt modifications to urban renewal plans pursuant to Section 12 of the *Redevelopment Act;*

k. approve the location, height, bulk, number of stories, and size of Federal public buildings in the District of Columbia and the provision for open space in and around the same, pursuant to Section 16 of the *Zoning Act* (D.C. Code, sec. 5–428);

l. adopt, or alter and adopt, sections of the plan for the extension of a permanent system of highways prepared by the *Mayor,* pursuant to Section 2 of the Act of March 2, 1893, 27 Stat. 532 (D.C. Code, sec. 7–109);

m. approve plats adjusting the permanent system of highways to provide ground for educational, religious, or similar institutions, pursuant to Section 3 of the Act of June 28, 1898, 30 Stat. 520 (D.C. Code, sec. 7–113);

n. approve new highway plans for portions of the District of Columbia prepared by the *Mayor,* pursuant to the Act of March 4, 1913, 37 Stat. 949 (D.C. Code, sec. 7–122);

o. approve the sale of real estate owned in fee simple by the District of Columbia for municipal use which the *Council* and *Commission* find to be no longer required for public purposes, pursuant to Section 1 of the Act of August 5, 1939, 53 Stat. 1211 (40 U.S.C. 72c; D.C. Code, sec. 9–301);

p. approve the sale by the Secretary of the Interior of real estate held by the United States in the District of Columbia under the jurisdiction of the National Park Service which may be no longer needed for public purposes, pursuant to Section 4 of the Act of August 5, 1939, 53 Stat. 1211 (40 U.S.C. 74a; D.C. Code, sec. 9–304);

q. approve the exchange of District-owned land, or part thereof, for an abutting lot or parcel of land, or part thereof, pursuant to the Act of August 1, 1951, 65 Stat. 150 (D.C. Code, sec. 9–401);

r. approve plans for replatting and/or method of condemnation with respect to the acquisition of property under the District of Columbia Alley Dwelling Act (June 12, 1934, 48 Stat. 930, as amended; D.C. Code, secs. 5–103 to 5–112);

s. approve settlements for the purpose of establishing and making clear the title of the United States in lands and water in, under, and adjacent to the Potomac River, the Anacostia River, or Eastern Branch, and Rock Creek, pursuant to the Act of June 4, 1934, 48 Stat. 836 (D.C. Code, sec. 8–104);

t. approve the location and construction in the District of Columbia of bathing pools or beaches by the Director of the National Park Service, pursuant to the Act of May 4, 1926, 44 Stat. 394, as amended (D.C. Code, sec. 8–169);

u. approve harbor regulations made by the *Council* which affect the interests and rights of the *Commission,* pursuant to Section 895 of the Act of March 3, 1901, 31 Stat. 1335, as amended (D.C. Code, sec. 22–1701);

v. approve the location of court buildings on portions of Judiciary Square or within the area bounded by

[1] The central area has been concurrently defined by the *Commission* and *Council* pursuant to Section 5(c) of the *Planning Act* to include the Shaw School and Downtown Urban Renewal Areas.

4th and 5th Streets, D and G Streets, N.W., pursuant to Section 1 of the Act of June 25, 1934, 48 Stat. 1215, as amended (D.C. Code, sec. 9–204); and

w. approve plans showing the location, height, bulk, number of stories, and size of, and the provisions for open space and off street parking in and around, buildings for foreign governments and international organizations on land sold or leased by the Secretary of State in the northwest section of the District of Columbia bounded by Connecticut Avenue, Van Ness Street, Reno Road, and Tilden Street, pursuant to Section 4 of the Act of October 8, 1968 (Public Law 90–553); and

x. approve transfers of jurisdiction over properties within the District of Columbia owned by the United States or the District among or between Federal and District authorities, pursuant to Section 1 of the Act of May 20, 1932, 47 Stat. 161, as amended (40 U.S.C. 122; D.C. Code, sec. 8–115) except where such transfers of jurisdiction conform to master plans or site and building plans approved by the *Commission* pursuant to Section 5(a) of the *Planning Act* or to urban renewal plans and modifications thereof adopted by the *Commission* and approved by the *Council* pursuant to Sections 6 and 12 of the *Redevelopment Act.*

Sec. 8. Actions Which Normally Do Not Require Either Commission Preparation of Environment Impact Statements or Environmental Assessments

The *Commission* has determined that administrative, personnel, and procedural actions, and the following actions of an advisory nature only normally do not require *Commission* preparation of either an EIS or an *environmental assessment:*

a. make a preliminary report and recommendations to Federal agencies on plans and programs submitted to the Commission pursuant to Section 5(a) of the *Planning Act;*

b. submit a final report a Federal agency which does not concur in the *Commission's* preliminary report and recommendations and which has so advised the *Commission* with its reasons therefor, pursuant to Section 5(a) of the *Planning Act;*

c. recommend a six-year program of public works projects for the Federal government pursuant to Section 7(a) of the *Planning Act;* and

d. comment on capital budget estimates of Federal agencies pursuant to Office of Management and Budget Circular No. A–11.

Any of the actions listed above may, in extraordinary circumstances, have a significant environmental effect. If the *Executive Director* makes such a determination, the appropriate environmental document will be prepared and made available to the *Commission* prior to its taking action on the item.

Sec. 9. Categorical Exclusions

The Commission has determined that the following are categorical exclusions within the meaning of 40 CFR 1508.4:

a. make a preliminary report and recommendations to District of Columbia agencies on plans and programs submitted to the Commission pursuant to Section 5(a) of the *Planning Act;*

b. submit a final report to a District of Columbia agency which does not concur in the *Commission's* preliminary report and recommendations and which has so advised the *Commission* with its reasons therefor, pursuant to Section 5(a) of the *Planning Act;*

c. advise and consult with appropriate planning agencies having jurisdiction over the affected part of the *environs* with respect to general plans for proposed Federal and District developments and projects within the *environs* and with respect to plans for proposed developments or projects submitted pursuant to Section 5(a) of the *Planning Act* involving a major change in the character or intensity of an existing use in the *environs,* pursuant to Section 5(d) of the *Planning Act;*

d. comment upon the multi-year capital improvements plan for the District developed by the *Mayor* under Section 444 of the *Home Rule Act,* pursuant to Section 7(b) of the *Planning Act;*

e. make a report and recommendation, including a final report, to the *Council* on any proposed change in or addition to the regulations or general orders regulating the platting and subdividing of lands and grounds in the District of Columbia, pursuant to Section 8(d) of the *Planning Act;*

f. make recommendations to the *Mayor* concerning the acquisition of areas for, or the establishment upon property not acquired under the authority of the Act of, public parking facilities pursuant to Section 3 of the District of Columbia Motor Vehicle Parking Facility Act of 1942 (February 16, 1942, 56 Stat. 91, as amended; D.C. Code, sec. 40–804);

g. consult with the *Mayor* on the development plan for the Pennsylvania Avenue development area submitted for approval to the *Mayor* by the Pennsylvania Avenue Development Corporation pursuant to Section 5 of the Pennsylvania Avenue Development Corporation Act of 1972 (October 27, 1972, 86 Stat. 1269; 40 U.S.C. 874);

h. submit to the *Zoning Commission* proposed amendments or general revisions to the *Zoning Regulations,* pursuant to Section 8(a) of the *Planning Act;*

i. make recommendations to the *Council* on proposed closings of streets, roads, highways, and alleys, or parts thereof, pursuant to Section 1 of the Street Readjustment Act of the District of Columbia (December 15, 1932, 47 Stat. 747, as amended; D.C. Code, sec. 7–401);

j. make a report and recommendations to the *Zoning Commission,* as provided in Section 5 of the *Zoning Act,* on proposed amendment to the *Zoning Regulations,* pursuant to Section 8(a) of the *Planning Act;* and

k. comment on state and local undertakings reviewed pursuant to Attachment A to Office of Management and Budget Circular No. A–95 (Revised).

Sec. 10. Environmental Data and Analysis Available to Commission

The alternatives considered by the *Commission* shall be encompassed by the range of alternatives discussed in the relevant environmental documents. All relevant environmental documents, comments, and responses shall accompany the proposal through the *Commission's* approval process.

Sec. 11. Public Information

Interested persons can obtain information or status reports on *EISs* and other elements of the NEPA process from the *Commission's* Offic eof Public Affairs, 1325 G Street NW., Washington, D.C. 20576, telephone (202) 724–0174.

Sec. 12. Supercession

The Commission's environmental policies and procedures published at 36 FR 23706, 37 FR 3010, 37 FR 4936, 37 FR 11198, and 37 FR 16039 are superceded.

Sec. 13. Authority

These procedures are adopted pursuant to the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (43 FR 55978–56007).

APPENDICES

Appendix A

Outline for Preparation of Environmental Assessments

The environmental assessment should contain *brief* discussions of the following:

I. Purpose of and need for the proposal.

II. Alternatives, including the *No Action* alternative.

III. Environmental effects of the proposed action and alternative.

The most important or significant environmental consequences of the areas listed below should be discussed. Only those areas which are relevant to the proposal should be addressed in as much detail as is necessary to allow an analysis of the alternatives and the proposal. The areas to be considered are the following:

1. Natural/ecological features (such as flood plains, wetlands, coastal zones, wildlife refuges and endangered species);
2. Air quality;
3. Sound levels;
4. Water supply, wastewater treatment and storm water runoff;
5. Energy requirements and conservation;
6. Solid waste;
7. Transportation;
8. Community facilities and services;
9. Social and economic; and
10. Historic and aesthetic.

IV. Listing of agencies and persons consulted in preparation of the assessment.

Appendix B

Outline of Information Necessary for Preparation of Environmental Impact Statements

I. Description of the Proposal

A. *Purpose of and Need for Action.* In discussing the purpose of and need for the action, this section should include a *brief* description of the proposal, its size and location, and any appropriate maps and/or diagrams. Where applicable, Comprehensive Plan modifications (as a related proposed action) should also be identified.

B. *Affected Environment.* Identification and succint description of the geographic area(s) affected by the proposed action and the alternatives considered including: other activities in the area affected by or related to the proposed action (if any). The CEQ Regulations advise that "the description shall no longer than is necessary to understand the effects of the alternatives. Data and analysis in a statement shall be commensurate with the importance of the impact with the less important material summarized, consolidated, or simply referenced". (Sec. 1502.15 of the CEQ Regulations.)

II. Environmental Consequences

This section should include discussions of the following:

A. *Environmental Effects of the Alternatives and the Proposed Action.*[2]

In this discussion, consideration should be given to the following factors where needed to reflect the most significant or important effects for analysis of the alternatives:

1. *Physical-Biological*

a. *Natural/Ecological Features*—This should include a discussion of effects on topographic, hydrology, soils, flora, fauna, floodplains, wetlands, coastal zones, endangered species, etc.

b. *Air Quality*—This discussion should focus on effects on the particular site/area affected by stationary, mobile and/or demolition/construction sources, if any, related to the proposed action and alternatives within the context of overall air quality goals/objectives.

c. *Sound Levels*—This discussion should focus on potential sound level effects associated with the proposed action and alternatives, such as demolition/construction, stationary (mechanical equipment) and mobile (transportation) sources on-site and in the surrounding areas, within the context of existing and relevant knowledge of noise effects, mitigation measures, and any existing or proposed noise standards/controls. Any unusual noise generation from the proposed action must be addressed.

d. *Site and Surrounding Area Land Uses, Plans, Policies and Controls*—This discussion should focus on the effects of the proposed action and alternatives on such things as street layouts and traffic movement/circulation patterns; setback and siting relationships; vehicular/pedestrian access; proposed Federal, State, local, and regional land use plans, policies and controls; etc.

2. *Urban Systems*

a. *Water Supply, Wastewater Treatment and Storm Water Runoff*—This discussion should focus on the effects on availability and capacity of the existing water supply, wastewater treatment and storm water systems (with any planned changes/expansions accounted for) to serve the proposed action(s), and alternatives based on documentation and evaluation of the anticipated water supply needs, and wastewater treatment and storm water demands, recognizing any unusual requirements, within the framework of applicable federal, regional and local regulations and standards. Any potential impacts on specific bodies of water (such as Rock Creek, the Potomac and Anacostia Rivers, etc.) should be addressed.

b. *Public Utilities, Energy Requirements and Conservation*—This discussion should focus on: (1) off-site effects of the proposed action, including anticipated insufficient capacity, delivery, and service level problems (Example: the inability of an off-site central heating facility to service a new project); (2) any on-site problems, such as effects on air quality from on-site plants; and (3) energy requirements and conservation measures related to proposed action and alternatives, and mitigation measures for each.

c. *Solid Waste*—This discussion should focus on the effects on the availability and capacity of disposed systems to serve the project and alternatives (with any timely changes or expansions accounted for), based on the anticipated amount and type of solid waste generation, including and unusual or special disposal requirements, methods for handling them, and recycling applicability.

d. *Community Facilities and Services*—This discussion should focus on the effects of the proposed action and alternatives on such facilities as police, fire, recreation/parks, schools, libraries, etc.

e. *Housing*—(Optional, depending upon the nature of the proposed action, as it may effect jurisdictional or regional housing markets and requirements (aggregate demand, type, location, size, etc.)).

f. *Transportation*—This discussion should focus on the effects on such things as transit systems capacities and constraints, vehicular congestion, safety considerations, mobile source levels, etc.

3. *Socio-Cultural and Economic Environments*

a. *Socio—cultural*—This discussion should fous on effects on the existing population patterns and characteristics, (number, age, sex, race, family structure, etc.) any relevant demographic trends, and any related changes in land use, water and public services of the area(s) involved. The scope of this discussion is dependant upon the nature and extent of the proposed action (i.e. a large-scale federal employment change could be expected to have a regional focus).

b. *Economic*—Effects on local and/or regional economic changes should be addressed, as available or able to be projected (employment changes, absolute/relative income changes, expenditure patterns, property value and tax changes, and direct and induced changes in development/construction patterns, business relocation, etc.).

4. *Historic and Aesthetic Values*—Any effects on historic properties or districts, unique features (architectural styles, vistas), etc., should be discussed, as well as compliance with Section 106 of the National Historic Preservation Act of 1966.

B. *Probable Adverse Environmental Effects Which Cannot Be Avoided.*

This should be a brief section summarizing in one place those effects discussed above that are adverse and unavoidable under the proposed action.

C. *The Relationship Between Local Short-Term Uses of Man's Environment and the Maintanence and Enhancement of Long-Term Productivity*

This section should briefly discuss tradeoff involved between short-term environmental gains at the expense of long-term losses, or vice versa, if any of the proposed action.

D. *Irreversible and Irretrievable Commitment of Resources*

This section requires a discussion of the irreversible and irretrievable commitments of resources that would be involved in the implementation of the proposed action. These could include land, labor, finance, public services and facilities, cultural and natural resources, etc.

[2] Each of the factors listed should address *direct* and *indirect* effects and their significance and any appropriate means to mitigate adverse environmental impacts.

III. Alternatives Including Proposed Action

As advised by the CEQ Regulation, this section ". . . should present the environmental impacts of the proposed action and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options . . ." (sec. 1502.14)

All reasonable alternatives should be addressed, including ones not within the jurisdiction of the responsible agency, and the *no action* alternative. Also included should be a brief explanation of the reasons for eliminating other alternatives which were considered. This section should provide enough detail so that the comparative merits of each alternative can be evaluated.

IV. List of Preparers

According to the CEQ Regulations, this should include the "names and qualifications of persons primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement".

V. List of Agencies, Organizations, and Persons Receiving Copies of the Statement

VI. Index

VII. Appendix (if any)

According to section 1502.18 of the CEQ Regulations, the Appendix shall: "(a) consist of material prepared in connection with an environmental impact statement (as distinct from material which is incorporated by reference); (b) normally consist of material which substantiates any analysis fundamental to the impact statement; (c) normally be analytical and relevant to the decision to be made; and (d) be circulated with the environmental impact statement or be readily available on request.

Daniel H. Shear,

Secretary.

June 4, 1979

[FR Doc. 79-17773 Filed 6-7-79; 8:45 am]

BILLING CODE 7520-01-M

NATIONAL SCIENCE FOUNDATION

Subcommittee for Applied Social and Behavioral Sciences of the Advisory Committee for Applied Science and Research Applications Policy; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee for Applied Social and Behavioral Sciences of the Advisory Committee for Applied Science and Research Applications Policy.

Date and time: June 25-26, 1979—9 a.m. to 5 p.m. each day.

Place: Room 540, National Science Foundation, 1800 G Street, NW, Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. L. Vaughn Blankenship, Director, Division of Applied Research, Room 1126, National Science Foundation, Washington, D.C. 20550. Telephone: (202) 634-6260.

Purpose of subcommittee: To provide advice and recommendations concerning support for applied research in the social and behavioral sciences.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. Rebecca Winkler,

Committee Management Coordinator.

June 4, 1979.

[FR Doc. 79-17839 Filed 6-7-79; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee for Applied Physical, Mathematical, and Biological Sciences and Engineering Sciences of the Advisory Committee for Applied Science and Research Applications; Meetings

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee for Applied Physical, Mathematical, and Biological Sciences and Engineering Sciences of the Advisory Committee for Applied Science and Research Applications.

Date and Time: June 28-29, 1979—9 a.m. to 5 p.m. each day.

Place: Room 1242, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. L. Vaughn Blankenship, Director, Division of Applied Research, Room 1126, National Science Foundation, Washington, D.C. 20550. Telephone (202) 634-6260.

Purpose of Subcommittee: To provide advice and recommendations concerning support for applied research in the social and behavioral sciences.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. Rebecca Winkler,

Committee Management Coordinator.

June 4, 1979.

[FR Doc. 79-17840 Filed 6-7-79; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-245]

Northeast Nuclear Energy Co. et al.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 61 to Provisional Operating License No. DPR-21, issued to Northeast Nuclear Energy Company, The Hartford Electric Light Company, Western Massachusetts Electric Company, and Connecticut Light and Power Company (the licensees), which revised the Technical Specifications for operation of the Millstone Nuclear Power Station, Unit No. 1 (the facility) located in Waterford, Connecticut. The amendment is effective as of its date of issuance.

The amendment revises the provisions of the Appendix A Technical Specifications to (1) authorize use of 148 8x8R type fuel assemblies, (2) change the safety limit Minimum Critical Power Ratio (MCPR) from 1.06 to 1.07, (3) change the Cycle 7 (Reload 6) operating limit MCPRs for various transients, (4) change the Maximum Average Planar Linear Heat Generation Rate Limits, (5) delete the dropped control rod reactivity worth in Specification 3.3.B.3, and (6) revise the stepoint, maintenance, and surveillance requirements on the safety-relief valves.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations 10 CFR Chapter I, which are set forth in the

license amendment. Notice of Proposed Issuance of Amendment to Provisional Operating License in connection with this action was published in the Federal Register on April 13, 1979 (44 FR 22229). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated March 5, 1979, (2) Amendment No. 61 to License No. DPR-21, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut 06385. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland this 29th day of May, 1979.

For the Nuclear Regulatory Commission.

Dennis L. Ziemann,

Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 79-17831 Filed 6-7-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50-495]

Stone & Webster Engineering Corp. Reference Safety Analysis Report, Issuance of Amendment To Preliminary Design Approval

Notice is hereby given that the staff of the Nuclear Regulatory Commission has issued Amendment No. 3 to Preliminary Design Approval No. PDA-4, dated June 1, 1979, for the reference system design of a balance-of-plant portion of a pressurized water reactor nuclear power plant utilizing the Westinghouse RESAR-41 nuclear steam supply system design, and as described in the application by Stone & Webster Engineering Corporation (SWESSAR-P1). Preliminary Design Approval No. PDA-4 was issued by the staff of the Nuclear Regulatory Commission on May 5, 1976.

The amendment extends the expiration date for Preliminary Design Approval No. PDA-4 from June 5, 1979 to August 18, 1979. This change was made as a result of the Nuclear Regulatory Commission's policy statement on standardization of nuclear power plants which provided for an extension to five years of the effective terms for preliminary design approvals for reference system designs issued prior to the August 1978 policy statement. The August 1978 policy statement identified certain types of safety matters that PDA holders would be required to address prior to the granting of PDA extensions. The policy statement requested prospective applicants for extension to submit their responses to the safety matters identified to them early enough ". . . so that staff review can be completed prior to the expiration date of the existing PDA or as soon thereafter as is practical."

The safety matters were identified in the NRC staff letter to the Stone & Webster Engineering Corporation, R. Boyd to W. J. L. Kennedy, dated January 24, 1979. By letter dated May 3, 1979, W. J. L. Kennedy to R. Boyd, the Stone & Webster Engineering Corporation submitted material addressing each of these matters. The staff concluded that the time required to conduct a completeness review of the applicant's submittal would exceed the remaining time to the then current PDA-4 expiration date of May 5, 1979. The staff issued an interim administrative extension (Amendment 2) of PDA-4 to June 5, 1979, in order to complete its initial review of the PDA extension matters prior to a decision on further extension of PDA-4 in accordance with the Commission's August 1978 policy statement.

As a result of the nuclear power reactor accident at the Three Mile Island power plant in Pennsylvania, unforeseen high priority demands on NRC staff resources have precluded completion of planned work on the extension review for PDA-4. The staff has concluded that a second interim administrative extension of PDA-4, to August 18, 1979, is appropriate and warranted.

Amendment No. 3 to PDA-4 is effective as of its date of issuance and shall expire on August 18, 1979 unless extended by the NRC staff. The expiration of PDA-4 as amended, should not affect use of PDA-4, Amendment No. 3 for reference in any construction permit application filed prior to such date.

A copy of Preliminary Design Approval No. PDA-4, Amendment No. 3 dated June 1, 1979 is available for public inspection at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555.

Dated at Bethesda, Maryland, this 1st day of June 1979.

For the Nuclear Regulatory Commission.

C. J. Heltemes, Jr.,

Chief, Standardization Branch, Division of Project Management Office of Nuclear Reactor Regulation.

[FR Doc. 79-17832 Filed 6-7-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-327 and 50-328]

Tennessee Valley Authority (TVA), Sequoyah Nuclear Plant, Units 1 and 2; Issuance of Environmental Impact Appraisal and Negative Declaration

The U. S. Nuclear Regulatory Commission (the Commission), as required under the National Environmental Policy Act (NEPA) and the NRC licensing procedure, has assessed anticipated changes affecting environmental impact of the Sequoyah Nuclear Plant since issuance of the Final Environmental Statement in February 1974.

The Tennessee Valley Authority (permittee) presently holds provisional construction permits for the Sequoyah Nuclear Plant, Units 1 and 2 (CPPR-72 and CPPR-73) located near Daisy in Hamilton County, Tennessee and now seeks an operating license for these units.

The Commission's staff has reviewed and assessed changes of environmental consequence as submitted by TVA to the staff on October 30, 1978, and an environmental impact appraisal relative to the changes has been prepared. Based upon this appraisal, the staff has concluded that all previously unreviewed issues of potential environmental consequence are amenable to acceptable impact control and have been appropriately addressed by the EPA in their drafting of the NPDES permit for operation of the Sequoyah plant. The staff has worked closely with EPA, Region IV, in the development and preparation of the draft NPDES permit and presently views the conditions and requirements of the permit to be adequate to minimize environmental impact.

With incorporation of at least the conditions and limitations presently proposed by EPA for the NPDES permit and TVA's acceptance of those conditions and limitations, the staff has

determined based on its review that operation of the Sequoyah plant will have no significant adverse impact on the environment beyond that described in the Final Environmental Statement prepared by the TVA in July 1974. The staff therefore concludes that the appropriate action is issuance of the operating license for the Sequoyah Nuclear Plant, and that no additional environmental impact statement for the proposed acton need be prepared.

The environmental impact appraisal is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, and at the Chattanooga—Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, TN 37402.

Dated at Bethesda, Maryland, this 31st day of May 1979.

For the Nuclear Regulatory Commission.

Ronald L. Ballard,

Chief, Environmental Projects Branch 1, Division of Site Safety and Environmental Analysis.

[FR Doc. 79-17833 Filed 6-7-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co. and the Cleveland Electric Illuminating Co., Davis-Besse Nuclear Power Station, Unit No. 1; Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated April 24, 1979, the Toledo Coalition for Safe Energy requested that an order be issued that the Davis-Besse Nuclear Power Station, Unit No. 1, not be restarted until certain actions are taken concerning emergency and evacuation procedures and public hearings have been held. This petition is being treated as a request for action under 10 CFR 2.206 of the Commission's regulations, and accordingly, action will be taken on the petition within a reasonable time.

Copies of the petition are available for inspection in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555 and in the local public document room at the Ida Rupp Public Library, 310 Madison Street, Port Clinton, Ohio 43452.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 1st day of June 1979.

Harold R. Denton,

Director Office of Nuclear Reactor Regulation.

[FR Doc. 79-17834 Filed 6-7-79; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued a revision to two guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.84, Revision 15, "Design and Fabrication Code Case Acceptability—ASME Section III Division 1," and Regulatory Guide 1.85, Revision 15, "Materials Code Case Acceptability—ASME Section III Division 1," list those code cases that are generally acceptable to the NRC staff for implementation in the licensing of light-water-cooled nuclear power plants. These two guides were revised to update the listings of acceptable code cases and to reflect public comment and additional staff review.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of the latest revision of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C 552(a))

Dated at Rockville, Maryland this 30th day of May 1979.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Standards Development.

[FR Doc. 79-17835 Filed 6-7-79; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Privacy Act: Notice of New Systems

The purpose of this notice is to give members of the public an opportunity to comment on Federal agency proposals to establish or alter personal data systems subject to the Privacy Act of 1974.

The Act states that "each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect on such proposal on the privacy and other personal or property rights of individuals * * *."

OMB policies implementing this provision require agencies to submit reports on proposed new or altered systems to Congress and OMB 60 days prior to the issuance of any data collection forms or instructions, 60 days before entering any personal information into the new or altered systems, or 60 days prior to the issuance of any requests for proposals for computer and communications systems or services to support such systems—whichever is earlier.

The following reports on new or altered systems were received by OMB between May 14, 1979 and May 25, 1979. Inquiries or comments on the proposed new systems or changes to existing systems should be directed to the designated agency point-of-contact and a copy of any written comments provided to OMB. The 60 day advance notice period begins on the report date indicated.

Department of the Treasury

System Name: Document Delivery Control System.

Report Date: May 3, 1979.

Point-of-Contact: Mr. Floyd Sandlin, Office of Administrative Programs, Department of the Treasury, Washington, D.C. 20220.

Summary: This is the proposed revision of a system previously reported as "Library Circulation Control

Records." The system, maintained by the Office of the Secretary, is used to control the distribution of news publications and the loan of books and periodicals to library users. The addition of distribution control for current news publications is an addition of records and uses of the system.

Department of Agriculture

System Name: YCC Long-Term Benefit Evaluation

Report Date: May 16, 1979.

Point-of-Contact: Mr. Hoyt L. Abney, Room 0320 South Building, Forest Service, P.O. Box 2117, Washington, D.C. 20013.

Summary: The Forest Service proposes this new system of records as a means of identifying the possible long-term (five years) benefits of the Youth Conservation Corps. The study will be performed and funded in conjunction with the Department of the Interior, which runs the Youth Conservation Corps.

Office of Personnel Management

System Names: (1) *Internal System of Records:*

Defense Mobilization Emergency Cadre Records.
Confidential Statements of Employment and Financial Interest.
Negotiated Grievance Procedure Records.
Security Office Control Cards.
Employee Occupational Health Program Records.
Pay, Leave, and Travel Records.
Appeal and Administrative Review Records.
Complaints and Inquiries Records.
Applicants for Employment Records.
Pre-Employment Inquiry Records.
Intergovernmental Personnel Act Assignment Records.
Employee Incentive Award and Recognition Files.
Employee Assistance Program Records.
Federal Executive Development Program Records.
Employee Locator Card Files.
Employee Production Records.
Investigator Performance Records.
Speaker Resume and Clearance Records.
Motor Vehicle Operator and Accident Report Records.
Training Records.
Performance Evaluation/Rating Records.
Intern Program and Upward Mobility Program Records.

(2) *Central Systems of Records:*

Confidential Statements of Employment and Financial Interest.
Complaints and Position Classification or Retained Rate of Pay Appeals Records.
Personnel Research Test Validation Records.
Civil Service Retirement and Insurance Records.
Federal Executive Development Program Records.
Executive Assignment and Inventory Records.
Intergovernmental Personnel Act Assignment Records.
Administrative Law Judge Application Records.
Litigation and Claims Records.
Privacy Act/Freedom of Information Act Case Files.
Personnel Investigations Records.
Directory of Federal Executive Institution Alumni.
Presidential Management Intern Program Records.
Federal Automated Career System (FACS) Records.

(3) *Government-wide System of Records:*

General Personnel Records.
Records of Adverse Actions and Actions Based on Unacceptable Performance.
Ethics in Government Financial Disclosure Records.*
Recruiting, Examining,and Placement Records.

Point-of-Contact: Mr. Robert J. Drummond, Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, Washington, D.C.

Summary: The Office of Personnel Management has completely revised its systems of records and descriptive notices in order to implement Reorganization Plans Nos. 1 and 2, February 23, and May 23, 1978, respectively. These plans transferred responsibility for Federal EEO programs from the Civil Service Commission to the Equal Employment opportunity Commission, and established the Office of Personnel management and the Merit Systems Protection Board. OPM also prepared and submitted for review proposed new Privacy Act regulations.

The systems of records reports include the same types of records which were maintained by the Civil Service Commission. They pertain to—

(1) CSC employees who have been transferred to OPM;

(20 Applicants for CSC positions and former CSC employees whose records have been transferred to OPM;

(3) Applicants for employment with OPM;

(4) Current and former employees of CSC, OPM, or other Federal agencies whose records are maintained only at OPM;

(5) Applicants for Federal employment where OPM maintains the records for all Federal agencies; and

(6) Current and former Federal employees whose records are maintained by all agencies for OPM and for which OPM has retained Privacy Act responsibilities.

OPM has categorized its systems as "internal", "central", and "government-wide". The records in (1)–(3) above are OPM internal, (4) and (5) are OPM central, and (6) are OPM government-wide.

Waiver Request: OMB procedures permit a waiver of the advance notice requirement when the agency can show that the delay caused by the 60 day advance notice would not be in the public interest. It should be noted that a waiver of the 60 day advance notice period does not relieve an agency of the obligation to publish notice describing the system and to allow 30 days for public comment on the proposed routine uses of the personal information to be collected. A waiver of the 60 day advance notice provision was requested by agencies for the following reports received between May 14, 1979 and May 25, 1979. Public inquiries or comments on the proposed new or altered systems should be directed to the designated agency point-of-contact and a copy of any written comments provided to OMB. Comments on the operation of the waiver procedure should be directed to OMB.

Department of Defense

System Name: Application for Pentagon Parking Permit; Pentagon Carpool Locator.

Report Date: May 18, 1979.

Point-of-Contact: Mr. William Cavaney, Department of Defense, Washington, D.C. 20301.

Summary: These systems of records, maintained by the Office of Secretary of Defense, will be expanded to include all DOD Pentagon employees and to reflect organizational changes. The changes are being made to carry out the President's directive to agencies, that they carry out energy conservation and pollution control programs.

Waiver Status: No action as of May 30.

Department of Health, Education, and Welfare

System Name: Epidemiological Research Studies of the Bureau of Radiological health.

*This system was the subject of a Report on New Systems and **Federal Register** notice earlier this year. It is listed here only to provide a full list of OPM systems of records.

Report Date: May 22, 1979.

Point-of-Contact: Mr. Gerald H. Deighton, FDA Privacy Act Coordinator, Department of Health, Education, and Welfare, Washington, D.C. 20201.

Summary: The Food and Drug Administration proposes this new system to provide a data base for determining and evaluating possible harmful effects of exposure to low-level radiation, including three previously unreported thyroid studies. The data base will include records of the three earlier studies, as well as persons exposed to radiation from medical, environmental, or environmental sources, patients with cancer, birth defects, or other diseases or conditions resulting from radiation exposure; and unexposed persons against whom comparisons can be made.

Waiver Status: No action as of May 29, 1979.

Department of the Treasury

System Name: Treasury Emergency Preparedness Information Program System.

Report Date: May 23, 1979.

Point-of-Contact: Mr. Floyd Sandlin, Office of Administrative Programs, Department of the Treasury, Washington, D.C. 20220.

Summary: The Office of the Secretary of the Treasury proposes to alter this existing system of records by computerizing the records. The system is used by "key Treasury officials" to assign personnel to Emergency Executive Teams.

Waiver Status: No action, as of May 29, 1979.

Velma N. Baldwin,

Assistant to the Director for Administration.

[FR Doc. 79-17959 Filed 6-7-79; 8:45 am]

BILLING CODE 3110-01-M

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

Reallocation of Specialty Steel Quotas

AGENCY: Office of the Special Representative for Trade Negotiations.

ACTION: Notice of Shortfall Reallocation for Specialty Steel Quotas.

SUMMARY: The Special Representative for Trade Negotiations hereby reallocates shortfalls of certain specialty steel quota categories as set forth below.

This action modifies certain quota quantities of the third restraint period, June 14, 1978–June 13, 1979. Quota quantities are reduced for certain suppliers who are not likely to export the quantity of steel which would fill the quotas assigned to them. The quota quantities for other suppliers who are able to supply additional steel are increased.

EFFECTIVE DATES: The reallocations which result in a reduction of a quota quantity shall be effective on June 8, 1979. Reallocations which increase a quota quantity shall be effective on June 11, 1979.

FOR FURTHER INFORMATION CONTACT: Karen Alleman, Office of the Special Representative for Trade Negotiations, Washington, D.C. 20506 (202–395–7203).

SUPPLEMENTARY INFORMATION: Pursuant to subparagraph (c) of headnote 2, subpart A, part 2 of the Appendix to the Tariff Schedules of the United States (TSUS) the Special Representative is authorized to modify the quota quantities to reallocate shortfalls as defined by subparagraph (c). I have determined that shortfalls are likely to occur in items 923.20 and 923.21, TSUS, in the third restraint period (June 14, 1978–June 13, 1979) as follows:

Item	Article	Supplier	Shortfall (in short tons)
923.20	Stainless Steel and Strip	Canada	1,174
923.21	Stainless Steel sheet Plate	Sweden	200

Accordingly, subpart A, part 2, of the Appendix to the TSUS is amended to substitute new quota quantities for the third restraint period (June 14, 1978–June 13, 1979) for articles provided for in items 923.20 and 923.21, TSUS, as set forth below:

A. For item 923.20 (stainless steel and strip):

1. By changing the quota quantity for the European Economic Community from "17,500" to "18,174";

2. By changing the quota quantity for Canada from "7,900" to "6,726";

3. By changing the quota quantity for Sweden from "7,600" to "7,850";

4. By changing the quota quantity for other countries entitled to the rate of duty in rates of duty column numbered 1 from "3,102.8365" to "3,352.8365";

B. For item 923.21 (stainless steel plate):

1. By changing the quota quantity for Sweden from "1,975" to "1,775";

2. By changing the quota quantity for other countries entitled to the rate of duty in rates of duty column numbered 1 from "800" to "1,000".

William B. Kelly, Jr.,

Chairman, Trade Policy Staff Committee.

[FR Doc. 79-17837 Filed 6-7-79; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-15894; File No. SR-NYSE-79-22]

New York Stock Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s (b)(1), as amended by Pub. L. No. 94–29, 16 (June 4, 1975), notice is hereby given that on May 15, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Exchange's Statement of the Terms of Substance of the Proposed Rule Change

The amendment provides for the election by the Board of Directors of the New York Stock Exchange, Inc. of more than one vice chairman.

Purpose of Proposed Rule Change

The ability for the Board of Directors of the New York Stock Exchange, Inc. to elect more than one vice chairman would give the Board maximum flexibility in selecting its officers. The vice chairman plays a substantial role in the decision making process at the Exchange and the ability to elect more than one vice chairman would permit broader representation in that decision making process.

Basis Under the Act

The proposed constitutional amendments are consistent with Section 6(b)(1) of the Act as follows:

(i) The proposed constitutional amendments relate to the organization of the Exchange and the capacity of the Exchange to be able to carry out the purposes of the Securities Exchange Act of 1934 as amended.

(ii) Inapplicable

(iii) Inapplicable

(iv) Inapplicable

(v) Inapplicable
(vi) Inapplicable
(vii) Inapplicable
(viii) Inapplicable

Comments Received From Members, Participants or Others

No comments were solicited or received with respect to the proposed constitutional amendments.

Burden on Competition

There will be no burden on competition.

Basis for Rule Change Being Put Into Effect Pursuant to Section 19)b)(3)

In accordance with Section 19(b)(3)(A)(iii) the proposed amendments take effect immediately, as they are concerned solely with the administration of the New York Stock Exchange, Inc.

At any time within sixty days of the date of filing of these proposed rule changes, the Commission summarily may abrogate the change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments covering the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal offices of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within 21 days of the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

Article III

The Board of Directors

Sec. 3. At its annual meeting the Board of Directors, by the affirmative vote of a majority of the Directors then in office, shall elect the Chairman of the Board and, from among its members [who are members or allied members of the Exchange], [the] *one or more* Vice [Chairman] *Chairmen* of the Board, *as the Board may deem appropriate* [each] *such Chairman and Vice Chairmen* to serve until the next annual meeting of the Board and until [his] *their* successors [has] *have* been elected and take[s] office. *At least one Vice Chairman shall be a Director who is a member or allied member of the Exchange.*

* * * * *

Sec. 9. In the event of the refusal or failure of the Chairman of the Board, [the] *any* Vice Chairman of the Board, any other officer of the Exchange, a Director of the Exchange, or a Trustee of the Gratuity Fund to discharge [his] *their* duties, or for any cause deemed sufficient by the Board of Directors, the Board may, by the affirmative vote of a majority of the entire Board, (1) remove any such officer or Director and declare [his] *that* office or position to be vacant, (2) remove any such Trustee who shall have been elected by the Board and declare [his] *that* office to be vacant, or (3) suspend any such Trustee who shall have been elected by the members of the Exchange from authority to act as such Trustee.

* * * * *

Article IV

Chairman of the Board of Directors

Sec. 3. Subject to the approval of the Board of Directors, the Chairman of the Board may appoint a President, one or more Vice Presidents, a Treasurer, a Secretary and such other officers of the Exchange, other than [the] *any* Vice Chairman of the Board, as [he] *the Chairman* from time to time may determine are required for the efficient management and operation of the Exchange and fix the duties, responsibilities, terms and conditions of employment of such officers and, subject to like approval, [he] *the Chairman* may terminate their employment at any time. All such officers shall be responsible to the Chairman of the Board for the proper performance of their duties.

* * * * *

Sec. 8. In case of the absence or inability to act of the Chairman of the Board, such other person as the Board of Directors may designate shall assume all the functions and discharge all the duties of the Chairman of the Board, other than those which shall devolve upon [the] *any* Vice Chairman of the Board as provided in Article V. In the absence of such designation by the Board, the President, if there be one, or, if there is no President or in [his] *the* absence or inability to act of *the President*, the senior available Vice President shall assume all such functions and discharge all such duties of the Chairman of the Board.

* * * * *

Article V

Vice Chairmen of the Board of Directors

Sec. 1. The Vice Chairman of the Board *and, if there are two or more Vice Chairmen of the Board, the Vice Chairman designated by the Board of Directors, shall* in case of the absence or inability to act of the Chairman of the Board, or in case of a vacancy in the office of Chairman of the Board, [shall] exercise the powers and discharge the duties of the Chairman of the Board in calling and presiding at meetings of the Board of Directors and of members of the Exchange. [The] *Any* Vice Chairman of the Board shall have such other functions and responsibilities as the Board of Directors may from time to time assign. [to him.]

Sec. 2. In case of the absence or inability to act of both the Chairman of the Board and the Vice Chairman of the Board *who is authorized to exercise the powers and discharge the duties of the Chairman of the Board as provided in Section 1 of this Article, the other Vice Chairman of the Board if there be one and if there be more than one other Vice Chairman, then the other Vice Chairmen in such order or priority as the Board may designate, and, if there is no other Vice Chairman of the Board,* the members of the Board of Directors who are members or allied members of the Exchange, and in such order of priority as the Board may designate, or, in the absence of such designation, the senior available member of the Board of Directors who is a member or allied member of the Exchange, shall exercise the powers and discharge the duties of the Chairman of the Board in calling and presiding at meetings of the Board of Directors and of members of the Exchange.

Sec. 3. In case a vacancy shall occur in the office of *any* Vice Chairman of the Board, the Board, by the affirmative vote of a majority of the Directors then in office, shall fill such vacancy by the election to such office of a Director who [is a member or allied member of the Exchange] *meets the qualifications of the Vice Chairman whose office has become vacant.*

* * * * *

Article VII

Elections—Exchange Meetings

Sec. 13. At any meeting of the members of the Exchange, if neither the Chairman of the Board nor [the] *any* Vice Chairman of the Board nor a member of the Board of Directors authorized to act for the Chairman of the Board under Section 2 of Article V shall be present, the members present, in person and by proxy, shall appoint a presiding officer for the meeting.

* * * * *

Article XVIII

Emergency Committee

Sec. 2. The Emergency Committee shall, at the inception of the Period of Emergency, be composed of the following five Directors who are available and able to meet together—the Chairman of the Board of Director, [the] *each* Vice Chairman of the Board [of Directors and] *then in office and, if there is one Vice Chairman then in office,* the three senior members of the Board of Directors who are members or allied members of the Exchange *and if there are two or more Vice Chairmen then in office, such number of the senior members of the Board who are members or allied members of the Exchange as are necessary to bring the Committee up to its full complement of five. . . .*

New language italicized.
Deleted language in brackets [ ].

[FR Doc. 79-17788 Filed 6-7-79; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-15828; File No. SR-Amex-79-5]

American Stock Exchange, Inc.; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on May 7, 1979 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Exchange's Statement of Terms of Substance of the Proposed Rule Change

Proposed amendments to Rules 234 and 235 provide that, subject to specified dollar limitations, the Exchange will assume responsibility for losses incurred by members resulting from certain errors or omissions of Exchange employees responsible for processing and handling orders transmitted through the Exchange's ITS facility.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

ITS is an electronic communications facility which enables a member physically located on the floor of one exchange to execute an order in another market center by means of an intermarket "commitment to trade".

ITS is a key element in the formulation of the national market system, and, as such, it is important that the system attract sufficient member participation to ensure its continued growth and success.

The purpose of the amendments is to enable the Exchange to assume liability to its members, subject to certain specified limits and conditions, for those losses incurred by members in their use of the ITS system which result from errors or omissions of Exchange employees responsible for operating ITS transmission stations.

The proposed rule is authorized under Article IV, Section 1(e) of the Exchange Constitution, which provides that the Exchange shall not be liable to any member for losses arising out of use of Exchange facilities for the conduct of business, except as may be specifically provided by rule with regard to Exchange facilities for the electronic transmission of orders.

The proposed rule change is designed to provide for an equitable allocation of losses arising out of members' use of ITS and thereby to encourage the use of this facility, which will tend to enhance competition and facilitate development of a national market system. Therefore, the proposed amendments are consistent with Section 6(b) of the Act.

Comments Received From Members, Participants or Others on Proposed Rule Change

No comments were solicited or received from members, participants or others on the proposed amendments.

Burden on Competition

The Amex has determined that no burden on competition will be imposed by the proposed rule change.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before July 2, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

May 15, 1979.

Exhibit A.—American Stock Exchange, Inc.

1. Rule 234 is redesignated as Rule 235, and is amended to read as follows:
Rule [234] *235* Transmission and Reception of System Messages;

Exchange Liability

(a) For the convenience of members on the Floor, the Exchange shall furnish employees ("ITS Clerks") who shall, on behalf of such members, send and receive through the System commitments and obligations to trade, pre-opening notifications and responses thereto. The Exchange shall not be liable for any loss, expense or damage resulting from or claimed to have resulted from the errors or omissions of its ITS Clerks *except in accordance with the provisions of and subject to the limitations set forth in this Rule 235.*

(b) All errors and omissions made by one or more ITS Clerks with respect to any single System trade or proposed System trade shall give rise to a single claim against the Exchange by the on-Floor member who instructed the ITS Clerk or Clerks who made the errors or omissions for all loss, cost, damage or expense (hereinafter called "loss") suffered by such member, or any other member organization for which he acted, as a result of such errors and omissions, but only to the extent and as provided in this Rule 235, and the Exchange shall be free to assert any defense to such claim it may have.

(c) *(i)* A member is responsible for communicating instructions to the ITS Clerk as to the message he desires to have transmitted through the System in a clear and accurate manner, on such forms as the Exchange may provide for that purpose. Such member (the "instructing member") shall be responsible for ensuring that his message is entered into the System correctly and for discovering and correcting any error or omission in entry of the message. *No claim shall arise as to errors or omissions which are found to have resulted from any failure by a member (whether or not such member is a party to the claim against the Exchange pursuant to this Rule 235) to place or cancel a message clearly and accurately with the ITS Clerk on a timely basis, in writing on such form or forms as the Exchange may provide for such purpose, and containing such information as may be required by the Exchange from time to time in connection with such message.*

Note.—*Italics* indicate material to be added; [Brackets] indicate material to be deleted.

(ii) It shall be the responsibility of the instructing member to keep abreast of the status of the message. The ITS Clerk shall not be responsible for keeping the instructing member advised as to the status of his message, except that the

ITS Clerk shall be responsible for responding as promptly as possible to the instructing member's inquiry concerning his message.

(iii) No claim shall be allowed if, in the opinion of the arbitration panel provided for in subparagraph (e) of this Rule 235, the member making such claim did not, promptly on discovery of the error or omission, take all proper steps to correct such error or omission and to establish and mitigate the loss resulting therefrom.

(d) Any claim for loss arising from errors or omissions of an ITS Clerk or Clerks shall be presented in writing to the Exchange no later than the opening of trading on the next business day following the day on which the error or omission giving rise to the loss occurred or within such longer period as the Exchange shall consider equitable under the circumstances.

(e) All disputed claims shall be referred for binding arbitration to an arbitration panel and the decision of a majority of the arbitrators selected to hear and determine the controversy shall be final and there shall be no appeal to the Board of Governors from the decision of such panel. The arbitration panel shall be composed of an odd number of panelists. Each of the parties to the dispute shall select one member or allied member to serve as panelist on the arbitration panel. The panelists so selected shall then select one or more additional panelist(s); provided that the additional panelist(s) so selected are either members or allied members of the Exchange, and provided further that no member of the arbitration panel may have any direct or indirect financial interest in the claim. In the event that the initial panelists selected by the parties to the dispute cannot agree on the selection of the additional panelist(s), such additional panelist(s) shall be appointed by a Floor Official, selected by lot from a roster of Floor officials having no direct or indirect financial interest in the claim. Each party to the dispute may make oral and written submissions and present witnesses to the arbitration panel. To the extent not inconsistent with the provisions of this Rule 235 the provisions governing arbitration contained in Article VIII of the Constitution and Rules 600 through 610 shall apply to proceedings under this subparagraph (e).

(f) The Exchange shall not be liable for any loss, resulting from or claimed to have resulted from the errors or omissions of its ITS Clerks *except with respect to claims against it under this Rule and to the extent provided in this subparagraph (f).*

(i) As to any single claim, the Exchange shall not be liable in excess of the larger of $10,000 or the amount of the recovery obtained by the Exchange as a result of the errors or omissions giving rise to such claim under any applicable insurance maintained by the Exchange; or

(ii) As to any number of single claims by any one or more members growing out of errors or omissions made by any one or more, or all, ITS Clerks, in the aggregate, on a single trading day, the Exchange shall not be liable in excess of the larger of $50,000 or the amount of the recovery obtained by the Exchange as a result of the errors or omissions giving rise to all such claims under any applicable insurance maintained by the Exchange.

(iii) As to any number of single claims by any one or more members growing out of errors or omissions made by any one or more, or all, ITS Clerks, in the aggregate, during a single calendar month, the Exchange shall not be liable in excess of the larger of $100,000 or the amount of the recovery obtained by the Exchange as a result of the errors or omissions giving rise to such claim under any applicable insurance maintained by the Exchange.

If the number of claims growing out of errors or omissions made by any one or more, or all, ITS Clerks, in the aggregate, during a single calendar month, cannot be fully satisfied because any single claim or all such claims in the aggregate exceed the maximum amount of liability provided for in subparagraph (iii) above, then such maximum amount shall be allocated among all such claims based upon the proportion that each such claim bears to the sum of all such claims. Thereafter, if all claims arising on a single trading day (reduced to reflect any allocation made in accordance with the preceding sentence) cannot be fully satisfied because any single claim or all such claims in the aggregate exceed the maximum amount of liability provided for in subparagraph (ii) above, then such maximum amount shall be allocated among all such claims based upon the proportion that each such claim bears to the sum of all such claims.

2. Rule 235 is redesignated Rule 234, and is amended to read as follows:

Rule [235] *234* Clearing of System Transactions

(a) As used in this Rule *234 and Rule 235* the term "System trade" shall mean any purchase or sale of a security which results from the acceptance of a commitment or obligation to trade received on the Floor through ITS or the Pre-Opening Application or from the acceptance in another market of a commitment or obligation to trade sent from the Floor through ITS or the Pre-Opening Application.

(b) Each System trade shall be reported on the clearing tape generated by the System at the end of each trading day. Such tape shall also identify one or more clearing members who will clear and settle each System trade. The *member on the Floor who instructed the ITS Clerk (defined in Rule 235) to issue or accept the commitment or obligation to trade which resulted in the System trade reported on the clearing tape* ("instructing member") [(as defined in Rule 234) for each System trade] shall *also* be identified in Exchange records.

(c) Clearing members shall report each day's System trades to the agency through which they clear, along with all other trade input for that trade date. The participating market center which supplied the contra side of the System trade shall be dsignated by the clearing member as the contra party to the trade.

(d)(1) Whenever any System trade as reported by the clearing tape continues to be unresolved at the close of the second business day following the trade date, notwithstanding the routine comparison procedures employed by the clearing agency to which such system trade was reported, the Exchange shall be notified of the uncompared System trade so as to be able to conduct appropriate inquires on the Floor. The instructing member shall cooperate with the Exchange in the course of its on-Floor inquires and shall comply with such procedures as the Exchange may from time to time prescribe in an attempt to identify the member or member organization who knows the uncompared System trade. If the on-Floor inquiries conducted by the Exchange fail to identify the member or member organization who knows the uncompared System trade, but the inquires confirm to the satisfaction of the Exchange that Exchange records were accurate in their identification of the instructing member, and that the instructing member did instruct the [Exchange employee referred to in Rule 234 (") ITS Clerk (")] to issue or accept the commitment or obligation to trade which resulted in the uncompared System trade as included on the clearing tape, then the instructing member shall accept and honor the trade or shall cause a member organization to do so in his behalf.

(2) If the on-Floor inquiries conducted by the Exchange identify to the satisfaction of the Exchange a member, other than the member indicated on Exchange records as the instructing member, as the person who instructed the ITS Clerk to issue or accept the commitment *or obligation* to trade which resulted in the uncompared System trade as included on the clearing tape, then such other member shall accept and honor the trade or shall cause a member organization to do so in his behalf.

(3) If the on-Floor inquiries conducted by the Exchange fail to identify the member or member organization who knows the uncompared System trade, and also fail to satisfy the Exchange as to the identify of the member who instructed the [Exchange employee] *ITS Clerk* to issue or accept the commitment or obligation to trade which resulted in the uncompared System trade as included on the clearing tape, then the Exchange shall, for its own account, accept and honor the uncompared System trade and may take such action in the market to close out or offset its position as it may deem appropriate.

(e) Whenever a clearing agency to which a System trade has been reported excludes such System trade from the clearance procedures conducted by such agency, either because such agency ceases to act (either with respect to transactions generally or as to a particular transaction) for a member or member organization, or because of the insolvency of such member or member organization, the Exchange may, but shall not be obligated to, assume and honor any one or more or all of such excluded System trades for the account of and on behalf of the member or member organization for which the clearing agency ceased to act or which is insolvent and the Exchange may take such action in the market to close out or offset its position as it may deem appropriate. In any such case, the Exchange shall have a claim against such member or member organization in the amount of the loss incurred by the Exchange as a result of such assumption of such excluded System trades. The Exchange may assert such claim against such member or member organization in any appropriate forum and, without limiting the generality of the foregoing, in connection with the transfer or any membership by such member, or by any member who is associated with such member organization, such claim shall be entitled to priority in payment as a sum due the Exchange under the provisions of Section 4(e) of Article IV of the Constitution.

[FR Doc. 79-17764 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 15882]

Bradford National Clearing Corp., et al.; Extension of Comment Period

May 30, 1979.

The Commission today announced that it has extended until July 27, 1979 the comment period on the two issues remanded for further study and explication by the United States Court of Appeals for the District of Columbia Circuit in the *Bradford* case. [1] Those issues were National Securities Clearing Corporation's ("NSCC") use of the pricing policy known as geographic price mutualization ("GPM") and NSCC's selection, without competitive bidding, of the Securities Industry Automation Corporation ("SIAC") as facilities manager of its consolidated system. The Commission had requested comment on those two issues in Securities Exchange Act Release No. 15640 (March 14, 1979).

In Release No. 15640, the Commission also included the text of a letter to Jack Nelson, President of NSCC, requesting (i) that NSCC submit written statements of its views and arguments concerning the two issues remanded by the court and (ii) that NSCC respond to certain other specific questions set forth in that letter relating to those two issues. The Commission also indicated that NSCC's two reports would be placed in a public file and that interested persons were encouraged to examine those reports and to comment on them. Finally, the release indicated that the comment period would be open for 45 days.[2]

On April 20, 1979, the Commission received a letter from NSCC containing a report on one of those issues, geographic price mutualization. That report was placed in Public File No. 600-15 and also issued as a Commission release. [3] Subsequent to that letter, NSCC orally requested that the Commission extend the time for submission by NSCC of its report on competitive bidding until June 15, 1979.

The Commission also has received a written request from the National Association of Securities Dealers, Inc. (the "NASD") and oral requests from Stock Clearing Corporation of Philadelphia ("SCCP"), Midwest Clearing Corporation ("MCC") and Bradford Securities Processing Services, Inc. ("BSPS") that the comment period on the two issues remanded in the *Bradford* litigation be extended.

The Commission believes it is important that interested persons have a meaningful opportunity to examine and comment upon NSCC's two reports. Accordingly, the Commission has extended the comment period on the two issues remanded in the *Bradford* litigation until July 27, 1979, which is approximately 30 days after the anticipated receipt and publication of NSCC's report on competitive bidding.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-17789 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21078; (70-6320)]

Central & South West Fuels, Inc. et al.; Proposed Indemnity Agreements With Insurance Company Concerning Fuels Subsidiary's Mining Activities

June 1, 1979.

In the matter of Central and South West Fuels, Inc., P.O. Box 10773, Golden, Colorado 80401; Central Power and Light Company, P.O. Box 2121, Corpus Christi, Texas 78403; Public Service Company of Oklahoma, 212 East 6th Street, Tulsa, Oklahoma 74119; Southwestern Electric Power Company, P.O. Box 21106, Shreveport, Louisiana 71156; and West Texas Utilities Company, P.O. Box 841, Abilene, Texas 79604.

Notice is hereby given that Central Power and Light Company ("CPL"), Public Service Company of Oklahoma ("PSO"), Southwestern Electric Power Company ("SWEPCO"), and West Texas Utilities Company ("WTU"), each an electric utility subsidiary of Central and South West Corporation, a registered holding company, together with Central and South West Fuels, Inc. ("CSWF"), a fuel subsidiary of CPL, PSO, SWEPCO and WTU, have filed with this Commission a declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 12(b) of the Act and Rules 45(b), 90 and 91 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

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[1] *Bradford National Clearing Corporation et al.* v. *Securities and Exchange Commission et al.*, 590 F. 2d 1085 (D.C. Cir. 1978).

[2] To date, the Commission has received written comments from The Depository Trust Company, Pershing & Company and Merrill Lynch, Pierce, Fenner & Smith, Inc.

[3] Securities Exchange Act Release No. 15760 (April 24, 1979).

By order dated August 2, 1978 (HCAR No. 20658), this Commission authorized the creation of CSWF, with CPL, PSO and SWEPCO each owning 30% of CSWF's Common stock and WTU owning the remaining 10%. CSWF conducts nonpetroleum fuel exploration, acquisition and development activities as agent for its owners pursuant to orders issued in File No. 70–6235. As part of this fuel exploration and development program, CSWF contemplates engaging in mining activity in a number of States which require, as a prerequisite to the commencement of such activity, the posting by CSWF of a bond indemnifying the State against potential losses due to CSWF's failure to restore any mined property to its original condition. To avoid the unnecessary expense involved in obtaining a separate bond for each property it plans to develop, CSWF plans to procure a master bond which will cover mining operations in multiple locations.

CSWF has negotiated the terms of such a master bond with St. Paul Fire and Marine Insurance Company ("St. Paul"). As a condition to its acting as surety thereon, St. Paul requires that each of CSWF's owners indemnify it against any default on CSWF's obligations under the bond. Such indemnification would be in proportion to each company's ownership interest in CSWF. CPL, PSO, SWEPCO and WTU seek authorization to enter into separate general agreements indemnifying St. Paul for 30%, 30%, 30% and 10%, respectively, of the total of any liability incurred by St. Paul in its position as surety for CSWF under the master bond.

The authorization given in connection with the fuel exploration, acquisition and development activities in File No. 70–6235 provides that the costs incurred by CSWF in the development of a given property be apportioned among its owners not on the basis of their ownership interest in CSWF, but rather on the basis of their ownership interests in that one property. Accordingly, should the owners be called upon to fulfill their obligations under the proposed general indemnity agreements with St. Paul (under which agreements their liability would be proportionate to their ownership interests in CSWF), CPL, PSO, SWEPCO and WTU would reimburse each other as necessary to render each company's loss in connection with a particular mining operation proportionate to its ownership interest in that mining operation.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $2,700, including legal fees of $500. It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than June 28, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79–17790 Filed 6–7–79; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 15892; (SR–CBOE–79–3)]

Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

June 1, 1979.

On April 16, 1979, the Chicago Board Options Exchange, Incorporated filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b–4 thereunder, copies of a proposed rule change which establishes the basis for the determination of maximum bid/ask differentials for market makers as the last preceding bid for an option contract, rather than the last sale.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34–15754, April 23, 1979) and by publication in the **Federal Register** (44 FR 25547, May 1, 1979). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79–17791 Filed 6–7–79; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 21072 (70–6166)]

Connecticut Yankee Atomic Power Co.; Post-Effective Amendment Regarding Issuance and Sale of Short-Term Notes to Banks and a Dealer in Commercial Paper and Exception From Competitive Bidding

June 1, 1979.

In the matter of Connecticut Yankee Atomic Power Company, P.O. Box 270, Hartford, Connecticut 06101.

NOTICE IS HEREBY GIVEN that Connecticut Yankee Atomic Power Company ("Connecticut Yankee"), an electric utility subsidiary company of Northeast Utilities and New England Electric System, both of which are registered holding companies, has filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder regarding the following proposed transactions. All

interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

By order in this proceeding dated June 28, 1978 (HCAR No. 20607), Connecticut Yankee was authorized, during the period ending June 30, 1979, to issue and sell short-term notes to banks and commercial paper to a commercial paper dealer in an aggregate amount at any time outstanding not to exceed $30,000,000. The notes and commercial paper were to be issued and renewed from time to time as funds were required prior to June 30, 1979, provided no such notes or commercial paper would nature after March 31, 1981.

Connecticut Yankee now proposes to (a) extend the period for the short-term borrowings to June 30, 1980, (b) provide for the latest maturity for the borrowings to be March 31, 1981, and (c) revise the list of banks which will participate in the company's short-term borrowing program. The aggregate amount of short-term borrowings to be outstanding at any one time, whether issued to banks or to a dealer in commercial paper, will not exceed $30,000,000.

As of March 31, 1979, Connecticut Yankee's outstanding short-term debt was $17,525,000, all of which was represented by commercial paper. The short-term debt at June 30, 1979, is estimated to be $13,000,000. It is stated that the funds to be derived from the issuance and sale of the bank notes and commercial paper will be applied by the company (i) to repay $13,000,000 of commercial paper outstanding at June 30, 1979, (ii) to provide funds for construction, and (iii) to provide a portion of the funds required for the purchase of additional nuclear fuel through June 30, 1980. The company's estimated construction and nuclear fuel programs for 1979 are $8,900,000 and $25,000,000, respectively, and for 1980 are $16,000,000 and $18,700,000, respectively.

The bank notes to be issued by Connecticut Yankee will each be dated the date of issue, will have maximum naturity dates of nine months, and will bear interest at the prime rate. The bank notes will be issued no later than June 30, 1980, and will be subject to prepayment at any time at the company's option without premium. Connecticut Yankee proposes to make such borrowings from The Chase Manhattan Bank, New York, N.Y., and Bankers Trust Company, New York, N.Y., in a maximum principal amount at any one time outstanding from each bank of $15,000,000 and $5,000,000, respectively. Compensating balance requirements will be 5% of the credit line plus 15% on any funds borrowed. Connecticut Yankee calculates that the effective cost of such borrowings will be 14.69% per annum based on a prime interest rate of 11¾%. No closing costs are required in connection with the proposed bank borrowings.

The commercial paper will be issued in the form of short-term promissory notes in denominations of not less than $50,000 and not more than $1,000,000, of varying maturities, with no maturity more than 270 days after the date of issue, and will not be repayable prior to maturity. The commercial paper will be sold directly to a commercial paper dealer at the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and of the particular maturity. No commercial paper shall be issued having a maturity of more than 90 days at an effective interest cost to the company in excess of the effective bank interest rate at which the company could obtain loans from banks in an amount at least equal to the principal amount of such commercial paper. No commission or fee will be payable in connection with the issuance and sale of the commercial paper. The purchasing dealer, as principal, will reoffer the commercial paper to institutional investors at a discount of not more than ⅛ of 1% per annum less than the prevailing discount rate to Connecticut Yankee.

The commercial paper will be reoffered to not more than 200 identified and designated customers in a list (nonpublic) prepared for Connecticut Yankee in advance by the purchasing dealer. No additions will be made to this customer list. It is anticipated that the commercial paper will be held by customers to maturity, but if such customers desire to resell prior to maturity, the purchasing dealer, pursuant to a verbal repurchase agreement, will repurchase the commercial paper and reoffer the same to others in the group of 200 customers.

Expenses to be incurred in connection with the proposed transactions are estimated at $500. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Connecticut Yankee has requested that the issuance and sale of commercial paper be excepted from the competitive bidding requirements of Rule 50 pursuant to paragraph (a)(5)(B) thereof on the ground that it is not practicable to invite competitive bids for commercial paper and that current rates for commercial paper of prime borrowers such as Connecticut Yankee are published daily in financial publications. Connecticut Yankee has also requested that time for filing certificates of notification pursuant to Rule 24 be extended to allow for filing on a quarterly basis.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 26, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact of law raised by the post-effective amendment which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-17792 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21073; (70-6225)]

Louisiana Power & Light Co.; Post-Effective Amendment Regarding Increase of Short-Term Borrowing

June 1, 1979.

In the matter of Louisiana Power & Light Co., 142 Delaronde Street, New Orleans, Louisiana 70174.

Notice is hereby given that Louisiana Power and Light Company ("Louisiana"), a wholly-owned subsidiary of Middle South Utilties, Inc., a registered holding company, has filed

with this Commission a first post-effective amendment to the declaration in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transactions.

By orders in this proceeding dated December 15, 1978 and January 5, 1979 (HCAR Nos. 20832 and 20873), Louisiana was authorized to issue and sell, from time to time until December 31, 1979, notes to banks and commercial paper to a dealer in an aggregate principal amount of all such borrowings at any one time outstanding not exceeding $120,000,000, the presently effective loan commitments from such banks terminating on December 31, 1979, with loans thereunder maturing not later than December 31, 1979, and proposing further that no bank loans under any extensions or renewals of such loan commitments and no sales of Louisiana's commercial paper would be made after June 30, 1980 or having a maturity date after June 30, 1980 without further authorization from the Commission on the basis of a further filing by Louisiana. As of May 18, 1979, the aggregate principal amount of short-term borrowings by means of bank loans and the sale of its commercial paper which Louisiana has outstanding, as authorized by this proceeding, is $93,007,500.

Louisiana now proposes that the maximum aggregate principal amount of all such borrowings that it is permitted to have outstanding at any one time through December 31, 1979, be increased to $130,000,000; and in such connection it has obtained from a new and additional participant, Jefferson Bank and Trust Company, Metairie, Louisiana, a loan commitment terminating on and providing for loan maturities not later than December 31, 1979, under which the maximum principal amount at any one time outstanding which may be borrowed by Louisiana from such new participant during such period is $1,000,000, and has obtained increases in the presently effective loan commitments from three of the presently participating banks, whereby the respective maximum principal amounts at any one time outstanding which may be borrowed by Louisiana from these three banks has been increased as follows: The Chase Manhattan Bank, increased from $54,000,000 to $59,000,000, Irving Trust Company, increased from $12,000,000 to $15,000,000, and Manufacturers Hanover Trust Company, increased from $9,000,000 to $10,000,000.

All of the other statements previously set forth in the amende declaration in this proceeding with respect to the Louisiana banks and the loans to be made therefrom and the non-Louisiana banks and the loans to be made therefrom, remain unchanged and apply, respectively, to the Louisiana bank and to the three non-Louisiana banks mentioned above.

Louisiana's construction program contemplates expenditures of approximately $268,600,000 in 1979. Louisiana estimates that it will require approximately $145,000,000 of additional funds from external sources in order to finance the balance of this 1979 construction program. As part of its financing program, Louisiana is presently contemplating the sale in July of 1979 of not to exceed $60,000,000 in aggregate per values of preferred stock. However, in the event that this preferred stock sale is not effected and completed before the end of July, Louisiana believes that it will become necesary for it to make and have outstanding by or before the end of July 1979 short term borrowings of the nature aforesaid aggregating more than the $120,000,000 principal amount presently authorized in this proceeding.

It is stated that no special or separate expenses are anticipated in connection with the proposed transactions and that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than June 29, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the post-effective amendment which he desires to controvert; or he may request that he be notified in the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-17793 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 15888; SR-MSE-79-6]

Midwest Stock Exchange, Inc.; Order Approving Proposed Rule Change

May 31, 1979

In the matter of Midwest Stock Exchange, Inc., 120 South LaSalle Street, Chicago, Illinois 60603.

On April 2, 1979, the Midwest Stock Exchange, Inc. (the "MSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which amended Article XX, Rule 25 of the MSE Rules, and added a new Rule 13 to Article IX of the MSE Rules. The purpose of the proposal is to conform the MSE rules to the requirements of Section 11(a)(1) of the Act. On March 26, 1979, the MSE filed with the Commission Amendment No. 1 to SR-MSE-79-6. As amended, the proposal would require that MSE members clearly announce to the trading crowd that they are representing orders to be executed pursuant to Section 11(a)(1)(G) of the Act and Rule 11al-1(T) thereunder, and that such orders yield priority, parity, and precedence to any order which is not for the account of a member, member organization or associated person thereof. Additionally, orders to be executed pursuant to Section 11(a)(1)(G) of the Act and Rule 11al-1(T) thereunder must be marked in such a manner as to alert the executing member that the order is subject to those provisions.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission release (Securities Exchange Act Release No. 34-15690, April 2, 1979) and by publication in the **Federal Register** (44 FR 21102, April 9, 1979). No comments

were received with respect to the proposed rule filing.[1]

The Commission finds that the proposed rule change is consistent with the requirements of the act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Sections 6 and 11(a), and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-17794 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 15889; SR-MSE-79-9]

Midwest Stock Exchange, Inc.; Order Approving Proposal Rule Change

May 31, 1979.

In the matter of Midwest Stock Exchange, Inc., 120 South La Salle Street, Chicago, Illinois 60603.

On April 2, 1979, the Midwest Stock Exchange, Inc. (the "MSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed change to Article XXI, Rule 19 of the MSE Rules. On April 13, 1979 the MSE filed with the Commission Amendment No. 1 to SR-MSE-79-9. As amended, the proposal would require that members effecting on-floor proprietary transactions pursuant to Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder, yield priority, parity and precedence to all orders originating off the floor, other than off floor orders to be executed pursuant to Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-15745, April 18, 1979) and by publication in the **Federal Register** (44 FR 24670, April 26, 1979). No comments were received with respect to the proposed rule filing.[1]

[1] On April 30, 1979, the MSE filed with the Commission Amendment No. 2 to SR-MSE-79-6, indicating final approval of the proposal by the MSE Board of Governors on April 19, 1979.

[1] On April 30, 1979, the MSE filed with the Commission Amendment No. 2 to SR-MSE-79-6, indicating final approval of the proposal by the MSE Board of Governors on April 19, 1979.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Sections 6 and 11(a), and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-17795 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-15893; File No. SR-MSE-79-14]

Midwest Stock Exchange, Inc.; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975) (the "Act"), notice is hereby given that on May 29, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

Article XXXI, Rules 6 and 10 of the Midwest Stock Exchange, Incorporated (the "MSE") are hereby amended as follows:

Additions Italicized—[Deletions Bracketed]

ARTICLE XXXI

Dealer Required to Purcahse All Odd Lots Offered

Rule 6. In any security in which he or it is registered as such, an odd-lot dealer shall be required to purchase all odd lots offered to him or it by any member or member organization of the Exchange and he or it shall be required to sell to any member or member organization of the Exchange any odd lots bid for by such member or member organization.

[A market order shall be executed at the next proper full-lot transaction, plus if a sale or minus if a purchase, the designated odd-lot differential, except where an order exceeds a full lot or a multiple of a full lot, such excess portion shall be filled on the execution of the first full lot.

Stop orders to buy shall become market orders when a round-lot transaction takes place at or above the stop price. The order shall be filled at the price of the next transaction plus the designated odd-lot differential.

Stop orders to sell shall become market orders when a round lot transaction takes place at or below the stop price. The order shall be filled at the price of the next transaction minus the odd-lot differential.

Odd-lot executions shall not be made on "seller" or "cash" trades. Odd-lot "seller" orders shall be executed on the regular designated differential up to an including "seller 7 days"; for longer periods, an additional one-quarter (¼) of a point shall be charged by the odd-lot dealer.]

ARTICLE XXXI

Execution of Odd Lot Orders

Rule 10. (a) No change in text.

(b) No change in text.

(c) General. A market order shall be executed at the proper full lot transaction, plus or minus a differential, if one is to be charged, except where an order exceeds a full lot or a multiple of a full lot, such excess portion shall be filled on the execution of the first full lot.

(i) Stop orders to buy shall become market orders when a round-lot transaction takes place at or above the stop price. The order shall be filled at the price of the next transaction plus an odd-lot differential if one is to be charged.

(ii) Stop orders to sell shall become market orders when a round-lot transaction takes place at or below the stop price. The order shall be filled at the price of the next transaction minus an odd-lot differential if one is to be charged.

(iii) Odd-lot transactions shall not be made on "seller" or "cash" trades.

(iv) Buy Limited Orders. The effective transaction for a limited order to buy shall be the first round-lot transaction which is below the specified limit by the amount of any differential or by a greater amount. The order shall be filled at the price of the effective transaction, plus any differential.

(v) Sell Limited Orders, Marked "Long". The effective transaction for a limited order to sell marked "long" shall be the first round-lot transaction which is above the specified limit by the amount of any differential or by a greater amount. The order shall be filled at the price of the effective transaction, minus any differential.

Statement of Basis and Purpose

The MSE states that the purposes of the proposed changes in Rule 6 of Article XXXI are to delete duplicate provisions also reflected in Rule 10 of Article XXXI, and to delete the provision of Rule 6 of Article XXXI that was revised by the previous adoption of the provisions of paragraph (b) of Rule 10 of Article XXXI.

Further, the MSE states that the purpose of the additions to Rule 10 of Article XXXI is to reflect the fact that odd-lost limit orders must be filled at a price that is better than the limited price at least by the amount of any differential charged.

The basis under the Act for this proposed rule change is Section 6(b)(5) which requires, among other things, that the rules of the exchange be designed to promote just and equitable principles of trade.

Comments Received From Members, Participants or Others on the Proposed Rule Change

The MSE has neither solicited nor recieved any comments on this proposed rule change.

Burden on Competition

The MSE believes that no burdens will be imposed on competition as a consequence of the effectiveness of this proposed rule change.

The foregoing proposed rule change has become effective, pursuant to Section 19(b)(3) of the Act. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be avaialble for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before June 25, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

June 1, 1979.

[FR Doc. 79-17785 Fied 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 15883; File No. SR-NASD-78-16]

National Association of Securities Dealers, Inc., Order Approving Proposed Rule Change

May 30, 1979.

In the matter of National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006.

On October 11, 1978, the National Association of Securities Dealers, Inc. (the "NASD") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, copies of a proposal to amend Schedule C under Article I, Section 2 of its By-Laws to revise its requirements for registration and qualification of principals associated with member broker-dealer firms.[1] In particular, the proposal would create several new categories of "limited principal" registration [2] and would establish specialized qualification examinations for certain of those categories to be administered in connection with a pilot computerized examination program.

Notice of the filing, together with its terms of substance, was given by publication of a Commission Release (Securities Exchange Act Release No. 15283, October 27, 1978) and by publication in the **Federal Register** (43 FR 51154, November 2, 1978). On December 27, 1978, the initial proposal was revised to redefine one limited principal category, to incorporate into this proposal certain provisions governing registered options principals, and to add certain administrative and technical provisions. Notice of the filing of this amendment was given by publication of a Commission Release (Securities Exchange Act Release No. 15498, January 16, 1979) and by publication in the **Federal Register** (44 FR 5036, January 24, 1979). Although public comments were solicited on the proposed rule change as initially submitted and as amended in December, none were received. A final clarifying amendment to the proposal was submitted on May 8, 1979.

Currently, Schedule C of the NASD By-Laws specifies three categories of principal registration: Principal, Registered Options Principal, and Financial Principal. The proposed amendment to Schedule C would retain these categories, with the modifications discussed below, and would create two totally new limited principal categories: Limited Principal—Investment Company and Variable Contracts Products, and Limited Principal—Direct Participation Programs.

Under the proposed rule change, the existing "Principal" category would be recaptioned "General Securities Principal." Qualification requirements would remain the same, and all existing Principals would be redesignated General Securities Principals. The "Registered Options Principal" qualification requirements similarly would be unchanged, except for certain technical provisions.[3]

A category of "Limited Principal—Financial and Operations," which defines in detail the types of responsibilities requiring principal registration, would replace the existing Financial Principal category. Persons seeking qualification in this category would be required only to complete a specialized financial and operations examination and would not also need to qualify as General Securities Principals. As a result, unlike existing Financial Principals, persons qualifying only in the new limited category could not function as principals beyond the financial and operations areas.

The new "Limited Principal—Investment Company and Variable Contracts Products" category would permit, but would not require, persons whose supervisory activities are limited solely to transactions involving these products and insurance premium refunding programs to qualify as limited principals by passing a specialized examination relating primarily to these areas of business. Similarly, under the new "Limited Principal—Direct Participation Programs" category, persons could take a specialized examination and qualify as limited

[1] A "principal" is an individual actively engaged in the management of a member firm's investment banking or securities business, including the supervision, solicitation or conduct of business, or training of persons associated with the firm.

[2] A "limited prinicipal" is an individual whose supervisory activities would be restricted to certain specialized types of business and who registers to function as a principal in these areas alone. A limited principal could qualify as such by passing an examination dealing primarily with the specialized area of business.

[3] The provisions in Schedule C of the NASD By-Laws for Registered Options Principals became effective on February 1, 1979, as part of the NASD's rules to regulate options activities of member firms. *See* Securities Exchange Act Release No. 15332 (November 15, 1978).

principals if their activities are restricted solely to such programs.[4]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations applicable to registered national securities associations, and in particular, with the requirements of Sections 15(b) and 15A of the Act and the rules and regulations thereunder.[5] The Commission believes the activities of limited principals in the proposed categories are sufficiently specialized to make it unnecessary for them to qualify as principals in unrelated areas of the securities industry. By providing for the registration of limited principals, the Commission believes that the NASD may provide greater opportunities for persons to register as brokers and dealers and become members of the NASD or to become associated with a member firm. In addition, the Commission believes the NASD proposal accomplishes these results in a manner which is not designed to permit unfair discrimination between brokers and dealers and which will assist the NASD in enforcing compliance by its members, and persons associated with its members, with the provisions of the Act, rules thereunder, and the rules of the NASD.

The proposed rule change also would amend the following provisions in Schedule C, which are incidental to the creation of categories of limited principal registration.

Schedule C currently requires firms applying for NASD membership to have two persons qualified to become registered as principals. The purpose of this provision is to ensure that a firm losing one principal can continue to have another associated person qualified to manage it. To eliminate any ambiguities arising from the creation of categories of limited principal registration, this provision has been amended to require applicants to have two persons qualified to be registered as principals "with respect to each aspect of the applicant's investment banking and securities business." Exceptions to this general provision would permit a firm to have only one qualified Limited Principal—Financial and Operations,[6] and if the firm engages in option transactions, one qualified Registered Options Principal. These exceptions reflect current requirements in Schedule C.

Schedule C currently provides that a registered representative whose duties are changed so as to require registration as a principal will be allowed "a reasonable period of time" to pass a qualification examination for principals. The proposed rule change, as amended, would require a registered representative to pass the appropriate principal qualification examination within 90 calendar days following the change in his duties. Similarly, an individual new to the industry or new to a firm would have 90 days to qualify as a principal, after first satisfying any necessary prerequisites. If an applicant fails the examination or does not take it within the 90 days, a new application form and examination fee would be required.[7] The Commission believes this provision is reasonable as a means of assuring the timely qualification of individuals as principals and as an aid to efficient administration of the qualification examinations.

In addition to the examination fee, the proposed rule change would provide for the assessment of a $10 "service charge" as to each individual who, having made an appointment for an examination administered by computer, failed timely to appear for the examination or cancel the appointment. This provision would simply pass through a charge assessed against the NASD for persons failing to appear for scheduled examinations.

Copies of the proposed rule change, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, which were filed with the Commission, and of all written communications relating to the proposed rule change as amended between the Commission and any person were considered and are available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. (File No. SR-NASD-78-16).[8]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-17796 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

[4] The Commission has also approved a proposed rule change (SR-NASD-79-3) by the NASD containing the plans and specifications for the two new categories of limited principal registration: Limited Principal—Investment Company and Variable Contracts Products, and Limited Principal—Direct Participation Programs. The NASD intends to administer these limited principal examinations through its pilot computerized examination system. Securities Exchange Act Release No. 15884 (May 30, 1979).

[5] The Commission currently is considering issues relating to the qualification of principals in connection with its review of proposed Securities Exchange Act Rule 15b7-1, which was published for comment in Securities Exchange Act Release No. 13679 (June 27, 1977), 43 FR 34338 (July 5, 1977). This rule, as proposed, includes the same categories of limited principals approved today by the Commission as part of the NASD s rule change proposal.

[6] To codify an existing policy of the NASD, another provision of the proposed rule change would provide that firms exempt from certain provisions of Securities Exchange Act Rule 15c3-1 could, upon written request to the NASD, also be exempted from the requirement to have a Limited Principal—Financial and Operations.

[7] As originally filed, the proposed rule change, by its terms, applied only to registered representatives seeking elevation to principal status as a result of changed duties. The NASD filed an amendment on May 8, 1979, to clarify that the provision applied to all applicants for principal status.

[8] The Commission also considered public comments on proposed Securities Exchange Act Rule 15b7-1 (File No. S7-709) and public information submitted inconnection with a pending rule change proposal of the NASD to amend Schedule C of its By-Laws (File No. SR-NASD-75-6). Both of these proposals included the limited principal categories being approved by the Commission.

[Release No. 15884; SR—NASD—79—3]

National Association of Securities Dealers, Inc.; Filing of Proposed Rule Change and Order Approving Proposed Rule Change

May 30, 1979.

In the matter of National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, DC 20006.

On May 4, 1979, the National Association of Securities Dealers, Inc. (the "NASD") filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act"), and Rule 19b-4 thereunder, copies of a proposal to adopt plans and specifications[1] for two limited principal examinations which were pending approval by the Commission in a related proposed rule change (File No. SR-NASD-78-16).[2] That proposed rule change would, among other things, authorize the establishment of the categories of Limited Principal—Investment Company and Variable Contracts Products, and Limited Principal—Direct Participation Programs. According to the NASD, the purpose of the proposed rule change is

[1] The filing received from the NASD included the following materials: copies of two letters from Frank J. McAuliffe, Director of the NASD's Qualifications Department, to Janet R. Zimmer, Chief of the Branch of Over-the-Counter Regulation of the Division of Market Regulation, dated May 4, 1979, concerning the two proposed limited principal examinations; study outlines prepared by the NASD for each of the limited principal examinations; specifications describing the examinations' area and sectional weightings; and relevant portions of an agreement between the NASD and Control Data Corporation, the organization providing the computer facilities which wil be used by the NASD for the administration of the qualification examinations.

[2] Proposed NASD Rule SR-NASD-78-16 was also today approved by the Commission. See Securities Exchange Act Release No. 15883 (May 30, 1979).

to provide question banks for those limited principal examinations.

Interested persons are invited to submit written data, views and arguments concerning the submission within 30 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, DC 20549. Reference should be made to File No. SR–NASD–79–3.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change before the thirtieth day after the publication of notice of filing thereof. The proposed rule and change imposes no additional restrictions on brokers and dealers or their associated persons. Further, by enabling such persons, to the extent their activities are limited solely to transactions involving securities in a limited category, to take a limited principal examination in lieu of the General Securities Principal examination, the proposed rule change may relieve a substantive regulatory burden. The proposed limited principal examinations will be administered by the NASD through a pilot automated test administration system. Permitting these new limited principal examinations to become effective without delay will permit further experimentation with this pilot system. The Commission believes that the public interest would be served by the NASD's prompt implementation of the proposed new limited principal qualification examinations.

It therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.[3]

[3] Although the individual questions which comprise the question banks for the two proposed limited principal qualification examinations have not been specifically approved by the Commission, the NASD has represented that the question banks, and each examination drawn from the question banks, will conform to the plans and specifications herein approved. The NASD has further represented that it will update the question banks periodically in accordance with the outlines and procedures specified in its submission and that the question banks, and each examination drawn from the question banks, will continue to conform to the plans and specifications herein approved notwithstanding the revision or replacement of individual questions. New or revised questions will not necessarily be provided to the Commission for its review prior to their use. The NASD could not, however, revise the plans and specifications for either of the proposed limited principal qualification examinations without prior Commission approval.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-17797 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-15890; File No. SR-NASD-79-4]

National Association of Securities Dealers, Inc.; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94–29, 16 (June 4, 1975), notice is hereby given that on May 14, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

The NASD's Statment of the Terms of Substance of the Proposed Rule Change

Test of Proposed Rule Change

The following is the full text of the proposed amendment to Paragraph B of Part II of Schedule D under Article XVI of the By-Laws of the National Association of Securities Dealers, Inc. (Deleted material is bracketed, proposed new material is in italics.)

[2. A new issue shall be eligible to be an authorized security on the day that its registration statement is effective with the Securities and Exchange Commission provided that the total assets of the issuer shall reach or are expected to reach as a result of the offering, $1,000,000 and provided that all other applicable criteria contained herein are met. An authorization under this paragraph 2. shall automatically terminate 120 days after the last day of the issuer's fiscal year during which the registration statement became effective.]

2. Notwithstanding the provisions of Section B. 1. above, a new issue shall be eligible to be an authorized security, if:

a. i. the issue is being publicly offered pursuant to a registration statement declared effective by the Securities and Exchange Commission, or

ii. the issue is being publicly offered pursuant to an exemption from registration under Regulation A of Securities Act of 1933 and the issuer has provided the Corporation with financial statements which comply with the applicable minimum requirements for registration under the Securities Act of 1933 and has undertaken to file with the Corporation the same quarterly and annual reports required to be filed by issuers registered with the Securities and Exchange Commission; and

b. as a result of the offering, the issuer expects to comply with the criteria for securities not yet authorized contained in Section B.3. below.

c. This authorization shall terminate 120 days after the last day of the issuer's fiscal year during which the offering was made.

The NASD's Statement on the Purpose of the Proposed Rule Change

The proposed change to Schedule D will permit the inclusion in the NASDAQ System of certain companies engaged in offerings exempt from registration under the Securities Act of 1933 pursuant to Regulation A. The proposed amendment would permit inclusion of such companies on the condition that they provide the Association with certified financial statements consistent with those that would be required had the company registered with the Commission pursuant to the Securities Act of 1933. In addition, the proposed rule requires these companies to undertake to provide the NASD with quarterly and annual financial statements equivalent to those required to be filed by issuers registered with the Commission.

The NASD's Statment on the Basis Under the Act for the Proposed Rule Change

Section 15A(b)(11) provides that an association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that the rules of the Association contain provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange, which may be distributed or published by any member or other persons associated with a member, and the persons to whom such quotations may be supplied. Such rules relating to quotations shall be designed to produce fair and informative quotations to prevent fictitious or misleading quotations and to promote orderly

procedures for collecting, distributing and publishing quotations.

The NASD's Statement on the Comments Received From Members, Participants or Others on the Proposed Rule Change

Article XVI of the NASD By-Laws provides that the Board of Governors may amend Schedule D without recourse to the membership. Comments of the membership were neither solicited nor received.

The NASD's Statement on the Burden on Competition

Since the proposed rule change would permit access to the NASDAQ System by companies that have not previously been authorized securities, it is believed that the proposed rule change will enhance competition among dealers in these securities and provide better markets for investors in these securities. Any burdens on competition caused by the reporting requirements contained in the rule change are consistent with the purposes of the Act in that these reports shall insure that issuers continue to comply with the NASDAQ qualification requirements.

On or before July 16, 1979, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before June 25, 1979.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

June 1, 1979.

[FR Doc. 79-17786 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

[Release 34-15891; File No. SR-NASD-79-5]

National Association of Securities Dealers, Inc.; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975) notice is hereby given that on May 14, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

The NASD's Statement of the Terms of Substance of the Proposed Rule Change

Text of Proposed Rule Change

The following is the full text of proposed Section 37 of Article III, of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. Brackets [ ] indicate deletions; italics indicate new material.

RULES OF FAIR PRACTICE

Article III

Section 1

(The Interpretation of the Board of Governors entitled "Advertising Interpretation (Advertising, Sales Literature, Market Letters and Recruiting of Sales Personnel)" is deleted in its entirety.)

* * * * *

Section 33

(Section 23 of Appendix E to Article III, Section 33 of the Rules of Fair Practice, entitled "Advertisements and Sales Literature" is deleted in its entirety.)

* * * * *

Section 37

Communications With the Public

(a) Definitions. (1) Advertisement—For purposes of this Section 37 and any interpretation thereof, the term "advertisement" means material published, or designed for use in, a newspaper, magazine or other periodical, radio, television, telephone or tape recording videotape display, signs or billboards, motion pictures, telephone directories (other than routine listings), or other public media.

(2) Sales Literature—For purposes of this Section 37 and any interpretation thereof, sales literature means any notice, circular, report (including research reports), newsletter (including market letters), form letter, or reprint or excerpt of the foregoing or of any published article, or any other promotional literature designed for use with the public, which material does not meet the foregoing definition of "advertisement." For purposes of this subsection, a form letter shall include one of a series of identical letters, or individually typed or prepared letters which contain essentially identical statements or repeat the same basic theme and which are sent to 25 or more persons.

(b) Approval and Recordkeeping. (1) Each item of advertising and sales literature shall be approved by signature or initial, prior to use, by a registered principal (or his designee) of the member. In the case of advertising or sales literature pertaining to options, the approval must be by the senior registered options principal or his designee.

(2) A separate file of all advertisements and sales literature, including the name(s) of the person(s) who prepared them and/or approved their use shall be maintained for a period of three years from the date of each use.

(c) Filing Requirements and Review Procedures. (1) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) shall be filed with the Association's Advertising Department by any member preparing it, or who has such material prepared, within three business days after first use or publication. Dealers need not file material prepared and filed by sponsors or underwriters unless a change in content or format is contemplated. Filing of such material in advance of use is permitted and encouraged but is not required.

(2) Advertisements pertaining to options shall be submitted to the Association's Advertising Department for review at least ten days prior to use (or such shorter period as the Department may allow in exceptional circumstances), unless such advertisement is submitted to and approved by a registered securities exchange or other regulatory body having substantially the same standards with respect to options advertising as set forth in this Section 37.

(3)(A) Each member of the Association which has not previously filed advertisements with the Association (or with a registered securities exchange having standards comparable to those contained in this Section 37) shall file its initial advertisement with the Association's Advertising Department at least ten days prior to use and shall continue to file its advertisements at least ten days prior to use for a period of one year.

(B) Each member which, on the effective date of this Section 37, had been filing advertisements with the Association (or with a registered securities exchange having standards comparable to those contained in this Section 37) for a period of less than one year shall continue to file its advertisements, at least ten days prior to use, until the completion of one year from the date the first advertisement was filed with the Association or such exchange.

(C) Except for advertisements related to direct participation programs or to investment company securities, members subject to the requirements of subsection (a) or (b) above may, in lieu of filing with the Association, file advertisements on the same basis, and for the same time periods specified in those subsections, with any registered securities exchange having standards comparable to those contained in this Section 37.

(4) Notwithstanding the foregoing provisions, any District Business Conduct Committee of the Association, upon review of a member's advertising and/or sales literature, and after determining that the member has departed and there is a reasonable likelihood that the member will again depart from the standards of this Section 37, may require that such member file all advertising and/or sales literature, or the portion of such member's material which is related to any specific types or classes of securities or services, with the Association's Advertising Department and/or the District Committee, at least ten days prior to use.

The Committee shall notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. The requirement shall not exceed one year, however, and shall not take effect until 30 days after the member receives the written notice, during which time the member may request a hearing before the District Business Conduct Committee, and any such hearing shall be held in reasonable conformity with the hearing and appeal procedures of the Code of Procedure for Handling Trade Practice Complaints.

(5) In addition to the foregoing requirements, every member's advertising and sales literature shall be subject to a routine spot-check procedure. Upon written request from the Association's Advertising Department, each member shall promptly submit the material requested. Members will not be required to submit material under this procedure which has been previously submitted pursuant to one of the foregoing requirements and the procedure will not be applied to members who have been, within the preceding calendar year, subjected to a spot-check by a registered securities exchange or other self-regulatory organization utilizing comparable procedures.

Explanation: While the procedures may vary with experience, it is the Association's current intention to request a one month's sample of material from each member annually.

(6) The following types of material are excluded from the foregoing filing requirements and spot-check procedures:

(A) advertisements or sales literature solely related to changes in a member's name, personnel, location, ownership, offices, business structure, officers or partners, telephone or teletype numbers, or concerning a merger with, or acquisition by, another member;

(B) advertisements or sales literature which do not more than identify the NASDAQ symbol of the member and/or of a security in which the member is a NASDAQ registered market maker;

(C) advertisements or sales literature which do not more than identify the member and/or offer a specific security at a stated price;

(D) material sent to branch offices or other internal material that is not distributed to the public;

(E) prospectuses, preliminary prospectuses, offering circulars and similar documents used in connection with an offering of securities which has been registered or filed with the Securities and Exchange Commission or any state, or which is exempt from such registration;

(F) advertisements prepared in accordance with Section 2(10)(b) of the Securities Act of 1933, as amended, or any rule thereunder, such as Rule 134, unless such advertisements are related to options, direct participation programs or securities issued by registered investment companies.

(d) Standards Applicable to Communications with the Public. All member communications with the public shall be based on principles of fair dealing and good faith and should provide a sound basis for evaluating the facts in regard to any particular security or securities or type of security, industry discussed, or service offered. No material fact or qualification may be omitted if the omission, in the light of the context of the material presented, would cause the advertising or sales literature to be misleading.

Exaggerated, unwarranted or misleading statements or claims are prohibited in all public communications of members. In preparing such literature, members must bear in mind that inherent in investment are the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield, and no member shall, directly or indirectly, publish, circulate or distribute any public communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

When sponsoring or participating in a seminar, forum, radio or television interview, or when otherwise engaged in public appearances or speaking activities which may not constitute advertisements, members and persons associated with members shall nevertheless follow the standards of this subsection 37(d).

In addition to the foregoing general standard, the following specific standards apply:

(1) Necessary Data: Advertisements and sales literature shall contain the name of the member, the person or firm preparing the material, if other than the member, and the date on which it is first published, circulated or distributed (except, that in advertisements, only the name of the member need be stated; and except also that in any so-called "blind" advertisement used for recruiting personnel, the name of the member may be omitted). If the information in the material is not current, this fact should be stated.

(2) Recommendations: In making a recommendation, whether or not labeled as such, a member must have a reasonable basis for the recommendation and must disclose the price at the time the recommendation is made, as well as any of the following situations which are applicable:

(A) that the member usually makes a market in the securities being recommended;

(B) that the member and/or its officers or partners own options, rights or warrants to purchase any of the securities of the issuer whose securities

are recommended, unless the extent of such ownership in nominal;

(C) that that member was manager or co-manager of a public offering of any securities of the recommended issuer within the last 3 years.

The member shall also provide, or offer to furnish upon request, available investment information supporting the recommendations.

A member may use material referring to past recommendations if it sets forth all recommendations as to the same type, kind, grade, or classification of securities made by a member within the last year. Longer periods of years may be covered if they are consecutive and include the most recent year. Such material must also name each security recommended, and give the date and nature of each recommendation (e.g., whether to buy or sell), the price at the time of the recommendation, the price at which or the price range within which the recommendation was to be acted upon, and the fact that the period was one of generally rising markets, if such was the case.

Also permitted is material which does not make any specific recomendation but which offers to furnish a list of all recommendations made by a member within the past year or over longer periods of consecutive years, including the most recent year, if this list contains all the information specified in the previous paragraph.

(3) Claims and Opinions: Communications with the public must not contain promises of specific results, exaggerated or unwarranted claims or unwarranted superlatives, opinions for which there is no reasonable basis, or forecasts of future events which are unwarranted, or which are not clearly labeled as forecasts. Nor may references to past specific recommendations state or imply that the recommendations were or would have been profitable to any person and that they are indicative of the general quality of a member's recommendations.

(4) Testimonials: Testimonial material concerning the member or concerning any advice, analysis, report or other investment or related service rendered by the member must make clear that such experience is not necessarily indicative of future performance or results obtained by others. Testimonials must also disclose that compensation has been paid to the maker directly or indirectly, if applicable, and if they imply an experienced or specialized opinion, the qualifications of the maker of the testimonial should be given.

(5) Offers of Free Service: Any statement to the effect that any report, analysis, or other service will be furnished free or without any charge must not be made unless such report, analysis or other service actually is or will be furnished entirely free an without condition or obligation.

(6) Claims for Research Facilities: No claim or implication may be made for research or other facilities beyond those which the member actually possese or has reasonable capacity to provide.

(7) Hedge Clauses: No cautionary statements or caveats, often called hedge clauses, may be used if they are misleading or are inconsistent with the content of the material.

(8) Recruiting Advertising: Advertisements in connection with the recruitment of sales personnel must not contain exaggerated or unwarranted claims or statements about opportunities in the investment banking or securities business and should not refer to specific earnings figures or ranges which are not reasonable under the circumstances.

(9) Periodic Investment Plans: Communications with the public should not discuss or portray any type of continuous or periodic investment plan without disclosing that such a plan does not assure a profit and does not protect against loss indeclining markets. In addition, if the material deals specifically with the principles of dollar-cost-averaging, it should point out that since such a plan involves continuous investment in securities regardless of fluctuating price levels of such securities, the investor should consider his financial ability to continue his purchases through periods of low price levels.

(10) References to Regulatory Organizations: Communications with the public shall not make any reference to membership in the Association or to registration or regulation of the securities being offered, or of the underwriter, sponsor, or any member or associated person, which reference could imply endorsement or approval by the Association or any federal or state regulatory body.

Reference to membership in the Association or Securities Investors Protection Corporation shall comply with all applicable By-Laws and Rules pertaining thereto.

(11) Identification of Sources: Statistical tables, charts, graphs or other illustrations used by members in advertising or sales literature should disclose the source of the information if not prepared by the member.

(e) Standards Applicable to Investment Company-Related Communications

In addition to the provisions of Paragraph D of this Section, members' public communications concerning investment company securities shall conform to all applicable rules of the SEC, as in effect at the time the material is used.

(f) Standards Applicable to Options-Related Communications

In addition to the provisions of Paragraph D of this Section, members' public communications concerning options shall conform to the following provisions:

(1) As there may be special risks attendant to some options transactions and certain options transactions involve complex investment strategies, these factors should be reflected in any communication which includes any discussion of the uses or advantages of options. Therefore, any statement referring to the opportunities or advantages presented by options should be balanced by a statement of the corresponding risks. The risk statement should reflect the same degree of specificity as the statement of opportunities, and board generalities should be avoided. Thus, a statement such as, "by purchasing options, an investor has an opportunity to earn profits while limiting his risk of loss," should be balanced by a statement such as, "Of course, an options investor may lose the entire amount committed to options in a relatively short period of time."

(2) It should not be suggested that speculative option strategies are suitable for most investors, or for small investors.

(3) Options issued by the Options Clearing Corporation (OCC Options) are securities registered under the Securities Act of 1933, and they are the subject of a currently effective registration statement. Section 5 of the Securities Act prohibits the use of any written material or radio or television advertisements (or other material constituting a "prospectus" as defined in the Act) relating to a registered security unless certain conditions are met. With respect to communications concerning OCC Options, the following rules shall apply:

(A) except as provided in paragraph (b) below, no written material with respect to OCC Options may be sent to any person unless prior to or at the same time with the written material a current OCC Options Prospectus is sent to such person.

(B) advertisements may be used (and copies of the advertisements may be sent to persons who have not received a Prospectus) if the material meets the requirements of Rule 134 under the Securities Act of 1933, as that Rule has been interpreted as applying to OCC Options. Under Rule 134, advertisements are limited to general descriptions of the security being offered and of its issuer. In the case of OCC Options, advertisements under this Rule must have the following characteristics: (i) The advertisement should state the name and address of the person from whom a current OCC Options Prospectus may be obtained (this would usually be the member sponsoring the advertisement); (ii) The text of the advertisement may contain a brief description of OCC options, including a statement that the issuer of every OCC Option is the Options Clearing Corporation. The text may also contain a brief description of the general attributes and method of operation of the Options Clearing Corporation and/or a description of any of the options traded in different markets, including a discussion of how the price of an option is determined: (iii) The advertisement may include any statement or legend required by any state law or administrative authority; (iv) Advertising designs and devices including borders, scrolls, arrows, pointers, multiple combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics may be used, provided such material is not misleading.

* * * * *

Paragraph 5001 of the NASD Manual is amended as follows:

Investment Company Securities

Introduction

This section of the Association Manual is devoted to standards governing preparation and use of sales literature and advertising about investment company securities, together with some of the important ethical requirements relating specifically to sales practices of underwriters and dealers in offering such securities to the public.

It must be read in conjunction with and as supplemental to Sections 1, 2, 10, 19(a), 25, 26, [and] 27, and *37* of Article III of the Rules of Fair Practice.

[Members should feel free to submit proposed sales literature or questions regarding its preparation and use to the Advertising Department of the National Association of Securities Dealers, Inc., in Washington, D.C.]

Sales Literature

[All of paragraph 5002 is deleted in order to remove all reference to the Commission's Statement of Policy which has been withdrawn and to remove the reference to the sales literature filing requirement which has been incorporated in § 37.]

The NASD's Statement on the Purpose of Proposed Rule Change

The Association has reviewed the action taken by the New York Stock Exchange to eliminate its requirements for prior approval of member advertising, and the American Stock Exchange's similar action with respect to advertising for all securities other than options. After careful consideration, the Board of Governors decided to eliminate its general after-the-fact requirement and adopt a new spot-check procedure similar to that used by some of the exchanges. In addition, however, the Board believed that the separate requirements for investment company material should be retained and that new advance filing requirements should be instituted in certain limited areas. The Board has also taken this opportunity to codify some of its existing interpretations into rule form, and to consolidate various requirements into one place which are now contained in different sections of the NASD Manual. The rule also applies advance filing requirements to all new members for one year and, in addition, District Business Conduct Committees are specifically authorized to direct a member to file advertising or sales literature in advance for a period not exceeding one year. This latter provision is designed to provide District Committees with added flexibility to deal with situations where a member appears to be having difficulty in designing advertising or sales literature in accordance with applicable standards, but the Committee does not feel that the situation warrants formal disciplinary proceedings. The procedure would not displace the Formal Complaint procedure or the Admission, Waiver and Consent Procedure and the District Committees could still utilize these procedures where appropriate. A member who desired further consideration of the requirement imposed by the District Committee could request a hearing on the matter.

Both of these latter two new provisions result from the Association's belief that, except for the special product areas mentioned, difficulties experienced with the content of members' advertising tend to be concentrated in a relatively small number of firms. Often the members experiencing difficulties are new members or members who have not advertised in the past. Occasionally, however, problems are experienced by other than new members, due to a change in personnel or other factors. These two new provisions are intended to focus the Association's regulatory effort on the likely problem areas, while lifting a substantial compliance burden from the majority of members. This consideration has resulted in an expansion of the types of material exempted from our filing requirements and spot-check procedures. The Association will, of course, continue to review and comment on members' material which is voluntarily submitted.

The NASD's Statement on the Basis Under the Act for Proposed Rule Change

The NASD has the authority to enact this new rule under § 15A(b)(6) of the Securities Exchange Act of 1934, as amended (15 USC § 78o–3(b)(6)), and Article VII of the Association's By-Laws.

the Association believes that this new rule will better effecutate the role of the NASD in regulating and monitoring its members' advertising and sales literature. Such monitoring is necessary "to remove impediments to and perfect the mechansim of a free and open market . . . and, in general, to protect investors and the public interest. . . ." Article VII of the NASD's By-Laws is the Association's enabling provision which allows it to adopt necessary rules to carry out its purposes.

The NASDs Statement on the Comments Received From Members, Participants, or Others on Proposed Rule Change

Comments were received from members of the NASD and other industry organizations, both in the initial request for comments on the appropriate course the Association should take with respect to existing filing requirements (March 31, 1977), and on the proposed rule (October 6, 1977).

As to the initial for comments, one response suggested replacing the mandatory filing requirement with a spot check enforcement mechanism. Two commentators suggested that the NASD should refrain from any filing requirement that creates dual requirements on members of exchanges.

The Securities Industry Association agreed with pre-publication filing requirements concerning investment company securities. It also suggested

that the NASD coordinate its rules with those of the NYSE and AMEX.

As to the request for comments on the actual proposed rule, one commentator suggested that "the whole section be abolished and replaced with the statement that no false or misleading advertising may be done, and that spot checks will be made to control the use of advertising." The same comment suggested that "if the heavy verbiage is retained, then . . . surely there should be a difference in advertising individual issues over mutal funds and variable annuities . . . " Another commentator suggested that certain subsections of the rule were unclear as written and suggested clearer language.

The SIA submitted a letter enthusiastically endorsing most of the proposed changes. Another comment was in "wholehearted agreement" with the changes. Another commentator suggested that the definition of public or non-public, and "exempt from registration" should be clarified. He also made certain suggestions as to the standards applicable to advertising and sales literature.

Finally, another comment agreed with the proposed changes, except it disagreed "with the Association's apparent position that, solely with respect to registered investment company products, increased procedures are necessary and no reduction in compliance is warranted." The letter then addressed particular areas of the rule wherein it believed an unnecessary requirement was placed on members selling investment company securities.

The proposed rule reflects most of the favorable comments on the elimination of the after-the-fact filing requirement and the adoption of a new spot-check procedure similar to that used by some of the exchanges. However, the rule does retain separate requirements for investment company material. As to those comments regarding the clarity of particular sections of the rule, they have been incorporated herein where deemed appropriate.

The NASD's Statment on the Burden on Competition

The purpose of the proposed rule is to better enable the Association to regulate all of its members' advertising. The substitution of a spot check for filing requirements eliminates the immediate filing burden previously imposed on most members. The retention of the filing requirements for investment company advertising and options advertising, the one-year advance filing requirement for new members, and those directed to do so by a District Business Conduct Committee, do impose a burden on certain members. These special requirements reflect the experience of the NASD that difficulties experienced with the content of members' advertising tend to be concentrated in a relatively small number of firms. Thus, these new provisions are intended to focus the Association's regulatory effort on the likely problem areas, while lifting a substantial compliance burden from the majority of members. The Association believes that the proposed rule change does not impose burdens on competition not necessary or appropriate in furtherance of the purposes of the Act.

On or before July 16, 1979, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available for inspection ad copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to the file number referenced in the caption above and should be submitted on or before July 9, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

June 1, 1979.

[FR Doc. 79-17787 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21070; 70-6317]

New England Power Co., et al.; Proposed Contribution by Holding Company to Subsidiary

May 31, 1979.

In the matter of New England Power Company, New England Electric System, 20 Turnpike Road, Westborough, Mass. 01581.

Notice is hereby given that New England Electric System ("NEES"), a registered holding company, and New England Power Company ("NEPCO"), one of NEES' electric utility subsidiary companies, have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 9(a), 10 and 12 of the Act and Rules 42(a) and 45 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

NEES proposes to make a capital contribution to NEPCO of $20,000,000. NEPCO will use such contribution towards the payment of a like amount of its short-term promissory notes issued to pay for capitalizable expenditures, or to reimburse the treasury therefor. As of March 31, 1979, NEPCO has no outstanding short-term indebtedness, but it is anticipated that at the time of the proposed capital contribution, such indebtedness will aggregate $37,000,000.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $2,500, including $500 of incidental services to be performed at cost by New England Power Service Company, an affiliate of NEES. It is stated that no state commission, and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than June 26, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission,

Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-17798 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21074; 70617]

Northeast Utilities, Western Massachusetts Electric Co., et al.; Post-Effective Amendment Regarding Issuance and Sale of Short-Term Notes to Banks and Commercial Paper to Dealer, Exception From Competitive Bidding, and Capital Contributions and Open Account Advances by Holding Company to Subsidiaries

June 1, 1979.

In the matter of Northeast Utilities, Western Massachusetts Electric Company, 174 Brush Hill Avenue, West Springfield, Massachusetts 01089; The Connecticut Light and Power Company, The Hartford Electric Light Company, Selden Street, Berlin, Connecticut 06037; Holyoke Water Power Company, One Canal Street, Holyoke, Massachusetts.

Notice is hereby given that Northeast Utilities ("NU"), a registered holding company, and The Connecticut Light and Power Company ("CL&P"), The Hartford Electric Light Company ("HELCO"), Western Massachusetts Electric Company ("WMECO"), and Holyoke Water Power Company ("HWP"), public-utility subsidiary companies of NU, have filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to Sections 6(a), 7, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50(a)(5) promulgated thereunder regarding the following proposed transactions. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transactions.

By order in this proceeding dated June 26, 1978 (HCAR No. 20601), the declarants were authorized, during the period ending June 30, 1979, to issue and sell short-term notes to banks and commercial paper to a commercial paper dealer in aggregate amounts outstanding at any one time not to exceed $15,000,000 in the case of NU and in the cases of CL&P, HELCO, WMECO, and HWP, $150,000,000, $35,000,000, $40,000,000, and $6,000,000, respectively. The notes and commercial paper were to be issued and renewed from time to time as funds were required prior to June 30, 1979, provided no such notes or commercial paper would mature after March 31, 1980.

It is now proposed (a) to extend the period for the short-term borrowings to June 30, 1980, (b) to provide for the latest maturity date for the borrowings to be March 31, 1981, and (c) to revise the maximum amount of bank notes and commercial paper outstanding at any one time to $20,000,000 in the case of NU and $150,000,000, $70,000,000, $55,000,000, and $6,000,000, respectively, in the case of CL&P, HELCO, WMECO, and HWP. CL&P, HELCO, and WMECO each have authorization from the holders of their respective preferred shares to issue securities representing unsecured indebtedness up to a maximum of 20% of their respective capitalizations not later than March 31, 1984, in the case of CL&P and HELCO and February 10, 1984, in the case of WMECO.

The outstanding short-term debt of the applicants as of March 31, 1979, the amount anticipated to be outstanding as of June 30, 1979, and the maximum aggregate amount of such short-term borrowings to be outstanding at any one time at or prior to June 30, 1980, are as follows:

[In thousands]

	Commercial paper (3/31/79)	Bank notes (3/31/79)	Total (3/31/79)	Anticipated, 6/30/79	Proposed maximum outstanding at any one time 7/1/79-6/30/80
NU	0	0	0	$1,000	$20,000
CL&P	$18,950	$500	$19,450	55,000	150,000
HELCO	5,000	0	5,000	23,000	70,000
WMECO	14,250	600	14,850	32,000	55,000
HWP	0	0	0	1,000	6,000

The notes issued to banks by the declarants will each be dated the date of issue, will have maximum maturity dates of nine months with right of renewal, will bear interest at the prime rate or at the prime rate plus a fraction thereof, will be issued no later than June 30, 1980, and will be subject to prepayment at any time at the applicant's option without premium. The companies have credit lines with a number of banks subject in some cases to commitment fees and/or compensating balance requirements. The bank credit lines expire at various times in 1979 and 1980 and their continued availability is subject to continuing review by the banks involved. The effective rate of interest on the bank note ranges from 13.18% to 14.69% per annum, assuming a prime rate of 11¾%.

Commercial paper will be issued by the declarants in the form of short-term promissory notes in denominations of not less than $50,000 and not more than $1,000,000, of varying maturities, with no maturity more than 270 days after the date of issue, and will not be repayable prior to maturity. The commercial paper will be sold directly to a dealer in commercial paper at the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and of the particular maturity. No commercial paper shall be issued having a maturity of more than 90 days at an effective interest cost to the declarant in excess of the effective bank interest rate at which the company could obtain loans from banks in an amount at least equal to the principal amount of such commercial paper. No commission or fee will be payable in connection with the issuance and sale of the commercial paper. The purchasing dealer, as principal, will reoffer the commercial paper to institutional

investors at a discount of not more than ⅛ of 1% per annum less than the prevailing discount rate to the applicant.

The commercial paper will be reoffered to not more than 200 identified and designated customers in a list (nonpublic) prepared for each applicant in advance by the purchasing dealer. No additions will be made to this customer list. It is anticipated that the commercial paper will be held by customers to maturity, but if such customers desire to resell prior to maturity, the purchasing dealer, pursuant to a verbal repurchase agreement, will repurchase the commercial paper and reoffer the same to others in the group of 200 customers.

The new funds to be derived by NU from the issuance and sale of the bank notes and the commercial paper will be applied during the period from July 1, 1979, to June 30, 1980, (1) to make a capital contribution and/or open account advances to WMECO and HWP in an amount not to exceed $10,000,000 and $3,000,000, respectively, (2) to make open account advances to The Quinnehtuk Company, a wholly-owned subsidiary of NU, in an amount not to exceed in the aggregate $1,000,000, and (3) to supply funds as needed to other subsidiary companies as heretofore or hereafter authorized by this Commission. All capital contributions to subsidiaries will be credited to their capital surplus accounts. The funds to be derived by CL&P, HELCO, WMECO, and HWP from the issuance and sale of the bank notes and the commercial paper will be applied, together with other funds available to these companies, to finance their respective 1979 and 1980 construction and nuclear fuel programs.

Declarants request exception from the competitive bidding requirements of Rule 50 for the proposed issue and sale of the commercial paper pursuant to paragraph (a)(5) thereof on the grounds that it is not practicable to invite competitive bids for commercial paper and that current rates for commercial paper for borrowers such as declarants are published daily in financial publications. Declarants also request authority to file certificates of notification under Rule 24 with respect to the issuance and sale of commercial paper within 30 days after the end of each calendar quarter.

It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions. There are no fees or expenses other than the filing fee paid to this Commission, to be incurred in connection with the proposed transactions except charges for incidental services estimated at $500 in the case of each declarant to be performed at cost by Northeast Utilities Service Company, the system service company.

Notice is further given that any interested person may, not later than June 26, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the post-effective amendment which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated addresses, and proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

Georgel A. Fitzsimmons,

Secretary.

[FR Doc. 79-17799 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21077; Administrative Proceeding, File No. 3-5749; 70-6111; 31-606]

Northern States Power Co.; Notice of and Order for Hearing Regarding Acquisition by Exempt Holding Company of Common Stock of Nonassociate Company

June 1, 1979.

In the matter of Northern States Power Co., 414 Nicollet Mall, Minneapolis, Minnesota 55401.

On January 19, 1978, Northern States Power Company ("Northern States"), filed an application with this Commission pursuant to Section 10 of the Public Utility Holding Company Act of 1935 ("Act") regarding a proposed 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 nonassociate public-utility company.

Northern States, a Minnesota corporation, is a utility company and also a holding company. Northern States is presently an exempt holding company pursuant to an order of this Commission under Section 3(a)(2) of the Act. *In the Matter of Northern States Power Company,* 36 S.E.C. 1 (1954).

Northern States is engaged predominantly in the generation, transmission, distribution and sale of electricity in the States of Minnesota, North Dakota and South Dakota and in the distribution and sale at retail of natural gas in the States of Minnesota and North Dakota. Its wholly-owned subsidiary which is incorporated in the State of Wisconsin and which has the same name as the parent, Northern States Power Company ("Northern States Wisconsin"), provides similar utility services in the State of Wisconsin. In addition Northern States has two wholly-owned nonutility subsidiaries, Cormorant Corporation, a Montana corporation, which holds interests in fuel resources, and United Power and Land Company, a Minnesota corporation, which holds nonutility properties of a relatively nominal value. Together, Northern States and Northern States Wisconsin furnish electric service in a 40,000 square mile service area to approximately 990,000 customers in 631 communities, and gas service to 248,000 customers in 78 communities located in the same general territory. Their consolidated assets at December 31, 1978, were $2.4 billion and utility revenues were $980 million.

Lake Superior, a Wisconsin corporation, is engaged primarily in the generation, transmission, distribution and sale of electric energy and in the distribution and sale at retail of natural gas in northern Wisconsin and the Upper Peninsula of Michigan. Lake Superior serves a territory with a population of about 125,000 in an 8,600 square mile area. It furnishes electric service to 37,000 customers in 15 counties in Wisconsin and Michigan, gas service to about 8,000 customers in 22 communities in the same area, and water service in one community in Wisconsin. Its assets at December 31, 1978, were $54.4 million and revenues were $31.6 million.

Lake Superior and Northern States, along with 21 other electric utilities, including two public power districts, eight cooperatives and one Federal

system are parties to the Mid-Continent Area Power Pool Agreement ("MAPP Agreement"). Parties to the MAPP Agreement may exchange power and energy for various purposes, including improved operations, emergency and economy. The MAPP Agreement was filed with the Federal Power Commission, now the Federal Energy Regulatory Commission, in July 1972.

At the present time, Lake Superior's major source of bulk electric power supply, in addition to its own generation facilities, is Minnesota Power and Light Company, under an agreement which expires in November 1980. Lake Superior is contemplating the construction of transmission facilities for additional interconnections with major bulk transmission facilities in northern and central Wisconsin. Lake Superior also has plans to participate in certain jointly-owned generation units. One such undertaking involves the agreement dated June 30, 1977, as subsequently amended, (the "Tyrone Agreement") between Lake Superior, Northern States Wisconsin, Cooperative Power Association ("CPA"), a Minnesota corporation, and Dairyland Power Cooperative, a Wisconsin corporation with a service area which includes portions of Illinois, (collectively, the "Tyrone Participants") to construct a jointly-owned 1100 MW nuclear power plant (the "Tyrone Project") in Dunn County, Wisconsin. The Tyrone Agreement provides, among other things, for the joint ownership, licensing, construction and operation of the Tyrone Project. On June 14, 1978, the Tyrone Participants filed an application with the Public Service Commission of Wisconsin ("Wisconsin Commission") seeking a certificate of convenience and necessity to commence construction of the Tyrone Project. On March 6, 1979, the Wisconsin Commission issued an order denying the application, finding that applicants failed to show the need for the facility. On April 5, 1979, the Tyrone Participants filed an appeal of this order in the Eau Claire County Circuit Court. That appeal is still pending.

Northern States and Lake Superior have entered into an agreement dated December 29, 1977, (the "Acquisition Agreement") which provides for an offer to exchange 0.48 shares of Northern States common stock, for each share of Lake Superior common stock. Under the terms of the Acquisition Agreement, the exchange offer will be made during an initial period of approximately 30 days, subject to extension by Northern States for an additional period or periods. Northern States will not extend the exchange offer beyond 60 days from the initial date without approval of the Commission. The deposits of shares of Lake Superior Common Stock will be irrevocable during the initial period and any authorized extension or extensions thereof. Northern States will declare the exchange offer effective when shares of Lake Superior Common Stock equal to 80% of all of the voting securities of all Lake Superior stock outstanding are tendered prior to the expiration of the offer period and if all other conditions of the proposed exchange have been met. The offer is also subject to other conditions, among them, a favorable tax ruling and all necessary regulatory approvals.

Northern States recognizes that if it does not acquire all of the outstanding common stock of Lake Superior the resulting publicly-held minority interest in such stock will create an unduly or unnecessarily complicated corporate structure or an inequitable distribution of voting power, contrary to the standards of Section 11(b)(2) of the Act. If less than all shares of Lake Superior common stock are acquired pursuant to the exchange offer, Northern States will register with the Commission in accordance with Section 5(a) of the Act for the limited purpose of promptly submitting a plan to eliminate the minority publicly-held shares of Lake Superior common stock.

Northern States represents that it intends to operate Lake Superior as a separate unit, and that its present intention is to retain all personnel currently employed by Lake Superior. Northern States expects that substantially all officers and all but one of the directors of Lake Superior will remain in their current positions. The application states that the acquisition of Lake Superior will permit improved coordination of planning, construction, operation and maintenance of electric facilities and a reduction in administrative costs associated with generation and transmission facilities.

The proposed acquisition of Lake Superior was duly noticed on May 1, 1978, (HCAR No. 20527). In response to the notice of filing, a joint request for hearing was filed by Citizens for Tomorrow, Inc. ("Citizens") and Northern Thunder, Inc. ("Thunder"), nonprofit Wisconsin corporations organized for the purposes of protecting the environment and opposing construction of the Tyrone Project. Subsequent to the expiration of the comment period specified in the notice, Badger Safe Energy Alliance, Inc. ("Badger") filed its "intervention" in the joint request for hearing previously filed by Citizens and Thunder. Badger is also a nonprofit Wisconsin corporation organized for the purposes of protecting the environment, promoting safe alternatives to nuclear energy, opposing construction of Tyrone and the high voltage transmission lines associated therewith and opposing radioactive waste storage facilities. Among the members of Thunder and Badger are stockholders of Northern States and Lake Superior and consumers of Lake Superior, Northern States and Northern States Wisconsin.

Citizens, Thunder and Badger ("Petitioners") request that Northern States' application to acquire the common stock of Lake Superior be denied and that Northern States' exemption under Section 3(a)(2) of the Act be terminated regardless of whether we approve or disapprove the proposed acquisition. In opposing the proposed acquisition, Petitioners allege failure to comply with the requirements of Section 10 of the Act stating, among other things, that the acquisition would tend toward interlocking relations and concentration of control of public utility companies; would unduly complicate the holding company system and would be detrimental to the interests of investors and consumers and to the proper functioning of the system; would not be based upon a reasonable or fair consideration; would tend toward the uneconomical and inefficient over extension of the system; and would not comply with applicable State law. Petitioners also assert that the proposed acquisition will tend to reduce competition in bulk electric power supply to several small privately-owned utilities in northwest Wisconsin and several municipally-owned utilities in northwest Wisconsin and the Upper Peninsula of Michigan, and that the acquisition will have other anticompetitive effects and will violate the Sherman and Clayton Acts. In addition, Petitioners allege that the application before us cannot be approved without the preparation by the Commission of an Environmental Impact Statement ("EIS").

In objecting to Northern States' exemption, Petitioners state that upon acquisition of Lake Superior, Northern States will no longer meet the requirements for exemption under Section 3(a)(2) because the Northern States system would extend into Michigan, a State which is not, contiguous to Minnesota, the State in which Northern States is incorporated; and because the system would become more complex and far-flung, less economically sound and less susceptible

to effective State regulation. They conclude the exemption would no longer be in the interests of the public, investors or consumers. They contend that even if the proposed acquisition is not approved, Northern States' present exemption should be revoked because continuation is detrimental to the interests of the public, investors, or consumers. They also assert that the MAPP and Tyrone Agreements create a holding company relationship between Northern States and other parties to those agreements and that the resulting enlarged system does not qualify for the exemption provided by the Act.

It appears that an evidentiary hearing will be required to consider certain of the objections raised by the Petitioners. But that hearing must be limited to matters which are both relevant to the issues raised under the Act by the proposed acquisition, and whose resolution involves material factual disputes. During the hearing, the following matters and questions should be considered:

(1) Whether the proposed acquisition will serve the public interest by tending towards the economical and efficient development of an integrated public utility system;

(2) Whether the proposed acquisition is detrimental to the carrying out of the provisions of Section 11;

(3) Whether the proposed acquisition will tend towards the concentration of control of public-utility companies, of a kind or to an extent detrimental to the public interest or the interest of investors or consumers;

(4) Whether the proposed acquisition will be based upon a consideration which is reasonable and bears a fair relation to the utility assets underlying the securities to be acquired;

(5) Whether the proposed acquisition will unduly complicate the captial structure of the system or will be detrimental to the public interest or the interest of investors or consumers;

(6) If the acquisition is authorized, whether Northern States continues to be entitled to exemption under Section 3(a)(2) of the Act and what conditions, if any, would be required;

(7) Whether there has been compliance with applicable state laws.

The Nuclear Regulatory Commission and the Wisconsin Public Service Commission have primary jurisdiction over the proposed Tyrone plant. If authorized by those Commissions, its construction by the parties to the Tyrone Agreement is not conditioned on the stock acquisition which is the subject of this proceeding. Evidence as to the Tyrone plant shall not be introduced or considered except that the Tyrone Agreement itself, as an existing contractual relationship, shall be included in the record. With respect to the plans of Northern States, Lake Superior and other parties to the MAPP Agreement for construction or interconnections, the hearing shall be limited to the examination of such plans insofar as they relate to the issues as heretofore specified. It shall not extend to alternatives for supplying regional energy requirements and the environmental impact of these plans. After the hearing, briefs that will or may be filed may be directed, in accordance with the Rules of Practice, to the issues specified above as well as to the relevance of any matter raised by petitioners in their requests for a hearing but excluded from hearing as directed by this order.

It appearing to the Commission that it is appropriate in the public interest and in the interest of investors and consumers that a public hearing he held with respect to the proposed transactions; that all interested persons be afforded an opportunity to be heard; and that the pending proposal should not be authorized or approved except pursuant to further order of the Commission.

It is ordered, accordingly, that a hearing be held at a time and place to be designated by further order in accordance with the Rules of Practice.

It is further ordered that jurisdiction be, and hereby is, reserved to separate, in whole or in part, either for hearing or for disposition, any issues or questions which may arise in these proceedings and to take such other action as may appear conducive to an orderly, prompt, and ecnonmical disposition of the matters involved.

It is further ordered that an Administrative Law Judge, hereafter to be designated, shall preside at said hearing. The officer so designated is hereby authorized to exercise all powers granted to the Commission under Section 18(c) of the Act and to the hearing officer under the Commission's Rules of Practice.

It is further ordered that the Secretary of the Commission shall serve a copy of this order by certified mail upon the applicants herein, and upon those who have filed requests for a hearing. Notification to all other interested persons shall be given by the general release of the Commission and by publication of this order in the **Federal Register.**

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-17800 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21069; 70-6310]

Piedmont-Forrest Corp.; Proposed Transactions Related to Construction of New Office Building Complex

May 31, 1979.

In the matter of Piedmont-Forrest Corporation, 270 Peachtree Street NW., Atlanta, Georgia 30302.

Notice is hereby given that Piedmont-Forrest Corporation ("Property Company"), a wholly-owned subsidiary of Georgia Power Company ("Georgia"), which, itself, is a wholly-owned electric utility subsidiary of The Southern Company, a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9(a) and 10 of the Act as applicable to the following proposed transactions. All interested persons are referred the application, which is summarized below, for a complete statement of the proposed transactions.

Property Company is engaged in the acquisition, ownership, maintenance, and disposition of property in connection with and incidental to the utility operations of Georgia. In order to provide for the construction of a new office building complex ("Improvements") for Georgia in the Bedford-Pine Urban Redevelopment Area ("Area") of downtown Atlanta, Georgia (see File No. 70-6135), Property Company proposes to enter into a Construction Loan Commitment pursuant to which Property Company will be committed to make a construction loan ("Construction Loan") in a currently estimated amount of $57,019,340, to One Atlanta Associates, a special-purpose limited partnership ("Improvements Owner"), which is to own the Improvements and lease them to Georgia under a long-term net lease ("Prime Lease"). Improvements Owner will use the proceeds of such loan to purchase the partially completed Improvements from Property Company and complete construction thereof. In exchange for the Construction Loan, Property Company proposes to acquire a note ("Construction Note") from Improvements Owner to evidence the indebtedness under the Construction Loan.

The Construction Loan will comprise 98% of the presently budgeted cost

($58,183,000) of constructing the Improvements, the remaining 2% to be contributed by the Improvements Owner as disbursements are made for construction. The principal amount of the Construction Loan is subject to increase or decrease by a maximum of 5% but will not exceed $59,870,307. Disbursements will be made by Property Company from time to time as needed and as requested by the borrower until substantial completion of the Improvements, presently expected to be on or before November 1, 1980, but not later than March 31, 1981. The Construction Loan will bear interest at a variable rate equal to the greater of the cost of money to Property Company or 9.75% per annum, payable as each disbursement is made thereunder, each such disbursement to include an amount equal to 98% of each such interest payment.

The Construction Note will be without recourse against Improvements Owner and will be secured by a first priority lien and security title in the Improvements, express assignments of the Improvements Owner's positions as lessee under a Ground Lese and as lessor under the Prime Lease, and a collateral assignment to Property Company of certain construction and architectural contracts. No payment of principal will be required under the Construction Note during the period of construction.

Pursuant to Commission authorization (see File No. 70–6135), Georgia will make advances from time to time as needed to Property Company to enable it to fund the Construction Loan. The Trustees of the General Electric Pension Trust ("GEPT") have issued a commitment to provide permanent financing for the Improvements by purchasing the Construction Note upon the earlier of substantial completion of the Improvements or March 1, 1981, at which time the Property Company will repay such advances to Georgia.

The proposed Construction Loan and acquisition of the Construction Note are part of a contemplated overall series of transactions to provide for the construction, financing, sale and leaseback of the Improvements, the real property (approximately 5.67 acres) which comprises the building site, and certain rights with respect to parking and other facilities (such real property and such rights are hereinafter collectively referred to as the "Land"). Such contemplated transactions are outlined in a "Letter Agreement" with attached "New Outline", dated April 17, 1979, among Georgia, Property Company, and Winthrop Financial Company, Inc. (acting on behalf of itself, GEPT, R.H. Cushman Associates, Inc., Damon Raike & Company and Wells Fargo Mortgage Company, all of which are hereinafter collectively referred to as the "Winthrop Group").

The Letter Agreement and New Outline contemplate that on or before August 31, 1979 ("First Closing"), Property Company will grant an option to Improvements Owner to purchase the Land ("Land Option") for $8,600,000 ("Land Cost"), which represents Property Company's cost for the Land. On or before the First Closing, Improvements Owner will assign the Land Option to GEPT which, at the First Closing, will exercise the Land Option and purchase the Land from Property Company. Simultaneoulsy, GEPT will enter into a "Ground Lease" with Improvements Owner pursuant to which the Improvements Owner will lease the Land. The Ground Lease will have an initial term of forty years at an annual rental of 9.75% per annum of the Land Cost, three renewal terms of ten years each at an annual rental of 14.625% per annum of the Land Cost, and one renewal term of twenty-five years at an annual rental of 14.625% per annum of the greater of the Land Cost or the then appraised fair market value of the Land.

Also, at the First Closing, GEPT will enter into a "Buy-Sell Agreement" with Property Company, Georgia, and Improvements Owner, which will be a binding obligation on the part of GEPT to purchase the Construction Note from the Property Company, in the amount of the Construction Loan, upon the earlier of substantial completion of the Improvements or March 1, 1981.

At the First Closing, Georgia will enter into the Prime Lease with Improvements Owner pursuant to which Georgia will lease the Improvements and sublease the Land. The Prime Lease will have an initial term of forty years with three renewal terms of ten years each. Base rent payments under the Prime Lease will commence upon substantial completion of construction of the Improvements and issuance of certain certificates of completion or March 1, 1981, whichever is earlier, provided that Improvements Owner is not in material default under the Construction Loan. During the initial term of the Prime Lease, base rent will be a function of the "Completion Cost" which is defined as the total of the amount budgeted at the First Closing for construction of the Improvements (subject to a variance, plus or minus, of 5%) and Land Cost. Completion Cost is currently estimated to be $66,783,000.

The base rent will be calculated over the entire forty-year initial term to a rent cost constant to Georgia of 8.27% per annum of Completion Cost. In the early years of the initial term, base rent payments will be substantially smaller than in the later years of such term and will be payable monthly in arrears, with each installment to be in an amount equal to 1/12 of : (i) 1.269271% of Completion Cost (exclusive of Land Cost) and 9.75% of Land Cost during the first three years of the initial term; (ii) 5.559641% of Completion Cost (exclusive of Land Cost) and 9.75% of Land Cost during the fourth year of the initial term; (iii) 6.75000% of Completion Cost (exclusive of Land Cost) and 9.75% of Land Cost during the fifth and sixth years of the initial term; (iv) 12.122259% of Completion Cost (exclusive of Land Cost) and 9.75% of Land Cost during the next fourteen years of the initial term; and (v) 14.15159% of Completion Cost (exclusive of Land Cost) and 9.75% of Land Cost for the balance of the initial term. Based on the above percentages, it is estimated that the annual rental cost to Georgia during the initial term will be as follows: $100,000 for year 1–3; $4,073,266 for year 4; $4,765,853 for year 5–6; $7,891,594 for year 7–20; and $9,072,320 for year 21–40. During any renewal term of the Prime Lease, annual base rent will be 7.5% of Completion Cost.

The Prime Lease will be absolutely net, and Georgia will be required to pay the base rent without offset or diminution and will be responsible for all costs and expenses associated with the use and occupancy of the Improvements and Land. In the event that the amount required to complete cosntruction of the Improvements exceeds the maximum Completion Cost contemplated by the documents ($61,092,150, exclusive of Land Cost), Georgia will thereupon be required to thake possession of the Improvements and complete construction thereof, with such additional expenditures to be at Georgia's own expense and for its own account. Under the Prime Lease, it is contemplated that Georgia will be treated as the purchaser of "new Section 38 property" pursuant to Internal Revenue Code Section 48(d) in order that the investment tax credit be available to Georgia.

At all times during the initial term and any renewal term of the Prime Lease, Georgia will have a right of first refusal to Purchase the Land and/or the Improvements. At the end of the initial term of the Prime Lease or any renewal term, Georgia will have the right to purchase the Land and Improvements at

their then appraised fair market value. If at any time during or after the twentieth year of the Prime Lease, Georgia is required by regulatory authorities to account for the Prime Lease for rate making purposes in a manner adverse to Georgia's ability to take lease costs into account in its asset or expense base, Georgia will have the continuing right to offer to purchase the Improvements.

The application states that Georgia distributed bid request for both mortgage debt and sale/leaseback financing proposals to twenty-nine major real estate lenders and approximately fifty financial intermediaries, that it received over forty responses, and that after analyzing such responses (with lowest effective interest cost being the primary consideration) Georgia determined that the proposal submitted by the Winthrop Group was the most attractive. Georgia estimates that the effective interest cost of the Prime Lease will be 8.27% per annum and that the effective interest cost of the next-most-attractive proposal would have been 8.76% per annum.

On December 12, 1978, Georgia applied to the Georgia Public Service Commission ("GPSC") for authority to enter into the Prime Lease and to account for the Prime Lease for retail ratemaking purposes by capitalizing it in accordance with Financial Accounting Standards Board Statement No. 13 and expensing interest and depreciation expenses as they accrue, which would be on a levelized basis throughout the term of the Prime Lease, rather than on the staggered basis that the actual lease payments will be made. After hearings, GPSC authorized Georgia, by order effective February 23, 1979, to enter into the Prime Lease, but ordered that for such ratemaking purposes, Georgia should not capitalize the Prime Lease and should charge to expense the actual lease payments. Over the initial term of the Prime Lease, Georgia will expense the entire amount of lease payments to be made during such term to lease expense.

The fees and expenses to be incurred in connection with the proposed transactions are to be filed by amendment. It is stated that Property Company's issuance of the Construction Loan and acquisition of the Construction Note are not subject to the jurisdiction of any state or federal commission other than this Commission; that Georgia's entry into the Prime Lease may be subject to the jurisdiction of the Georgia Public Service Commission, and that the Land Owner and Improvements Owner will require the approval of the Housing Authority of the City of Atlanta and its governing authority, the United States Department of Housing and Urban Development, as "redevelopers" in order to effect the proposed transactions. It is represented that no other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than June 26, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-17801 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21075; 70-5912]

Western Massachusetts Electric Co.; Post-Effective Amendment Regarding the Issuance and Sale of Unsecured Promissory Notes to Banks

June 1, 1979.

In the matter of Western Massachusetts Electric Company, 174 brush Hill Avenue, West Springfield, Massachusetts 01089.

Notice is hereby given that Western Massachusetts Electric Company ("WMECO"), an electric utility subsidiary company of Northeast Utilities, a registered holding company, has filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By order in this proceeding dated November 9, 1976 (HCAR No. 19750), WMECO was authorized to issue and sell its unsecured promissory notes equally to Chemical Bank and Citibank, N.A. in the aggregate principal amount of $20,000,000, maturing in four equal semiannual installments commencing in 1980, the final installment being payable November 10, 1981, and bearing interest at a rate per annum of (i) 118% of the prevailing prime rate of Chemical Bank during the first year, (ii) 120% of the prime rate during the second year, (iii) 122% of the prime rate during the third year and (iv) 124% of the prime rate thereafter. Subsequently, the interest rate was changed to 114% of the prime rate effective one year from the date of the notes and continuing thereafter. The proceeds of the notes were used to repay a portion of WMECO's short-term borrowings outstanding at that time.

In view of current high interest rates and dividend rates on mortgage bonds and preferred stock, WMECO has negotiated and requests authorization of an amendment to its bank loan agreement to provide for (i) an extension of the maturity of the notes to March 30, 1984, (ii) elimination of the installment pay back, (iii) changing the interest rate to 105% of the prime rate effective April 1, 1979, and (iv) substitution of new notes to the banks to reflect the changes in terms.

WMECO's short-term borrowings were $14,650,000 at February 28, 1979, and are estimated to be about $40,000,000 at December 31, 1979. The company's construction and nuclear fuel program is expected to total about $41,500,000 in 1979. WMECO states that it will require additional long-term financing (first mortgage bonds and/or preferred stock) in 1980.

It is stated that the amendment to the bank loan agreement will require the approval of the Department of Public Utilities of the Commonwealth of Massachusetts and of the Connecticut Division of Public Utility Control.

Notice is further given that any interested person may, not later than June 25, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for

such request, and the issues of fact or law raised by said post-effective amendment to the application-declaration which he desires to controvert; or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application declaration, as now amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regualtions promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-17802 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 21079; 70-6319]

New England Electric System; Proposed Issue and Sale of Unissued Common Stock Pursuant to a Proposed Employee Share Ownership Plan and Request for Exemption From Competitive Bidding

June 4, 1979.

Notice is hereby given that New England Electric System ("NEES"), a registered holding company, 20 Turnpike Road, Westborough, Massachusetts 01581, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 6(a) and 7 of the Act and Rule 50(a)(5) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

By order dated September 14, 1977 (HCAR No. 20173), NEES was authorized to issue and sell through December 31, 1979 a maximum of 300,000 shares of its authorized but unissued common shares, $1 par value through a NEES Companies' Employees' Share Ownership Plan. NEES now proposes to issue and sell from time to time through December 31, 1983, up to 675,000 shares of its authorized but unissued common stock, $1 par value, through NEES' amended Companies' Employees' Share Ownership Plan ("Plan"). The proceeds of the sale will be used for investment in NEES' subsidiaries, for payment of NEES' indebtedness or for general purposes.

Each employee of NEES and its direct and indirect subsidiaries, Granite State Electric Company, Massachusetts Electric Company, Narrangansett Electric Company, New England Energy Incorporated, New England Power Company and New England Power Service Company ("Employers") who has completed at least one year of service as of January 1, 1976, will participate in the Plan as of that date. Each other employee will become a participant on the first day of the Plan year in which he completes one year of service. Participation in the Plan will terminate when employment terminates.

The Employers will contribute to a trust ("Trust") in each year an amount equal to the additional one percent investment tax credit allowed for the Plan year under Section 46(a)(2)(E)(i) of the Internal Revenue Code ("Code"). In addition, if an appropriate election is made on the consolidated federal income tax return and to the extent matched by participant contributions, the Employers will contribute to the Trust in each Plan year an amount not in excess of an additional one-half of one percent investment tax credit under Section 46(a)(2)(E)(ii) of the Code. Contributions to the Trust by the Employers will be made for each Plan year on the due date (unless extended) for filing the consolidated federal income tax return for the corresponding tax year. The trustee, The First National Bank of Boston, will purchase common shares of NEES on or before the thirtieth day following the date of the contribution. However, if the full amount of the investment credit is not utilized for a plan year because the credit limited on the basis of the tax payable for the year, that portion of the additional credit not so utilized shall be contributed to the Trust at the time when such portion is so utilized.

Participants shall not be required to make contributions to the Trust. However, if elected by NEES on its consoldiated federal income tax return, participants may make contributions in an aggregate amount not in excess of an additional one-half of one percent investment credit, which contributions will be matched on a like amount by the Employers. The amount of the contributions to be made by a participant for a Plan year will be based on the ratio of his compensation for the Plan year to the total compensation of all participants making matching contributions. Participant contributions shall be invested by the trustee in NEES' common shares within thirty days of payment.

Shares purchased under the Plan will normally come from the authorized but unissued common shares. However, NEES proposes that it shall reserve the right to instruct the trustee for the Plan to purchase shares for participants on the open market. Such market purchases may be made on such terms as to price, delivery and other matters as the trustee may determine. NEES states that the decision to purchase shares on the open market will take into account NEES' need for common equity, general market conditions and the relationship between the purchase price and the book value per share.

The value of common shares purchased from NEES with Employer contributions will be based on the average of the closing prices on the New York Stock Exchange—composite transactions as reported in *The Wall Street Journal* for the twenty consecutive trading days immediately preceding the purchase date. The value of common shares purchased from NEES with participants' contributions and reinvested dividends wil be based on the average of the high and low sale prices on the New York Stock Exchange—composite transactions as reported in *The Wall Street Journal* for each of the last 5 trading days preceding the purchase date. When shares are purchased on the open market, shares will be priced for each participant's account at the average purchase price of all shares purchased.

A separate account for each participant, reflecting the number of common shares credited thereto, will be established and maintained by the trustee. If participant contributions are made to the trust, two accounts shall be maintained for each participant, one for Employer contributions and the other for participant contributions. Contributions to the Trust by the Employers of an amount determined pursuant to Section 46(a)(2)(E)(i) of the Code, less an amount equal to the expenses of the Plan but not

in excess of statutory limitations, shall be combined and allocated to the account for each participant based on the ratio of the participant's compensation for the Plan year for which the contribution is made to the total compensation of all participants for such Plan year. Contributions to the Trust by the Employers of an amount determined pursuant to Section 46(a)(2)(E)(ii) of the Code shall be combined and allocated to the contributions of each participant.

Cash dividends received on common shares held by the trustee, less an amount necessary to pay expenses of administering the Plan but not in excess of statutory limitations, will be invested by the trustee in common shares as soon as practicable. Common shares so purchased will be allocated to each participant's account or accounts based on the ratio of the common shares in each account to the total common shares in all participant's accounts.

As soon as practicable after the end of each Plan year, each participant will be furnished with a statement showing the status of his account or accounts at the beginning and end of each Plan year, any changes in his account or accounts during the Plan year, and other information that may be pertinent.

A participant's account or accounts shall become distributable to him (or, in the event of his death, to the beneficiary designated by him) upon the termination of his participation. A participant may, subject to certain restrictions, prior to termination of employment apply for a distribution of a portion or all of the balance in his account or accounts, if such portion or balance has been allocated to his account or accounts for a period of at least eighty-four months beginning after the month in which the allocation was made.

Distributions shall be made in cash or in whole common shares, at the participant's option. Any fraction of a common share allocated to a participant's account shall be paid in cash. A participant shall at all times have a fully vested and nonforfeitable right to the common shares credited or creditable to his account or accounts.

The Board of Directors of New England Power Service Company shall have the sole authority to appoint and remove the trustee. The trustee shall have the sole responsibility for administration of the Trust and the management of Plan assets held under the Trust, as and to the extent set forth in the Trust. The trustee will accept and hold in the Trust contributions made by the Employers or participants pursuant to the Plan.

Pending the purchase of common shares pursuant to the Plan, the trustee may temporarily retain uninvested cash or may invest all or any part thereof in short-term investments, if such action is prudent under all the facts and circumstances then prevailing.

A committee ("ESOP Committee") shall be the named fiduciary, which shall have authority to control and manage the operation and administration of the Plan. Among other duties, the ESOP Committee will deliver or cause to be delivered to each participant proxy statements and other communications which are distributed to owners of NEES common shares. Each participant shall have the right to direct the trustee to exercise the voting rights with respect to all the whole and fractions of common shares allocated to his account.

No amendment of the Plan may be made which will (1) deprive any participant or beneficiary of any part of an account existing on the date of such amendment; (2) result in the reversion to an Employer of any part of the funds contrary to the provisions of the Plan; or (3) increase the duties or liabilities of the trustee without its written consent. Any Employer, with the written consent or vote of the board of directors of each other Employer, may terminate the Plan at any time.

NEES requests an exemption from the competitive bidding requirements of Rule 50 under Rule 50(a)(5) for the proposed issuance and sale of common stock to the Plan.

The fees and expenses to be incurred in connection with the proposed sale of the common shares are estimated at $130,000 through 1983. Pursuant to Internal Revenue Service regulations, these fees and expenses will be paid from the Trust. Included in such estimate are fees, in an amount to be specified by amendment, for services to be performed, at cost, by New England Power Service Company (an affiliate of NEES). It is stated that no state commisson and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than June 29, 1979, request in writing that a hearing be held on such matters, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-17950 Filed 6-7-79; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 01/01-0300]

ESLO Capital Corp.; Issuance of License To Operate as a Small Business Investment Company

On March 26, 1979, a notice was published in the Federal Register (44 FR 18128) stating that ESLO Capital Corporation, 133 Washington Street, Morristown, New Jersey 07960 had filed an Application with the Small Business Administration, pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1979)), for a License to operate as a small business investment company.

Interested parties were given until the close of business on April 10, 1979, to submit written comments on the Application to the SBA.

Notice is hereby given that no written comments were received, an having considered the Application and all other pertinent information, the SBA approved the issuance of License No. 01/01-0300 on May 31, 1979, to ESLO Capital Corporation pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended.

(Catalogue of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies)

Dated: June 4, 1979.

Peter F. McNeish,

Deputy Associate Administrator for Finance and Investment.

[FR Doc. 79-17960 Filed 6-7-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1641]

West Virginia; Declaration of Disaster Loan Area

Harrson County and adjacent counties within the State of West Virginia constitutes a disaster area as a result of damage caused by heavy rains and flooding which occurred on May 11–12, 1979. Applications will be processed under the provisions of Pub. L. 94–305. Interest rate is 7⅝ percent. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business July 30, 1979, and for economic injury until the close of business on February 29, 1980, at: Small Business Administration, District Office, 109 North Third Street, Clarksburg, West Virginia 26301 or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 29, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-17961 Filed 6-7-79; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 79-23]

Study of Factors Affecting Transportation Operations; Request for Public Comments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: Section 166 of the Surface Transportation Assistance Act of 1978 requires the Department of Transportation to conduct a study of the factors affecting the safe and efficient operation of bridges, tunnels, and roads within the United States. The purpose of this notice is to advise the public of this study and to invite comments from interested parties for use in designing the format and content of the study.

DATES: Comments must be received on or before August 7, 1979.

ADDRESS: FHWA Docket No. 79–23, Federal Highway Administration, HCC–10, Room 4205, 400 Seventh Street, SW., Washington, D.C. 20590. All responses to this notice will be available for examination at the above address between 7:45 a.m. and 4:15 p.m., eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Caldwell, Office of Program and Policy Planning, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590, 202–426–0226. Office hours are Monday through Friday, 7:45 a.m. to 4:15 p.m., eastern time.

SUPPLEMENTARY INFORMATION: Section 166 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599, 92 Stat. 2722) reads as follows:

"The Secretary of Transportation shall make a full and complete investigation and study of all those factors affecting the safe and efficient operation of bridges, tunnels, and roads within the United States, including, but not limited to, structural, operational, environmental, and civil disturbance factors."

The August 11, 1978 report of the House Committee on Public Works and Transportation indicates that the study "should be aimed primarily at toll facilities and should include an identification, analysis, and evaluation of the risk factors, risk control programs, and risk transfer and financing programs." Both the House Report and the Joint Explanatory Statement of the Committee on Conference dated October 14, 1978, indicate that the study is to concentrate on the insurance problems affecting the operation of these transportation facilities. Accordingly, the study will address questions of risk management of toll facilities and their financial capacities.

A study design will be prepared by September 30, 1979, and the study will be conducted in fiscal year 1980. The results of the study will form the basis for a report to Congress.

The purpose of this notice is to advise the public of this study and to invite suggestions on the format and content of the study design from all interested groups and individuals. All responses to this notice will be available for examination by any interested person at the above address both before and after the closing date for comments.

Issued on: June 4, 1979.

John S. Hassell, Jr.,

Deputy Administrator.

[FR Doc. 79-17771 Filed 6-7-79; 8:45 am]

BILLING CODE 4910-22-M

INTERSTATE COMMERCE COMMISSION

[Decisions Volume No. 54]

Permanent Authority Applications; Decision-Notice

Correction

In FR Doc. 78–35086, published at page 59197, on Tuesday, December 19, 1978, on page 59209, in the second column, in the first paragraph beginning "MC–135070 . . .", in the 20th line, "RI, VT, WV . . ." should be corrected to read "RI, VT, VA, WV . . ."

BILLING CODE 1505-01-M

[Decisions Volume No. 58]

Permanent Authority Application; Decision-Notice

Correction

In FR Doc. 78–35362, published at page 59584, on Thursday, December 21, 1978, on page 59592, in the middle column, the paragraph reading "MC 13420 . . ." should be corrected to read "MC 134201 . . ."

BILLING CODE 1505-01-M

[Finance Docket Nos. 26482 and 26483 (Sub-No. 2)]

Auto-Train Corp.; Petition for Modification

Auto-Train Corporation, operation rail passenger and automobile transport service between Alexandria, VA, and Sanford, FL. Petitioner Auto-Train Corporation, 1801 K Street, N.W., Washington, DC 20006, represented by Robert G. Seaks, 1729 H Street, N.W., Washington, DC 20006, holds authority as a railroad (1) for combined rail passenger-automobile transport service between Alexandria, Virginia, and Sanford, Florida, and (2) for the transportation between the same points of automobiles only, unaccompanied by their owner or driver, when the transportation is performed under a point booking whereby Auto-Train transports an automobile and an airline transports its owner or driver between substantially the same points at substantially the same time.

Petitioner seeks modification of its authority under (2) above to permit it to

transport unaccompanied automobiles tendered to it by Central Florida Coach Lines, Inc. (d/b/a Auto-Bus) when the tendering carrier is transporting at substantially the same time the owners or drivers of such automobiles between Florida points and northern points.

Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition on or before July 9, 1979.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-17928 Filed 6-7-79; 8:45 am]

BILLING CODE 7035-01-M

[Exception No. 2 To Corrected Second Revised S.O. No. 1301]

Burlington Northern Inc.

To: Burlington Northern Inc.

Pursuant to the authority vested in me by Section (a)(4) of Corrected Second Revised Service Order No. 1301, Burlington Northern Inc. is authorized to use forty-foot narrow-door plain boxcars owned by Canadian National Railways or by CP Rail from stations in the State of Montana destined to Seattle, Washington, subject to the following conditions.

1. Cars must be used in compliance with United States Customs regulations.

2. Cars must be used in compliance with Car Service Rules 1 and 2 adopted by the Commission in Docket Ex Parte No. 241.

3. Car Relocation Directives and Car Assistance Directives issued by the Car Service Division, Association of American Railroads, applicale to such cars remain fully in effect.

Effective May 24, 1979.

Expires August 31, 1979.

Issued at Washington, D.C., May 24, 1979.

Joel E. Burns,

Director, Bureau of Operations.

[FR Doc. 79-17931 Filed 6-7-79; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29057 F]

Brillion & Forest Junction Railroad Co., Inc.—Operation Over a Line of Railroad Between Brillion and Forest Junction in Calumet County, Wis.

Brillion & Forest Junction Railroad Company, Inc., P.O. Box 111, Algoma, WI 54201, represented by Clinton Jones, Jr., Chief Executive Officer, Brillion & Forest Junction Railroad Company, P.O. Box 111, Algoma, WI 54201, hereby give notice that on the 22nd day of May, 1979, it filed with the Interstate Commerce Commission at Washington, DC, an application pursuant to 49 U.S.C. § 10901 (formerly Section 1(18) of the Interstate Commerce Act), for a decision approving and authorizing the operation of a line of railroad extending from milepost 98.5 to milepost 105.2, between Brillion and Forest Junction, WI.

The line is located in Calumet County, WI. Approximately 300 feet of spur or industry trackage is in Manitowoc County, WI. The line Applicant operates extends from milepost 98.5 at Brillion westerly to milepost 105.2 at Forest Junction, approximately 6.7 miles of route. The line Applicant operates includes a 6.7 mile main line with an additional 1.3 miles of spurs, sidings, etc., for a total of approximately 8 track miles of line.

The line of railroad was formerly owned and operated by the Chicago and North Western Transportation Company (C&NW) as a portion of a branch line of C&NW, which was authorized for abandonment and/or sale by the Commission in docket No. AB-1 (Sub-No. 52), decided May 9, 1978. A private organization composed of freight shippers accordingly purchased the line of railroad from C&NW.

In accordance with the Commission's requirements (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No. 4), *Implementation—National Environmental Policy Act, 1969,* 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—National Environmental Policy Act, 1969, supra* at p. 487.

Pursuant to the provisions of the Interstate Commerce Act, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, DC 20423, and the aforementioned counsel for Applicant, within 30 days after the date of first publication in a newspaper of general circulation. Any interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-17923 Filed 6-7-79; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-204 (Sub-No. 1F)]

Cape Fear Railways, Inc., Abandonment Between Skibo and Fort Junction in Cumberland County, N.C.; 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 17, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, the present and future public convenience and necessity permits abandonment of 4.296 miles of track owned and operated by Cape Fear and cessation of operations over 5.910 miles of track under lease from the United States Government and operated by Cape Fear, Cumberland County, NC, the total line extending from Skibo, NC, milepost 10, to Fort Junction, NC, milepost 0, a distance of 10 miles, provided, however, that Cape Fear shall keep intact all of its righ-of-way underlying the track, including all of the bridges and culverts for a period of 120 days from the effective date of this 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. A certificate of public convenience and necessity permitting the abandonment was issued to Cape Fear Railways, Inc. Since no investigation was instituted, the requirement of § 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 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 (§ 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 on or before June 25, 1979. The offer, as filed, shall contain information required pursuant to § 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 on July 23, 1979.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-17930 Filed 6-7-79; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 241, Rule 19, Exemption No. 157]

Mandatory Car Service Rules Exemption

To all railroads:

The railroads named below own numerous open hopper cars for the purpose of transporting substantial volumes of coal and other bulk freight originating on their lines and destined to points on other lines. There are no significant volumes of traffic transported in similar cars originating on other lines and terminating on these lines which would provide a source of empty hopper cars for return loading. These lines have agreed to refrain from loading hopper cars owned by other lines without the express consent of the car owners even though such use might otherwise be authorized by Car Service Rules 1 and 2. Under these conditions it is imperative that open hopper cars owned by these railroads be returned to the owning railroad empty unless their use is authorized by the car owner.

It is ordered, That pursuant to the authority vested in my by Car Service Rule 19:

(a) Hopper cars listed under the heading "Class 'H' Hopper Car Type" in the Official Railway Equipment Register, ICC RER 6410–A, issued by W. J. Trezise, or successive issues thereof, and owned by the railroads named in section (c) below, are exempt from the provisions of Car Service Rules 1(a), 2(a) and 2(b). These cars must be returned empty to the car owner unless their use has been authorized by the car owner.

(b) Railroads named in section (c) below are prohibited from using hopper cars foreign to their line unless their use has been authorized by the car owner.

(c) List of railroads and car reporting marks:

The Baltimore and Ohio Railroad Company
Reporting Marks: B&O
Bessemer and Lake Erie Railroad Company
Reporting Marks: B&LE
Carolina, Clinchfield and Ohio Railway
Reporting Marks: CRR
The Chesapeake and Ohio Railway Company
Reporting Marks: C&O
Consolidated Rail Corporation
Reporting Marks: BA–BWC–CNJ–CR–DL&W–EL–ERIE–LV–NH–NYC–PC–P&E–PRR–RDG–TOC
Illinois Central Gulf Railroad Company
Reporting Marks: GM&O–IC–ICG
Louisville and Nashville Railroad Company
Reporting Marks: L&N–NC–MON
*Montour Railroad Company
Reporting Marks: MTR
Norfolk and Western Railroad Company
Reporting Marks: ACY–N&W–NKP–P&WV–VGN–WAB
St. Louis-San Francisco Railway Company
Reporting Marks: SLSF
Southern Railway System
Reporting Marks: CG–INT–NS–SOU
The Pittsburgh and Lake Erie Railroad Company
Reporting Marks: P&LE
Western Maryland Railway Company
Reporting Marks: WM

(d) For the purpose of improving car utilization and the efficiency of railroad operations, or alleviating inequities or hardships, modifications may be authorized by the Chief Transportation Officer of the car owner, or by the Director or Assistant Director of the Bureau of Operations, Interstate Commerce Commission. Modifications authorized by the car owner must be confirmed in writing to W. H. Van Slyke, Chairman, Car Service Division, Association of American Railroads, Washington, D.C., for submission to the Director or Assistant Director.

(e) No common carrier by railroad subject to the Interstate Commerce Act shall accept from shipper any loaded hopper car, described in this exemption, contrary to the provisions of the exemption.

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

Effective May 22, 1979, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., May 18, 1979.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 79-17934 Filed 6-7-79; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 241, Rule 19, Exemption No. 90]

Mandatory Car Service Rules Exemption

To All Railroads:

It appearing, That the railroads named below own numerous 50–ft. plain boxcars; that under present conditions there are substantial surpluses of these cars on their lines; that return of these cars to the owners would result in their being stored idle; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of utilization of such cars.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, 50–ft. plain boxcars described in the Official Railway Equipment Register, ICC RER 6410–A, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM," and bearing reporting marks assigned to the railroads named below, shall be exempt from provisions of Car Service Rules 1, 2(a), and 2(b).

Aberdeen and Rockfish Railroad Company
Reporting Marks: AR
Bath and Hammondsport Railroad Company
Reporting Marks: BH
Camino, Placerville & Lake Tahoe Railroad Company
Reporting Marks: CPLT
City of Prineville
Reporting Marks: COP
Duluth, Missabe and Iron Range Railway Company
Reporting Marks: DMIR
East Camden & Highland Railroad Company
Reporting Marks: EACH
Genessee and Wyoming Railway Company
Reporting Marks: GNWR
Greenville and Northern Railway Company
Reporting Marks: GRN
The Hutchinson and Northern Railway Company
Reporting Marks: HN
Indiana Eastern Railroad and Transportation, Inc. D/B/A The Hoosier Connection
Reporting Marks: HOSC
Lake Superior & Ishpeming Railroad Company
Reporting Marks: LSI
Lenawee County Railroad Company, Inc.
Reporting Marks: LCRC
Louisiana Midland Railway Company
Reporting Marks: LOAM
Louisville and Wadley Railway Company
Reporting Marks: LW
Louisville, New Albany & Corydon Railroad Company
Reporting Marks: LNAC
Manufacturers Railway Company
Reporting Marks: MRS
Middletown and New Jersey Railway Company, Inc.
Reporting Marks: MNJ
Missouri-Kansas-Texas Railroad Company
Reporting Marks: MKT-BKTY
New Orleans Public Belt Railroad
Reporting Marks: NOPB
Pearl River Valley Railroad Company
Reporting Marks: PRV
Peninsula Terminal Company
Reporting Marks: PT
*Providence and Worcester Company
Reporting Marks: PW
Raritan River Rail Road Company
Reporting Marks: RR
Sacramento Northern Railway
Reporting Marks: SN
St. Lawrence Railroad
Reporting Marks: NSL

*Addition.

*Addition.

Savannah State Docks Railroad Company
Reporting Marks: SSDK
Sierra Railroad Company
Reporting Marks: SERA
Terminal Railway, Alabama State Docks
Reporting Marks: TASD
The Texas Mexican Railway Company
Reporting Marks: TN
Tidewater Southern Railway Company
Reporting Marks: TS
Toledo, Peoria & Western Railroad Company
Reporting Marks: TPW
Vermont Railway, Inc.
Reporting Marks: VTR
WCTU Railway Company
Reporting Marks: WCTR
Youngstown & Southern Railway Company
Reporting Marks: YS
Yreka Western Railroad Company
Reporting Marks: YW

Effective June 1, 1979, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., May 24, 1979.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 79-17933 Filed 6-7-79; 8:45 am]

BILLING CODE 7035-01

[Ex Parte No. 241, Rule 19, Exemption No. 166]

Mandatory Car Service Rules Exemption

There is an emergency movement of military supplies from Crane, Indiana, to Savanna, Oklahoma. The originating carrier has insufficient system cars of suitable dimensions immediately available for loading with this traffic. Sufficient cars of other ownerships having suitable dimensions are available on the lines of the originating carrier and on its connections, and compliance with Car Service Rules 1 and 2 would prevent the timely assembly and use of such cars.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, the Car Service Division of the Association of American Railroads is authorized to direct the movement to the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee), the railroads designated by the Car Service Division are authorized to move to, and the Milwaukee is authorized to accept, assemble, and load not to exceed 100 empty plain boxcars with military supplies from Crane, Indiana, to Savanna, Oklahoma, regardless of the provisions of Car Service Rules 1 and 2.

Effective May 25, 1979.
Expires August 31, 1979.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 79-17935 Filed 6-7-79; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Board Transfer Proceedings

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include request for oral hearing, must be filed with the Commission on or before July 9, 1979. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

H. G. Homme, Jr.,

Secretary.

MC-FC-78029, filed February 2, 1979. Transferee: CHRISTIE & LARRY HILL, doing business as ST. MARIES BUS LINE, 487 Fourth St. Milltown, St. Maries, ID 83861. Transferor: JOHN FRANKLIN CURTIS, doing business as INLAND EMPIRE COURIER, 1808 Hastings, Coeur d'Alene, ID 83861. Representative: Christie & Larry Hill, 487 Fourth St. Milltown, St. Maries, ID 83861. By decision of June 1, 1979, the Commission, Motor Carrier Board, granted authority for the transfer to transferee of the operating rights of transferor as set forth in Certificate No. MC-111490, issued August 27, 1976, as follows: (A) *Passengers and their baggage, and express, mail, and newspapers* in the same vehicle with passengers, over specified regular routes serving all intermediate points, (1) between Spokane and Tekoa, WA, and (2) between junction U.S. Hwy 95 and unnumbered highway northwest of Worley, ID, and Moscow, ID. (B) *Passengers and their baggage, and express* in the same vehicle with passengers, over specified regular routes, serving all intermediate points, (1) between Spokane, WA and Worley, ID, and (2) between Plumber and St. Maries, ID., and (C) *passengers and their baggage, express, and newspapers* in the same vehicle with passengers, over specified regular routes serving all intermediate points, between Tekoa, WA and Tensed, ID. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. 11349. Petitions for reconsideration may be filed by any interested person on or before June 28, 1979.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-17925 Filed 6-7-79; 8:45 am]

BILLING CODE 7035-01-M

[Permanent Authority Decisions Vol. No. 54]

Permanent Authority Applications; Decision-Notice

Decided: May 11, 1979.

The following applications filed on or before February 28, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR § 1100.247). For applications filed before March 1, 1979, these rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register.** Failure to file a protest, within 30 days, will be considered as a waiver of opposition to the application. A protest under these rules should comply with Rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations

phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

On cases filed on or after March 1, 1979, petitions for intervention either with or without leave are appropriate.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If applicant has introduced rates as an issue it is noted. Upon request an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. § 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. § 10101 subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. § 10930(a) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 2, Members Boyle, Eaton, and Liberman.

H. G. Homme, Jr.,
Secretary.

MC 340 (Sub-55F), filed February 22, 1979. Applicant: QUERNER TRUCK LINES, INC., 1131–33 Austin Street, San Antonio, TX 78208. Representative: M. Ward Bailey, 2412 Continental Life Bldg., Fort Worth, TX 76102. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs*, from Fond du Lac, WI, to points in AZ, TX, LA, MS, and FL. (Hearing site: Dallas or San Antonio, TX.)

MC 441 (Sub-7F), filed February 21, 1979. Applicant: HINTON MOTOR SERVICE, INC., 1410 Gardner Expressway, Quincy, IL 62301. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *paper and paper products*, from Quincy, IL, to points in the United States (except AK, AR, AL, GA, HI, KY, MS, MI, MN, NY, NC, PA, TX, TN, VA, WV, and WI); and (2) *waste paper*, from points in the United States (except AK, AR, AL, GA, HI, IN, KY, MS, MI, MN, NY, NC, PA, TX, TN, VA, WV, and WI), to Quincy, IL, under continuing contract(s) in (1) and (2) above with The Celotex Corporation, of Tampa, FL. (Hearing site: St. Louis, MO, or Chicago, IL.)

MC 531 (Sub-374F), filed February 22, 1979. Applicant: YOUNGER BROTHERS, INC., 4904 Griggs Road, P.O. Box 14048, Houston, TX 77021. Representative: Wray E. Hughes (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chemicals*, in bulk, in tank vehicles, from Salisbury, NC to points in CA. (Hearing site: Washington, DC.)

MC 730 (Sub-432F), filed February 23, 1979. Applicant: PACIFIC INTERMOUNTAIN EXPRESS CO., a corporation, 25 North Via Monte, Walnut Creek, CA 94598. Representative: A. G. Krebs (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Magma Copper Co., at or near San Manuel, AZ, as an off-route point in connection with carrier's otherwise authorized regular-route operations. Condition: To the extent any certificate to be issued in this proceeding authorizes classes A and B explosives, it shall be limited to a term expiring 5 years from its date of issue. (Hearing site: Phoenix, AZ, or San Francisco, CA.)

MC 3151 (Sub-22F), filed February 15, 1979. Applicant: BENDER & LOUDON MOTOR FREIGHT, INC., 3024 Brecksville Road, Richfield, OH 44286. Representative: George Wilkinson (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives,

household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of the General Motors Corporation, at or near Constantine, MI, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Detroit, MI, or Washington, DC.)

MC 33641 (Sub-143F), filed February 12, 1979. Applicant: IML FREIGHT, INC., P.O. Box 30277, Salt Lake City, UT 84125. Representative: Thomas A. Scott (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving Milan, MI, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Detroit, MI, or Washington, DC.)

MC 35320 (Sub-200F), filed February 9, 1979. Applicant: T.I.M.E.-DC, INC., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, ammunition, ammunition parts, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of The Ithaca Textile Co., at or near (a) Cairo, GA, and (b) Chadbourn, Wilkesboro, and Gastonia, NC, as off-route points in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Greensboro, NC, or Washington, DC.)

MC 35320 (Sub-206F), filed February 15, 1979. Applicant: T.I.M.E.-DC, INC., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, ammunition, ammunition parts, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Sheller-Globe Corporation, Leece-Neville Division, at or near Gainesville, GA, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Atlanta, GA, or Washington, DC.)

MC 35320 (Sub-207F), filed February 15, 1979. Applicant: T.I.M.E.-DC, INC., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transportation *general commodities* (except those of unusual value, classes A and B explosives, ammunition, ammunition parts, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of The General Tire and Rubber Company, at or near Columbus, MS, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Memphis, TN, or Washington, DC.)

MC 35320 (Sub-213F), filed February 21, 1979. Applicant: T.I.M.E.-DC, INC., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transportation *general commodities* (except those of unusual value, classes A and B explosives, ammunition, ammunition parts, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of King Plastics, Inc., at or near (a) Denison, TX, (b) Waseca, MN, and (c) Mt. Sterling, IL, as off-route points in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Los Angeles or Orange, CA.)

MC 38170 (Sub-30F), filed February 8, 1979. Applicant: WHITE STAR TRUCKING, INC., 1750 Southfield Road, Lincoln Park, MI 48146. Representative: Wilhelmina Boersma, 1600 First Federal Building, Detroit, MI 48226. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transportation *general commodities* (except those of unusual value, and classes A and B explosives), in cargo containers, between Detriot, MI, and Toledo, Cleveland, and East Liverpool, OH, on the one hand, and, on the other, points in IL, IN, MI, OH, and PA. (Hearing site: Detriot, MI, or Chicago, IL.)

MC 41951 (Sub-38F), filed February 23, 1979. Applicant: WHEATLEY TRUCKING INC., P.O. Box 458, Cambridge, MD 21613. Representative: Gary E. Thompson, 4304 East-West Highway, Washington, DC 20014. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transportation *frozen peppers*, from the facilities of RJR Foods Warehouses, Inc., at Kansas City, KS, to Cambridge, MD, and Jackson, OH. (Hearing site: Washington, DC or Cambridge, MD.)

MC 52861 (Sub-50F), filed February 23, 1979. Applicant: WILLS TRUCKING, INC., 4500 Rockside Road, Cleveland, OH 44131. Representative: Paul F. Beery, 275 E. State Street, Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *ammonium sulphate*, from Cleveland, OH, to points in IN and MI. (Hearing site: Columbus, OH.)

MC 59150 (Sub-148F), filed February 5, 1979. Applicant: PLOOF TRUCK LINES, INC., 1414 Lindrose Street, Jacksonville, FL 32206. Representative: Martin Sack, Jr., 1754 Gulf Life Tower, Jacksonville, FL 32207. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *plastic pipe and fittings*, from points in Mecklenburg and Union Counties, NC, and York County, SC, to points in AL, FL, GA, SC, LA, MS, and TN; and (2) *equipment, materials, and supplies* used in the manufacture or distribution of plastic pipe and fittings, in the reverse direction. (Hearing site: Charlotte, NC.)

MC 65580 (Sub-25F), filed December 11, 1978. Applicant: MUSHROOM TRANSPORTATION CO., INC., 845 East Hunting Park Ave., Philadelphia, PA 19124. Representative: A. David Millner, P.O. box 1409, 167 Fairfield Road, Fairfield, NJ 07006. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Bethlehem and Irwin, PA, from Bethlehem over Interstate Hwy 78 to junction Interstate Hwy 81, then over Interstate Hwy 81 to junction Interstate Hwy 76, then over Interstate Hwy 76 to Irwin, and return over the same route, serving no intermediate points, (2) between Philadelphia, PA, and junction Interstate Hwys 76 and 81, at or near Middlesex, PA, (a) from Philadelphia over U.S. Hwy 1 to junction Interstate Hwy 276, then over Interstate Hwy 276 to junction Interstate Hwys 76 and 81, and return over the same route, serving

no intermediate points, and serving junction Interstate Hwys 76 and 81 for purpose of joinder only, (b) from Philadelphia over U.S. Hwy 30 to junction PA Hwy 283, then over PA Hwy 283 to junction Interstate Hwy 76, and return over the same route, serving no intermediate points, and serving junction Interstate Hwys 283 and 76 for purpose of joinder only, (3) between York and Irwin, PA, over U.S. Hwy 30, (4) between Kennett Square and York, PA, from Kennett Square over PA Hwy 82 to junction U.S. Hwy 30, then over U.S. Hwy 30 to York, and return over the same route, serving no intermediate points, and serving York for purpose of joinder only, (5) between Kenneth Square, PA and junction U.S. Hwy 30 and PA Hwy 41, at or near Gap, PA, from Kennett Square over U.S. Hwy 1 to junction PA Hwy 41, then over PA Hwy 41 to junction U.S. Hwy 30, and return over the same route, serving junction U.S. Hwy 30 and PA Hwy 41, for purpose of joinder only, (6) Between Allentown, and Phillipsburg, PA, from Allentown over PA Hwy 309 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction PA Hwy 879, then over PA Hwy 879 to junction U.S. Hwy 322, then over U.S. Hwy 322 to Phillipsburg, and return over the same route, serving no intermediate points, (7) between Harrisburg, PA, and Hagerstown, MD, over Interstate Hwy 81. (Hearing site: Philadelphia, PA.)

MC 94350 (Sub-423F), filed February 21, 1979. Applicant: TRANSIT HOMES, INC., P.O. Box 1628, Greenville, SC 29602. Representative: Mitchell King, Jr. (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *travel trailers*, in initial movements, in truckaway service, from the facilities of Skyline Corporation, at or near Dewey, OK, to points in AR, CO, IA, KS, MO, NE, OK, and SD. (Hearing site: St. Louis, MO.)

MC 95540 (Sub-1084F), filed February 22, 1979. Applicant: WATKINS MOTOR LINES, INC. 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Representative: Benjy W. Fincher (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from Oneida, NY, to Mason City, IA. (Hearing Site: Des Moines, IA, or Washington, DC.)

MC 95540 (Sub-1085F), filed February 22, 1979. Applicant: WATKINS MOTOR LINES, INC. 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Representative: Benjy W. Fincher (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except commodities in bulk, in tank vehicles), in vehicles equipped with mechanical refrigeration, from the facilities of M & M/Mars, Division of Mars, Inc., at or near Cleveland, TN, to points in FL, GA, TX, IA, NE, KS, WI, MN, IL, CO, OK, MS, LA, NJ, NY, PA, MA, CT, and RI, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing Site: New York, NY, or Washington, DC.)

MC 95540 (Sub-1087F), filed February 23, 1979. Applicant: WATKINS MOTOR LINES, INC. 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Representative: Benjy W. Fincher (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs*, from Louisville, KY, to points in FL. (Hearing Site: Tampa or Orlando, FL.)

MC 105120 (Sub-19F), filed February 14, 1979. Applicant: FREIGHTWAYS EXPRESS, INC., 2700 Sterick Building, Memphis, TN 38103. Representative: James N. Clay, III (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of American Greetings Corp., at Harrisburg, Osceola, and McCrory, AR, on the one hand, and, on the other, Jonesboro, Forest City, and Wynne, AR. (Hearing site: Memphis, TN.)

Note.—Applicant can presently serve the named facilites at McCrory, Harrisburg, and Osceola. It intends to tack this authority with its current regular-route authority at those points to provide service to points on its regular routes in MS, TN, AR, MO, IL, and KY.

MC 105501 (Sub-34F), filed February 27, 1979. Applicant: TERMINAL WAREHOUSE COMPANY, a corporation, 1851 Radisson Road N.E., Blaine, MN 55434. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *beverages*, (except commodities in bulk, in tank vehicles), from Minneapolis, MN, to points in IA, MT, ND, SD, and WI. (Hearing site: Chicago, IL, or Minneapolis, MN.)

Note.—Dual operations may be involved.

MC 108341 (Sub-134F), filed February 12, 1979. Applicant: MOSS TRUCKING COMPANY, INC., 3027 N. Tryon St., P.O. Box 26125, Charlotte, NC 28213. Representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, NY 10048. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *machinery and machine parts*, from the facilities of Ward Machinery Company, at or near Cockeysville, MD, to those points in the United States in and east of MN, IA, MO, AR, and LA. (Hearing site: Washington, DC.)

MC 110420 (Sub-803F), filed February 16, 1979. Applicant: QUALITY CARRIERS, INC., P.O. Box 186, Pleasant Prairie, WI 53158. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425—13th Street NW., Washington, DC 20004. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chemicals*, in bulk, in tank vehicles, from Wichita, KS, to Danbury, CT, and Deepwater, NJ. (Hearing site: Chicago, IL, or Washington, DC.)

MC 111231 (Sub-259F), filed February 22, 1979. Applicant: JONES TRUCK LINES, INC., 610 East Emma Ave., Springdale, AR 72764. Representative: John C. Everett, P.O. Box A, 140 East Buchanan, Prairie Grove, AR 72753. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *conveyor belting and rubber packing*, from the facilities of American Biltrite, Inc., at or near Paragould, AR, on the one hand, and, on the other, those points in the United States on and west of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the international boundary line between the United States and Canada (except AK and HI). (Hearing site: Paragould or Little Rock, AR)

MC 111231 (Sub-253F), filed November 29, 1978, previously noticed in the

Federal Register issue of February 20, 1979. Applicant: JONES TRUCK LINES, INC., 610 East Emma Ave., Springdale, AR 72764. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (3) between junction Interstate Hwy 29 and IA Hwy 2, and Lincoln, NE: From junction Interstate Hwy 29 and IA Hwy 2 over IA Hwy 2 to junction NE Hwy 2, then over NE Hwy 2 to Lincoln, and return over the same route, serving no immediate points, and (4) between Kansas City, MO, and junction Interstate Hwy 29 and IA Hwy 2, over Interstate Hwy 29, serving no intermediate points, and serving the junction of Interstate Hwy 29 and IA Hwy 2 for purposes of joinder only. (Hearing Site: Little Rock, AR, or Washington, DC)

Note.—This partial republication states parts (3) and (4), previously inadvertently omitted. The remainder of the application remains as previously published.

MC 115331 (Sub-486F), filed February 9, 1979. Applicant: TRUCK TRANSPORT INCORPORATED, 29 Clayton Hills Lane, St. Louis, MO 63131. Representative: J. R. Ferris, 230 St. Clair Avenue, East St. Louis, IL 62201. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *such commodities* as are dealt in by grocery and food business houses; and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, between the facilities of Ralston Purina Co., at or near Clinton and Davenport, IA, on the one hand, and, on the other, points in IN, MI, OH, MO, and WI. (Hearing Site: St. Louis, MO)

MC 115730 (Sub-67F), filed February 22, 1979. Applicant: THE MICKOW CORP., P.O. Box 1774, 531 S.W. Sixth St., Des Moines, IA 50306. Representative: Cecil L. Goettsch, 1100 Des Moines Bldg., Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, from St. Louis, MO, to points in IA. (Hearing site: St. Louis, MO, or Washington, DC)

MC 115841 (Sub-682F), filed February 14, 1979. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., 9041 Executive Park Drive, Suite 110, Building 100, Knoxville, TN 37919. Representative: D. R. Beeler (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum and petroleum products* (except commodities in bulk), from the facilities of Texaco, Inc., in Jefferson County, TX, to points in AL, AR, CO, FL, GA, IL, IN, IA, KS, KY, MI, MN, MS, MO, NE, NM, NY, NC, OH, PA, SC, TN, VA, WI, and WV. (Hearing site: Houston or Dallas, TX.)

MC 119741 (Sub-146F), filed February 21, 1979. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Avenue, NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides, and commodities in bulk, in tank vehicles), from the facilities of Theis Packing Company, at Great Bend, Topeka, and Wichita, KS, to points in AR, CT, DE, IL, IN, IA, KY, MD, MA, MI, MN, MO, NE, NJ, NY, OH, PA, RI, VA, WV, WI, and DC. (Hearing site: Wichita, KS.)

MC 119741 (Sub-149F), filed February 22, 1979. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Ave., NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides, and commodities in bulk, in tank vehicles), from Ames and Webster City, IA, to points in KS, MN, MO, NE, and WI, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Des Moines, IA.)

MC 123091 (Sub-28F), filed February 12, 1979. Applicant: NICK STRIMBU, INC., 3500 Parkway Road, Brookfield, OH 44403. Representative: James Duvall, Post Office Box 97, 220 West Bridge Street, Dublin, OH 43017. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles, pipe, and accessories* for pipe, from Brookfield, OH, to points in CT, ME, MD, MA, NH, NJ, NY, PA, RI, and VT. (Hearing site: Washington, DC.)

MC 124170 (Sub-113F), filed February 21, 1979. Applicant: FROSTWAYS, INC., 3000 Chrysler Service Dr., Detroit, MI 48207. Representative: William J. Boyd, 600 Enterprise Dr., Suite 222, Oak Brook, IL 60521. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in Appendix I to the Report in *Descriptions in Motor Carriers Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from New York, NY, to points in IL, IN, and OH. (Hearing site: New York, NY, or Washington, DC)

MC 124211 (Sub-349F), filed February 7, 1979. Applicant: HILT TRUCK LINE, INC., P.O. Box 988, D.T.S., Omaha, NE 68101. Representative: Thomas L. Hilt (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *malt beverages*, from points in Jefferson County, CO, to points in AZ, CA, IA, NE, and WA; and (2) *empty used beverage containers* for recycling, and such commodities as are used by breweries, from points in AZ, CA, IA, NE, and WA, to points in Jefferson County, CO.

Note.—Dual operations may be involved. (Hearing site: Denver, CO)

MC 124711 (Sub-82F), filed February 16, 1979. Applicant: BECKER CORPORATION, P.O. Box 1050, El Dorado, KS 67042. Representative: Norman A. Cooper (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chemicals*, in bulk, from the facilities of Vulcan Materials Company, at or near Wichita, KS, to points in the United States (except AK and HI). (Hearing site: Wichita, KS)

MC 133591 (Sub-62F), filed February 14, 1979. Applicant: WAYNE DANIEL TRUCK, INC., Post Office Box 303, Mount Vernon, MO 65712. Representative: Harry Ross, 58 S. Main Street, Winchester, KY 40391. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *confectionery*, from points in Marion and Washington Counties, IL,

to points in NM, CO, WY, MT, ID, UT, AZ, NV, OR, WA, and CA. (Hearing site: St. Louis, MO)

MC 134501 (Sub-44F), filed February 12, 1979. Applicant: INCORPORATED CARRIERS, LTD., P.O. Box 3128, Irving, TX 75061. Representative: T. M. Brown, P.O. Box 1540, Edmond, OK 73034. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *floor coverings, wall coverings, doors, furniture, and fixtures;* and (2) *parts* for the commodities named in (1) above, from Overland, MO, Forest City, IA, Salt Lake City, UT, Knoxville, TN, Houston, TX, Richmond, VA, Atlanta, GA, Cincinnati, OH, New Hartford, CT, and Jacksonville, FL, to points in the United States (except AK and HI). (Hearing Site: St. Louis, MO, or Chicago, IL.)

MC 134501 (Sub-47F), filed February 22, 1979. Applicant: INCORPORATED CARRIERS, LTD., P.O. Box 3128, Irving, TX 75061. Representative: T. M. Brown, P.O. Box 1540, Edmond, OK 73034. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *new kitchen furniture, kitchen fixtures, and kitchen equipment*, from Hagerstown, MD, to points in the United States (except AK and HI). (Hearing site: Washington, DC.)

MC 135170 (Sub-33F), filed February 12, 1979. Applicant: TRI-STATE ASSOCIATES, INC., P.O. Box 188, Federalsburg, MD 21632. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *paper bags, plastic bags, plastic film, and plastic sheeting*, from New Philadelphia, OH, to points in DE, MD, NJ, NY, NC, PA, VA, and DC, under continuing contract(s) with Great Plains Bag Corp., of New Philadelphia, OH. (Hearing Site: Washington, DC, or Columbus, OH.)

MC 135410 (Sub-48F), filed February 22, 1979. Applicant: COURTNEY J. MUNSON, doing business as, MUNSON TRUCKING, North 6th Street Road, P.O. Box 266, Monmouth, IL 61462. Representative: Stephen H. Loeb, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *salt* (except in bulk), from the facilities of Morton Salt Company, at Manistee and Marysville, MI, to points in IL, IN, IA, MO, and WI. (Hearing site: Chicago, IL.)

MC 135410 (Sub-50F), filed February 22, 1979. Applicant: COURTNEY J. MUNSON, doing business as MUNSON TRUCKING, P.O. Box 266, Monmouth, IL 61462. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from the facilities of Wilson Foods Corporation, at Monmouth, IL, to points in IA, MN, MO, and WI, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Dallas, TX, or Kansas City, MO.)

MC 135410 (Sub-51F), filed February 22, 1979. Applicant: COURTNEY J. MUNSON, doing business as MUNSON TRUCKING, P.O. Box 266, Monmouth, IL 61462. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from the facilities of Wilson Foods Corporation, at (a) Marshall, MO, and (b) Cherokee, IA, to points in IL, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Dallas, TX, or Kansas City, MO.)

MC 141450 (Sub-12F), filed February 12, 1979. Applicant: OLIN WOOTEN TRANSPORT CO., INC., P.O. Box 731, Hazlehurst, GA 31539. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *materials and supplies* used in the manufacture of paint (except commodities in bulk), between those points in the United States in and east of ND, SD, NE, KS, OK, and TX, under continuing contract(s) with Martin Trading Corporation, of Ft. Lauderdale, FL. (Hearing site: Jacksonville, FL, or Atlanta, GA.)

MC 141921 (Sub-44F), filed February 12, 1979. Applicant: SAV-ON TRANSPORTATION, INC., 143 Frontage Road, Manchester, NH 03108. Representative: John A. Sykas (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *paint and paint products* (except commodities in bulk, in tank vehicles), from the facilities of Parks Corporation, at or near Somerset, MA, to points in PA, WV, KY, OH, MI, IN, IL, WI, MN, IA, MO, KS, NE, SD, CO, ND, OK, TX, OR, CA, AR, LA, TN, MS, AL, GA, SC, NC, FL, ID, UT, NV, WY, WA, and MT. (Hearing site: Concord, NH, or Boston, MA.)

Note.—Dual operations may be involved.

MC 142431 (Sub-7F), filed February 14, 1979. Applicant: WAYMAR TRANSPORT CORP., 1755 S.E. 108th Street, Runnells, IA 50237. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Swift & Company, at (a) Des Moines and Marshalltown, IA, and (b) Rochelle, IL, to points in CT, DE, ME, MD, MA, NH, NJ, NY, OH, PA, RI, VT, VA, and DC. (Hearing site: Chicago, IL.)

MC 142831 (Sub-13F), filed February 22, 1979. Applicant: HAMRIC TRANSPORTATION, INC., 3318 E. Jefferson St., Grand Prairie, TX 75051. Representative: Lawrence A. Winkle, P.O. Box 45538, Dallas, TX 75245. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *unassembled electrical transmission towers*, from the facilities of Anchor Metals, at Hurst, TX, to points in AZ and NM. (Hearing site: Dallas or San Antonio, TX.)

MC 142941 (Sub-36F), filed February 7, 1979. Applicant: SCARBOROUGH TRUCK LINES, INC., 1313 N. 25th Ave., Phoenix, AZ 85009. Representative: Lewis P. Ames, 111 W. Monroe, 10th Floor, Phoenix, AZ 85003. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *paper, paper products, and plastic articles;* and (2) *filters, holders, dispensers, and racks*, for the commodities named in (1)

above, from the facilities of American Convenience Products, Inc., at Milwaukee, WI, to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY. (Hearing site: Milwaukee, WI, or Chicago, IL.)

MC 143331 (Sub-6F), filed February 22, 1979. Applicant: FREIGHT TRAIN TRUCKING, INC., 4906 E. Compton Blvd., P.O. Box 817, Paramount, CA 90723. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *dried noodles and dehydrated soups*, from Gardena, CA, to Phoenix, AZ, Denver, CO, Kansas City, MO, Oklahoma City, OK, Dallas, Houston, and San Antonio, TX, and Salt Lake City, UT, under continuing contract(s) with Nissin Foods (USA) Co., Inc., of Gardena, CA. (Hearing site: Los Angeles, CA.)

MC 144740 (Sub-7F), filed February 23, 1979. Applicant: L. G. DEWITT, INC., P.O. Box 70, Ellerbe, NC 28338. Representative: Terrence D. Jones, 2033 K Street, N.W., Suite 300, Washington, DC 20006. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* from the facilities of or used by Foodways National, Inc., at (a) Wethersfield and Hartford, CT, and (b) New Paltz, NY, to points in CA, FL, GA, ID, IL, KS, PA, NY, MI, MN, MO, OH, OR, TX, and WI, under continuing contract(s) with Foodways National, Inc., of Wethersfield, CT. (Hearing site: Washington, DC.)

MC 145340 (Sub-2F), filed January 16, 1979. Applicant: BILLY R. BURGESS, Rt. 1, Box 250, Shirley, AR 72153. Representative: Thomas J. Presson, Lot 27, Riverbend Estates, Redfield, AR 72132. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *wood pallets, pallet parts, and wooden packaging products*, from Concord, AR, to points in IA, IL, MO, NE, OH, TN, and TX, under continuing contract(s) with Martin Lumber Company, Inc., of Concord, AR. (Hearing site: Little Rock, AR, or Memphis, TN.)

MC 145560 (Sub-6F), filed February 21, 1979. Applicant: NORTH ALABAMA TRANSPORTATION, INC., P.O. Box 38, Ider, AL 35981. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *carpeting and flooring*, from Dalton and Calhoun, GA, Nashville, TN, and Center, TX, to points in ID, MT, OR, UT, and WA, under continuing contract(s) with Wanke Panel Company, of Portland, OR. (Hearing site: Washington, DC.)

MC 145900 (Sub-2F), filed February 23, 1979. Applicant: THREE RIVERS TRUCKING, INC., Legionville Road, Ambridge, PA 15003. Representative: John A. Pillar, 1500 Bank Tower, 307 Fourth Avenue, Pittsburgh, PA 15222. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, (except commodities in bulk), between the facilities of The Levinson Steel Company, at Pittsburgh and Ambridge, PA, on the one hand, and, on the other, those points in WV on and north of U.S. Hwy 50, and those points in OH on and east of a line beginning at the OH-KY State line and extending along U.S. Hwy 23 to junction OH Hwy 4, then along OH Hwy 4 to Sandusky, OH. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 146091 (Sub-2F), filed February 22, 1979. Applicant: JOHN E. HOTH and BOBBIE J. HOTH, d.b.a. W. I. EXPRESS, Box 43, Garnavillo, IA 52049. Representative: Carl E. Munson, 469 Fisher Bldg., Dubuque, IA 52001. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as defined in sections A and C to Appendix I to the Report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Wilson Foods Corporation, at (a) Cedar Rapids, IA, and (b) Albert Lea, MN, to points in AL, AR, GA, KY, and TN, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. NOTE: The person or persons who appear to be engaged in common control of applicant and another carrier subject to regulation by this Commission must either file an application under 49 U.S.C. 11343(a) [formerly section 5(2) of the Interstate Commerce Act], or submit an affidavit indicating why such approval is unnecessary. (Hearing site: Oklahoma City, OK, or Chicago, IL.)

MC 146290 (Sub-1F), filed February 16, 1979. Applicant: DON THREDE, an individual doing business as DON THREDE TRUCKING COMPANY, 1777 Arnold Industrial Highway, Concord, CA 94520. Representative: Eldon M. Johnson, 650 California Street, Suite 2808, San Francisco, CA 94108. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *flat glass*, from the facilities of PPG Industries, Inc., at Fresno, CA, to points in AZ and NV, under continuing contract(s) with PPG Industries, Inc., of Pittsburgh, PA. (Hearing site: San Francisco or Fresno, CA.)

MC 146341F, filed February 8, 1979. Applicant: RIGHT-O-WAY, INC., 566 Valley Street, Orange, NJ 07050. Representative: Ronald I. Shapss, 450 Seventh Avenue, New York, NY 10001. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Rouses Point, NY, on the one hand, and, on the other, points in AL, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, SC, SD, TN, TX, UT, VA, WA, WV, WI, and WY, under continuing contract(s) with the Champlain Valley International Shippers and Receivers Inc., of Rouses Point, NY. (Hearing site: New York or Rouses Point, NY.)

Broker Authority

MC 130281 (Sub-3F), filed February 8, 1979. Applicant: HOLIDAY TRAVEL, INC., 2842 London Square Mall, Eau Claire, WI 54701. Representative: Douglas P. Stoffers (same address as applicant). To engage in operations, in interstate or foreign commerce, as a *broker*, at Eau Claire, WI, and Davenport, IA, in arranging for the transportation, by motor vehicle, of *passengers and their baggage*, in special and charter operations, in one-way and round-trip tours, between points in the United States (including AK and HI). (Hearing site: Eau Claire, WI.)

MC 130561F, filed January 12, 1979. Applicant: WORLD TRAVEL SERVICE, INC., 30 West Church Ave., Roanoke, VA 24011. Representative: L. C. Major, Jr., Suite 400, Overlook Bldg., 6121 Lincolnia Rd., P.O. Box 11278, Alexandria, VA 22312. To engage in operations, in interstate or foreign commerce, as a *broker*, at Roanoke and Blacksburg, VA, in arranging for the transportation, by motor vehicle of *passengers and their baggage*, in the same vehicle with passengers, in round-trip special and charter operations, beginning and ending at points in

Roanoke and Franklin Counties, VA, and extending to points in the United States (including AK, but excluding HI). (Hearing site: Roanoke, VA.)

Note.—Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in *Tauck Tours, Inc., Extension—New York, N.Y.* 54 M.C.C. 291 (1952).

[FR Doc. 79-17924 Filed 6-7-79; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-32 (Sub-No. 3F)]

Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston & Maine Corp., Debtor, Abandonment Near Bennington and Hillsborough in Hillsborough County, N.H.; Findings

Notice is hereby pursuant to 49 U.S.C. § 10903 (formerly Section 1a of the Interstate Commerce Act) that by a Certificate and Decision decided May 21, 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 B&M 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 this 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 Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston and Maine Corporation of a segment of a line of railroad known as the Hillsboro Branch extending from railroad milepost W 62.0 in Bennington to the end at railroad milepost W 70.4 in Hillsborough, a distance of 8.40 miles in Hillsborough County, NH. A certificate of public convenience and necessity permitting the abandonment was issued to Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston and Maine Corporation. Since no investigation was instituted, the requirement of § 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 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 June 25, 1979. The offer, as filed, shall contain information required pursuant to § 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 on July 23, 1979.

H. G. Homme, Jr.,

Secretary

[FR Doc. 79-17927 6-7-79; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-32 (Sub-No. 4F)]

Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston & Maine Corp., Debtor, Abandonment Near Townsend, Mass., and Greenville, N.H., in Worcester County, Mass., and Hillsborough County, N.H.; 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 29, 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.—Abandoment Goshen,* —— I.C.C. ——, decided February 9, 1979, and further that B&M 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 this 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 Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston and Maine Corporation, of a segment of a line of railroad known as the Greenville Branch extending from railroad milepost B 46.85 in Townsend, MA to the end of the line at railroad milepost B 59.76 in Greenville, NH, a distance of 12.91 miles in Worcester County, MA and Hillsborough County, NH. A certificate of public convenience and necessity permitting the abandonment was issued to Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston and Maine Corporation. Since no investigation was instituted, the requirement of § 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 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 (§ 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 on or before June 25, 1979. The offer, as filed, shall contain information required pursuant to § 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 on July 23, 1979.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-17928 Filed 6-7-79; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-32 (Sub-No. 5F)]

Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston & Maine Corp., Debtor, Abandonment in Somerville and Cambridge, Middlesex County, Mass.; 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 21, 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, the present and future public convenience and necessity permit the abandonment by Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston and Maine Corporation of a segment of a line of railroad known as the Fitchburg Freight Cut-off extending from railroad milepost B 3.38 in Somerville to railroad milepost B 4.64 in Cambridge, a distance of distance of 1.26 miles in Middlesex County, MA. A certificate of public

convenience and necessity permitting the abandonment was issued to Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston and Maine Corporation. Since no investigation was instituted, the requirement of § 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 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 (§ 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 on or before June 25, 1979. The offer, as filed, shall contain information required pursuant to § 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 on July 23, 1979.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-17929 Filed 6-7-79; 8:45 am]

BILLING CODE 7035-01-M

[Amdt. No. 1 TD I.C.C. Order No. 40 Under S.O. No. 1344]

Rerouting Traffic

To: All Railroads:

Upon further consideration of I.C.C. Order No. 40 and good cause appearing therefor:

It is ordered: I.C.C. Order No. 40 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., June 8, 1979, unless otherwise modified, changed or suspended.

Effective date. This amendment shall become effective at 11:59 p.m., May 25, 1979.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., May 24, 1979.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 79-17932 Filed 6-7-79; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. 55 (Sub-No. 28F)]

Seaboard Coast Line Railroad Co. Abandonment Near Creedmoor and Joyland in Granville and Durham Counties, N.C.

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 21, 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, 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 Durham Subdivision, extending from railroad milepost SB-139.00, near Creedmoor, NC, to milepost SB-150.00, near Joyland, NC, a distance of 11.00 miles, in Granville and Durham Counties, NC. A certificate of public convenience and necessity permitting the abandonment was issued to the Seaboard Coast Line Railroad Company. Since no investigation was instituted, the requirement of § 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 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 (§ 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 on or before June 25, 1979. The offer, as filed, shall contain information required pursuant to § 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 on July 23, 1979.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-17922 Filed 6-7-79; 8:45 am]

BILLING CODE 7035-01-M

[Decision Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs

Decided: June 1, 1979.

In a decision served April 20, 1979, in the above-entitled proceeding, the Commission implemented Special Permission No. 76-350 to provide a mechanism whereby regulated carriers could attempt to reflect rapidly increasing fuel costs in the rate structure as quickly as possible. (44 FR 25556, May 1, 1979).

In addition, comments were requested as to possible modifications of the X-311 procedures, and to the question of the authorization of a fuel-based surcharge and guaranteed pass-through provision to those actually incurring increased fuel charges. On the question of the surcharge, several petitions were held in abeyance pending comments. Comments were also requested on possible modification of the 10-working day notice requirement, and the use of the one-percent rate increase triggering mechanism, absent special justification.

Since the April 20 decision there have been a number of X-311 rate increase filings including industry-wide requests by the railroads, bus, and household goods' carriers. There are indications, however, that the fuel situation with regard to owner-operators is deteriorating. Whether this is due to certain motor common carriers which use owner-operators not filing for increases, or that the owner-operators are not receiving adequate compensation for increased fuel expenses despite X-311 increases is not clear. However, there have been reports of job slowdowns, and the possibility of major walkouts appears to exist.

The requested comments have been received. All contentions have been evaluated and considered in leading to our conclusions discussed below.

The nature of the emergency dictates that a fuel-based surcharge be the appropriate method of implementing future X-311 rate increases as of the date of this decision. It appears that, as a general rule, this would be the best and most efficient manner for carriers, owner-operators and/or other parties bearing the increased fuel charges, and the shipping public to determine how

much of any given shipment is attributable to added fuel expense. It would facilitate tariff publication, and would clearly show especially with regard to owner-operators and/or other parties bearing increased fuel charges, how much such parties are entitled to be reimbursed. Carriers whose earlier surcharges have been rejected under the prior rule are invited to refile immediately.

Several other parties suggested various types of surcharges (mileage, weight, revenue-based, etc.). Given the urgency of the energy emergency for all modes, and the myriad types of rate structures, especially among motor carriers, we are not recommending that a proposed fuel surcharge be in any particular form. Thus, a carrier, in its discretion, could choose a mileage surcharge or any other surcharge method it deemed appropriate for its circumstances. However, the following conditions are to be attached to the use of a surcharge: each surcharge must have a provision for a 100 percent pass-through [1] to those parties actually incurring the increased fuel charges; and, the surcharge must have an expiration date of no later than October 31, 1979, which may not be extended or canceled except upon specific authorization of the Commission. Extension of the expiration date for the surcharge will be dependent upon the continuation of the fuel emergency. We state strongly that any surcharges approved should be replaced at the earliest opportunity by general increase proposals or other appropriate tariff adjustments on statutory notice in order that the Commission can consider whether the person actually responsible for the payment of the fuel costs will continue to receive the benefit of the fuel adjustment.

The possible use of a "Fuel Increase Schedule", such as that proposed in Appendix A of the April 20 decision, or the future use of any specific Commission-imposed surcharge formula is not being discarded. The Commission will closely monitor fuel price increases with the various monitoring systems available to it. If the emergency worsens, or the Commission deems it warranted, a specific schedule or formula could be implemented.

In addition, increases already granted or pending under the provisions of Ex Parte No. 311 implemented in the April 20 decision would remain as changes in the rate structure. Subsequent to the date of the present decision, all fuel-related increases filed under the provisions of Ex Parte No. 311 will be in the form of a surcharge, except where special justification to deviate is shown.

It should be stressed that the overall issue of revenue need is not being considered in Ex Parte No. 311 increases. However, revenue increases as a result of escalating fuel prices will of necessity be reflected in revenue/cost relationships in subsequent general increase proceedings. Such comparisons will be evaluated in future general rate increase proposals where the issue of overall revenue need will be considered.

In the April 20 decision, the Commission established the base period as January, 1979. Many comments were received requesting that the base period be changed to September, 1978. Several other base period dates were also suggested in individual proceedings. Most of the comments stated that fuel price increases were occurring prior to January, 1979, and should be included in any X-311 requests. The September, 1978, base period was also suggested so as to be in conformity with the program year of the Council of Wage and Price Stability (COWPS) which began October 1, 1978.

We find that the January, 1979 base period should be retained. Based on the best evidence of record, it appears that the extremely rapid rise in fuel prices began during this month. Any increased fuel expenses not covered by an X-311 increase could be examined in future general rate increase proposals.

In addition, some comments posed the question of whether the Commission's change to a January, 1979 base period eliminated the "floating base period" established in the decision served February 24, 1976. In that decision, the Commission modified the original X-311 procedures to insure that carriers seeking a first or second X-311 increase have not duplicated increased fuel costs used as justification in prior general rate increase proceedings. We find that while the January, 1979 base period will be retained, those carriers seeking a second X-311 increase can use the floating base period concept outlined in the February 24, 1976 decision. It should be emphasized again, however, that a second surcharge must have an expiration date of October 31, 1979, and that any subsequent surcharge should be replaced by general rate increase proposals at the earliest opportunity.

The present procedures require that X-311 increases be published on not less than 10 working days' notice, with protests due no later than 5 days before the effective date. Some shippers complained that this period is not long enough, while a few carriers wanted less notice. We find that the 10-day notice should not be reduced. However, in individual situations, this period can be shortened if absolutely necessary.

Under the present procedures, in the absence of special justification, increases of less than 1 percent shall not be requested. Several comments requested that this trigger mechansim be lowered. We agree, and find that, in the absence of special justification, increases of less than .5 percent shall not be requested.

The freight forwarders have filed a petition asking for implementation of Special Permission No. 76-360 which set out the special procedures for this mode in seeking fuel-based rate increases. This was also included in the original X-311 decision, 350 I.C.C. 563, 582 (1975). However, the Commission decision of April 20 did not take any action with regard to forwarders. We find that Special Permission No. 76-360 should be activated, and that freight forwarders also be authorized to use the surcharge method.

COWPS submitted a statement contending that fuel prices should not be considered as an isolated element in setting rate increases. It is stated that such a policy encourages inefficiency, will allow unjustified revenue to accrue to certain carriers which could otherwise absorb some fuel cost increases, and will contribute to the nation's high inflation rate.

Given the nature of the emergency, the Commission feels there is a strong basis for the existence of expedited procedures for the recovery of rapid fuel price increases. We assure the Council that the Commission will exercise its duty in determining that any surcharge is fully cost justified.

At the same time, we repeat that it is our intention to consider inflationary effects when determining the lawfulness of the surcharges to be filed. If possible, the carriers, when filing X-311 increases, should also submit data that the Commission can place into the Council's current price guideline formulas.[2] The Council should also be aware that we are reviewing its proposals to increase efficiency of the transportation system, such as eliminating backhaul restrictions.

Finally, the question was raised of how to protect owner-operators an/or the person bearing the increased fuel charges when the carriers they work for refuse to file a surcharge. The

[1] Overhead and other expenses associated with the pass-through requirement may be recouped by the certificated carrier by normal tariff procedures.

[2] We urge the carriers and their representatives to discuss their proposals for fuel cost increases with the Council prior to filing the tariff schedules with the Commission.

Commission does not have a solution to this potential problem, and invites comments from interested parties on this issue no later than 20 days from the date of service of this decision.

Special Permission No. 79–2620 Emergency Fuel Surcharge for Line-Haul Transportation Charges and Other Charges-Expedited Procedure

In a decision served April 20, 1979, the Commission implemented Special Permission No. 76–350 to provide a mechanism where regulated carriers could attempt to reflect rapidly increasing fuel costs in the rate structure as quickly as possible. Because of the increasing fuel emergency, and because the prior authority does not entirely meet the immediate need of certain carriers and/or persons bearing the increased fuel charges, further relief is warranted.

It is ordered: 1. All regulated carriers, including freight forwarders, or their authorized publishing agents that have tariffs or schedules on file with this Commission, or those carriers or agents that may in the future file tariffs or schedules with this Commission, are authorized to depart from the terms of the governing tariff circulars to file and post on not less than 10 working days' notice to this Commission and the public, an increase in passenger fares and freight charges for line-haul transportation and charges for other services which consume fuel, such as pickup and delivery, which must be specified in the tariffs, by means of a percentage surcharge. Increases already granted or pending under Special Permission No. 76–350 would remain as changes in the rate structure. As of the date of this decision, all fuel-related increases must be filed under the terms of Special Permission No. 79–2620 using the surcharge method, except where special justification to deviate is shown and approved by the Commission.

2. The Commission shall analyze the impact of fuel expenses on a month-to-month basis to determine whether there is justification for modifications of this decision; if conditions warrant, this decision will be amended accordingly.

3. The surcharge filed and posted under the authority of this permission may take the form of master tariff of increase, or as a supplement to the affected tariffs. If the master tariff form of publication is to be employed, reference will be made by connecting link supplement to each tariff (to be made subject to the master tariff), connecting such tariff with the master. Such supplements may be blanket supplements (a common supplement issued to two or more tariffs), provided each copy officially filed is hand marked in the tariff it supplements.

4. The person actually responsible for the payment of fuel charges, by contract or otherwise, is to receive the full increase in revenue derived from surcharges published hereunder. Each publication containing the surcharge shall contain whichever of the following certifications is appropriate:

This is to certify that each carrier party to this publication has been notified that:

Special Permission No. 79–2620 requires that the person actually responsible, by contract or otherwise, for the payment of fuel charges is to receive the full increase in revenue derived from surcharges published thereunder, and that a carrier's participation in a publication filed thereunder constitutes an undertaking to comply with that requirement.

or

This is to certify that the person actually responsible, by contract or otherwise, for the payment of fuel charges will receive the full increase in freight revenue to be derived from the proposed surcharge.

5. All surcharges filed under this special permission must have an expiration date of no later than October 31, 1979. Special Permission No. 79–2620 will remain in effect until October 31, 1979, unless extended by further order of the Commission.

6. Publications issued and filed hereunder shall be exempt from the supplemental and volume limitations of the tariff circulars, shall contain no other matter and shall bear the following notation:

"Issued on ten days' notice, I.C.C. permission No. 79–2620"

7. The carriers, individually, or by tariff publishing bureaus, as appropriate, shall submit with the schedules of proposed surcharges based on fuel costs, an original and 2 copies of an executed "Verified Statement of Fuel Expenses and Data in Support of Requested Fuel Rate Increase" in the form and manner provided for in Appendix II to the report in Ex Parte No. 311, 350 I.C.C. 563, 575–76 (1975), as amended by decisions served February 24, 1976 and April 20, 1979. Railroads when filing jointly and motor carrier rate bureaus subject to Ex Parte No. MC–82 when filing on behalf of substantially all their members, should submit 20 copies of the Appendix II data.

8. Indicate the percent (to 1 decimal) of the requested fuel surcharge based on the increase in fuel expenses, including taxes, current period over base period. This percent should not exceed the percent shown on line 15 of Appendix II. In the absence of special justification, increases of less than .5 percent shall not be requested.

9. Only one surcharge as to a tariff may be in effect at one time, and any surcharge filed under authority of this special permission shall not provide for any exceptions (non-application) with respect to any particular traffic.

10. The surcharge provisions must include a rule for disposition of fractions of one cent or other stated amounts, or refer to a conversion table of increased charges or fares.

11. In the situation where a proposed surcharge is on a mileage basis, the carrier or agent must include in the tariff a clear method of determination of mileage. Also, there must be included in the tariff a method of pro-rating any mileage surcharge on a per truck basis for situations where LTL or truckload shipments involve more than one shipper.

12. All outstanding orders of the Commission are modified to the extent necessary to permit the filing of the tariffs authorized herein. Increases filed under this Special Permission shall not be deemed general increases or general adjustments as defined in section 1102.1 and 1104.1(a) of Chapter X of Title 49 of the Code of Federal Regulations.

13. The requirement of following rate bureau procedures provided in agreements approved by this Commission under section 10706 of the Act (formerly sections 5a and 5b) is waived to the extent necessary to permit the filing of the tariffs authorized herein.

14. Protests are due no later than 5 days before the effective date of the tariff.

15. All carriers are hereby notified that they are expected to update their tariff by incorporating the increase published under authority of this Special Permission as soon as practicable, and that the surcharges be replaced at the earliest opportunity by general increase proposals.

16. Notice of this Special Permission shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commissions or Boards of each State having jurisdiction over transportation, by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection, and by delivering a copy to the Director, Office of the Federal Register, for publication therein.

It is further ordered: Special Permission No. 76–360 is implemented for use by freight forwarders. However, the forwarders are advised that in publishing proposals they are to use the surcharge method in Special Permission No. 79–2620 based on all the requirements therein, unless special justification is granted to use another form.

Interested parties may file comments no later than 20 days from the date of service of this decision to the question of how to protect the person actually bearing the increased fuel charges when the carriers they work for refuse to file a surcharge under this Special Permission.

By the Commission, Chairman O'Neal, Vice-Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian. Commissioner Christian absent and not participating.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18032 Filed 6-7-79; 8:45 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 112
Friday, June 8, 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).

CONTENTS

	Items
Civil Rights Commission	1
Equal Employment Opportunity Commission	2
Federal Communications Commission	3
Federal Deposit Insurance Corporation	4, 5
Federal Maritime Commission	6
Federal Reserve System	7
International Trade Commission	8
Nuclear Regulatory Commission	9
Railroad Retirement Board	10
Securities and Exchange Commission	11

1

COMMISSION ON CIVIL RIGHTS.

DATE AND TIME: Monday, June 11, 1979, 10:30 a.m.–12:30 p.m.—1:30 p.m.–3:30 p.m.

PLACE: Marina Conference Center, Holiday Inn, 801 Calhoun Street, Houston, Texas.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda.
II. Approval of Minutes of Last Meeting.
III. Staff Director's Report:
A. Status of Funds.
B. Personnel Report.
C. Office Directors' Reports.
D. Correspondence:
1. Letter from OMB Director McIntyre on Housing Report.
2. Letter from Delores Young.
IV. Report on Civil Rights Developments in the Rocky Mountain Region.
V. State Advisory Committee Re Charters:
A. Alabama.
B. California.
C. Indiana.
D. Florida (Interim Appointment).
VI. Title IX Recommendation.
VII. Battered Women Study Contract.
VIII. Review of Health Insurance Research Design.
IX. Status Report on SBA Set-Aside Provision.
X. Recommendation Re Policy on SAC Chairperson Criteria.
XI. Follow-up Re Kansas Committee Statement on School Desegregation in Topeka.
XII. Action Re Race Relations in Cooper County, Missouri—1978.

CONTACT PERSON FOR MORE INFORMATION: Barbara Brooks, Office of Congressional and Public Liaison, (202) 254–6697.

[S–1150–79 Filed 6–16–79; 11:45 am]

BILLING CODE 6335–01–M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (Eastern Time), Tuesday, June 12, 1979.

PLACE: Commission Conference Room, No. 5240, on the fifth floor of the Columbia Plaza Office Building, 2401 E Street N.W., Washington, DC 20506.

STATUS: Part will be open to the public and part will be closed to the public.

Open to the Public

1. Proposed Modifications of Various State and Local Agency fiscal year 1979 Charge Resolution Contracts.
2. Proposed Annual Report to President and Congress on Implementation of Executive Order 12067.
3. Report on Status of Consultation with Office of Federal Contract Compliance Programs on its Compliance Manual.
4. Proposed Revised Regulations Establishing Time Limits for Federal Sector Appeals.
5. Report by Vice Chair Leach on Religious Accommodation and the Postal Service.
6. Report on Court Decision in EDOC v. St. Louis Diecasting Corp.
7. Report on the Commission operations by the Executive Director.

Closed to the Public

1. Litigation Authorization; General Counsel Recommendations
2. Proposed Decision in Charge TN03–1711
3. Proposed Reconsideration of Decision in Charge 052–77–0749.

This matter, consideration of which was postponed from the meeting of June 5, was incorrectly identified as Charge 052–77–1688 in the original announcement.

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 June 5, 1979.

[S–1148–79 Filed 6–6–79; 10:11 am]

BILLING CODE 6570–06–M

3

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, June 7, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission meeting.

CHANGES IN THE MEETING: The following item has been deleted:

Agenda, Item No., and Subject

General—4—FOIA request by James Reston, Jr., to inspect records and tapes of Amateur Radio transmission of The People's Temple. FOIA Control No. 9–80.

Additional information concerning this item may be obtained from the FCC Public Affairs Office, telephone number (202) 632–7260.

Issued: June 4, 1979.

[S–1153–79 Filed 6–6–79; 2:27 pm]

BILLING CODE 6712–01–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, June 4, 1979, the Corporation's Board of directors determined, on motion of Chairman Irvine H. Sprague, seconded by director John G. Heimann (Comptroller of the Currency), concurred in by Director William M. Isaac (Appointive), that Corporation business required the withdrawal of the following matter from the agenda for consideration at the meeting, on less than seven days' notice to the public:

Memorandum proposing a sublease of space for the New York Regional Office.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: June 4, 1979.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–1143–79 Filed 6–6–79; 9:57 am]

BILLING CODE 6714–01–M

5

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)),

notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, June 4, 1979, the Corporation's Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by Director John G. Heimann (Comptroller of the Currency), concurred in by Director William M. Isaac (Appointive), that Corporation business required its addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a recommendation regarding the liquidation of assets acquired by the Corporation from United States National Bank, San Diego, California (Case No. 43,941–NR).

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter was eligible for consideration in a closed meeting by authority of subsections (c)(4), (c)(6), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), and (c)(9)(B)).

Dated: June 4, 1979.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–1144–79 Filed 6–6–79; 9:57 am]

BILLING CODE 6714–01–M

6

FEDERAL MARITIME COMMISSION.

TIME AND DATE: June 12, 1979, 10 a.m.

PLACE: Room 12126, 1100 L Street, NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public

1. Agreement No. 10320–1: Modification of a cargo revenue pooling and sailing arrangement in the trade from Brazil to the United States Gulf to provide for participation of nonnational flag lines.
2. Proposal to initiate a nonadjudicatory fact-finding investigation into neutral container leasing systems.
3. ACE Lines, Limited—Section 19 Petition concerning the New Zealand Wool Board's Circular No. 58 governing the movement of wool from New Zealand to U.S. East and West Coast ports.
4. Application of United States Cruises, Inc. for a Certificate of Financial Responsibility for Idemnification of Passengers for Nonperformance of Transportation Covering the SS UNITED STATES.
5. Workpaper availability in domestic offshore rate proceedings.
6. Docket No. 79–47: Sea-Land Service, Inc.—Proposed Five Percent General Rate Increase in Six Puerto Rico and Virgin Islands Trades—Petition of Government of Virgin Islands for reconsideration of order of investigation.
7. Docket No. 79–48: Trailer Marine Transport Corporation—Proposed General Increase in Rates—Petition of Government of Virgin Islands for reconsideration of order of investigation.
8. Docket No. 76–63: Filing of Agreements by Common Carriers and Other Persons; supporting Statements and Evidence—Proposed rules.

Portion Closed to the Public

1. Activities of Richmond Transfer and Storage Company.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523–5725.

[S–1174–79 Filed 6–6–79; 9:57 am]

BILLING CODE 6730–01–M

7

FEDERAL RESERVE SYSTEM, (BOARD OF GOVERNORS.)

TIME AND DATE: 10 a.m., Wednesday, June 13, 1979.

PLACE: 20th Street Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed purchase of a communication system for the Federal Reserve Bank of Philadelphia.

Discussion Agenda

1. Proposed recommendations to the Congress on whether Edge Corporations should be permitted to become members of the Federal Reserve System.
2. Proposed revised amendments to Regulation H (Membership of State Banking Institutions in the Federal Reserve System) to require that State member banks that effect certain securities transactions for customers provide confirmation and maintain certain records with respect to such transactions. (Proposed earlier for public comment; docket no. R–0142).
3. Proposed statement to be presented to the Senate Governmental Affairs Committee regarding S. 445, the "Regulatory Reform Act of 1979".
4. Proposal to conduct a Special Survey of Deposits Held by U.S. Residents in Caribbean Branches (FR 3010).
5. Proposed 1980 budget objective for the Federal Reserve Banks.
6. (Tentative) Board statement before the Senate Committee on Banking, Housing, and Urban Affairs on legislation dealing with interest on deposits.
7. Any agenda items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452–3204.

Dated: June 6, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[S–1149–79 Filed 6–6–79; 11:35 am]

BILLING CODE 6210–01–M

8

[USITC SE–79–22B/23C]

INTERNATIONAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 31387 (May 31, 1979).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Thursday, June 7, 1979.

CHANGES IN THE MEETING: The following item, previously scheduled for the meeting of Thursday, June 7, 1979, has been rescheduled and added to the agenda for the meeting on Tuesday, June 12, 1979:

4. Petitions and complaints, if necessary; c. Coke (Docket No. 554)—discussion (partially closed; partially open) and vote on institution (in open session).

By action jacket approved June 5, 1979, Commissioners Parker, Alberger, Moore, Bedell, and Stern determined that Commission business requires the change in subject matter and affirmed that no earlier announcement of the changes to the agenda was possible, and directed the issuance of this notice at the earliest practicable time.

Pursuant to the specific exemptions of 5 U.S.C. 552b(c)(4) and in conformity with 19 C.F.R. 201.36(b)(4), Commissioners Parker, Alberger, Moore, Bedell, and Stern voted, by action jacket approved June 4, 1979, to close only that portion of the discussion which involved confidential business information.

A majority of the entire membership of the Commission felt that this portion of the meeting should be closed to the public since the information discussed in such portion would be likely to disclose confidential business information.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

[S–1146–79 Filed 6–6–79; 9:57 am]

BILLING CODE 7020–02–M

9

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: June 5 and 7, 1979.

PLACE: Commissioners' Conference Room, 1717 H St., N.W., Washington, D.C.

STATUS: Open (Additional items).

MATTERS TO BE CONSIDERED:

Tuesday, June 5, 2:55 p.m.

Affirmation Session (Approximately 10 minutes—Public meeting)

Additional item.

Clearance for Presidential Commission Investigating the Three Mile Island Accident.

Thursday, June 7, 11 a.m. (Additional item)

Discussion of Emergency Planning (Approximately 1 hour—Public meeting)

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, (202) 634–1410

Roger M. Tweed,

Office of the Secretary.

June 6, 1979.

[S–1152–79 Filed 6–6–79; 2:10 pm]

BILLING CODE 7590–01–M

10

RAILROAD RETIREMENT BOARD.

TIME AND DATE: 1 p.m., June 15, 1979.

PLACE: Board's meeting room on the 8th floor of its headquarters building at 844 Rush Street, Chicago, Illinois 60611.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion Open to the Public

(1) Questionnaire on employer status of certain companies.

Portions Closed to the Public

(2) Appeal from referee's denial of application for "period of disability", Billie L. Brown.

(3) Appeal from referee's denial of disability annuity application, Ira L. Crain.

(4) Appeal from referee's denial of application for "period of disability", Eduardo R. Tovar.

(5) Appeal from referee's denial of disability annuity application, William A. Huffman, Sr.

(6) Appeal from referee's denial of disability annuity application, Alfonso M. Reynoso.

(7) Appeal of Robert D. Sunden under the Railroad Unemployment Insurance Act.

(8) Appeal from referee's denial of annuity application, Esther H. Bechtel.

CONTACT PERSON FOR MORE INFORMATION: R. F. Butler, Secretary of the Board, COM No. 312–751–4920, FTS No. 387–4920.

[S–1151–79 Filed 6–6–79; 11:58 am]

BILLING CODE: 7905–01–M

11

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 June 11, 1979, in Room 825, 500 North Capitol Street, Washington, D.C.

Closed meetings will be held on Tuesday, June 12, 1979, at 10 a.m. and on Wednesday, June 13, 1979, immediately following the 10 a.m. and 2:45 p.m. open meeting. Open meetings will be held on Wednesday, June 13, 1979, at 10 a.m. and 2:45 p.m.

The Commissioners, their legal assistant, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402 (a)(8)(9)(i) and (10).

Chairman Williams and Commissioners Loomis, Evans, Pollack and Karmel determined to hold the aforesaid meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 12, 1979, at 10 a.m., will be:

Formal orders of investigation.

Settlement of administrative proceedings of an enforcement nature.

Settlement of injunctive action.

Institution of injunctive action.

The subject matter of the closed meeting scheduled for Wednesday, June 13, 1979, immediately following the 10 a.m. open meeting, will be:

Settlement of administrative proceedings of an enforcement nature.

The subject matter of the closed meeting scheduled for Wednesday, June 13, 1979, immediately following the 2:45 p.m. open meeting, will be:

Post oral argument discussion.

The subject matter of the open meeting scheduled for Wednesday, June 13, 1979, at 10 a.m., will be:

1. Consideration of a release for the purpose of stating the Commission's views concerning certain factors which should be considered (i) by independent accountants, both individuals and firms, in assessing the possible effects of performing certain nonaudit services for audit clients on accountants' independence, in fact or in appearance, or on their professional image, and thus on the credibility and usefulness of their reports, and (ii) by audit committees, boards of directors and managements in determining whether to engage their independent accountants to perform nonaudit services. For further information, please contact Clarence M. Staubs at (202) 755–0222 or Edmund Coulson at (202) 472–3782.

2. Consideration of a report proposed to be sent to Congress on the accounting profession and the Commission's oversight role. For further information, please contact Clarence M. Staubs at (202) 755–0222 or Edmund Coulson at (202) 472–3782.

3. Consideration of whether to amend Rule 10f–3 and Form N–1Q under the investment Company Act of 1940 to modify the conditions pursuant to which an investment company may purchase securities from an underwriting syndicate in which certain affiliated persons participate as syndicate members. For further information, please contact Mark B. Goldfus at (202) 755–0230.

4. Consideration of whether to propose for comment a rule under the Investment Advisers Act of 1940 ("Advisers Act") which would permit certain registered investment advisers to business development companies to be compensated based on a share of net capital gains upon, or net capital appreciation of, the funds, or any portion of the funds, of a business development company. Such means of compensation is currently prohibited by the Advisers Act. For further information, please contact Kathleen McGann at (202) 755–0214.

5. Consideration of the Eighth Annual Report of the Securities Investor Protection Corporation ("SIPC"). Pursuant to the Securities Investor Protection Act of 1970, SIPC has submitted its Annual Report to the Commission which, in turn, is required to transmit the report to the President and Gongress with such comment as the Commission deems appropriate. For further information, please contact Michael J. Simon at (202) 755–8767.

The subject matter of the open meeting scheduled for Wednesday, June 13, 1979, at 2:45 p.m., will be:

Oral argument on appeals by Raymond L. Dirks, a security analyst, and the Division of Enforcement from the initial decision of an administrative law judge. The law judge concluded that Dirks should be suspended from association with any broker or dealer for sixty days. For further information, please contact R. Moshe Simon at (202) 755–1530.

FOR FURTHER INFORMATION AND TO ASCERTAIN WHAT, IF ANY, MATTERS HAVE BEEN ADDED, DELETED OR POSTPONED, PLEASE CONTACT: Mike Rogan at (202) 755–1638.

June 4, 1979.

[S–1145–79 Filed 6–6–79; 9:57 am]

BILLING CODE 8010–01–M]

federal register

Friday
June 8, 1979

Part II

Department of Health, Education, and Welfare

Food and Drug Administration

Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding Human Food

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 20 and 110]

[Docket No. 78N-0296]

Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding Human Food

AGENCY: Food and Drug Administration.

ACTION: Proposal

SUMMARY: The Food and Drug Administration is proposing to revise the current good manufacturing practice (CGMP) regulations for the manufacturing, processing, packing, and holding of human foods. this document would establish new, updated, or more detailed CGMP provisions concerning food industry personnel; plants and grounds; sanitary facilities, controls and operations; equipment and utensils; processes and controls; product coding; warehousing and distribution; recordkeeping; and natural or unavoidable defect levels. As revised by this proposal, the CGTMP regulations would be more directly applicable to the problems associated with foods for which specific CGMP regulations have not been promulgated, and thus would better ensure the production of save and sanitary food. The agency is planning to hold public hearings on this proposal in the fall of 1979. A notice giving specific information about these hearings will be published in the **Federal Register** on or about June 15, 1979.

DATES: Comments by December 31, 1979; the agency proposes that the final regulation based on this proposal be effective on or before December 5, 1979.

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

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: Passage of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) in 1938 gave the Food and Drug Administration (FDA) for the first time the authority to establish and impose reasonable sanitation standards on the production of foods, drugs, and cosmetics. For foods, these applicable statutory provisions are found in section 402(a) (3) and (4) of the act (21 U.S.C. 342(a) (3) and (4)), which, among other concerns, defines conditions under which a food is deemed to be adulterated. The legislative history of the act explains that these new provisions were added to expand the agency's bases for initiating enforcement proceedings conducted under the Pure Food and Drug Act of 1906 and, more specifically, to provide control mechanisms against insanitary and otherwise contaminated foods (Ref. 1). Furthermore, Congress granted FDA authority in section 704 of the act (21 U.S.C. 374) to inspect factories, warehouses, and other establishments in which foods are manufactured, processed, packed, or held, and to inspect their facilities, equipment, and materials.

Historically, FDA has used its inspection authority to trigger the legal sanctions provided by the act (1) to prevent the introduction or delivery for introduction into interstate commerce of adulterated food or (2) to prevent adulteration of food while it is being held for sale after shipment in interstate commerce. Under section 402(a)(3) of the act, the food is adulterated if it actually consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food. Moreover, under section 402(a)(4) of the act, food is adulterated if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health. In sum, then, food need not be shown to contain filth or other contaminants to be adulterated; a showing that the food is prepared, packed, or held under conditions whereby it may become so is legally sufficient to prove adulteration.

On the basis of evidence gathered during inspections, FDA then uses its legal authority to go to court to seize the adulterated food, to seek to enjoin its shipment or sale, or to have the persons adulterating the food criminally prosecuted. The number of inspections and court actions instituted by FDA has varied over the years, in part because of the vast number of products and parties regulated by FDA. For example, FDA's 1977 annual report estimates the overall number of food processing, manufacturing, and warehouse facilities regulated by the agency at 77,000, and FDA conducts approximately 19,000 food establishment inspections annually (Ref. 9). As a result of the vast industry that the agency must regulate, FDA ceased relying exclusively on case-by-case litigation in the late 1960's and adopted a combined policy of promulgating regulations, relying on self-regulation by the industry, and, within the limits of available resources, enforcing regulations when the industry fails to comply with them.

In 1967, based on its experience in regulating the food industry, FDA proposed regulations to establish CGMP criteria for the manufacturing, processing, packing, or holding of food, to bring about compliance with section 402(a)(4) of the act (see the **Federal Register** of December 15, 1967 (32 FR 17980)). Because comments resulted in significant changes in the proposal, the agency reproposed the regulations in the **Federal Register** of December 20, 1968 (33 FR 19023) and issued the final regulations in the **Federal Register** of April 26, 1969 (34 FR 6977). At the request of the General Accounting Office (GAO) in 1971, FDA inspected 97 food manufacturing plants of all types, which were selected at random from some 4,500 food manufacturing and processing plants located in 6 FDA districts. Insanitary conditions having the potential for or having already caused product adulteration were observed in many facilities. The results of the survey appear in the GAO report, "Dimensions of Insanitary Conditions in the Food Manufacturing Industry" (Ref. 11).

The agency initiated a series of actions to improve conditions in the food industry. In addition to its normal inspection programs, FDA held several meetings with representatives of various segments of the food industry to exchange ideas and gather information helpful for developing improved good manufacturing practices in the industry. Based on these discussions, FDA proposed CGMP regulations for cacao products and confectionaries (hereinafter referred to as the candy CGMP's) in the **Federal Register** of November 26, 1973 (38 FR 32554) and issued the final candy CGMP's in the **Federal Register** of June 4, 1975 (40 FR 24162); it also proposed analogous regulations for bakery foods in the **Federal Register** of February 12, 1976 (41 FR 6456) and tree nuts and peanuts in the **Federal Register** of June 30, 1976 (41 FR 27000). The agency selected these segments of the food industry as the first subjects of specific CGMP regulations due to the cooperation of the representatives of those segments. They also represent an approximate cross section of the food industry. The CGMP regulations for the specific segments of the food industry were proposed as merely complementary provisions to the CGMP regulations for the overall food

industry (21 CFR Part 110, the so-called umbrella CGMP's).

The agency's experience in regulating the food industry in general, including drafting CGMP proposals for other particular segments of the food industry and reviewing the comments on the outstanding CGMP proposals, has shown that problems to be addressed by those CGMP regulations are common throughout all segments of the food industry, e.g., personnel, plant construction, and sanitation. Accordingly, the agency believes that the most efficient way to proceed now is to revise the umbrella CGMP regulations rather than repetitively to propose identical regulations for numerous segments of the industry. Therefore, the agency is staying the rulemaking proceedings on the CGMP proposals for bakery foods and tree nuts and peanuts pending an evaluation of the comments on this proposal. After the comments are evaluated, the agency will determine what action to take with respect to the stayed rulemaking proceedings and will consider whether all or part of the candy CGMP's should continue in effect.

The CGMP regulations already in effect detail the practices to be followed to ensure (1) that food is manufactured, processed, packed, and held under conditions that are sanitary, and (2) that such food is safe, clean, and wholesome. In general, this notice proposes to revise and update the requirements for plant personnel; plant design and construction; sanitary operations, facilities, and controls; equipment and utensils; regulating and recording controls; processing operations; and coding and recordkeeping. Preliminary drafts of this proposal were reviewed by the Food Safety and Quality Service, United States Department of Agriculture, and the National Marine Fisheries Service, National Oceanographic and Atmospheric Administration, United States Department of Commerce. The agency has carefully considered the suggestions received from these two agencies and has incorporated them, where appropriate, into the proposal. Copies of the correspondence are on file with the Hearing Clerk, FDA (Refs. 12 and 13). The following is a section-by-section analysis of the proposal:

Definitions

Section 110.3 (21 CFR 110.3) includes definitions of new terms and revised definitions of previously used terms that have uniform applicability. To eliminate any possible misunderstanding, the agency is also revising the definitions to ensure that they are consistent with the other regulations in this subchapter. These definitions are based on the agency's experience in regulating foods, common usage in the regulated industry, and, in the case of new § 110.3 (l) and (p), the material in Refs. 14 and 15.

Current Good Manufacturing Practices

Section 110.5 (21 CFR 110.5) emphasizes that the CGMP regulations identify the applicable criteria for implementing the requirements of section 402(a) (3) and (4) of the act. Moreover, this section explains that foods covered by specific CGMP regulations in the subchapter are still subject to the requirements imposed by this part.

Under section 701(a) of the act (21 U.S.C. 371(a)), FDA has the authority to promulgate regulations for the efficient enforcement of the act, and such regulations have been held to have the force and effect of law. See *National Nutritional Foods Ass'n* v. *Weinberger*, 512 F. 2d 688, 695–698 (2d Cir., 1975). The courts have also expressly held that FDA has the authority to promulgate substantive regulations defining current good manufacturing practices for the food industry *National Confectioners Ass'n* v. *Califano*, 569 F. 2d 690 (D.C. Cir., 1978). See *Nova Scotia Food Products Corp.* v. *U.S.*, 568 F. 2d 240, 245–248 (2d Cir., 1978). Furthermore, since the promulgation of the CGMP regulations in 1969, the Secretary of Health, Education, and Welfare has delegated authority to exercise the functions vested in the Secretary under section 361 of the Public Health Service Act (42 U.S.C. 264) to the Commissioner of Food and Drugs (see 35 FR 606 (January 16, 1970), corrected at 35 FR 3001 (February 13, 1970), codified at 21 CFR 5.1(a)(4)). Under this provision, the Commissioner is authorized to issue and enforce regulations for any measures that, in the Commissioner's judgment, are necessary to prevent the introduction, transmission, or spread of food-borne communicable diseases from one State to another. Because this authority is designed to eliminate the introduction of diseases such as typhus from one State to another, this authority must of necessity be exercised upon the disease-causing substance within the State where the food is manufactured, processed, or held. Due to the nationwide, interrelated structure of the food industry, communicable diseases may, without proper intrastate food controls, easily spread interstate, as the annual Center for Disease Control reports on food-borne Salmonellosis show (Refs. 16 and 17). The Commissioner therefore assumes authority to promulgate regulations under the Public Health Service Act to assure that foods are manufactured, processed, packed, or held under sanitary conditions so as to be safe, wholesome, and otherwise fit for food. Regulations promulgated under that statute also have the force and effect of law. See *State of Louisiana* v. *Mathews*, 427 F. Supp. 174 (D. La., 1977).

Personnel

Section 110.10 (21 CFR 110.10) summarizes the responsibilities imposed on the plant management to take reasonable measures and precautions to satisfy the articulated criteria for disease control, cleanliness, and education and training. These standards and criteria will help to prevent the spread of disease among the workers and from the workers to the food processing area and the food itself.

Exclusions

Section 110.19 (21 CFR 110.19) codifies FDA's historical exemption from the "umbrella" CGMP regulations of establishments that are engaged in the harvesting, storage, or distribution of one or more raw agricultural commodities that are ordinarily cleaned, prepared, treated, or otherwise processed before being marketed to the consuming public. Subsequent handlers of the commodities would be subject to the CGMP regulations, and food from those commodities is thus brought into compliance with the act at the later stages of the manufacturing, processing, packing, or holding. The Commissioner, however, will issue special regulations when necessary to encompass any excluded operation.

Plants and Grounds

Section 110.20 (21 CFR 110.20) describes the general principles of plant design and construction that are necessary to protect food from insanitary conditions and unwholesomeness and also to prevent the spread of disease-causing microorganisms through food. The proposal includes a new subparagraph to explain ways to reduce the possibility of microorganism, chemical, filth, or other contamination of end products, raw materials, and packaging materials. It recommends separating each step in the operation, from receiving the raw materials, to packing and shipping the end product, to cleaning, sanitizing, and maintaining the operations. Several mechanisms of separating the operations are set out in the regulation: location, partition, air flow, enclosed systems, or any other effective means

that will separate the systems and prevent their contamination.

These requirements were adopted in the candy CGMP's, and FDA has found them useful in that area. Comments received in response to the candy CGMP proposal and proposals for bakery foods and tree nuts and peanuts CGMP regulations, which also included these provisions, interpreted them as requiring the affected parties to separate each step in their operations by partitions. The agency advises that the use of partitions is only one method of separating operations, and that other means are acceptable. However, the operations should be separated so as to ensure that no contamination occurs. Additionally, the new subparagraph recommends that the design of the plant permit management to take precautions to protect products in out-door bulk fermentation vessels from insanitary conditions.

Sanitary Operations

Section 110.35 (21 CFR 110.35) sets out the basic rules for sanitation and cleanliness of buildings, fixtures, and other physical facilities, equipment, and utensils. The rules describe the requirements for general maintenance, control of animals and vermin, sanitation of equipment and utensils, and storage and handling of cleaned equipment and utensils. This section has been expanded to emphasize and describe proper use of cleaning compounds, sanitizing agents, and pesticide chemicals to protect raw material, packaging material, and finished food from contamination.

Sanitary Facilities and Controls

Section 110.37 (21 CFR 110.37) lists and describes the minimally acceptable adequate sanitary facilities and accommodations for all the food-handling operations. These include, but are not limited to, water supply, plumbing, sewage disposal, toilet facilities, hand-washing facilities, and rubbish and offal disposal.

A new subparagraph added to paragraph (b) prohibits backflow or cross connection between piping systems that carry water for food processing use and piping systems that discharge waste water or sewage. This prohibition is necessary to prevent spread of filth or disease-causing microorganisms through the sanitation facilities. In addition, paragraph (e) is revised to describe better the requirements for hand-washing facilities and has adopted the paragraph used in the candy CGMP's, which the agency believes is applicable for all food handling operations.

Equipment and Utensils

Section 110.40 (21 CFR 110.40) describes the general rules for cleanliness and maintenance of equipment and utensils, which must be designed and constructed so that they can be cleaned and maintained to prevent adulteration of the food. To prevent problems that can arise in this area, the agency had added the following requirements:

(a) Food-contact surfaces must be corrosion free when in contact with food.

(b) Seams in food-contact surfaces must be smoothly bonded or maintained to minimize the accumulation of food particles. Surfaces such as stainless steel are not required; other surface materials also can be maintained to prevent microbial contamination.

(c) Surfaces of equipment that do not come in contact with food are to be constructed so that they can be kept clean by maintenance in accordance with the other provisions of the regulations.

(d) Systems that hold, convey, and process ingredients and products must be designed and constructed so that they also can be kept clean.

(e) Temperature-controlling, -re - cording, and -measuring devices on equipment used to control and prevent the growth of microorganisms must be accurate and effective for their designated use. Because killing the microorganisms is critical, the devices must ensure that the food is adequately processed.

(f) Freezer and cold storage compartments used for holding materials capable of supporting the growth of microorganisms must be fitted with suitable temperature-indicating or -recording devices.

(g) Instruments used for measuring or regulating conditions that control or prevent undesirable microbial growth in foods must be properly maintained (e.g., compressed air introduced into foods must be clean). Food-contact surfaces and gases, in addition to compressed air, must comply with the requirements of section 409 of the act (21 U.S.C. 348). Any pesticides used must be used in accordance with section 408 of the act (21 U.S.C. 346a) and the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 note).

(h) Although most former industrial uses of polychlorinated biphenyls (PCB's) have been curtailed, if not eliminated, the agency believes that it is necessary to retain a restricted uses paragraph for PCB's in the proposed regulation for the following reasons: PCB's represent a class of toxic industrial chemicals manufactured and sold under a variety of trade names, including: Aroclor (United States); Phenoclor (France); Colphen (Germany); and Kanaclor (Japan). PCB's are highly stable, heat resistant, nonflammable chemicals. Industrial uses of PCB's include, or did include in the past, their use as electrical transformer and capacitor fluids, heat transfer fluids, hydraulic fluids and plasticizers, and in formulations of lubricants, coatings, and inks. Their unique physical and chemical properties and widespread, uncontrolled industrial applications have caused PCB's to be a persistent and ubiquitous contaminant in the environment and to contaminate certain foods. In addition, incidents have occurred in which PCB's have directly contaminated animal feeds as a result of industrial accidents (leakage or spillage of PCB fluids from plant equipment). These accidents in turn cause the contamination of food intended for human consumption (meat, milk, and eggs). Because PCB's are toxic chemcials, the PCB contamination of food as a result of these accidents represents a hazard to human health. It is therefore necessary to place certain restrictions on the industrial uses of PCB's in food plants.

Processes and Controls

Section 110.80 (21 CFR 110.80) adds a quality control operation to ensure that all operations in the receiving, inspecting, transporting, packaging, segregating, preparing, processing, and storing of food are conducted in accordance with adequate sanitation principles. This program requirement is based on FDA's experience in conducting approximately 19,000 food establishment inspections annually. Most operations have control procedures of this nature, and quality control procedures of this type help to ensure that raw materials and finished products are fit for food, that packaging materials are safe and suitable, and that all are in compliance with the act.

The agency is also proposing to amend the paragraph on raw materials to establish new subparagraphs addressing the issue of the fitness of raw materials. These materials must comply with the act. They must be held under proper storage conditions, and they must not contain microorganisms that can produce food poisoning or other disease in humans, or they must be properly treated to destroy such microorganisms.

The agency has reexamined the requirement in the candy CGMP's (21 CFR 118.80(b)(1), and (4)(i), and (c)(1)) that such foods be held at temperatures below 40°F (4.4°C). As the refrigeration temperature rises, the shelf life of foods is generally shortened. Although some pathogenic bacteria can reproduce at temperatures between 40°F (4.4°C) and 45°F (7.2°C), growth is slow (Refs. 18 through 26). The agency has reviewed the added risk of allowing a maximum storage temperature of such foods of 45°F (7.2°C) rather than 40°F (4.4°C) and concludes that this risk is minimal.

On the other hand, the agency believes the added expenditure of energy and cost of maintaining foods at 40°F (4.4°C) versus 45°F (7.2°C) is significant. A refrigerator operating at an ambient air temperature of 70°F (21.1°C) requires 20 percent more energy to operate at a temperature of 40°F (4.4°C) than to operate at a temperature of 45°F (7.2°C) (Refs. 27 and 28). Therefore, the agency is proposing to require that materials capable of supporting rapid microbial growth be stored at a temperature of 45°F (7.2°C) or below.

The agency is also expanding paragraphs concerning processing operations by proposing to require that: (a) foods that can support the rapid growth of microorganisms be held so that the risk of such growth is minimized; (b) measures taken to destroy or prevent the growth of microorganisms of public health significance be adequate under the conditions of manufacture; (c) raw materials, work-in-process, rework, finished foods, and refuse be handled so that the risk of having a contaminated food is minimized; (d) measures be taken to prevent the inclusion of extraneous material in finished products; (e) adulterated materials be properly disposed of or, if it is feasible, be reconditioned; (f) mechanical processing be performed so as not to contaminate raw materials, ingredients, or finished products; (g) batters, breadings, sauces, and other preparations be treated or maintained so that they are free of contamination; (h) the filling, assembling, and packaging of food be performed so as not to contaminate the finished food products; (i) foods relying on low water activity for preventing the growth of most microorganisms be processed to, and maintained at, a safe moisture level; and (j) foods relying on low pH for preventing the growth of microorganisms of public health significance be maintained at a pH of 4.6 or below.

Coding

To emphasize the importance of this provision, new § 110.91 (21 CFR 110.91) deals expressly with product coding. In § 110.80(i) of the current umbrella GMP regulations, which this proposal would supersede, the agency suggests that meaningful coding of products should be used to enable positive lot identification. Positive lot identification facilitates, identification and segregation of contaminated products or products that may be otherwise unfit for their intended use. The current regulations also recommend that records be retained for a period that exceeds the shelf life of the product, but for no more than 2 years.

In the past decade, voluntary product recalls by manufacturers have become one of FDA's most useful regulatory tools, and the agency has promulgated guidelines describing the policies and procedures that FDA follows and guidelines that firms should follow in the conduct of product recalls (see the **Federal Register** of June 16, 1978 (43 FR 26202)). In fiscal year 1975 there were 133 recalls of food products, including misbranding violations, and 163 in fiscal year 1976 (Ref. 9). These experiences have shown that product coding is an essential element of this regulatory tool. Congress has recognized the utility of product coding, as have many members of the food industry, who have developed guidelines for their segments of the industry (Ref. 34). Furthermore, the United States Court of Appeals for the District of Columbia Circuit recognized the self-evident rationality of this procedure in its opinion upholding the coding provision in the candy CGMP's. See *National Confectioners Ass'n* v. *Califano*, 569 F.2d 690, 695 (D.C. Cir., 1978).

Many companies are already coding products (Ref. 34), and, based upon coding's recognized utility and accepted use in many segments of the food industry, the agency believes product coding should be mandatory for all foods. Accordingly, the agency is proposing, except where specifically exempt, to require permanently legible marks at a readily visible location on each finished food package delivered or displayed to purchasers (except for over-the-counter retail sales at the site of manufacture), so that the code marks can be easily seen on the unopened package. The marks must identify at least the plant where the product was packed and the product lot or packaging lot. It is recognized that a packaging lot may contain food manufacturerd on more than 1 day but packaged on a single day.

The agency is proposing to exempt the following products from the requirement that code marks be placed on each finished food package: (a) individually wrapped confectionery, each piece weighing ½ ounce or less, subject to § 1.24(a)(4); (b) food received in bulk containers at a retail establishment, and subject to § 101.100(a)(2), and (c) food repackaged at a retail establishment subject to § 101.100(b) provided that the package in which the food item is shipped to the retailer shall bear a code mark. The agency is willing to consider other similar exemptions if they are considered necessary and if such exemptions will allow the easy recall of food items from the retailers, institutions, manufacturers, or repackers to whom the products are shipped.

This proposed coding requirement is somewhat more stringent than the coding provision in the candy CGMP's in that it does not, as a general rule, give the manufacturer the option of placing the code mark on the shipping container rather than on the individual finished food package. The agency believes, however, that the proposed requirement is consistent with the coding practices now used by much of the food industry and that it will facilitate identification of recalled products.

Warehousing and Distribution

Revised § 110.93 (21 CFR 110.93) describes and establishes the requirement that storage and transportation of finished foods be conducted under conditions that will prevent physical, chemical, and microbiological contamination.

Records

Section 110.100 (21 CFR 110.100) lists current recordkeeping requirements, amended to conform to those promulgated and upheld in the candy GGMP's. These recordkeeping requirements are correlated with the other CGMP requirements and require the affected parties to maintain (a) records on the results of examinations or copies of supplier guarantees or certifications verifying that the raw materials comply with the basic act and other FDA regulations under proposed § 110.80(a); (b) records of processes that are specified in proposed § 110.80(b) and are intended to destroy or prevent the growth of microorganisms of public health significance in the foods; and (c) distribution records that identify initial distribution of finished food under proposed § 110.93 to facilitate recalls. The agency proposes that these records

be kept for 2 years or for the shelf life of the product, whichever is shorter.

Natural or Unavoidable Defects

Section 110.110 (21 CFR 110.110) alerts all affected parties that current action levels for natural or unavoidable defects in food for human use that present no human health hazard are publicly available. Because the action levels for these defects are subject to revision, it is impractical to include them in the regulation, but they are available from FDA on request, and the regulation identifie show this information can be obtained.

For editorial consistency, the agency also proposes to revise § 20.100(c)(8) (21 CFR 20.100(c)(8)) to reflect a cross reference to proposed § 110.110(e), which contains cross-referenced action level provisions now located in § 110.99(e) (21 CFR 110.99(e)).

The agency plans to hold public hearings for the purpose of receiving information and views regarding the issues raised by this proposal and the impact the proposed regulations will have on the food industry, especially small businesses. The hearings will be held in Chicago, IL, on September 11, 1979; San Francisco, CA, on October 3, 1979; and Atlanta, GA, on October 24, 1979. Representatives of small businesses will be encouraged to participate. Specific information about these hearings will be published in the **Federal Register** on or about June 15, 1979.

The agency proposes that the final regulations based on this proposal be effective 180 days after the date of publication of the final regulations in the **Federal Register.**

The agency has carefully considered the environmental effects of the proposed regulation and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the environmental impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

References and Material Consulted

1. Memo on Legislative History of section 404 (21 U.S.C. 344) of the Federal Food, Drug, and Cosmetic Act.

2. S. Rep. No. 493, 73d Cong., 2d Sess. (1934).

3. S. Rep. No. 361, 74th Cong., 1st Sess. (1935).

4. S. Rep. No. 646, 74th Cong., 1st Sess. (1935).

5. H.R. Rep. No. 2755, 74th Cong., 2d Sess. (1936).

6. S. Rep. No. 152, 75th Cong., 1st Sess. (1937).

7. S. Rep. No. 91, 75th Cong., 1st Sess. (1937).

8. H.R. Rep. No. 2139, 75th Cong., 3d Sess. (1937).

9. 1977 Food and Drug Administration Annual Report.

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11. General Accounting Office Report, "Dimensions of Insanitary Conditions in the Food Manufacturing Industry."

12. Letter dated November 4, 1977, from Dr. Robert Angelotti, Administrator, Food Safety and Quality Service, USDA, to Dr. Howard R. Roberts, Acting Director, Bureau of Foods, FDA, containing FSQS comments on preliminary draft of GMP proposal and FDA reply dated May 31, 1979.

13. Letter dated November 8, 1977, from Joseph W. Slavin, Assistant Director for Fisheries Development, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Dept. of Commerce, to Dr. Howard R. Roberts, Acting Director, Bureau of Foods, FDA, containing NMFS comments on preliminary draft of GMP proposal and FDA reply dated May 31, 1979.

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25. Wiedeman, K., M. A. Watson, J. Neill, and W. G. Walter, "Effect of Holding time on Bacteria in Chicken Casserole," *Journal of the American Dietetic Association*, 33:37–41, 1957.

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28. Private communication from R. W. Dickerson, Jr., January 4, 1978.

29. Food Services Sanitation Manual including A Model Food Service Sanitation Ordinance (1940, 1943, 1962; revision published, 1976).

30. Draft Retail Food Store Sanitation Ordinance (1978).

31. The Vending of Food and Beverages including A Model Sanitation Ordinance (1965, revised 1978).

32. Grade A Pasteurized Milk Ordinance 1965 Recommendation of the United States Public Health Service (being revised, 1979).

33. Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products (7 CFR Part 58).

34. Proposed Amendments to the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act to authorize a Uniform System of Coding for Packaged Food: Hearings on S. 3012—Amendment No. 1838, Before the Subcommittee for Consumers of the Senate Committee on Commerce, 93d Cong., 2d Sess. (1974).

Copies of the items listed above, except for items 2 through 8, are on file with the Hearing Clerk, FDA.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 302, 303, 304, 402(a), 701(a), 52 Stat. 1043–1046 as amended, 1055 (21 U.S.C. 332, 333, 334, 342(a), 371(a))), and the Public Health Service Act (sec. 361, 58 Stat. 703 (42 U.S.C. 264), and the authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

1. In Part 20, § 20.100 is amended by revising paragraph (c)(8) to read as follows:

§ 20.100 Applicability; cross-reference to other regulations.

* * * * *

(c) * * *

(8) Action levels for natural and unavoidable defects in food for human use, in § 110.110(e) of this chapter.

* * * * *

2. By revising Part 110 to read as follows:

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

Subpart A—General Provisions

Sec.
110.3 Definitions.
110.5 Current good manufacturing practice.
110.10 Personnel.
110.19 Exclusions.

Subpart B—Buildings and Facilities

110.20 Plants and grounds.
110.35 Sanitary operations.
110.37 Sanitary facilities and controls.

Subpart C—Equipment

110.40 Equipment and utensils.

Subpart D [Reserved]

Subpart E—Production and Process Controls

110.80 Processes and controls.
110.91 Coding.
110.93 Warehousing and distribution.

Subpart F—Records and Reports

110.100 Records.

Subpart G—Defect Action Levels

110.110 Natural or unavoidable defects in food for human use that present no health hazard.

Authority: Secs. 302, 303, 304, 402(a), 701(a), 52 Stat. 1043–1046 as amended, 1055 (21 U.S.C. 332, 333, 334, 342(a), 371(a)); sec. 361, 58 Stat. 703 (42 U.S.C. 264)).

Subpart A—General Provisions

§ 110.3 Definitions.

The definitions and interpretations of terms in section 201 of the Federal Food, Drug, and Cosmetic Act are applicable to such terms when used in this part. The following definitions shall also apply:

(a) "Acid foods or acidified foods" means foods that have an equilibrium pH of 4.6 or below.

(b) "Adequate" means that which is needed to accomplish the intended purpose in keeping with good public health practice.

(c) "Batter" means a semifluid substance, usually composed of flour and other ingredients, in which principal components of food are dipped or with which they are coated.

(d) "Blanching" means a hot water or steam direct-scalding treatment of foodstuffs for a sufficient time and at a sufficient temperature to inactivate the naturally occurring enzymes.

(e) "Corrosion-free" as it applies to food-contact surfaces means that the surface material is free of corrosion that may cause contamination of the food.

(f) "Critical control point" means a point in a food process where lack of control may cause, allow, or contribute to adulteration of the final product or any raw materials used therein.

(g) "Food-contact surfaces" are those surface that contact food and those surfaces from which drainage onto foods or onto surfaces that contact food ordinarily occurs during the normal course of operations.

(h) "Lot" means a collection of primary containers or units of the same size, type, and style containing a finished product produced under conditions as nearly uniform as possible and designated by a common container code or marking; and, in any event, "lot" means no more than a day's production.

(i) "Plant" means the building or facility or parts thereof, used for or in connection with the manufacturing, processing, packaging, labeling, or holding of human food.

(j) "Quality control operation" means a planned and systematic procedure for all actions necessary to ensure that the food is free from adulteration.

(k) "Rework" means clean, unadulterated product, removed from processing, that is suitable for reprocessing and for use as food.

(l) "Safe-moisture level" is a level of moisture low enough to prevent the growth of microorganisms in the finished product. The maximum safe moisture level for a food is based on its water activity (a_w). An a_w will be considered safe for a food if adequate data are provided that demonstrate that the food at or below the given a_w will not support the growth of microorganisms.

(m) "Sanitize" means adequate treatment of surfaces by a process that is effective in destroying vegetative cells of microorganisms of public health significance and in substantially reducing numbers of other microorganisms. Such treatment shall not adversely affect the product and shall be safe for the consumer.

(n) "Shall" is used to state mandatory requirements.

(o) "Should" is used to state recommended or advisory procedures or to identity recommended equipment.

(p) "Water activity" (a_w) is a measure of the free moisture in a product and is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.

§ 110.5 Current good manufacturing practice.

(a) The criteria and definitions in this part shall apply in determining whether a food is adulterated (l) within the meaning of section 402(a)(3) of the act in that the food has been manufactured under such conditions that it is unfit as food; or (2) within the meaning of section 402(a)(4) of the act in that the food has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

(b) Foods covered by specific current good manufacturing practice regulations also are subject to the requirements of those regulations. Compliance with the criteria and definitions in this part is necessary for the prevention and control of communicable diseases under section 361 of the Public Health Service Act (42 U.S.C. 264).

§ 110.10 Personnel.

The plant management shall take all reasonable measures and precautions to ensure the following:

(a) *Disease control.* No person, while affected by disease in a communicable form, or while a carrier of such disease, or while affected with boils, sores, infected wounds, or other abnormal sources of microbiological contamination, shall work in a food plant in any capacity in which there is a reasonable possibility of food or food ingredients becoming contaminated by that person, or of disease being transmitted by that person to other individuals.

(b) *Cleanliness.* All persons, while working in direct contact with food preparation, food ingredients, or food-contact surfaces shall conform to hygients practices while those persons are on duty, to the extent necessary to prevent contamination of food products. The methods for maintaining cleanliness include, but are not limited to:

(1) Wearing proper outer garments in a manner that prevents the contamination of food.

(2) Maintaining a high degree of personal cleanliness.

(3) Washing hands thoroughly (and sanitizing if necessary to prevent contamination by undesirable microorganisms) in an adequate hand-washing facility before starting work, after each absence from the work station, and at any other time when the hands may have become soiled or contaminated.

(4) Removing all insecure jewelry and, during periods in which food is manipulated by hand, removing from hands any jewelry that cannot be adequately sanitized.

(5) If gloves are used in food handling, maintaining them in an intact, clean, and sanitary condition. The gloves should be of an impermeable material

except where their usage would be inappropriate or incompatible with the work involved.

(6) Wearing hair nets, headbands, caps, beard covers, or other effective hair restraints in an effective manner.

(7) Not storing clothing or other personal belongings in areas where food or food ingredients are exposed or in areas used for washing equipment or utensils.

(8) Not eating food, drinking beverages, or using tobacco in areas where food or food ingredients are exposed or in areas for washing equipment or utensils.

(9) Taking any other necessary precautions to prevent contamination of foods with microorganisms or foreign substances including, but not limited to, perspiration, hair, cosmetics, tobacco, chemicals, and medicants.

(c) *Education and training.* Personnel responsible for identifying sanitation failures or food contamination should have a background of education or experience, or a combination thereof, to provide a level of competency necessary for production of clean and safe food. Food handlers and supervisors should receive appropriate training in proper food handling techniques and food-protection principles and should be cognizant of the danger of poor personal hygiene and insanitary practices.

(d) *Supervision.* Responsibility for assuring compliance by all personnel with all requirements of this part shall be clearly assigned to competent supervisory personnel.

§ 110.19 Exclusions.

The following operations are excluded from coverage under these general regulations. The Commissioner, however, will issue special regulations when necessary to cover these excluded operations: Establishments engaged solely in the harvesting, storage, or distribution of one or more "raw agricultural commodities," as defined in section 201(r) of the act, which are ordinarily cleaned, prepared, treated, or otherwise processed before being marketed to the consuming public.

Subpart B—Buildings and Facilities

110.20 Plant and grounds.

(a) *Grounds.* The grounds about a food plant under the control of the operator shall be kept in a condition that will not cause food to be contaminated. The methods for adequate maintenance of grounds include, but are not limited to:

(1) Properly storing equipment, removing litter and waste, and cutting weeds or grass within the immediate vicinity of the plant buildings or structures that may constitute an attractant, breeding place, or harborage for rodents, insects, or other pests.

(2) Maintaining roads, yards, and parking lots so that they do not constitute a source of contamination in areas where food is exposed.

(3) Adequately draining areas that may contribute contamination to food products by seepage, by foot-borne filth, or by providing a breeding place for rodents, insects, or other pests.

If the plant grounds are bordered by grounds not under the operator's control and not maintained in the manner described in subparagraphs (1) through (3) of this paragraph, care shall be exercised in the plant by inspection, extermination, or other means to effect exclusion of pests, dirt, and other filth that may be a source of food contamination.

(b) *Plant construction and design.* Plant buildings and structures shall be suitable in size, construction, and design to facilitate maintenance and sanitary operations for food-processing purposes. The plant and facilities shall:

(1) Provide sufficient space for such placement of equipment and storage of materials as is necessary for sanitary operations and production of safe food.

(2) Permit the taking of proper precautions to reduce the potential for contamination of end products, raw materials, or food-packaging materials with microorganisms, chemicals, filth, or other extraneous material. The potential for contamination may be reduced by any effective means including the separation, by location, partition, air flow, enclosed systems, or other effective means, of the following operations:

(i) Receiving.

(ii) Raw material storage.

(iii) Food preparation and processing operations.

(iv) Weighing, wrapping, packaging, and packing.

(v) Finished product storage and shipping.

(vi) Portable equipment and utensil cleaning and sanitizing.

(vii) Equipment and vehicle maintenance.

(3) Permit the taking of proper precautions to protect products in outdoor bulk fermentation vessels. This may be accomplished by an effective means, including:

(i) Using protective coverings.

(ii) Controlling areas over and around the vessels to eliminate harborages for birds and rodents.

(iii) Checking on a regular basis for insect infestation.

(iv) Skimming the fermentation vessels frequently.

(4) Provide floors, walls, and ceilings that are of such construction as to be adequately cleanable and that shall be kept clean and in good repair. Fixtures, ducts, and pipes shall be installed in such a manner that drip or condensate does not contaminate foods, raw materials, or food-contact Surfaces. Aisles or working spaces between equipment and walls shall be unobstructed and of sufficient width to permit employees to perform their duties without contamination of food or food-contact surfaces with clothing or personal contact.

(5) Provide adequate lighting to hand-washing areas, dressing and locker rooms, and toilet rooms and to all areas where food or food ingredients are examined, processed, or stored and where equipment and utensils are cleaned. Light bulbs, fixtures, skylights, or other glass suspended over exposed food in any step of preparation shall be of the safety type or otherwise protected to prevent food contamination in case of breakage.

(6) Provide adequate ventilation or control equipment to minimize odors and noxious fumes or vapors (including steam) in areas where they may contaminate food. Fans and other air-blowing equipment shall be located and operated in a manner that does not cause contamination of raw materials, work-in-process, rework, finished foods, food-packaging materials, and food-contact surfaces.

(7) Provide, where necessary, effective screening or other protection against birds, animals, and vermin (including, but not limited to, insects and rodents).

§ 110.35 Sanitary operations.

(a) *General maintenance.* Buildings, fixtures, and other physical facilities of the plant shall be kept in good repair and shall be maintained in a sanitary condition. Cleaning and sanitizing of utensils and equipment shall be carried out in a manner that prevents contamination of raw material, food-packaging material, or finished food. Detergents, sanitizers, and other supplies employed in cleaning and sanitizing procedures shall be free of significant microbiological contamination and shall be safe and effective for their intended uses. Only those toxic materials that are required to maintain sanitary conditions, for use in laboratory testing procedures, for plant and equipment maintenance and operation, or in manufacturing or

processing operations shall be used or stored in the plant. Poisonous or dangerous cleaning compounds, sanitizing agents, and pesticide chemicals shall be applied, stored, and held in a manner that prevents food or food-packaging material contamination. These materials shall be identified and used only in a manner and under conditions that will be safe for their intended use. All applicable regulations promulgated by the Environmental Protection Agency for the application, use, or holding of these materials shall be followed.

(b) *Animal and vermin control.* No animals or birds, other than those essential as raw materials, shall be allowed in any area of a food plant. Effective measures shall be taken to exclude pests from the processing areas and to protect against the contamination of foods in or on the premises by animals, birds, and vermin (including, but not limited to, rodents and insects). The use of insecticides or rodenticides is permitted only under precautions and restrictions that will prevent the contamination of food and food-packaging materials with illegal residues.

(c) *Sanitation of equipment and utensils.* All utensils and food-contact surfaces of equipment shall be cleaned as frequently as necessary to prevent contamination of food and food products.

(1) Food-contact surfaces of equipment used for processing or holding low-moisture raw materials or foods shall be in a dry, sanitary condition at the time of use. When the surfaces are wet-cleaned, they shall be sanitized when necessary and thoroughly dried before subsequent use.

(2) In wet processing, when cleaning is necessary to prevent the introduction of undersirable microorganisms into food products, all utensils and food-contact surfaces of equipment used in the plant shall be cleaned and sanitized before use and after any interruption during which the utensils and contact surfaces may have become contaminated. Where the equipment and utensils are used in a continuous production operation, the contact surfaces of the equipment and utensils shall be cleaned and sanitized on a predetermined schedule using adequate methods for cleaning and sanitizing.

(3) Non-food-contact surfaces of equipment used in the operation of food plants should be cleaned as frequently as necessary to minimize accumulation of dust, dirt, food particles, and other debris.

(4) Single-service articles (such as utensils intended for one-time use, paper cups, paper towels, etc.) should be stored in appropriate containers and shall be handled, dispensed, used, and disposed of in a manner that prevents contamination of food or food-contact surfaces.

(5) Sanitizing agents shall be effective and safe under conditions of use. Any facility, procedure, machine, or device is acceptable for cleaning and sanitizing equipment and utensils if it is established that the facility, procedure, machine, or device will routinely render equipment and utensils clean and provide adequate sanitizing treatment.

(d) *Storage and handling of cleaned portable equipment and utensils.* Cleaned and sanitized portable equipment and utensils with food-contact surfaces should be stored in a location and manner that protects food-contact surfaces from splash, dust, and other contamination.

§ 110.37 Sanitary facilities and controls.

Each plant shall be equipped with adequate sanitary facilities and accommodations including, but not limited to:

(a) *Water supply.* The water supply shall be sufficient for the operations intended and shall be derived from an adequate source. Any water that contacts foods or food-contact surfaces shall be safe and of adequate sanitary quality. Running water at a suitable temperature and under pressure as needed shall be provided in all areas where required for the processing of food, the cleaning of equipment, utensils, or containers, or for employee sanitary facilities.

(b) *Plumbing.* Plumbing shall be of adequate size and design and adequately installed and maintained to:

(1) Carry sufficient quantities of water to required locations throughout the plant.

(2) Properly convey sewage and liquid disposable waste from the plant.

(3) Neither constitute a source of contamination to foods, food products or ingredients, water supplies, equipment or utensils nor create an unsanitary condition.

(4) Provide adequate floor drainage in all areas where floors are subject to flooding-type cleaning or where normal operations release or discharge water or other liquid waste on the floor.

(5) Ensure that there is not backflow from, or crossconnection between, piping systems that carry water for food or food-processing use and piping systems that discharge waste water or sewage.

(c) *Sewage disposal.* Sewage disposal shall be made into an adequate sewerage system or disposed of through other adequate means.

(d) *Toilet facilities.* Each plant shall provide its employees with adequate toilet and associated hand-washing facilities within the plant. The facilities shall be maintained in a sanitary condition and kept in good repair at all times. Doors to toilet rooms shall be self-closing and shall not open directly into areas where food is exposed to airborne contamination, except where alternate means have been taken to prevent such contamination (such as double doors, positive air-flow systems, etc.).

(e) *Hand-washing facilities.* Adequate and readily accessible hand-washing and, if necessary, sanitizing facilities shall be provided in the plant for employees who may handle unprotected food, unprotected packaging materials, and food-contact surfaces. Such facilities shall be furnished with running water at a suitable temperature for hand washing, effective hand-cleaning and sanitizing preparations, sanitary towel service or suitable drying services, and, if necessary, sanitizing preparations. These facilities should be equipped with water control valves so designed and constructed as to prevent recontamination of clean, sanitized hands. Readily understandable signs directing employees handling unprotected food, unprotected food-packaging materials, or food-contact surfaces to wash their hands before they start work, after each absence from post of duty, and when their hands may have become soiled or contaminated, shall be conspicuously posted in the processing room(s) and in all other areas where employees may handle such food, materials, or surfaces. Where appropriate, such signs shall also direct employees to sanitize their hands. Refuse receptacles that are constructed and maintained in a manner that precludes contamination of the products shall be used where appropriate.

(f) *Rubbish and offal disposal.* Rubbish and any offal shall be so conveyed, stored, and disposed of as to minimize the development of odor, prevent waste from becoming an attractant and harborage or breeding place for vermin, and prevent contamination of food, food-contact surfaces, ground surfaces, and water supplies.

Subpart C—Equipment

§ 110.40 Equipment and utensils.

(a) All plant equipment and utensils shall be so designed and of such material and workmanship as to be adequately cleanable, and shall be properly maintained. The design, construction, and use of equipment and utensils shall preclude the adulteration of food with lubricants, fuel, metal fragments, contaminated water, or any other contaminants. All equipment should be so installed and maintained as to facilitate the cleaning of the equipment and of all adjacent spaces. Food-contact surfaces shall be corrosion free when in contact with food. They shall be made of nontoxic material that will withstand the environment of its intended use and the action of food ingredients, cleaning compounds, and sanitizing agents. All food-contact surfaces shall be maintained to prevent product contamination and shall be in compliance with section 409 of the act.

(b) Seams on food-contact surfaces shall be smoothly bonded or maintained so as to minimize accumulation of food particles or to prevent microbiological contamination in places where dirt or organic material might accumulate.

(c) Equipment that is in the processing or food-handling area and that does not come into contact with food shall be so constructed that it can be kept in a clean condition.

(d) Ingredient and product-holding, conveying, and -processing systems that include, but are not limited to, gravimetric, pneumatic, closed, and automated systems shall be of a design and construction that enables them to be cleaned.

(e) Regulating and recording controls, thermometers, other temperature-measuring devices, and temperature-recording devices on equipment used to sterilize, pasteurize, or otherwise control or prevent growth of microorganisms in raw materials or products shall be accurate, effective, and adequate in number for their designated uses.

(f) Each freezer and cold storage compartment used for storing and holding raw materials or products capable of supporting growth of microorganisms shall be fitted with an indicating thermometer, temperature-measuring device, or temperature-recording device so installed as to show the temperature accurately within the compartment, and should be fitted with an automatic control for regulating temperature or with an automatic alarm system to indicate a significant temperature change in a manual operation.

(g) Instruments used for measuring or regulating pH, acidity, water activity, or other conditions that control or prevent undesirable microbial growth in foods shall be precise and properly maintained.

(h) All compressed air or other gases mechanically introduced into foods or used to clean food-contact surfaces or equipment shall be properly filtered or washed, shall be free of oil and other extraneous material that might contaminate the foods, and shall be in compliance with section 409 of the act.

(i) Restrictions on the industrial uses of polychlorinated biphenyls (PCB's) provided in § 109.15 of this chapter shall also be applicable to the industrial uses of PCB's in the production, handling, and storage of food. Equipment, utensils, and machinery for handling or processing food in or around a food plant shall not contain PCB's, except for electrical transformers and condensers containing PCB's in sealed containers.

Subpart D [Reserved]

Subpart E—Production and Process Controls

§ 110.80 Processes and controls.

All operations in the receiving, inspecting, transporting, packaging, segregating, preparing, processing, and storing of food shall be conducted in accordance with adequate sanitation principles. Appropriate quality control operations shall be employed to ensure that raw materials and finished products are fit for food, that food-packaging materials are safe and suitable, and that all of the foregoing materials are in compliance with the Federal Food, Drug, and Cosmetic Act. Overall sanitation of the plant shall be under the supervision of an individual assigned responsibility for this function. All reasonable precautions shall be taken to ensure that production procedures do not contribute contamination such as filth, harmful chemicals, undesirable microorganisms, or any other objectionable material to the processed food. Chemical, microbiological, or extraneous-material testing procedures shall be utilized where necessary to identify sanitation failures or food contamination, and all foods and ingredients that have become contaminated shall be rejected or treated or processed to eliminate the contamination.

(a) *Raw materials and ingredients.* (1) Raw materials and ingredients shall be inspected and segregated as necessary to ensure that they are clean and fit for processing into human food and shall be stored under conditions that will protect against contamination and minimize deterioration. Raw materials shall be washed or cleaned as required to remove soil or other contamination. Water used for washing, rinsing, or conveying of food products shall be of adequate quality, and water shall not be reused for washing, rinsing, or conveying products in a manner that may result in contamination of food products. Containers and carriers of raw ingredients should be inspected on receipt to ensure that their condition has not contributed to the contamination or deterioration of the products.

(2) Raw materials and ingredients shall not contain levels of microorganisms that may produce food poisoning or other disease in humans, or they shall be pasteurized or otherwise treated during processing operations to destroy such microorganisms.

(3) Raw materials susceptible to contamination with aflatoxin or other natural toxins shall be examined, sorted, or treated to ensure that the finished foods comply with current Food and Drug Administration requirements, guidelines, and action levels for poisonous or deleterious subtances before these materials are incorporated into finished products. Compliance with this requirement may be accomplished by purchasing these materials under a supplier's guarantee or certification, or may be verified by analyzing these materials for aflatoxins and other natural toxins.

(4) Raw materials and rework susceptible to contamination or infestation by animals, birds, vermin, microorganisms, or extraneous material shall comply with current Food and Drug Administration regulations, guidelines, and action levels for natural or unavoidable defects before these materials are incorporated into finished products. Compliance with this requirement may be verified by any effective means, including examination of these materials for infestation and contamination.

(5) Raw materials shall be held in containers so designed and constructed as to prevent their contamination and shall be held at such temperature and relative humidity and in such a manner as to prevent their adulteration.

(6) Frozen raw materials shall be kept frozen exept for the period of time actually required for processing and shall be defrosted in a manner that does not adversely affect their use as food.

(7) Liquid or dry ingredients received and stored in bulk form shall be held in a manner that prevents any direct or indirect contamination.

(b) *Processing operations.* (1) Processing equipment and utensils and finished product containers shall be maintained in a sanitary condition through frequent cleaning with appropriate cleaning agents, and by sanitization where indicated. Insofar as necessary, equipment shall be taken apart for thorough cleaning.

(2) All food processing, including packaging and storage, shall be conducted under such conditions and controls as are necessary to minimize the potential for undesirable bacterial or other microbiological growth, toxin formation, or deterioration or contamination of the processed product or ingredients. Compliance with this requirement may require careful monitoring of such physical factors as time, temperature, humidity, a_w, pH, pressure, flow rate, and such processing operations as freezing, dehydration, heat processing, acidification, and refrigeration to ensure that mechanical breakdowns, time delays, temperature fluctuations, and other factors do not contribute to the decomposition or contamination of the processed products.

(3) Foods that can support the rapid growth of microorganisms of public health significance or that are subject to decomposition as a result of microbial multiplication shall be held in a manner that minimizes the growth of those microorganisms. Compliance with this requirement may be accomplished by any effective means, including:

(i) Maintaining refrigerated foods at 45° F (7.2° C) or below as appropriate for the particular food involved.

(ii) Maintaining frozen foods at 0° F (−17.8° C) or below.

(iii) Maintaining hot foods at 140° F (60° C) or above.

(iv) Heat treating acid or acidified foods to destroy mesophilic microorganisms when those foods are to be held in hermetically sealed containers at ambient temperatures.

(4) Measures such as sterilizing, pasteurizing, freezing, refrigerating, controlling pH or controlling a_w that are taken to destroy or prevent the growth of microorganisms of public health significance shall be adequate under the conditions of manufacture for a given food to ensure destruction or the prevention of growth of those microorganisms.

(5) Rework shall be held in properly identified containers, shall be handled and stored as raw material, and shall meet raw material requirements before reprocessing.

(6) Work-in-process shall be handled in a manner that prevents its contamination.

(7) Effective measures shall be taken to prevent cross contamination between raw materials and finished foods, or between refuse and these materials. When any of these materials are unprotected, they shall not be handled simultaneously in a receiving, loading, or shipping area if that handling could result in a contaminated product. Materials and products transported by conveyor shall be protected against contamination from extraneous material.

(8) Equipment, containers, and utensils used to convey, process, hold, or store raw materials, work-in-process, rework, or finished foods shall be constructed, handled, and maintained during processing or storage in a manner that prevents the contamination of raw materials, rework, or finished foods.

(9) Effective measures shall be taken to prevent the inclusion of metal or other extraneous material in the finished foods. Compliance with this requirement may be accomplished by using sieves, magnets, electronic metal detectors, or other suitable effective means.

(10) Adulterated materials shall be disposed of in a manner that prevents the contamination of raw materials, rework, or finished foods. If the adulterated product is reconditioned, it shall be reexamined and found to be free from adulteration before being incorporated into finished foods.

(11) Mechanical processing steps such as washing, peeling, trimming, cutting, sorting and inspecting, mashing, dewatering, cooling, shredding, extruding, drying, whipping, defatting, and forming shall be performed so as not to contaminate raw materials, ingredients, or finished foods. Compliance with this requirement may be accomplished by providing adequate physical protection of raw materials, ingredients, and food products from contaminants that may drip, drain, or be drawn into the food product, by adequate cleaning and sanitizing of all food-contact surfaces and by using time and temperature controls at and between each step in the process.

(12) Heat blanching, when required in the preparation of food, should be effected by heating the food to the required temperature, holding it at this temperature for the required time, and then either rapidly cooling the food or passing it to subsequent processing without delay. Thermophilic growth and contamination in blanchers should be minimized by the use of adequate operating temperatures and by cleaning. Where the blanched food is washed prior to filling, water used shall be safe and of adequate sanitary quality.

(13) Batters, breading, sauces, gravies, dressings, and other preparations shall be treated or maintained in such a manner that they are free of contamination. Compliance with this requirement may be accomplished by any effective means, including one or more of the following:

(i) Using ingredients free of contamination.

(ii) Employing adequate heat processes where applicable.

(iii) Using adequate time and temperature controls.

(iv) Providing adequate physical protection of components from contaminants that may drip, drain, or be drawn into them.

(v) Cooling to an adequate temperature during processing.

(vi) Disposing of batters at the end of each working day, or more frequently if required, to prevent significant microbial multiplication.

(14) Filling, assembling, and packaging and other operations shall be performed so as not to contaminate the finished food product. Compliance with this requirement may by accomplished by any effective means, including:

(i) Use of a quality control operation in which the critical control points within the food process are identified and controlled.

(ii) Adequate cleaning and sanitizing of all food-contract surfaces and food containers.

(iii) Using materials for food containers and food-packaging materials that are safe and suitable, as defined in § 130.3(d) of this chapter.

(iv) Providing physical protection from airborne contamination.

(v) Requiring the use of sanitary handling procedures by employees.

(15) Foods such as, but not limited to, dry mixes, nuts, intermediate moisture foods, and dehydrated foods, that rely on the control of a_w for preventing the growth of of microorganisms shall be processed to and maintained at a safe moisture level. Compliance with this requirement may be accomplished by any effective means, including employment of one or more of the following practices:

(i) Monitoring the a_w of ingredients and finished products.

(ii) Controlling the soluble solids-water ratio in finished products.

(iii) Protecting finished foods from moisture pickup, by use of a moisture barrier or by other means, so that the a_w of the product does not increase to an unsafe level.

(16) Food such as, but not limited to, acid and acidified foods, that rely on the control of pH for preventing the growth of microorganisms shall be monitored and maintained at a pH of 4.6 or below. Compliance with this requirement may be accomplished by any effective means, including employment of one or more of the following practices:

(i) Monitoring the pH of raw foods, ingredients, and finished products.

(ii) Controlling the amount of acid or acidified foods added to low-acid ingredients.

(17) When ice is used in contact with food products, it shall be made from water that is safe and of adequate sanitary quality, and shall be used only if it has been manufactured in accordance with adequate standards and stored, transported, and handled in a sanitary manner.

(18) Food-processing areas and equipment used for processing human food should not be used to process nonhuman food-grade animal feed or inedible products, unless there is no reasonable possibility for the contamination of the human food.

§ 110.91 Coding.

Permanently legible code marks shall be placed at a readily visible location on each finished food package delivered or displayed to purchasers so that the code marks can be readily seen on the unopened package. The marks shall identify at least the plant where the food was packed and the lot or packaging lot. This requirement does not apply to over-the-counter retail sales at the site of manufacture. The following foods are exempt from the requirement that coding marks be placed on each finished food package provided that the bulk containers received by the retail establishment contain code marks complying with this section:

(a) Individually wrapped pieces of "penny candy" and other confectionery entitled to exemption under § 1.24(a)(4) of this chapter.

(b) Foods entitled to exemption under § 101.100(a)(2) of this chapter.

(c) Foods entitled to exemption under § 101.100(b) of this chapter.

§ 110.93 Warehousing and distribution.

Storage and transportation of finished foods shall be under conditions that will prevent physical, chemical, and microbial contamination and will protect against undesirable deterioration of the food and the container. This deterioration includes, but is not limited to, contamination from insects, rodents and other vermin, toxic chemicals, pesticides, and the development of microorganisms of public health significance.

Subpart F—Records and Reports

§ 110.100 Records.

(a) Records of results of examinations and/or copies of suppliers' guarantees or certifications that verify compliance with Food and Drug Administration regulations, guidelines, or action levels of raw materials, food-packaging materials, and finished foods, shall be maintained.

(b) Processing and production records of processes intended to pasteurize or otherwise treat materials to destroy, prevent, or control the growth of microorganisms of public health significance shall be maintained, and shall contain sufficient information to permit a public health evaluation of the processed food.

(c) Distribution records shall be maintained to identify the initial distribution, except for over-the-counter retail sales at the site of manufacture, of the finished food to facilitate, when necessary, the segregation and recall of specific lots that may have become contaminated or otherwise unfit for their intended use.

(d) The records required by paragraphs (a), (b), and (c) of this section shall be retained for a period of time that exceeds the shelf life of the finished product, except that they need not be retained for more than 2 years from the date of manufacture.

Subpart G—Defect Action Levels

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

(a) Some foods, even when produced under current good manufacturing and/or processing practices, contain natural or unavoidable defects at lower levels that are not hazardous to health. The Food and Drug Administration establishes maximum levels for these defects in foods produced under good manufacturing and processing practices and uses these levels for recommending regulatory actions.

(b) Defect action levels are established for products whenever it is necessary and feasible to do so. These levels are subject to change upon the development of new technology or the availability of new information.

(c) Compliance with defect action levels does not excuse failure to observe either the requirement in section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act that food may not be prepared, packed, or held under insanitary conditions or the other requirements in this part that food manufacturers shall observe current good manufacturing practices. Evidence obtained through factory inspection indicating such a violation renders the food unlawful, even though the amounts of natural or unavoidable defects are lower than the currently established action levels. The manufacturer of food shall at all times utilize quality control operations that will reduce natural or unavoidable defects to the lowest level currently feasible.

(d) The mixing of a food containing defects above the current defect action level with another lot of food is not permitted and renders the final food unlawful, regardless of the defect level of the final food.

(e) A compilation of the current action levels for natural and unavoidable defects in food for human use that present no health hazard may be obtained upon request from the Food and Drug Administration, Bureau of Foods, Industry Guidance Branch (HFF-342), Rm. 5425, 200 C St. SW., Washington, DC 20204.

Interested persons may, on or before December 31, 1979, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four Copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executeive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is a on file with the Hearing Clerk, Food and Drug Administration.

Dated: May 29, 1979.

Sherwin Gardner,

Acting Commissioner of Food and Drugs.

[FR Doc. 79-17432 Filed 6-7-79; 8:45 am]

BILLING CODE 4110-03-M

federal register

Friday
June 8, 1979

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

Fishery Management Plan For High Seas Salmon

Alaska

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 674

Fishery Management Plan for the High Seas Salmon; Fishery Off the Coast of Alaska

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Publication of FMP for Salmon off Coast of Alaska.

SUMMARY: On May 18, 1979, the National Marine Fisheries Services published interim emergency regulations implementing the approved portion of the Fishery Management Plan (FMP) for the Alaska Salmon Fishery. Due to an inadvertance, the FMP was not published at that time. The FMP is set forth below in its entirety.

DATES: Nonapplicable.

FOR FURTHER INFORMATION CONTACT: Mr. Harry L. Rietze, Director, Alaska Region, National Marine Fisheries Service, (907) 586–7221.

Signed at Washington, D.C, this 31st day of May, 1979

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

Authority: 16 USC 1801 *et seq.*

Summary, High Seas Salmon Fishery off the Coast of Alaska, East of 175° East Longitude

North Pacific Fishery Management Council

The salmon troll fishery off the coast of Alaska has historically been conducted from the U.S./Canada boundary (Dixon Entrance) to Middleton Island in the Gulf of Alaska, with intermittent efforts to the west as far as the Kodiak Island region.

The troll fishery is the only major U.S. fishery on salmon currently conducted in the Fishery Conservation Zone (see exceptions as noted in Sec. 8.2). Many vessels engaged in the offshore troll fishery participate in other types of fishing for salmon in State of Alaska waters, and for halibut, crab, etc., both in Alaska waters and the Fishery Conservation Zone (FCZ).

This fishery management plan is designed to promote conservation of the ocean salmon resource while allowing utilization of its stocks for food production.

Target species in the troll fishery are chinook *(Oncorhynchus tshawytscha)* and coho *(O. kisutch)* salmon. Pink salmon *(O. gorbuscha)*, sockeye *(O. nerka)*, and chum *(O. keta)* salmon are caught in insignificant numbers compared to the commercial harvest of chinook and coho.

A recreational fishery is conducted almost entirely within inshore and coastal waters of the State of Alaska.

The most concentrated effort on troll salmon is conducted on the Fairweather Grounds, a congregating place for salmon from both Alaskan and non-Alaskan areas. The migratory nature of the salmon and the mixture of stocks makes the management of this fishery complex.

There is a lack of biological information concerning the salmon in the troll fishery off the coast of Alaska; all information, however, indicates that stocks of wild chinook from Alaska are depressed and that the conduct of the troll fishery offshore is thought to be detrimental to remaining Alaska wild chinook stocks. This same effect is likewise detrimental to stocks of wild chinook entering the fishery from outside Alaska, but the nonselective nature of fishing in a mixed-stock fishery such as this is unavoidable.

It has been determined that controlling the catch is necessary for the future well-being of the stocks in this fishery.

There has been a prohibition on net fishing in offshore waters off the coast of Alaska since 1952. It is the intention of this plan to continue that prohibition.

The plan is designed to allow only a directed troll and recreational fishing effort for salmon in the offshore waters. Salmon present in these waters are the object also of intensive fishing in inshore areas. The offshore catch is but a fraction of the total annual coastwide catch.

Chinook spawn in the larger rivers of the Alaska mainland, with 33 populations identified in Southeastern Alaska east of Cape Suckling. West of Cape Suckling, and not included in the area managed for the salmon troll fishery, chinook spawn in similar river systems including the Copper, Cook Inlet system, Nushagak, Kuskokwim, and Yuokon Rivers. The contribution to the troll fishery of fish from these areas appears to be insignificant.

Important contributions of stocks to the troll fishery originate in the Columbia and Fraser River systems as well as in some Oregon and Washington coastal streams.

Coho in this fishery are primarily of Alaskan origin, with coho populations occurring in most of the 2,000-plus freshwater streams in Southeastern Alaska east of Cape Suckling. Again, the contribution of coho to the troll fishery from areas west of Cape Suckling appears to be insignificant.

A major concern of fishery specialists is the addition of significant numbers of hatchery fish to waters hosting native stocks. The problem is to avoid creating a dependency on hatchery fish to the detriment of the wild fish. There are indications that increased open ocean fishing pressure stimulated by successful hatchery programs may have affected adversely wild coho stocks in Oregon.

Foreign troll effort (all Canadian) was regulated by a Reciprocal Fisheries Agreement (1977) and occurred outside the U.S. 12-mile zone.

Total ex-vessel value of the commercial troll salmon landings in Southeastern Alaska (1975–76) was $14.5 million.

The plan addresses all salmon in the offshore waters off the coast of Alaska east of 175 degrees east longitude to Dixon Entrance. This area, encompassing more than 2,000 miles of straight-line coast, includes stocks of all five species of Pacific salmon. The fishing area managed by specific reference in the plan is small in proportion to the total ocean area. Management of the region west of the longitude of Cape Suckling and outside the limits of the troll fishery has been through successive restrictions and prohibitions on net fishing (since 1952) and trolling (since 1973). These prohibitions effectively restrict offshore fishing to a troll fishery east of the longitude of Cape Suckling.

Life history features of all salmon are included in the plan and maximum sustainable yield estimates have been developed solely from past catch data for all species of salmon off the coast of Alaska, with further MSY calculations for the area in which the troll fishery is conducted. Those values are (Nos. of fish):

MSY east and west of Cape Suckling

Chinooka (West)—247–267,000 (East)—296–316,000
Sockeye (West)—4,549–12,142,000 (East)—808–894,000
Coho (West)—602–682,000 (East)—959–1,115,000
Pink (West)—12,236–15,314,000 (East)—9,164–11,604,000
Chum (West)—3,682–4,180 (East)—1,822–2,201

Provisions for enforcement, cooperative research and permit and financing requirements for participants are also included in this plan.

The number of boats involved in the troll fishery increased from the early 1900s to 1974, when the State of Alaska passed legislation (Limited Entry) setting a limit of 950 units of power gear in the troll fishery.

The record year in the troll fishery was 1937 when 846,000 chinook were landed. There has since been a general decline which leveled off in 1965; the fishery is now reasonably stable with annual catches of 250–350,000 chinook.

The record coho catch was in 1951 when two million fish were landed. The catch has fluctuated between 300,000 and one million fish yearly since the late 1950s. From 1971 through 1976 an average of only 15.8 percent of chinook and 6.4 percent of coho taken in Southeast Alaska were reported taken in offshore waters.

Regulations for the offshore troll fishery have been basically the same since the 1950s. Prior to Alaskan statehood in 1959, it was managed by the U.S. Fish and Wildlife Service; since 1959, regulation has been by the State of Alaska through enforcement of its landing laws. A minimum length of 28 inches for chinook salmon was set in 1977; waters inside the surfline are open year-round with local exceptions designed to provide individual stock protection; a maximum of four lines may be fished within the three-mile limit (no similar restriction in offshore waters) and, since 1957, outside waters have been closed to all species from November 1 to April 14.

Catch statistics show that of the approximately 2,000 boats landing fish in 1976 in Southeastern Alaska, boats over 27′ in length (970) accounted for 85 percent of the salmon caught by trolling.

The troll fishery for coho is closed from September 30 to June 14. There is no minimum size limit. Since 1973, all waters west of the longitude of Cape Suckling have been closed to salmon troll fishing. The June 15 opening is considered unrestrictive as coho do not show in the fishery in any numbers until mid-July.

The limited entry provision proposed for this fishery is one management concept used to control participation.

Finally, there is a statement of intent and the method for review of the plan following approval by the Secretary of Commerce.

Proposed Management Regime

Objectives

(1) Control expansion of the salmon troll fishery in the Fishery Conservation Zone.

(2) Allocate the salmon resource among user groups without disrupting present social and economic structures.

(3) Regulate the catch of salmon to assure adequate escapement for spawning.

(4) Reduce the catch of salmon with potential growth to increase the poundage yield from the troll fishery.

(5) Make cost effective the public investment in the high-seas salmon fishery.

(6) Promote the eventual development of a Pacific coast salmon fishery management plan.

Measures

Proposed measures for the conduct of the salmon troll fishery include size, sex, area, seasons, and gear regulations which are complementary with existing State of Alaska regulations.

Limited entry will be used as a method of meeting the objective of controlling expansion of this fishery.

Seasons—(1) All waters open for chinook, chum, sockeye, and pink salmon between April 15 and October 31 with the following exception: ALL WATERS WEST OF THE LONGITUDE OF CAPE SUCKLING HAVE NO OPEN SEASON. (2) Coho season is open between June 15 and September 20 except: ALL WATERS WEST OF THE LONGITUDE OF CAPE SUCKLING HAVE NO OPEN SEASON.

Gear—(1) Fishing with nets for salmon is not permitted in the Fishery Conservation Zone east of Cape Suckling. West of Cape Suckling, existing small-scale net fisheries conducted at False Pass (South Peninsula), Cook Inlet, and the Copper River Delta will be allowed under this plan. (2) Commercial fishing in allowed only by troll in the Fishery Conservation Zone. (3) Sport fishing is to be conducted with only a single, hand-held or closely attended rod with not more than one artificial lure or two flies or two single hooks attached.

Area—Trolling for salmon is permitted east of the longitude of Cape Suckling to Dixon Entrance on the U.S./Canadian border and within the described Fishery Conservation Zone.

Size—(1) Chinook salmon must be at least 28 inches in length overall (23 inches measured from the mid-point of the cleithral arch if headed). (2) All fin-clipped salmon must be landed head-on. (3) All other salmon no length restriction.

Sex—No restrictions.

Limited Entry—Limited entry for the offshore troll fishery is proposed as outlined in the regulations section.

1.0. Table of Contents
2.0. Introduction
2.1. Goals and Objectives for Management Plan
2.2. Operational Definitions of Terms Used
3.0. Description of Fishery
3.0. Description of Fishery (Appendix Index)
3.1. Areas and Stocks Involved
3.2. History of Exploitation
3.2.1. Domestic Fishery
3.2.1.1. Description of User Groups
3.2.1.2. General Description of Fishing Effort
3.2.1.3. Catch Trends
3.2.1.4. Description of Vessels and Gears Employed
3.2.2. History of Foreign Exploitation (3.2.2.1–4)
3.3 History of Management
3.3.1. Management Institutions, Policies, Jurisdictions
3.3.2. Domestic
3.3.2.1. Measures Employed to Regulate Fishery
3.3.2.2. Purpose of Measures
3.3.3. Foreign (3.3.3.1., 3.3.3.2)
3.3.4. Effectiveness of Management Measures
4.0. Biological Descriptors
4.0. Biological Descriptors (Appendix Index)
4.1. Life History Features
4.2. Stock Units
4.3. Catch and Effort Data Sources
4.4. Survey and Sampling Data
4.5. Habitat
4.6. Ecological Relationships
4.7. Quality of Data
4.8. Current Status of Stocks
4.8.1. Maximum Sustainable Yield (MSY)
4.8.2. Acceptable Biological Catch (ABC)
4.9. Estimate of Future Stock Conditions
4.10. Non-Target Species Mortality Other Than Salmon
5.0. Catch and Capacity Descriptors
5.1. Data and Analytical Approaches (5.1.1, 5.1.2)
5.2. Domestic Annual Capacity (DAC)
5.3. Expected Domestic Annual Harvest (DAH)
5.4. Domestic Annual Processing Capacity
6.0. Optimum Yield (OY)
6.0. Optimum Yield (OY) (Appendix Index)
7.0. Total Allowable Level of Foreign Fishery (TALFF)
7.0. Total Allowable Level of Foreign Fishery (TALFF) (Appendix Index)
8.0. Management Regime
8.1. Objectives
8.2. Areas, Fisheries, and Stocks Involved
8.3. Management Measures
8.3.1. Domestic
8.3.1.1. Season, Gear, and Area Restrictions
8.3.1.2. Size and Sex Restrictions, and Landing Requirements
8.3.1.3. Limited Entry
8.3.1.4. In-Season Adjustments
8.3.1.5. Issuance of Field Orders
8.3.1.6. Troll Fishery Managed From Surfline to 200 Miles
8.3.2. Foreign (8.3.2.1–4)
8.3.3. Relationship of Recommended Measures to Existing Applicable Laws and Policies
8.3.3.1. Other Fishery Management Plans Prepared by a Council or the Secretary
8.3.3.2. Federal Laws and Policies

8.3.3.3. State Laws and Policies (8.3.3.4)
8.4. Enforcement Requirements
8.5 Reporting Requirements
8.5.1. Data Standards
8.5.2. Time and Place of Reporting
8.6. Research Requirements
8.7. Permit Requirements
8.8. Financial Requirements (8.8.1, 8.8.2)
9.0. Statement of Council Intentions to Review the Plan After Approval by the Secretary
10.0. References
11.0. Appendices
11.1. Supportive Data
11.2. Regulatory Definitions
11.3. General Regulatory Provisions
Appendix 8.3.1.3 History and Development of Alaska's Commercial Fisheries Entry Commission.

List of Tables

Table 1 Number of Troll Salmon Caught In State and Council Waters, 1977.
Table 2 Numbers of Salmon Caught in Alaska by Species, 1977.
Table 3 Catches of Chinook, Coho and Pink Salmon in the Southeastern Region and All Alaskan Waters.
Table 4 Average Annual Catch (MSY) From 1953–1977 Taken East and West of Cape Suckling.
Table 5 Mean Annual Catch (1971–1977) Expressed as an ABC Range for Salmon East and West of Cape Suckling.
Table 6 Optimum Yield for Salmon East and West of Cape Suckling.

List of Figures

Figure 1 Troll Catches for Chinook, Coho, and Pink Salmon in Southeastern Alaska, 1966–1977.
Figure 0 Fishery Management Boundaries and the Troll Salmon Fishery off the Coast of Southeastern Alaska.

2.0 Introduction

This plan is a management regime for ocean salmon off the coast of Alaska in response to the requirements of the Fishery Conservation and Management Act of 1976 (U.S. Public Law 94–265). It was developed at the direction of the North Pacific Fishery Management Council by a multi-agency team composed of members of the Alaska Department of Fish and Game (lead agency), the Washington Department of Fisheries, National Marine Fisheries Service, Alaska Commercial Fisheries Entry Commission, and industry.

2.1 *Goals and Objectives for Management Plan*

The Fishery Conservation and Management Act (FCMA) of 1976 sets forth in Section 2, Findings, Purposes and Policy, and Section 301, National Standards for Fishery Conservation and Management, a series of guidelines and principles which govern the development of fishery management plans for fisheries in the Conservation Zone. The Act calls for ". . . achieving, on a continuing basis, the optimum yield from each fishery" ((Sec. 301. (a)(1))). In Section 3., Definitions, optimum yield is defined as ". . . the amount of fish—(A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and (B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor."

Thus defined, optimum yield management, along with the clarifying language in Sections 2 and 301 of the Act, requires consideration of a multiplicity of biological, economic, social, and ecological objectives. This is in essence the difficult task of defining a social function for fisheries management. It is however, a crucial factor in the development of a management plan, for there is no way in which the concept of optimum yield can be given any meaning without a clear specification of the relevant biological, social,and economic objectives to be served.

The management objectives of the High Seas Salmon Plan are:

(1) Control the expansion of the salmon troll fishery in the Fishery Conservation Zone.

(2) Allocate the salmon resource among user groups without disrupting present social and economic structures.

(3) Regulate the catch of salmon to assure adequate escapement for spawning.

(4) Reduce the catch of salmon with potential growth to increase the poundage yield from the troll fishery.

(5) Make cost effective the public investment in the high seas salmon fishery.

(6) Promote the eventual development of a Pacific Coast salmon fishery management plan.

It must be pointed out that these objectives cannot be totally accomplished by any plan for the FCZ alone and represent the Council's contribution to a set of total objectives for the fishery to be accomplished in concert with actions taken by the State of Alaska in their waters.

To that end this plan is formally considered by the Council an interim plan with a fully integrated 0–200 mile FMP planned for writing and development for the 1980 fishery.

2.2 *Operational Definitions of Terms Used*

A. *Determinants of Catch Levels.* 1. *Maximum Sustainable Yield* (MSY) is an average, over a reasonable period of time, of the largest catch which can be taken continuously by the *fishery* under current environmental conditions. It should normally be presented with a range of values around its point estimate.

The term *fishery* means:

a. One or more *stocks of fish* which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics.

b. Any fishing for such stocks.

The term "stock of fish" means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

Where sufficient scientific data as to the biological characteristics of the stock do not exist, or the period of exploitation or investigation has not been long enough for adequate understanding of stock dynamics, the MSY will be estimated from the best information available.

2. *Acceptable Biological Catch* (ABC) is a seasonally determined catch that may differ from MSY for biological reasons. It may be lower or higher than MSY in some years for species with fluctuating recruitment. It may be set lower than MSY in order to rebuild overfished stocks.

3. *Optimum Yield* (OY) may be obtained by a plus or minus deviation from ABC for purposes of promoting economic, social, or ecological objectives as established by law and public participation processes. Ecological objectives, where they relate primarily to biological purposes and factors, are included in the determination of ABC. Where ecological objectives relate to resolving conflicts and accommodating competing uses and values, they are included as appropriate with economic and/or social objectives.

OY may be set higher than ABC in order to produce higher yields from other more desirable species in a multispecies fishery. It might be set lower than ABC in order to provide larger individuals or a higher average catch-per-unit of effort.

B. *Determination of Domestic Annual Fishing Capacity and Expected Harvest.* 1. *Domestic Annual Fishing Capacity* (DAC) is the total potential physical capacity of the fleets modified by

logistic factors. The components of the concept are:

a. An inventory of total potential physical capacity defined in terms of appropriate vessel and gear characteristics (e.g., size, horsepower, hold capacity, gear design, etc.).

b. Logistic factors determining total annual fishing capacity (e.g., variations in vessel and gear performance, trip length between fishing locations and landing points, weather constraints, etc.).

2. *Expected Domestic Annual Fishing Harvest* (DAH) is the domestic annual fishing capacity modified by other factors which will determine estimates of what the fleets will harvest (e.g., how fishermen will respond to price changes in the subject species and other species, etc.).

These concepts should be placed in a dynamic context of past trends and future projections. For example, physical fleet capacity should not simply be last season's inventory of vessels and hold measurements (although this is appropriate for present interim planning), but also next year's projected movement into and out of the fishery. Vessels under construction should be included and an estimate of attrition made.

The determination of domestic annual fishing capacity and expected harvest should be made on the best available information.

C. *Determination of Foreign Allowable Catch* (FAC) The foreign allowable catch is determined by deducting the domestic annual expected harvest from the optimum yield (OY−DAH=FAC).

D. *Determination of Areas Fished.* 1. *Offshore Waters:* Those waters seaward of the three-mile territorial jurisdiction.

2. *Coastal Waters:* Those waters under State control from the surfline to the three-mile territorial limit.

3. *Inshore Waters:* Those waters inside the surfline including all bays, sounds and straits.

E. *Other.* 1. *Troll:* A method of fishing in which a line with hook attached is drawn through the water behind a moving boat.

2. *Fishery Conservation Zone (FCZ):* A zone contiguous to the territorial sea of the United States, the inner boundary of which is the territorial sea boundary (3 nautical miles) and the outer boundary of which is a line drawn 200 nautical miles from the baseline from which the territorial sea is measured.

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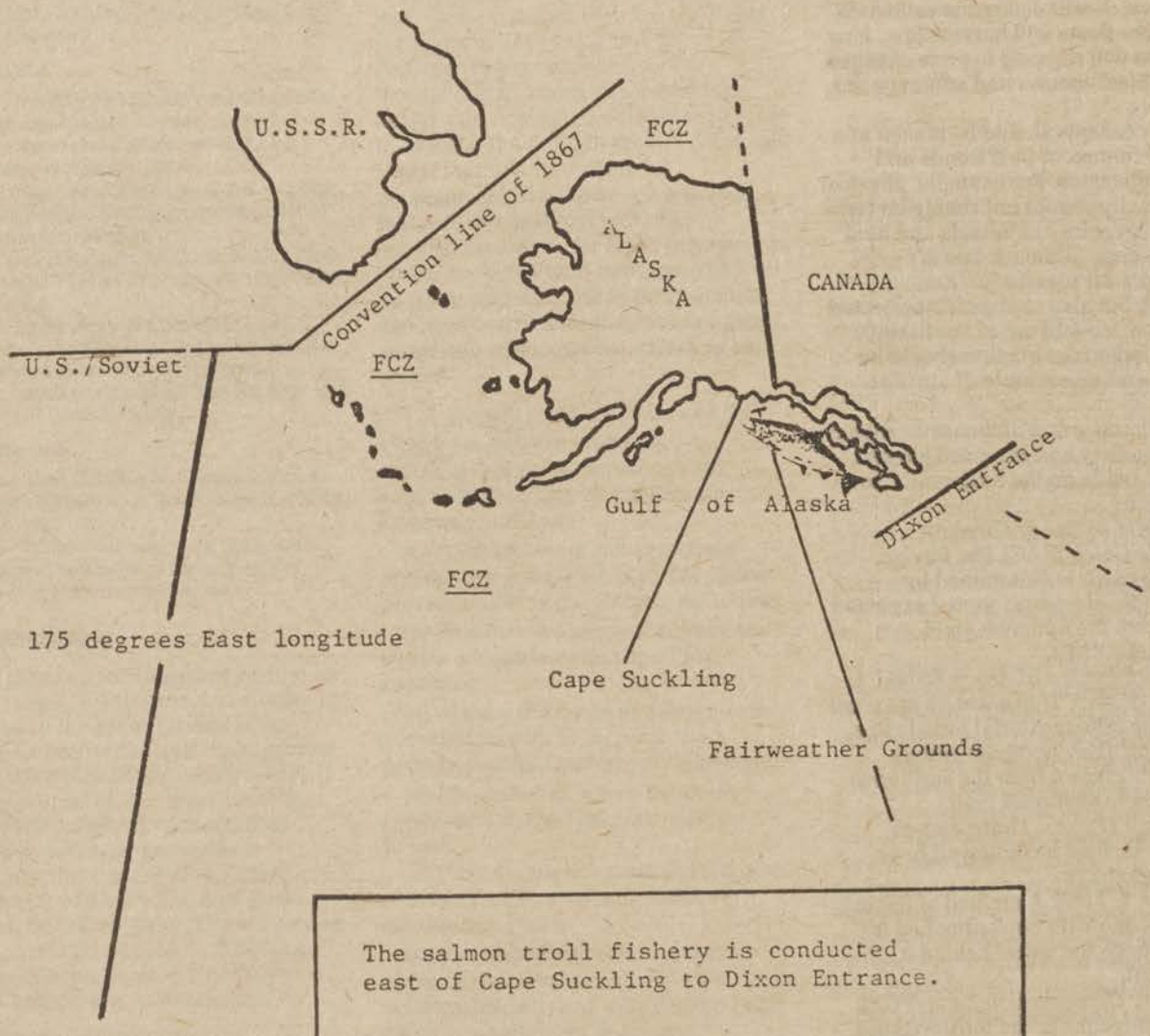
THE SALMON TROLL FISHERY OFF THE COAST OF ALASKA



The salmon troll fishery is conducted east of Cape Suckling to Dixon Entrance.

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3.0 Description of Fishery

3.1 *Areas and Stocks Involved* (See Appendix 3.0 for additional material)

The ocean area for this fishery management plan is the water off the coast of Alaska east of 175° East longitude within the 200-mile Fishery Conservation Zone.

Fishing effort in the FCZ west of 175° east longitude is the subject of a separate international fisheries agreement between the United States, Canada, and Japan.

State of Alaska fishery management areas contiguous to the Fishery Conservation Zone in these waters are the Arctic-Yukon-Kuskokwim, Bristol Bay, Chignik/Alaska Peninsula (Aleutian), Kodiak, Cook Inlet, Prince William Sound, northern Southeastern, and Southeastern Alaska.

The specific fishery addressed in this FMP is the salmon troll fishery conducted east of the longitude of Cape Suckling off Southeastern Alaska. Special reference is made to the Fairweather Grounds portion of that fishery. This area is a mixed-stock fishery for Alaskan and non-Alaskan salmon, of which chinook and coho salmon are the target species.

All five species of Pacific salmon are present in the troll fishery, but pink, chum and sockeye are caught in insignificant amounts compared to the numbers of chinook and coho taken commercially.

In Southeastern Alaska, native chinook and coho salmon occur from Cape Suckling to Dixon Entrance. The chinook spawn in the larger rivers of the mainland and their tributaries. The Taku, Stikine, Alsek, Unuk, Situk, and Chickamin Rivers host important spawning populations. Other river systems are known to produce chinook. Coho populations occur in most of the 2,000-plus anadromous fish streams in Southeastern Alaska. Fish from these areas are present in the troll fishery. Stocks of King salmon of non-Alaskan origin known to be present in the troll fishery include those from the Columbia River and Oregon-Washington coastal streams.

West of the longitude of Cape Suckling, chinook spawn in several major river systems including the Copper, Susitna, Kvichak, Togiak, Kuskokwim, and Yukon. As in southeastern Alaska, coho are found in numerous stream and river systems. (Catalog of Salmon Spawning Rivers, ADF&G, Rev., 1975.)

3.2 *History of Exploitation*

3.2.1 *Domestic Fishery*

3.2.1.1 *Description of User Groups*

East of Cape Suckling the troll fishery is the only domestic salmon fishery in the offshore area. Net fishing of all types has been prohibited in this area since 1952 [International North Pacific Fisheries Convention 1952; North Pacific Fisheries Act of 1954) [16 USC1021–1032] and with specific exceptions off the remainder of the Pacific Coast (including Canada) since 1956. Chinook are harvested mostly by the troll fishery, with small numbers taken by gillnets, purse seines, and the recreational fishery. Coho are caught in inshore waters by nets and trolling in nearly the same proportion. Recreational coho catches are relatively small and are mostly taken in the territorial waters. Pink, chum, and sockeye salmon are harvested by the same user groups; the bulk is taken by net fisheries inshore.

3.2.1.2 *General Description of Fishing Effort*

The number of boats in the Alaska troll fishery has generally been increasing since the early 1900s. The clear and protected waters of Southeast Alaska are conducive to trolling for chinook and coho. Trolling is not feasible in areas north and west due to lack of fish, murky waters, or the use of nets, the combination of factors preventing the growth of the fishery in those areas. After the 1973 season, the Alaska Board of Fish and Game made trolling illegal in all areas of the State of Alaska except east of Cape Suckling.

The early troll effort was conducted in inshore waters closer to spawning streams of the fish. As the number of fish decreased and the amount of effort increased, gear conflicts occurred; fishing effort gradually moved outward to coastal and offshore areas and it was during this expansion of area that, in 1952, several fishermen from the Pelican area caught fish on the offshore Fairweather Grounds. After a lapse of several years, during which good runs of salmon in inshore areas made it unnecessary to prospect offshore, fishermen again ranged offshore to the Fairweather Grounds and the fishery became established.

Effort in the troll fishery increased steadily until 1974 when the State of Alaska passed limited entry legislation holding effort to 950 units of power troll gear.

Based on the existing data, 187 individual boats fished the offshore troll fishery during the three-year period 1975–1977; the most that were on the grounds in any one year during that period was 118.

3.2.1.3. *Catch Trends*

The greatest recorded catch of chinook in Alaska was in 1937 when 846,000 fish were landed. From 1937 to the early 1960s there was a general decline in chinook catches. Since 1965 the catch has been reasonably stable between 250,000 and 350,000 fish per season (Figs. 12 and 13, Appendix 4.0).

The record catch of coho was in 1951 when 2.0 million fish were landed. Since the late 1950s the coho catch has fluctuated between 300,000 and 1,000,000 fish annually. In 1976 there were 220,000 chinook and 510,000 coho caught by troll gear.

In 1977 there were 272,000 chinook and 507,000 coho caught by troll gear. Table 1 shows that, respectively, 18.5, 1.8, and 1.6 percent of troll caught chinook, coho, and pink were taken in Council waters. These figures are equivalent to 8 percent for chinook, 0.5 percent for coho, and .02 percent for pink of the state total caught by all gear types (Table 2).

Table 3 shows the 10-year statistics for the 3 major species by troll gear and all gear types. Figure 1 depicts the trends of troll catches for these species.

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TABLE 1

NUMBER OF TROLL SALMON CAUGHT IN STATE AND COUNCIL WATERS--1977

Species	State Waters		Council Waters		Total
	NO.	(%)	NO.	(%)	
Chinook	221,508	(81.5)	50,251	(18.5)	271,759
Coho	497,680	(98.2)	9,155	(1.8)	506,835
Pink	276,733	(98.4)	4,455	(1.6)	281,188
Red	5,391	(94.5)	313	(5.5)	5,704
Chum	11,032	(94.5)	648	(5.5)	11,680
Total	1,012,344	(94.0)	64,822	(6.0)	1,077,166

Source: Prel. ADF&G Statistics, 1977

TABLE 2

NUMBER OF SALMON CAUGHT IN ALASKA BY SPECIES--1977

Species	All Gear State	Troll Gear					
		State Water	(%)	Council Water	(%)	Total Troll	(%)
Chinook	626,723	221,508	(35.34)	50,251	(8.02)**	271,759	(43.36)
Coho	1,815,167	497,680	(27.42)	9,155	(.50)	506,835	(27.92)
Pink	28,582,428	276,733	(.97)	4,455	(.02)	281,188	(.99)
Red	13,717,737	5,391	(.04)	313	(*)	5,704	(.04)
Chum	6,204,094	11,032,	(.18)	648	(.01)	11,680	(.19)
Total	50,946,149	1,012,344	(1.99)	64,822	(.13)	1,077,166	(2.11)

*0.0022 percent ** 8.02 = (50,215/626,723)(100)

Numbers in () represent the percent of fish to the total of fish caught by all gear.

Source: Prel. ADF&G Statistics, 1977

TABLE 3

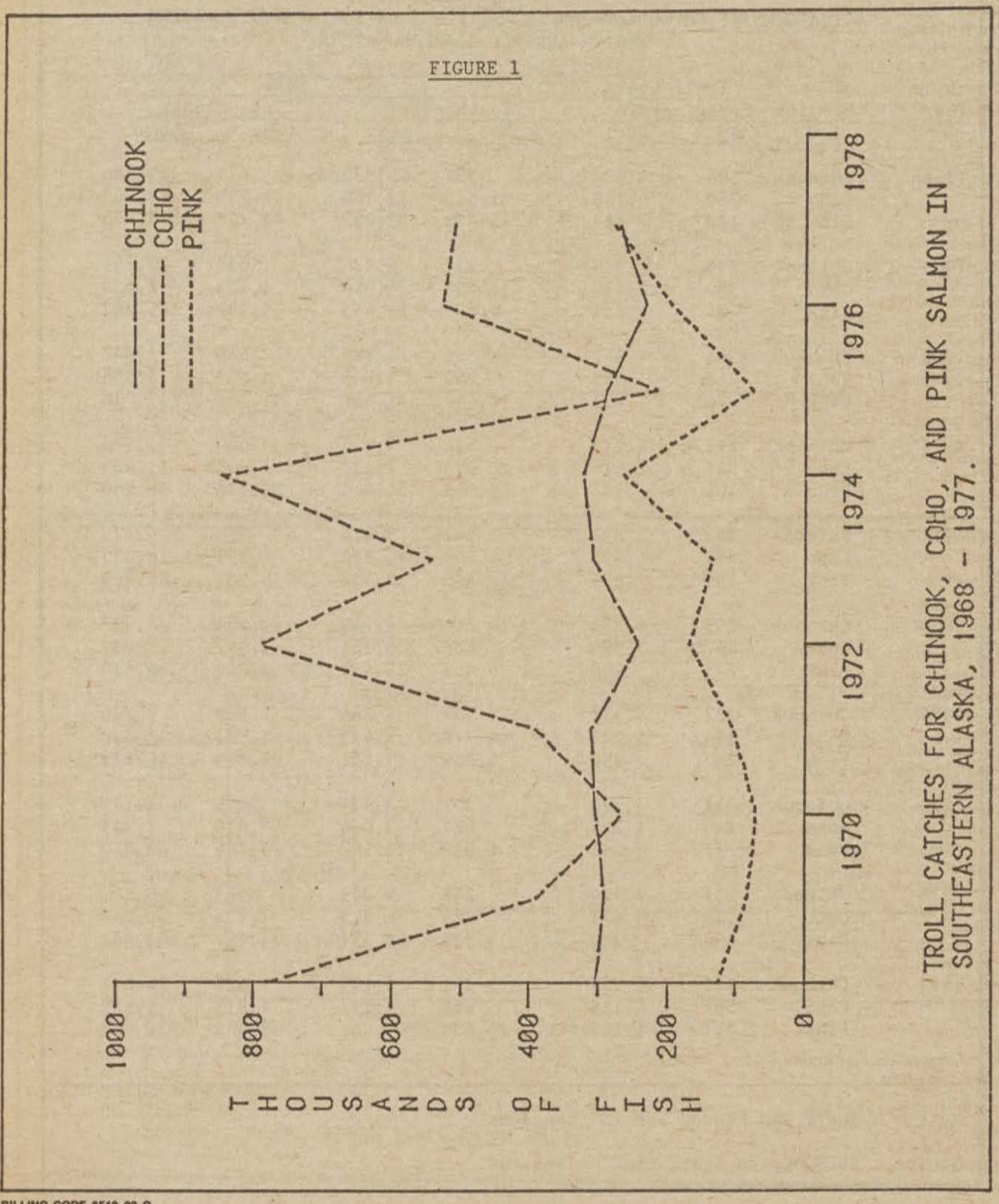
CATCHES OF CHINOOK, COHO, AND PINK SALMON IN THE SOUTHEASTERN REGION AND ALL ALASKAN WATERS *

Year	Species	Troll Gear Southeastern		All Gear Southeastern		All Gear All Alaska	
		No.	Lbs.	No.	Lbs.	No.	Lbs.
1968	Chinook	304	4,932	332	5,372	611	11,246
	Coho	780	6,158	1,543	12,190	2,751	20,968
	Pink	126	417	25,085	82,782	44,727	148,446
1969	Chinook	290	3,915	314	4,236	639	10,746
	Coho	389	2,836	596	4,354	1,133	8,034
	Pink	84	351	4,870	20,453	25,767	105,967
1970	Chinook	304	4,352	322	4,589	646	11,547
	Coho	267	1,899	759	5,823	1,527	11,898
	Pink	70	251	10,657	41,442	31,147	117,718
1971	Chinook	311	4,215	334	4,529	662	11,972
	Coho	391	2,674	914	7,137	1,448	11,459
	Pink	105	352	9,345	34,414	23,528	86,260
1972	Chinook	242	2,852	287	3,376	553	9,973
	Coho	792	4,891	1,509	10,586	1,831	13,035
	Pink	167	535	12,400	38,468	15,921	59,969
1973	Chinook	308	4,283	344	4,749	551	8,917
	Coho	540	3,806	836	6,161	1,457	9,837
	Pink	135	448	6,455	23,424	9,802	36,610
1974	Chinook	322	4,377	347	4,744	558	9,290
	Coho	846	5,722	1,278	9,413	1,861	12,820
	Pink	263	950	4,889	19,271	9,859	40,072
1975	Chinook	287	3,792	301	3,974	455	7,165
	Coho	214	1,295	427	3,084	1,014	7,745
	Pink	77	249	4,027	15,552	12,984	49,969
1976	Chinook	231	2,954	242	3,099	533	8,601
	Coho	525	3,671	824	6,355	1,432	10,644
	Pink	194	720	5,329	23,351	24,751	102,401
1977	Chinook	272	3,979	291	4,199	627	12,071
	Coho	507	4,158	945	8,247	1,815	15,362
	Pink	281	1,195	13,838	67,865	28,582	129,529

*Note: Numbers and Pounds are in thousands.

Source: ADF&G Catch Statistics. 1968-1977

FIGURE 1



TROLL CATCHES FOR CHINOOK, COHO, AND PINK SALMON IN SOUTHEASTERN ALASKA, 1968 - 1977.

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3.2.1.4 *Description of Vessels and Gear Employed*

Commercial trolling in Southeastern Alaska commenced in Ketchikan around the turn of the century with mechanically powered vessels entering the fishery in 1910. Power gurdies came into use in the early 1920's and later, the use of ice and refrigeration to maintain quality of unprocessed catch over extended periods of time lengthened the amount of time a commercial troller could spend fishing before returning to port.

The 2,076 commercial trolling vessels that landed fish in 1976 (power troll, 801; hand troll, 1,275) may be divided into two categories by size and area fished. The 1,106 boats under 27 feet in length do not fish in outside waters; the total troll catch by these fishermen is about 15 percent of the total.

The remainder of the catch was landed by 970 boats over 27 feet in length; the majority are power trollers which can fish for 10–14 days before delivering to a buyer. These boats are often highly mobile, fully equipped electronically, and very seaworthy.

There is no standardization of vessel types in this fishery; an endless variety of small, medium, and large size vessels participate.

3.2.2 *History of Foreign Exploitation* (3.2.2.1.–4.)

The foreign troll effort in the waters off Alaska has historically been Canadian. In some years of predicted large runs of albacore tuna *(Thunnas alalunga)* or salmon elsewhere on the coast, the Canadian effort off Alaska is minimal. In other years as many as 30 Canadian boats have fished in the offshore waters. In 1968 a total of 18,168 chinook, 1,732 coho, and 853 pinks was taken by Canadian boats that spent 1,048 boat days off Alaska. In 1976 there was no reported catch by Canadian trollers off Alaska (Annual Summary of British Columbia Catch Statistics 1976). This is thought to be in error on the basis of confirmed sightings of Canadian vessels on the Alaska fishing grounds by American fishermen.

3.3 *History of Management*

3.3.1 *Management Institutions, Policies, Jurisdiction*

Prior to statehood in 1959, management of salmon within 3 miles of the coast and all inshore waters of Southeast Alaska was under jurisdiction of the U.S. Fish and Wildlife Service. Regulations were established for the territorial waters in Washington, D.C., primarily to comply with Pacific coast states and Canadian regulations. Since statehood the Alaska Board of Fish and Game (now the Board of Fisheries) has set policy and regulations in accordance with proposals by the Alaska Department of Fish and Game, local advisory boards, and individuals. The Department of Fish and Game is responsible for in-season management, research, and implementation of regulations. The State and the Board of Fisheries exercise de-facto jurisdiction in the Pacific ocean waters beyond 3 miles under the terms of landing laws and other licensing requirements of U.S. Nationals. Due to disparities in regulations between the U.S. and Canada enforcement of Alaskan regulations pertaining to Canadian vessels in the contiguous zone has been generally ineffective.

Recognition of the coastwide nature of the management problems of chinook and coho led to the consideration of possible solutions initially under the auspices of the Pacific Marine Fisheries Commission (PMFC). The forum for coordinating both research efforts and ocean salmon fishery management regulations has been the PMFC Salmon-Steelhead Committee. This committee consists of fishery scientists from each member state (California, Oregon, Washington, Idaho, and Alaska).

3.3.2 *Domestic*

3.3.2.1 *Measures Employed to Regulate Fishery*

Regulations for the troll fishery have remained basically the same since the 1930's. In 1977, a 28-inch minimum total length size limit for chinook was imposed. Coastal and offshore waters are open to trolling from April 15 to October 31. Waters inside the surfline are open to trolling year-round with local exceptions to provide individual stock protection and conform to gillnet seasons (Alaska Commercial Fishing Regulations Finfish 1977). A maximum of four lines may be fished inside the 3-mile territorial limit. Beyond the 3-mile limit there is no restriction on the number of lines used.

The troll fishery is open to the taking of coho from June 15 to September 20. There is no minimum size limit for coho. In some years area closures are necessary to comply with gillnet closures for local stock protection.

3.3.2.2. *Purpose of Measures*

The 28-inch total length minimum size limit and the winter closure of offshore and coastal waters are intended to restrict the harvest of immature stocks of chinook salmon that have remaining growth potential. The offshore and coastal winter closure is basically of little or no consequence as weather conditions are more restrictive than the regulatory season. The coho season is unrestrictive because coho usually do not appear in the troll catch in substantial numbers prior to July 15 or after September 20. The four-line limit for troll vessels is imposed only in Alaska waters. Elsewhere on the coast the line limit is six lines; in some jurisdictions there is no line limit. Many Alsaka resident trollers have more than four lines on board their boats and will fish with all their lines when outside State jurisdiction.

The purpose of limited entry as a management tool is to promote the conservation and sustained yield management of the fishery resource and the economic health and stability of commercial fishing. Without limited entry levels of participation many fisheries have impaired or threatened to impair the economic welfare of the fisheries, the overall efficiency of the harvest, and the sustained yield management of the fishery resources.

3.3.3 *Foreign* (3.3.3.1, 3.3.3.2)

The foreign salmon troll effort in this fishery has been Canadian, has been regulated by a Reciprocal Fisheries Agreement, and occurred outside 12 nautical miles.

3.3.4 *Effectiveness of Management Measures*

Ideally, the management of any fishery should be focused on optimum escapement and yield from the resource. While inshore and coastal regulations have decreased the take of chinook salmon in inside areas, the effort in offshore waters has increased, thereby partially nullifying any intended benefits from inshore and coastal troll or net fishery curtailment. The 26-inch minimum size limit was intended to restrict the take of immature chinook salmon that have reared in the ocean for only two years under the concept that these fish would then be available for harvest in subsequent years. However, the increased effort in areas where small fish predominate has reduced the intended benefits of the minimum size limits because of the release and subsequent mortality of undersized chinook (shakers) that are inadvertently caught by troll fishermen.

This history of size restrictions in the troll fishery shows that prior to 1971, the legal length limit for chinook was 26 inches (fork lengh); fork length was changed to total length commencing with the 1972 season and remained at 26

inches total length until the 1977 season when the 28-inch total length (head-on) measurement was adopted.

The minimum size limit was increased to 28 inches for the 1977 season to provide further protection of immature chinook.

4.0 Biological Descriptors

4.1 *Life History Features*

Five species of Pacific salmon are off Alaska—pink, chinook, coho, chum and sockeye—and all have somewhat similar life histories. They spawn in fresh water from late summer to late autumn and die soon after. The eggs are deposited in gravel and remain until they emerge as fry in late winter or early spring. The fry of some species go to sea almost immediately, but in other species the freshwater period may vary from a few weeks to one or more years.

The ocean life is one of feeding and rapid growth. During the ocean residence the color is metallic blue on the top, with black spots or specklings, and silvery on the undersurfaces.

As the fish enter fresh water a red color appears on the chinook, sockeye, and coho; chum salmon acquire a "calico" banding and pink salmon turn a mottled brown. Males of all species develop a distinctive "kype" or elongated nose.

The salmon are placed in the genus *Oncorhynchus* and are characterized by a comparatively large anal fin with 13–19 rays. (By comparison, trout and char have 8–12 rays.)

Approximately one-third and two-thirds of Southeastern Alaska coho salmon, respectively, have 3- and 4-year life cycles. The 3-year old fish spend 1 year and the 4-year old spend 2 years in freshwater. Both migrate to sea as smolts in the spring; the 3-year old fish migrate as age 1+ smolts at the beginning of their second year and the 4-year old fish migrate as age 2+ smolts at the beginning of their third year. A small percentage of Southeastern Alaska coho are 5-year old fish having spent 3 years in freshwater and migrating to sea as age 3+ smolts at the beginning of their fourth year. Ecological characteristics of freshwater nursery areas that influence growth of fry and fingerlings apparently determine if seaward migration occurs in the second, third, or fourth year of life (Crone and Bond, 1976). In 1969 and 1970 age determinations on a 5,406 fish sample of adult coho from purse seine, troll, and gillnet fisheries in Southeastern Alaska revealed that 27, 64, and 9 percent respectively, were 3-, 4-, and 5-year-old fish (Marriot and Gray, 1970).

Regardless of their total age, coho are generally available to the troll fishery only in their final year of life as they approach maturity. This is during the summer and early fall after spending one winter in ocean nurseries.

Ninety-five percent of Southeastern Alaska chinook salmon smolts migrate seaward after rearing in freshwater for one year. The remainder migrate after two years. Alaska male chinook salmon mature after 1 to 5 years at sea, while females mature after 3 or 4 ocean years (Kissner, 1977). Chinook are available to various troll fisheries for up to 5 years but cannot be legally landed until the latter part of their second ocean year when they exceed 28 inches total length. Discrete migration patterns of fish after leaving the freshwater environment are unknown.

Adult sockeye migrate in early summer from salt water back to their freshwater stream of origin. While at sea the sockeye is bright and silvery; upon entering freshwater, the adult acquires the characteristic red coloration. The maturation process takes from one to two months. After spawning, the eggs develop and the fry will spend one or more years in freshwater before migrating to sea as smolts. After two to four years in saltwater, mature fish will weigh from four to eight pounds. In the fourth, fifth or sixth year, the mature fish will return to freshwater to spawn.

Pink salmon mature at two years of age. Following the freshwater spawning and incubation and growth to fry stage, the outmigration occurs during early spring and the fish spends one winter in saltwater, returning as the smallest of Pacific salmon with an average weight of some three pounds. It is the most abundant salmon in Alaska, and the most affected by natural, cyclic fluctuations.

Chum salmon exhibit similar spawning and early life stage characteristics similar to pink salmon. The principal difference occurs after outmigration of fry to the ocean environment where they spend three to four years before returning to spawn.

4.2 *Stock Units*

For purposes of management in terms of the Council's jurisdiction in waters where intermingling of both Alaskan and non-Alaskan chinook and coho occurs, these stocks must be considered as a unit because present knowledge is not sufficient for the management of discrete stocks throughout their range.

In general, native and hatchery chinook from the following areas are known to make contributions to the Alaska troll fishery: California, Columbia River, Washington, and Oregon coastal streams, Puget Sound, northern and southern British Columbia including Vancouver Island, and Southeastern Alaska.

Fish from all areas intermingle and constitute the fishery against which the troll effort is directed. Nearly 99 percent of the chinook troll landings from the offshore area come from the Fairweather Grounds (Table 13, Appendix 4.0).

This averages 15.8% of the total Alaska troll landings in numbers of fish (Table 12, Appendix 4.0).

Troll landings of coho in Council waters average only 6.4 percent of the total Alaska coho troll catch.

4.3 *Catch and Effort Data Sources*

Prior to statehood, catch and effort data recorded for the troll fishery was lacking in detail necessary for effective management. Since statehood, concerted efforts have been made to improve all data gathering functions of the Alaska Department of Fish and Game. At present, the available data includes numbers of boats and landings, and catch (in numbers and pounds) by species, statistical area, and week. In addition, effort in numbers of boats by statistical area is recorded by Department of Fish and Game personnel during overflights along the outside coast from Cape Muzon to Lituya Bay.

4.4 *Survey and Sampling Data*

From 1971 to 1974 a troll logbook program was conducted under the auspices of the Alaska Department of Fish and Game's Ocean Troll Fishery Project to determine catch by fishing location, hours fished per day, and number of undersized chinook caught by time and area. In 1976, the Alaska Trollers Association re-established a troll logbook program. In 1973, a port sampling program was initiated in three major ports of landing: Sitka, Pelican, and Craig. Information has been gathered concerning age-class structure of the troll catch, stock contributions from hatcheries, migration routes of maturing salmon, and relative frequency of stock contributions under mark-sampling programs funded by the National Marine Fisheries Service's Columbia River Fisheries Program and the North Pacific Fisheries Management Council.

Attempts have been made to establish escapement trends for the major chinook and coho streams in Southeastern Alaska. Because of variable water conditions (turbidity, etc.) as well as the inaccessibility of

many of the rivers, some of the survey results are not comparable. However, surveys of river systems for which data are comparable clearly demonstrate the decline in Southeastern Alaska chinook stocks (Table AI–4). Because of the dynamic nature of the stocks in the troll fishery it is necessary that these programs be continued and refined in order to achieve effective management.

4.5 *Habitat*

Because of the anadromous nature of salmon, it is essential that freshwater and estuarine habitat protection be given primary consideration in any plan designed to achieve sustained yield. The loss in potential production from the destruction of spawning environment through the construction of dams, industrial development, and poor logging practices cannot be completely offset by fishery restrictions or artificial production. The decline of the chinook catch in the Alaskan ocean troll fishery since the 1930's has been correlated with hydroelectric dam construction on the Columbia River; some upriver stocks in that system have been lost completely (Pacific Fisheries Management Council 1977). The decline in natural fish together with a relatively stable troll fishery demonstrated an increased reliance on hatchery-produced chinook.

The loss of spawning and rearing habitat through poor logging practices, urbanization, and industrial pollution in Southeastern Alaska will jeopardize sustained yield from coho. Some streams that presently support coho will undoubtedly suffer adverse effects from continued misuse of the environment. Information on specific streams or particular habitat problem areas currently is limited. There are studies being conducted by the Alaska Department of Fish and Game that should provide useful data in this regard. They are currently cataloging Southeastern Alaska streams to advise the U.S. Forest Service during development of their comprehensive land use plans. There are a large number of streams involved and these assessments are not yet complete. Also, ADF&G intends to closely monitor the effect on the Keta River of the access road that will be constructed by U.S. Borax for the proposed molybdenum mine.

Further development of land use-oriented industries in the States of Washington and Oregon and in the Province of British Columbia may cause further reduction in the numbers of chinook available to Alaskan fishermen. However, the present status of these stocks cannot be solely attributed to lost environment and, as with the Southeastern Alaska native chinook stocks, can be attributed as well to the fisheries which intercept these stocks.

4.6 *Ecological Relationships*

The ecological relationships of principal concern to salmon off Alaska are embedded in food chain relationships: i.e., marine mammals (sea lions) eat salmon which eat herring (or krill or needlefish) which eat plankton which need nutrient energy, etc. Direct food chain relationships involving salmon are poorly understood. Several applied research projects address (to a degree) "ecological relationships and salmon" but none present a very clear understanding of the total picture.

A troll logbook program being conducted under a cooperative agreement between the Alaska Trollers Association, the Alaska Department of Fish & Game, the Alaska Sea Grant Program, the University of Alaska, and the National Marine Fisheries Service, NPFMC should eventually result in better information regarding feed abundance and type. Preliminary data indicates that salmon feed primarily on needlefish and krill in the FCZ and on herring in inside waters. Several forage fish studies have been conducted off Alaska which deal with the distribution, abundance, and biology of herring, capelin, euchelon, candlefish, and krill. As an example, the ADF&G conducts continuing studies of herring abundance and although these studies relate specifically to the herring fishery, they should be useful in assessing some food chain relationship of salmon.

The Outer Continental Shelf/ Environmental Assessment Program (OCSEAP) has also conducted forage fish studies off Alaska, but primarily for the area north and west of Cape Suckling and principally with little conclusive data regarding salmon.

The Marine Mammal Protection Act of 1972 (Pub. L. 92–522) imposed a moratorium on the taking of marine mammals and further preempted State management authority over marine mammals in favor of Federal management. The Sea lion population has increased substantially since that moratorium went into effect. Sea lions prey on salmon and this has an effect on salmon stocks. Sea lions also physically interfere with some salmon fishing operations.

4.7 *Quality of Data*

The domestic catch in numbers and pounds of fish by grade and species is recorded by the processors at the time of delivery. The boat identification number, the fisherman's name, and his limited entry permit number are also recorded at the time of sale. A standard form called a "fish ticket" is completed with the above information for each delivery (Fig. 9, App. 4.0) and is forwarded to the Alaska Department of Fish and Game. Summaries and analyses of catch are calculated from this basic fish ticket form. In addition, spot checks are conducted by the ADF&G to verify fish ticket information.

Data concerning species composition, relative native stock contributions, and discrete stock distribution by time and area are of poor quality, or in some cases, nonexistent. Data available from earlier studies may not be applicable to the present situation because of changing stock characteristics (declining natural runs and increasing hatchery production).

In general, the quality of catch data by gear, time, and area is good in the aggregate. Logbook summaries to determine areas of shaker* incidence are considered adequate but because of the dynamic nature of the troll fishery and chinook stocks involved, several more years of data will be required to differentiate all areas of shaker abundance in Southeastern Alaska. Data concerning age class structure of the troll catch and size frequency by age class are considered adequate. Spawning ground surveys and escapement counts are considered adequate to exemplify declining stock strengths. Tag recovery data on chinook of non-Alaskan origin is adequate to determine contribution of these stocks to the Alaskan troll fishery. Native chinook tagging began in 1977 and results have not yet been determined.

Catch by Canadians is reported by the Canadian government in the *Annual Summary of British Columbia Catch Statistics*. The catch data are reported in numbers of fish and pounds by species.

4.8 *Current Status of Stocks* (See Appendix 4.0 for additional information)

Native spring chinook salmon stocks are at a low level along the entire Pacific Coast.

Southeastern Alaska chinook stocks (all "spring" type) are also at a low level in most chinook systems monitored annually (Appendix, Table A, 1–4). While some cause for the decline of chinook in the Pacific Northwest can be attributed to loss or deterioration of spawning grounds and freshwater rearing areas such as mainstem and

*A "shaker" is a salmon of less than legal length that a fisherman releases (shakes off) from the hook.

tributary dams, industrialization and urbanization of rivers, and extensive watershed logging, none of these factors have significantly influenced the decline of Southeastern Alaska chinook. *All data indicate a major reason for population declines in Southeastern Alaska chinook is due to overharvest.* The chinook is the only species which is available to sport and commercial troll fisheries for three or four years, and in addition is often subjected to net fisheries near their river of origin.

Southeastern Alaska coho are below historic catch levels. Coho catches by all gear in Southeastern Alaska averaged 1.6 million fish per year during the thirty years from 1926–1955. This compares to about one million fish per year from 1960 to 1975 and about 800,000 fish per year from 1973 to 1975 (Alaska Salmon Fisheries Plan, 1976).

4.8 *Maximum Sustainable Yield (MSY)*

MSY is an average over a reasonable length of time of the catch which can be taken annually from a stock under current environmental conditions. MSY, as it applies to salmon management, is difficult, if not impossible, to evaluate in terms of any measurement of data other than past catches. The MSY for salmon is discussed in terms of total catch of salmon taken in the fisheries east and west of the longitude of Cape Suckling (for rationale see Section 8.3.1). While MSY is calculated as an average for each of the two areas, it is important that the complexity of the problems and importance or lack of importance of a single river system versus multiple river systems is understood.

Under ordinary management procedures using MSY, where recruitment requirements determine escapement goals for individual populations or groups of stocks, harvest levels should be based on surplus fish above recruitment requirements. Restrictions on terminal fisheries are therefore used to help achieve the proper balance between total catches and escapement.

The Alaska offshore troll fishery contributes to the total catch of salmon east of the longitude of Cape Suckling but is based on variable harvest levels of mixed stocks before the relative strength of individual runs are known. This fishery is based on salmon taken during an active growth period when natural mortality rates are low and when the high death rate of released undersized salmon increase the difficulty of justifying the fishery.

Achieving maximum poundage yields require eliminating harvests of salmon with remaining significant growth potential. The high-seas troll fishery creates a net effect of a major loss of salmon production in poundage yields as compared to the same fish taken closer to their natal streams.

The MSY figures (for five species of salmon, east of the longitude of Cape Suckling to Dixon Entrance and west of the longitude of Cape Suckling to 175° east longitude) are calculated from annual catches in all waters, State and Federal, off Alaska from 1953–1977.

The mean catch of chinook during an equal time period (25 years) prior to 1953 is statistically higher than the 25-year period used in the determination of MSY (see Table 4). The 1953–1977 period more accurately reflects current environmental conditions.

The MSY ranges are the average catches minus and plus one standard error.

4.8.2 *Acceptable Biological Catch (ABC)*

Acceptable Biological Catch (ABC) is a seasonally determined figure that may differ from MSY for biological reasons. The principles of salmon managment require ABC calculations to be made on the basis of the surplus assumed to prevail in any mix of river systems involved in the fishery.

In dealing with a mixed-stock fishery, in which diverse stocks mingle at different levels of abundance, and a fishery in which those diverse stocks consist of wild and hatchery fish from widely separated geographic areas, there are stocks which can be safely harvested but which cannot be separated from stocks within the fishery which should not be harvested.

If a fishery is allowed in a mixed-stock situation where certain stocks require protection, the inevitable consequence is that some from these stocks will be caught.

The offshore and coastal troll fishery in the FCZ (east of Cape Suckling) and Alaskan State waters is an example of such a situation. Wild Alaskan stocks of chinook are critically depressed and should not be harvested but are mixed with other stocks having a harvestable surplus.

The overall management of the five species of salmon off Alaska (east and west of Cape Suckling) requires an estimate of ABC be calculated from past annual catches (1971–1977) in all waters in and off Alaska. A range of ABC for each species is presented as a mean catch plus or minus one standard error (Table 5).

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TABLE 4

Average Annual Catch (MSY) From 1953-1977 Taken East and West of Cape Suckling

	Pounds (in thousands)	Numbers of salmon (in thousands)
Chinook		
West	5,133 - 5,548	247 - 267
East	5,130 - 5,476	296 - 316
Sockeye		
West	26,384 - 70,424	4,549 - 12,142
East	4,775 - 5,284	808 - 894
Coho		
West	4,780 - 5,415	602 - 682
East	8,362 - 9,723	959 - 1,115
Pink		
West	44,784 - 56,049	12,236 - 15,314
East	36,289 - 45,952	9,164 - 11,604
Chum		
West	27,320 - 31,016	3,682 - 4,180
East	17,218 - 20,799	1,822 - 2,201

TABLE 5

Mean Annual Catch (1971-1977) Expressed as an ABC Range
For Salmon East and West of Cape Suckling

	Pounds	Numbers (of fish in thousands)
Chinook		
West	5,063 - 6,390	225 - 284
East	4,424 - 4,950	286 - 320
Sockeye		
West	43,531 - 65,811	6,697 - 9,817
East	3,566 - 4,717	669 - 885
Coho		
West	3,636 - 4,600	505 - 631
East	7,420 - 9,053	841 - 1,100
Pink		
West	29,972 - 45,599	7,382 - 11,051
East	25,716 - 37,489	6,494 - 9,467
Chum		
West	30,288 - 35,687	4,071 - 4,796
East	12,232 - 17,813	1,292 - 1,883

The years 1971–1977 were used for this derivation of ABC because (1) the use of recent catch data (7 years as opposed to 25 years) is essential in understanding changes and trends which occur in biological systems over time and (2) a seven-year period takes into account a recent full cycle of spawning for major chinook and coho stocks. Additionally, 1971 was the initiation of the first reliable fish ticket information which clarified landings by area for the first time.

Cape Suckling is an established boundary for management and statistical areas and separates Southeastern Alaska waters from the remainder of Alaskan waters. There is no known information which shows a significant mixing of stocks originating west and east of Cape Suckling.

4.9 *Estimates of Future Stock Conditions*

The future status of salmon in the offshore Alaska troll fishery is unclear. Non-Alaska fall chinook in the fishery presently are strongly supported by West Coast hatchery production. The future condition of these stocks will be closely tied to existing hatchery programs and the success of new coast-wide rehabilitation and enhancement programs. *Hatcheries for spring chinook have generally been financially unsuccessful. Until this problem is solved, maintaining spring chinook stocks will depend largely on natural production.* Reversing the severely depressed status of Southeastern Alaska chinook can only be achieved by stern conservation efforts that eliminate or restrict further harvest of these fish. Efforts are underway in Southeastern Alaska to develop spring chinook brood stocks for artificial propagation programs. However, these efforts will remain small until successful techniques are established. *Until that time, conserving these stocks with an ABC approaching zero is vitally important.*

Prospects for enhancement of coho production in Southeastern Alaska, in addition to conventional hatchery programs, include several different approaches to artifically recruiting smolts to ocean nurseries. These include utilizing estuarine and freshwater culture in net pens, floating raceways, and unused natural rearing areas. There may be a significant number of unused freshwater nurseries for coho production in Southeastern Alaska that are not accessible to natural runs due to geologic features of the area. Active research on these approaches is underway at several locations. Caution should guide their use and development, especially in relation to simultaneously maintaining viable native stocks in adjacent areas (Heard, in press).

4.10 *Non-target Species Mortality Other Than Salmon*

This is not a serious problem with the ocean salmon fishery. Although species such as the Pacific halibut (*Hippoglossus stenolepsis*), rockfish (genus *Sebastes*), and lingcod (*Ophiodon elongatus*) may be caught, the total catch is minor.

5.0 Catch and Capacity Descriptors

5.1 *Data and Analytical Approaches (5.1.1., 5.1.2.)*

There is insufficient data to quantitatively define capacities. Harvesting characteristics (section 3.5.2) and catch trends (section 3.2.1.3) substantiate the values for DAC and DAH discussed below.

5.2 *Domestic Annual Capacity (DAC)*

Capacity of the power troll fishery to harvest salmon is exceedingly difficult to estimate. In 1976, approximately 100 vessels with a mean keel length of 41 feet made landings from offshore waters. Because of the increased efficiency of the vessels in the fishery, due to technological advances in electronic gear and increased hold capacity, it is estimated that the DAC is substantially greater than the largest catch that could be realized from the offshore fishery.

Provisions of limited entry will restrict the number of fishermen who could conceivably fish; this does not necessarily limit fishing effort.

Larger boats and increased experience on the part of the fishermen plus increasing sophisticated electronic gear is the means by which effort can increase without numbers of fishermen increasing.

5.3 *Expected Domestic Annual Harvest (DAH)*

Based upon past performance of the troll fleet and market trends, the DAH for chinook and coho is expected to be equivalent to OY.

5.4 *Domestic Annual Processing Capacity*

Domestic processors have in the past been able to process the entire domestic harvest of troll-caught salmon, and it is expected that they will be able to process the harvest of salmon allowed by this plan.

6.0 Optimum Yield (OY)

Optimum Yield (OY) may be obtained by a plus or minus deviation from ABC because of economic, social, or ecological objectives as established by law and the public participation processes. Ecological objectives where they relate primarily to biological purposes and factors are included in the determination of ABC. Where ecological objectives relate to resolving conflicts and accommodating competing uses and values, they are included as appropriate with economic and social objectives in the determination of OY.

The optimum yield for all species in all areas is based on the acceptable biological catch for the years 1971–1977 modified by social and economic considerations. The OYs are expressed as ranges determined from past mean catches plus and minus one standard error.

It is necessary to take into consideration MSY, ABC, and OY based on all species, all areas, for purposes of management. The plan, however, is subdivided and deals primarily with the one active fishery in the FCZ off Southeast (east of Suckling) as this is the area of council jurisdiction as addressed by the FCMA.

Catches of pink, chum, and sockeye salmon are relatively insignificant in the troll fishery. The 1971–1977 average annual combined catch of pink, chum, and sockeye is less than five percent of the total offshore troll salmon harvest (Table 13, Appendix 4.0) Pink, chum and sockeye salmon caught in the offshore are not considered significant in the overall optimum yield determination. Any catch likely to be realized in the troll fishery will be an acceptable by-catch.

Alternatives Considered

Two other concepts of optimum yield were considered in the development of this plan: (1) a greatly restricted OY essentially prohibiting trolling in the FCZ by certain time and area closures and (2) allowing OY and effort to expand according to current trends in the fishery (see also EIS, Section 12.5). The argument to greatly restrict and reduce the OY was considered unacceptable given the basic definitions of OY which mandates a consideration of relevant socio-economic factors. The preponderance of public testimony and socio-economic data did support this conclusion by showing the grave social and economic dislocation and hardships that would occur in several geographic areas and villages in Southeast Alaska. Likewise any expansion of effort or greatly increased catch or catch potential was not consistent with a principle management objective of controlling the expansion of the fishery. Neither was this alternative considered optimal in terms of the carefully considered balance of social and economic values and the biological principles of mixed stock management.

West of Cape Suckling: The optimum yield for waters west of Cape Suckling addressed by this plan is fully utilized by existing inshore net fisheries. (Table 6).

East of Cape Suckling: The optimum yield for salmon east of Cape Suckling is set equal to ABC (See Table 6).

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TABLE 6

OPTIMUM YIELD

For Salmon East and West of Cape Suckling

	Pounds	Numbers
	(of fish in thousands)	
Chinook		
West	5,063 - 6,390	225 - 284
East	4,424 - 4,950	286 - 320
Sockeye		
West	43,531 - 65,811	6,697 - 9,817
East	3,566 - 4,717	669 - 885
Coho		
West	3,636 - 4,600	505 - 631
East	7,420 - 9,053	841 - 1,100
Pink		
West	29,972 - 45,599	7,382 - 11,051
East	25,716 - 37,489	6,494 - 9,467
Chum		
West	30,288 - 35,687	4,071 - 4,796
East	12,232 - 17,813	1,292 - 1,883

7.0 Total Allowable Level of Foreign Fishery (TALFF)

The amount of U.S. Pacific Coast salmon available to the Alaskan Troll fishery will vary from year to year. At the highest conceivable level of abundance, it can be completely harvested by U.S. domestic fisheries. Therefore, in compliance with PL 94–265 there is no allowable foreign catch except as proposed by a Reciprocal Fishing Agreement with Canada, or as a temporary Japanese salmon fishery might be allowed under terms of the Protocol Amending the International North Pacific Fisheries Convention signed April 25, 1978, which requires approval of all parties to the convention before such fishery can occur.

8.0 Management Regime

8.1 *Objectives*

(1) Control the expansion of the salmon troll fishery in the Fishery Conservation Zone.

(2) Allocate the salmon resource among user groups without disrupting present social and economic structures.

(3) Regulate the catch of salmon to assure adequate escapement for spawning.

(4) Reduce the catch of salmon with potential growth to increase the poundage yield from the troll fishery.

(5) Make cost effective the public investment in the high-seas salmon fishery.

(6) Promote the eventual development of a Pacific Coast salmon fishery management plan.

8.2 *Areas, Fisheries, and Stocks Involved*

This plan covers salmon off the coast of Alaska east of 175° East longitude.

Two management units are established: the waters west of Cape Suckling and the waters east of Cape Suckling to Dixon Entrance.

There are presently no offshore salmon fisheries west of Cape Suckling in the FCZ with the exception of those historical fisheries managed by the State (North Pacific Act). These are the False Pass (South Peninsula), Cook Inlet, and Copper River net fisheries. These fisheries are technically in the FCZ, but are conducted and managed by the State of Alaska as inside fisheries. Thus, no fishery is discussed for the FCZ west of Cape Suckling.

Within the FCZ, the only offshore salmon fishery east of Cape Suckling is the troll fishery. Historically, this fishery has been and presently is conducted without regard to the FCZ-State jurisdictional boundary line. If this line is interpreted as a management boundary line, it artificially divides the historical fishing pattern and management of the power troll fishery. This causes a situation which ignores the mobility of the fishery and the stock distribution of the resource, and fails to recognize practical problems of enforcement and monitoring.

Stocks involved in this fishery include all five species of Pacific salmon, however, chinook and coho are the target species. Chinook originate from rivers in Southeast Alaska, British Columbia, and Washington/Oregon/California. The latter two groups are the predominant stocks. Most coho originate from Southeastern Alaska with a minor contribution from British Columbia.

8.3 *Management Measures*

Proposed measures for the conduct of the salmon troll fishery include size, sex, area, seasons and gear regulations which are complementary with existing State of Alaska regulations.

The use of limited entry is proposed as a method of meeting the objective of curtailing expansion of this fishery.

In-season monitoring of the catch remains the primary technique available for management of the fishery. The Alaska Department of Fish & Game presently has an in-season catch monitoring and reporting system. This system should serve as the basis for in-season management of the offshore fishery. Refinement of this system of monitoring and reporting through the regulations suggested in this section should satisfy the critical data needs necessary for management of the troll fishery. As landings are made outside Alaska these data will be transmitted to the Council.

The Council intends that if any of the following management measures be disapproved, the balance of the plan should still be implemented.

8.3.1 *Domestic*

8.3.1.1 *Season, Gear, and Area Restrictions*

A. Seasons: 1. All waters east of the longitude of Cape Suckling are open to troll fishing for chinook, chum, sockeye, and pink salmon between April 15 and October 31.

All waters west of the longitude of Cape Suckling have no open season.

2. All waters east of the longitude of Cape Suckling are open to the troll fishery for coho between June 15 and September 20.

All waters west of the longitude of Cape Suckling have no open season.

3. All waters are open to sport fishing year-around.

Rationale. Alaskan inshore and coastal waters are open to chinook troll fishing by regulation from April 15 through October 31. This period corresponds with seasonally mild weather. Little fishing effort occurs beyond three miles during the coastal and inshore closure because of prohibitive weather. Effort in the offshore area increases from the April 15 opening of the coastal and inshore waters until it peaks in late July. After July, much of the effort shifts to the inshore and coastal areas.

The coho season inside 3 miles is presently June 15 through September 20. June 15 is approximately the date when coho appear in coastal and inshore waters in fishable numbers. The major catches usually occur after July 15, but by the September trolling date most trollers have quit fishing.

Regulatory seasons for the troll fishery are considered unrestrictive. The relatively long season allows distribution of catch during the entire migration of the many stocks and does not key fishing by time to specific stocks. It does, however, allow some chinook stocks to be fished during more than one year.

State waters west of the longitude of Cape Suckling have been closed to commercial troll fishing since 1973. Proposals have been made by commercial troll groups to re-open these waters to trolling, but the Alaska Board of Fisheries has ruled against such openings on the grounds that the troll fishing effort would be directed toward chinook salmon stocks that are already fully harvested in inshore fisheries. For these reasons, it is recommended that the waters west of Cape Suckling remain closed to troll fishing.

Cape Suckling was adopted as a boundary line for this plan because (1) of historical precedence, (2) of compatibility requirements with existing contiguous state management areas, and (3) certain concepts of stock separation.

Cape Suckling is a well known landmark that has traditionally been regarded as the northern and western boundary of the Southeast Alaska Region. It also provides a reasonable separation between areas in which the troll fleet has and has not consistently operated. Although exact areas of stock separation are not known (if indeed exact areas exist) it is known that the farther north one proceeds the higher the portion of northern salmon stocks, i.e. Prince William Sound, Cook Inlet and Bristol Bay, are encountered. Very few salmon tagged in Southeast Alaska

have been recovered west of Cape Suckling and vice versa.

The inability to predict stock run strength makes it impractical to adjust the opening dates of chinook season or to establish a mid-season closure prior to the beginning of the seasons.

The ideal conduct of the offshore fishery requires that uniform regulations for seasons and areas be adopted for the Fishery Conservation Zone and state waters.

Sport fishing regulations adopt State of Alaska (S.E. Region) regulations.

B. Gear: 1. Fishing with nets for salmon is not permitted in the area covered by this plan except as discussed under Section 8.2.

2. Commercial fishing is allowed only by trolling gear in the FCZ east of Cape Suckling.

3. Sport fishing is to be done only with a single line held in the hand or attached to a hand-held or closely attended rod. The line may not have more than one artificial lure or two flies or two single hooks attached.

Rationale. The ban on net fishing in offshore waters has been in effect since the mid-1950's by consent of the coastal fishery states and international agreement (see Sec. 3.2.1.1.).

The line limit and method for sport fishermen adopt the present State of Alaska regulations for Southeast Alaska.

8.3.1.2 Size and Sex Restrictions and Landing Requirements

A. Size: 1. Chinook salmon—28-inch minimum total length limit (with head on), 23 inches from the midpoint of cleithral (gill) arch to the tip of the tail (with head off).

2. All other species—None.

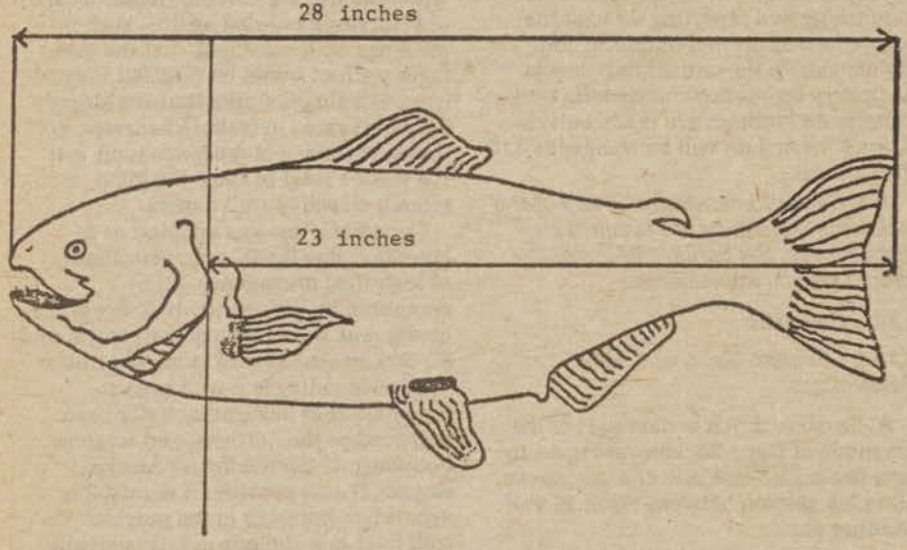
B. Sex: None.

C. Landing Requirements: Fin-clipped salmon must be landed with the head on.

D. Sport Bag Limit: Daily bag and possession limit of six (6) salmon, only three (3) of which may be chinook salmon.

Rationale. Chinook harvested by the troll fishery in Alaska do not attain maturity before two years of ocean residence. The average size of chinook with one and two years ocean residence is usually less than 28 inches (total length); most of these fish would be available to the troll fisheries and possible other fisheries in subsequent years if they were not harvested or if there were no mortality due to hooking and releasing.

The minimum size for chinook in Council waters is 28 inches total length, except that fish landed with the head off must measure at least 23 inches from the mid-point of the cleithral (gill) arch to the tip of the tail. (This regulation, while specific for the Fishery Conservation Zone (3–200 miles) is the same in State waters (0–3 miles).



Legal length—chinook salmon

No minimum size restriction is proposed for coho because coho harvested by the troll fishery in Alaska are available only during the second and last year of ocean residence. There is little preseason incidental catch of coho and weights for landings after that date average in excess of five pounds dressed.

Pink salmon caught in the Alaska troll fishery are also in their final year of life and are sufficiently large so that no size limit is necessary.

Chum and sockeye salmon are caught in insignificant quantities in the Alaska troll fishery. No size restrictions are recommended for these two species.

All troll-caught salmon landed fresh are dressed, head on. In recent years, freezing the catch at sea has become more common. The heads of all salmon are generally removed at sea before the fish is frozen. This process assures maximum quality and minimum handling by buyers.

A method of tagging salmon has been developed by implanting a micro-wire tag in the snout and clipping the adipose fin. At present there are several million salmon tagged in this manner at liberty in the Pacific Ocean. If landing tagged salmon with heads removed is allowed, valuable scientific information on migration patterns and hatchery contributions to the fishery will be lost. Tagged fish have the adipose fin removed; therefore, requiring those fish to be landed with head attached allows retrieval of the tag.

The sport fishery daily and possession bag limit matches that adopted for the S.E. Alaska coastal area by the Alaska Board of Fisheries.

8.3.1.3 *Limited Entry*

Council Findings as to Limited Entry

1. That limited entry or limited access into the Alaska power troll fishery in the FCZ is necessary to maintain present levels of effort and catch.

2. That the use of other management techniques in conjunction with a limited access system will help promote sound conservation and management practices and provide flexibility to deal with fluctuating biological and ecological factors, since other management techniques will operate more efficiently and with better results when used in conjunction with this limited access system;

3. That an ocean salmon management plan without a limited access system will in all probability result in increased effort by power troll fishermen who have so far fished exclusively in State waters, by fishermen excluded from fisheries by the limited entry program of the State of Alaska, and by fishermen from the State of Washington and elsewhere who are adversely affected by Federal Court decisions on resource allocation in their present fisheries.

4. That limited entry for the FCZ is necessary because alternative management measures, i.e., a ban on all trolling in the FCZ or a separate FCZ catch quota, are either too disruptive of present social and economic structure or too costly to administer and enforce.

General

Limited access into the power troll fishery in the Fishery Conservation Zone (FCZ) is important as one of the management tools needed to carry out the North Pacific Fishery Management Council's intention to stabilize at present levels the rate of interception of mixed stocks of salmon by stabilizing effort in that fishery.

The North Pacific Fishery Management Council recognizes that the implementation of limited entry as a management tool cannot by itself stabilize the rate of interception. It will help to achieve that goal most effectively in conjunction with other techniques, such as some form of quota, and/or restrictions on time, area, gear, size, etc. In this context, stabilizing the harvest may include the amount of harvest, the average size and weight of fish, species composition, and other considerations. This may mean that future phases of the limited access system being initiated could be tied to effort.

No greater qualification toward the initial issuance of a Federal entry permit will be gained by fishing after December 31, 1977.

Adopted Limited Entry Program

Any person who currently holds a valid State of Alaska Commercial Fisheries Entry Commission (CFEC) Power Troll Permit may fish in the FCZ off Alaska. This permit retains its original status relating to all of the restrictions and conditions placed on the permit and the bearer by the CFEC.

The Council has examined the methods and criteria utilized by the State of Alaska when it enacted the limited entry system that resulted in 950 power troll entry permits. Of particular significance to the Council is the fact that the State system was adopted after considering participation by fishermen throughout the troll fishery, including what is now the federally managed FCZ. The Council believes that Alaska's limited entry system and the data upon which it is based most accurately reflect the extent of present participation in and economic dependence on the entire troll fishery.

While it is not possible at this time to state conclusively that the optimum number of permits for the power troll fishery is 950, it is clearly not in excess of the number. Adopting the State scheme will thus establish an upward limit on the number of vessels which, while not an absolute limit on all additional effort, since upgrading is not prohibited, will help promote conservation.

In addition any power troll fisherman who (a) has fished in the FCZ off Alaska in any one of the base years 1975, 1976, or 1977 but (b) did not or does not have a State of Alaska CFEC Power Troll Permit and (c) does not fish or land fish in State waters, and (d) upon proof of said fishing during 1975, 1976, or 1977 (e) is entitled to a Federal Limited Entry Permit which is nontransferable and upon specific retirement for any reason that permit is retired from the fishery.

Data from 1977 indicate that a half dozen power trollers fished off Alaska in the FCZ. Insofar as these vessels fish only in the FCZ (as evidenced by Washington fish tickets and an absence of an Alaskan CFEC permit), their economic dependence can be said to be completely within the FCZ. Additionally, those power trollers have historically fished in the FCZ for the past several years.

This action is intended to maintain a fishing privilege gained by these power troll fishers, but is not designed or intended to create a new privilege (i.e., a State limited entry permit) or a transferable property right.

For exact regulations, restrictions, conditions and procedures see 50 CFR Part 674, Domestic Regulations. For a further discussion of the rationale and data base used to implement the CFEC and hence the Council's limited entry program (see Appendix 8.3.1.3).

8.3.1.4 *In-Season Adjustments*

In-season adjustment of time and area management of shellfish and finfish by fisheries by the State of Alaska in recent years compares favorably with the management of most other fisheries in the United States and elsewhere. The success of this management program may be attributed largely to the deliberate flexibility built into the governing system by State law and the resultant ability of the Board of Fisheries and the Department of Fish and Game to make timely changes in the regulations to meet changing conditions and needs. This flexibility, which has been realized through annual revision of the regulations by the Alaska Board of Fisheries, together with emergency orders and regulations issued inseason by the Board and the Department, has resulted in many benefits:

(a) New information and data relating to resource management (e.g. assessments of actual resource conditions) can be immediately incorporated into the management program, even when the fishery is in progress.

(b) Unanticipated resource conditions can be reacted to immediately to prevent overharvest or wasteful underutilization.

(c) Unexpected developments with respect to economic and social factors (natural disaster, changes in marketing conditions, cannery fires) can be accommodated so the resources are distributed and allocated in a manner which maximizes overall public benefits.

(d) Management philosophies and policies formulated through legislative and administrative processes may be carried out in the field by personnel familiar with local conditions.

(e) Management approaches which are proving unworkable or which are imposing undue hardships may be changed at once.

(f) Necessary inseason refinements in management programs can be accomplished primarily in the field with the advice and assistance of the users most directly affected.

8.3.1.5 *The Issuance of Field Orders*

A. The Council finds that the Optimum Yields in this plan, which are based upon historic performance of the fishery, economic, and other conditions in advance of the actual conduct of the fishery, may be found to be mis-specified in light of unpredicted and unanticipated adverse or favorable stock conditions which are revealed inseason. Under such circumstances, the Council further finds it appropriate for conservation and management purposes, that the Regional Director of the National Marine Fisheries Service, Alaska Region, or his designee, in close coordination with the Commissioner of the Alaska Department of Fish and Game, take immediate action by issuing field orders adjusting time and/or area restrictions; therefore, this plan provides that seasons and areas shall be subject to inseason adjustment by the Regional Director of the National Marine Fisheries Service. The Regional Director or his designee may adjust season opening and closing dates based upon the following considerations:

1. The effect of overall fishing effort within a major statistical area;

2. Catch per unit effort and rate of harvest;

3. Relative abundance of stocks within an area in comparison with preseason expectation;

4. The proportion of sublegal fish to legal fish being caught;

5. General information on the condition of stocks within the area;

6. Information pertaining to the optimum yield for stocks within the statistical area; or

7. Any other factors necessary for the conservation and management of the offshore salmon troll fishery.

B. In order to assume effective management of the salmon troll fishery resource as a unit through its range, inseason adjustments made by the Regional Director must be coordinated with similar actions taken by the State regarding waters under State jurisdiction. It is necessary that the Regional Director, to the extent possible, act in conjunction with the Alaska Department of Fish and Game in order to effect uniformity of management in State waters and the Fishery Conservation Zone. As a result, any changes proposed by the Regional Director will be accompanied by advance notice to allow for opportunity to maintain such uniformity. In most cases, the Regional Director will exercise his authority on the basis of recommendations received from the Department, and will rely on the Department for season data, reports, and assessments necessary to make a determination as to the advisability of any action contemplated. In all cases, continuous consultation between ADF&G and the Regional Director will be maintained.

It is expected that the actual opening and/or closing dates for the seasons prescribed in this plan will be adjusted by the Regional Director pursuant to the authority described in this section. Such action is not considered emergency action that would require amendment of the plan; adjusting the season opening and closing dates is meant to be an inherent part of the seasons themselves. For this reason, any adjustment made by the Regional Director or his designee will be effected by the issuance of a field order and announcement in the manner currently utilized by the State of Alaska.

Any inseason amendment of the plan's season or area or other implementing regulations beyond the scope of the above authority will be accomplished by emergency regulation, as provided by Section (305e) of the Act, in accordance with the recommendation of the Regional Director following consultation with the Commissioner of the Department of Fish and Game. It is understood that time will often be of the essence in making effective the aforementioned adjustment and changes.

8.3.1.6 *Troll Fishery Managed From Surfline to 200 Miles*

A management unit for the power troll fishery will encompass all the waters east of Cape Suckling between the coastline and the 200-mile limit. The Council is responsible for the FCZ (3–200 miles) and the State maintains responsibility for the coastal waters (0–3 miles). However, the management objectives and resulting management regime is similar in both waters since the fishery is considered continuous from 0–200 miles and handled by cooperative agreement.

8.3.2 *Foreign* (8.3.2.1–4)

As has been previously stated (Section 7.0) it is proposed that there be no foreign fishing allowed in Council waters except as provided by international bilateral agreements or reciprocal fishing agreement.

8.3.3 *Relationship of the Recommended Measures to Existing Applicable Laws and Policies*

It is the intent of this plan to promulgate regulations for waters under Council jurisdiction that will, to the extent possible, be compatible with existing Alaska State, Federal, and other Fishery Management Council regulations.

8.3.3.1 *Other Fishery Management Plans Prepared by a Council or the Secretary*

All preliminary fishery management plans and all Council fishery management plans address salmon as a prohibited species to all foreign fishing and to all domestic fisheries not specifically addressed by this plan. These plans include the following:

PMP—Snail Fishery of the Eastern Bering Sea
PMP—Trawl and Herring Gillnet Fishery of the Bering Sea and Aleutian Islands
PMP—Sablefish Fishery of the Eastern Bering Sea and Northeast Pacific
PMP—Shrimp of the Eastern Bering Sea and Gulf of Alaska
FMP—Commecial Tanner Crab Fishery off the Coast of Alaska
FMP—Gulf of Alaska Groundfish Fishery
FMP—Groundfish Fishery for the Bering Sea and Aleutian Islands Area.

An FMP adopted by the Pacific Fishery Management Council for salmon has some bearing on the North Pacific Council's FMP. The following compares the regulatory measures of the North Pacific Council Fishery Management Plan and the Pacific Council Fishery Management Plan.

Management Plan:

1. *Seasons*

NPFMC—April 15 through October 31 for chinook.
—June 15 through September 20 for coho.
PFMC—May 1 through June 14 for all species *except* coho north of the Oregon/California border.
—April 15 through May 14 for all species *except* coho south of the Oregon/California border.
—July 1 through September 15 for all species north of Point Grenville.
—July 1 through October 31 for all species from Point Grenville to Cape Falcon.
—June 15 through October 31 for all species from Cape Falcon to the Oregon/California border.
—May 14 through September 30 for all species south of the Oregon/California border.

2. *Gear*

NPFMC—power troll and sport gear.
PFMC—power troll gear, hand troll gear, and sport gear allowed (varies with management areas).
—single and barbless hooks except bait hooks and salmon plugs may be barbed only during all early seasons denoted by prohibition against landing coho.

3. *Area Restrictions*

NPFMC—all waters west of the longitude of Cape Suckling closed to commercial troll fishing.
PFMC—waters north of Cape Falcon closed to commercial troll fishing June 15–30.

4. *Size*

NPFMC—28-inch minimum length for chinook; all fin-clipped salmon to be landed head-on, no length restriction for other species
PFMC—28-inch minimum length for chinook north of Cape Falcon; 26-inch minimum length for chinook south of Cape Falcon; 16½-inch minimum length for coho north of Oregon/California border; 22-inch minimum length for chinook south of Oregon/California border; no length restriction for other species.

8.3.3.2 *Federal Laws and Policies*

In Council waters there are no existing troll fishery policies promulgated by the United States Federal Government (see Section 3.2.1.1).

8.3.3.3 *State Laws and Policies* (8.3.3.4)

The proposed regulations recognize that all State laws pertaining to vessels registered under the laws of the State, including State landing laws, will continue to apply to fisheries addressed in these regulations.

8.4 *Enforcement Requirements*

Enforcement of fishery regulations in Council waters will be the responsibility

of the U.S. Coast Guard and the National Marine Fisheries Service. Enforcement of regulations in State waters, including landing laws for salmon caught in Council waters, will be the responsibility of the Alaska Department of Public Safety in accordance with P.L. 94–265 and Alaska Statute Title 16, 5 AAC, of the Fish and Game code.

8.5 *Reporting Requirements*

Reporting requirements by domestic fishermen and processors are identical to existing State requirements as set forth in Alaska Statutes Title 16.

Fishermen intending to land fish outside the State of Alaska must forward to the Regional Director, National Marine Fisheries Service, the following: name and permit number, vessel name, total number of salmon by species, catch area statistical number, number of lines used, and port of landing. The report must be made within 72 hours of the sale by way of a completed fish ticket or other document of the State where landed.

Since little recreational fishery exists in the waters under Council jurisdiction, no reporting requirements are presently provided for under this plan.

Reporting catches by statistical area will be done in accordance with the redefined statistical area designations as issued by the Alaska Board of Fisheries. (See following)

8.5.1 Data Standards

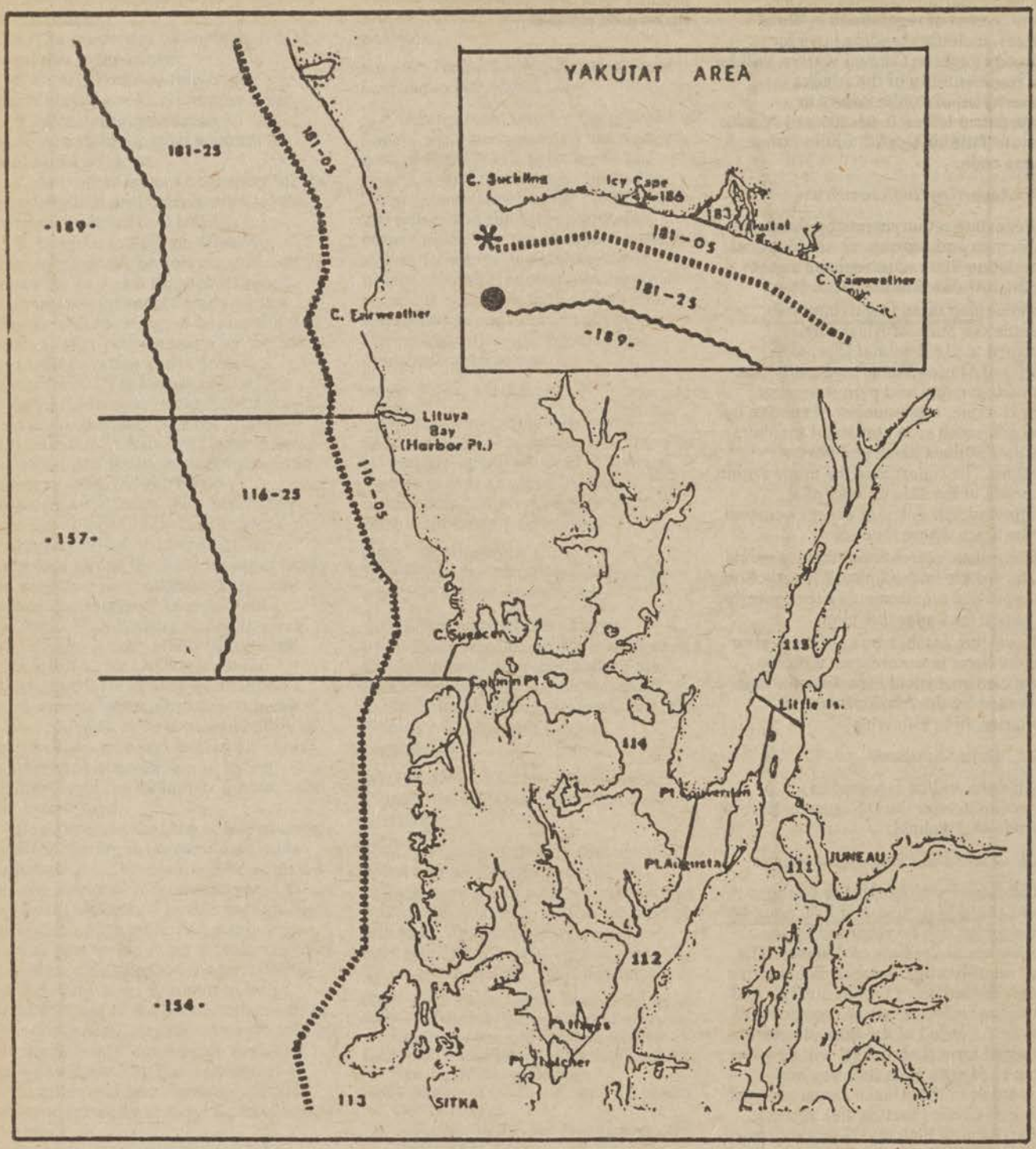
All data will be reported in accordance with the U.S. system (i.e., in pounds and inches).

8.5.2 *Time and Place of Reporting*

Landings from the Alaska offshore troll fishery in numbers of fish, pounds, and species will be recorded by the processors at the time of delivery. The boat identification number, fisherman's name, limited entry permit number and additional information as required will also be recorded at the time of sale. A standard form (fish ticket) will be completed with each delivery and forwarded to the Alaska Department of Fish and Game (Section 4.8). Alaska Department of Fish and Game requires that an "intent to operate" form be filed prior to any commercial buying or processing operation for fishery resources. Further, an annual report is also required from all commercial operators. This includes the type of operation (buyer/processor, shorebased/floater, fish-frozen/cured/canned), the peak month employment, the pounds and price by species paid to fishermen, and the pounds and value by product form of all processing.

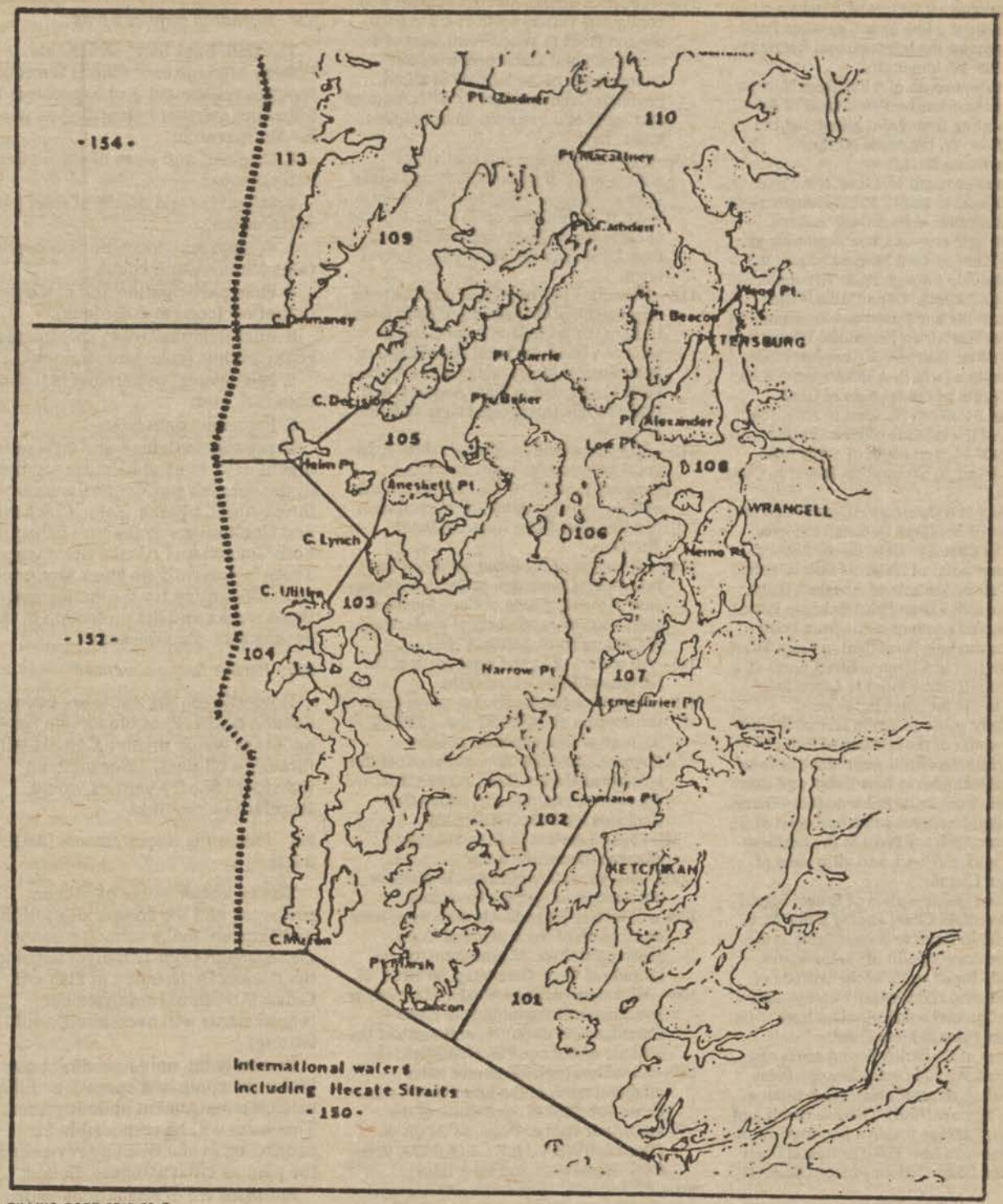
BILLING CODE 3510-22-M

SOUTHEASTERN ALASKA STATISTICAL AREAS (Northern part)



REVISED 1978

SOUTHEASTERN ALASKA STATISTICAL AREAS (Southern part)



BILLING CODE 3510-22-C

Statistical Areas in Southeastern Alaska for Reporting Troll Catches on Fish Tickets

101—All contiguous waters of Alaska east and north of a line from Caamano Point to a point on the International Boundary at 131°45' W. longitude.

102—All waters south of a line from Narrow Point to Lemesurier Point, west of Area 101 to a line from Point Marsh light to 132°17'30" W. longitude on the International Boundary.

103—All waters north of a line from Point Marsh light to 132°17'30" W. longitude on the International Boundary to Cape Muzon, and east of a line beginning at Eagle Point on Dall Island and passing successively through Point Arboleda, Point San Roque, Cape Ulitka, Cape Lynch to the southwest entrance point of Halibut Harbor on Kosciusko Island, and south of the latitude of Aneskett Point.

104—All waters (within Alaska's three mile limit) north of the latitude of Cape Muzon, 54°39'50" N., west of Area 103, south of the latitude of Helm Point, 55°49'30" N., and south of a line from Helm Point on Coronation Island to Cape Lynch.

105—Waters of Sumner Strait, north and east of a line from Cape Decision to Helm Point to Cape Lynch to the southwest entrance point of Halibut Harbor, and north of the latitude of Aneskett Point, west of a line from Point Baker to Point Barrie, and south of a line from Point Camden to Salt Point light in Keku Strait.

106—All waters of Clarence Strait north of a line from Narrow Point to Lemesurier Point to Ernest Point to the most southerly point on Etolin Island, Stikine Strait south of the latitude of Round Point, Sumner Strait west of a line from Point Alexander to Low Point, and east of a line from Point Baker to Point Barrie, Wrangell Narrows, south and west of a line from Prolewy Point to the northern tip of Mitkof Island, and all waters of Duncan Canal.

107—All contiguous waters of Ernest Sound and Bradfield Canal east of a line from Lemesurier Point to Ernest Point to the most southerly point of Etolin Island, Zimovia Strait south of the latitude of Nemo Point, and Eastern Passage and Blake Channel south of a line from Babbler Point to Hour Point.

108—Waters of Frederick Sound south of a line from Wood Point to Beacon Point (excluding Wrangell Narrows), Stikine Strait, Sumner Strait, Zimovia Strait and Eastern Passage inside a line from Point Alexander to Low Point to Round Point to Nemo Point to Hour Point to Babbler Point.

109—All waters of Frederick Sound and Chatham Strait south of the latitude of Point Gardner, south of the latitude of Elliott Island and west of a line from Elliott Island to Point Macartney, north and west of a line from Point Camden to Salt Point light, north of a line from Cape Decision to Helm Point, and all waters (within Alaska's three mile limit) north of the latitude of Helm Point, 55°49'30" N., and south of the latitude of Cape Ommaney, 56°10'00" N.

110—Frederick Sound, Stevens Passage and contiguous waters north of a line from Beacon Point to Wood Point, east of a line from Point Macartney to Elliott Island, north of the latitude of Elliott, Seymour Canal south of 57°37' N. latitude and south of a line from Point League to Point Hugh.

111—Stephens Passage and contiguous waters north of a line from Point League to Point Hugh and Seymour Canal north to 57°37' N. latitude, south of the latitude of Little Island Light and east of a line from Little Island Light to Point Retreat Light.

112—All waters of Lynn Canal and Chatham Strait south of the latitude of Little Island Light to the latitude of Point Gardner, west of a line from Little Island Light to Point Retreat Light, east of a line from Point Couverden to Point Augusta, and east of a line from Point Hayes to Point Thatcher.

113—All waters (within Alaska's three-mile limit) between the latitude of Cape Ommaney, 56°07'15" N., and the latitude of Column Point, 58°07'15" N., and west of a line from Point Hayes to Point Thatcher.

114—All waters of Icy Strait west of a line from Point Couverden to Point Augusta, east of the longitude of Cape Spencer, 136°39'30" W., and north of the latitude of Column Point, 58°07'15" N.

115—All waters of Lynn Canal north of the latitude of Little Island Light.

116—All waters (inside twelve miles) north of the latitude of Column Point, 58°07'15" N., west of the longitude of Cape Spencer, 136°39'30" W., and south of the latitude of Harbor Point, 58°36'45" N., at the southern entrance of Lituya Bay [Includes the P.D. GROUNDS]

116–05—All waters of Area 116 inside Alaska's three-mile limit.

116–25—All waters of Area 116 offshore between three and twelve miles.

152—All waters (outside Alaska's three-mile limit) north of the latitude of Cape Muzon, 54°39'50" N., and south of the latitude of Cape Ommaney, 56°10'00" N.

154—All waters (outside Alaska's three-mile limit) north of the latitude of Cape Ommaney, 56°07'00" N., and south of the latitude of Column Point, 58°07'15" N.

157—All waters (outside twelve miles offshore) north of the latitude of Column Point, 58°07'15" N., and south of the latitude of Harbor Point, 58°36'45" N. [The FAIRWEATHER GROUNDS; West Bank, East Bank, and Ham Bone]

181—All waters (inside twelve miles) north of the latitude of Harbor Point, 58°36'45" N., at the southern entrance of Lituya Bay and east of the longitude of Cape Suckling, 143°53'00" W.

118–05—All waters of Area 181 inside Alaska's three-mile limit.

118–25—All waters of Area 181 offshore between three and twelve miles.

189—All waters (outside twelve miles offshore) north of the latitude of Harbor Point, 58°36'45" N., and east of the longitude of Cape Suckling, 143°53'00" W.

8.6 *Research requirements*

The data base upon which this Fishery Management Plan is formulated requires refinement and expansion; the following areas are identified as needing further research:

1. Origin(s) and sizes of stocks (coho and chinook),

2. Migration and timing of runs (coho and chinook),

3. Foreign and domestic interception rates (chinook and coho),

4. Fleet participation and catch-per-unit-effort (coho and chinook),

5. Interaction between user groups; gear conflicts (coho and chinook),

6. Escapement requirements (coho and chinook), and

7. Economic data base.

In regards to items 1 and 2 there is an urgent need to establish the magnitude of the chinook stock contributions of the Situk, Alsek, Stikine, Taku, Chickamin, and Unuk Rivers to the troll fishery in both Council and Alaska State waters. There is presently no stock size or catch rate information for the management of these stocks and the protection of their escapement requirements.

8.7 *Permit Requirements*

Domestic requirements are covered in Section 8.3.1.4. Possible foreign fishery activities would involve Canada only through a bilateral agreement; no individual fishery permits would therefore be required.

8.8 *Financing Requirements* (8.8.1, 8.8.2)

The economic value of salmon resources and the complexities of their management make salmon research and management priority budget items for the Alaska Department of Fish and Game. Additional management requirements will necessitate additional funding.

Presently the only new direct cost will be for the continued operation of the salmon management planning team. This team will be responsible for continuing evaluation and revision of the plan as circumstances dictate.

Enforcement of regulations under this Plan will be a cooperative effort among the State, National Marine Fisheries Service, and Coast Guard. It is expected these additional enforcement duties will require some increase in enforcement staffs. The National Marine Fisheries Service and the U.S. Coast Guard anticipate increases in their appropriations and staff to

accommodate the new extended jurisdiction law (200-mile limit).

Revenues are expected to approximate the previous year (see Section 3.7, Appendix 3.0).

9.0 Statement of Council Intentions To Review This Plan After Approval by the Secretary

The North Pacific Fishery Management Council will, after approval and implementation of this plan by the Secretary, maintain a continuing review of the fisheries managed under this plan by the following methods.

1. Promote the development of a Fishery Management Plan for all salmon off Alaska to deal with the management regimes and resource in the State's waters and the FCZ.

2. Maintain close liaison with the management agencies involved, usually the Alaska Department of Fish and Game and the National Marine Fisheries Service, to monitor the development of the fisheries and the activity in the fisheries.

3. Promote research to increase its knowledge of the fishery and the resource, either through Council funding or by recommending research projects to other agencies.

4. Conduct public hearings at appropriate times and in appropriate locations, usually at the close of a fishing season and in those areas where a fishery is concentrated, to hear testimony on the effectiveness of the management plans and requests for changes.

5. Consideration of all information gained from the above activities and development, if necessary, of amendments to the management plan. The Council will also hold public hearings on proposed amendments prior to forwarding them to the Secretary for possible adoption.

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11.0 Appendices

11.1 *Appendix I—Supportive Data*

Note.—Appendix I, consisting of Tables AI–1 through AI–5 and Figures AI–1 and AI–2 is referenced but not included here. This material consists of catch statistics detailing gear, week, number of boats, landings, and catch (both in number of fish and pounds, by species and area). Appendix I material is on file with the North Pacific Fishery Management Council and may be obtained from either the council or from the Alaska Department of Fish & Game, Commercial Fisheries Division.

11.2 *Appendix II*

Regulatory-Definitions

1. *Act* means the Fishery Conservation and Management Act of 1976, Public Law 94–265 (16 U.S.C. 1801–1882).

2. *Authorized Officer* means: a. Any commissioned, warrant, or petty officer of the Coast Guard;

b. Any enforcement agent of the National Marine Fisheries Service;

c. Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce or the Commandant of the Coast Guard to enforce the provisions of the Act;

d. Any Coast Guard personnel accompanying and acting under the direction of any person described in subparagraph (a) of this paragraph.

3. *Commercial fishing* means fishing for the purpose of sale or barter.

4. *Fishing* means: a. The catching, taking, or harvesting of fish;

b. The attempted catching, taking, or harvesting of fish; or

c. Any other activity which can reasonably be excepted to result in the catching, taking or harvesting of fish.

5. *Fishing vessel* means any boat, ship, or other craft.

6. *Landing* means bringing fish to shore or off-loading fish from a fishing vessel.

7. *Salmon* means any anadromous species of the family *Salmonidae,* genus *Oncorhynchus,* commonly known as salmon, including but not limited to: Chinook (or King) salmon—*Oncorhynchus tshawytscha;* Coho (or Silver) salmon—*O. kisutch;* Pink (or Humpback) salmon—*O. gorbuscha;* Sockeye (or Red) salmon—*O. nerka;* and Chum (or Dog) salmon—*O. keta.*

8. *Salmon length* means the shortest distance between the tip of the snout or jaw (whichever extends farther) and the

tip of the longest lobe of the tail, measured while the salmon is lying on its side, without resort to any force (including squeezing the tail) or mutilation of the salmon.

9. *Power Troll Gear* means equipment used for commercial fishing which consists of one or more lines used to drag lures behind a moving vessel, which lines originate from a powered spool or receptacle fastened to the vessel, and the extension or retraction of which is directly to the spool or receptable without disengaging any gurdy or outboard arm from its fixed position on the vessel.

11.3 *Appendix III*

Management Areas: The North Pacific Council Management Area includes the entire Fishery Conservation Zone in the Arctic Ocean, Bering Sea, and North Pacific Ocean within the following boundaries:

a. All waters east of the northern U.S.–U.S.S.R. Convention Line of 1867, thence southeast to 175° east longitude, thence east to the longitude of Cape Suckling;

b. All waters east of the longitude of Cape Suckling to the U.S.-Canada International Boundary at Dixon Entrance.

General Restrictions: a. No person shall use nets to fish for solmon other than in those areas permitted under the provisions of this plan.

b. No person shall take any species of salmon:

1. Which is less than the minimum size (measured in terms of the salmon's length as defined in Section 8.3.1.2) specified in these regulations;

2. During closed seasons or in closed areas specified in these regulations;

3. By means of gear or methods prohibited by these regulations.

c. No person shall possess, have custody, control, ship, transport, offer for sale, sell, purchase, import, or export any species of salmon or part which was taken in violation of the Act, these regulations, or any other regulation issued under the Act.

d. No person shall possess, while in the North Pacific Council Management Area, any salmon taken in the North Pacific Council Management Area for which a size limit is set forth in these regulations, in such condition that its size cannot be determined.

e. No person shall fish for salmon while on a vessel which has aboard:

1. Any salmon which is less than the minimum length for that species in the Management Area where the fishing is taking place; or

2. Any species of salmon for which the season is closed in the Management Area where the fishing is taking place; or

3. Any salmon in such condition that its size cannot be determined.

f. No person, while on board a fishing vessel, shall mutilate or otherwise disfigure a salmon in a manner which extends its length to conform to any minimum size requirements specified in these regulations.

g. No person shall land any salmon taken in violation of the Act, these regulations, or any other regulations issued under the Act.

h. No person shall:

1. Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act, these regulations, or any other regulation issued under the Act;

2. Forcibly assault, resist, oppose, impede, intimidate or interfere with any Authorized Officer in the conduct of any search or inspection described in subparagraph (1) of this paragraph;

3. Resist a lawful arrest for any act prohibited by these regulations; or

4. Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such other person has committed any act prohibited by these regulations.

Penalties. Any person or vessel found to be in violation of these regulations will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act.

Emergency regulations. The Secretary may issue emergency regulations, if and when needed, under 305(e) of the Act, announced by publication of a notice in the **Federal Register.**

Open seasons and areas. All open seasons shall begin at 0001 hours and terminate at 2400 hours on the dates specified herein. Unless otherwise specified, Pacific Daylight Time will apply.

Text Appendix Index

Appendix 3.0—Description of Fishery

3.1 *Areas and Stocks Involved*
3.2.1.2 *General Description of Fishing Effort*
3.3.2.1 *Measures Employed to Regulate Fishery*
3.4 *History of Research* (3.4.1, 3.4.2)
3.5 *Socio-Economic Characteristics*
3.5.1 *Output of Subject Domestic Commercial Fishery*
3.5.1.1 *Value of Catch (Ex-vessel)*
3.5.1.2 *Description and Value of Product (Wholesale)*
3.5.1.3 *Markets, Domestic, and Export*
3.5.2 *Domestic Commercial Harvesting Characteristics*
3.5.2.1 *Total Gross Income of Fleet*
3.5.2.2 *Investments in Vessels and Gear*
3.5.2.3 *Annual Participation in Subject Fishery*
3.5.2.4 *Total Manpower Employed and Labor Payments*
3.5.2.5 *Economic Viability*
3.5.3 *Domestic Commercial Processing Characteristics*
3.5.3.1 *Total Gross Income in Area Processors*
3.5.3.2 *Investment in Plant and Equipment*
3.5.3.3 *Total Employment and Labor Income*
3.5.3.4 *Economic Viability*
3.5.4 *Recreational Fishing Characteristics*
3.5.5 *Subsistence Fishing Characteristics*
3.5.6 *Indian Treaty Fishing Characteristics*
3.5.7 *Area Community Characteristics*
3.5.7.1 *Total Population*
3.5.7.2 *Total Employment*
3.5.7.3 *Total Work Force*
3.6 *Interaction Between and Among User Groups*
3.7 *Federal and State Revenues Derived From Fishery*

List of Tables

Table:
1 Salmon Catches in Southeastern Alaska by Species, 1977
2 Value of Troll Salmon Catch by Species and Type of Gear in Southeastern Alaska, 1975 and 1976
3 Average Price Paid Per Pound to Fisherman in 1976
4 1975 Production and Wholesale Value of King, Coho and Pink Salmon in the Southeastern Region and all Alaskan Waters (All Gear Types)
5 Percentages by Species for Alaskan Salmon Troll Catches
6 Southeastern Alaska Troll Salmon Catch by Species
7 Resident Population (Civilian and Military) by Area and Year
8 Employment and Payroll Statistics for Selected Industries in State of Alaska
9 Employment and Payroll Statistics by Area for Selected Industies in Alaska (Southeast)
10 1977 Average Population, Employment and Unemployment for Southeastern Alaska
11 State Revenues Related to Ocean Troll Salmon

List of Figures

Fig:
1 Chinook Salmon River Systems in Southeastern Alaska
2 Basic Rigging of a Typical Commercial Troller
3 Southeastern Troll and Total Alaska Chinook (all Gear) Catches, 1968–1977
4 Southeastern Troll and Total Alaska Coho (All Gear) Catches, 1968–1977
5 The Major Movements of Fresh and Frozen Salmon for the 1968 Season (Millions of Pounds)
6 Net Tonnage of Vessels, Power Troll Gear, 1976
7 Keel Length of Vessels, 1976
8 First Wholesale Value of Southeastern Alaska Seafood Products

2. Stocks of all species of salmon throughout Alaska were being fully utilized by fishermen in existing in-shore fisheries. This contention has been supported in International North Pacific Fisheries Commission publications: Bulletin 10, (1962); Fredin, et al. (1973). These documents successfully supported the United States case for maintaining the abstention principle relative to salmon fisheries by the Japanese on the high seas. This principle in effect stated that Japanese fishing for North American salmon stocks east of 175 west longitude would be prohibited if the United States could show that the stocks were being fully utilized by the domestic fisheries and were the subject of an on-going research and management program.

3. Statewide salmon populations including coho and chinook salmon stocks in many areas have declined since the early years of the fishery. This decline coupled with an increase in the total fishing effort being expended to harvest salmon stocks has insured that any surpluses in excess of broodstock requirements are not surplus to the needs of the existing fisheries. This is particularly true in the case of chinook and coho salmon where recreational fisheries have become a significant portion of the total harvest allocation within the last ten years. The Cook Inlet area has one of the largest stocks of chinook salmon north of Cape Spencer and south of the Bering Sea. The commercial harvest of this species has declined from a high of 187,000 fish in 1951 to a harvest in the 17 to 30,000 range in late 1950's and early 1960's. The commercial fishery on the major part of these stocks was closed in 1964. A total closure on commercial and recreational fishing for the major stocks was instituted in 1972. This closure is still in effect. Coho salmon in both Cook Inlet and Prince William Sound have experienced declines in the past 15 to 20 years and are the subject of intensive net fisheries.

4. The major concentration of chinook and coho salmon north of Cape Spencer is in Western Alaska. The Bristol Bay fishery is prosecuted by a large fleet of drift and set gillnetters in conjunction with the harvest of the predominant sockeye salmon. Harvest in the Yukon and Kuskokwim is carried out by the large fleet of primarily local residents fishing within the mouths of these major rivers. During the past 15 years to 20 years there has been a significant increase in the levels of effort for all salmon net fisheries in Alaska. These levels have recently been stabilized by the adoption of the State law that limits new entry into these heavily developed fisheries. Nevertheless, this new program has not resulted in any surplus fish availability beyond the legitimate and established needs of the existing fisheries.

5. Sound conservation practices demand that insofar as possible harvests be taken from specific stocks in relationship to their ability to sustain different levels of harvest on an annual basis. The State management program has attempted to accomplish this by fishing generally in the vicinity of the mouths of major spawning rivers or at least close to aggregrates of these rivers. The additional pressure of any offshore troll fishery catching mixed stocks of undetermined origin; harvesting immature fish that have not obtained maximum growth and confounding any attempts by the State to manage stocks based on escapement requirements, particularly when these stocks are already being used to their allowable maximum by carefully regulated inshore fisheries, would be contrary to rational management practices.

3.3.2.1 *Measures Employed To Regulate the Fishery*

Examination of regulations adopted over the last 60 years indicates that troll fleet harvests have been affected to a minor degree only. The first major regulation to control commercial fishing effort in saltwater occurred by an Act of Congress on June 26, 1906. This legislation provided for a 36-hour per week closure in all waters of Alaska. Rich and Ball (1933) state that, "they (the troll fleet) fished for years without the slightest regard for the fishery laws and regulations, assuming that line fishing was not subject to provisions of the law of 1906. In 1923 certain trollers were convicted for fishing during the weekly closed season, and since then this type of fishing has conformed in general to the usual regulations."

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FIGURE 1

MINOR PRODUCERS
500 or less

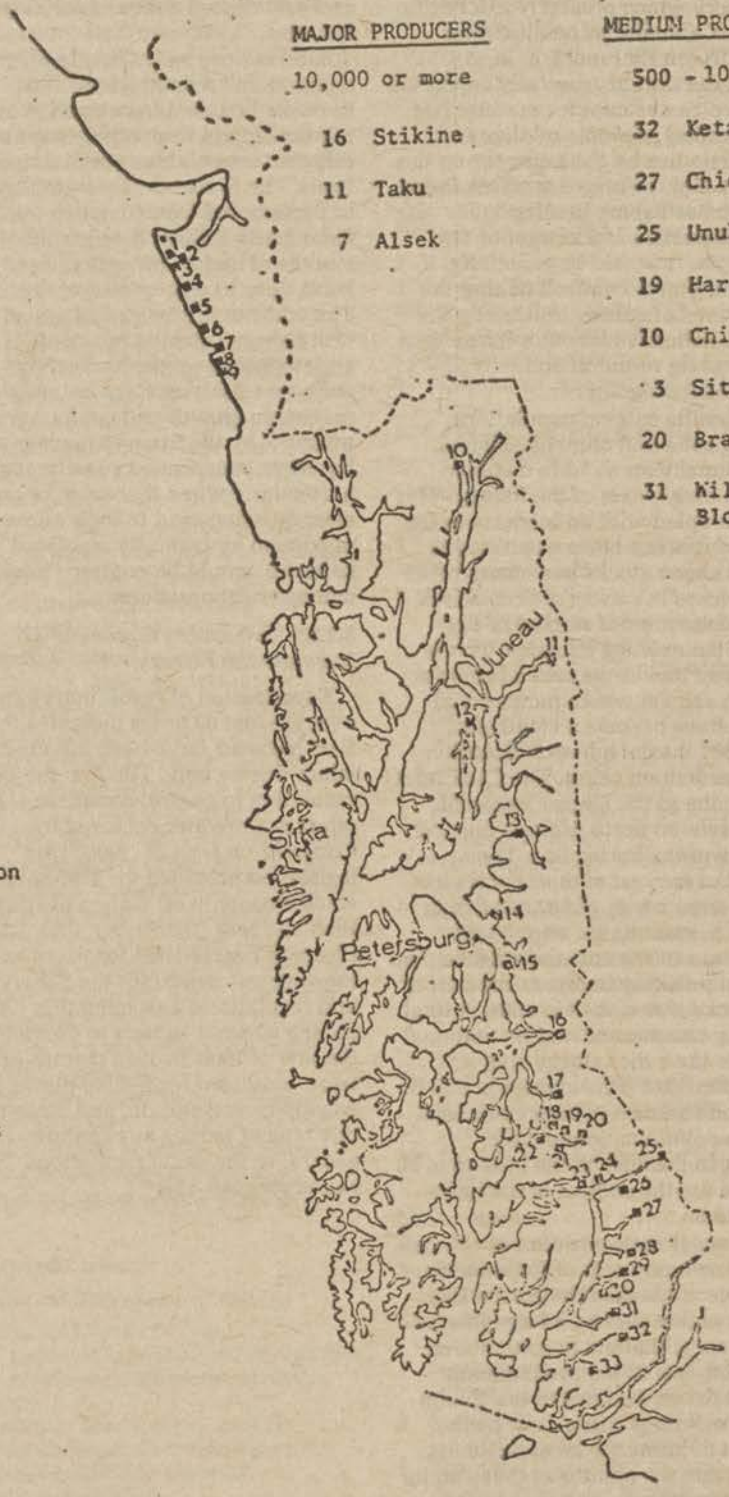
33 Martin
30 Big Goat
29 Rudyard
28 Walker
26 Klahine
24 Grant
23 Herman
22 Anan
21 Eagle
18 Tom
17 Aaron
15 Muddy
14 Farragut
13 Chuck
12 King Salmon
9 Dohn
8 East
6 Akwe
5 Italio
4 Dangerous
2 Lost
1 Ankau

MAJOR PRODUCERS
10,000 or more

16 Stikine
11 Taku
7 Alsek

MEDIUM PRODUCERS
500 - 10,000

32 Keta
27 Chickamin
25 Unuk
19 Harding
10 Chilkat
3 Situk
20 Bradfield
31 Wilson-Blossom



Chinook Salmon River Systems in Southeastern Alaska.

Appendix 3.0—Description of Fishery

3.1 *Areas and Stocks Involved*

The ocean salmon troll fishery is a mobile fishery which presently extends from the U.S.-Canada International Boundary (Dixon Entrance) to Cape Suckling in the Gulf of Alaska. Many of the vessels also participate in other fisheries, such as the longline fishery for halibut and bottomfish, the albacore tuna fishery and the crab fishery. Some vessels also participate in other types of salmon fisheries, i.e., purse seining and gillnetting.

The mobility of ocean troll fishing fleets, mixtures of stocks, presence of several age-maturity classes, and the migratory nature of the various stocks involved make the management of the ocean salmon fishery extremely complex. These characteristics result in both the fishing fleet and the resource crossing interstate and international boundaries. The management of the salmon resource is further complicated by multiple gear utilization of many of the stocks.

Tagging conducted in the outside waters of Southeastern Alaska from west of Cape Fairweather to Dixon Entrance by the Alaska Department of Fisheries between 1950 and 1952 indicates that the outside troll fleet is highly dependent on chinook stocks that originate to the south. Of fish tagged in outside waters, 80 percent of the tag recoveries were made in non-Alaskan waters and over 53 percent of the river recoveries were made in the Columbia River, mostly from the fall run. It seems reasonable to assume that during the 1930s, when peak catches were made in Southeastern Alaska, the Columbia River stocks contributed to a greater degree than when the tagging program was conducted (see section 4.5).

Parker and Kirkness (1956) point out that direct application of results in "calculating the contributions of these rivers to the Southeastern Alaska troll catch should be made with discretion." They point out that factors such as varying recovery effort and application of tagging results to years other than those in which the experiments were conducted could cause errors in interpretation. Not having the necessary information to correct the errors the authors drew the conclusions that the Columbia and Fraser rivers were the two most important contributors to the *offshore chinook troll fishery* and other streams from southern Oregon to Southeastern Alaska contributed to a lesser degree.

The importance of the Columbia River to the offshore troll fishery had been established previously by the U.S. Bureau of Fisheries in a 1927 tagging operation on the west coast of Baranof Island. A total of 382 chinook were tagged and of the 38 recaptures, 22 were taken entering the Columbia River (Rich and Ball, 1933).

It appears that the decline of the chinook salmon stocks of the Columbia River have contributed greatly to the reduced troll harvest in Southeastern Alaska (Parker and Kirkness 1956; Ken Henry, NMFS, personal communication).

The contribution of chinook from western and central Alaska to the ocean salmon fishery appears to be insignificant to the present ocean salmon fishery.

Tagging studies indicate that coho and pink salmon harvested by the ocean troll fishery are primarily of Alaskan origin, although Washington State and Canadian coho do contribute to a small degree.

Recent tag recoveries of hatchery produced chinook have indicated a significant contribution to the Alaska troll fishery from Washington, Oregon and California.

3.2.1.2 *General Description of Fishing Effort*

The Alaska Board of Fish and Game in 1973 adopted regulations to prohibit trolling in State waters of Alaska west of Cape Suckling. The decision to close those waters was based on several factors:

1. Troll harvest in those waters had been relatively insignificant compared to other fisheries. For some years, no troll harvest was recorded. There was, however, an indicated interest to expand troll fisheries even to the Kodiak and Western Alaska areas.

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FIGURE 2

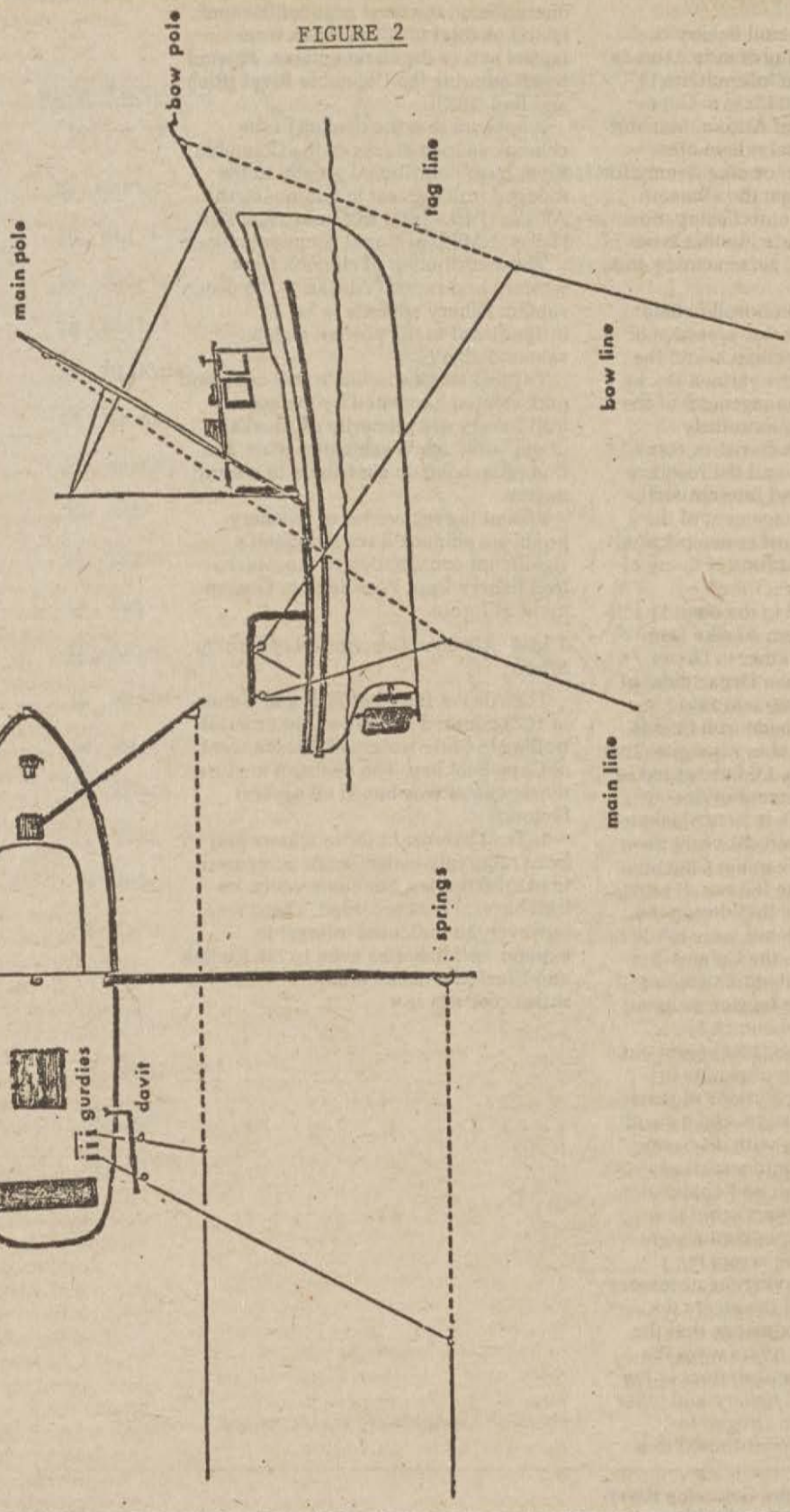

Figure 2 Basic Rigging of a Typical Commercial Troller.

The White Act, passed in 1924, stated that "there shall be allowed an escapement of not less than 50 per centum of the total number thereof. In such waters the taking of more than 50 per centum of the run of such fish is hereby prohibited." This law had no effect on the taking of chinook or coho as the size of the total run was impossible to predict or enumerate. In 1957 a coastwide regulation was adopted that closed the coastal and offshore troll fishery in Alaska from November 1 to April 14, imposed a limit of four lines and a 26-inch (fork length) minimum size for chinook. Net fishing in international waters was also prohibited by this time (see section 3.2.1.1). The winter closure was probably not effective in curtailing catches because inclement weather allows little effort during this time period. The effects of the 26-inch minimum are difficult to assess as fish buyers often refused to buy small chinook.

The troll season was restricted in inside waters in areas with concentrations of immature and maturing chinook are protected. The 26-inch fork length minimum size also applied to inside trolling.

Regulation of the amount of fishing effort in Alaska's commercial salmon fisheries was recognized as a necessity in the early 1900's. Many attempts failed due to the unconstitutionality of trying to restrict nonresident fishermen. The 1973 legislature created the Commercial Fisheries Entry Commission and began a new era in fisheries management. In 1974, that Commission began stabilizing effort levels in the already overcrowded salmon fisheries. All commercial fisheries are now monitored and limitations are being imposed for each fishery as optimal effort levels are reached.

In the power troll fishery, entry permits were originally issued to individual fishermen on the basis of the amount of participation in the fishery and the economic dependence on it. Once issued the permits are property of the permit holder and are freely transferable to anyone. The law withstood a constitutionality test up to the State Supreme Court level in *Isakson v. Rickey.* 550 P. 2d 359 (Alaska 1976). An initiative petition attempt to repeal the program was defeated in the 1976 general election. Alaska's limited entry program was the first such program of its kind in the U.S.

3.4 *History of Research* (3.4.1, 3.4.2)

Because of the coastwide movement of vessels and the salmon species they pursue, most research has been coastwide. The first ocean salmon research results that had significant coastal management implications were published in 1920. This work on salmon in Washington coastal waters revealed the rapid growth of coho in their final summer of life and the advantages of delaying their capture (Smith 1920).

Although tagging salmon at sea to study migration patterns was attempted in the early 1920's, it was not until the late 1930's and early 1940's that significant information regarding ocean salmon movements was available.

In 1950 the Alaska Department of Fisheries began research on stock origin, as well as biological descriptors of chinook and coho. However, it was not until 1970 that research was begun dealing specifically with the troll fisheries. The research included: life history studies of chinook and coho salmon; a logbook survey of troll fishery effort and catch rates; a sampling program to recover marked chinook and coho; collection of age data and information on numbers of undersized fish; and vessel distribution surveys.

Compilation of catch statistics in the troll fishery began in the early 1900's. However, accurate reporting of weekly landings by area and gear type did not begin until 1968. Further refinements in data processing since 1970 have produced timely catch statistics detailing gear, week, numbers of boats and landings, and catch, both in numbers of fish and pounds, by species and area (Appendix Table AI–2 and AI–3). These data reflect troll catches by area for inshore, coastal, and offshore waters.

There is a long history of cooperative research between the U.S. and Canada on salmon problems, as well as an exchange of statistical data. Catches landed in foreign countries are reported to the Department of Fish and Game in various agencies' technical reports, usually on an annual basis (i.e., annual Summary of British columbia Catch Statistics 1976).

In the early 1960's an informal committee on chinook and coho salmon and a technical working group were established between the two countries' research staffs providing an accessible route for exchange of data. Canadian research in the Fishery Conservation Zone off Alaska has been in the form of cooperative studies of a coastwide nature (e.g. the coastwide mark-recovery program).

3.5 *Socio-Economic Characteristics*

3.5.1 *Output of Subject Domestic Commercial Fishery*

In 1977, the statewide catches (all gear) of chinook, coho, and pink were 626,723, 1,815,167 and 28,582,428 fish, respectively. Catch trends for these species by troll and all gear types are addressed in Section 3.2.1.3.

In Southeastern Alaska, the salmon catches (all gear) for chinook, coho and pink salmon in 1977 were 290,886, 944,611 and 13,838,497 fish, respectively, of which 93.4, 53.7, and 2.0 percent, respectively, were caught by troll gear. Table 1 reveals these relationships. Figures 3 and 4 show a 10-year trend for Southeastern troll vs Alaska (all gear) chinook and coho catches.

3.5.1.1 *Value of Catch (Ex-vessel)*

Total ex-vessel value of the commercial troll salmon landings in Southeastern Alaska in 1975 and 1976 was $4,594,000 and $9,956,000, respectively, of which 13 and 15 percent, respectively, were taken by hand trollers. Totals by species and type of gear for 1975 and 1976 are shown in Table 2.

The average prices per pound paid to fishermen for salmon in 1976 are shown in Table 3. The highest *average* price of $1.60 per pound was for troll-caught king salmon in Sitka. This table shows that troll-caught salmon bring higher prices than salmon caught by other means.

3.5.1.2 *Description and Value of Product (Wholesale)*

The latest year is 1976 for which complete salmon production and wholesale value data are available. Table 4 shows production and value statistics for king, coho, and pink salmon by product form in Southeastern Alaska and all Alaskan waters.

Separate production statistics are not kept for troll caught salmon. However, since 94 percent of all southeastern king salmon are troll caught (Table 5), most of the production and value of king salmon in Southeastern Alaska can be attributed to trolling. In 1976, 2,653,000 pounds of king salmon were processed at a value of $5,945,000. Almost 100 percent of this production was in the fresh/frozen form.

Of all the coho caught in Southeastern Alaska, 54 percent were caught by troll gear. Assuming the wholesale production value of troll-caught coho was comparable to coho caught by other gear (95 percent of all the southeastern coho production was fresh/frozen form), the wholesale value of Southeastern Alaska troll-caught coho was $7,687,000.

The contribution of troll-caught pink salmon was only $399,000 in 1976.

3.5.1.3 *Markets, Domestic & Export*

Since the most recent domestic market data are from the Analysis of the Distribution System for Northwest-Originated Fresh and Frozen Salmon (Schary et. al., 1969), any conclusions as to the distribution by destination of products must be highly tentative.

Estimates from the above analysis are from a total Northwest catch of 66 million pounds of chinook and coho salmon in 1968. Approximately 37.4 million pounds were available for distribution in fresh and frozen product form with 9.1 million pounds coming from Alaska (see Fig. 5). To this was added 4.9 million pounds of imported salmon from British Columbia. Of this total, West Coast consumption was approximately 15.1 million pounds and that of the Midwest and East Coast was 12 million pounds. Export and East Coast markets were significant receiving areas for salmon products.

Although the two largest markets for exports in 1968 were France and the United Kingdom with 4.9 million pounds and 4 million pounds, respectively, the major export markets for the U.S. fresh and frozen salmon in 1977 were Japan, France, Canada, Sweden, and the United Kingdom with 31.9, 12.9, 5.5, 3.9, and 3.6 million pounds, respectively. The overall exports of the U.S. fresh and frozen salmon in 1977 were 65.6 million pounds valued a $117.5 million, up 71 percent in quantity and 70 percent in value from the previous year. These increased exports in 1977, when compared to those in 1968, reflected declines in the 1977 catch of salmon by other salmon importing countries.

In 1976, 22 million pounds (3 major species) were available for distribution in fresh/frozen, cured, and canned forms from Southeastern Alaska with a wholesale value of $34 million. These comprised 31 percent in quantity and 33 percent in wholesale value of Alaska total. The composition of wholesale value for these species in Southeastern Alaska by product form shows that 56 percent was in fresh/frozen, 44 percent in canned, and only 0.01 percent in cured forms in 1976. Adequate information dealing with domestic market channels are not available.

3.5.2 *Domestic Commercial Harvesting Characteristics*

In 1976, 2,683 licenses were issued for the troll fishery by the Department of Revenue. However, 4,281 entry permits were issued of which 956 were power troll and 3,325 were hand troll. The number of vessels for which actual landings were made was 2,076 of which 801 were power troll and 1,275 were hand troll. The mean keel length of power and hand troll vessels was 35 and 22 feet, respectively. The net mean tonnage of power and hand troll vessels was 11 and 2 tons, respectively. Similar data for 1977 are not available. Figures 6 and 7 show the distribution of vessels by weight and length.

3.5.2.1. *Total Gross Income of Fleet (Subject Fishery and all Other Fisheries)*

Total gross income is equivalent to the total ex-vessel value from all fisheries (troll salmon, net salmon, crab, halibut, etc.) in which the troll fleet participated. In 1976, $13.9 million was the total gross income from all fisheries for power trollers of which 60 percent ($8.4 million) was from power troll-caught salmon.

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TABLE 1
SALMON CATCHES IN SOUTHEASTERN ALASKA BY SPECIES, 1977

Species	All Gear		Troll Gear			
	No.	Lbs	No.	(%)	Lbs.	(%)
Chinook	290,886	4,198,644	271,759	(93.4)	3,979,496	(94.8)
Coho	944,611	8,246,658	506,835	(53.7)	4,158,400	(50.4)
Pink	13,838,497	67,864,799	281,188	(2.0)	1,194,728	(1.8)
Red	1,085,148	7,555,206	5,704	(0.5)	37,473	(0.5)
Chum	738,720	7,509,394	11,680	(1.6)	97,931	(1.3)
Total	16,897,862	95,374,701	1,077,166	(6.4)	9,468,028	(9.9)

FIGURE 3

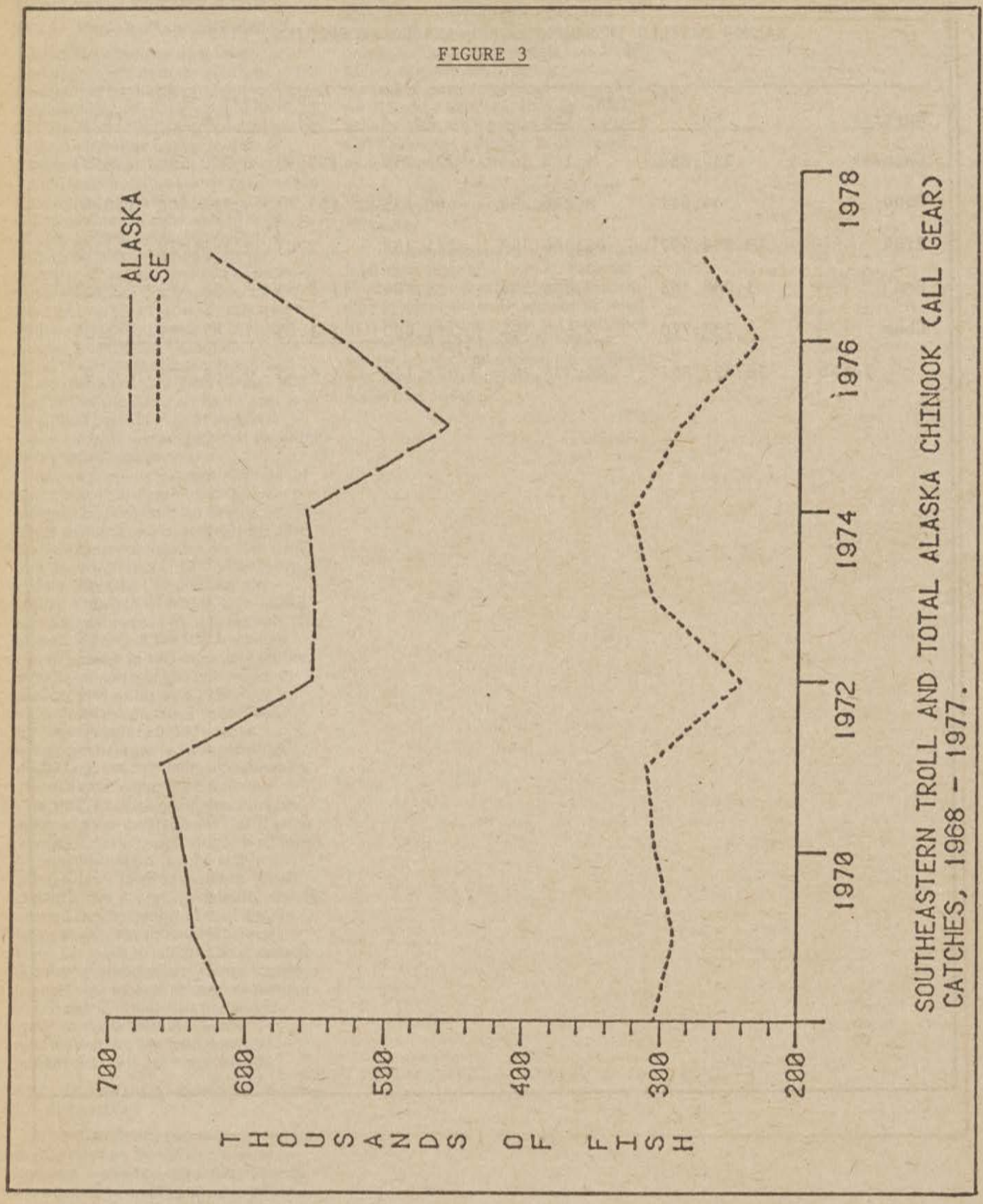

ALASKA
SE
700
600
500
400
300
200
THOUSANDS OF FISH
1970
1972
1974
1976
1978
SOUTHEASTERN TROLL AND TOTAL ALASKA CHINOOK CALL GEAR)
CATCHES, 1968 - 1977.

FIGURE 4

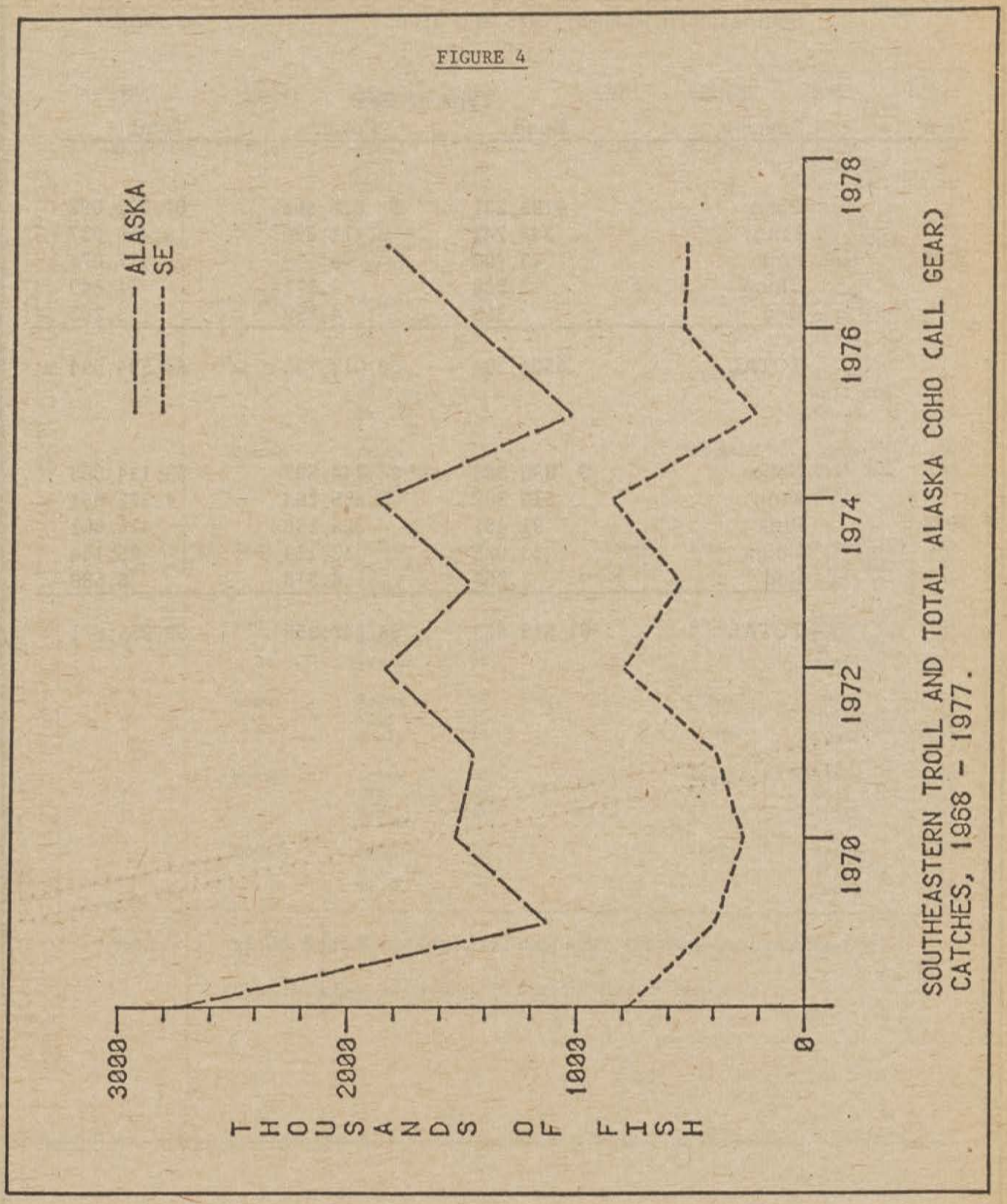

ALASKA
SE
3000
2000
1000
0
THOUSANDS OF FISH
1970
1972
1974
1976
1978
SOUTHEASTERN TROLL AND TOTAL ALASKA COHO CALL GEAR) CATCHES, 1968 - 1977.

Table 2. Value of Troll Salmon Catch by Species and Type of Gear in Southeastern Alaska, 1975 and 1976.

Year	Species	Type of Gear		Total
		Hand	Power	
1975	Coho	$188,231	$ 813,861	$1,002,092
	King	346,747	3,111,290	3,458,037
	Pink	43,703	73,369	117,072
	Chum	2,268	9,372	11,640
	Red	355	4,898	5,253
	TOTAL	$581,304	$4,012,790	$4,594,094
1976	Coho	$ 890,388	$4,244,507	$5,134,895
	King	516,387	3,856,264	4,372,651
	Pink	91,451	325,150	416,601
	Chum	13,025	12,119	25,144
	Red	2,262	4,318	6,580
	TOTAL	$1,513,513	$8,442,358	$9,955,871

Table 3 . Average Price Paid Per Pound to Fisherman in 1976.

AREA	Species	Gear	Price	AREA	Species	Gear	Price
KETCHIKAN	Kings:	Seine	$ .50	SITKA	Kings:	Seine	$ .00
		Gill Net	.95			Gill Net	1.47
		Troll	1.44			Troll	1.60
	Reds:	Seine	.63		Reds:	Seine:	.00
		Gill Net	.78			Gill Net:	.95
		Troll	.86			Troll	.75
	Coho:	Seine:	.56		Coho	Seine	.00
		Gill Net	1.05			Gill Net	1.21
		Troll	1.25			Troll	1.36
	Pinks:	Seine:	.32		Pinks:	Seine:	.43
		Gill Net:	.41			Gill Net:	.51
		Troll:	.57			Troll:	.56
	Chums:	Seine	.51		Chums:	Seine	.00
		Gill Net	.63			Gill Net	.76
		Troll	.63			Troll	.61
Petersburg/ Wrangell	Kings:	Seine	1.09	Juneau/ Yakutat	Kings	Seine	.42
		Gill Net	1.26			Gill Net	.85
		Troll	1.52			Troll	1.56
	Reds:	Seine	.74		Reds:	Seine	.61
		Gill Net	.79			Gill Net	.86
		Troll	.90			Troll	.72
	Coho:	Seine	.89		Coho:	Seine	.62
		Gill Net	.99			Gill Net	.90
		Troll	1.42			Troll	1.32
	Pinks:	Seine	.38		Pinks:	Seine	.32
		Gill Net	.42			Gill Net	.35
		Troll	.54			Troll	.56
	Chums:	Seine	.59		Chums:	Seine	.56
		Gill Net	.66			Gill Net	.67
		Troll	.71			Troll	.72

Source: Alaska Department of Fish and Game Catch and Production Leaflet 1976.

Prices Include an Estimate of Bonuses Paid to Fishermen.

1975 PRODUCTION AND WHOLESALE VALUE OF KING, COHO, AND PINK SALMON IN THE SOUTHEASTERN REGION AND ALL ALASKAN WATERS (ALL GEAR TYPES)

Region & Species	CURED Production 10^3 lbs*	CURED Value 10^3 $*	CANNED Production 10^3 lbs	CANNED Value 10^3 $	FRESH/FROZEN Production 10^3 lbs	FRESH/FROZEN Value 10^3 $	TOTAL Production 10^3 lbs	TOTAL Value 10^3 $
Southeast								
King**	0.4	0.5	14.	22.	2,733.	4,225.	2,747.	4,247.
Coho	---	---	179.	281.	2,238.	2,760.	2,417.	3,041.
Pink	---	---	8,935.	12,350.	1,495.	1,185.	10,430.	13,535.
TOTALS	0.4	0.5	9,128.	12,653.	6,466	8,170.	15,594.	20,823.
All Alaskan Waters								
King	130.0	106.0	384.	696.	4,541.	6,663.	5,055.	7,465.
Coho	22.0	35.0	2,355.	3,294.	5,332.	5,628.	7,709.	8,957.
Pink	0.4	1.5	26,524.	36,176.	2,407.	2,116.	28,931.	38,294.
TOTALS	152.4	142.6	29,263.	40,166.	12,280.	14,407	41,695.	54,716.

SOURCE: Alaska Department of Fish and Game Catch and Production Leaflet, 1975, Juneau, Alaska.

* 10^3 means that the values are in thousands of pounds or dollars,

** King is the same as a chinook salmon,

TABLE 4

Percentages by Species For Alaskan Salmon Troll Catches

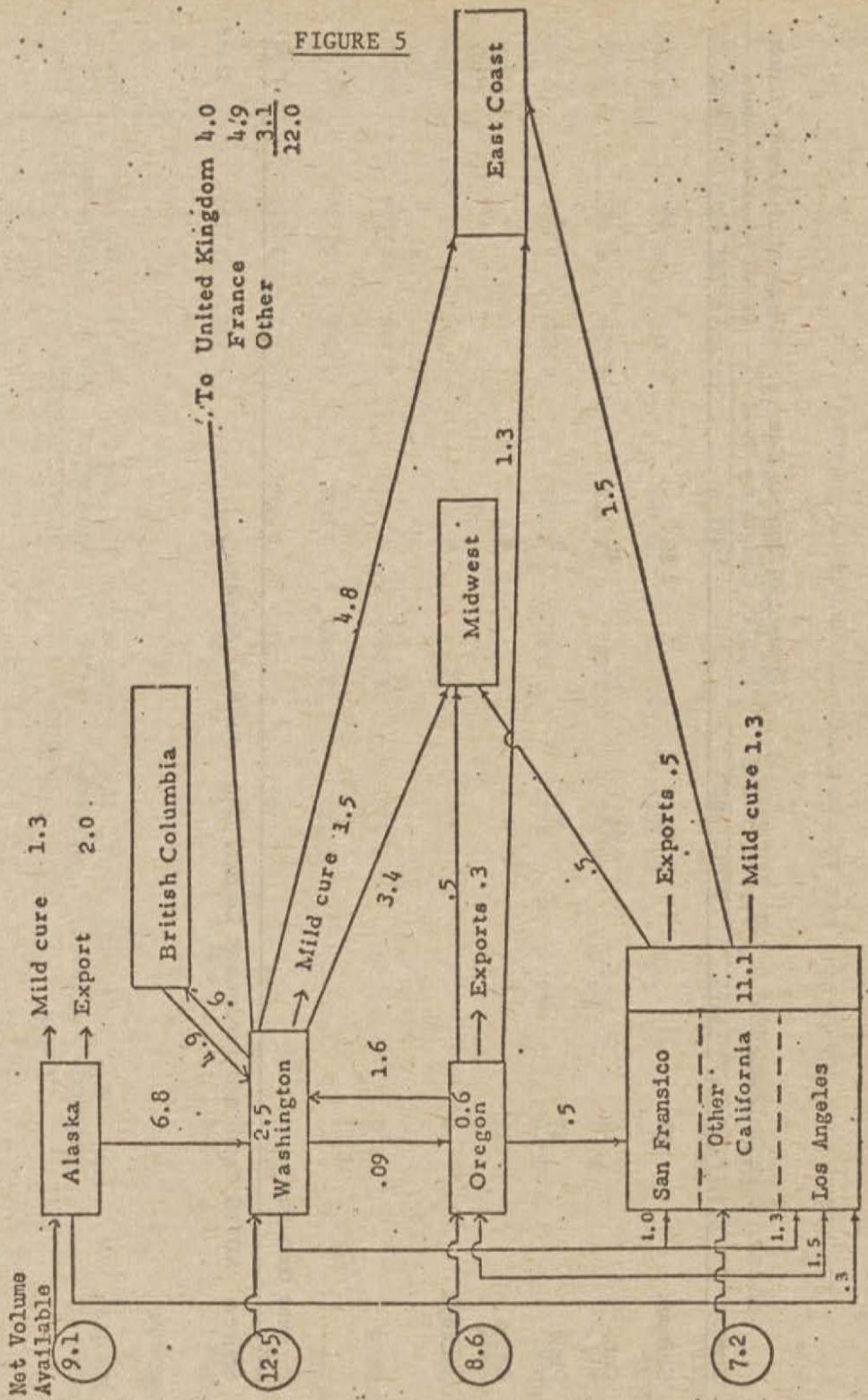
TABLE 5

Species	Percent of Total S.E. Catch (all gear)	Percent of S.E. Troll Catch	Percent of Species Catch in S.E. Caught by Troll Gear	Percent of Species Catch in All Alaskan Waters Caught By Troll Gear
Chinook	13	71	95	55
Coho	10	24	42	18
Pink	51	5	2	*
Chum	21	*	*	*
Sockeye	5	*	*	*

* Less than one percent

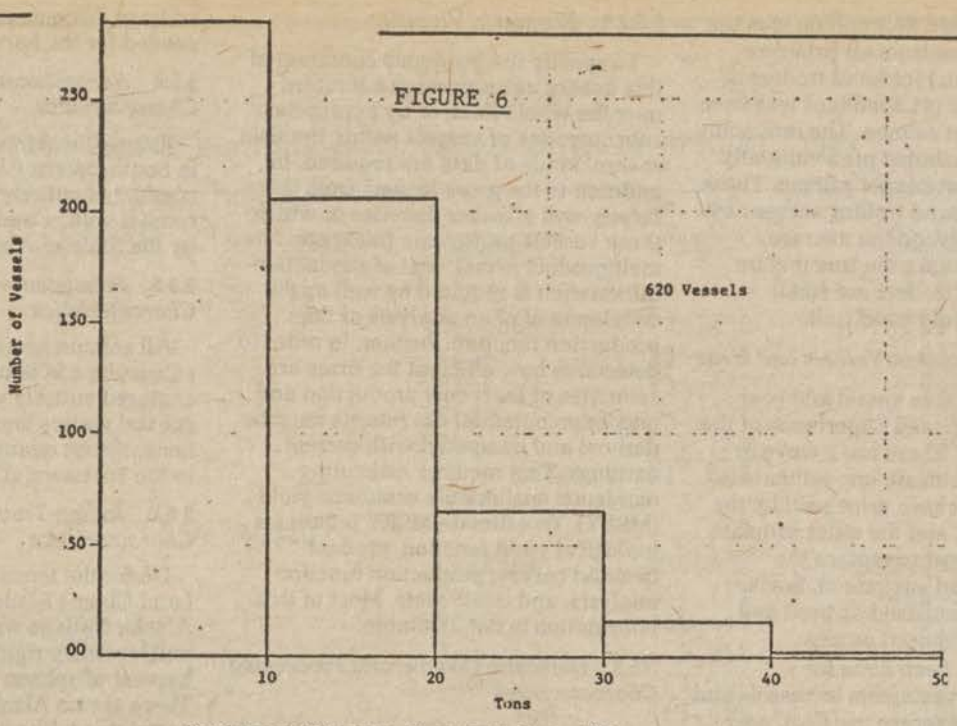
Source: ADF&G Catch and Production Leaflet, 1975. Juneau, Alaska.

FIGURE 5



The Major Movements of Fresh and Frozen Salmon for the 1968 Season (Millions of Pounds)

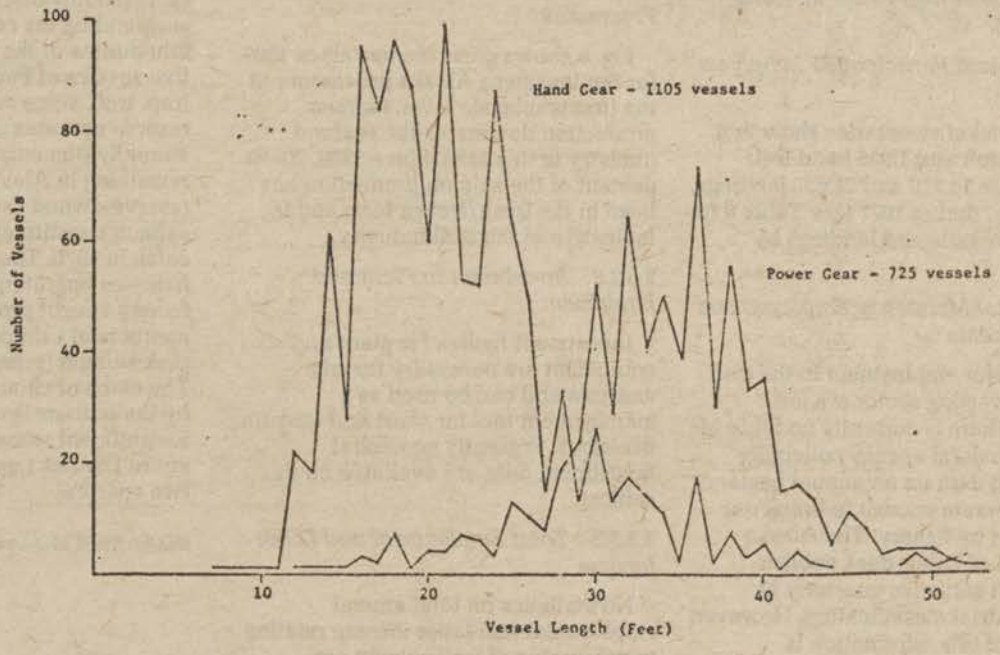
FIGURE 6



Net Tonnage of Vessels, Power Trol.. Gear, 1976

Source: Commercial Fisheries Entry Commission

FIGURE 7



Keel Length of Vessels, 1976

Source: Commercial Fisheries Entry Commission

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In the same year, $5.3 million was the total gross income from all fisheries (halibut, crab, etc.) for hand trollers of which 28 percent ($1.5 million) was from hand troll-caught salmon. The remaining 72 percent is attributed predominantly to halibut and net-caught salmon. These figures suggest hand trolling serves as a secondary fishery, on the average. However, this masks the true picture that many hand trollers are small operators who only hand troll.

3.5.2.2 *Investment in Vessels and Gear*

The investment in vessel and gear indicates the size and importance of the fishing segment. There are 2 ways in estimating investment; one estimate is the average purchase price paid by the present owners, and the other estimate is the average cost to replace the vessels, gear, and equipment. Some vessels were purchased as used and others were purchased as new.

No Study has been done for estimation of investments in vessels and gear (total and average per fleet/gear unit) for the troll vessels. However, in 1977, a survey was made by Alaska Trollers' Association, Ketchikan, by sending questionnaires to all power troll permit holders (approximately 900). They received 130 responses and found out that an average estimated market value for power troll vessel and gear was $74,500.

3.5.2.3 *Annual Participation in Subject Fishery*

Landing ticket summaries show that 872 power troll and 1,938 hand troll vessels made 14,320 and 21,635 landings, respectively, during 1977 (see Table 6 for number of vessels and landings by species).

3.5.2.4 *Total Manpower Employed and Labor Payments*

Statistics for employment in the troll salmon harvesting sector are not available. There is currently no State of Alaska or Federal agency collecting employment data on an annual basis which is discrete enough to break out employment by fishery. The Alaska Department of Labor does publish employment statistics quarterly by major industrial classification. However, the source of this information is employer's contribution reports for unemployment insurance, and therefore does not reflect total employment since significant segments such as self-employed persons, their spouses and children under 21 are excluded.

3.5.2.5 *Economic Viability*

To specify the economic condition of this fishery as an average net return over the whole fleet, or by appropriate subcategories of vessels within the fleet, several kinds of data are required. In addition to the gross income from this fishery and all other fisheries in which these vessels participate (most are multiproduct firms), cost of production information is required as well as the development of an analysis of the production function. Further, in order to determine how efficient the firms are, estimates of least cost production and maximum potential net returns must be derived and compared with current earnings. This requires estimating maximum sustainable economic yield (MSEY). To estimate MSEY requires a biological yield function, product demand curves, production function analysis, and input costs. Most of this information is not available.

3.5.3 *Domestic Commercial Processing Characteristics*

In 1976, 38 plants (36 companies) and 2,050 employees processed over 50 million pounds of seafood in Southeastern Alaska. In terms of salmon, 20 plants handled fresh/frozen production and 9 plants dealt with canned production.

3.5.3.1 *Total Gross Income In Area Processors*

Fig. 8 shows gross income since 1969 for Southeastern Alaska processors at the first wholesale level. Salmon production dominates the seafood industry in this area. Since 1969, 20–50 percent of the salmon production has been in the fresh/frozen form and is indicative of the troll industry.

3.5.3.2 *Investment in Plant and Equipment*

Investment figures for plant and equipment are necessary for cost analysis and can be used as a management tool for short and long-run decisions. Presently no capital investment data are available on this subject.

3.5.3.3 *Total Employment and Labor Income*

No statistics on total annual employment and labor income relating to processing of troll salmon are available.

3.5.3.4 *Economic Viability*

There is no single source of information on economic viability of processing troll salmon. Data required to address this question are similar to that needed for the harvesting sector.

3.5.4 *Recreational Fishing Characteristics*

Recreational (sport) fishing for salmon in Southeastern Alaska is presently conducted entirely within inshore and coastal waters and, as such, is managed by the State of Alaska.

3.5.5 *Subsistence Fishing Characteristics*

All salmon species taken for subsistence in Southeastern Alaska are captured entirely within inshore and coastal waters and are taken in insignificant quantities when compared to the commercial harvest.

3.5.6 *Indian Treaty Fishing Characteristics*

Under the terms of the Alaska Native Land Claims Settlement Act of 1971 Alaska Natives waived all aboriginal and/or treaty rights pertaining to the harvest of salmon in Alaskan waters. There are no Alaskan Indian treaties pertaining to the harvest of salmon in Alaskan waters.

On the Annette Islands Reserve, near Ketchikan, however, President Woodrow Wilson on April 28, 1916, established for the Metlakatla Indians, an exclusive fishing zone of 3,000 feet, extending outward from the shoreline (at mean low tide) and completely surrounding the reserve. Catches by inhabitants of the reserve include all five species of Pacific salmon taken by trap, troll, seine and gillnet gear. The reserve operates up to four traps annually (the only legal salmon traps remaining in Alaska) to support a reserve-owned canning industry. Pink salmon constituted 98 percent of the trap catch in 1976. The gillnet, seine, and troll fisheries operating within the perimeter fishery caught proportionally larger numbers of salmon species other than pink salmon (primarily sockeye salmon). The catch of chinook and coho salmon by the Indians is considered insignificant when compared to the entire District 1 salmon catch for the two species.

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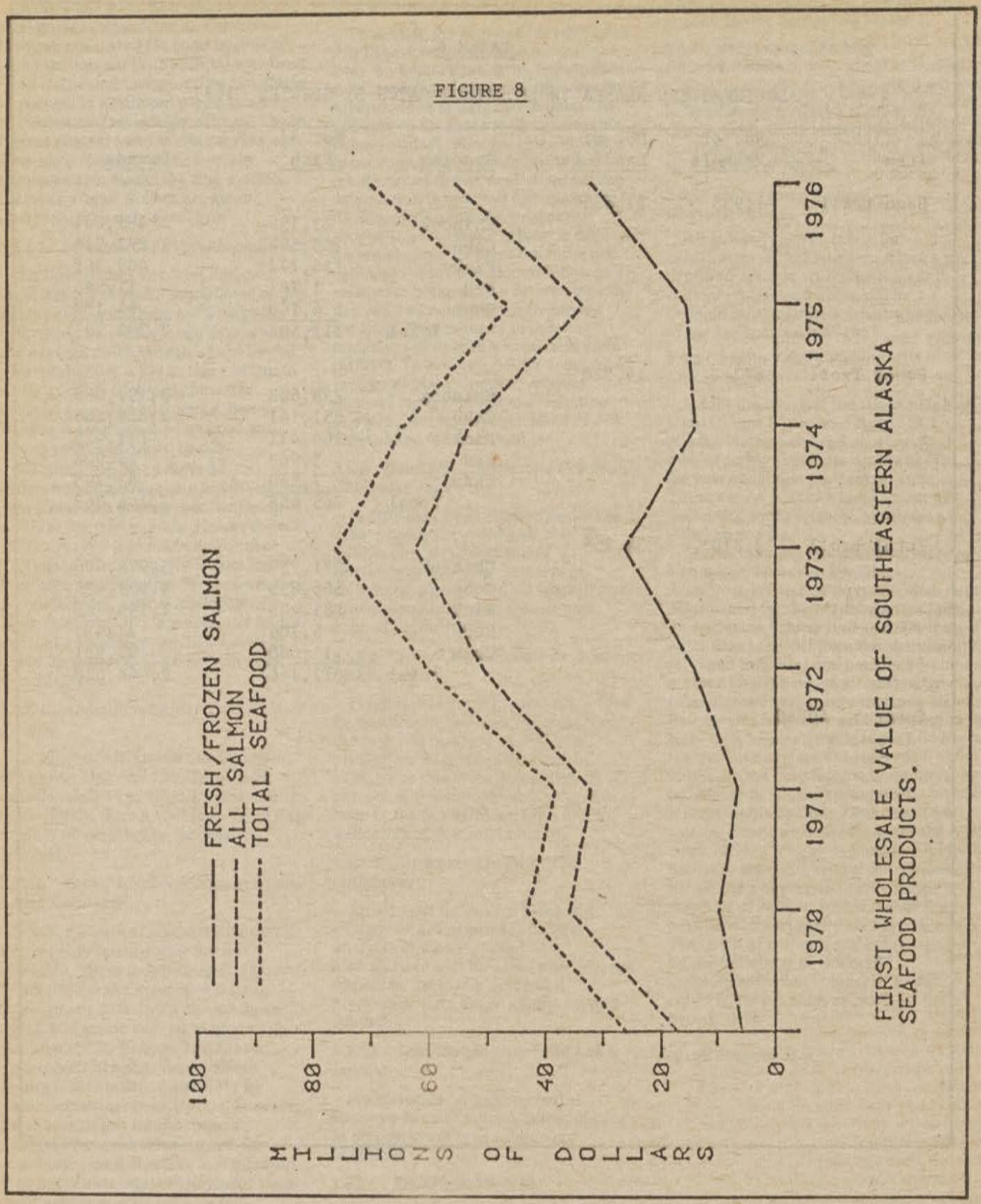
TABLE 6

SOUTHEASTERN ALASKA TROLL SALMON CATCH BY SPECIES, 1977

Item	No. of Vessels	No. of Landings	Species	No. of Fish	Pounds
Hand troll	1,938	21,635			
			Chinook	33,156	481,661
			Coho	155,694	1,292,514
			Pink	116,777	483,303
			Red	1,741	11,545
			Chum	4,140	34,138
			Total	311,508	2,303,161
Power Troll	872	14,320			
			Chinook	238,603	3,497,835
			Coho	351,141	2,865,886
			Pink	164,411	711,425
			Red	3,963	25,928
			Chum	7,540	63,793
			Total	765,658	7,164,867
Total troll	2,810	35,955			
			Chinook	271,759	3,979,496
			Coho	506,835	4,158,400
			Pink	281,188	1,194,728
			Red	5,704	37,473
			Chum	11,680	97,931
			Total	1,077,166	9,468,028

Source: ADF&G

FIGURE 8



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3.5.7 *Area Community Characteristics*

3.5.7.1 *Total Population*

Alaska's 1977 population statistics show the State as having a population of 411,211 with 53,162 residing in Southeastern Alaska (13 percent—Department of Labor, 1978). Table 7 provides population estimates for areas within the Southeast Region.

3.5.7.2 *Total Employment*

The Alaska Department of Labor [1] publishes a "Statistical Quarterly" that provides primary employment data that are by products of administration of the Alaska Employment Security Act. The principal sources of these data are the quarterly report of employers subject to the State unemployment insurance law and quarterly reports of Federal agencies made in connection with the State administered program for unemployment of Federal workers. Significant excluded segments are unpaid family help, domestic, self-employed persons and most persons engaged in agriculture.

The data are identified by industry inconformity with the Standard Industrial Classification Manual [2] which provides for numerical classification of establishments on the basis of the principal activity conducted.

Data pertaining to fish harvesting are not presented here since a significant amount of the persons engaged in the harvested sector are self-employed (an excluded segment of the data base unless the person receives a wage instead of a profit share).

Table 8 shows these Statement employment and payroll data for all industries the whole distribution of fish and seafood grocers, ship building and repair, frozen and canned fish and seafood production.

In the first quarter of 1977, total employment stood at 155,000 per month for all industries within the State. Total payroll for the 3-month period was $826 million.

Fresh/frozen seafood processing sector employed a monthly average of 1,204 persons which is 1 percent of the statewide total. These employees received an average monthly wage of $1,053. This wage is about 60 percent of the statewide average of $1,772. Their quarterly wage of a little more than $3.8 million is less than one half of one percent of the quarterly total statewide wage ($826 million).

Table 9 shows similar data for Southeastern Alaska. An average monthly employment in fresh/frozen seafood processing was 248 persons and their total quarterly wage was $705,000. These figures were equivalent to 1.2 percent for average monthly employment and .8 percent for total quarterly wage of the total Southeastern industries.

3.5.7.3 *Total Work Force*

In 1977, Southeastern Alaska had an annual average labor force of 21,558 of which 19,290 were employed and 2,268 were unemployed. This labor force attributes to 12.4 percent of the State total. Unemployment rates of this region was 10.5 percent, higher than statewide average (9.4 percent).

Among the 9 census divisions in Southeastern Alaska, Juneau division showed the lowest unemployment rate of 8.0 percent with the highest labor force of 7.180. Haines Division had the highest unemployment rate of 15.7 percent with labor force of 908. Table 10 shows more detailed information.

3.6 *Interaction Between and Among User Groups*

The present Canadian fishery in offshore waters is minimal (Section 3.2.2). Therefore, it is assumed there would be little change in domestic fisheries should Canadian efforts be curtailed.

Sport, commercial and subsistence fisheries are present on some maturing chinook stocks in Canadian watersheds of transboundary rivers.

On the Klukshu River, a major chinook spawning tributary of Alsek River, a subsistence trap is operated. The Tatshenshini River is developing an increasing sport fishery for chinook.

Maturing chinook are caught in increasing numbers annually by expanding Canadian sport fisheries in major spawning tributaries of the Taku River.

Chinook are also taken by commercial and subsistence fishermen on the Stikine River near Telegraph Creek, B.C.

The impact of the domestic offshore fishery on the inshore and coastal fisheries is not known, however, the offshore troll fishery will directly affect the inshore and coastal catches. The greater the magnitude of the offshore catch, the smaller the available run to coastal and inshore fisheries. The inshore and coastal fisheries affect the magnitude of the offshore catch by catching immature chinook salmon before they are available to the offshore fishery and by directly affecting escapement of both chinook and coho adults to individual streams.

Gear conflicts between user groups in future years are undeniable. As numbers and efficiency of gear increase among the unlimited sport and hand troll fleets the subsequent reallocation of catch to these user groups from the offshore fisheries will occur unless other allocation measures are adopted. Likewise, the power troll fleet is increasing in efficiency with larger boats and more sophisticated electronic equipment.

3.7 *Federal and State Revenues Derived from Fishery*

Information on revenues derived by the State of Alaska from fish taxes and the sale of permits and licenses from 1969 to 1976 is shown in Table 11. However, only the Commercial Fisheries Entry Commission's permits and troll line permits are specific to the troll fishery. The processor taxes are an approximation for the troll salmon industry. The processor, commercial fish, and vessel licenses are applicable to multiple fisheries.

Revenues derived from other taxes, such as personal Federal and State income taxes associated with net earnings in the salmon fishery, are not available.

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[1] Employment Security Division, Research and Analysis Section.

[2] U.S. Bureau of the Budget, 1972 Edition.

RESIDENT POPULATION (CIVILIAN AND MILITARY) BY AREA AND YEAR

	60	70	71	72	73	74	75	76	77
Angoon	540	503	482	481	402	481	481	494	559
Haines	875	1,504	1,637	1,765	1,902	2,054	2,069	1,850	1,500
Juneau	9,745	13,556	14,478	14,979	16,593	17,195	17,714	18,760	18,886
Ketchikan	8,794	10,041	10,046	10,488	10,587	11,522	11,311	11,394	12,496
Outer Ketchikan	1,276	1,676	1,622	1,649	1,641	1,703	1,764	1,761	2,019
Petersburg/Wrangell	4,181	4,913	4,956	4,927	5,085	5,848	5,270	5,218	5,236
Prince of Wales	1,772	2,105	1,781	2,035	1,992	2,525	2,502	1,761	2,639
Sitka	6,150	6,109	5,942	6,029	6,010	6,428	6,595	6,883	7,053
Yakutat	2,070	2,157	2,144	2,121	2,205	2,476	2,732	2,812	2,774
Total SE	35,403	42,565	43,088	44,475	46,417	50,232	50,438	51,172	53,162
Total Alaska	226,167	302,361	311,070	322,115	330,365	351,159	404,634	413,289	411,211

TABLE 7

Source: Alaska Department of Labor, Employment Security Division

Employment and payroll statistics for selected industries in State of Alaska

Year/Qtr.	Industry[1]	Number of Firms	Monthly Employment			Average Monthly Employment	Percent of Total Employment	Average Monthly Wage (dollars)	Quarterly Total Wage (thousand dollars)	Percent Total Wage
	Canned Fish	90	5,001	5,214	4,203	4,806	3	1,226	17,678	2
	Frozen Fish	48	2,803	2,970	2,373	2,715	2	935	7,622	1
1976/3	Ship Building & Repair	9	37	29	37	34	*	992	102	*
	Wholesale Distr.	21	127	163	53	114	*	748	257	*
	All Industries	11,032	171,781	162,916	154,451	163,049	100	2,079	1,016,957	100
	Canned Fish	89	2,171	1,846	1,693	1,902	1	1,106	6,313	1
	Frozen Fish	53	2,015	1,812	1,723	1,850	1	907	5,038	1
1976/4	Ship Building & Repair	8	31	31	32	31	*	1,183	111	*
	Wholesale Distr.	21	51	39	43	44	*	1,596	212	*
	All Industries	11,097	188,754	192,505	187,397	189,552	100	2,081	1,183,496	100
	Canned Fish	90	1,620	1,758	1,926	1,768	1	852	4,520	1
	Frozen Fish	52	1,090	1,241	1,280	1,204	1	1,053	3,804	1
1977/1	Ship Building & Repair	9	34	30	30	31	*	1,104	104	*
	Wholesale Distr.	17	29	28	29	29	*	2,404	207	*
	All Industries	10,921	152,414	155,048	158,756	155,406	100	1,772	826,323	100
	Canned Fish	93	1,799	2,351	3,439	2,530	-	1,019	7,738	-
	Frozen Fish	54	2,221	2,186	2,925	2,444	-	916	6,721	-
1977/2	Ship Building & Repair	9	40	39	39	39	-	1,368	161	-
	Wholesale Distr.	15	63	176	217	152	-	649	296	-
	All Industries	N.A.	-	-	-	-	-	-	-	-

TABLE 8

* Significantly less than 1%

1/ Canned and frozen fish and seafood production wholesale distribution of fish and seafood groceries

Employment and payroll statistics by area for selected industries in Alaska.

SOUTHEAST

Year/Qtr.	Industry[1]	Number of Firms	Monthly Employment			Average Monthly Employment	Percent of Total Employment	Average Monthly Wage (dollars)	Quarterly Total Wage (thousand dollars)	Percent of Total Wages
			1st	2nd	3rd					
	Canned Fish	20	807	999	1,109	998	4	728	2,178	2
	Frozen Fish	11	355	512	555	474	2	948	1,349	1
1976/3	Ship Building & Repair	5	27	26	33	29	*	1,020	89	*
	Wholesale Distr.	6	6	6	8	7	*	676	14	*
	All Industries	1,909	24,739	25,660	26,008	25,469	100	1,367	104,553	100
	Canned Fish	20	452	371	308	377	2	520	588	1
	Frozen Fish	10	245	185	163	198	1	1,018	602	1
1976/4	Ship Building & Repair	5	27	28	31	29	*	1,205	104	*
	Wholesale Distr.	6	5	6	5	5	*	1,777	28	*
	All Industries	1,904	22,507	21,641	20,667	21,605	100	1,484	96,218	100
	Canned Fish	19	214	220	235	223	1	676	452	1
	Frozen Fish	11	215	276	254	248	1	947	705	1
1977/1	Ship Building & Repair	5	29	25	26	27	*	1,154	92	*
	Wholesale Distr.	3	- confidential -			-	-	-	-	-
	All Industries	1,863	20,166	20,888	21,761	20,938	100	1,345	84,458	100
	Canned Fish	17	372	446	665	494	-	387	1,241	-
	Frozen Fish	11	448	353	427	409	-	860	1,055	-
1977/2	Ship Building & Repair	5	30	26	27	28	-	1,496	124	-
	Wholesale Distr.	3	19	17	22	19	-	748	43	-
	All Industries	- not available -				-	-	-	-	-

TABLE 9

* Significantly less than 1%

1/ Canned and frozen fish and seafood production wholesale distribution of fish and seafood groceries

TABLE 10

1977 AVERAGE POPULATION, EMPLOYMENT, AND UNEMPLOYMENT
FOR SOUTHEASTERN ALASKA

	Total 1/ Resident Population	Labor Force	Employment	Unemployment	Unemployment Rate (%)
Statewide	411,211	174,000	158,000	16,000	9.4
Southeastern	53,162	21,558	19,290	2,268	10.5
Angoon	559	350	303	47	13.4
Haines	1,500	908	765	143	15.7
Juneau	18,886	7,180	6,605	575	8.0
Ketchikan	12,496	4,545	4,022	523	11.5
Outer Ketchikan	2,019	757	662	95	12.5
Prince of Wales	2,639	1,260	1,122	138	11.0
Sitka	7,053	2,899	2,634	265	9.1
Skagway-Yakutat	2,774	1,153	1,006	147	12.7
Wrangell-Petersburg	5,236	2,506	2,171	335	13.4

1/ As of July 1, 1977

Source: Alaska Department of Labor

TABLE 11

State Revenues Related to Ocean Troll Salmon

	1969	1970	1971	1972	1973	1974	1975	1976
1/ C.F.E.C. Permits	$					14,900	63,000	74,000
2/ Processor Taxes	$ 79,500	59,500	57,100	67,400	115,900	128,500	81,900	N/A
3/ Troll Line Permits	$ 42,740	48,450	42,965	43,185	56,910	59,780	49,920	47,835
4/ Processor Licenses	$ 450	600	525	650	675	625	650	?
5/ Com. Fish Licenses	$315,630	375,240	334,400	346,520	358,130	325,020	334,510	391,550
6/ Vessel Licenses	$146,898	161,863	156,490	156,624	164,194	152,486	158,704	163,180

Source: Alaska Dept. of Revenue; except C.F.E.C. permits are from Commercial Fisheries Entry Commission

1/ Commercial Fisheries Entry Commission - hand or power troll - $20 except for poverty income - dollars.
2/ Taxes are an approximation of the troll salmon industry
salmon canneries -- 2% of raw salmon value
salmon diverted for purposes other than canning -- 1% of value on fresh fish market.
shore-based fish processors -- 1% of raw fish value
floating fish processors -- 4% of raw fish value
3/ Hand or power gurdy -- $15 resident, $45 nonresident
4/ All salmon processors (not necessarily troll salmon) -- $25. per facility
5/ & 6/ Values apply to all fisheries (ie not specific to troll salmon)
$10 resident, $30 nonresident

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Text Appendix Index

Appendix 4.0—Biological Descriptors

4.8 *Current Status of Stocks*
4.8.1 *Maximum Sustained Yield (MSY)*
4.8.1.1 *Equilibrium Yield (EY)*

List of Tables

Table:
12 Average Annual Landings, Numbers, Pounds, etc.
13 Number and Percent of Offshore Troll Caught Chinook and Coho Salmon in Area 157, (Fairweather Grounds) 1971 to 1976

List of Figures

Fig.:
9 Sample of ADF&G Fresh Fish Ticket
10 Percent Age Composition of Washington's Troll-Caught Chinook Salmon, etc.
11 Percent Age Composition of Washington's Ocean Sport-Caught Chinook, etc.
12 Chinook Catch—Troll Gear vs All Gear
13 Coho Catch—Troll Gear vs All Gear

4.8 *Current Status of Stocks*

In some areas declining population levels are partially associated with losses of habitat. Examples include impounding or damming of flow on the Columbia and Sacramento Rivers which have destroyed both spawning areas and rearing habitat and in some cases have blocked access and thereby eliminated certain stocks. In the lower Columbia River and in coastal areas of Washington and Oregon native fall chinook are also depressed, however, large scale hatchery programs are providing support for these fish. Spring chinook hatcheries have been less successful than fall chinook hatcheries. British Columbia fall chinook hatcheries, while not as old or an extensive as those in the Pacific Northwest states, are also contributing to some fisheries.

The Taku River, which is one of the most important chinook systems in Southeastern Alaska, was closed to spring gillnetting and sport and commercial trolling by the Board of Fisheries in the fall of 1975 to protect the severely depleted spawner returns. Comparative escapement data and CPUE in the Taku Inlet drift gillnet fishery indicated weakness in most of the year classes.

Because over 50 percent of the immature chinook harvested during 1973 and 1974 in the Juneau area were of Alaskan origin additional closures and bag reductions were made to protect future spawning runs (Kissner 1974, 1975).

The Alsek and Stikine Rivers, which are the other two major chinook systems in Southeastern Alaska, have had strictly curtailed chinook fisheries to protect weak spawner returns (Kissner 1977).

In the vicinity of Behm Canal sport and commercial closures and bag reductions were made by the Board of Fisheries in 1976 to protect declining spawning runs to the Unuk, Chickamin, Keta and Blossom Rivers.

A matter of coastwide concern from California to Southeastern Alaska is the long-term downward shift in size and age of chinook. Chinook populations have shifted towards younger mean ages at maturity and smaller mean sizes within given age groups. In stocks where comparative data exist, older and larger 5- and 6-year-old chinook are less common. The populations today consist of young and smaller 3- and 4-year-old fish. In Washington, for example, both ocean troll-caught and ocean sport-caught chinook salmon show this trend (Figs. 10 and 11). The larger 60 to 90-pound class chinook common along the coast at the turn of the century are rare in present stocks. Some stocks strongly disposed toward older ages and larger fish such as the upper Columbia summer run stocks are now extinct. The Canadian scientist W. E. Ricker attributes the trend toward younger age classes (personal communication) to long-term effects caused by selection pressures of fisheries and the continuous removal from chinook populations of older, larger fish. The troll fishery, by its nature, is well suited to provide such pressure. By fishing during active feeding and rapid growth periods over sequential years of the fish's life more of the older and larger fish are caught before they reach maturity than is the case with the younger and smaller fish. Specific year classes of some stocks are now known to remain in the same ocean nursery area and be caught by troll fisheries at several ages in the same vicinity (Davis 1976; Davis and Selin 1977).

Alaskan chinook stocks have declined precipitously during the past 20 years, a period during which the Alaska troll catch for this species has been relatively stable. Between 1956 and 1975 Alaska troll catches of chinook have ranged from 175,000 to 330,000 (Fig. 12) and have averaged 271,000 fish per year over that period. Although in many cases escapement data for Alaskan chinook that may be contributing to the troll fishery are incomplete and of varying quality, all indications point to severe declines ranging from a minimum of 40 percent to a maximum in some cases approaching 100 percent (Appendix Table AI–4). Many smaller chinook stock units in Southeastern Alaska may already be extinct since escapements in them have not been observed in recent years.

Chinook salmon are harvested in Southeast Alaska by line, gillnet, seine and trap. In most years over 85 percent of the harvest is by troll gear. Harvest by gillnets is associated with maturing local stocks near their river of origin while harvest by the other gear types is associated with mixed stocks.

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FIGURE 9

Speedset ® Moore Business Forms, Inc m

PLACE WRAPAROUND COVER UNDER GOLDENROD COPY

DISTRIBUTION: WHITE - PURCHASER YELLOW - FISH & GAME PINK - SELLER GOLDENROD - PURCHASER

PURCHASER

J517560

ALASKA DEPARTMENT OF FISH & GAME
FRESH FISH TICKET *

Boat Name

Fishery →

Name →

Permit Number →

ADF & G NUMBER ←

SECTION I

SECTION II
IF PERMIT CARD NOT AVAILABLE
COMPLETE THIS SECTION

CHECK TYPE OF GEAR USED

1 ☐ PURSE SEINE 5 ☐ TROLL 12 ☐ HAND PICKED
2 ☐ BEACH SEINE 6 ☐ SKATES 91 ☐ POTS-KEEL OVER 50 FT.
3 ☐ DRIFT NET 09 ☐ POTS-KEEL TO AND 50 FT.
4 ☐ SET NET 11 ☐ HERRING PURSE SEINE
OTHER ☐ _____ SHOW

Company

Station

DATE ←

AREA CAUGHT _____ STAT. CHART NO.
SHOW NEAREST BAY OR HEADLAND

SECTION III

HALIBUT 10 - 20 lbs	200					SALMON Lg Red Kings	410				
20 - 40 lbs	200										
40 - 60 lbs	200					Med Red Kings	410				
Total Medium	200										
						Sml Red Kings	410				
60 - 80 lbs	200										
80 - 100 lbs	200					Lg White Kings	410				
100 - 150 lbs	200										
Over 150 lbs	200					Sml White Kings	410				
Total Large	200										
						TOTAL KINGS	410				
No 2 s Med	200										
No 2 s Lg	200					REDS (SOCKEYE)	420				
Chicken	200										
						Lg Cohos	430				
Total Halibut	200										
						Med Cohos	430				
MISCELLANEOUS Lg Sablefish	710										
Sml Sablefish	710					Sml Cohos	430				
Total Sablefish	710										
						TOTAL COHOS	430				
Lingcod	130										
Rockfish/Red Snapper	140					PINKS	440				
Herring	230										
Herring Eggs on Kelp	231					BRITE CHUMS	450				
Steelhead	540					DARK CHUMS	450				
						TOTAL					

Fisherman's Signature * _____ Fish Received by _____

I certify that the fish listed herein were caught in compliance with state licensing laws and state laws and regulations.

* ADF & G requirements require completion of all of Sections I and II, and Column 2 for salmon and Column 1 for other fish in Section III. Section II is not required if Permit Card is used.

NOT NEGOTIABLE

Sample of ADF&G Fresh Fish Ticket

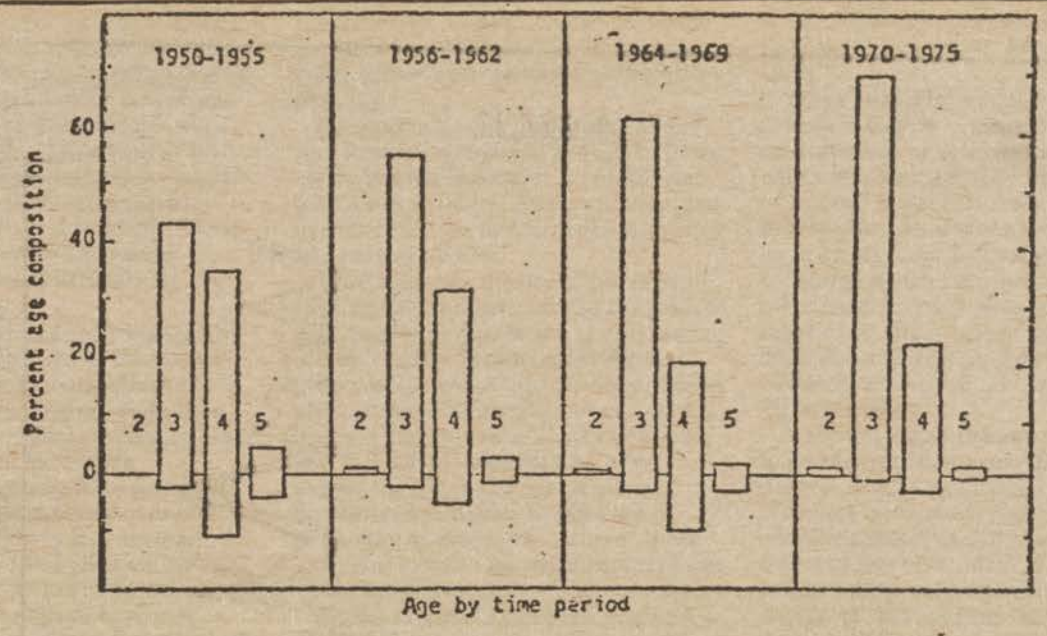


Figure 10. Percent age composition of Washington's troll-caught chinook salmon for the four consecutively reported time periods 1950-1975, by sub-type (fall run-type above and spring run-type below axis).

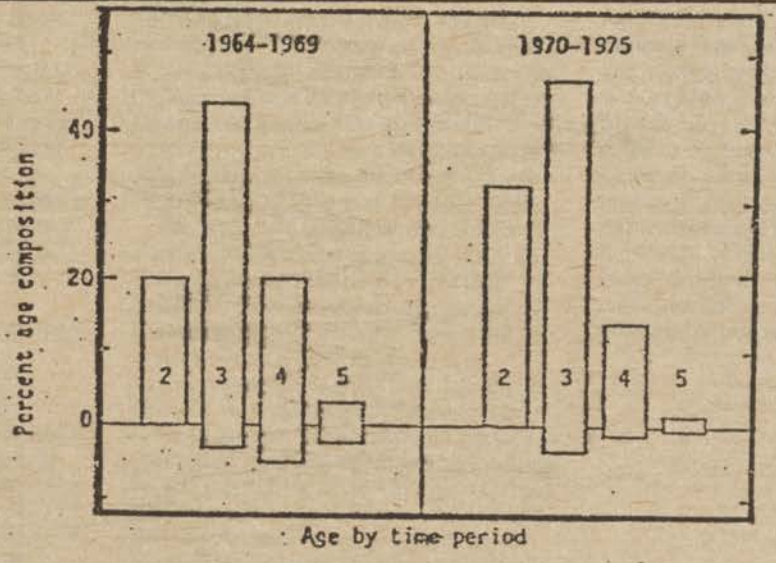
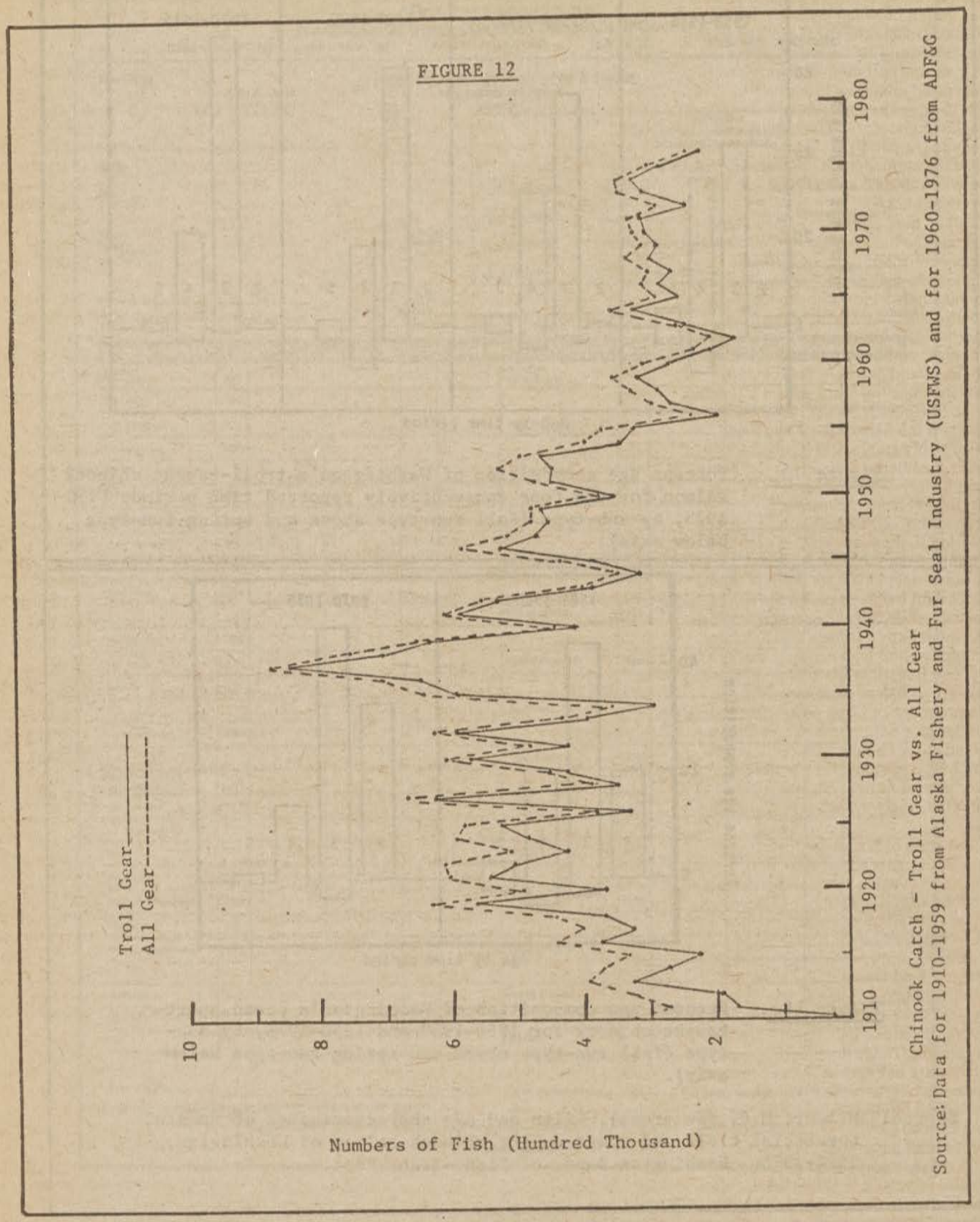


Figure 11. Percent age composition of Washington's ocean sport-caught chinook for 1954-1959 and 1970-1975, by sub-type (fall run-type above and spring run-type below axis).

Source: Miller, M.C. (in press). Size and age characteristics of coastal commercial troll and sport-caught chinook salmon of Washington, 1970-1975. Washington Dept. of Fish. Tech. Rept.

FIGURE 12



Chinook Catch - Troll Gear vs. All Gear

Source: Data for 1910-1959 from Alaska Fishery and Fur Seal Industry (USFWS) and for 1960-1976 from ADF&G

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Since 1920 the annual commercial chinook catch for Southeastern Alaska has varied between 879,000 (1937) and 202,000 (1962). The catch peaked during the 1920's and 1930's when an average of over one half million chinook were harvested annually. From 1940 to 1970 the 10-year average annual harvest has declined about 100,000 chinook per decade (Appendix Table AI–5). Since 1970 the annual catch has varied between 286,000 and 346,000 and has averaged 322,000.

When these factors are considered against the background of the known heavy contribution of non-Alaska chinook to the troll fishery and of the increasingly successful production from Pacific Northwest hatcheries (particularly fall chinook), a potential adverse relationship between native Alaskan and hatchery fish develops. In this instance the hatcheries are located long distances from the impacted native fish and the fishery itself has been reasonably stable. What nominally has been considered an asset to the Alaska troll fishery—"first chance at Pacific Northwest chinook hatchery production"—may in fact be a serious liability to the perpetuation of native chinook from Southestern Alaska. This paradox develops from the fact that successful hatchery programs can sustain much higher harvest rates than can most native stocks. The hatchery protection and high survival during egg, fry, and fingerling life stages requires less brood fish or escapement to maintain the cultured population than a similar size natural run. Therefore in a mixed stock fishery with both native and hatchery runs, it is possible to overharvest native fish and simultaneously underharvest hatchery fish.

The coho of Southeastern Alaska consist of hundreds of spawning populations using inner and outer island streams as well as mainland streams. These fish, many of which produce only a few hundred adults annually, spawn in streams and rear to smolt stage in streams, backwater sloughs, small ponds and lakes. Some larger river systems have spawning escapements of several thousand fish. Specific causes for this long-range decline in coho catches are not known but are probably related to overharvest. During the last 20 years, troll landings of coho have ranged from 267,000 fish in 1970 to 846,000 fish in 1974 with an annual average of 557,000 fish. Escapement data for specific populations is limited because coho spawn in September and October when fall rains increase stream flows make spawner counts difficult.

In addition to the troll fishery, Southeastern Alaska coho stocks make important contributions to inside purse seine, gillnet and recreational fisheries (Fig. 13).

Because coho commonly spawn and rear in small streams in heavily forested areas, logging is a major threat to long-term stock stability. Abuses of accepted logging practices destroy coho spawning and rearing habitat.

Unless specific stock components are overfished or major losses to the present high quality of the spawning and rearing habitats occur, Southeastern Alaska coho stocks can be expected to continue producing sustained yield at or near the levels of recent years. There is concern that full gillnet fisheries may over-exploit mainland coho in northern Southeastern Alaska. Studies are underway to define the status of these coho and to measure the effects on them of various fisheries.

Southeastern Alaska coho production also holds promise of significant increases through various hatchery and artificial enhancement measures. However, an issue of vital importance is the relationship between coho production from native and hatchery stocks. These two sources of coho must be recognized and managed to avoid developing dependency on hatchery fish to the detriment of native fish. There are indications that increased ocean fishing pressure stimulated by successful hatchery programs may have adversely affected native coho in Oregon (Oregon Department of Fish and Wildlife 1976).

The troll fisheries in waters under Council jurisdiction occur primarily in the area known as the Fairweather Grounds. Approximately 89 percent of the chinook troll landings from offshore waters since 1971 came from the Fairweather Grounds (Table 13). While chinook troll landings (numbers) for Council waters have averaged about 15 percent of the total Alaska troll landings for the period 1971–1977 (Table 12), they have ranged annually from about 9 to 25 percent during the same period. Troll landings (numbers) of coho in Council waters during this time have averaged 6 percent of the total Alaska coho troll catch.

Some stocks of chinook salmon involved in this fishery originate in Alaska streams, but based on large numbers of recent recoveries of fish marked with coded wire tags as juveniles and recovered as immature and mature adults in the Alaska troll fishery they originate primarily in British Columbia mainland streams, Vancouver Island streams, Washington coastal streams, Puget Sound, the Columbia River, Oregon coastal streams, and to a lesser degree the streams of Idaho and California (Davis 1976; Davis and Selin 1977).

These stocks intermingle to an unknown degree in the offshore and coastal areas of Southeastern Alaska where an extensive troll fishery has developed to harvest them. Changes in fishing effort in offshore waters will have an effect on fish destined for the coastal and inshore waters. *Based on recent recovery patterns of coded wire tagged fish, all groups of marked chinook caught on the Fairweather Grounds are also caught in coastal or inshore waters.*

Intermingling of chinooks contributes to problems of managing the offshore fishery. Analysis of catch statistics indicates that the average weight of chinook salmon caught in area 157 (Fairweather Grounds) in May and June is generally greater than the average weight of chinook from that area in August. The average weight in this area early in the season (May–June) is often greater than 15 pounds dressed weight for chinook while late in the season (August–September) the average weight is often only 10–12 pounds (See Appendix Figures AI–1 and AI–2, and Appendix Table AI–2). These data indicate that the Fairweather Grounds are a primary ocean nursery area for many chinook stocks. Each year new broods of young immature chinook migrate northward to the Fairweather Grounds, while older year classes of mature fish migrate southward toward natal streams. The timing of arrival and departure of these groups of chinook is important in developing fishery management strategies for the area.

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Table 12 Average annual landings, numbers, pounds (dressed), and percent of chinook and coho salmon caught in offshore, coastal, and inshore Alaska troll fish management areas[1/] during the 6-year period 1971-1976.

	Landings[2/]	Chinook		Coho	
		number	pounds	number	pounds
Offshore					
Area 150	2	143	1,666	521	2,976
Area 152	1	82	1,067	24	160
Area 154	6	439	5,506	959	7,439
Area 157	290	40,338	504,626	29,397	199,896
Area 189	2	191	2,215	171	877
Area 199[3/]					
Subtotal	301	41,193	515,080	31,072	211,348
Percent	1.6	15.8	14.9	6.4	6.4
Coastal					
Area 104	2,678	44,317	657,131	85,654	530,331
Area 113	2,480	60,027	870,697	70,820	475,342
Area 116	609	11,385	133,822	45,540	319,498
Area 181	5	730	6,526	138	860
Area 184	2	225	2,467	37	284
Area 191	8	1,298	14,880	221	1,503
Subtotal	5,782	117,982	1,685,523	202,410	1,327,818
Percent	30.7	45.3	48.6	41.5	40.2
Inshore					
Area 101	1,103	20,360	226,159	44,919	270,114
Area 102	432	5,553	58,845	10,366	60,789
Area 103	1,811	16,262	230,238	46,447	280,204
Area 105	243	4,398	60,899	7,345	47,744
Area 106	984	7,401	89,551	14,716	102,238
Area 107	334	4,173	55,004	3,015	21,606
Area 108	316	2,387	33,170	1,656	11,974
Area 109	858	4,149	59,858	18,522	117,454
Area 110	429	9,104	116,372	11,194	73,502
Area 111	2,130	5,607	59,874	19,806	153,157
Area 112	273	1,820	25,008	2,536	19,097
Area 114	3,716	17,300	220,264	70,768	584,478
Area 115	34	674	9,854	1,372	12,042
Area 183	87	1,913	21,199	1,878	14,287
Subtotal	12,750	101,101	1,266,295	254,540	1,765,686
Percent	67.7	38.8	36.5	52.1	53.4
All Areas					
Grand total	18,833	260,276	3,466,898	488,022	3,304,852
Percent	100	99.9	100	100	100

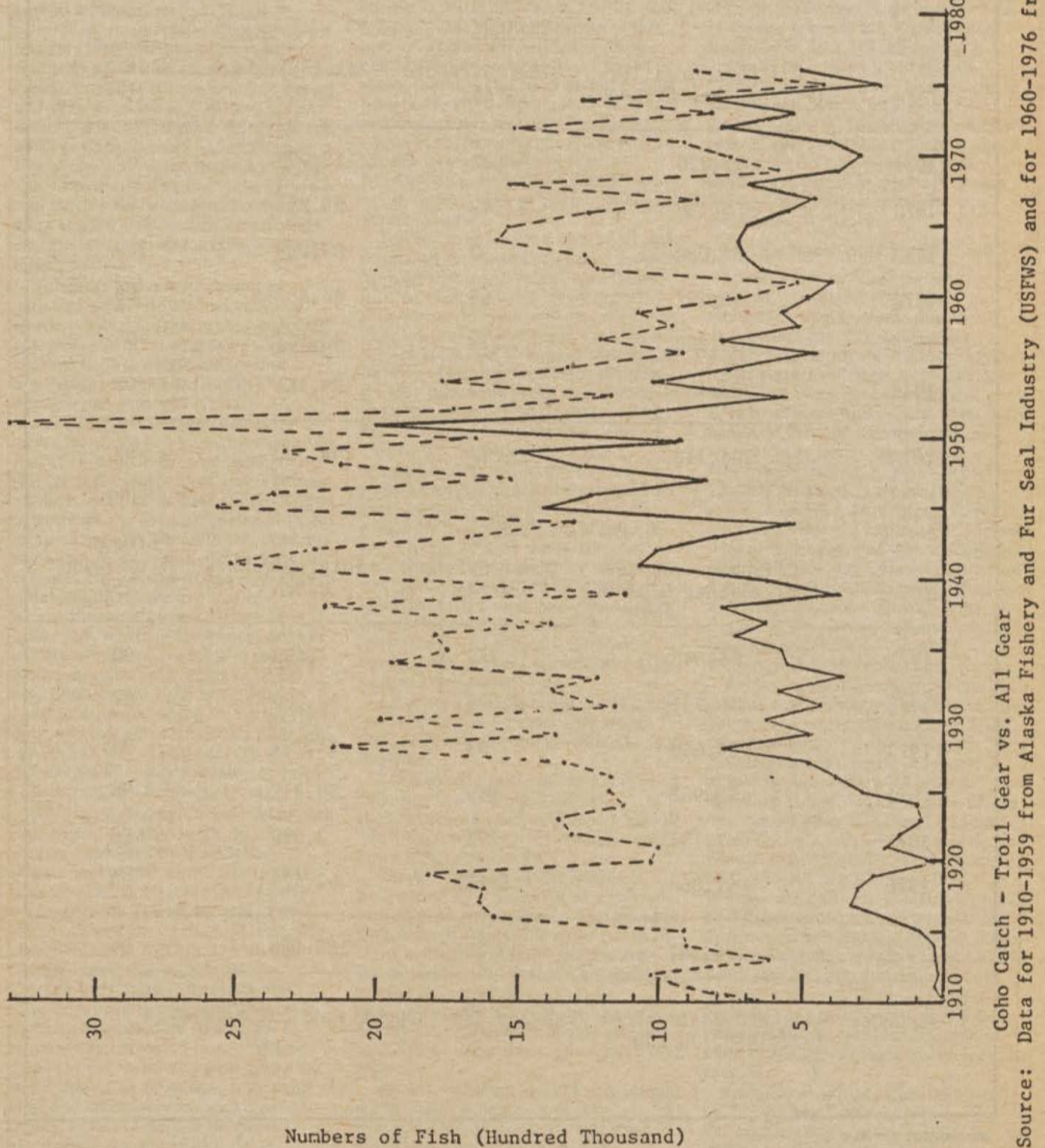
1/ Management areas are shown in Figure 1; Offshore, Coastal, and Inshore designations are defined in section 2.2.

2/ Annual landings were not made in all areas in each of the 6 years. Averages are based only on those years in which landings were made.

3/ No reported landings.

Source: Derived from Appendex Table AI-3

FIGURE 13



Coho Catch - Troll Gear vs. All Gear

Source: Data for 1910-1959 from Alaska Fishery and Fur Seal Industry (USFWS) and for 1960-1976 from ADF&G

Table 13 Number and Percent of Offshore Troll Caught Chinook and Coho Salmon in Area 157 (Fairweather Grounds), 1971 to 1976.

CHINOOK

Year	Offshore area 157 (Fairweather Grounds)	Other Offshore Areas	Total Offshore Catch	Percent from Area 157
1971	17,270	822	18,092	95
1972	25,106	1,149	26,255	96
1973	84,088	0	84,088	100
1974	46,192	65	46,257	99
1975	39,969	218	40,187	99
1976	28,488	963	29,451	98
TOTAL	241,113	3,217	244,330	99

COHO

Year	Offshore area 157 (Fairweather Grounds)	Other Offshore Areas	Total Offshore Catch	Percent from Area 157
1971	6,848	785	7,633	90
1972	40,931	1,075	42,006	97
1973	34,649	92	34,741	99
1974	38,962	955	39,917	98
1975	7,134	276	7,410	96
1976	47,867	5,622	53,479	90
TOTAL	176,381	11,805	185,186	95

Source: Alaska Department of Fish and Game unpublished catch reports 1971-1976, Juneau.

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Tagging of troll-caught chinook from Cape Spencer to Cape Fairweather (both immature and mature fish) by Parker and Kirkness (1956) also demonstrated that this area is a primary nursery ground for immature fish. Based on subsequent recovery of fish tagged from this area and from two other more southerly areas along the Southeastern Alaska coastline (Cross Sound to Sitka and Warren Island to Cape Felix) they estimated that 80 percent of the chinook north of Cape Spencer with 4 years or less of ocean residence were immature fish. Conversely they found the opposite relationship for fish tagged in the two more southerly areas; fish for all of the size groups commonly encountered were largely mature.

Voluntary logbook information gathered between 1971 and 1974 has shown a sublegal (shaker) to legal sized chinook ratio of 1:1 or greater when the average landed weight for an area approaches 10 pounds (ADF&G unpublished data 1971–1974). Considering an estimated shaker mortality of one fish killed for every two that are boated in the troll fishery (Ricker 1976), losses from such a fishery are high. Additional losses in production occur when the chinook landed have not attained maximum growth potential. For Canadian, Washington and Oregon chinook, any harvest of less than 28-inch (total length) results in a loss of potential annual growth (Ricker 1976). These fish, whether of spring or fall run variety, would be available to the troll fishery in subsequent years (ADF&G unpublished data 1974–1976). For Alaskan chinook, which are spring run only, any fishing which occurs after July results in a loss of potential growth as fish caught after July 1 would not mature at least until the following spring.

Coho harvested by the troll fishery are primarily of Alaskan origin. Marking studies conducted by the Alaska Department of Fish and Game in 1972 have shown catch rates of 35.7 to 40.3 percent for the Taku River and Lynn Canal coho stocks by the troll fishery in statistical areas 157, 116, 114, and 113 (ADF&G unpublished data 1974). Catches from these areas show that coho from inshore mainland streams in northern Southeastern Alaska are sequentially harvested from offshore areas to near their natal streams by the troll fishery. Tag recoveries from coho tagged at artificial rearing facilities at Crystal Lake hatchery in Petersburg, Starrigavan Bay near Sitka, the Mendenhall ponds and Fish Creek pens near Juneau, and the NMFS facility at Little Port Walter have indicated southerly migration routes of adult coho from areas north of Cape Spencer.

The fishery in statistical area 157.00 (Fairweather Grounds) harvests on the average about 6.4 percent of all coho landed in the Southeastern Alaska troll fishery (Table 12). Coho caught in this area originate from various parts of northern Southeastern Alaska based on recent marking studies of juvenile coho from both native and hatchery fish. No marking studies on juvenile coho from stocks in southern Southeastern Alaska have been conducted and it is not known if coho from this region also use ocean waters north of Cape Spencer as nursery areas.

The status of sockeye, chum and pink salmon in *Southeastern Alaska* ranges from present low levels of abundance for chum salmon to seriously depleted sockeye stocks. Pink salmon constitute 74 percent of the Southeastern Alaska salmon catch, but stocks are merely a fraction of historic high catch periods. (In 1941, 60 million pinks were taken; the 1960–75 average catch figure for all of Southeastern Alaska was 5.5 million.)

In *Prince William Sound,* the commercial effort is primarily with purse seines for pink and chum salmon; pink salmon catches for the 1960–75 period are half (3.3 million) of historic catch levels. Chum salmon are considered in good condition. Sockeye and coho are thought to be in good condition with recent low coho catches considered short term and environmentally induced. Chinook harvests are of minor importance in this salmon management area.

All salmon species are at historic low levels in the *Cook Inlet* management area, with chinook stocks seriously depleted.

The *Kodiak* region pink and chum salmon are in healthy condition; sockeye are seriously depleted. Chinook and coho are of minor importance and taken only incidentally.

Alaska Peninsula/Chignik area is predominantly a pink salmon area and those stocks are depressed considerably from historic levels. The same is true of chum salmon. Coho and chinook are insignificant in this fishery (one percent of the total catch) while sockeye, although second in importance in this fishery are in decline. (Chignik sockeye rank first in economic importance in that region.)

Bristol Bay chum and chinook salmon are in sound condition with recent catch averages near or above historic levels; pink salmon are in fair shape and appear to be in the process of recovery. Sockeye (90 percent of the commercial catch) catches in the period 1960–75 were slightly more than half the historical high average of 14.7 million. Coho are of minor importance in this commercial fishery.

Chum salmon (70 percent) and chinook (20 percent) comprise the bulk of species taken in the *Arctic-Yukon-Kuskokwim* area, but the status of stocks in this region is not known. Chinook have declined substantially in recent years; chum are apparently in good condition. The biological status of coho is virtually unknown and sockeye occur only in small numbers. Pink salmon are caught incidentally in this fishery, with harvestable surpluses apparently available.

4.8.1 *Maximum Sustained Yield (MSY)*

Under ordinary management procedures using MSY, where recruitment requirements determine escapement goals for individual populations or groups of stocks, harvest levels should be based only on surplus fish above recruitment needs. The Alaska offshore troll fishery, however, is based on variable harvest levels of mixed stocks before the relative strengths of individual runs are known. There is no practical mechanism for evaluating troll fishing rates on chinook while the fishery is in progress. The only case of in-season, real-time management action regulating the Alaska ocean troll fishery was the 1975 areawide closure of all commercial coho fisheries from August 15–31. Greatly reduced coho landings had indicated severely depressed Alaskan coho runs.

Achieving maximum yield levels in pounds requires eliminating harvests of any salmon with remaining significant growth potential when the rate of growth exceeds the rate of natural mortality. Achieving MSY would therefore necessitate closing the ocean troll fishery since it is based on salmon taken during an active growth period when natural mortality rates are low. Shaker losses of undersized fish increase the difficulty of justifying ocean troll fisheries. Recent estimates of the growth rate for coho and chinook during their last growing season are 26 percent per month for coho and 6 percent per month for chinook (fifth year) while estimates of mortality rate during the same period are considerably lower, averaging 1.3 percent per month for both species.

Recent shaker loss estimates for troll fishing are one fish lost for every two fish landed (Ricker 1976). Earlier, Wright (1970) in reviewing the results of 35 separate studies on hooking losses found that mortality estimates on chinook ranged from 2.5 to 71.0 percent.

Shaker mortalities are a function not just of injury to the fish but are also due to subsequent effects of stress and physiological shock—in effect a delayed mortality. Muscle fatigue and a buildup of high blood levels of lactic acid have been associated with delayed hooking mortalities where mechanical injuries were judged to be minimal (Black 1958; Parker and Black 1959). Hence, it is not thought that hook type (e.g. barbed or barbless) significantly influences shaker mortality rates.

The net effect of maintaining an ocean troll fishery is a major loss of chinook and coho salmon production annually as compared to catching the same fish closer to its natal streams. The ratio of loss to potential yield is less for coho than for chinook since almost all coho are harvested in their last year of life and closer to their maximum size than many troll caught chinook.

The extent of this loss for Alaskan chinook is not clear because of the unknown contribution of these stocks to the troll fishery. An estimate has been made for Columbia River chinook which contributes significantly to the Alaska troll fishery. This estimate (Ricker 1976) projects an increase in yield (weight) ranging from 63 to 98 percent of present levels by discontinuing ocean trolling and correspondingly increasing the river fishery. Applying these percentages to the current Alaska troll fishery catch of chinook would increase the average annual yield of 3.5 million pounds to 5.7–6.9 million pounds.

4.8.1.1 *Equilibrium Yield (EY)*

Equilibrium yield, the seasonal annual harvest that maintains the resource at approximately the same level of abundance in subsequent years is, like MSY, difficult to relate to the Alaska troll fishery. Major shifts in the number of fish from the diverse populations which make up the complex mixture of chinook would accordingly change the harvest composition. If this occurred, for example, with major increases in Pacific Northwest hatchery production concomitant with further declines in Alaska chinook, the troll fishery catch could be maintained at approximately the same level, achieving EY, but with disasterous consequences for native Alaskan chinooks. EY for non-Alaskan chinook in the offshore troll fishery may be equal to the average catch of these fish in recent years. There is however, a distinct possibility that endemic nonhatchery fish from other geographic areas may, like native Alaskan fish, be adversely impacted by any harvest in the Alaskan troll fishery.

A tentative EY for chinook taken by the troll fishery off Southeastern Alaska cannot be calaculated because of the complex mixture of stocks involved and because of the unknown proportion of depressed Alaskan stocks in this mixed-stock fishery. To set even an arbitrary EY value for the troll fishery for chinook would imply the resource (chinook stocks that collectively make up the resource) could maintain approximately the same level of abundance. Present indications suggest that any level of harvest on depressed Alaskan stocks would push these same stocks to even lower levels of abundance and that under current conditions no equilibrium yield is possible.

New research involving detailed marking studies of juvenile chinook from known Southeastern Alaskan stocks is critically needed to define the distribution and contribution of these stocks, not only in the offshore troll fishery but also in the coastal and inshore troll fishery and all other fisheries that catch these fish.

Test Appendix Index

6.0 *Optimum Yield (OY)*
6.1–3 *Optimum Yield (OY)*

List of Tables

Table 14 Number of Vessels per Category of: Income From all Troll Fishing by Percent of the Income that was Caught North of Cape Spencer. 99 Vessels for 1976.

Appendix 6.0—Optimum Yield (OY)

6.1–3 *Optimum Yield (OY0*

In terms of total pounds caught, troll fishing in offshore areas north of Cape Spencer is more important than other troll areas in Council waters, i.e. about 98 percent of all chinook and 95 percent of the coho caught in the offshore troll fishery are caught north of Cape Spencer (6-year average, 1971–76). This offshore fishery constitutes 10 percent of all troll caught chinook and coho in Southeastern Alaska.

In 1976, 99 vessels (1 hand and 98 power trollers) fished the waters north of Cape Spencer, which is only 12 percent of the 801 power vessels that made landings in Alaska ("freezer"-type vessels fishing offshore Alaska and making landings out of State jurisdiction are not monitored or included in these figures).

The 1976 total income (based on average prices reported by the Fisheries Market News Service) from all fisheries (troll salmon, net salmon, halibut, etc.) for these 99 vessels was $2,858,000 with 75 percent ($2,152,000) coming from troll fishing, 45 percent of this ($969,000) came from the offshore areas north of Cape Spencer. This was only 12 percent of the total value of the troll fishery in Southeastern Alaska (see section 3.5.2.1).

The 1976 average income per vessel from troll salmon fishing (for the 99 vessels offshore north of Cape Spencer) was $22,000 with 46 percent ($9,900) attributed to the offshore waters north of Cape Spencer.

Table 14 shows the distribution of these 99 vessels into categories of: vessel's income from all troll fishing versus percent of that income which was caught offshore north of Cape Spencer.

The columns (labeled across the top increments of 5 thousand) represent categories of income from troll fishing in all areas (not just offshore north of Cape Spencer). The rows represent categories (labeled on the left side by 10 percent increments) for the percent of the vessel's total troll income that was caught in offshore waters north of Cape Spencer.

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TABLE 14

VESSEL'S INCOME FROM SALMON TROLLING - ALL AREAS

(thousand dollars)

Percent of vessel income caught north of Cape Spencer	5	10	15	20	25	30	35	40	45	50	55	60	Row Totals
100 90	1		4	3	1	1							10
80		2	2			2	1				1		8
70	1		1	1	2	1	1				2	1	10
60	1		2	2	1	1	1			1			9
50	1	2		4	1		1	2					11
40		3	1	1		1		1	1				8
30		2		3	1		1	1		1			9
20		2	2	1			1	1					7
10	2	1	2	1			2	2					10
0			3	4	2	2	3	2		1			17
Column totals	6	12	17	20	8	8	11	9	1	3	3	1	99

Number of vessels per category of: Income from all troll fishing by percent of income caught north of Cape Spencer. (99 vessels for 1976)

Compiled by CFEC

BILLING CODE 3510-22-C

The values within the squares are the number of vessels whose total income and percent income from the offshore waters north of Cape Spencer fall within the specific categories. For example, there is one vessel (in the heavily outlined square) represented by a 50–55 thousand dollars total income from trolling (11th column from left) with 80–90 percent of this income coming from the offshore waters north of Cape Spencer (2nd row down from the top).

This vessel happens to have caught the greatest value in offshore waters north of Cape Spencer ($53,000 total troll income times 83 percent from offshore equals $43,000 income from offshore).

One half of these 99 vessels (48) made more than 50 percent of their income in the offshore waters north of Cape Spencer. This is less than 6 percent of the total power troll fleet that made landings in Alaska.

Obviously, the vessels fishing the offshore waters consider their efforts to be worth the costs and risks of fishing the open ocean. This ability is reflected by their average vessel length of 42 feet which is 7 feet longer than the average length for the entire power troll fleet (801 vessels). This ability also means that they are quite capable of fishing the coastal and inshore waters, which in fact, 94 percent of them do.

Text Appendix Index

7.0 Total allowable level of foreign fishery (TALFF)

Appendix 7.0—Total Allowable Level of Foreign Fishery (TALFF)

7.0 *TALFF*

U.S. and Canadian salmon intermingle to a significant degree, especially off southern Southeastern Alaska, and ocean fisheries off the coasts of either country exploit fish destined for the other. Catches in the ocean have a direct bearing on both countries' management of "inside" net and recreational fisheries for the same fish. Proper overall management of these salmon will require joint efforts by the two countries.

Data on the incidence of chinook caught by the Japanese trawl fleet off Alaska are available only for the months of March, April and May (1976 observer data). The incidence (number chinook per metric ton of groundfish catch) ranged from 0 to 0.555; the average incidence for all months/areas was 0.1335. If we apply this average incidence to the Japanese catch in 1975 (the latest year for which data are available) during March, April and May, we obtain an estimated catch of 1,917 chinook salmon (coho were not observed). In applying the average incidence to the total Japanese catch in 1975 (assuming the incidence is comparable for other months) we obtain an estimated catch of 7,422 chinook for the year (French and Miller 1976).

Precise information on the incidental catch rate of trawl caught salmon is not available for the U.S.S.R. fishery (French and Miller 1976).

There are occasional unconfirmed reports of illegal foreign gillnet fishing in the eastern Gulf of Alaska. In addition, commercial troll fishermen in recent years have reported the occurrence of gillnet marks on chinook and coho landed from offshore and coastal troll fisheries. ADF&G port samplers recorded the occurrence of these marks; from 1973 to 1975 gillnet marks on troll caught salmon ranged from 0.2 to 0.7 percent of the fish sampled (Davis 1976). Quantities of foreign monofilament gillnet material have also been found floating offshore and on coastal beaches in Southeastern Alaska. It is not known, however, if the material originated from illegal fishing in the Gulf of Alaska or legal high seas gillnet fishing farther westward. With enactment of Pub. L. 94–265 and subsequent increased ocean surveillance, any illegal high seas gillnet fishing that might impact the Alaskan troll fisheries presumably will be reduced or eliminated.

Appendix 8.3.1.3—History and Development of Alaska's Commercial Fisheries Entry Commission

Discussion of Considerations

The State of Alaska, prior to the FCMA, historically managed the inshore and offshore troll fishery as a unit; the salmon stocks move inside and outside the three-mile line as does the fleet of troll vessels operating on those stocks. Alaska acted to protect troll salmon stocks whether they were found within or beyond territorial waters.

The State of Alaska passed limited entry enabling legislation in April of 1973. Pursuant to the Act, the Commercial Fisheries Entry Commission was formed to write and implement regulations limiting entry into those fisheries which, in the Commission's judgment, required limitation.

In 1974, after considering the available biological data, consulting with fishery management personnel, conducting an economic study of the fishery and holding public hearings in communities throughout southeast Alaska, the Commission decided to limit entry into the power troll fishery, effective with the 1975 season. At the same time the Commission limited entry into all the salmon net fisheries from Bristol Bay south and eastward. The remaining salmon net fisheries in the north were limited in the following year. Due to intense political pressure, the hand troll fishery was and still is the only salmon fishery not subject to limited entry.

In accordance with past management practices in treating inside and outside waters as a unit, the State limited entry into the power troll fishery based upon fishermen's participation both inside and outside territorial waters.

Application of the limited entry system to waters beyond the limits of Alaska territorial jurisdiction was effected through a regulation which prohibited possession of fish aboard a fishing vessel without a valid interim-use or entry permit for that type of fish and gear.

The Entry Commission's decision to limit entry into the power troll fishery was based on a spectrum of reason. The number of vessels participating in the fishery had been increasing, harvesting capacity of the fleet was also increasing and the existing fleet was more than adequate to take any expected returns. Resource levels were greatly depressed, with some stocks at all-time low levels, due in part to the efficiency of the power troll fleet; many direct and indirect regulatory efforts had failed, with others resulting in only minor effect on the fishery; and stern conservation and management measures were necessary to reverse the trend of depression in the fishery stocks (4.8). The Commission thus opted for a conservative decision in acting to halt the growth of the power troll fleet operating on those stocks.

The following discussion of various aspects of the limited entry system is illustrative of the Council's consideration of the existence of Alaska's functioning program and its impact on and potential for the limited entry system in the FCZ. Since the existing Alaska system is intended to play a partnership role with the limited entry system for the FCZ, it is advisable to set forth in some detail the history of the Alaska system.

Title 16 of the Alaska Statutes was amended, effective 27 April 1973, by adding Chapter 43, entitled "Regulation of Entry Into Alaska Commercial Fisheries." This law created the Alaska Commercial Fisheries Entry Commission and, effective 21 December 1973, regulations adopted by the Commission required all persons who wanted to participate in this fishery to hold valid interim-use permits pending the establishment of a system for issuing entry permits. Interim-use permits for this fishery are distinguishable from

entry permits in that interim-use permits are temporary and may be transferred only on a temporary basis in case of an emergency, whereas entry permits are permanent and freely transferable.

On 18 December 1974, Commission regulations went into effect which required all participants in the power troll fishery to hold entry permits, established a point system for the issuance of those permits and set the guidelines under which the Commission would function and permits would be issued. These regulations are found in Title 20 of the Alaska Administrative Code in Chapter 05.

Having determined that a need existed to limit access to the Alaska power troll fishery in 1975, it became necessary to determine how many entry permits should be issued.

Alaska law required that all power troll fishermen who qualified for 20 or more points must be issued a permit at the outset. This group of fishermen included those who were characterized as those who would suffer "significant economic hardship" if denied an entry permit at the outset of the program. The State determined that unless accommodating those in this category required a greater number, the existing size of the power troll fleet should not be exceeded. This determination was based upon the fact that even with the present fleet size, limited entry was necessary for conservation and management, and social/economic reasons.

The State further determined that substantial social and economic dislocation could occur if the number of entry permits issued at the beginning of the program was less than the approximate size of the fleet as of the date of the passage of the law in early 1973. By not reducing the size of the fleet at the outset, the State nevertheless prevented any further unwarranted growth which could only result in continued deterioration of the native Alaska stocks.

The current fleet size was determined to be 950 units of gear (i.e., boats). Thus, entry was limited at the outset to a fleet of the approximate current size, the maximum number of permits being 950, with the overriding requirement that all who would suffer "significant economic hardship" be issued a permit even if 950 must be exceeded.

It was not intended that the 950 units of gear represent the optimum size for the power troll fleet. This number simply represents a restraint on further growth, with the determination of the actual optimum number yet to be made.

The Council is in accord with the Alaska Commercial Fisheries Entry Commission's finding that a system of limited entry is necessary and appropriate for the management of the power troll fishery. The considerations which prompted the Commission's decision in 1974 were valid. Other information which has become available since 1974 reaffirms that conclusion.

During the period from 1969 to 1977, when increases in the fleet occurred, they correlated with increased catch and with smaller average catches per gear operator. The increases in catch were undesirable from a biological management point of view and the smaller average catches per gear operator suggests a decline in salmon. Lower average catches per boat, moreover, were undesirable from the standpoint of economic efficiency and social stability. The reduction of the fleet from its 1974 high level effected by limited entry resulted in a trend towards larger average catches per gear operator.

The Council further argues that Alaska's decision to limit the power troll fleet to its pre-1973 level was appropriate. Although adequate information was not available from which to determine the optimum number of catching units for the fishery, the need for prompt action was evident. Taking into consideration the requirement for protecting the resource, and on the other hand, the importance of avoiding economic hardship and social disruption for those dependent upon the fishery, the decision on the fleet size was a necessary first step to achieve valid State and Federal concerns.

The point system used by Alaska to issue permits under Commission regulations gives consideration to a broad range of factors: number of years in the fishery; kind of participation (crew member or gear license holder); consistency of participation; income percentage derived from the fishery; reliance on alternative occupation; vessel and gear, and unavoidable and special circumstances that precluded participation or precluded a realistic representation of the points that should be awarded. The system is built around participation in and economic dependence upon the fishery and is designed to insure that those applicants get entry permits who would suffer the greater degree of hardship if excluded from the fishery, and as stated earlier, the entire power troll fishery, including that which is now in the FCZ, was subject to the point system.

The Council concurs that the optimum number of power troll permits for the whole fishery is not in excess of 950. The Council also believes that these 950 permits are, (due to the breadth of factors initially accounted for by the State) indicative of those persons who are presently participating in the entire fishery, including the FCZ.

BILLING CODE 3510-22-M

TABLE 8

Permit status of gear operators who fished in the FCZ from 1975-1977.

Alaska Power Troll Permit Status Type--	No. of Cases
Original issuees who still hold permits	123
Original issuees who have transferred permits away	13
Transferees who now hold permits	36*
Transferees who have transferred permits away	2
Interim-use permits still held in 1978	3
OTHER:	
Estates	1
Hand Trollers	5
No permit, possible fish ticket error	1
TOTAL	184

*Of these, 3 are people who still have unsettled permit applications, but went ahead and acquired a permanent entry permit.

Compiled by CFEC

(Last Page of High-Seas Salmon FMP)

[FR Doc. 79-17521 filed 6-7-79; 8:45 am]
BILLING CODE 3510-22-C

federal register

Friday
June 8, 1979

Part IV

Department of Labor

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions and Corrections to Previous Document

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

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 on construction projects 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. 224–70) 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. 224–70) 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, Wage & Hour Division, Office of Government Contract Wage Standards, Division of Construction 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.

New General Wage Determination Decisions

Kentucky.—KY79–1099.

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.

Alabama:	
AL79–1065	Apr. 13, 1979.
Connecticut:	
CT79–2010; CT79–2011	Apr. 6, 1979.
Kentucky:	
KY76–1111	Oct. 1, 1976.
New Jersey:	
NJ77–3092	Oct. 7, 1977.
Ohio:	
OH79–2043	May 4, 1979.
OH79–2047; OH79–2048; OH79–2049; OH79–2050	May 11, 1979.
Pennsylvania:	
PA78–3017	May 5, 1978.
PA78–3066	Sept. 22, 1978.
PA78–3068	Sept. 29, 1978.
PA79–3004	Mar. 16, 1979.
PA79–3008	Apr. 27, 1979.
Virginia:	
VA78–3074	Nov. 3, 1978.
West Virginia:	
WV78–3018	June 9, 1978.

Cancellation of General Wage Determination Decisions

None.

Signed at Washington, D.C., this 1st day of June 1979.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

[FR Doc. 79-17514 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-27-M

NEW DECISION

STATE: KENTUCKY
COUNTIES: BOYD, CARTER, ELLIOTT, FLEMING, GREENUP, JOHNSON, LAWRENCE, LEWIS, MARTIN, MORGAN, ROWAN.
DECISION NUMBER: KY79-1099 DATE: DATE OF PUBLICATION
DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS - includes single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AIR CONDITIONING & HEATING MECHANICS	$ 5.50				
BRICKLAYERS	7.35				
CARPENTERS	5.92				
CEMENT MASONS	5.99				
DRYWALL FINISHERS	6.24				
DRYWALL HANGERS	6.00				
ELECTRICIANS	6.00				
INSULATION INSTALLERS	4.00				
LABORERS:					
Unskilled	3.50				
Mason tenders	4.00				
PAINTERS	5.74				
PLUMBERS & PIPEFITTERS	6.25				
ROOFERS	5.00				
SHEET METAL WORKERS	5.50				
SOFT FLOOR LAYERS	5.00				
TILE SETTERS	5.00				
TRUCK DRIVERS	3.50				
WELDERS - Rate for craft.					
POWER EQUIPMENT OPERATORS:					
Backhoe	8.25				
Bulldozer	8.25				

MODIFICATIONS P. 1

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. AL79-1065 - Mod. #1 (44 FR 22305 - April 13, 1979) Colbert and Lauderdale Counties, Alabama					
Change:					
Electricians:					
Electricians	11.30	.50	3%+.50		1%
Cable Splicers	11.55	.50	3%+.50		1%
DECISION NO. CT79-2010 - MOD #4 (44 FR 20913 - April 6, 1979) Fairfield, Litchfield and Windham Counties, Connecticut					
CHANGE:					
PAINTERS:					
Fairfield Co.: Bethel, Brookfield, Danbury, New Fairfield, Newton, Redding, Richfield, Sandy Hook & Sherman; Litchfield Co.: New Milford					
Brush, Paperhangers, Tapers	$11.60	.50	.50	r	
Steel	12.90	.50	.50	r	
Epoxy	14.00	.50	.50	r	
Residential	9.85	.50	.50	r	
Spray	17.40	.50	.50	r	
DECISION NO. CT79-2011 - MOD #4 (44 FR 20921 - April 6, 1979) Hartford, Middlesex, New Haven, New London and Tolland Counties Connecticut					
CHANGE:					
PAINTERS:					
Hartford Co.: Avon, Bloomfield, Broad Brook, Canton, E. Granby E. Hartford, E. Windsor, Enfield, Farmington, Glastonbury Grandby, Hartford, Manchester, Marlborough, Poquonock, Rocky Hill, Sinsbury, S. Windsor, Suffield, S. Manchester, W. Hartford, W. Sinsbury, Wetherfield, Windsor & Windsor Locks; Tolland Co.: Andover, Ashford, Bolton, Columbia, Coventry, Ellington, Hebron, Mansfield, Rockville, Strafford, Somers, Tolland, Union, Vernon & Wellington					
Brush; Tapers	$10.60	1.10	.85		

DECISION NO. CT79-2011 - MOD #4 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
PAINTERS: (Cont'd)					
Paperhangers	$11.10	1.10	.85		
Riding Steel; Steam Cleaning; Sandblasting; Tank; Towers; Spray	11.18 13.60	1.10 1.10	.85 .85		
Hartford Co.: Berlin, Bristol, Burlington, E. Berlin, Forestville, Hartland, Kensington, Milldale, New Britain, Newington, Plainville, Plantsville, Southington and Unionville; New Haven Co.: Cheshire, Guilford, Madison, Meriden, & Wallingford; Middlesex Co.: Chester, Clinton, Cromwell, Deep River, Durham, E. Haddam, E. Hampton, Essex, Haddam, Higganum, Ivoryton, Killingworth, Middlefield, Middletown, Moodus, Norfolk, Portland, Saybrook & Westbrook					
Brush; Roller; Taping	10.25	.90	.60		
Spray	12.90	.90	.60		
Epoxy	10.45	.90	.60		
Paperhanging	10.75	.90	.60		
Work over 60 ft. & Boatswain chair; Open Steel	15.38	.90	.60		
Swing Stage 40-60 ft.	11.25	.90	.60		

DECISION NO. KY76-1111 - Mod. #1
(41 FR 43466 - October 1, 1976)
Carter, Elliott, Fleming, Lewis, Mason, Nicholas, Robertson, and Rowan Counties, Kentucky

OMIT THE FOLLOWING COUNTIES:

Carter, Elliott, Fleming, & Lewis

DECISION #NJ77-3092 - Mod. #8
(42 FR 54726 - October 7, 1977)
Bergen, Essex, Hudson, & Passaic Counties, New Jersey

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers, Stonemasons, Cement Masons, & Plasterers:					
Area 1	11.75	.92	.90		.05
Area 2	10.50	1.97	.95		.05
Area 3	12.10	.84	.90		.02
Area 4					
Cement Masons	11.70	.75	1.00		
Plasterers	11.70	.75	1.00		.05
Carpenters, Insulators, & Millwrights:					
Area 1					
Carpenters & Insulators	12.13	8%	7%		½%
Millwrights	12.38	8%	7%		½%
Electricians & Cable Splicer:					
Other Residential Construction:					
Essex County	13.75	9%	12%		
Passaic County	14.25	7%	3%+7%		
Glaziers:					
Bergen & Passaic Counties	11.17	.80	2.00	1.25	.03
Essex & Hudson Counties	12.45	1.00	2.00		.05
Laborers:					
Area 1					
Group 1	8.40	.85	.85		.07
Area 3					
Group 1	9.25	.45	.55		.07
Group 2	9.50	.45	.55		.07
Area 4					
Unskilled laborer	8.80	.80	.50		.07
Area 5					
Unskilled laborers	8.50	.75	.85		.07
Area 7					
Unskilled laborers	8.15	.80	1.20		.07
Line Construction:					
Essex County:					
Linemen, Cable Splicers, Line Equipment Operators, Line Truck Operators & Groundmen	13.75	9%	12%		3/4%
Passaic County:					
Linemen & Equipment Operators	14.25	7%	10%		3/4%
Cable Splicers	15.32	7%	10%		3/4%
Groundmen	9.975	7%	10%		3/4%
Pipefitters:					
Bergen & Hudson County and the city of Passaic in Passaic Co.	12.00	1.00	1.90	1.00	.25

DECISION #NJ77-3092 - Mod. #8

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Plumbers:					
Area 1	13.60	1.00	1.35		.25
Area 2	13.60	1.00	1.35		.25
Area 3	13.60	1.00	1.35		.25
Area 4	13.60	1.00	1.35		.25
Plumbers & Pipefitters:					
Area 2					
Plumbers	13.60	1.00	1.35		.25
Pipefitters	12.00	1.00	1.90	1.00	.25
Sheet Metal Workers:					
Essex & Passaic Counties	11.75	4%+.67	4%+.46	8%	.01

DECISION NO. OH79-2043 - MOD #2
(44 FR 26504 - May 4, 1979)
Statewide, Ohio

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ELECTRICIANS:					
Holmes & Stark Counties, the remainder of Carroll and Tuscarawas Counties, Columbiana County (Knox Twp.), Mahoning County (Smith Twp.) and Wayne County (south of Baughman, Chester, Green and Wayne Twps.)	$13.35	.55	3%+.60		.3%
Summit County, the remainder of Medina & Wayne Counties & Portage County (excluding Twps. of Charleston, Edinburg, Freedom, Hiram, Palmyra, Paris and Windham)	13.66	.74	3%+.65		.2%
PAINTERS:					
Ashtabula, Cuyahoga, Geauga & Lake Counties, Lorain (North East Part) and Portage & Summit Counties (North of the Ohio Turnpike):					
Brush	12.96	.82	1.00		.05
Bridge and Open Steel; Closed Steel Over 55'	13.66	.82	1.00		.05
Closed Steel Below 55'; Spray	13.36	.82	1.00		.05
Erie, Hancock, Huron, Sandusky, Seneca and Wyandot Counties					
Brush	11.80	.70	.70		50.00p/yr
Structural Steel and Bridges	11.25	.70	.70		50.00p/yr
LINE CONSTRUCTION:					
Carroll (N ½ incl. Fox, Harrison, Rose & Washington Twps.), Columbiana (Knox Twp.), Holmes, Mahoning (Smith Twp.), Stark, Tuscarawas (N. of Auburn, Clay, Bush, & York Twps.) & Wayne (S. of Baughman, Chester, Green & Wayne Twps.) Cos.:					
Cable Splicers; Linemen	13.35	.55	3%+.60		.3%
Line Equipment Ops.	11.60	.55	3%+.60		.3%
Groundmen; Truck Drivers	7.95	.55	3%+.60		.3%

MODIFICATIONS P. 6

DECISION NO. OH79-2043 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
LINE CONSTRUCTION (Cont'd)					
Medina (Brunswick, Chatham, Granger, Guilford, Harrisville, Hinckley, Homer, Lafayette, Medina, Montville, Sharon, Spencer, Wadsworth, Westfield, & York Twps.), Portage (Atwater, Aurora, Brimfield, Deerfield, Franklin, Mantus, Randolph, Ravenna, Rootstown, Shalersville, Streetsboro & Suffield Twps.), Summit & Wayne (Northern ½ of Co.) Cos.:					
Linemen	$13.66	.74	3%+.65		½%
Cable Splicers	14.46	.74	3%+.65		½%
Equipment Ops.	10.25	.74	3%+.65		½%
Truck Drivers; Groundman	6.83	.74	3%+.65		½%
DECISION NO. OH79-2047 - MOD #2 (44 FR 27889 - May 11, 1979) Adams, Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Delaware, Fairfield, Fayette, Franklin, Gallia, Geauga, Greene, Hamilton, Highland, Lawrence, Licking, Madison, Meigs, Miami, Montgomery, Muskingum, Perry, Pickaway, Pike, Preble, Ross, Scioto, Shelby, Union and Warren Counties, Ohio					
CHANGE:					
ASBESTOS WORKERS:					
Butler (Middletown & Vic), Champaign, Clark, Clinton, Darke, Greene, Miami, Montgomery, Preble, Shelby, & Warren (Twps. of Clear Creek, Franklin, Massie, Turtle Creek & Wayne) Cos.	12.87	.55	1.50		.02

MODIFICATIONS P. 7

DECISION NO. OH79-2047 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ELECTRICIANS:					
Geauga Co. (Bainbridge, Chester & Russell Twps.)	$14.62	.90	3%+.51		.02
IRONWORKERS:					
Geauga Co.	13.97	1.05	1.20		.03
MARBLE SETTERS' FINISHERS; Terrazzo Workers' Finishers; Tile Setters' Finishers:					
Champaign, Clark, Darke, Greene, Miami, Montgomery, Preble & Shelby Cos.	9.99				
PAINTERS:					
Geauga Co.:					
Brush; Paperhangers; Rollers	12.96	.82	1.00		.05
Swing Stage; Windowjack & Bos'n Chair	13.26	.82	1.00		.05
Spray	13.36	.82	1.00		.05
Tapers	13.66	.82	1.00		.05
DECISION NO. OH79-2048 - MOD #2 (44 FR 27901 - May 11, 1979) Ashtabula, Cuyahoga, Lake, Lorain, Portage, Stark & Summit Counties, Ohio					
CHANGE:					
ELECTRICIANS:					
Cuyahoga & Lorain (Twp. of Columbia) Cos.	14.62	.90	3%+.51		.02
Portage (Twps. of Atwater, Aurora, Brimfield, Deerfield, Franklin, Mantus, Randolph, Ravenna, Rootstown, Shelbyville, Streetsboro & Suffield) & Summit Cos.:					
Commercial Construction	13.66	.74	3%+.65		.2%
Residential Construction	8.48	.74	3%+.20		.2%
Stark County:					
Commercial Construction	13.35	.55	3%+.60		.3%
Residential Construction	8.95	.50	3%+.40		.3%

DECISION NO. OH79-2048 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
IRONWORKERS:					
Ashtabula (except NE ¼ of Co.), Cuyahoga, Lake, Lorain, Portage (excluding Ravenna Ordnance Depot), & Summit Cos.	$13.97	1.05	1.20		.03
LINE CONSTRUCTION:					
Portage (Twps. of Atwater, Aurora, Brimfield, Deerfield, Franklin, Mantua, Randolph, Ravenna, Rootstown, Shalersville, Streetsboro, & Suffield) & Summit Cos.:					
Linemen	13.66	.74	3%+.65		½%
Cable Splicers	14.46	.74	3%+.65		½%
Groundmen; Truck Drivers	6.83	.74	3%+.65		½%
Equipment Operators	10.25	.74	3%+.65		½%
Stark Co.:					
Cable Splicers; Linemen	13.35	.55	3%+.60		.3%
Truck Drivers; Groundmen	7.95	.55	3%+.60		.3%
Line Equipment Ops.	11.60	.55	3%+.60		.3%
PAINTERS:					
Ashtabula, Cuyahoga, Lake, Portage (No. of East West Turnpike) & Summit (No. of East West Turnpike), Lorain (NE part):					
Brush; Rollers; Paperhangers	12.96	.82	1.00		.05
Swing Stage; Window Jack	13.26	.82	1.00		.05
Tapers	13.66	.82	1.00		.05

DECISION NO. OH79-2049 - MOD #2
(44 FR 27906 - May 11, 1979)
Ashland, Carroll, Columbiana, Coshocton, Holmes, Medina, Tuscarawas & Wayne Counties, Ohio

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ELECTRICIANS:					
Carroll (N ½ incl. Fox, Harrison, Rose & Washington Twps.) Columbiana (Knox Twp.), Holmes, Tuscarawas (N. of Auburn, Clay, Rush, & York Twps.), & Wayne (S. of Baughman, Chester, Green, & Wayne Twps.) Cos.	$13.35	.55	3%+.60		.3%
Medina (Rem. of Co.), & Wayne (N ½ of Co.)	13.66	.74	3%+.65		.2%
IRONWORKERS:					
Medina Co.	13.97	1.05	1.20		.03
LINE CONSTRUCTION:					
Carroll (Rem. of Co.), Columbiana (Knox Twp.), Holmes, Tuscarawas (N. of Auburn, Clay, Rush, & York Twps.) & Wayne (S. of Baughman, Chester, Green & Wayne Twps.) Cos.:					
Cable Splicers; Linemen	13.35	.55	3%+.60		.3%
Line Equipment Operators	11.60	.55	3%+.60		.3%
Groundmen; Truck Drivers	7.95	.55	3%+.60		.3%
Medina (Rem. of Co.) and Wayne (N ½ of County):					
Linemen	13.66	.74	3%+.65		½%
Cable Splicer	14.46	.74	3%+.65		½%
Truck Drivers; Groundmen	6.83	.74	3%+.65		½%
Equipment Operators	10.25	.74	3%+.65		½%
ADD:					
GLAZIERS:					
Ashland Co.:					
Outside replacement	10.55	.50			.01
Outside all other work	10.82	.50			.01

MODIFICATIONS P. 10

DECISION NO. OH79-2050 - MOD #2
(44 FR 27913 - May 11, 1979)
Allen, Auglaize, Crawford, Defiance, Erie, Hancock, Hardin, Henry, Huron, Knox, Logan, Marion, Mercer, Morrow, Ottawa, Paulding, Putnam, Richland, Sandusky, Seneca, Van Wert, Williams, Wood, & Wyandot Counties, Ohio

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ASBESTOS WORKERS:					
Auglaize & Logan Cos.	$12.87	.55	1.50		.02
IRONWORKERS:					
Defiance, Paulding, Putnam, Van Wert & Williams Cos.	12.35	1.00	1.70		.02
Erie, & Huron Cos.	13.97	1.05	1.20		.03
MARBLE SETTERS' FINISHERS; Terrazzo Workers' Finishers; & Tile Setters' Finishers:					
Auglaize, Hardin, Logan & Mercer Cos.	9.99				
PAINTERS:					
Erie, Hancock, Huron, Sandusky, Seneca & Wyandot Cos.:					
Old Commercial					
Brush; Roller; Wash; Clean	9.90	.70	.70		50.00p/yr
Drywall; Paperhanging; 30' to 60'	10.15	.70	.70		50.00p/yr
60' or over	11.00	.70	.70		50.00p/yr
Sandblasting; Spray; Swing Stage; Boatswain Chair; Needle Beam	10.40	.70	.70		50.00p/yr
Hazardous Work & Material; Stacks, Tanks, Towers over 40' in ht.	10.90	.70	.70		50.00p/yr
New Commercial					
Brush; Roller, Wash; Clean	10.80	.70	.70		50.00p/yr
Drywall; Paperhanging	11.05	.70	.70		50.00p/yr
Structural Steel; 30' to 60'	11.25	.70	.70		50.00p/yr
60' & over	11.65	.70	.70		50.00p/yr
Sandblast; Spray; Swing Stage; Needlebeam; Boatswain Chair	11.30	.70	.70		50.00p/yr
Hazardous Work & Material; Stacks, Tanks, & Towers over 40' in ht.	11.80	.70	.70		50.00p/yr
ADD:					
GLAZIERS:					
Crawford, Huron (S. part), Knox, Marion, Richland, Wyandot (Eastern part), Cos.:					
Outside replacement	$10.55	.50			.01
Outside all other work	10.82	.50			.01

MODIFICATIONS P. 11

DECISION No. PA78-3017 - Mod. #10
(43 Fr 19547 - May 5, 1978)
Carbon, Monroe County, including Tobyhanna Army Depot, and Pike County, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers & Stonemasons:					
Zone 2	$11.40	.60	.75		
Zone 3	11.35	.90	1.00		.01
Zone 4	11.01	.85	.40		
Carpenters					
Zone 1	11.30	.64	.72		.05
Zone 2	10.92	.55	.65		.05
Cement mason					
Zone 2	10.91	.85	.40		
Zone 3	11.55				
Laborers:					
Zone 1					
Class 1	9.30	.57	1.00		
Class 2	9.45	.57	1.00		
Class 3	9.70	.57	1.00		
Zone 2					
Class 1	8.09	.62	.59		
Class 2	8.34	.62	.59		
Class 3	8.49	.62	.59		
Class 4	9.11	.62	.59		
Class 5	8.84	.62	.59		
Roofers:					
Zone 2					
Composition & Kettleman	10.65	.90	.85		
Sheet metal workers	11.52	.70	.76		.02
Soft floor layers	9.60	.55	.65		.05
Tile Setters					
Zone 3	9.93	.85	.40		
Terrazzo workers					
Zone 1	9.90	1.00	1.15		
Zone 2	9.45	.35	.50		
Marble Setters:					
Zone 1	9.65	1.00	1.15		
Zone 3	10.18	.85	.40		
Millwrights					
Zone 2	11.70	.64	.72		.05

DECISION NO. PA78-3017 - Mod. # 10
Cont'd.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Painters:					
Zone 1					
Brush	$9.95	.75	.50		.10
Tapers	10.21	.75	.50		.10
"All open structural steel, bridges, water tank towers, interiors and exteriors of tanks, smoke stacks, radio and transmission towers, powers, drive-in theater screens and framing, tin roofing, pits or wells, disposal plants and their equipment, sandblasting, steamcleaning, spray painting, work with epoxy paints or materials similar with highly toxi fumes, use of window jacks, window belts, swing scaffolds or bosun's chair on structure of more than two stories high or twenty-five feet, work requiring crawling or climbing without support of a scaffold from the ground floor, rolling steel scaffold towers in the interior or exterior of buildings with work platform twenty-five feet or over in height which are not tied in"	11.21	.75	.50		.10
POWER EQUIPMENT OPERATORS:					
Monroe County, including Tobyhanna Army Depot, and Pike County					
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%

DECISION No. PA78-3017 - Mod. # 10,
Cont'd.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: Monroe County, including Tobyhanna Army Depot, and Pike County					
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%
POWER EQUIPMENT OPERATORS: REMAINDER OF COUNTY					
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					
Zone 4	10.70	.85	.40		
DECISION NO. PA78-3066 - Mod. # 8 (43 FR 43228 - September 22, 1978) Columbia, Montour, Snyder Counties, Pennsylvania					
Add:					
Laborers:					
Zone 3					
Mason tenders, machine mixers, Motorized stockers, scaffold builders (masonry), mortar pump, conveyors, mechanical cleaners, and sandblasting for masonry and masonry equipment	$8.97	.35	.40		
DECISION NO. PA78-3068 - Mod. # 6 (43 FR 45160 - September 29, 1978) Lebanon County, Pennsylvania					
Change:					
Electricians:					
Lawn, East Hanover, and Indiantown Gap Military Reservation	11.36	.65	3%+.67		½ of 1%
Line Construction:					
Linemen & cable splicer	12.05	.45	3%		3/8 of 1%
Groundmen	7.23	.45	3%		3/8 of 1%
Winch truck operator	8.43	.45	3%		3/8 of 1%
Sheet metal workers	11.06	1.42	1.18		.14

DECISION NO. PA79-3004 - Mod. # 3
(44 FR 16319 - March 16, 1979)
Northumberland County, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Add:					
Laborers:					
South of the Susquehanna River: Mason tenders, machine mixers; Motorized stockers, scaffold builders (masonry), mortar pump, conveyors, mechanical cleaners, and sandblasting for masonry and masonry equipment	$8.97	.35	.40		

DECISION NO. PA79-3008 - Mod. #2
(44 FR 25124 - April 27, 1979)
Cumberland, Dauphin, Perry, Juniata, New Cumberland Depot in York County, Pennsylvania

Change:					
Electricians	11.36	.65	3%+.67		1/4 of 1%
Line Construction:					
Linemen	12.05	.45	3%		3/8 of 1%
Groundmen	7.23	.45	3%		3/8 of 1%
Winch truck operator	8.43	.45	3%		3/8 of 1%
Sheet metal workers	11.06	1.42	1.18		.14
Add:					
Laborers:					
Mason tenders, machine mixers, motorized stockers, scaffold builders (masonry), mortar pump, conveyors, mechanical cleaners, and sand lasting for masonry and masonry equipment	8.97	.35	.40		

DECISION #VA78-3074- Mod. #2
(43 FR 51588- November 3,1978)
Henrico and the Independent City of Richmond, Virginia

CHANGE:					
Asbestos Workers	$9.93	.80	.85		.01

DECISION #WV78-3018 - Mod. #6
(43 FR 25278 - June 9, 1978)
State of West Virginia excluding the Counties of Berkeley, Jefferson, & Morgan

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos Workers:					
Area 3	14.15	.50	.70		.03
Carpenters & Piledrivermen:					
Area 2					
Carpenters	11.37	.50	.60		.02
Piledrivermen	11.67	.50	.60		.02
Electricians:					
Jackson, Pleasants, Ritchie, Tyler, Wirt, & Wood Counties					
Wiremen	11.10	.50	3%+1.25	1.50	.04
Cable Splicers	11.35	.50	3%+1.25	1.50	.04
Brooke (Buffalo Twp. Only), Marshall, Ohio, & Wetzel Counties:					
Wiremen	12.60	.50	3%+.35	1.00	.04
Cable Splicers	12.85	.50	3%+.35	1.00	.04
Barbour, Doddridge, Harrison, Lewis, Randolph, & Upshur Counties:					
Wiremen	10.95	.50	3%+.52	2.02	.03
Cable Splicers	12.045	.50	3%+.52	2.02	.03
Marion, Monongalia, Taylor, Preston, & Tucker Counties:					
Contracts under $12,000:					
Wiremen	6.15	.50	3%+1.02	1.52	.02
Contracts over $12,000:					
Wiremen	11.35	.50	3%+1.02	1.52	.02
Cable Splicers	11.50	.50	3%+1.02	1.52	.02
Line Construction:					
Brooke (Buffalo Twp. only), Marshall, Ohio, & Wetzel Counties:					
Linemen & Equipment Operators	12.60	.50	3%+.35	1.00	.04
Cable Splicers	12.85	.50	3%+.35	1.00	.04
Groundmen	10.08	.50	3%+.35	1.00	.04
Jackson, Pleasants, Ritchie, Tyler, Wirt, & Wood Counties:					
Linemen & Equipment Operators	11.65	.60	3%+1.25	1.52	3%
Cable Splicers	12.82	.60	3%+1.25	1.52	3%
Groundmen	9.32	.60	3%+1.25	1.52	3%

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DECISION #WV78-3018 - Mod. #6

Line Construction (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
Marion, Monongalia, Preston, Taylor, & Tucker Counties:					
Linemen & Equipment Operators	11.35	.50	3%+1.02	1.52	½%
Cable Splicers	12.485	.50	3%+1.02	1.52	½%
Groundmen & Truck Drivers	9.08	.50	3%+1.02	1.52	½%
Barbour, Harrison, Lewis, Randolph, Doddridge, & Upshur Counties:					
Linemen & Equipment Operators	10.95	.50	3%+.52	2.02	½%
Cable Splicers	12.045	.50	3%+.52	2.02	½%
Groundmen & Truck Drivers	8.76	.50	3%+.52	2.02	½%
Ironworkers: Structural, Ornamental, & Reinforcing:					
Area 2	11.93	.80	1.15		.03
Area 5	10.55	.80	.85		.03
Sheet Metal Workers:					
Area 2	12.56	1.20	.825		.095
Truck Drivers:					
Area 2					
Group 1	9.20	q	r		
Group 2	9.30	q	r		
Group 3	9.45	q	r		
Group 4	9.60	q	r		
Group 5	9.85	q	r		
Group 6	9.95	q	r		
Area 7					
Group 1	8.53	.90	1.15		
Group 2	8.68	.90	1.15		
Group 3	8.88	.90	1.15		
Group 4	9.07	.90	1.15		
Group 5	9.31	.90	1.15		

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

Corrections

In FR Doc. 79–16898 appearing at page 31818 in the issue for Friday, June 1, 1979, pages 31820–31822 are hereby deleted in their entirety and the following tables are inserted immediately after p. 31837.

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DECISION No. PA79-3000 - Mod. # 3
(44 FR 5625 - January 25, 1979)
Butler, Cambria, Erie, Fayette, Mercer, Washington, Westmoreland, Lawrence, Somerset, Allegheny, Beaver, Armstrong, Blair, Cameron, Centre, Clarion, Clearfield, Crawford, Forest, Greene, Indiana, McKean, Venango, Warren, Bedford, Jefferson, Clinton, Elk, Franklin, Fulton, Huntington, Mifflin & Potter Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
Change:					
Ironworkers:					
Structural, Ornamental & Reinfotcing					
Zone 2	$12.105	1.14	1.35		.03

DECISION No. PA79-3006 - Mod. # 2
(44 FR 19099 - March 30, 1979)
Franklin County, Pennsylvania

Change:					
Bricklayers	10.57	.60	.57		.02
Ironworkers	12.105	1.14	1.35		.03
Plumbers	11.55	.85	.90		.12

DECISION NO. TX78-4090 - Mod. #6
(43 FR 31364 - September 15, 1978)
Bowie County, Texas

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
Change:					
Electricians	$11.17	.60	3%+.35		1/4%

DECISION NO. TX79-4003 - Mod. #6
(44 FR 1671 - January 5, 1979)
Brazos County, Texas

Change:					
Cement masons	11.50	.68	.72		.08

DECISION NO. TX79-4004 - Mod. #6
(44 FR 1673 - January 5, 1979)
El Paso County, Texas

Add:					
Glaziers	7.29	.30	.10		.02
Roofers	8.30	.35			

DECISION NO. TX79-4010 - Mod. #5
(44 FR 1681 - January 5, 1979)
Wichita County, Texas

Change:					
Electricians:					
Electricians	11.10	.50	3%		1/10%
Cable splicers	11.35	.50	3%		1/10%
Line Construction:					
Lineman; Lineman operator	11.10	.50	3%		1/10%
Cable splicer	11.35	.50	3%		1/10%
Groundman, 1st 6 months	50%JR	.50	3%		1/10%
Groundman, 2nd 6 months	60%JR	.50	3%		1/10%
Groundman, 1 year & over	70%JR	.50	3%		1/10%

DECISION NO. TX79-4011 - Mod. #6
(44 FR 1683 - January 5, 1979)
Galveston & Harris Cos., Texas

Change:					
Cement masons - Galveston Co.	11.50	.68	.72		
Harris Co.	11.50	.68	.72		.08
Marble masons-Galveston Co.	10.95				
Terrazzo workers-Galveston Co.	10.95				
Tile setters-Galveston Co.	10.95				

MODIFICATIONS P. 29

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX79-4033 - Mod. #2 (44 FR 16326 - March 16, 1979) Jefferson & Orange Cos., Texas					
Change:					
Bricklayers & stonemasons	$13.29	.63	.60		.04
Tile setters	11.78	.63	.60		.04
DECISION NO. TX79-4048 - Mod. #2 (44 FR 16330 - March 16, 1979) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Counties, Texas					
Change:					
Electricians:					
Zone 1 - Electricians	11.28	.60	3%+.50		1/2%
Cable splicers	12.41	.60	3%+.50		1/2%
Zone 2 - Electricians	11.10	.50	3%		1/10%
Cable splicers	11.35	.50	3%		1/10%
Line construction:					
Zone 1:					
Lineman; Operator	11.10	.50	3%		1/2%
Cable splicers	11.35	.50	3%		1/2%
Groundman - 1st 6 months	50%JR	.50	3%		1/2%
Groundman - 2nd 6 months	60%JR				
Groundman - 1 year & over	70%JR				
Zone 2:					
Lineman	11.28	.60	3%+.50		1/2%
Cable splicers	12.41	.60	3%+.50		1/2%
Groundman:					
More than 1 yr. experience	7.44	.60	3%+.50		1/2%
Less than 1 yr. experience	6.52	.60	3%+.50		1/2%
Op.-hole digger, line truck	8.65	.60	3%+.50		1/2%
Flat bed truck drivers	6.52	.60	3%+.50		1/2%
DECISION NO. TX79-4051 - Mod. #1 (44 FR 26535 - May 4, 1979) Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Counties, Texas					
Change:					
Laborers:					
Zone 2 - Group 1	$ 6.49	.30	.40		.02
Group 2	6.64	.30	.40		.02
Group 3	6.74	.30	.40		.02
Group 4	6.89	.30	.40		.02

SUPERSEDEAS DECISION

STATE: Florida COUNTY: Dade

DECISION NUMBER: FL79-1094 DATE: Date of Publication

Supersedes Decision No. FL76-1102 dated September 17, 1976 in 41 FR 40365.

DESCRIPTION OF WORK: Heavy Construction Projects (excluding Storm, Sanitary, Sewer Line and Water Line Projects)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS	$10.55	.60	.54		.04
CARPENTERS	10.00	.80	.55		.02
CEMENT MASONS	10.55	.60	.54		.04
ELECTRICIANS	11.25	.51	.34	.96	
IRONWORKERS	10.00	.75	.83		.04
LABORERS:					
Unskilled	4.97				
Pipelayers	5.97				
MILLWRIGHTS	9.42	.55	.70		.08
PAINTERS	8.80	.55	.50	.12	.02
PILEDRIVERS	8.46	.55	.70		.02
PLUMBERS; PIPEFITTERS	10.42	.92	1.30		.09
STEAMFITTERS	11.03	1.08	1.00	.50	.09
TRUCK DRIVERS	4.65				
WELDERS - Rate for craft.					
POWER EQUIPMENT OPERATORS:					
Backhoes	8.26	.50	.45		.05
Combination Operators	8.26	.50	.45		.05
Cranes	9.30	.50	.45		.05
Draglines	6.51				
Front end loaders	7.96	.50	.45		.05
Graders	8.26	.50	.45		.05
Mechanics	6.94				
Oilers	5.49	.63	.50		7%
Rollers	7.06	.50	.45		.05
Scrapers	7.36	.50	.45		.05
Trenching Machines	7.36	.50	.45		.05.

STATE: Kansas & Missouri

COUNTIES: Cass, Clay, Jackson, Platte, Ray, Henry, Johnson & Lafayette Counties, Missouri; Johnson & Wyandotte Counties, Kansas.

DECISION NO: M079-4065 DATE: Date of Publication

Supersedes Decision No. M078-4047, dated May 5, 1978 in 43 FR 19550

DESCRIPTION OF WORK: Building Construction Projects, (does not include single family homes and garden type apartments up to and including 4 stories) and heavy and highway construction in Johnson and Wyandotte Counties, Kansas only.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.67	.60	1.55		.05
BOILERMAKERS	12.00	1.15	1.00		.03
BRICKLAYERS AND STONEMASONS	11.025	.80	.35	1.00	
CARPENTERS:					
Zone 1 - Cass, Clay, Jackson, Lafayette, Platte and Ray Counties, Missouri; Johnson and Wyandotte Counties, Kansas					
Carpenter, Millwrights and Piledrivermen	11.00	.50	.30		.05
Zone 2 - Henry and Johnson Counties, Missouri					
Carpenters	10.625	.50	.30		.05
Millwrights and Piledrivermen	11.00	.50	.30		.05
CEMENT MASONS (Building Construction)					
Zone 1 - Cass, Clay, Jackson, Lafayette, Platte and Ray Counties, Missouri; Johnson and Wyandotte Counties, Kansas					
Cement masons	11.675	.65	.50		
Zone 2 - Henry and Johnson Counties, Missouri	10.13				
CEMENT MASONS (Heavy and Highway Construction): Johnson & Wyandotte Counties, Kansas	12.50	.65	.50		
ELECTRICIANS:					
Zone 1 - Western half of Clay and Jackson Counties, Missouri not including Blue Springs; Northern half of Platte County, Missouri; Northwestern portion of Cass County, Missouri not including Pleasant Hill:					
Electricians	12.77	.54	3%+.51	.95	.10
Zone 2 - Henry, Johnson and Lafayette Counties, Missouri and remainder of Clay, Jackson, Platte and Cass Counties, Missouri					
Electricians (contracts exceeding 2000 man hours	12.77	.54	3%+.51	.95	.10
ELECTRICIANS - Zone 2 CONTD:					
Electricians (contracts not exceeding 2000 man hours	11.77	.54	3%+.51	.95	.10
Zone 3 - Ray County, Missouri;					
Electricians (contracts exceeding 2000 man hours	12.77	.54	3%+.51	.95	.10
Electricians (contracts not exceeding 2000 man hours	11.17	.54	3%+.51	.95	.10
Zone 4 - Johnson and Wyandotte Counties, Kansas	12.77	.54	3%+.51	.95	.10
ELEVATOR CONSTRUCTORS	11.97	.745	.56	3%+a	.025
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.745	.56	3%+a	.025
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				

FOOTNOTES: - a-Employer contributes 8% of basic hourly rate for over 5 years of service and 6% of basic hourly rate for 6 months to 5 years service as Vacation Pay Credit. Also 6 paid holidays.

GLAZIERS	10.72	.61	.89	18.7%	.04
IRONWORKERS	11.60	.75	1.40	1.00	.05
LABORERS:					
Building Construction					
Zone 1 - Cass, Clay, Jackson and Platte Counties, Missouri; Johnson and Wyandotte Counties, Kansas					
GROUP 1	9.65	.45	.40	.50	.10
GROUP II	9.80	.45	.40	.50	.10
GROUP III	9.95	.45	.40	.50	.10
Zone 2 - Lafayette and Ray Counties, Missouri					
GROUP I	9.35	.45	.40	.50	.10
GROUP II	9.50	.45	.40	.50	.10
GROUP III	9.65	.45	.40	.50	.10

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federal register

Friday
June 8, 1979

Part V

Environmental Protection Agency

Agenda of Regulations

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Ch. I]

[FRL 1222-2]

Agenda of Regulations

AGENCY: Environmental Protection Agency.

ACTION: Agenda of Regulations.

SUMMARY: Several times a year the Agency publishes an agenda summarizing significant regulations under development. Its purpose is to help assure that interested parties have an early opportunity to participate in shaping these regulations.

FOR FURTHER INFORMATION: For information regarding a particular regulation listed in the Agenda, please contact the Agency official identified with that item.

Suggestions: If you have suggestions as to how we can make this publication more useful to you, please write Philip Schwartz, (PM-223), Environmental Protection Agency, Washington, D.C., 20460.

Mailing List: If you want your name on the mailing list for the Agenda of Regulations please write Allie Little, Environmental Protection Agency, PM-223, Washington, D.C., 20460.

SUPPLEMENTAL INFORMATION:

Background

On March 23, 1978, President Carter signed Executive Order 12044, *Improving Government Regulations*, which directs all executive agencies to adopt practices to improve their regulations. One of these practices prescribes that each agency publish, at least twice a year, an agenda of its significant regulations that are under development or review. EPA's most recent *Agenda of Regulations* was published on November 30, 1978.

Regulations Covered in the Agenda

We have tried to include all significant regulations which we expect to publish within the next year. Also listed are a few major policy actions which will be issued as EPA guidelines or Presidential guidance rather than regulations. Thirty significant proposed and final regulations were published since the last Agenda. Appearance or nonappearance of an item in the Agenda carriers no legal significance. Information in the Agenda is accurate as of May 1, 1979.

Executive Order 12044 gives general guidelines to determine those regulations that are significant and also directs each agency to develop its own specific criteria for this purpose. EPA's criteria are described in *Improving Environmental Regulations* published in the **Federal Register**, May 29, 1979, (44 FR 30988).

Organization

The Agenda lists prospective regulatory actions by program area according to the following format:

AIR—*The Clean Air Act as amended* (CAA). *The Motor Vehicle Information and Cost Savings Act* (MVICSA).

DRINKING WATER—*The Safe Drinking Water Act* (SDWA).

NOISE—*The Noise Control Act* (NCA).

PESTICIDES—*The Federal Insecticide, Fungicide, and Rodenticide Act as amended* (FIFRA).

RADIATION—*The Atomic Energy Act* (AEA). *The Public Health Service Act* (PHSA). *Uranium Mill Tailings Radiation Control Act* (UMTCRA).

SOLID WASTE—*The Resource Conservation and Recovery Act* (RCRA).

TOXIC SUBSTANCES—*The Toxic Substances Control Act* (TSCA).

WATER—*The Federal Water Pollution Control Act as amended by the Clean Water Act* (CWA). *The Marine Protection, Research, and Sanctuaries Act* (MPRSA).

JOINT PROGRAMS—(Regulations with Multiple Statutory Authorities).

The first column of the Agenda lists for each regulation an Agenda identification number (*e.g.*, 1122); title (*italicized*); statutory authority; (*e.g.*, CWA 303); and expected location in the Code of Federal Regulation (*e.g.*, 40 CFR 130.17). In most instances, a *brief* description of the regulation follows. Prospective regulations which may have economic consequences large enough to require a regulatory analysis are identified by an asterisk (*) after the Agenda identification number. Regulations for which we are preparing Urban Impact Statements in accordance with Executive Order 12044 are identified by a bullet (•) preceding the title.

The second and third columns list either actual or projected publication dates, if available, of the proposed regulation and of the final regulation in the **Federal Register**.

The fourth column provides the name, EPA mail code address and telephone number (including FTS number, if different than commercial number) of an Agency official to contact for further information.

Henry E. Beal,

Director, Standards and Regulations Evaluation Division.

May 4, 1979.

SIGNIFICANT EPA REGULATIONS UNDER CONSIDERATION

NAME AND DESCRIPTION OF REGULATION	PROPOSAL DATE IN FEDERAL REGISTER	FINAL DATE IN FEDERAL REGISTER	CONTACT PERSON AND ADDRESS
AIR			
We have already or are now developing the following five items under the authority of Sections 108 and 109 of the CAA, which direct the Administrator to establish National Ambient Air Quality Standards (NAAQS). To write a NAAQS for a pollutant, we first prepare a criteria document, which contains the latest scientific knowledge on the kind and extent of public health and welfare problems caused by the pollutant in the air. If we revise the criteria document, we may find it necessary to change the NAAQS. We are noting the date we expect to decide to reaffirm or to change the NAAQS. A National Primary Ambient Air Quality Standard defines the maximum amount of an air pollutant which the Administrator of EPA determines is compatible with an adequate margin of safety to protect the public health. A National Secondary Ambient Air Quality Standard defines levels of air quality which the Administrator judges necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant.			
No. 1000 **Review of NAAQS for Photochemical Oxidants.* CAA 108. 40 CFR 50. The proposed regulation would change the existing primary, health-based standard to 0.10 ppm for a one-hour average from the existing 0.08 ppm standard. The secondary, welfare-based standard would remain at 0.06 ppm for a one-hour average. The pollutant we control would be changed from photochemical oxidants to ozone, which is the principal measurable ingredient in photochemical oxidants.	June 22, 1978	February 8, 1979	Joe Padgett (MD–12). Environmental Protection Agency, Research Triangle Park, N.C. 27711, 919–541–5204, FTS 8–629–5204.
No. 1001 ● **Review of NAAQS for Carbon Monoxide.* CAA 108. 40 CFR 50. The health basis for control of this pollutant will be reviewed. This task requires preparation of an updated criteria document and analysis of whether or not NAAQS should be revised.	September 1979	February 1980	Do.
No. 1002 ● **Review of NAAQS for Sulfur Oxides.* CAA 108. 40 CFR 50. A review of the health basis for control of this pollutant will require preparation of an updated criteria document and analysis of whether or not NAAQS should be revised.	May 1980	December 1980	Do.
No. 1003 ● **Review of NAAQS for Particulates.* CAA 108. 40 CFR 50. A review of the health basis for control of this pollutant will require preparation of an updated criteria document and analysis of whether or not NAAQS should be revised.	May 1980	December 1980	Do.
No. 1004 ● **Review of Long Term NAAQS for Nitrogen Dioxide.* CAA 108. 40 CFR 50. The NAAQS for nitrogen dioxide is undergoing review. Under the CAA amendments, the criteria and the decision to revise the standard must address both the short- and long-term effects of NO2 and other nitrogen species in the air, particularly nitrates and nitric acid aerosol.	October 1979	February 1980	Do.
We are developing performance standards to control emissions from the following industries under Section 111(b) of the CAA. This section requires that the Administrator develop and periodically update New Source Performance Standards (NSPS) for stationary sources which significantly contribute to air pollution. The NSPS are based on the best systems demonstrated to continually reduce emissions, taking into account costs and energy requirements. The standards will apply to both new sources and existing sources which are modified after approval of the regulation.			
No. 1005 **NSPS—Fossil Fuel Steam Generators (Revision).* CAA 111. 40 CFR 60. Revised standards are proposed for utility boilers to control SO2, NOx, and particles. The revised NSPS will apply to any fossil-fueled utility boiler with a heat input of 250 million BTU/hour or greater. The NSPS will require that a certain percent of sulfur dioxide be removed and will include an emission ceiling and an emission floor.	September 19, 1978	June 1979	Don Goodwin (MD–13). Environmental Protection Agency, Research Triangle Park, N.C. 27711, 919–541–5271, FTS 8–629–5271.
No. 1006 *NSPS—Petroleum Liquid Storage Vessels.* CAA 111.40 CFR 60. This is a revision of 1974 NSPS. The revised standard will propose the use of double seals rather than single seals on floating roofs. The standard, as currently being developed, will essentially eliminate one of two types of seals currently in use.	May 18, 1978	September 1979	Do.
No. 1007 *NSPS—Glass Manufacturing.* CAA 111. 40 CFR 60.This regulation addresses the problem of emissions from new glass manufacturing furnaces. The Governor of New Jersey requested that EPA develop national standards.	June 1979	March 1980	Do.
No. 1008 *NSPS—Internal Combustion Engines.* CAA 111. 40 CFR 60.These regulations will require the application of best demonstrated technology to control emissions from stationary internal combustion engines. It will also require States to act under Section 111(d) to regulate these compounds from existing sources.	June 1979	April 1980	Do.
No. 1009 *NSPS—Non-Metallic Minerals.* CAA 111. 40 CFR 60. Particulate emissions from quarrying operations and related facilities will be controlled.	July 1979	June 1980	Do.
No. 1010 *NSPS—Organic Solvent Metal Cleaning.* CAA 111. 40 CFR 60. This rule will control evaporative emissions from metal cleaning and degreasing operations.	July 1979	June 1980	Do.
No. 1111 *NSPS—Surface Coating Operations for Auto Assembly Plants.* CAA 111. 40 CFR 60. Evaporative emissions from coating operations in the auto and light truck industry will be controlled.	September 1979	July 1980	Do.
No. 1112 *NSPS—Synthetic Organic Chemical Manufacturing.* CAA 111. 40 CFR 60. This regulation will establish the degree of emission control required in the manufacture of over 100 major organic chemicals.	January 1980	November 1980	Do.
No. 1113 *NSPS—Can Coating.* CAA 111. 40 CFR 60. This regulation will establish emission standards for volatile organic emissions from can-coating operations.	June 1980	September 1981	Do.
No. 1114 *NSPS—Pressure Sensitive Tapes and Labels Coating.* CAA 111. 40 CFR 60. This regulation will establish emission standards for volatile organic emissions from pressure-sensitive tapes and label operations.	February 1980	December 1980	Do.

SIGNIFICANT EPA REGULATIONS UNDER CONSIDERATION—Continued

NAME AND DESCRIPTION OF REGULATION	PROPOSAL DATE IN FEDERAL REGISTER	FINAL DATE IN FEDERAL REGISTER	CONTACT PERSON AND ADDRESS
AIR —Continued			
No. 1115 *NSPS—Metal Furniture Surface Coating.* CAA 111. 40 CFR 60. This regulation will establish emission standards for volatile organic emissions from metal furniture operations.	March 1980	January 1981	Do.
No. 1116 *NSPS—Lead Battery Manufacturing.* CAA 111. 40 CFR 60. This regulation will establish standards for lead emissions from lead battery manufacturing facilities.	June 1979	April 1980	Do.
No. 1117 *NSPS—Gas Turbines.* CAA 111. 40 CFR 60. This regulation will establish limitations on oxides of nitrogen emitted from stationary gas turbines.	October 3, 1977	May 1979	Do.
No. 1118 *NSPS—Phosphate Rock.* CAA 111. 40 CFR 60. This regulation will control the emission of particulate matter.	June 1979	April 1980	Do.
No. 1119 *NSPS—Dry Cleaning.* CAA 111. 40 CFR 60	October 1979	August 1980	Do.
No. 1120 *NSPS—Graphic Arts.* CAA 111. 40 CFR 60	February 1980	December 1980	Do
No. 1121 *Aluminum Plant Fluoride Control—Existing Plants.* CAA 111(d). 40 CFR 60. These are guidelines for State control of fluoride emissions from existing aluminum plants.	April 11, 1979	January 1980	Do.
No. 1122 *Guidelines for Existing Kraft Pulp Mills.* CAA 111(d). 40 CFR 60. These guidelines to control sulfur (odors) from existing kraft pulp mills will allow States flexibility in establishing control.	February 23, 1978	May 23, 1979	Do.
No. 1123 *List of New Source Performance Standards.* CAA 111(f). 40 CFR 60. The 1977 Clean Air Act requires the Administrator to list the categories of major stationary sources that are not already controlled by NSPS. He must then issue standards for these categories within four years.	August 31, 1978	June 1979	Do.
We are developing emission standards for hazardous air pollutants under Section 112 of the CAA. This section requires that the Administrator develop National Emission Standards for Hazardous Air Pollutants (NESHAPS) for emissions that cause or contribute to air pollution which results in an increase in mortality or in serious or incapacitating illness. The standards will apply to both new sources and existing sources.			
No. 1124 *NESHAPS: Asbestos-Iron Ore Beneficiation.* CAA 112. 40 CFR 61. This regulation will establish limits on asbestos emissions from iron ore beneficiation facilities.	September 1979	July 1980	Do.
No. 1125 *NESHAPS: Vinyl Chloride Amendments.* CAA 112. 40 CFR 61. The proposed regulations call for increased control of existing sources, stringent control of new sources, and a goal of complete control of emissions.	June 7, 1977	Pending	Do.
No. 1126 *NESHAPS: Refinery Sources.* CAA 112. 40 CFR 61. This regulation will control the emission of benzene from point sources, fugitive sources (pumps, valves, etc.), and waste disposal.	February 1980	January 1981	Do.
No. 1127 *NESHAPS—Maleic Anhydride.* CAA 112. 40 CFR 61. This regulation will control the emission of benzene in the manufacture of maleic anhydride.	June 1979	April 1980	Do.
No. 1128 *NESHAPS—Ethyl Benzene.* CAA 112. 40 CFR 61. This regulation will control the emission of benzene in the manufacture of ethyl benzene.	February 1980	December 1980	Do.
No. 1129 *NESHAPS—Styrene.* CAA 112. 40 CFR 61. This regulation will control the emission of benzene in the manufacture of styrene.	June 1979	April 1980	Do.
No. 1300 *NESHAPS: Arsenic.* CAA 112. 40 CFR 61. A health risk assessment of arsenic emissions is being conducted. If it is determined that these emissions (primarily from copper smelters) are hazardous, then emission standards will be proposed.	December 1979	February 1980	Joe Padgett (MD-12). Environmental Protection Agency, Research Triangle Park, N.C. 27711, 919-541-5204, FTS 8-629-5204.
No. 1301 *Primary Nonferrous Smelter Orders.* CAA 119. 40 CFR 57. These regulations will establish the substantive requirements of initial primary nonferrous smelter orders (NSO's) and the procedures to be used in issuing them. NSO's will allow certain copper, lead, and zinc smelters to delay compliance with the requirements for constant control of sulfur dioxide emissions and let them use tall stacks and supplementary control systems to meet ambient standards.	January 31, 1979	July 1979	Judith Larsen (EN-341). Environmental Protection Agency, Washington, D.C. 20460, 202-755-2583.
No. 1302 *Noncompliance Penalties.* CAA 120. 40 CFR 56. EPA is required to establish a penalty program to collect money from polluters after mid-1979 in an amount equal to the money the polluter saves by failing to obey the law.	March 21, 1979	July 1979	Bob Homiak (EN-341). Environmental Protection Agency, Washington, D.C. 20460, 202-755-2542.
No. 1303 *Tall Stack Regulation.* CAA 123. 40 CFR 51. The regulations specify stack heights acceptable for credit under State implementation plans.	January 12, 1979	September 1979	Dick Rhoads (MD-15). Environmental Protection Agency, Research Triangle Park, N.C. 27711, 919-541-5251, FTS 8-629-5251.
No. 1304 *Regulations Providing for State/Local Consultation.* CAA 121. 40 CFR 51. The regulations will ask the States to provide a satisfactory process of consultation for local governments, elected officials, and Federal land managers. The regulations will also require the States to choose a lead planning organization to coordinate the State Implementation Plan revisions for oxidants (smog) and carbon monoxide.	May 18, 1978	June 1979	John Hidinger (AW-445). Environmental Protection Agency, Washington, D.C. 20460, 202-755-0481.
No. 1305 *1979 Listing of Radioactive Pollutants.* CAA 122. We will determine whether radioactive pollutants shall be classified as 108, 111 or 112 pollutants, or none of these categories.	August 1980		William A. Mills (AW-460). Environmental Protection Agency, Washington, D.C. 20460, 703-557-0704.

SIGNIFICANT EPA REGULATIONS UNDER CONSIDERATION—Continued

NAME AND DESCRIPTION OF REGULATION	PROPOSAL DATE IN FEDERAL REGISTER	FINAL DATE IN FEDERAL REGISTER	CONTACT PERSON AND ADDRESS
AIR —Continued			
No. 1306 *Prevention of Significant Deterioration (PSD).* Set II. CAA 166. 40 CFR 51/52. These regulations will insure that areas which are in compliance with hydrocarbon, carbon monoxide, photochemical oxidant, and nitrogen oxide standards will remain in compliance.	December 1979	September 1980	Dick Rhoads (MD-15). Environmental Protection Agency, Research Triangle Park, N.C. 27711, 919-541-5251, FTS 8-629-5251.
No. 1307 *Visibility Protection.* CAA 167(a). 40 CFR 51/52. EPA is required to prepare a report to Congress and guidelines which require SIP's to address visibility problems.	October 1979	August 1980	Joe Padgett. Environmental Protection Agency, Research Triangle Park, N.C. 27711, 919-541-5204, FTS 8-629-5204.
No. 1308 *Requirements to Build Demonstration Cars Meeting 0.4 Gram/Mile NOx Standard.* CAA 202. 40 CFR 85. All manufacturers with at least a 0.5% share of the U.S. passenger car market will have to build research vehicles which emit not more than 0.4 grams nitrogen dioxide per mile. This regulation will be published in interim-final form for 1979 model year and in final form for the 1980 model year.	February 7, 1979	November 1979	Karl Hellman. Emission Control Technology Div., Environmental Protection Agency, Ann Arbor, Michigan 48105, 313-668-4246, FTS 8-374-8246.
No. 1309* *Light-Duty Diesel Particulate Standards.* CAA 202. 40 CFR 86. EPA is required to set particulate standards for mobile sources starting in 1981. The regulation will contain 1981 standards (0.60 gram per mile) and more stringent standards for 1983 and later model years (0.20 gram per mile).	February 1, 1979	October 1979	Merrill Korth. Emission Control Technology Div., Environmental Protection Agency, Ann Arbor, Michigan 48105, 313-668-4299, FTS 8-374-8299.
No. 1310 *Heavy-Duty Diesel Particulate Standards.* CAA 202. 40 CFR 86. Although these standards are required by CAA for 1981 models, there is no test procedure available that can be used as the basis for a standard. A 1983 model year is targeted.	May 1980	October 1980	Do.
No. 1311 *Test Procedures for Measuring Heavy Duty Evaporative Emissions.* CAA 202(a). 40 CFR 86. The Clean Air Act requires that a test procedure be promulgated to require measurement of evaporative emission from vehicles. EPA will promulgate test procedure and standards.	July 1979	March 1980	Mike Leiferman. Environmental Protection Agency, Ann Arbor, Michigan 48105, 313-668-4271, FTS 8-374-8271.
No. 1312 *Heavy-Duty Evaporative Emission Standards.* CAA 202(a). 40 CFR 86. These standards for heavy-duty gasoline vehicles will regulate fuel evaporation emissions beginning in model year 1981.	July 1979	March 1980	Do.
No. 1313* *Light-Duty Truck Emission Standards (Up to 8,500 lbs. Gross Vehicle Weight Rating—GVWR).* CAA 202(a). 40 CFR 86. CAA requires standards for 6,000-8,500 lb trucks that represent a 90% reduction in HC and CO from baseline by 1983 and a 75% reduction of NOx emissions from baseline by 1985 model year. The same standards will also be applied to trucks under 6,000 lbs GVWR.	July 1979	January 1980	William Houtmann. Environmental Protection Agency, Ann Arbor, Michigan 48105, 313-668-4272, FTS 8-374-8272.
No. 1314* *HC and CO Emission Standards for Heavy Duty Vehicles (Over 8500 Pounds).* CAA 202(a)(3). 40 CFR 86. The CAA requires EPA to establish engine emission standards for heavy duty vehicles over 8,500 pounds. Standards for HC and CO are 90% reductions from baseline emissions by the 1983 model year. EPA is developing a new test procedure to measure exhaust emissions and baseline emissions. Provisions for assembly line testing and a non-conformance penalty system are also included in the regulations.	February 13, 1979	December 1979	Chet France. Environmental Protection Agency, Ann Arbor, Michigan 48105, 313-668-4338, FTS 8-374-8338.
No. 1315* *NOx Emission Standard for Heavy Duty Vehicles (Over 8,500 Pounds).* CAA 202(a)(3). 40 CFR 86. The CAA requires EPA to establish emission standards for heavy-duty vehicles (over 6,000 lbs. GVWR). A 75% reduction for NOx beginning with 1985 model year is scheduled. EPA is developing a new test procedure for measuring exhaust emissions which will be used to measure baseline emissions.	May 1981	December 1981	Do.
No. 1316 *Interim High Altitude Requirements.* CAA 202(a), (f). 40 CFR 86. The regulations set requirements for cars to meet high altitude standards for 1981-1983.	May 11, 1979	September 1979	William Houtmann. Environmental Protection Agency, Ann Arbor, Michigan 48105, 313-668-4272, FTS 8-374-8272.
No. 1317 *Importation of Motor Vehicles and Motor Vehicle Engines.* CAA 203. 40 CFR 85. The regulation attempts to improve the effectiveness and administration of EPA's program to prevent importation of vehicles and engines which fail to conform to Federal emission standards.	June 1979	December 1979	Tom Preston (EN-340). Environmental Protection Agency, Washington, D.C. 20460, 202-755-0944.
No. 1318 *Regulations Defining Certificate of Conformity.* CAA 206(a). 40 CFR 86. The regulations identify certain components and specifications required for motor vehicle certification: the parameters of allowable deviation of parts and the specifications for the certification tests.	December 23, 1974	June 1979	Do.
No. 1319 *Selective Enforcement Auditing of Motorcycles.* CAA 206(b). 40 CFR 86. The regulation establishes a program to test motorcycles at the assembly line for compliance with emission standards.	March 1980		Frank Slaveter (EN-340). Environmental Protection Agency, Washington, D.C. 20460. 202-755-1572.
No. 1321 *Engine Parameter Adjustment Regulations.* CAA 206(b). 40 CFR 86. This regulation limits the adjustment parameters of emissions controls. It is intended to prevent dealerships and service stations from readjusting controls in order to improve driveability at the cost of increased emissions.	October 21 1977	January 12, 1979	Ron Kruse. Environmental Protection Agency, Ann Arbor, Michigan 48105, 313-668-4317.
No. 1322 *1984 High Altitude Standards.* CAA 206(f). 40 CFR 86. These regulations require all vehicles to meet standards at all altitudes beginning with 1984 models.	May 1981	May 1982	Ernie Rosenberg (AW-455). Environmental Protection Agency, Washington, D.C. 20460, 202-755-0596.

SIGNIFICANT EPA REGULATIONS UNDER CONSIDERATION—Continued

NAME AND DESCRIPTION OF REGULATION	PROPOSAL DATE IN FEDERAL REGISTER	FINAL DATE IN FEDERAL REGISTER	CONTACT PERSON AND ADDRESS
AIR—Continued			
No. 1324 *Emissions Design and Defect Warranty.* CAA 207(a)(1). 40 CFR 86. The regulations will clarify the rights and responsibilities of consumers and vehicle manufacturers concerning the required design and defect warranty.	July 1979	October 1979	Rick Friedman (EN-340). Environmental Protection Agency, Washington, D.C. 20460, 202-755-9437.
No. 1325 *Aftermarket Parts Certification.* CAA 207(a)(2). 40 CFR 86. The regulation establishes a procedure whereby parts manufacturers can certify that use of their parts will not increase vehicle emissions.	July 1979	September 1979	David Feldman (EN-340). Environmental Protection Agency, Washington, D.C. 20460, 202-755-0297.
No. 1326 *Short Test for Emission Warranties.* CAA 207(b). 40 CFR 86. The regulation establishes procedures to test emissions from light-duty trucks and light-duty vehicles in conjunction with inspection/maintenance programs.	May 25, 1977	August 1979	Dick Nash. Environmental Protection Agency, Ann Arbor, Michigan 48105, 313-668-4412, FTS 8-374-8412.
No. 1327 *Emission Control (Performance) Warranty.* CAA 207(b)(2). 40 CFR 86. This regulation requires vehicle manufacturers to warrant the in use emission performance of their vehicles. Warranty would be an inspection/maintenance program.	May 16, 1976 proposed; April 20, 1979 (reproposed).	August 1979	David Feldman (EN-340). Environmental Protection Agency, Washington, D.C. 20460, 202-755-0297.
No. 1328 *Fuels and Fuel Additives Protocols for Testing.* CAA 211. 40 CFR 79.6. These protocols will help determine effects of fuel and fuel additives on public health and emission control devices.	July 1979	October 1979	Matt Bills (RD-680). Environmental Protection Agency, Washington, D.C. 20460, 202-426-4452.
No. 1329 *High Altitude Performance Adjustments.* CAA 215. 40 CFR 86. EPA is required to set procedures for approval of manufacturers' adjustments to cars for high-altitute operation.	February 1980		Ernie Rosenberg (AW-455). Environmental Protection Agency, Washington, D.C. 20460, 202-755-0596.
No. 1330 *Turbine Aircraft Gaseous Emissions Retrofit and Modification of 1973 Standards.* CAA 231. 40 CFR 86. This regulation proposes new emission standards for large aircraft to reduce HC, NOx, and CO.	March 24, 1978	November 1979	William Houtmann. Environmental Protection Agency, Ann Arbor, Michigan 48105, 313-668-4272, FTS 8-374-8272.
No. 1331 *Regional Consistency.* CAA 301. 40 CFR 56. EPA is required to provide for consistent implementation of the Clean Air Act by the various EPA Regional Offices.	March 9, 1979	October 1979	Darryl Tyler (MD-13). Environmental Protection Agency, Research Triangle Park, N.C. 27711, 919-541-5251, FTS 8-629-5425.
No. 1332 *Monitoring Regulations.* CAA 319. 40 CFR 52/53/58/60. These regulations revise the State and local air pollution monitoring requirements for State implementation plans and for reporting air quality and emission data to EPA.	August 7, 1978	May 10, 1979	Robert Neligan (MD-14). Environmental Protection Agency, Research Triangle Park, N.C. 27711, 919-541-5447, FTS 8-629-5447.
No. 1333 *Testing Retrofit Devices for Fuel Economy Performance.* MVICSA 511. 40 CFR 85. The regulation provides for EPA evaluation of a fuel economy retrofit device produced by a manufacturer.	August 10, 1977	June 1979	Ernie Rosenberg (AW-455). Environmental Protection Agency, Washington, D.C. 20460, 202-755-0596.
DRINKING WATER			
No. 1201 **Control of Organic Chemical Contaminants in Drinking Water.* SDWA 1412. 40 CFR 141. The first part of the proposed regulation sets a maximum contaminant level for total trihalomethanes; the second part proposes a required treatment technique for synthetic organic chemicals.	February 9, 1978	July 1979	Joe Cotruvo (WH-550). Environmental Protection Agency, Washington, D.C. 20460, 202-472-5016.
No. 1202 *Technical Amendments to the National Interim-Primary Drinking Water Regulations.* SDWA 1412. 40 CFR 141. These proposed regulations adjust the previously published National Interim-Primary Drinking Water regulations.	June 1979	November 1979	Do.
No. 1203 *National Secondary Drinking Water.* SDWA 1412(C). 40 CFR 143. These regulations are nonenforceable guidelines on esthetic drinking water quality.	March 31, 1977	June 1979	Frank Bell (WH-550). Environmental Protection Agency, Washington, D.C. 20460, 202-472-6820.
No. 1205 *Underground Water Source Protection Program.* SDWA 1421(a). 40 CFR 146. Underground injection of fluids is practiced mainly in the oil and gas industry. These regulations are intended to protect groundwater drinking supplies from contamination caused by improper injection procedures. States can apply for primary enforcement authority if they meet the minimum criteria specified in the regulations. The regulations can require a permit program to ensure that a case-by-case determination is made.	August 31, 1976 (proposed); April 20, 1979 (reproposed).	January 1980	Do.
NOISE			
No. 1170 *Buses.* NCA 5/6. 40 CFR 205. This regulation sets noise emission standards for new interstate, city, and school buses.	September 12, 1977	October 1979	William Roper (ANR-490). Environmental Protection Agency, Washington, D.C. 20460, 703-557-7747.
No. 1171 *Truckmounted Solid Waste Compactor.* NCA 5/6. 40 CFR 204. The regulation sets noise emission standards for solid waste compactors.	August 26, 1977	June 1979	Kenneth Feith (AW-490). Environmental Protection Agency, Washington, D.C. 20460, 703-557-2710.
No. 1172 *Wheel and Crawler Tractors.* NCA 5/6. 40 CFR 204. The regulation sets a noise emission standard for new wheel and crawler tractors.	July 11, 1977	January 1980	Henry Thomas (AW-490). Environmental Protection Agency, Washington, D.C. 20460, 703-557-7743.
No. 1173 *Motorcycles.* NCA 5/6. 40 CFR 205. This regulation sets noise emission standards for motorcycles and replacement exhaust systems.	February 15, 1978	February 1980	William Roper (AW-490). Environmental Protection Agency, Washington, D.C. 20460, 703-557-7747.
No. 1174 *Labeling: Hearing Protectors.* NCA 8. 40 CFR 211. The regulation requires the labeling of hearing protectors.	June 22, 1977	July 1979	Henry Thomas (AW-490). Environmental Protection Agency, Washington, D.C. 20460, 703-557-7743.

SIGNIFICANT EPA REGULATIONS UNDER CONSIDERATION—Continued

NAME AND DESCRIPTION OF REGULATION	PROPOSAL DATE IN FEDERAL REGISTER	FINAL DATE IN FEDERAL REGISTER	CONTACT PERSON AND ADDRESS
NOISE—Continued			
No. 1175 *Labeling: General.* NCA 8. 40 CFR 211. The regulation establishes general labeling provisions.	June 22, 1977	July 1979	Do.
No. 1176 *Administrative Hearing Procedures.* NCA 11. 40 CFR 210. Procedures are established for hearings to issue remedial orders under Section 11(d) of the Act. As mandated, these are adjudicatory hearings under the Administrative Procedure Act, 5 U.S.C. 554.	August 3, 1978	August 1979	Jim Kerr (EN-387). Environmental Protection Agency, Washington, D.C. 20460, 703-557-7410.
No. 1177 *Low Noise Emission Products.* NCA 15. 40 CFR 203. If a product is determined to have low emission, it may be suitable for special consideration in Federal purchasing. This regulation establishes guidelines for such determination.	May 27, 1977	June 1979	Henry Thomas (AW-490). Environmental Protection Agency, Washington, D.C. 20460, 703-557-7743.
No. 1178 *Importation of Noise Emitting Products.* NCA 9. The standards will be concurrent with the Customs Department/EPA regulations governing the importation of regulated products.	January 1980		Rich Kozlowski (EN-387). Environmental Protection Agency, Washington, D.C. 20460, 703-557-7470.
No. 1179 *Interstate Rail Carriers.* NCA 17. 40 CFR 205. This regulation sets noise emission standards for railroad facilities. EPA prepared this regulation after a successful law suit by the Association of American Railroads, which said EPA's noise emission standards for locomotives and cars failed to address the problem of noise from facilities such as railroad yards. The Court ordered EPA to adopt final regulations controlling railroad facilities.	April 17, 1979	July 1979	William Roper (AW-490). Environmental Protection Agency, Washington, D.C. 20460, 703-557-7747.
No. 1180 *Special Local Conditions.* NCA 17(c)2/18(c)2. 40 CFR 201. The regulation establishes procedures for a State to adopt otherwise pre-empted State and local rail and motor carrier noise regulations when necessitated by special local conditions.	November 29, 1976	Late 1980	Henry Thomas (AW-490). Environmental Protection Agency, Washington, D.C. 20460, 703-557-7743.
PESTICIDES			
Pesticide Registration Guidelines. 40 CFR 163. These guidelines specify the test data standards and reporting and labeling requirements to support registration applications for pesticide products.			
No. 1141. *Introduction.* FIFRA 3. Subpart B (will become A) includes the general purposes of all of the guidelines, degree of flexibility in requirements and in interim data usage, definition of terms used throughout the guidelines, and requirements for retention of data and test samples at laboratories.	July 10, 1978	August 1979	Bill Preston (TS-769). Environmental Protection Agency, Washington, D.C. 20460, 703-557-7351.
No. 1142 *Experimental Use Permits.* FIFRA 3. Subpart A (will become Subpart C) specifies that data and labeling must be submitted in support of an application for an experimental use permit, and the procedures which must be followed to obtain a permit.	August 1979	April 1980	Do.
No. 1143 *Chemistry Requirements.* FIFRA 3. Subpart D covers requirements for data on chemistry of active ingredients, formulation components, manufacturing impurities, and environmental fate of pesticides.	July 10, 1978	August 1979	Do.
No. 1144 *Hazard Evaluation: Wildlife & Aquatic Organisms.* FIFRA 3. Subpart E covers data requirements for studies of pesticide effects on birds, wild mammals, fish, and other aquatic animals.	July 10, 1978	August 1979	Do.
No. 1145 *Hazard Evaluation: Humans & Domestic Animals.* FIFRA 3. Subpart F specifies data requirements for studies of pesticide effects in laboratory animals.	August 22, 1978	December 1979	Do.
No. 1146 *Product Performance.* FIFRA 3. Subpart G specifies the data that registrants must submit to demonstrate that pesticide products will control pests as specified in label claims.	August 1979	August 1980	Do.
No. 1147 *Label Development.* FIFRA 3. Subpart H describes all essential parts of a pesticide product label.	August 1979	August 1980	Do.
No. 1148 *Hazard Evaluation: Non-Target Plants and Microorganisms.* Subpart J covers data required to evaluate adverse effects on nontarget areas; it also provides guidance to submit data on spray draft and phytoxicity.	August 1979	April 1980	Do.
No. 1149 *Pesticide Use Restrictions.* FIFRA 3. 40 CFR 162. This regulation classifies restricted uses of pesticides.	January 9, 1979	July 1979	Walt Waldrop (TS-770). Environmental Protection Agency, Washington, D.C. 20460, 202-755-7014.
No. 1150 *Conditional Registration Regulation.* FIFRA 3(c)(7)(A) and (B). 40 CFR 162. This interim/final regulation establishes procedures for conditional registration of: (1) pesticide products which are identical or substantially similar to those currently registered and (2) new uses of existing pesticide products.	May 11, 1979		Bob Rose (TS-767). Environmental Protection Agency, Washington, D.C. 20460, 202-426-2510.
No. 1151 *Registration Data Compensation.* FIFRA 3(C)(1)(D). 40 CFR 162. These rules provide for compensation when one pesticide registrant relies on test data generated by another registrant.	June 21, 1977	May 11, 1979	Ed Gray (A-132). Environmental Protection Agency, Washington, D.C. 20460, 202-755-0846.
No. 1152 *State Experimental Use Permits.* FIFRA (5)f. 40 CFR 172. This regulation defines the scope of State jurisdiction to allow experimental uses of pesticides.	September 3, 1975, interim final.	June 1979	Phil Gray (TS-770). Environmental Protection Agency, Washington, D.C. 20460, 202-755-7014.
No. 1153 *State Registration to Meet Special Local Needs.* FIFRA 24(c). 40 CFR 162. This regulation defines the scope of State jurisdiction to register pesticides for use not covered by Federal registrations.	September 3, 1975	June 1979	Do.

SIGNIFICANT EPA REGULATIONS UNDER CONSIDERATION—Continued

NAME AND DESCRIPTION OF REGULATION	PROPOSAL DATE IN FEDERAL REGISTER	FINAL DATE IN FEDERAL REGISTER	CONTACT PERSON AND ADDRESS
PESTICIDES—Continued			
No. 1154 *Pesticide Special Packaging Regulations.* FIFRA 25. 40 CFR 162. This rule prescribes requirements for child-proof packaging.	February 16, 1977	March 9, 1979.	Maureen Grimmer (TS-766). Environmental Protection Agency, Washington, D.C. 20460, 202-755-8030.
No. 1155 *Exemption of New Human Drugs.* FIFRA 25(c)(2). 40 CFR 162. This part exempts from FIFRA pesticides that are also new drugs regulated by FDA.	October 13, 1978	June 1979	Herbert Harrison (TS-767). Environmental Protection Agency, Washington, D.C. 20460, 202-426-4110.
RADIATION			
No. 1160 *Protective Action Guidelines for Nuclear Emergencies.* AEA 274(h). This is guidance for emergency response plans in the event of a nuclear accident, i.e. effluent release from a nuclear reactor.	September 1979	February 1980	Jim Hardin (AW-460). Environmental Protection Agency, Washington, D.C. 20460, 703-557-8610.
No. 1161 *Guidance for Occupational Radiation Exposure.* AEA 274(h). This guidance updates existing (1960) radiation occupational exposure limits for workers at Federal facilities and those facilities inspected by Federal agencies.	June 1979	December 1979	Luis Garcia (AW-460). Environmental Protection Agency, Washington, D.C. 20460, 703-557-8224.
No. 1162 *Transuranic Elements.* AEA 274(h). This guidance to Federal agencies establishes dose rate limits for persons exposed to transuranic elements in the general environment. The final guidance is to be signed by the President.	November 3, 1977	June 1979	Gordon Burley (AW-460). Environmental Protection Agency, Washngton, D.C. 20460, 703-557-8610.
No. 1163 **Environmental Standards for High-Level Radioactive Wastes.* AEA 274(h). The regulation will set standards for release of radioactivity to the environment as a result of storage of waste isotopes.	August 1979	March 1980	Stan Lichtman (AW-460). Environmental Protection Agency, Washington, D.C. 20460, 703-557-8927.
No. 1164 *Environmental Criteria for Radioactive Wastes.* AEA 274(h). The criteria are general guidance as to what constitutes radioactive waste and factors to be considered in evaluating disposal modes and sites.	November 15, 1978	June 1979	Harry Pettengill (AW-460). Environmental Protection Agency, Washington, D.C. 20460, 703-8927.
No. 1165 *Florida Phosphate Tailings.* PHSA 301. A 1975 commitment to the Governor of Florida by the Administrator requires EPA to establish guidelines as to what to do (1) about existing houses on radium "contaminated" land; (2) about new construction on such land.	June 1979	September 1979	Joe Fitzgerald (AW-460). Environmental Protection Agency, Washington, D.C. 20460, 703-557-8224.
No. 1166 **Environmental Standard for Inactive Uranium Mill Tailings.* UMTRCA 206(a). The purpose of this standard is to execute the Agency's responsibilities under the Uranium Mill Tailings Radiation Control Act of 1978. In brief, these are: (a) to set generally applicable radiological and non-radiological standards for uranium mill tailing at inactive and active mill sites; (b) to advise the Dept. of Energy on public health considerations applicable to setting priorities for remedial actions at the inactive sites; (c) to consult with other Federal agencies concerning certain responsibilities they are given under the Act; (d) to prepare a report to Congress on health, safety and environmental hazards of uranium mine waste, with recommendations, if any, for a program to eliminate the hazards. The portion of the program regarding inactive sites provides the criteria according to which the Dept. of Energy will conduct remedial actions at the sites. The standards for active sites will be implemented in the regulatory program of the Nuclear Regulatory Commission for Uranium Mills.	August 1979	November 1979	Stan Lichtman (ANR-458). Environmental Protection Agency, Washington, D.C. 20460, 703-557-8927.
SOLID WASTE			
No. 1191 *Hazardous Waste Criteria—Identification and Listing.* RCRA 3001. 40 CFR 250. These regulations define wastes that will be controlled under the nationwide hazardous waste management program. Criteria are provided to identify characteristics of hazardous wastes, based on ignitability, corrosiveness, reactivity, and toxicity. Also included are testing procedures to determine whether a waste meets the described characteristics. The regulation also lists certain hazardous wastes and processes which are presumed to generate hazardous wastes. Also, means are provided for demonstration of noninclusion in the Subtitle C system.	December 18, 1978	December 1979	Alan Corson (WH-565). Environmental Protection Agency, Washington, D.C. 20460, 202-755-9187.
No. 1192 **Standards for Generators of Hazardous Wastes.* RCRA 3002. 40 CFR 250. This regulation establishes national standards for generators of hazardous wastes, covering such items as recordkeeping, containerization, and labelling, waste identification, and reporting. This regulation also contains provisions for a hazardous waste manifest system.	December 18, 1978	December 1979	Harry Trask (WH-565). Environmental Protection Agency, Washington, D.C. 20460, 202-755-9187.
No. 1193 *Standards for Transporters of Hazardous Wastes.* RCRA 3003. 40 CFR 250. These national standards require transporters of hazardous waste to ship only properly labeled containers and only to permitted facilities.	April 28, 1978	December 1979	Do.
No. 1194 **Standards for Hazardous Waste Treatment, Storage, and Disposal Facilities.* RCRA 3004. 40 CFR 250. Hazardous waste management facilities will be required to meet certain technical performance standards regarding operating practices, location, and design. These standards contain provisions to protect surface-water, groundwater, and air quality.	December 18, 1978	December 1979	Timothy Fields (WH-565). Environmental Protection Agency, Washington, D.C. 20460, 202-755-9206.
No. 1195 *Permit Regulations for Hazardous Waste Treatment, Storage, and Disposal Facilities.* RCRA 3005. 40 CFR 250. This regulation establishes a permit program to assure uniform State (or EPA) control of hazardous waste management facilities.	July 1979	October 1979	Sam Morekas (WH-565). Environmental Protection Agency, Washington, D.C. 20460, 202-755-9190.

SIGNIFICANT EPA REGULATIONS UNDER CONSIDERATION—Continued

NAME AND DESCRIPTION OF REGULATION	PROPOSAL DATE IN FEDERAL REGISTER	FINAL DATE IN FEDERAL REGISTER	CONTACT PERSON AND ADDRESS
SOLID WASTE—Continued			
No 1196 *Guidelines for State Hazardous Waste Programs.* RCRA 3006. 40 CFR 250. These guidelines are to assist States in developing their own hazardous waste regulatory programs. The guidelines also specify minimum requirements States must meet in order to be authorized by EPA to implement these programs.	February 1, 1978 (proposed); May 1979 (reproposed).	October 1979	Dan Derkics (WH-565). Environmental Protection Agency, Washington, D.C. 20460, 202-755-9190.
No. 1197 *Notification System for Hazardous Waste Generators, Transporters, Storers, Treaters, and Disposers.* RCRA 3010. 40 CFR 250. The regulation describes the one-time notification requirement for generators, transporters, storers, treaters, and disposers of hazardous waste.	July 11, 1978	August 1979	Terry Kafara (WH-565). Environmental Protection Agency, Washington, D.C. 20460, 202-755-9206.
No. 1198 *Guidelines for State Solid Waste Programs.* RCRA 4002(b). 40 CFR 256. These guidelines are to assist States in the development and implementation of solid waste management programs.	August 28, 1978	June 1979	George Garland (WH-565). Environmental Protection Agency, Washington, D.C. 20460, 202-755-9125.
No. 1199 *Criteria for Classification of Solid Waste and Disposal Facilities.* RCRA 4004(a). 40 CFR 257. These criteria provide a basis to determine whether solid waste-land disposal facilities pose a threat to health or the environment.	February 6, 1978	July 1979	Kenneth Shuster (WH-564). Environmental Protection Agency, Washington, D.C. 20460, 202-755-9116.
No. 1200 *Guidelines for Federal Procurement Practices.* RCRA 6002(e). These guidelines are to assist Federal agencies to comply with the RCRA's requirement that procured materials be composed of the highest percentage of recovered materials practicable:			John Hetfelfinger (WH-563). Environmental Protection Agency, Washington, D.C. 20460, 202-755-9140.
Utilization of Fly Ash and Slag	November 1979		
Use of Recycled Paper in Paper Products	November 1979		
Use of Waste in Construction Products	November 1979		
TOXIC SUBSTANCES			
Under section 4 of the Toxic Substances Control Act (TSCA), the Agency will develop a series of standards for the development of test data and a series of rules equiring the testing of specific chemical substances and mixtures.			
No. 1130 *Test Rules for Chemical Substances and Mixtures.* TSCA 4. 40 CFR 770. This regulation establishes general provisions and requirements.	December 1979		Denise Swink (TS-792). Environmental Protection Agency, Washington, D.C. 20460, 202-755-4894.
No. 1131 *Test Rules for Chemical Substances and Mixtures.* TSCA 4. 40 CFR 771. This regulation establishes requirements for testing of specific chemical substances and mixtures.			Do.
No. 1132 *Standards for Development of Chronic Test Data.* TSCA 4. 40 CFR 772. This regulation establishes standards for oncogenic and nononcogenic chronic effects testing and for Good Laboratory Practices (GLP) for health effects standards.	May 9, 1979	February 1980	Do.
No. 1461 *Standards for Development of test Data.* TSCA 4. 40 CFR 772. This regulation will establish standards for acute and subchronic toxicity, mutagenicity, teratogenicity, reproductive effects, and other health effects testing.			Do.
No. 1462 *Standards for Development of Test Data.* TSCA 4. 40 CFR 772. This regulation will establish standards for physical and chemical properties, environmental fate, and ecological effects testing.			Do.
No. 1133 *Premanufacture Testing Guidance.* TSCA 5. Not a rulemaking. Guidance to help manufacturers of new chemicals decide whether to perform testing, what types of testing to perform, and how to conduct tests.	Late 1979		Ron Outen (TS-792). Environmental Protection Agency, Washington, D.C. 20460, 202-472-2562.
No. 1134 *Premanufacture Notification.* TSCA 5. 40 CFR 720. This rule establishes procedures and forms to notify EPA of intent to manufacture new chemicals.	January 10, 1979	September 1979	Blake Biles (TS-794). Environmental Protection Agency, Washington, D.C. 20460, 202-755-5482.
No. 1135 *PCB's Manufacture and Distribution.* TSCA 6. 40 CFR 761. This regulation implements the statutory ban on manufacture, processing, distribution, and use of PCBs in other than a totally enclosed manner.	June 7, 1978	May 31, 1979	Hal Snyder (TS-794). Environmental Protection Agency, Washington, D.C. 20460, 202-755-8023.
No. 1136 *Chlorofluorocarbon Emissions.* TSCA 6. 40 CFR 760. This regulation may control certain nonaerosol uses of CFCs, depending on the results of a study now in progress. Timetable to be determined.			Ferial Bishop (TS-794). Environmental Protection Agency Washington, D.C. 20460, 202-755-8963.
No. 1137 *Reporting and Recordkeeping.* TSCA 8. 40 CFR 711. A rule is being developed under section 8(a) to require submittal of certain data for preliminary assessment of health and environmental hazards of specific chemicals or chemical groups. Additional 8(a) rules will follow.	August 1979	April 1980	Jeanette Wiltse (TS-793). Environmental Protection Agency, Washington, D.C. 20460, 202-755-2547.
No. 1138 *Reporting and Recordkeeping.* TSCA 8. 40 CFR 717. This regulation, which is being developed under section 8(c), will require recording and reporting allegations of adverse health and environmental reactions to chemicals.	September 1979	March 1980	Do.
No. 1139 *Reporting and Recordkeeping.* TSCA 8. 40 CFR 730. This rule, which is being developed under section (d), will establish policies and procedures for submittal of health and safety studies related to specific chemicals. This rule may serve as a model, and through additional rulemaking, these requirements would be applied to additional chemicals or chemical groups.	July 1979	January 1980	Do.

SIGNIFICANT EPA REGULATIONS UNDER CONSIDERATION—Continued

NAME AND DESCRIPTION OF REGULATION	PROPOSAL DATE IN FEDERAL REGISTER	FINAL DATE IN FEDERAL REGISTER	CONTACT PERSON AND ADDRESS
WATER			
No. 1400 *Water Quality Management Regulations.* CWA 106, 208, 303(e). 40 CFR 35. These regulations revise and update the water quality management regulations previously under 40 CFR 130 and 131.	September 12, 1978	May 23, 1979	Linda Eichmiller (WH-554). Environmental Protection Agency, Washington, D.C. 20460, 202-755-6965.
No. 1401 *State 208 Regulatory Programs for Dredge and Fill Materials.* CWA 208(b)(4). 40 CFR 35.15. These regulations authorize States to establish regulatory programs for the discharge of dredge and fill material to supplement State 404 permit programs.	June 1979	November 1979	Joe Krivak. Environmental Protection Agency, Washington, D.C. 20460, 202-755-7000.
No. 1402 *Modification of Secondary Treatment Requirements for Marine Dischargers.* CWA 301(h). 40 CFR 233. The 1977 amendments of the Clean Water Act allow EPA to modify the treatment requirements for Publicly-Owned Treatment Works (POTW's) discharging waste to the ocean. Subject to modification is the degree of required control of Biological Oxygen Demand (BOD), Total Suspended Solids (TSS), and pH. Applicants are required to meet eight specific 301(h) criteria in addition to any other applicable criteria of the Act. The receipt of a modification will not relieve a POTW from compliance with performance standards which EPA will publish later to reflect Best Practicable Wastewater Treatment Technology (BPWTT). This rule establishes the criteria which EPA will apply and the procedures it will follow in its evaluation of applications for a modification.	April 25, 1978	June 1979	Tom O'Farrell (WH-551). Environmental Protection Agency, Washington, D.C. 20460, 202-426-8976.
To comply with the Clean Water Act and a court order mandating control of certain toxic substances in industrial effluents, we are developing effluent guidelines representing best available treatment technology, new source performance standards, and pretreatment standards for the following industries. CWA sections 301, 304, 306, and 307.			
No. 1405 *Iron and Steel Manufacturing.* 40 CFR 420	November 1979	June 1980	Ernst Hall (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-426-2576.
No. 1406 *Petroleum Refining.* 40 CFR 435	July 1979	January 1980	John Cunningham (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-426-7770.
No. 1407 *Timber Products Processing.* 40 CFR 429	July 1979	January 1980	John Riley (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-426-5554.
No. 1408 **Steam Electric Power Plants.* 40 CFR 423	June 1979	January 1980	John Lum (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-426-7770.
No. 1409 *Leather Tanning and Finishing.* 40 CFR 425	June 1979	November 1979	Don Anderson (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-426-2440.
No. 1410 *Nonferrous Metals Manufacturing.* 40 CFR 421	August 1979	March 1980	Patricia Williams (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-426-2586.
No. 1411 *Paint and Ink Formulation.* 40 CFR 46	October 1979	May 1980	William Thompson (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-426-7797.
No. 1412 *Printing and Publishing Services.* 40 CFR 448	November 1979	June 1980	Carl Kassebaum (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-426-7797.
No. 1413 *Ore Mining and Dressing.* 40 CFR 434	December 1979	July 1980	Gail Coad (WH-586). Environmental Protection Agency, Washington, D.C. 20460, 202-426-2503.
No. 1414 *Coal Mining.* 40 CFR 414	December 1979	July 1980	William Telliard (WH-586). Environmental Protection Agency, Washington, D.C. 20460, 202-426-2726.
No. 1415 ● *Organic Chemicals Manufacturing.* 40 CFR 415	October 1979	September 1980	Paul Fahrenthold (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-426-2497.
No. 1416 *Inorganic Chemicals Manufacturing.* 40 CFR 415	October 1979	September 1980	Elwood Martin (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-426-2582.
No. 1417 *Textile Mills.* 40 CFR 410	June 1979	December 1979	James Gallup (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-426-2554.
No. 1418 *Plastics and Synthetic Material.* 40 CFR 416	February 1980	September 1980	Paul Fahrenthold (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-426-2497.
No. 1419 *Pulp and Paper.* 40 CFR 430	February 1980	September 1980	Bob Dellinger (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-426-2554.

SIGNIFICANT EPA REGULATIONS UNDER CONSIDERATION—Continued

NAME AND DESCRIPTION OF REGULATION	PROPOSAL DATE IN FEDERAL REGISTER	FINAL DATE IN FEDERAL REGISTER	CONTACT PERSON AND ADDRESS
WATER —Continued			
No. 1420 *Rubber Processing.* 40 CFR 428	July 1979	February 1980	Juanita Hillman (WH-550). Environmental Protection Agency, Washington, D.C. 20460, 202-426-2497.
No. 1421 *Soap and Detergents Manufacturing.* 40 CFR 417	July 1980	July 1981	Sammy Ng (WH-586). Environmental Protection Agency, Washington, D.C. 20460, 202-426-2503.
No. 1422 *Auto and Other Laundries.* 40 CFR 444	December 1979	July 1980	Richard Gigger (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-426-2583.
No. 1423 *Miscellaneous Chemicals—Adhesives and Sealants.* 40 CFR 456.	February 1980	September 1980	Elwood Forsht (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-426-2707.
No. 1424 *Miscellaneous Chemicals—Explosives Manufacturing.* 40 CFR 457.	January 1960	August 1980	Chester Rhines (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-426-4617
No. 1425 *Miscellaneous Chemicals—Gum and Wood.* 40 CFR 454	September 1979	April 1980	James Gallup (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-426-2554.
No. 1426 *Miscellaneous Chemicals—Pesticides.* 40 CFR 455.	April 1980	November 1980	George Jett (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-426-2497.
No. 1427 *Miscellaneous Chemicals—Pharmaceuticals.* 40 CFR 439	January 1980	August 1980	Joe Vitalis (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-426-2497.
No. 1428 ● *Electroplating.* 40 CFR 413	April 1980	September 1980	Bill Hanson (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-755-1331.
No. 1429 *Machinery and Mechanical Products—Photographic Equipment and Supplies.* 40 CFR 459.	February 1980	August 1980	Ernst Hall (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-426-2576.
No. 1430 *Machinery and Mechanical Products—Mechanical Products.* 40 CFR 433.	August 1980	March 1981	Richard Kinch (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-426-4617.
No. 1431 *Machinery and Mechanical Products—Electrical and Electronic Components.* 40 CFR 469.	March 1980	October 1980	Do.
No. 1432 *Machinery and Mechanical Products—Foundry Operations.* 40 CFR 464.	November 1979	June 1980	Ernst Hall (WH-552). Environmental Protection Agency, Washington, D.C. 20460, 202-426-2576.
No. 1433 *Machinery and Mechanical Products—Copper and Copper Alloy Products.* 40 CFR 468.	April 1980	November 1980	Do.
No. 1434 *Machinery and Mechanical Products—Battery Manufacturing.* 40 CFR 461.	April 1980	November 1980	Do.
No. 1435 *Machinery and Mechanical Products—Coil Coating.* 40 CFR 465.	September 1979	March 1980	Do.
No. 1436 *Machinery and Mechanical Products—Plastics Processing.* 40 CFR 463.	October 1980	May 1981	Do.
No. 1437 *Machinery and Mechanical Products—Porcelain*	October 1979	May 1980	Do.
No. 1438 *Machinery and Mechanical Products—Aluminum Forming.* 40 CFR 467.	March 1980	October 1980	Do.
No. 1441 **Revision of Water Quality Standards Regulation.* CWA 303. 40 CFR 130.17. This regulation may require States to adopt Water Quality Standards for some toxic pollutants covered by national ambient water quality criteria. One effect of this will be that dischargers (both municipal and industrial) may have to install treatment technology beyond that required by Best Available Wastewater Treatment Technology (BPWTT) or Best Available Technology (BAT) guidelines.	August 1979		Ken Mackenthun (WH-585). Environmental Protection Agency, Washington, D.C. 20460, 202-755-0100.
No. 1442 *Quality Criteria for Water: Volume II.* CWA 304(a). Ambient water quality criteria will be established for 65 pollutants.	March 15, 1979, 27 pollutants; July 1979, 38 pollutants.	September 1979, 27 pollutants; December 1979, 38 pollutants.	Do.
No. 1443 *Secondary Industry Review.* CWA 304(b). 40 CFR 400 to 469. This regulation promulgates Best Practicable Control Technology (BCT) for certain subcategories of the "secondary industries" not covered by the NRDC Settlement Agreement. For other subcategories, Best Available Technology (BAT) limits will be suspended. The methodology applied to BCT for secondary industries will also be applied to BCT for primary industries when BAT regulations are established.	August 23, 1978	July 1979	Emily Hartnel (WH-586). Environmental Protection Agency, Washington, D.C. 20460, 202-426-2704.

SIGNIFICANT EPA REGULATIONS UNDER CONSIDERATION—Continued

NAME AND DESCRIPTION OF REGULATION	PROPOSAL DATE IN FEDERAL REGISTER	FINAL DATE IN FEDERAL REGISTER	CONTACT PERSON AND ADDRESS
WATER—Continued			
No. 1446 *Revision of Hazardous Substances Discharge Regulations.* CWA 311. 40 CFR 117. As a result of amendments of Section 311, parts 117 and 119 will be withdrawn and part 118 revised, principally to clarify which dischargers will be subject to the provisions of Section 311.	February 16, 1979	July 1979	Ken Mackenthun (WH-585). Environmental Protection Agency, Washington, D.C. 20460, 202-755-0100.
No. 1447 *Oil Spill Liability.* CWA 311(q). 40 CFR 118. This rule establishes maximum limits of liability for fixed non-transportation-related facilities faced with cleanup liabilities under Section 311.	September 1979	June 1980	Joseph Lewis (WH-585). Environmental Protection Agency, Washington, D.C. 20460, 202-245-0581.
No. 1448 *Marine Sanitation Devices.* CWA 312. 40 CFR 140. These rules establish secondary treatment or equivalent requirements for commerical vessels navigating the Great Lakes.	Late 1980		Jonathan Amson (WH-585). Environmental Protection Agency, Washington, D.C. 20460, 202-245-3036.
No. 1449 *Drinking Water Intake Zone Exemptions.* CWA 312. 40 CFR 140. This regulation establishes the procedures and criteria for defining water intake zones. The regulation will prohibit discharges from vessels in waters so defined.	July 1979	December 1979	Do.
No. 1450. *Clean Lakes.* CWA 314. 40 CFR 35. These rules establish procedures to administer State grants for restoring lakes.	July 1979	August 1979	Robert Johnson (WH-585). Environmental Protection Agency, Washington, D.C. 20460, 202-472-3400.
No. 1451 *Hazardous Substances Pollution Prevention for Facilities Subject to Permitting Requirements.* CWA 402. 40 CFR 151. This regulation sets forth requirements for the Spill Prevention Control and Countermeasure Plans of nontransportation-related facilities which handle hazardous substances and are subject to NPDES permits.	September 1, 1978	November 1979	Thomas J. Charlton (WH-548). Environmental Protection Agency, Washington, D.C. 20460, 202-245-3045.
No. 1454 *Ocean Discharge Criteria.* CWA 403(c). 40 CFR 231. They are intended to help prevent environmental degradation of the territorial seas, the contiguous zone, and the oceans.	December 1979		Tom O'Farrell (WH-551). Environmental Protection Agency, Washington, D.C. 20460, 202-426-8976.
No. 1455 *Guidelines To Protect the Aquatic Environment, Including Wetlands, From the Discharge of Dredged or Fill Material.* CWA 404(b)(1). 40 CFR 230. These guidelines must be considered in the preparation of individual and general permit applications, in the preparation of Environmental Impact Statements (EIS's) for Federal activities specifically authorized by the Congress, and in the preparation of Best Management Practices (BMP's) under the State 208(4)(B) program. Failure to comply with these guidelines justifies denial of permit and return of State permit programs to the Corps of Engineers. September 5, 1975, interim-final guidelines are being revised and expanded by this effort.	June 1979		John Crowder (WH-585). Enviromental Protection Agency, Washington, D.C. 20460, 202-472-3400.
No. 1459 ● *Sewage Sludge Disposal.* CWA 405 and RCRA 4004. 40 CFR 258. These regulations are to assure that municipal sludge is managed in a manner that will protect public health and the environment and that valuable resources are conserved through beneficial utilization where practicable.	July 1979	August 1980	Bruce Weddle (WH-564). Environmental Protection Agency, Washington, D.C. 20460, 202-755-9120.
The following five regulations will be incorporated into the National Pollution Discharge Elimination System (NPDES) Permits Program regulations 40 CFR 121 to 125 in June 1979.			
No. 1403 *Extension of Pollution Control Deadlines for Publicly-Owned Treatment Works and Other Point Sources Planning to Discharge to Those Publicly-Owned Treatment Works.* CWA 301(j). 40 CFR 124. This regulation establishes criterial which EPA and NPDES States will use in reviewing requests for 301(i) extensions from the July 1, 1977, treatment requirements.	May 16, 1978, interim final		Ed Kramer (EN-336). Environmental Protection Agency, Washington, D.C. 20460, 202-755-0750.
No. 1404 *Requirements for Application for 301(c) and (g) Variances.* CWA 301(j)(1)(B). 40 CFR 125. These regulations require dischargers desiring 301(c) and (g) variances to fill initial applications by September 25, 1978, or 270 days after promulgation of BAT limitations, whichever is later.	September 13, 1978, interim final.		Do.
No. 1444 *Criteria and Standards for Imposing Best Management Practices for Ancillary Industrial Activities.* CWA 304(e) This regulation will indicate how "best management practices" for on-site industrial activities may be imposed in NPDES permits to prevent release of toxic and hazardous pollutants to surface waters.	September 1, 1978		Do.
No. 1452 *NPDES Program.* CWA 402. This regulation revises, updates, clarifies, and reorganizes existing NPDES regulations.	August 21, 1978	June 7, 1979	Do.
No. 1453 *Second Round Permits.* CWA 402. 40 CFR 124. This regulation establishes the use of short-term permits as the preferred mechanism to assure compliance with NRDC Consent Decree.	May 23, 1978	December 9, 1979	Do.
JOINT PROGRAMS			
No.1140 *Consolidated Rules of Practice Governing the Assessment of Civil Penalties.* TSCA 16, FIFRA 14, RCRA 3008, MPRSA 105, CAA 211. 40 CFR 22. This regulation provides a common set of procedural rules for several programs in order to reduce paperwork, inconsistency, and burden on regulated persons.	August 4, 1978, interim final	October 1979	Terrell Hunt (EN-342). Environmental Protection Agency, Washington, D.C. 20460, 202-755-0970.

[FR Doc. 79-15099 Filed 6-7-79; 8:45 am]

BILLING CODE 6560-01-M

federal register

Friday
June 8, 1979

Part VI

Department of Energy

Industrial Energy Conservation Program Including Proposed Voluntary Recovered Materials Utilization Targets; Proposed Rule and Announcement of Public Hearings

DEPARTMENT OF ENERGY

[10 CFR Part 445]

[Docket No. CAS-RM-79-301]

Industrial Energy Conservation Program Including Proposed Voluntary Recovered Materials Utilization Targets; Proposed Rulemaking and Public Hearings

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) is proposing regulations for the operation of its Industrial Energy Conservation Program (program). The program was established by the Energy Policy and Conservation Act (EPCA). The Federal Energy Administration and its successor, DOE, implemented the program through a series of notices published in the **Federal Register.** With the enactment of amendments to the EPCA in the National Energy Conservation Policy Act (NECPA), DOE is proposing to issue comprehensive regulations which will codify all aspects of the program, including criteria and procedures for the identification of certain manufacturing corporations for reporting purposes, the various reporting requirements of the program, and criteria and procedures for exemptions from reporting directly to DOE. DOE is including in the proposed program rule the final industrial energy efficiency improvement targets which were established by FEA as required by the EPCA. The proposed comprehensive regulations are intended to allow DOE to carry out more effectively its responsibilities for the program.

DOE also is proposing, as part of the comprehensive regulations, targets for the increased utilization of recovered materials (targets) for four industries, as required by the NECPA. The industries are metals and metal products, paper and allied products, textile mill products, and rubber. Information on public access to the support documents for the proposed targets is provided. Extensive public review and comment on this aspect of the proposed program rule are encouraged.

DATES: Written comments must be received by 4:30 p.m., e.d.t., August 7, 1979. A public hearing on all aspects of the proposed rule, other than the proposed targets, will be held on July 31. Four public hearings will be held on the proposed targets. Requests to speak at any hearing must be received by 4:30 p.m., e.d.t., July 13, 1979. The dates of the four hearings on targets are as follows:

Hearing on proposed targets for:	*Hearing date*
1. Textile mill products	July 23, 1979
2. Metals and metal products	July 24, 1979
3. Paper and allied products	July 25, 1979
4. Rubber	July 26, 1979

ADDRESSES: Send written comments, requests to speak at the hearings, and written statements to: Margaret Sibley, Docket No. CAS-RM-79-301, Office of Conservation and Solar Applications, U.S. Department of Energy, 20 Massachusetts Avenue, NW., Washington, D.C. 20585. The public hearings will be held at 9:30 a.m., e.d.t., each appointed day in Room 3000A, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background.
A. Introduction.
B. Voluntary Industrial Energy Conservation. Initiatives.
C. The Program under the EPCA.
D. The NECPA Amendments to the Program.
E. Public Workshops on the Program.
II. Discussion of Proposed Program Rule.
A. Introduction.
B. General Provisions.
C. Identification of Corporations.
D. Reporting Requirements.
E. Exemption Criteria and Procedures.
F. Voluntary Energy Efficiency and Recovered Materials Utilization Targets.
III. Access to Support Documents for the Proposed Recovered Materials Utilization Targets.
IV. Opportunities for Public Comment.
V. Environmental Review, Regulatory Review, Urban Impact Review, Consultation with other Federal Agencies and Major Industries.

I. Background.

A. *Introduction*

On November 9, 1978, President Carter signed the National Energy Conservation Policy Act (Pub. L. 95-619) (NECPA). Section 441 of the NECPA redesignated sections 371-376 of the Energy Policy and Conservation Act (42 U.S.C. 6341-6346) (EPCA) as Part E of Title III. Sections 461 and 601 of the NECPA further amended sections 371-376 of the EPCA, pursuant to which the Federal Energy Adminsitration (FEA) and, pursuant to the Department of Energy Organization Act (Pub. L. 95-91) (DOE Act), its successor, the Department of Energy (DOE), had implemented the Industrial Energy Conservation Program (program). This Background section describes voluntary industrial evergy conservation initatiatives, the program as developed in response to the EPCA, the changes in the program mandated by the recent enactment of the NECPA, and other matters relevant to the development of this proposed program rule.

B. *Voluntary Industrial Energy Conservation Initiatives.*

Since 1974, FEA and other federal agencies have encouraged industrial energy efficiency reporting as a means of promoting energy conservation by industry. The effort began prior to the enactment of the EPCA with a joint FEA and Department of Commerce (DOC) program, in cooperation with several energy intensive industries. Sections 301 and 308 of the DOE Act (42 U.S.C. 7151, 7157), in part, transferred authority for administering such voluntary initiatives to DOE. At present, 50 trade organizations report to DOE either as a part of the EPCA program or through this voluntary effort.

The information supplied by this voluntary cooperation is intended to provide both DOE and industry with an awareness of the opportunities for energy conservation and an indication of industry's conservation progress, and to assist in removing further constraints to conservation.

C. *The Program under the EPCA*

In enacting the EPCA in December 1975, Congress directed the FEA, in section 372 of Part D of Title III, to establish a program "(1) to promote increased energy efficiency by American industry, and (2) to establish voluntary energy efficency improvement targets for at least the ten most energy-consumptive major energy-consuming industries." In response, FEA issued requirements for the program through a series of notices published in the **Federal Register.**

FEA identified and ranked 20 two-digit Standard Industrial Classification (SIC) codes in the manufacturing division as the major energy-consuming industries in the United States in accordance with the provisions of section 373 of the EPCA (41 FR 7992, February 23, 1976; 41 FR 12766, March 26, 1976). Subsequently, FEA requested information from certain corporations on energy consumption in calendar year 1975 (41 FR 36838, September 1, 1976; 41 FR 47285, October 28, 1976; 42 FR 62422, December 12, 1977) and used this

information to identify, pursuant to section 373, the 50 most energy-consumptive corporations in each of the ten most energy-consumptive industries for which industrial energy efficiency improvement targets (efficiency targets) were to be established (41 FR 54977, December 16, 1976). The efficiency targets were established as required by section 374(a) (41 FR 48169, November 2, 1976; 42 FR 29642, June 9, 1977) for the following SIC codes: food and kindred products (SIC 20), textile mill products (SIC 22), paper and allied products (SIC 26), chemicals and allied products (SIC 28), petroleum and coal products (SIC 29), stone, clay and glass products (SIC 32), primary metals (SIC 33), fabricated metals (SIC 34), machinery, except electrical (SIC 35), and transportation equipment (SIC 37).

As part of the implementation of the requirement of section 375 that the 50 most energy-consumptive corporations in each of the ten industries report on improving energy efficiency, FEA developed and issued Form FEA U524–P–O (42 FR 22581, May 4, 1977; 42 FR 32831, June 28, 1977) for use by those corporations reporting directly to DOE.

Section 375 also provided that a corporation would be exempt from reporting directly to DOE if "* * * such corporation is in an industry which has an adequate voluntary reporting program (as defined by section 376 (g))." Section 376(g) further stated the following requirements for the exemption of a corporation through participation in an "adequate voluntary program".

(1) The Administrator shall exempt a corporation from the requirements of section 375(a) if such corporation is in an industry which has an adequate voluntary reporting program, as determined by the Administrator annually after notice and opportunity for interested persons to comment. An industry's voluntary reporting program shall be determined to be adequate only if—

(A) each corporation within such industry which is identified under section 373 fully participates in such program;

(B) all information deemed necessary by the Administrator for purposes of evaluating the progress made by such industry in achieving the industry energy efficiency improvement target set forth under section 374 is provided to the Administrator; and

(C) reports made to a trade association or other person, in connection with such program, are retained for a reasonable period of time and are available to the Administrator.

(2) If the Administrator determines that an industry's voluntary reporting program is not adequate solely on the basis that any corporation within such industry is not fully participating in such program, he shall exempt from the requirements of section 375(a) only those corporations which fully participate in such program.

The criteria for such indirect reporting were an important element of the program, and FEA developed criteria for exemption based on its determination that the existing voluntary reporting initiatives offered the most appropriate method of implementing the requirements of section 376(g). FEA proposed the criteria for indirect reporting for public comment (41 FR 38819, September 13, 1976). Following a review of 80 comments received in response, final criteria were published (41 FR 51866, November 24, 1976). Pursuant to the criteria, FEA exempted certain corporations from the direct reporting requirement (42 FR 15731, March 23, 1977; 42 FR 23538, May 9, 1977).

Accordingly, many corporations were exempt from direct reporting based on their participation in the existing reporting programs which were determined by FEA to be "adequate" for purposes of section 376(g). Since the direct and indirect reporting requirements were somewhat different, inconsistencies between the direct and indirect reports arose in the program.

With the publication of the direct reporting form and the exemption of corporations from the direct reporting requirement, the procedures for monitoring industrial energy efficiency improvements, as required by the EPCA, were compete. Identified corporations submitted semiannual reports to FEA, and then DOE, on progress in improving energy efficiency, either on Form FEA U524–P–O or through the reports of adequate voluntary reporting programs. DOE submitted to Congress an annual report in June 1978, based on data received from identified corporations covering energy consumption in 1976 and the first half of 1977. The preface to the Annual Report states, in part:

"The Department of Energy (DOE) will continue to work to improve the industrial energy efficency data to ensure that the reported information enables DOE, to the greatest extent possible under EPCA, to measure progress toward meeting the energy efficiency improvement targets. This will include revisions in reporting requirements, and increased follow-up and verification, to improve the quality of the data received from industry and to minimize potential inaccuracies in charting progress."

In Chapter III, "Program Improvement Elements," of the Annual Report—Volume I, DOE outlined certain areas for possible program improvements, including reporting and progress measurement.

Identified corporations have continued to submit the semiannual reports on energy consumption through 1978, and DOE will submit an annual report to Congress in 1979 based on this additional data. Monitoring of and reporting on industrial energy efficiency improvement after 1978 will be accomplished through the procedures proposed in these regulations.

D. *The NECPA Amendments to the Program*

In enacting the NECPA, Congress mandated several changes and additions to the program as established by the EPCA. These are described in this section.

1. *Corporate Identification.* Section 601 of the NECPA, among other things, amended the EPCA by striking a portion of section 373, redesignating the remaining part of that section as 373(a), and adding a new subsection (b). Section 373(b) requires DOE to identify, within ninety days of the enactment of the subsection, "each corporation which consumes at least one trillion British thermal units (Btu's) of energy per year and which is within a major energy-consuming industry identified under subsection (a)." This amendment expands the universe of corporations to be identified in each major energy-consuming industry from the fifty most energy-consuming corporations to all corporations which consume at least one trillion Btu's.

To implement this requirement, DOE, in a January 8, 1979 Federal Register notice (44 FR 1770), corrected by a January 19, 1979 notice (44 FR 4008), required all corporations which consumed at least one trillion Btu's of energy in calendar year 1977 in any of the 20 major energy-consuming industries identified by DOE to file a certified statement to that effect with DOE. The deadline for filing such a report with DOE was January 29, 1979. Based on the reports filed in response to this requirement, DOE identified corporations in Federal Register notices issued February 7, 1979 (44 FR 9045, February 12, 1979) and May 9, 1979 (44 FR 28750, May 16, 1979).

2. *Industrial Energy Efficiency Reporting.* Section 601 of the NECPA amended section 375 of the EPCA, which contains the requirements for mandatory reporting by identified corporations on progress in improving energy efficiency.

a. *Corporate Reporting.* The amendment to section 375(a) removes the language limiting reporting to identified corporations in the ten industries for which industrial energy

efficiency improvement targets had been established. While section 375(a) still requires reports to include information with which DOE can measure progress of industry in achieving the efficiency targets, it now also requires each corporation identified under section 373 to report on progress in improving its energy efficiency.

b. *Plant Reporting.* Sections 375(b) and (c) now require that the corporate reports made pursuant to section 375(a) include data aggregated to SIC codes from plant reporting forms, which each plant of an identified corporation shall periodically file with its corporate headquarters. Further, DOE is to prepare, publish, and make available forms for use in complying with the reporting requirements of section 375.

c. *Comment on Exemption Criteria.* While section 601 of the NECPA made significant changes to the reporting requirements of the program, no changes were made to the provisions for exemptions from the direct reporting requirements, as set forth in sections 375(a) and 376(g). However, in the Conference Report to the NECPA (Senate Report 95–1294), the section-by-section explanation of section 601 (amending sections 372, 373, and 375 of the EPCA) concludes as follows:

> "Finally, the conferees agreed not to change the language of the voluntary reporting exemption. However, it was agreed that the Secretary had not sufficiently defined 'adequate voluntary reporting program' within the guidelines provided in Sec. 376(g), and that the Secretary should set more explicit criteria for the determination of whether a voluntary program is adequate."

DOE had previously identified the exemption criteria as a potential area for improvement in its 1978 annual report. The exemption criteria and procedures proposed today result from DOE's own evaluation of the program, the statement in the Conference Report, and the views expressed in the workshops described below.

3. *Recovered Materials Targets and Reporting.* Section 461 of the NECPA adds a new section 374A to the EPCA. This new section requires DOE, within a year after the enactment of the NECPA, to establish targets for the increased utilization of energy-saving recovered materials (recovered materials targets) for each of four industries-metals and metal products, paper and allied products, textile mill products, and rubber. The term "energy-saving recovered materials" (recovered materials) is defined in section 374A(a) as "aluminum, copper, lead, zinc, iron, steel paper and allied paper products, textiles and rubber, recovered from solid waste, as defined in the Solid Waste Disposal Act."

Pursuant to section 374A(b), the recovered materials targets are to be: (1) Based on the best available information and (2) established at levels which represent the maximum feasible increase in the utilization of recovered materials which each such industry can achieve progressively by January 1, 1987. The technological and economic ability of each industry to increase its utilization of recovered materials must be considered, and DOE is also required to consider "all actions taken or which before such date could be taken by each such industry, or by Federal, State or local governments to increase that industry's utilization of energy-saving recovered materials."

Section 374A(e) requires each corporation in the four industries listed above which is "a major energy consumer (within the meaning of section 373)" to report to DOE on its use of recovered materials. The initial submission is to report on the volume of recovered materials which the corporation in using in each of its manufacturing operations in the United States and its plans, if any, to increase the utilization of such materials in those operations in each of the next ten years. Each appropriate corporation must also report annually on the progress it has made to increase its use of recovered materials.

In the February 12 and May 16 identification notices, DOE notified corporations identified under section 373 within four major energy-consuming industries—textile mill products (SIC 22), paper and allied products (SIC 26), rubber and miscellaneous plastics (SIC 30) and primary metals (SIC 33)—of these reporting requirements. DOE has issued Form CS–153 for preparing the initial report described above. Annual reporting on the use of recovered materials will be implemented through the procedures of this proposed program rule.

Pursuant to section 374A(f), DOE must also include information on the recovered materials aspects of the program in its annual report to Congress and the President under section 375(e).

4. *Conforming Amendments.* In addition to the substantive additions and modifications to the program discussed above, sections 461 and 601 of the NECPA contain several other provisions. These include a definition of "plant" for purposes of plant reporting under section 375 and a revised definition of "United States." The amendments to section 376 include: In subsection (b), extending the legal authorities available to DOE in obtaining data for implementing section 374A on the use of recovered materials; in subsection (c), requiring an opportunity for public comment before establishing the recovered materials targets; and in subsection (f), stating that "no liability shall attach and no civil or criminal penalties may be imposed for any failure to meet * * * any (recovered materials) target."

E. *Public Workshops on the Program.* Because of its interest in improving the administration and effectiveness of the program, DOE held public workshops between November 6, 1978 and February 23, 1979 at six major cities across the country, to obtain the views of the participants in the existing program, and the public in general, on industrial energy conservation reporting. The workshops were announced to the public in the **Federal Register** (43 FR 48682, October 19, 1978). Each workshop provided an opportunity to: (1) Focus the attention and expertise of the participants on improving the present reporting system to make it more useful to DOE and the industrial participants, while providing reliable and useful information on industrial energy conservation and (2) solicit viewpoints and suggestions regarding other approaches which might be developed for promoting and monitoring industrial energy conservation. DOE is preparing a report on the workshops which will be made available to the public. The points of view expressed and suggestions received at the workshops have been helpful in developing the program rule proposed today.

II. Discussion of Proposed Program Rule

A. *Introduction.* After considering its experience in administering the program, the requirements of NECPA, and the suggestions received through the workshops, DOE is proposing comprehensive regulations for the administration of the program. These regulations were developed by the Office of Industrial Programs, under the Assistant Secretary for Conservation and Solar Applications, which has the responsibility for management of the program. A major purpose of this program rule is to provide the necessary framework for the collection and reporting to DOE of data on industrial energy efficiency improvement and recovered materials utilization. DOE will use this data to prepare and submit reports to the President and the Congress on the progress being made in improving industrial energy efficiency and increasing recovered materials utilization.

The program set out in the proposed regulations will follow the approximate annual timetable indicated below. This allows for corporate reporting on manufacturing activities for the same year on which the identification of a corporation is based. DOE would implement this schedule beginning in January, 1980 for reports on calendar year 1979 energy efficiency improvement and recovered materials utilization.

January 1

Federal Register notice reminding corporations of the requirement, under Subpart B, to file information on energy consumption during the previous year.

February 28

Deadline for receipt by DOE of information for identification.

March 15—

Federal Register notice of identified corporations, with a reminder to those corporations which desire exemptions from reporting directly to DOE, and sponsors which desire to have their reporting programs determined adequate, to submit the requests required by Subpart D.

April 15—

Deadline for receipt by DOE of requests for exemption and for determination of adequacy, under Subpart D.

May 1—

Federal Register notice proposing for comment: (1) The sponsors which have adequate reporting programs and (2) the corporations exempt from reporting directly to DOE.

June 1—

Deadline for comments on May 1 **Federal Register** notice.

June 15—

Federal Register notice of final determination of: (1) Sponsors with adequate reporting programs and (2) corporations exempt from reporting directly to DOE.

July 15—

Deadline for receipt by DOE of reports from corporations and sponsors on energy efficiency improvement and, if appropriate, recovered materials utilization during the previous year, as required under Subpart C.

DOE is preparing and will issue for public comment the various reporting forms required by the NECPA and referred to in Subpart C of the proposed program rule. The proposed program rule also includes, in Subpart E, the energy efficiency improvement targets, as required by the EPCA and established by FEA, and the proposed recovered materials utilization targets, as required by the NECPA.

Comments are requested on the proposed program rule as it implements the objectives of the program, including: (1) Improved energy efficiency and increased utilization of recovered materials by U.S. manufacturing industry; (2) removal of constraints to improved industrial energy efficiency and appropriate utilization of recovered materials; and (3) accurate and useful reporting of energy efficiency improvement and recovered materials utilization. The following paragraphs explain the major provisions of this proposed rule and highlight other areas in which DOE is particularly interested in receiving public comment.

B. *General Provisions.*—1. *Definitions.* Some of the terms defined in § 445.2 such as "control," "commercial quality production" and "manufacturing" have previously been used by FEA and DOE in the implementation of the program under the EPCA. Other terms such as "energy type" and "manufacturing operation" are new. As required by section 371(5) of the EPCA, DOE is proposing a definition of "plant" for purposes of plant reporting. DOE's determination with respect to "major energy-consuming industries" is discussed below. DOE is interested in any comments on the validity and clarity of the definitions provided and on the need for any other definitions.

2. *Handling of Information Submitted Under the Program.* Section 376(e) of the EPCA states that DOE may not disclose information obtained under the program "which is a trade secret or other matter described in section 552(b)(4) of Title 5, United States Code, disclosure of which may cause significant competitive damage; except to committees of Congress upon request of such committees." In addition, section 375(c) now requires that plant report forms which are to be filed at corporate headquarters will be available to DOE for verification, but shall not be released to the public.

In the implementation of the program under the EPCA, FEA provided that,at least five days prior to disclosing any information which it determined was not information described in 5 U.S.C. 552(b)(4), it would notify the provider of the information for which a claim of confidentiality had been made.

The most common basis for the release of information is a request under the provisions of the Freedom of Information Act (FOIA) 5 U.S.C. 552, Pub. L. 89–487, as amended by Pub. L. 93–502, 88 Stat. 1561, and Pub. L. 94–409, 90 Stat. 1241. DOE has recently issued its own regulations implementing the requirements of the FOIA, 10 CFR Part 1004 (44 FR 1909, January 8, 1979). These regulations, in 10 CFR 1004.11, provide for notifying the person providing information, who has claimed that information is privileged or confidential under 5 U.S.C. 552(b)(4), of a determination to release such information at least seven days before the proposed release, and contain other requirements for the handling of proprietary information. DOE is proposing in § 445.4(a) that the handling of information submitted under the program will generally be governed by DOE's own FOIA regulations, which would provide seven days' notice before release, in response to an FOIA request, of information claimed by the corporation to be confidential.

As further permitted by DOE's FOIA regulations, 10 CFR 1004.11(a), DOE is proposing in § 445.4(c) to require corporations which submit information to DOE under the program to make any claims of confidentiality at the time of submitting the information. This will ensure that DOE can review such claims in a timely manner consistent with the needs of the program.

In addition to responding to requests under the FOIA, FEA and DOE in the past have published information received under the program. This includes the publication in the **Federal Register** of identified corporations and of corporations exempt from reporting directly to DOE. DOE is proposing in § 445.4(d) to provide at least seven days' notice prior to releasing information for which a claim of confidentiality has been made.

3. *Major Energy-Consuming Industries.*—a. *Identification of Major Energy-Consuming Industries.* Section 371(4) of the EPCA defines major energy-consuming industry as "* * * a two-digit classification, within the manufacturing division of economic activity set forth in the Standard Industrial Classification (SIC) Manual by a code number, which the * * * (Secretary) * * * determines is suited to the purposes of this part." As described above, FEA previously identified and ranked twenty major energy-consuming industries, but only required reporting by corporations in the ten industries for which industrial energy efficiency improvement targets were established. DOE is hereby proposing, in § 445.5(a), the 20 two-digit

SIC manufacturing classifications as the major energy-consuming industries. Each of those industries contains one or more corporations which consumed at least one trillion Btu's in 1977.

DOE recognizes, however, that the number of identified corporations in several industries is very small and that designating these industries as "major energy-consuming industries" might result in monitoring of industry progress in improving energy efficiency based on a relatively small percentage of an industry. DOE is, therefore, interested in comments on its proposal to include all of the twenty manufacturing industries as major energy-consuming industries, since all identified corporations in these industries are subject to the reporting requirements of the program.

b. *Major Energy-Consuming Industries for Recovered Materials Reporting.* The enumeration in section 374A(b) of the EPCA of the four industries for which recovered materials targets are to be established is not explicitly related to the SIC classification system. However, in section 374A(e) of the EPCA, each identified corporation which is within one of the four industries for recovered materials purposes is required to report on its use of recovered materials. DOE is, therefore, proposing in § 445.5(b) that the identified corporations in the following major energy-consuming industries be required to report pursuant to section 374A(e):

Industry	SIC code
Textile mill products	22
Paper and allied products	26
Rubber and miscellaneous plastics	30
Primary metal industries	33

DOE is interested in comments on its use of two-digit SIC codes for purposes of reporting on the use of recovered materials. For example, DOE is concerned if the use of two-digit SIC codes could result in reporting by corporations which could not possibly use any of the recovered materials listed in section 374A(a). Comments on this section should also consider DOE's determinations concerning industry boundaries and other matters in the proposed recovered materials targets, as discussed in section II.F.

C. *Identification of Corporations*

1. *Annual Identification.* As part of its one-time identification of corporations required to report on improving energy efficiency, FEA provided procedures for (1) requesting modification of the identification of a corporation on the grounds of technical or clerical error; (2) appealing the denial of such a modification request and appealing on any other grounds to FEA s Office of Exceptions and Appeals; and (3) requesting modification of a corporation's participation in the program based on a showing of "changed circumstances" by application to the Office of Exceptions and Appeals.

FEA's and DOE's experience in administering the program has been that an identification process which led to the processing of a large number of applications for modifications and appeals, particularly on the grounds of "changed circumstances," was administratively cumbersome and detrimental to the purposes of the program. Accordingly, DOE is proposing in Subpart B of Part 445 procedures for the annual identification of those corporations which consumed at least one trillion Btu's in any major energy-consuming industry in a calendar year. Using the same year's energy consumption both for the identification of corporations and for reporting is intended to streamline program management. At the same time, it will ensure that the corporations which are required to report are those that consumed at least one trillion Btu's during the reporting period.

Section 445.12(a) requires that any corporation which consumes at least one trillion Btu's in a major energy-consuming industry during a given year must file a statement to that effect with DOE after the close of the year. To minimize the burden of this information filing requirement, § 445.12(b) requires no action from identified corporations which continue to consume a trillion or more Btu's annually. However, DOE is proposing in § 445.12(c) that an identified corporation which consumes less than one trillion Btu's in a given year must file a statement to that effect with DOE.

2. *Energy to be Included for Identification Purposes.* Section 445.13 specifies what energy is to be included and excluded for identification purposes. For example, feedstocks, as defined in § 445.2, are to be included, while waste used as fuel is to be excluded. DOE believes that the inclusion of feedstocks in determining energy consumption is appropriate for identification purposes regardless of whether the reporting aspects of the program require the submission of information on feedstocks. What is to be included for reporting purposes will be addressed by DOE when it proposes the reporting forms. Comments are invited here with respect to the energy to be included and excluded for identification purposes.

3. *Additional Provisions.* The requirements for the content of a report on energy consumption filed pursuant to § 445.12 (a) or (c) are proposed in § 445.14. The procedures for the identification by DOE of corporations for reporting purposes are proposed in § 445.15. DOE is providing in § 445.16 procedures for modification requests based on clerical or technical error and is providing in § 445.6 procedures for appeals from DOE's response to these requests. However, DOE believes that the annual identification procedures should substantially reduce the volume of requests for modifications and appeals.

D. *Reporting Requirements*

In Subpart C of Part 445, DOE is proposing the reporting requirements of the program. Reporting on energy efficiency by each plant of an identified corporation to its corporate headquarters is proposed in § 445.21. Reporting by identified corporations on energy efficiency and, where appropriate, the use of recovered materials, is proposed in § 445.22. The corporate reports are to be submitted either directly to DOE or, if the corporation is exempt from reporting directly to DOE pursuant to the provisions of Subpart D of Part 445, to the sponsor of the adequate reporting program in which the corporation participates. Reporting by sponsors of adequate reporting programs is proposed in § 445.23.

These requirements are proposed to implement the changes in the program mandated by the NECPA, as well as to improve the consistency of the data from those corporations which report through sponsors with the data from corporations which report directly to DOE.

1. *Information to be Reported.* In response to the need to ensure the receipt by DOE of data which can be meaningfully aggregated, DOE is proposing in § 445.22c(2) and § 445.23 that the information obtained from corporations reporting through sponsors must be exactly the same, except aggregated, as that obtained from corporations reporting directly to DOE. This is a significant program modification, and comments are specifically invited on this point. The actual information to be reported will be contained in the report forms to be proposed by DOE.

Sponsors may include in a report information submitted by non-identified corporations. However, information

from such corporations must be aggregated separately from information submitted by identified corporations. DOE continues to encourage all non-identified corporations to participate in voluntary programs which promote energy efficiency.

2. *Annual Reporting.* DOE is proposing an annual submission, by July 15 of each year, of reports either directly from identified corporations or from sponsors. This timing is consistent with the proposed annual identification process and will serve to reduce the administrative burden of reporting. The reporting period will be the entire calendar year for which each corporation covered by the report is an identified corporation. DOE believes that nearly all corporations can report on a calendar year basis without significant modification to their internal procedures. Sponsors and corporations may require reporting more frequently from corporations and plants, respectively, for their own management purposes.

3. *Reporting Formats and Forms.* DOE proposes that plant reports, corporate reports to sponsors and sponsor reports may all be submitted on forms to be published and supplied by DOE or on alternative forms if these forms provide identical information. DOE feels that some flexibility in format is desirable to meet the needs of both DOE and the industrial participants in the program.

DOE recognizes the existence of programs by many corporations and sponsors to collect and aggregate data which can provide, in a similar but not identical format, the information required to be provided to DOE. Hence, DOE is proposing not to require the exclusive use of DOE reporting forms but to allow use of forms which provide identical information and which are completely cross-referenced to all the items on the DOE forms. DOE is proposing, however, that those corporations which report directly be required to report using a DOE form. DOE is not proposing the flexibility of using alternative forms for direct corporate reporting because there is no precedent in the program for such use and because DOE believes that the increased burden to DOE to process such alternative forms is not justified. DOE is interested in comments on its proposal for allowing the use of forms other than the DOE forms for reporting.

The DOE reporting forms mentioned above are being developed and will be proposed in the near future for public comment, as required by section 376(c) of the EPCA. It is DOE's intent to have the final forms available before requiring any corporation to submit a request for exemption or any sponsor of a reporting program to submit a request for a determination that its reporting program is adequate.

4. *Data Retention.* DOE is proposing in § 445.26 data retention requirements for all identified corporations and sponsors of adequate reporting programs. The retention of plant reporting forms is required by section 375(c) of the EPCA, and the retention of corporate reports to sponsors is required by section 376(g).

DOE is proposing in § 445.26(b) that all exempt corporations must retain the corporate reports filed with sponsors for at least five years. Copies of such reports may also be retained by the sponsors. All reports which are retained must be made available to DOE upon request. This will provide DOE with the opportunity for efficient verification.

E. *Exemption Criteria and Procedures*

1. *Criteria.* In order to eliminate inconsistencies between direct corporate reports and sponsor reports, and to take into account the program changes required by the NECPA, DOE is proposing in Subpart D revised criteria and procedures for the annual exemption of identified corporations from reporting directly to DOE. The proposed criteria are intended to ensure that the information obtained from identified corporations through the reports of sponsors is identical to the information obtained from identified corporations which report directly to DOE. DOE believes that corporations and sponsors are supportive of the need for consistency in the data supplied to DOE.

DOE is proposing in § 445.32 the criteria for the exemption of corporations. In order to be exempted, a corporation must file a timely and complete request to be exempt, must participate in a reporting program which is adequate and, if previously exempted, must have met the reporting requirements for an exempt corporation. DOE is proposing in § 445.33 the criteria for the adequacy of a reporting program. In order for its reporting program to be determined adequate, a sponsor must file a timely and complete request to be a sponsor of an adequate reporting program and, if previously determined to be adequate, must have met the reporting requirements for an adequate reporting program and have provided each exempt corporation participating in its program with (1) specific written guidance for preparing and submitting corporate reports and (2) a copy of the report which the sponsor filed with DOE. DOE wishes to receive comments on its proposed criteria.

2. *Procedures for Requesting Corporate Exemption and Adequacy of a Reporting Program.* In order to seek an exemption, an identified corporation is required to submit a request to DOE under § 445.34. This request must identify the sponsor to which the corporation intends to report and must include a copy of any report form, other than the appropriate DOE form, it will submit to the sponsor. Any alternative form must be appropriately indexed. The corporation must also submit a statement that it will meet the requirements for reporting by exempt corporations and the applicable data retention requirements. DOE is proposing in paragraph (c) of this section that corporations exempted from direct reporting for one year need not refile to be exempt for the next year, if all information contained in its previous request remains the same.

As proposed in § 445.35, in order to seek to have its reporting program determined to be adequate, a sponsor must submit a request which includes: A list of each major energy-consuming industry which is covered by its reporting program and any report form, other than the appropriate DOE form, which it intends to submit to DOE. Any alternative report form must be appropriately indexed. The request must state whether the sponsor will retain copies of corporate reports and will make such copies available to DOE, pursuant to § 445.26(b), and include additional statements that the sponsor will: (1) Meet the sponsor reporting requirements and the applicable data retention requirements, (2) provide each identified corporation which participates in the program with a copy of the sponsor's report to DOE under § 445.23, and (3) provide written guidance for preparing and submitting a corporate report to the sponsor. DOE proposes in § 445.35(c) that a sponsor with an adequate reporting program in one year can file in the next year a certification that its program is unchanged, instead of the complete request required by § 445.35(a) and (b).

DOE is interested in comments on the appropriateness of these requirements and suggestions for any additional criteria or procedures which could be useful in improving adequate reporting programs.

3. *Determination by DOE.* DOE is proposing in § 445.37 the procedures for determining the corporations and sponsors which meet the criteria in § 445.32 and § 445.33. In the case of a first-time request for exemption or

determination of adequacy, DOE will accept a timely and complete request, including certification that all criteria will be met, as meeting the criteria. Annually, DOE will publish its proposal to exempt corporations and to determine the adequate reporting programs in the **Federal Register** for public comment, as required by section 376(g) of the EPCA. After considering public comment, DOE will exempt corporations and determine the adequate reporting programs and will publish a list of exempt corporations and adequate reporting programs in the **Federal Register.**

4. *Timeliness of Reports by Exempt Corporations and Sponsors.* DOE is proposing in § 445.38 that, if a sponsor does not report to DOE by the deadline provided in § 445.25, all exempt corporations intending to report through that sponsor will be required to report directly to DOE. This section also proposes that, if a sponsor determines that an exempt corporation has failed to file its report, the sponsor should report to DOE based on the reports received from the other exempt corporations which participate in the program. Any exempt corporation which does not file a report with a sponsor will be required to report directly to DOE. DOE believes that these provisions are necessary to enable it to prepare a complete and timely annual report.

F. *Voluntary Energy Efficiency and Recovered Materials Targets*

1. *Industrial Energy Efficiency Improvement Targets.* DOE has included in § 445.42 the ten energy efficiency improvement targets, in order to set forth all parts of the program in the Code of Federal Regulations. As required by section 376(c) of the EPCA, these targets were proposed for public comment (41 FR 48169, November 2, 1976). The final targets were published in the **Federal Register** (42 FR 29642, June 9, 1977), together with a statement of the basis and justification for each of the targets.

2. *Recovered Materials Utilization Targets*—a. *Legislative Requirements.* DOE is proposing for comment in § 445.44 recovered materials utilization targets (targets) for each of the following industries—metals and metal products, paper and allied products, textile mill products and rubber. DOE is required to set such targets within one year of the enactment of the NECPA, i.e., by November 1979. Section 376(c) of the EPCA requires DOE to afford interested persons an opportunity to submit written and oral data, views and arguments prior to establishing the final targets.

Pursuant to Section 374A of the EPCA, the targets must be based on the best available information. In establishing the targets, DOE is required to consider the technological and economic ability of each of the four industries progressively to increase its use of recovered materials by the target year, as well as actions taken or which could be taken before the target year by the industries, Federal, State or local governments to increase the use of recovered materials. DOE has implemented these requirements in developing the targets.

In developing the proposed targets, DOE has consulted with the Environmental Protection Agency and with representatives from each of the industries for which targets are proposed.

The targets must be established at levels which represent the maximum feasible increase in the use of recovered materials that the appropriate industry can achieve progressively by January 1, 1987. Numerically, each proposed target represents, for an appropriate "subdivision" of an industry, a level expressed as a percentage of recovered materials from prompt industrial and obsolete scrap which can be used per unit of production (input or output) in manufacturing operations by the target year of 1987. The corresponding percentage of recovered materials used per unit of production in the latest year for which data are available (1976, 1977 or 1978) is also provided. The difference between the two numbers indicates the maximum feasible increase, if any, in the utilization of recovered materials between the reference year and the target year.

b. *Target Methodology.* In developing the targets for each of the four industries, DOE followed, in general, the methodology described below. The detailed analyses and assumptions varied, however, reflecting differences among the industries in structure, economics, previous history of recovered materials use and other factors, and reflecting the special characteristics of each recovered material as it is supplied to, processed in and, where appropriate, marketed by an industry.

The description of the general methodology in this preamble provides a basis for an understanding of how the levels were determined for the proposed targets. The use of this methodology in the development of each target, along with the particular set of basic assumptions, relationships and supporting rationale for each proposed target, is contained in the target support documents, which are available as stated in section III. Reference to these documents is necessary for a complete understanding of the establishment of the proposed targets.

i. *Selection of Appropriate Industry Subdivisions.* Each of the four industries was analyzed to determine how it should be subdivided to allow for the reasonable analysis of technological and economic ability to utilize recovered materials. In general, the result was to subdivide each industry according to process technologies, recovered materials input and/or product types. Factors such as the following were considered in selecting subdivisions: (a) Historical and current levels of use of recovered materials, (b) sales volumes of industry subdivisions, (c) energy consumption levels, and (d) potential for use of recovered materials. Once the appropriate subdivisions were selected, the subdivisions were reviewed to determine which should receive relatively more attention.

ii. *Selection of Sources of Recovered Materials.* Potential sources of recovered materials for each subdivision in each industry were then identified. Factors taken into account in selecting such sources included: (a) Quality of waste, (b) quantity of waste, and (c) dispersion of waste. Under this methodology, potential sources of recovered materials were deemed to include any waste containing one or more substances listed in the legislative definition of recovered materials. In general, sources of waste were categorized as obsolete scrap, prompt industrial scrap and self-generated scrap. Wastes generated outside the United States were considered to be potential sources of recovered materials.

iii. *Analysis of Technological Ability.* Determinations were made of present and future technological limits on the ability of each industry subdivision to use recovered materials from each potential source. These limits could be dictated by one or a number of different considerations including, for example, types of processes employed in the industry and minimum product quality standards. In establishing these technological limits on the use of recovered materials, attempts were made to discover proven and potential processes and equipment which could, if further utilized, affect the use of recovered materials. Once the technological limits were established for each industry subdivision, the ability of waste sources to provide sufficient recovered materials was assessed. If there was a limited supply of potential recovered materials, then the

technological limit was adjusted accordingly.

iv. *Analysis of Economic Ability.* Economic ability analyses were keyed to the technological limitations on the use of recovered materials. For example, economic criteria, such as industry growth rates and the availability of capital, were studied to determine the prospects for investment in equipment, processes and/or plants capable of increased recovered materials utilization. Other important factors considered include the projected cost of supply of recovered materials and the impact on these of alternative uses of recoverable wastes. For example, waste paper may be burned or waste rubber may be used in asphalt. Such alternative uses may affect the availability and price of recovered materials. As it is not possible to analyze all actions which could affect the target levels, major and potentially significant actions were specified and analyzed relative to each industry.

c. *Significance of Recovered Materials Utilization Targets.* DOE is proposing to establish recovered materials targets for each of the four industries by setting targets for industry subdivisions. Section 374A(a) does not require an aggregate target for each of four industries and DOE believes, because of the substantial differences among subdivisions, that the aggregation of these targets into a single target for a given industry would not be useful.

The proposed targets, as required by the EPCA, are intended as the best projection of maximum attainable utilization of recovered materials in the target year that is both economically and technologically feasible. Since these targets are not required to be established on the basis of minimum national energy use, a higher target may be consistent with a reduction in total energy consumption, but not necessarily with the requirement to reflect economic feasibility. On the other hand, a lower target might be associated with reduced energy consumption, if more recovered materials were to be burned for fuel rather than recycled to replace virgin materials. The support documentation addresses these relationships.

Three targets are proposed to be set at levels which reflect, between the reference year and the target year, a decrease per unit of production in the utilization of recovered materials. While this result may be contrary to an expectation that each target would show a percentage increase, the technological and economic feasibility analyses in the support documents set forth the reasons for decreased levels.

While the reporting of information on the use of recovered materials is required from certain corporations under the program, the targets themselves are not directed at individual corporations. Rather they are voluntary industry targets, and no sanctions attach for failure to meet them.

Each of the targets was derived by taking into account the various factors, assumptions and requirements mentioned above and their relationship to each other. The target-support documentation sets forth the extremely complex framework and analysis which determined the proposed target levels. To the extent that the documentation has oversimplified the actual process, made unwarranted assumptions or has other shortcomings, comments are requested.

Under § 445.45, any target established by DOE may be modified if DOE determines that the target cannot reasonably be attained or that it should require greater use of recovered materials.

d. *Significant Issues.* The attention of the public is particularly directed to the following issues, each of which is important in the establishment of the proposed recovered materials targets.

i. *Use of Waste as a Fuel.* DOE considered whether to include the direct combustion of waste for its energy content as utilization of a recovered material for purposes of the targets. DOE determined that it should not and, therefore, such use of waste is not included in the proposed targets. Whenever it is technically possible and environmentally acceptable, the use of waste as a fuel through direct combustion is encouraged by DOE. It is expected, however, that such use will be accounted for and reflected in energy efficiency improvement reporting.

ii. *Definition of Industry Boundaries.* DOE has made several determinations regarding the use of the Standard Industrial Classification (SIC) system to bound the four industries described in section 374A. For example, more than one two-digit SIC industry produces metals and metal products, including primary metals (SIC 33) and fabricated metal products (SIC 34). DOE has determined that only SIC 33 should be used for target-setting purposes, because SIC 34 has virtually no capability to utilize recovered materials. DOE has determined to exclude the plastic component of SIC 30, rubber and miscellaneous plastics, from the targets in the rubber industry, since plastic is not a recovered material for purposes of the program. DOE also determined that tire retreading and repair operations, classified as SIC 7534, which utilize substantial amounts of recovered rubber, should be included in the targets for the rubber industry. DOE recognizes that reporting on progress to reach the targets for the rubber industry will not contribute to monitoring progress toward the target for retreading, since SIC 7534 is not within a major energy-consuming industry as proposed in § 445.5(a). Comments are requested on the inclusion and exclusion of various industry components in setting the proposed targets.

iii. *Intermediate Targets.* DOE is interested in any comments on whether meaningful targets for increased use of recovered materials can or should be established for years before 1987.

iv. *Types of Waste Included.* Section 374A of EPCA, as amended, lists the recovered materials covered by the program. For purposes of the analytic effort required to set the targets, it is important to characterize properly by type the sources of these recovered materials. For analytic convenience and the different potential contribution to increased utilization each could make, any recovered material may be categorized as either self-generated, prompt industrial or obsolete scrap. The public is invited to comment on the definitions of prompt industrial and obsolete scrap as they appear in § 445.2 of the proposed rule. For purposes of target-setting, self-generated scrap was defined to mean recovered materials generated by a manufacturing operation and used as input to the same manufacturing operation. Examples include metal drosses and off-specification products returned to the manufacturing operation. Comments are requested on this definition, as it applies to target-setting.

Use of obsolete scrap in place of virgin raw material clearly reduces solid waste and conserves virgin material. It also generally conserves energy, and its inclusion as a type of recovered material was considered to be crucial. This category of scrap is expected to contribute most heavily to the potential for increased utilization between now and 1987.

Next in importance in terms of potential for increased utilization is prompt industrial scrap. It is currently being used to varying extents by the four specified industries. Its use in certain industries can be expected to increase significantly. It should be noted that more efficient fabricating methods lead to declining availability of this

category of scrap. For example, recent and projected improvements in can manufacturing are expected to reduce the amount of stamping waste which is returned to the supplier of the metal for remelting.

Self-generated scrap is the most complex category to analyze. However, DOE believes that virtually 100% of self-generated scrap is recovered in actual practice and that the potential for increased utilization is insignificant. Use of self-generated scrap was therefore not included in the development of the targets.

v. *Forest Residues.* In developing the targets for recovered materials utilization, DOE recognized that the paper and allied products industry recovers significant quantities of forest residue and other wood waste in its manufacturing operations. However, DOE believes that the definition of recovered materials in section 374A(a) of EPCA does not include such wastes. Accordingly, the targets proposed for the paper and allied products industry do not include increased use of forest residues and other wood wastes as sources of recovered materials. The use of wood waste is, however, addressed in the paper and allied products support documentation.

vi. *Data Used in Target Setting.* DOE believes it has used the best available data in setting the targets. Data sources are indexed in the support documents. DOE is interested in comments on the data it has used and on whether there is important information in either published or unpublished sources which was overlooked in the development of these documents. DOE is also interested in receiving comment on any actions which could be taken by Federal, State or local governments to increase the use of recovered materials in the four target industries.

As discussed above, DOE has recently required certain corporations to report on their current use of recovered materials and their plans, if any, to increase such use in the next ten years. DOE may use information from the reports in establishing final targets. If the additional information may materially affect the target values, DOE may make relevant data available to the public in order to allow comments on such data, if appropriate.

vii. *Target Universe and Reporting Universe.* The proposed targets represent levels of recovered materials utilization to be achieved by an industry subdivision and have been established from industry-wide data. DOE will measure progress toward such targets by an industry, based on data from corporations required to report to DOE under section 374A(e) of the EPCA. While these corporations do not comprise the entire industry, the EPCA contemplates that the largest corporate energy usage in an industry should be monitored to measure industry-wide progress. DOE believes that establishing the recovered materials targets based solely on data from the reporting universe would be a very complex process and is not required by section 374A. DOE is, however, interested in any comments on this matter.

III. Access To Support Documents for the Proposed Recovered Materials Targets

Copies of the detailed studies upon which each of the proposed targets is based are available for inspection at the DOE Freedom of Information Office, Forrestal Building, Independence Avenue and L'Enfant Plaza, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, and at each DOE Regional Office as follows:

Region	Address	Hours
I	Analex Bldg., DOE Library 150 Causeway Street Boston, Mass. 02114.	8:30 to 5
II	Room 3206, 26 Federal Plaza New York, N.Y. 10007.	8:30 to 5
III	Room 1011, 1421 Cherry Street Philadelphia, Pa. 19102.	8 to 4:30
IV	8th Floor, 1655 Peachtree St., NE Atlanta, Ga. 30309.	8 to 4:30
V	Room A-333, 175 West Jackson Blvd., Chicago, Ill. 60604.	8 to 4:30
VI	Room 280, 2626 West Mockingbird Lane, Dallas, Tex. 75235.	8 to 4:30
VII	324 East 11th Street Kansas City, Mo. 64106.	7:30 to 4
VIII	Room 206, 1075 South Yukon St., Lakewood, Colo. 80226.	7:30 to 4:30
IX	Third Floor Reading Room, 111 Pine Street, San Francisco, Calif. 94111.	7:30 to 3
X	Room 1992, 915 Second Ave., Seattle, Wash. 98174.	8 to 4

Copies of the studies will, wherever possible, be made available for duplication after regular business hours. Persons wishing to reserve a copy for this purpose shall contact DOE in advance.

IV. Opportunities for Public Comment

A. *Written Comment Procedures*

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposal set forth in this notice to Margaret Sibley, Office of Conservation and Solar Applications, Department of Energy, Docket Number CAS-RM-79-301, 20 Massachusetts Avenue, NW., Washington, D.C. 20585.

Comments on all parts of the rule other than the recovered materials targets should be identified on the outside of the envelope and on documents with the designation "Industrial Energy Conservation Program." Comments on the recovered materials targets proposed in § 445.44 should be identified on the outside of the envelope and on documents with the designation "Proposed Recovered Materials Targets-Industry." Twenty-five copies should be sumitted. All comments received by August 7, 1979, before 4:30 p.m. e.d.t., and all other relevant information, will be considered by DOE before final action is taken regarding the proposed rule.

Pursuant to the provisions of 10 CFR 1004.11 (44 FR 1908, January 8, 1979), any person submitting information which he or she believes to be confidential and which may be exempt by law from public disclosure should submit one complete copy, and twenty-five copies from which information claimed to be confidential has been deleted. In accordance with the procedures established at 10 CFR 1004.11, DOE shall make its own determination with regard to any claim that information submitted by exempt from public disclosure.

B. *Public Hearings*

DOE has determined to have one public hearing on all aspects of the proposed rule, other than the proposed recovered materials targets. This hearing will be held at 9:30 a.m., e.d.t., on July 31, 1979, in Room 3000A, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461.

DOE has determined that a public hearing will be held on the proposed recovered materials targets for each of the four industries for which such targets are to be established. Each of the four hearings will be held in Room 3000A, 12th & Pennsylvania Avenue, NW., Washington, D.C., on the following dates:

Proposed targets for:	*Date*
1. Textile mill products	July 23, 1979
2. Metals and metal products	July 24, 1979
3. Paper and allied products	July 25, 1979
4. Rubber	July 26, 1979

Any person who has an interest in these proceedings or who is a representative of a group of persons that has an interest in these proceedings may make a written request for an opportunity to make an oral presentation. All such requests should be directed to DOE at the address given at the beginning of this preamble, and must be received before 4:30 p.m., e.d.t., July 13, 1979. A request may be hand delivered between the hours of 8:00 a.m.,

and 4:30 p.m., Monday through Friday. Requests should be marked, as for written comments, with the additional notation, "Request to Speak."

The person making the request should briefly describe the interest concerned, if appropriate, state why she or he is a proper representative of a group of persons that has such an interest, and give a concise summary of the proposed oral presentation and a phone number where he or she may be contacted. Each person selected to be heard will be notified by DOE before 4:30 p.m., e.d.t. local time, July 16, 1979. Each person selected to be heard must submit twenty-five copies of his or her statement to the address given for written comments before 4:30 p.m., e.d.t., July 20, 1979. In the event any person wishing to testify cannot provide twenty-five copies, alternate arrangements can be made in advance of the hearing by so indicating in the letter requesting an oral presentation or by calling Ms. Margaret Sibley at 202–376–1651.

C. *Conduct of Hearings*

DOE reserves the right to select the persons to be heard at the hearings, to schedule their respective presentations and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated to preside at each hearing. These will not be judicial or evidentiary type hearings. Questions may be asked of speakers only by those conducting a hearing, and there will be no cross-examination or persons presenting statements. Any decision made by DOE with respect to the subject matter of a hearing will be based on all information available to DOE. At the conclusion of all initial oral statements at each hearing, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions to be asked, by those conducting a hearing, of any person making a statement. Questions should be received at the address given for written comments before 4:30 p.m., e.d.t., July 20, 1979. DOE will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any person making an oral statement who wishes to ask a question at a hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of each hearing will be announced by the presiding officer.

A transcript of each hearing will be made and the entire record of each hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Forrestal Building, Independence Avenue and L'Enfant Plaza, S.W., Washington, D.C. between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday. Any person may purchase a copy of a transcript from the reporter.

V. Environmental Review, Regulatory Review, Urban Impact Review, Consultation With Other Federal Agencies and Major Industries

A. *Environmental Review*

The National Environmental Policy Act of 1969 as amended, 42 U.S.C. 4321 *et seq.*, (NEPA) requires that Federal Agencies, to the fullest extent possible, execute their responsibilities in accordance with the policies set forth in the NEPA, and prepare a detailed statement concerning "major Federal actions significantly affecting the quality of the human environment." While reporting by an identified corporation is mandatory under the program, the achievement of the industrial energy efficiency improvement and recovered materials utilization targets is strictly voluntary. Therefore, while it is true that the goal of the program is to improve industrial energy efficiency and increase recovered materials utilization, which may reduce environmental residuals, any actual savings with resulting changes in environmental effects will occur solely as a result of, and in a manner determined by, private, rather than Federal, actions. The proposed rule is therefore not a "major Federal action significantly affecting the quality of the human environment" and does not require further environmental review.

As required by section 7(a)(1) of the Federal Energy Administration Act of 1974, as amended (15 U.S.C. 766), a copy of this proposed rulemaking was submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment. The Administrator had no comments.

B. *Regulatory Review*

DOE has determined that this proposed rulemaking is significant, as that term is used in Executive Order 12044 "Improving Government Regulations" and amplified in DOE Order 2030 "Procedures for the Development and Analysis of Regulations, Standards, and Guidelines." This is considered a significant proposal because it proposes the recovered materials targets and the criteria and procedures for mandatory reporting on industrial energy efficiency and utilization of recovered materials which will result in improved reporting of such information by DOE to the Congress, the President, and the public.

DOE has further determined that the proposed rulemaking is not likely to have a major impact, as defined by Executive Order 12044 and amplified in DOE Order 2030, because it is not likely to impose a gross economic annual cost of $100 million or more and is not likely to have any of the other impacts which are defined as major in DOE Order 2030. Accordingly no regulatory analysis will be performed.

As further required by DOE Order 2030, a draft regulatory evaluation plan has been prepared for the proposed rulemaking.

C. *Urban Impact Analysis*

The proposed rulemaking has been reviewed in accordance with OMB Circular A–116 to assess the impact on urban centers and communities. In accordance with DOE's finding that the proposed rulemaking is not likely to have a major impact, DOE has determined that no community and urban impact analysis of this proposed rulemaking is necessary, pursuant to section 3(a) of Circular A–116.

D. *Consultation With Other Federal Agencies and Major Indutries*

Pursuant to section 372 of the EPCA, DOE has consulted with the Secretary of Commerce on this proposed rule. The Department of Commerce has expressed its interest in the rulemaking and may submit comments during the public comment period.

As required by section 374A(c), in developing the proposed targets for the increased utilization of recovered materials DOE has consulted with the Administrator of the Environmental Protection Agency and each of the major industries subject to the provisions of section 374A.

(Energy Policy and Conservation Act (Pub. L. 94–163) as amended by the National Energy Conservation Policy Act (Pub. L. 95–619);

Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended; E. O. 11790 (39 F.R. 238185); The Department of Energy Organization Act (Pub. L. 95–91); E.O. 12009 (42 FR 46267))

In consideration of the foregoing, the Department of Energy proposes establishing Part 445 of Chapter II of Title 10 of the Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., June 1, 1979.

Maxine Savitz,

Deputy Assistant Secretary, Conservation and Solar Applications.

PART 445—INDUSTRIAL ENERGY CONSERVATION PROGRAM

Subpart A—General Provisions

Sec.

445.1 Purpose and Scope.
445.2 Definitions.
445.3 Management of the Program.
445.4 Handling of Information Submitted Under The Program.
445.5 Major Energy-Consuming Industries.
445.6 Procedures for Appeals.
445.7 General Information-Gathering Authority.

Subpart B—Identification of Corporations

445.11 Scope.
445.12 Requirement for Corporations to File a Report on Energy Consumption.
445.13 Computation of Energy Consumption.
445.14 Report on Energy Consumption.
445.15 Identification of Corporations by DOE.
445.16 Request for Modification.

Subpart C—Reporting Requirements

445.21 Plant Reporting Requirements.
445.22 Corporate Reporting Requirements.
445.23 Sponsor Reporting Requirements.
445.24 Reporting Period.
445.25 Reporting Date and Address.
445.26 Data Retention.

Subpart D—Exemption Criteria and Procedures

445.31 Scope.
445.32 Criteria for the Exemption of Corporations.
445.33 Criteria for Adequate Reporting Programs.
445.34 Request to be an Exempt Corporation.
445.35 Request to be a Sponsor with an Adequate Reporting Program.
445.36 Filing Deadline and Address.
445.37 Determination of Exempt Corporations and Adequate Reporting Programs.
445.38 Failure to Report.

Subpart E—Voluntary Energy Efficiency Improvement Targets and Voluntary Recovered Materials Utilization Targets

445.41 Purpose and Scope.
445.42 Energy Efficiency Improvement Targets.
445.43 Modification of Energy Efficiency Improvement Targets.
445.44 Recovered Materials Utilization Targets.
445.45 Modification of Recovered Materials Utilization Targets.

Authority: Secs., 5, 7, 13, Pub. L. 93–275, 88 Stat. 97 (15 U.S.C. 764, 766, 772); secs 371–376, Pub. L. 94–163, 89 Stat. 871 (42 U.S.C. 6341–6346), as amended by Pub. L. 95–619, 92 Stat. 3207; secs. 301, 308, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7151, 7158); E. O. 11790 (39 FR 23185); E. O. 12009 (42 FR 46267).

Subpart A—General Provisions

§ 445.1 Purpose and scope.

This part sets forth the regulations for the Industrial Energy Conservation Program established under Part I of Title III of the Act. It includes criteria and procedures for the identification of reporting corporations, reporting requirements, criteria and procedures for exemption from filing reports directly with DOE, voluntary industrial energy efficiency improvement targets and voluntary recovered materials utilization targets. The purpose of the program is to promote increased energy conservation by American industry and, as it relates to the use of recovered materials, to conserve valuable energy and scarce natural resources.

§ 445.2 Definitions.

For the purposes of this part—

"Act" means the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619, 92 Stat. 3207).

"Btu" means British thermal unit.

"Chief executive officer" means, within a corporation or a sponsor, the chief executive officer or other individual who is in charge of the corporation or sponsor.

"Commercial quality production" means the manufacture of products suitable for shipment and/or sale.

"Control" means the ability to direct or cause the direction of the management and policies of a corporation. Whether control is present involves a question of fact to be determined from such criteria as degree of ownership (especially of voting shares), contractual arrangements, and other means of influence, such as ability to appoint a majority of a corporation's board of directors, whether by sufficient stock ownership or other means.

"Corporation" means a person as defined in Section 3(2)(B) of the Act (any corporation, company, association, firm, partnership, society, trust, joint venture or joint stock company) and includes any person which controls, is controlled by, or is under common control with such person.

"DOE" means the Department of Energy.

"Energy efficiency" means the amount of energy consumed per unit of production.

"Energy type" means electricity, purchased steam, natural gas, bituminous coal, anthracite, coke, ethane, propane, LPG, natural gasoline, gasoline (including aviation), special naphtha, kerosene, distillate fuel oil (including diesel), still gas, petroleum coke, residual fuel oil, crude oil, and any other material consumed as a fuel in manufacturing.

"Exempt corporation" means an identified corporation which DOE determines, pursuant to § 445.37, is not required to report directly to DOE.

"Feedstock" means petroleum products, natural gas or coal used as a raw material which is processed to become a part of the chemical composition of a product other than an energy type.

"Identified corporation" means a corporation identified by DOE in accordance with § 445.15. A corporation is an identified corporation for the year in which it consumed, in accordance with § 445.13, at least one trillion Btu's.

"Major energy-consuming industry" is an industry listed in § 445.5(a).

"Manufacturing" means the mechanical or chemical transformation of materials or substances into new products, as described on page 57 of the Office of Management and Budget Standard Industrial Classification Manual (1972).

"Manufacturing operation" means the mechanical or chemical transformation of materials or substances into a product classified within SIC codes 22, 26, 30, or 33; which is measured in a single unit of production. Manufacturing operations include, but are not limited to, the production of iron, steel, aluminum, copper, lead, zinc, wood pulp, paper, spun textile goods, woven textile goods, felt textile goods, non-woven textile goods, tires and tire products, rubber footwear, and industrial rubber products.

"Obsolete scrap" means recovered materials created by the use and subsequent discard of a product. Examples are discarded tires, automobiles, and newspapers. This includes recovered materials from outside the United States which are used in manufacturing operations in the United States.

"Plant" means an economic unit of a corporation at a single physical location where manufacturing is performed.

"Product" means an item or grouping of items (separate parts of, or all of a product line) that is the production of a manufacturing corporation that is

classified within a major energy-consuming industry.

"Production" means the quantity of a corporation's product output, throughput, or activity.

"Program" means the Industrial Energy Conservation Program of DOE.

"Prompt industrial scrap" means recovered materials generated by an industrial process and used as input to a manufacturing operation other than the industrial process which generated it. An example is metal fabrication stamping waste which is used in manufacturing steel. This includes recovered materials from outside the United States which are used in manufacturing operations in the United States.

"Recovered materials" mean any of the following energy-saving recovered materials: Aluminum, copper, lead, zinc, iron, steel, paper and allied paper products, textiles, and rubber, recovered from solid waste.

"SIC" means the Standard Industrial Classification system described in the Office of Management and Budget Standard Industrial Classification Manual (1972).

"Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities; but does not include, solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation flows, or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

"Sponsor" means a trade association or other person which operates, or intends to operate, a reporting program which collects data from one or more corporations.

"United States" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

§ 445.3 Management of the program.

The Office of Industrial Programs, Office of the Assistant Secretary for Conservation and Solar Applications, Department of Energy, will implement and manage the program.

§ 445.4 Handling of information submitted under the program.

(a) Except as otherwise provided in this section, the handling of information submitted to DOE under this part will be governed by DOE's Freedom of Information regulations, 10 CFR Part 1004.

(b) DOE will not disclose any information obtained under this part which it determines is a trade secret or other matter described in 5 U.S.C. 552(b)(4), disclosure of which may cause significant competitive harm, except to committees of Congress upon request of such committees; and information from plant reporting forms made avaliable to DOE for verification purposes under § 445.26(a) shall not be released to the public.

(c) A corporation which claims that information provided to DOE under this part is a trade secret or commercial or financial information that is privileged or confidential within the meaning of 5 U.S.C. 552(b)(4), and that disclosure of this information would cause significant corporate competitive damage, must so inform DOE by providing at the time of the submission of the information a detailed item-by-item explanation of whether the information is customarily treated as confidential by the corporation and the industry, and a detailed explanation of the anticipated competitive damage which would result from public disclosure.

(d) Prior to disclosing any information other than in response to a request made under 10 CFR Part 1004, DOE will grant any person who submitted information in accordance with paragraph (c) of this section an opportunity to comment on the proposed disclosure by providing at least seven days' notice of DOE's determination to disclose such information. For purposes of this paragraph, notice is deemed to be given when mailed to the person who provided the information.

(e) Any information submitted to DOE by a corporation under this part shall not be considered energy information, as defined by section 11(e)(1) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 796), for purposes of any verification examination authorized to be conducted by the Comptroller General under section 501 of the Act.

§ 445.5 Major energy-consuming industries.

(a) For purposes of this part, the following 2-digit SIC manufacturing industries are the major energy-consuming industries:

(1) SIC 20—Food and kindred products;
(2) SIC 21—Tobacco products;
(3) SIC 22—Textile mill products;
(4) SIC 23—Apparel and other textile products;
(5) SIC 24—Lumber and wood products;
(6) SIC 25—Furniture and fixtures;
(7) SIC 26—Paper and allied products;
(8) SIC 27—Printing and publishing;
(9) SIC 28—Chemicals and allied products;
(10) SIC 29—Petroleum and coal products;
(11) SIC 30—Rubber and miscellaneous plastic products;
(12) SIC 31—Leather and leather products;
(13) SIC 32—Stone, clay and glass products;
(14) SIC 33—Primary metal industries;
(15) SIC 34—Fabricated metal products;
(16) SIC 35—Machinery, except electrical;
(17) SIC 36—Electric, electronic equipment;
(18) SIC 37—Transportation equipment;
(19) SIC 38—Instruments and related products; and
(20) SIC 39—Miscellaneous manufacturing industries.

(b) The following major energy-consuming industries are the industries for which reporting on the use of recovered materials is required under § 445.22(b):

(1) SIC 22 Textile mall products;
(2) SIC 26 Paper and allied products;
(3) SIC 30 Rubber and miscellaneous plastic products; and
(4) SIC 33 Primary metal industries.

§ 445.6 Procedures for appeals.

Any appeal of a determination by DOE pursuant to any provision of this part shall be filed with the Office of Hearings and Appeals, U.S. Department of Energy, Washington, D.C. 20461, within 30 days of the date of that determination, pursuant to the procedures for such an appeal stated in 10 CFR Part 205, Subpart H. A person has not exhausted its administrative remedies until an appeal has been filed under that subpart, and an order granting or denying the appeal has been issued.

§ 445.7 General information-gathering authority.

In addition to the exercise of authority under Part E of Title III of the Act, DOE may execise any authority available under any other provision of law to obtain such information with respect to

industrial energy efficiency and industrial recovered materials use which it determines is necessary or appropriate to the attainment of the objectives of the program. Nothing in this part shall limit the authority of DOE to require reports of energy information under any other law.

Subpart B—Identification of Corporations

§ 445.11 Scope.

This subpart contains the criteria and procedures for the annual identification of corporations.

§ 445.12 Requirement for corporations to file a report on energy consumption.

(a) Except as provided by paragraph (b) of this section, a corporation which consumed, as determined according to § 445.13, at least one trillion Btu's of energy in a calendar year within a major energy-consuming industry shall file a report on that energy consumption with DOE as provided in section § 445.14.

(b) Any corporation which was identified by DOE under § 445.15 within a major energy-consuming industry for a calendar year and which consumed, as determined according to § 445.13, at least one trillion Btu's of energy within the same major energy-consuming industry in the next calendar year, need not file a new report of its energy consumption in that industry.

(c) Any corporation which was identified by DOE under § 445.15 within a major energy-consuming industry for a calendar year and which consumed, as determined according to § 445.13, less than one trillion Btu's of energy within the same major energy-consuming industry in the next calendar year shall file a report on its energy consumption in that industry as provided by § 445.14. The failure of a corporation described in this paragraph to file a report may result in the continued identification of the corporation by DOE under § 445.15.

§ 445.13 Computation of energy consumption.

(a) For purposes of this subpart, energy consumed is the sum of the Btu contents of all energy types consumed by a corporation in a manufacturing industry within the United States and includes energy used for—

(1) Direct manufacturing activities;

(2) Thermal self-generation of electricity;

(3) Heating, ventilating and air conditioning of manufacturing buildings and plant offices, as well as manufacturing services such as shops, cafeteria, other plant personnel services, and plant chemical and analytical laboratories;

(4) In-plant transportation, such as lift trucks, conveyors, cranes, and railroads;

(5) Transportation to manufacturing facilities from mining operations owned by the manufacturer;

(6) Raw material storage;

(7) Services for finished product warehouses within a plant fence if directly related to manufacturing activities; and

(8) Feedstocks.

(b) For purposes of this subpart, energy consumed does not include (where such use is metered separatly or can otherwise be identified)—

(1) All uses of electricity self-generated by thermal means;

(2) Services for corporate and divisional offices not contiguous to a plant;

(3) Services for basic research not contiguous to a plant;

(4) Services for regional distribution centers;

(5) Fuel for corporate aircraft, salesmen's cars and over-the-highway trucks;

(6) By-product fuels sold and shipped, or stored for sale;

(7) Facility start-up energy (to point of commercial quality production);

(8) Waste used as fuel;

(9) Transport of intermediate product to another producer for finishing within the same two-digit industry; and

(10) Fuels received for storage for later disposition.

(c) For purposes of this section, where energy is consumed in manufacturing in one major energy-consuming industry for purposes of manufacturing an end product in another major energy-consuming industry and such energy is not separately metered or cannot otherwise be identified, the energy is consumed in the major energy-consuming industry of the end product.

(d) To avoid double-counting in the case of thermally self-generated electricity, a corporation's electricity consumption shall be comprised only of purchased electricity and self-generated hydropower. For example, where a corporation consumes coal in the thermal generation of electricity for its own use, the Btu's of the coal, but not the Btu's of the electricity, shall be included.

(e) Where an energy type (except electricity) was purchased according to, or with knowledge of, its actual Btu content, and such Btu content can be documented, energy consumed must be determined by reference to the actual Btu content. Where the energy type was not purchased according to, or with knowledge of, its actual Btu content and in the case of electricity, the following conversion factors (Btu's/energy unit) must be used:

(1) Electricity—3,412/kwh.;

(2) Natural gas—1,020/cu. ft.;

(3) Bituminous coal—22,565,000/short ton;

(4) Anthracite—25,400,000/short ton;

(5) Coke—26,000,000/short ton;

(6) Ethane—3,082,000/bbl.;

(7) Propane—3,848,000/bbl.;

(8) LPG—4,011,000/bbl.;

(9) Natural gasoline—4,620,000/bbl.;

(10) Gasoline (including aviation)—5,248,000/bbl.;

(11) Special naphtha—5,248,000/bbl.;

(12) Kerosene—5,670,000/bbl.;

(13) Distillate fuel oil (including diesel)—5,825,000/bbl.;

(14) Still gas—6,000,000/bbl.;

(15) Petroleum coke—6,024,000/bbl.;

(16) Residual fuel oil—6,287,000/bbl.;

(17) Crude oil—5,800,000/bbl.; and

(18) Other energy types (including purchased steam)—(to be determined by calorimetric measurement or engineering standard as appropriate for consuming corporation).

§ 445.14 Report on energy consumption.

(a) The reports required by § 445.12(a) and (c) must include the following information:

(1) The name, title, address and phone number of the individual responsible for reporting energy data for the corporation;

(2) The Internal Revenue Service "Employer Identification Number" (EIN) for the corporation; and

(3) The following statement, completed as appropriate:

(name of corporation)

consumed at least one trillion Btu's of energy in calendar year —— in SIC(s) ——— [for only those corporations filing pursuant to § 445.12(c), substitute or add the completed phrase: (and) consumed less than one trillion Btu's of energy in calendar year —— in SIC(s) ———], as determined according to 10 CFR 445.13. I certify that all the information in this report is true and accurate to the best of my knowledge.

(Signature of Chief Executive Officer or officer designated by such officer)

Date of Submission

(b) Reports required by § 445.12 must be received by DOE by the February 28 following the close of the calendar year for which the corporation is required to report and must be sent to the following address: Office of Industrial Programs,

U.S. Department of Energy, room 5103, 20 Massachusets Avenue, N.W., Washington, D.C. 20585. The deadline and address for submission of the report may be changed by DOE by the publication of a notice of the change in the **Federal Register.**

(c) Where a corporation controls, is controlled by or is under common control with another corporation, the corporation required to file the report is the corporation which controls.

(1) Where a corporation controls a joint venture, that corporation shall include the energy consumed by the joint venture in its energy consumption. Where more than one corporation controls a joint venture, each controlling corporation shall include in its energy consumption an equal percentage of the energy consumed by the joint venture during the calendar year for which the report is filed.

(2) Where a corporation is under common control, each controlling corporation shall include in its energy consumption an equal percentage of the energy consumed by the corporation under common control.

(3) A corporation shall supply to DOE, upon request, any material which DOE may require to verify control.

(d) All data used by a corporation in determining its energy consumption must be retained by the corporation for at least five years.

§ 445.15 Identification of corporations by DOE.

(a) Annually, after reviewing the information filed pursuant to § 445.12, and any other information on corporate energy consumption available to it, DOE will identify each corporation which consumed at least one trillion Btu's of energy within a major energy-consuming industry in the previous year, pursuant to the procedures set forth in paragraph (b) of this section.

(b) DOE will publish in the **Federal Register** a list identifying corporations. If this list must be supplemented, DOE may publish an updated list or may notify a corporation of its identification by certified mail.

§ 445.16 Request for modification.

(a) A corporation may file a request with DOE to modify its identification pursuant to § 445.15 on the grounds of clerical or technical error.

(b) Notwithstanding the provisions of § 445.6, the request must be filed with DOE within 30 days of the identification of the corporation, at the Office of Industrial Programs, U.S. Department of Energy, Room 5103, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585. and marked "Industrial Energy Conservation Program: Request for Modification." DOE may change the address for the submission of such requests by the publication of a notice of such change in the **Federal Register.**

(c) 10 CFR 205.131 and 205.134 provide the format for such a request.

(d) The request must adequately explain how the corporation erred in its report of energy consumption or how DOE erred in identifying the corporation.

(e) DOE shall respond to the request by granting or denying it within 20 days of the receipt of the request by the Office of Industrial Programs.

Subpart C—Reporting Requirements

§ 445.21 Plant reporting requirements.

(a) Each plant of an identified corporation shall report to the corporation at its headquarters in the United States on the progress the plant has made during the reporting period in improving its energy efficiency in each major energy-consuming industry within which the corporation is identified.

(b) The reports required under paragraph (a) of this section must be submitted on a plant reporting form which has been—

(1) Published and made available for this purpose by DOE, or

(2) Provided by the identified corporation, together with a complete index referencing each and every item on the DOE form to the appropriate identical item on the form submitted.

(c) The reports required under paragraph (a) of this section must be received by the identified corporation in a manner sufficiently timely to permit the data from such reports to be aggregated in the corporation's report required by § 445.22.

§ 445.22 Corporate reporting requirements.

(a) The chief executive officer (or officer designated by such officer) of each identified corporation shall report by the date specified in § 445.25 on the progress the corporation has made in improving its energy efficiency in each major energy-consuming industry within which the corporation is identified, including data aggregated from plant reports required under § 445.21.

(b) The chief executive officer (or officer designated by such officer) of each corporation identified within any of SIC(s) 20, 26, 30 or 33 also shall report by the date specified in § 445.25 on the progress the corporation has made to increase its utilization of recovered materials in each of these four industries within which the corporation is identified.

(c) The information required under paragraphs (a) and (b) of this section must be submitted—

(1) To DOE, on a corporate reporting form which has been published and made available for this purpose by DOE; or

(2) For an exempt corporation, to a sponsor of an adequate reporting program on a corporate reporting form—

(i) Described in paragraph (c)(1) of this section; or

(ii) Previously supplied by the corporation to DOE in its submission under § 445.34, accompanied by a complete index referencing each and every item on the DOE form to the corresponding identical item on the form submitted and the certification required by the DOE form.

§ 445.23 Sponsor reporting requirements.

(a) The chief executive officer (or officer designated by such officer) of each sponsor of an adequate reporting program, as determined pursuant to § 445.37, shall report by the date specified in § 445.25 to DOE, as follows:

(1) For each major energy-consuming industry for which the sponsor has an adequate reporting program, on the progress the exempt corporations which participate in the adequate reporting program have made in improving their energy efficiency in that major energy-consuming industry; and

(2) For each of SIC(s) 20, 26, 30 and 33 for which the sponsor has an adequate reporting program, on the progress the exempt corporations which participate in the adequate reporting program and which are identified in such SIC code have made to increase their utilization of recovered materials.

(b) The information required under paragraph (a) of this section must be submitted to DOE on a sponsor reporting form which has been—

(1) Published and made available for this purpose by DOE; or

(2) Previously supplied by the sponsor to DOE in its submission under § 445.35, accompanied by the certification required by the DOE form.

§ 445.24 Reporting period.

The reporting period for each report required by this subpart is the calendar year for which each corporation covered by the report is an identified corporation.

§ 445.25 Reporting date and address.

All reports submitted to DOE under this subpart must be received by DOE by the July 15 following the end of the

reporting period and must be sent to the address provided in the instructions to the appropriate DOE form. This deadline and address may be changed by DOE by a notice published in the Federal Register.

§ 445.26 Data retention.

(a) All data used by an identified corporation in preparing reports under § 445.22, including the reports submitted to the corporation under § 445.21, must be retained by the corporation for at least five years from the filing date and must be made available to DOE promptly upon request for verification.

(b) All reports submitted by an exempt corporation to a sponsor under § 445.22(c)(2) must be retained by the exempt corporation for at least five years from the filing date. Upon request for verification the reports must be made promptly available to DOE by the corporation, and by the sponsor if copies of the reports are retained by the sponsor.

(c) All data, other than reports described in paragraph (b), used in preparing reports submitted to DOE by a sponsor under § 445.23 must be retained by the sponsor for at least five years from the filing date and must be made available to DOE promptly upon request for verification.

Subpart D—Exemption Criteria and Procedures

§ 445.31 Scope.

This subpart contains the criteria and procedures for the exemption of identified corporations from the requirement of filing corporate reporting forms directly with DOE.

§ 445.32 Criteria for the exemption of corporations.

In order for an identified corporation to be exempt from filing the corporate report required by § 445.22 directly with DOE, pursuant to § 445.37, the corporation must—

(a) File a timely and complete request to be an exempt corporation, pursuant to § 445.34;

(b) Participate in an adequate reporting program; and

(c) If it was previously determined to be an exempt corporation, have met the requirements of § 445.22 (a), (b) and (c)(2) for the period it has been exempt.

§ 445.33 Criteria for adequate reporting programs.

In order for a reporting program of a sponsor to be determined an adequate reporting program for a major energy-consuming industry, pursuant to § 445.37, the sponsor must—

(a) File a timely and complete request to be a sponsor with an adequate reporting program, pursuant to § 445.35;

(b) If its program previously was determined to be adequate, have met the requirements of § 445.23 and have provided each identified corporation which participated in the reporting program with (1) specific written guidance for preparing and submitting the corporate report under § 445.22(c)(2) to the sponsor; and (2) a copy of the report which the sponsor filed with DOE under § 445.23.

§ 445.34 Request to be an exempt corporation.

(a) An identified corporation may seek an exemption by submitting a request to DOE describing its participation in an adequate reporting program.

(b) This request must include the following information:

(1) The name and address of the identified corporation;

(2) The name and telephone number of the person responsible for preparing the report required by § 445.22 on behalf of the corporation;

(3) The name, address, and telephone number of the sponsor in whose reporting program the corporation has arranged to participate, together with the enumeration of all major energy-consuming industries for which the corporation will submit reports to the sponsor;

(4) A statement that it will meet the requirements of § 445.22 (a), (b) and (c)(2) and § 445.26 (a) and (b);

(5) A statement of how the corporation will report to the sponsor, either—

(i) On the DOE corporate reporting form: or

(ii) On some other reporting form, designated by the corporation;

(6) If the corporation designates some other form, a copy of the form, together with a complete index referencing each and every item on the DOE form to the corresponding identical item on the form submitted; and

(7) A certification by the chief executive officer (or other officer designated by such officer) of the corporation as follows: "I certify that all information provided in this request is true and accurate to the best of my knowledge."

(c) Notwithstanding the provisions of paragraph (a) of this section, any corporation which was exempt under § 445.37 for a calendar year and for which all information required by paragraph (b) of this section is unchanged, need not refile a request for the next year.

§ 445.35 Request to be a sponsor with an adequate reporting program.

(a) A sponsor may seek to have its reporting program determined to be adequate by submitting a request to DOE describing its reporting program.

(b) This request must include the following information:

(1) The name and address of the sponsor;

(2) The name and telephone number of the person responsible for preparing the report required by § 445.23 on behalf of the sponsor;

(3) A listing of each major energy-consuming industry covered by its reporting program;

(4) A statement that the sponsor will meet the requirements of § 445.23 and § 445.26(c);

(5) A statement of how the sponsor will submit the reports required by § 445.23 to DOE; either—

(i) On the DOE sponsor reporting form; or

(ii) On some other reporting form, designated by the sponsor;

(6) If the sponsor designates some other form, a copy of the form, together with an index referencing each and every item on the DOE form to the corresponding identical item on the form submitted;

(7) A statement that the sponsor will provide each identified corporation which participates in the reporting program with—

(i) Specific written guidance for preparing and submitting the corporate report under § 445.22(c)(2) to the sponsor; and

(ii) A copy of the report which the sponsor files with DOE under § 445.23;

(8) A statement of whether the sponsor will retain copies of corporate reports and, if so, a statement that it will meet the requirements of § 445.26(b); and

(9) A certification signed by the chief executive officer (or other officer designated by such officer) as follows: "I certify that all information provided in this request is true and accurate to the best of my knowledge."

(c) Notwithstanding the provision of paragraph (a) of this section, a sponsor which was determined to have an adequate reporting program for a calendar year and for which all information required by paragraph (b) of this section is unchanged, need not refile a request for the next year, provided its chief executive officer (or other officer designated by such officer) submits a certification that all items in the request

filed the previous year are still true and accurate to the best of his knowledge.

§ 445.36 Filing deadline and address.

The requests made pursuant to § 445.34 and § 445.35 must be received by DOE by the April 15 of each year and must be sent to the following address: Office of Industrial Programs, U.S. Department of Energy, Room 5103, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585. DOE may change the deadline and address for submission of such requests by publishing a notice of such change in the **Federal Register.**

§ 445.37 Determination of exempt corporations and adequate reporting programs.

(a) Annually, in accordance with the criteria set forth in § 445.32 and § 445.33, DOE will exempt corporations and determine the adequacy of the reporting programs in which they participate, pursuant to the procedures set forth in paragraph (b) of this section.

(b) DOE will publish in the **Federal Register** for public comment its proposal to exempt corporations and to determine as adequate the reporting programs in which they participate. After considering comment from interested persons, DOE will exempt corporations and determine the adequacy of the reporting programs in which they participate by publishing a list of corporations and sponsors of programs in the **Federal Register.**

§ 445.38 Failure to report.

(a) If a sponsor with an adequate reporting program fails to submit the report required by § 445.23 by the deadline established in § 445.25, DOE may, by notice to the sponsor and to the corporations which participate in its program, revoke its determination that the sponsor has an adequate reporting program. Within 30 days after the notice is mailed, each such corporation must submit a corporate report directly to DOE as provided in § 445.22(c)(1).

(b) If a sponsor determines that an exempt corporation has failed to file its corporate report as required by § 445.22(c)(2), it should submit a report as required by § 445.23 only on those exempt corporations which filed the corporate report with the sponsor. If an exempt corporation does not file the report required by § 445.22 with a sponsor, it must file the report required by § 445.22 directly with DOE.

Subpart E—Voluntary Energy Efficiency Improvement Targets and Voluntary Recovered Materials Utilization Targets

§ 445.41 Purpose and scope.

(a) This subpart contains the energy efficiency improvement targets and the recovered materials utilization targets established by DOE pursuant to sections 374 and 374A of the Act.

(b) No liability shall attach to, and no civil or criminal penalties shall be imposed on, any corporation for any failure to meet any energy efficiency improvement target or any recovered materials utilizatoin target contained in this subpart.

§ 445.42 Energy effeciency improvement targets.

(a) Each energy efficiency improvement target is a percentage figure which represents, for a major energy-consuming industry, the percentage reduction in energy consumed per unit of production which DOE has determined that such industry can achieve between calendar year 1972 and January 1, 1980, as established in 42 FR 29642, June 9, 1977, "Final Industrial Energy Efficiency Improvement Targets." Each target is set at a level which represents the maximum feasible improvement in energy efficiency that each industry can achieve.

(b) The energy efficiency improvement targets are set forth in Table I.

Table I

Major energy-consuming industry		Target
SIC Code:		
20	Food and kindred products	12
22	Textile mill products	22
26	Paper and allied products	20
28	Chemicals and allied products	14
29	Petroleum and coal products	12
32	Stone, clay and glass products	16
33	Primary metal industries	9
34	Fabricated metal products	24
35	Machinery except electrical	15
37	Transportation equipment	16

§ 445.43 Modification of energy efficiency improvement targets.

Any energy efficiency improvement target in § 445.42 may be modified at any time if DOE—

(a) Determines that such target cannot reasonable be attained or could reasonably be made more stringent; and

(b) Publishes such determination in the **Federal Register** together with a statement of the basis and justification for the modification after providing an opportunity for public comment on any proposed modification.

§ 445.44 Recovered materials utilization targets.

(a) Recovered materials utilization targets are established for each of the following industries—textile mill products, paper and allied products, metals and metal products, and rubber.

(b) Each recovered materials utilization target is a percentage figure which represents, for each industry subdivision listed in paragraph (c) of this section, the amount of recovered materials from prompt industrial and obsolete scrap which DOE has determined can be used per unit of production by calendar year 1987. Each target is set at a level which represents the maximum feasible increase in the utilization of recovered materials which the industry can achieve progressively by January 1, 1987.

(c) The recovered materials utilization targets are set forth in Tables II, III, IV, and V.

Table II.—*Textile Mill Products*

Industry subdivision	Recovered materials utilization target	Recovered materials utilization in reference year 1978
Broad woven fabric mills, wool	13	13
Yarn mills, wool	13	13
Felt goods, except woven felt hats	80	59
Padding and upholstery filling	93	93
Non-woven fabrics	15	17
Cordage and twine	22	22
All other textile mill products subdivisions analyzed for establishing targets	0	0

Table III.—*Paper and Allied Products*

Industry subdivision	Recovered materials utilization target	Recovered materials utilization in reference year 1977
Newsprint	18	14
Tissue	38	28
Printing and writing paper	6	7
Packaging and industrial converting papers	4	4
Paperboard	37	33
Construction paper and board	31	33

Table IV.—*Rubber*

Industry subdivision	Recovered materials utilization target	Recovered materials utilization in reference year 1977
Tires and inner tubes	5	2
Industrial products	5	3
Rubber footwear	15	0
Tire retreading and repair shops	12	9

Table V.—*Metals and Metal Products*

Industry subdivision	Recovered materials utilization target	Recovered materials utilization in reference year 1976
Ferrous	41	38
Aluminum	35	32
Copper	50	47
Lead	60	51
Zinc	36	33

§ 445.45 Modification of recovered materials utilization targets.

Any recovered materials utilization target in § 445.44 may be modified if DOE—

(a) Determines that such target cannot reasonably be attained, or that it should require greater use of recovered materials; and

(b) Publishes such determination in the **Federal Register** together with a basis and justification for the modification, after providing an opportunity for public comment on the proposed modification.

[FR Doc. 79-17683 Filed 6-4-79; 3:25 pm]

BILLING CODE 6450-01-M

Federal Register

Friday
June 8, 1979

Part VII

Securities and Exchange Commission

General Rules and Regulations, Securities Act of 1933, and Forms Prescribed Under the Securities Act of 1933; Small Offering Exemption

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release No. 33-6075]

General Rules and Regulations, Securities Act of 1933, and Forms Prescribed Under the Securities Act of 1933; Small Offering Exemption

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting amendments to its small offering exemptive rule to permit the use of a preliminary offering circular between the date of filing of a notification relating to an underwritten public offering of securities in reliance upon this exemptive rule and the date on which the securities may be sold. As adopted, the rule permits the use prior to the date on which the securites may be sold of a preliminary offering circular in an offering which is to be sold by or through one or more underwriters who are broker-dealers registered under Section 15 of the Securities Exchange Act of 1934.

EFFECTIVE DATE: June 8, 1979.

FOR FURTHER INFORMATION CONTACT: Spencer I. Browne, Special Counsel, Ruth D. Appleton, Chief, Office of Tender Offers, Acquisitions and Small Issues, or Paul Belvin, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-376-2976) or (202-755-1290).

SUPPLEMENTARY INFORMATION: On November 16, 1978, the Commission proposed for comment an amendment to Regulation A (17 CFR 230.251-.264), a regulation adopted pursuant to Section 3(b) of the Securities Act of 1933 ("1933 Act") [15 U.S.C. 77a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)]. Securities Act Release No. 33-5997 (43 FR 55254) invited comments on the proposed amendment which would, generally, have made available the use of a preliminary offering circular between the date of filing a notification relating to a firm commitment public offering of securities in reliance upon this exemptive rule and the date on which the securities could be sold. In addition, the use of the preliminary offering circular would have been restricted to those offerings where the aggregate price of the securities being offered for sale was equal to or in excess of $500,000.

After careful consideration of the comments received on the proposed amendments, the Commission has decided to expand the availability of the use of a preliminary offering circular to all offerings which are to be sold by or through one or more underwriters who are broker-dealers registered under Section 15 of the Securities Exchange Act of 1934 ("1934 Act") and to delete the $500,000 minimum aggregate offering requirement. The Commission is also adopting an amendment to the Consent And Certification By Underwriter required by Form 1-A(17 CFR 239.90).

This release contains a general discussion of the background and purpose of the amendments proposed in Securities Act Release No. 33-5997, the comments received [1] and the Commission's response to those comments.

Background and Purpose

The amendments to Regulation A adopted today represent another step in the Commission's ongoing initiatives to reduce the burdens of the federal securities acts on small businesses whenever possible consistent with the protection of investors. In 1978, the Commission held extensive hearings concerning the effects of its rules and regulations on the ability of small businesses to raise capital and the impact on small businesses of the disclosure requirements under the securities acts. In response to the comments received at these hearings, the Commission has recently adopted rule and form amendments designed to facilitate the small business capital formation process.[2]

[1] *See* comments collected at File No. S7-762.

[2] A summary of these amendments is set forth in Securities Act Release No. 33-6-49 (April 3, 1979) [44 FR 21562, April 10, 1979].

The proposal set forth in Release No. 33-5997 was a response to statements from the investment banking community in testimony before the Commission in its hearings on small business capital formation that Regulation A was not suited for underwritten distributions of securities, particularly those on a firm commitment basis. As more fully explained in Release No. 33-5997, the inability of an underwriter to circulate a preliminary offering document prior to the date on which the securities could be sold adversely affected the feasibility of an underwriter making the distribution on a firm commitment basis. Thus, it was stated, an underwriter agreeing to effect the distribution on a firm commitment basis would insist that the underwriting compensation be increased. This increase would compensate the underwriter for his increased risk, because he could not ascertain potential investor interest in the offering prior to the time that sales could be made.

As proposed, the use of a preliminary offering circular in the form filed with a Regulation A notification on Form 1-A (17 CFR 239.90) would have been permitted if the following conditions were met:

1. The offering circular contained substantially the information required by Regulation A, or contained substantially that information except for certain data dependent upon the offering price.

2. The preliminary offering circular was clearly designated as such and bore a legend comparable to that required on the cover of a Preliminary Prospectus.

3. The aggregate offering price of the securities being offered pursuant to the Regulation A exemption was equal to or in excess of $500,000.

4. The offering related solely to a firm commitment underwritten public offering of securities.

5. A definitive offering circular other than one designated as a "Preliminary Offering Circular" and which contained all of the information required by Form 1-A accompanied or preceded the confirmation of sale sent to each person who had been furnished the preliminary offering circular.

The amendment as proposed was based upon Rule 433 (17 CFR 230.433) which sets forth the terms and conditions governing the use of a

preliminary prospectus in connection with a registered public offering under the 1933 Act. The proposed amendment would, however, have differed from Rule 433 in two important respects: (1) the aggregate offering price of the securities being offered pursuant to the Regulation A exemption would have had to have been equal to or in excess of $500,000; and (2) the offering would have had to relate solely to a firm commitment underwritten public offering of securities.

The Commission has given careful consideration to the 21 letters of comment on the proposed amendment, most of which addressed both of the above proposed restrictions. Based upon the Commission's review of these letters, its experience in administering Regulation A and statements by witnesses from the investment banking community testifying before the Commission in its hearings on small business capital formation, the Commission has adopted final amendments to Regulation A as discussed below.

Requirement of a Legend on the Outside Front Cover Page of the Preliminary Offering Circular

As proposed, the outside front cover page of a preliminary offering circular was to bear a legend, in ink of a color other than red and different from that used elsewhere in the offering circular, which would be similar to the legend required on a preliminary propectus. The use of a color other than red ink was to distinguish a preliminary offering circular from a preliminary propectus.

While only one commentator commented on the additional cost of such a requirement, the Commission has decided not to require that the legend be printed in ink of a color other than red or than otherwise used in the preliminary offering circular. The Commission notes that its experience in connection with offerings based upon Regulation A has indicated that a substantial number of such offering circulars are mimeographed and not printed. To require that the legend appear as originally proposed may have caused additional unnecessary expense. Accordingly, the Commission has concluded that the required legend may be printed in the same color ink as the other portions of the preliminary offering circular so long as it appears perpendicular to the text and runs along the left hand margin of the outside front cover page of the preliminary offering circular. In addition the legend must be in boldface type at least as large as the type used in the body of the prospectus.

$500,000 Aggregate Offering Price

As set forth in the proposed amendment, the use of a preliminary offering circular would have been limited to offerings where the aggregate offering price of securities being offered pursuant to the Regulation A exemption was equal to or in excess of $500,000. Release No. 33–5997 noted that this proposed requirement was intended to assure that the preliminary offering circular was of reasonably good quality.

Most commentators believed, however, that the quality of a preliminary offering circular is not determined by the size of an offering. In addition, it was felt that such a restriction could have the effect of denying the use of a preliminary offering circular in a substantial number of potential offerings in reliance upon Regulation A which may be less than $500,000.

The Commission has considered the views of the commentators and has decided not to adopt the proposed eligibility standard based on the size of the offering. The Commission agrees that the size of an offering may not be substantially related to the quality of a preliminary offering circular, and therefore adoption of this standard would not appear warranted. The Commission also believes that the presence of an underwriter will tend to assure that the disclosures in the preliminary offering circular will be of reasonably good quality.

Requirement That the Offering Be Underwritten

While most of the commentators were in agreement that permitting the use of a preliminary offering circular in offerings to be made on a firm commitment basis would expand the use of offerings made in reliance upon Regulation A, a substantial majority believed that its use should be expanded to include public offerings underwritten on a best efforts basis. In support of their views, the commentators indicated that the reasons cited by the Commission as necessary to facilitate offerings made on a firm commitment basis are, with the exception of the underwriter's commitment to purchase the shares prior to the actual sale of securities, equally applicable to facilitating an offering made on a best efforts basis. In addition, many of the commentators were of the opinion that most offerings made in reliance upon Regulation A were underwritten by smaller regional underwriters. Because such underwriters may have only limited capital, they would in all likelihood continue to underwrite offerings on a best efforts basis so as not to tie up all of their net capital on one offering. Thus, in order to extend the benefits of the use of a preliminary offering circular to a significant number of issuers, its use should be available to offerings underwritten on a best efforts as well as firm commitment basis.

The Commission has considered the statements of the commentators and has determined to expand the use of a preliminary offering circular to all underwritten public offerings of securities made in reliance upon Regulation A. This decision was based on the Commission's conclusion that the participation of an underwriter, on a firm commitment basis or otherwise, will tend to assure that the disclosures in the preliminary offering circular will be of reasonably good quality. Expanding the availability of the use of a preliminary offering circular to all Regulation A offerings which are to be sold by or through one or more underwriters who are broker-dealers registered under Section 15 of the 1934 Act reflects the Commission's view that underwriters should and will carefully review, prior to their distribution, the disclosures in preliminary offering circulars for completeness and accuracy.

Requirement for Redistribution of the Preliminary Offering Circular

A majority of the commentators, in urging the Commission to expand the availability of a preliminary offering circular to all underwritten offerings, also noted that, where the original preliminary offering circular is deficient, the staff has the ability to require redistribution of a revised preliminary offering circular to correct any inaccurate statements. In order to make it clear that redistribution may be required, the Commission, in adopting amendments to Regulation A, has revised proposed paragraph (i) of Rule 256 and has adopted an amendment to the Consent and Certification by Underwriter, which must be signed by each underwriter and filed as an exhibit to the Notification required to be filed pursuant to Rule 255(a). Where a preliminary offering circular will be distributed, paragraph (i) of Rule 256 and paragraph 3 of the Consent and Certification by Underwriter require that, if the preliminary offering circular is inaccurate or incomplete in any material respect, each person to whom the securities are to be sold shall be furnished a copy of either a revised preliminary or the final offering circular 48 hours prior to the mailing of confirmation of the sale or shall be sent

such offering circular under circumstances that it would normally be received by them 48 hours prior to their receipt of confirmation of the sale. The Commission is of the view that this requirement will give potential investors sufficient time to consider the effect of revised disclosures on their investment decision. While either a revised preliminary or the final offering circular may be furnished or sent, where a revised preliminary offering circular is used to meet this requirement the final offering circular as specified in Rule 256(i)(4) would have to be furnished or sent prior to or with confirmation of the sale. In order to assure that each person to whom the securities are to be sold receives the revised or final offering circular as specified, the amended Consent and Certification by Underwriter also requires that the underwriter keep an accurate and complete record of the name and address of each person who was furnished a preliminary offering circular.

Issuers and underwriters should also be aware that, where a preliminary offering circular which is inaccurate or inadequate in any material respect has been distributed, the staff may require as a condition to acceleration of the 10 day waiting period for sales contemplated by relevant rules that a revised preliminary or the final offering circular be accompanied by a memorandum specifying the changes from the original preliminary offering circular as well as requiring in particularly serious cases a "cooling-off" period prior to the date on which the securities may be sold. These practices are intended to parallel substantially similar practices available under the 1933 Act and are designed to draw particular attention to revised disclosures and to lessen the impact of prior misleading statements.[3] The Commission does, however, recognize that, where required, redistribution may involve an additional cost which may be a substantial burden on smaller issuers. In order to avoid this cost, issuers may wish to delay distribution of the preliminary offering circular until comments, if any, have been received from the staff of the Regional Offices.[4]

The Commission emphasizes that the decision to adopt amendments expanding the availability of a preliminary offering circular is in the nature of an experiment. The Commission reminds issuers, underwriters, and their counsel that it will closely monitor the quality of disclosure in preliminary offering circulars and will not hesitate to utilize all of its enforcement remedies if the use of preliminary offering circulars is abused. These remedies include suspension of the Regulation A exemption prior to effectiveness of the offering based on disclosures in the preliminary offering circular.[5] Underwriters in particular are reminded that participation in an offering in which the Regulation A exemption is later suspended serves as a bar under Rule 252(e)(2) from the underwriting of any other Regulation A offering for a period of five years.

Amendment of Paragraphs (a) and (d) of Rule 255

Prior to the adoption of this amendment, Regulation A did not permit (unless authorized by the Commission or its staff pursuant to delegated authority) the offer of a security during the 10-day waiting period between the filing of the Notification and the date on which the offering commenced. Since an offer of the security could not be made, a sale of the security was, by implication, likewise prohibited. However, where a preliminary offering circular is used prior to the expiration of the 10-day waiting period, as permitted by paragraph (i) of Rule 256, the offering of the security, defined in Section 2(3) of the 1933 Act, commences immediately upon the distribution of the preliminary offering circular. Since the purpose of this amendment is to facilitate underwritten offerings pursuant to Regulation A by allowing the distribution of an offering circular prior to the date on which the securities may be sold, in order to make clear that sales of the security continue to be prohibited during the 10-day waiting period provided in paragraphs (a) and (d) of Rule 255 and paragraph (f) of Rule 256, additional language has been added to paragraphs (a) and (d) of Rule 255 so as to specifically prohibit sales during that period unless otherwise authorized by the Commission or its staff pursuant to delegated authority.

Operation of the Amendments

The amendments as adopted today provide that a preliminary offering circular meeting the requirements of paragraph (i) of Rule 256 may be distributed as soon as the Notification, of which the preliminary offering circular is an exhibit, has been filed with the Commission as required by Rule 255(a).[6] After distribution of the preliminary offering circular, oral offers of the security based on the preliminary offering circular can be made;[7] however, a sale of the security is not permitted.[8] If the issuer of the security is required to file reports pursuant to Section 13(a) or 15(d) of the 1934 Act and the preliminary offering circular is not inaccurate or inadequate in any material respect, a confirmation of the sale, accompanied or preceded by the final offering circular as provided in Rule 256(i)(4), could be sent to each purchaser of the security. However, where the issuer is not a "reporting company," the distribution of the preliminary offering circular would permit the mailing of confirmation of the sale which must also be accompanied by the final offering circular, as provided in Rule 256(i)(4), only to those persons who had received the preliminary offering circular 48 hours prior to their receipt of confirmation of the sale. It should be noted that in each instance, paragraph (i)(4) of Rule 256 requires that confirmation of the sale be accompanied or preceded by the final offering circular containing all of the information required by Schedule I or Form 1–A.[9]

If the preliminary offering circular as originally distributed was inaccurate or inadequate in any material respect, a revised preliminary or the final offering circular must be furnished to all persons to whom the securities are to be sold 48 hours prior to the mailing of any confirmation of the sale or sent to such persons under circumstances that it would normally be received by them 48 hours prior to their receipt of

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[3] *See* Securities Act Release No. 4968 (April 14, 1969).

[4] The average period of time currently required to review Regulation A notifications and issue comments has been 16 days.

[5] Pursuant to Rule 261(a)(3) the Commission has the authority to enter an order temporarily suspending the Regulation A exemption, if it has reason to believe that the offering is being made in violation of Section 17 of the 1933 Act.

[6] As adopted, Rule 256(i)(1) requires: (1) that the preliminary offering circular contain substantially all of the information required by Schedule I of Form 1–A, except for the omission of certain specified information relating to the offering price and underwriters' compensation; and (2) where an issuer is not subject to the reporting provisions of the 1934 Act, the outside front cover page should include a bona fide estimate of the range of the maximum offering price and maximum number of shares or other units of securities to be offered or should include a bona fide estimate of the principal amount of debt securities to be offered.

[7] The use of sales literature continues to be prohibited by paragraph (a)(1) of Rule 256 until the final offering circular is delivered in accordance with paragraphs (a)(2) or (i)(4) of Rule 256.

[8] The distribution of the preliminary offering circular would satisfy the provisions of Rule 256(a)(1); however, paragraphs (a) and (d) of Rule 255 as amended prohibit the sale of the security during the 10-day waiting period provided therein, unless the Commission, and its staff pursuant to delegated authority, authorize, upon written request, sales of the securities prior to expiration of the 10-day waiting period.

[9] Sales to persons who did not receive a preliminary offering circular could only be made pursuant to Rule 256(a)(2).

confirmation of the sale. The requirement that a revised preliminary or final offering circular must be furnished or sent 48 hours prior to the mailing of confirmation of the sale is intended to parallel current staff procedures with respect to requiring redistribution of an amended preliminary prospectus as a condition to acceleration of effectiveness of an offering under the 1933 Act.

Text of the Amendments

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. Paragraphs (a) and (d) of § 230.255 are amended as follows:

§ 230.255 Filing of notification on form 1-A.

(a) At least 10 days (Saturdays, Sundays and holidays excluded) prior to the date on which the initial offering or sale of any securities is to be made under this regulation, there shall be filed with the Regional Office of the Commission specified below four copies of a notification on Form 1-A. The Commission may, however, in its discretion, authorize the commencement of the offering or sale prior to the expiration of such 10 day period upon a written request for such authorization.

* * * * *

(d) Any amendment to the notification shall be signed in the same manner as the original notification. Four copies of such amendment shall be filed with the same Regional Office as the original notification at least 10 days prior to any offering or sale of the securities subsequent to the filing of such amendment, or such shorter period as the Commission, in its discretion, may authorize upon a written request for such authorization.

* * * * *

2. Paragraph (a) is amended and paragraph (i) added to § 230.256 as follows:

§ 230.256 Filing and use of the offering circular.

(a) Except as provided in paragraphs (c) or (i) of this section and in § 230.257 —

* * * * *

(i) An offering circular filed pursuant to paragraph (f) may be distributed prior to the expiration of the 10-day waiting periods for offerings provided for in § 230.255(a) and (d) and paragraph (f) of this section and such distribution may be accompanied or followed by oral offers related thereto, provided the conditions in subparagraphs (1) through (4) are met. For the purposes of this section, any offering circular distributed prior to the expiration of the ten day waiting period is called a Preliminary Offering Circular. Such Preliminary Offering Circular may be used to meet the requirements of paragraph (a)(2) of § 230.256; Provided, That if a Preliminary Offering Circular is inaccurate or inadequate in any material respect, a revised Preliminary Offering Circular or an offering circular of the type referred to in subparagraph (4) shall be furnished to all persons to whom the securities are to be sold at least 48 hours prior to the mailing of any confirmation of sale to such persons, or shall be sent to such persons under such circumstances that it would normally be received by them 48 hours prior to their receipt of confirmation of the sale.

(1) Such Preliminary Offering Circular contains substantially the information required by this section to be included in an offering circular, or contains substantially that information except for the omission of information with respect to the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices, or other matters dependent upon the offering price. For issuers not subject to the reporting provisions under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, the disclosure on the outside front cover page of the Preliminary Offering Circular should include a bona fide estimate of the range of the maximum offering price and maximum number of shares or other units of securities to be offered, or should include a bona fide estimate of the principal amount of debt securities to be offered.

(2) The outside front cover page of the Preliminary Offering Circular shall bear the caption "Preliminary Offering Circular," the date of its issuance, and the following statement which shall run along the left hand margin of the page and printed perpendicular to the text, in boldface type at least as large as that used generally in the body of such offering circular:

A notification pursuant to Regulation A relating to these securities has been filed with the Securities and Exchange Commission. Information contained in this Preliminary Offering Circular is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time an offering circular which is not designated as a Preliminary Offering Circular is delivered. This Preliminary Offering Circular shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sales of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

(3) The Preliminary Offering Circular relates to a proposed public offering of securities which is to be sold by or through one or more underwriters who are broker-dealers registered under Section 15 of the Securities Exchange Act of 1934, each of whom has furnished a signed Consent and Certification in the form prescribed as a condition to the use of such offering circular;

(4) An offering circular which contains all of the information specified in Schedule I of Form I-A (17 CFR 239.90) and which is not designated as a Preliminary Offering Circular is furnished with or prior to delivery of the confirmation of sale to any person who has been furnished with a Preliminary Offering Circular pursuant to this paragraph.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

Section 239.90 is amended by revising paragraph (c) to Item 11.

§ 239.90 [Amended]

* * * * *

Item 11. Exhibits

(No change from present Item 11 except to revise paragraph (c) to add undertaking number 3 to the Consent and Certification by Underwriter as follows:)

* * * * *

Consent and Certification by Underwriter

1. (No change)
2. (No change)
3. If a Preliminary Offering Circular will be distributed as permitted by Rule 256(i), the Consent and Certification by Underwriter shall include the following additional paragraph:

The undersigned hereby undertakes, in connection with any distribution of the Preliminary Offering Circular as permitted by Rule 256(i), (a) to keep an accurate and complete record of the name and address of each person furnished such Preliminary Offering Circular and (b) if such Preliminary Offering Circular is inaccurate or inadequate in any material respect, to furnish a revised Preliminary Offering Circular or an offering circular of the type referred to in Rule 256(i)(4) to all persons to whom the securities are to be sold at least 48 hours prior to the mailing of any confirmation of sale to such persons, or to send such a circular to such persons under circumstances that it would normally be received by them 48

hours prior to their receipt of confirmation of the sale.

* * * * *

Effective Date

This amendment to Regulation A is effective June 8, 1979. [Secs. 3(b), 19(a), 48 Stat. 75, 85; sec. 209, 48 Stat. 908; 59 Stat. 167, Pub. L. 91–565, 84 Stat. 1480; sec. 308(a)(1)(2)(3), 90 Stat. 56, 57; Pub. L. 95–283, sec. 18, 92 Stat. 275; Pub. L. 95–425, sec. 2, 92 Stat. 962; 15 U.S.C. 77c(b), 77s(a)].

Statutory Authority

This Amendment to Regulation A is adopted pursuant to Sections 3(b) and 19(a) of the Securities Act of 1933.

The Commission finds that any changes in the amended provisions from those published in Securities Act Release No. 33–5997 have already been generally subject to comment and are either technical in nature or less burdensome than previous proposals so that further notice and rulemaking procedures pursuant to the Administrative Procedure Act (5 U.S.C. 553) are not necessary.

By the Commission.

George A. Fitzsimmons,

Secretary.

June 1, 1979.

[FR Doc. 79–17779 Filed 6–7–79; 8:45 am]

BILLING CODE 8010–01–M

federal register

Friday
June 8, 1979

Part VIII

Federal Election Commission

Freedom of Information Act; Implementation Procedures

FEDERAL ELECTION COMMISSION

11 CFR Part 4

Public Records and Freedom of Information Act

AGENCY: Federal Election Commission.

ACTION: Final rule.

SUMMARY: This notice contains the final Federal Election Commission regulations setting forth procedures to implement the Freedom of Information Act (5 USC § 552) and creates a new part, Part 4, to be added to 11 CFR, Chapter 1.

EFFECTIVE DATE: June 8, 1979.

FOR FURTHER INFORMATION CONTACT: Frederick S. Eiland, Public Information Officer, (202) 523–4065.

SUPPLEMENTARY INFORMATION: The proposed regulation was published on November 22, 1977, at 42 FR 59944. A comment period was specified and a single party commented. The Commission adopted one of the suggestions made by that commentator and revised proposed 11 CFR 4.5(a)(3) to reflect a two-pong test for determining whether information is specifically exempted from disclosure by statute.

In addition, the Commission made several other changes to the proposed regulations. With the exception of the change to 11 CFR 4.4(a)(4) which was revised to provide for the availability of transcripts made from tapes of Commission meetings, all changes were minor.

Only minor changes have been made from the proposed rule and comments were received from only one party. The Commission at present has no FOIA regulations in effect. There is therefore good cause to dispense with the 30 day waiting period before the regulations may become effective. Pursuant to 5 USC 553(d)(3), the regulations are made effective upon publication.

Dated: June 4, 1979.

Robert O. Tiernan,

Chairman, Federal Election Commission.

Chapter I of Title 11, Code of Federal Regulations, is amended by the addition of the following new part:

PART 4—PUBLIC RECORDS AND THE FREEDOM OF INFORMATION ACT

Sec.

4.1 Definitions.
4.2 Policy of disclosure of records.
4.3 Scope.
4.4 Availability of records.
4.5 Categories of exemptions.
4.6 Discretionary release of exempt records.
4.7 Requests for records.
4.8 Appeal of denial.
4.9 Fees.

AUTHORITY: 5 U.S.C. 552

§ 4.1 Definitions.

As used in this part:

(a) "Commission" means the Federal Election Commission, established by the Federal Election Campaign Act of 1971, as amended.

(b) "Commissioner" means one of the six appointees confirmed by the Senate who is a voting member of the Commission.

(c) "Request" means to seek the release of records under 5 U.S.C. 552.

(d) "Requestor" is any person who submits a request to the Commission.

(e) "Act" means the Federal Election Campaign Act of 1971, as amended by the Federal Election Campaign Act Amendments of 1974, and 1976, and unless specifically excluded, includes Chapters 95 and 96 of the Internal Revenue Code of 1954 relating to public financing of Federal elections.

§ 4.2 Policy on disclosure of records.

(a) The Commission will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the rights of persons contracting with the Commission with respect to trade secret and commercial or financial information entitled to confidential treatment, and the need for the Commission to promote free internal policy deliberations and to pursue its official activities without undue disruption.

(b) All Commission records shall be available to the public unless they are specifically exempt under this part.

(c) To carry out this policy, the Commission shall designate a Freedom of Information Act Officer.

§ 4.3 Scope.

(a) The regulations in this part implement the provisions of the Freedom of Information Act, 5 U.S.C. 552, with respect to the availability of records for inspection and copying.

(b) The regulations in this part do not apply to release of the following records:

(1) Reports of receipts and expenditures, designations of campaign depositories, statements of organization candidate designations of campaign committees; and the indexes compiled from the filings therein.

(2) Requests for advisory opinions, written comments submitted thereto and responses issued by the Commission;

(3) With respect to enforcement matters under the provisions of 2 U.S.C. 437g, the results of any conciliation attempt, including any conciliation agreement entered into by the Commission; and any determination by the Commission that no violation of the Act has occurred.

(4) Copies of studies published pursuant to the Commission's duty to serve as a national clearinghouse on election law administration.

(c) Release of the records identified in subsection (b)(1)–(4) above (11 CFR 4.3(b)(1)–(4)) are governed by the provisions of 2 U.S.C. 438(a)(5), 437f(c), 437g(a)(6)(C) and 438(b) and are available to the public from the Office of Public Records located on the first floor at 1325 K Street, Northwest, Washington, D.C. This office is open Monday through Friday from 9:00 a.m. to 5:00 p.m. except legal holidays.

§ 4.4 Availability of records.

(a) In accordance with 5 U.S.C. 552 (a)(2) and (a)(3) the Commission shall make the following materials available for public inspection and copying:

(1) Statements of policy and interpretation which have been adopted by the Commission;

(2) Administrative staff manuals and instructions to staff that affect a member of the public;

(3) Opinions of Commissioners rendered in enforcement cases and General Counsel reports and 2 U.S.C. 437g investigatory materials in enforcement files 60 days after the Commission has voted to close a case and to take no further action; provided that no civil action under 2 U.S.C. 437g (a)(9) has been filed to compel the Commission to take further action. In the event that such civil action is filed, if the court sustains the Commission's action in closing the case, the materials will be made available thereupon. If the Court orders the Commission to take further action, the materials will be made available when the case is again closed;

(4) Letter requests for guidance and responses thereto;

(5) The minutes of Commission meetings and transcripts made from tapes of Commission meetings;

(6) Material routinely prepared for public distribution, e.g. campaign guidelines, FEC Record, press releases, speeches, notices to candidates and committees.

(7) Proposals submitted in response to a request for proposals formulated pursuant to the Federal Procurement Regulations. 41 CFR 1–1.001 *et seq.*

(8) Contracts for services and supplies entered into by the Commission.

(9) Statements and certifications (with respect to closing meetings) as required

by the Government in the Sunshine Act, 5 U.S.C. 552b.

(b) The Commission shall maintain and make available current indexes and supplements providing identifying information regarding any matter issued, adopted or promulgated after April 15, 1975 as required by 5 U.S.C. 552(a)(2)(c). These indexes and supplements shall be published and made available on at least a quarterly basis for public distribution unless the Commission determines by Notice in the Federal Register that publication would be unnecessary, impracticable, or not feasible due to budgetary considerations. Nevertheless, copies of any index or supplement shall be made available upon request at a cost not to exceed the direct cost of duplication.

(c) The Freedom of Information Act and the provisions of this part apply only to existing records; they do not require the creation of new records.

(d) If documents or files contain both disclosable and nondisclosable information, the nondisclosable information will be deleted and the disclosable information released unless the disclosable portions cannot be reasonably segregated from the other portions in a manner which will allow meaningful information to be disclosed.

(e) All records created in the process of implementing provisions of 5 U.S.C. 552 will maintained by the Commission in accordance with the authority granted by General Records Schedule 14, approved by the National Archives and Records Service of the General Services Administration.

§ 4.5 Categories of exemptions.

(a) 5 U.S.C. 552(b) establishes nine categories of matters which are exempt from the mandatory disclosure requirements of 5 U.S.C. 552(a). No requests under 5 U.S.C. 552 shall be denied release unless the record contains, or its disclosure would reveal, matters that are:

(1) Specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute , provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for wihthholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person which are privileged or confidential. Such information includes confidential business information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount of source of income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, if the disclosure is likely to have the effect of either impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions, or causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information. These procedures shall be used for submitting business information in confidence:

(i) A request for confidential treatment shall be addressed to the FOIA officer, Federal Election Commission, 1325 K Street, Northwest, Washington, D.C. 20463, and shall indicate clearly on the envelope that it is a request for confidential treatment.

(ii) With each submission of, or offer to submit, business information which a submitter desires to be treated as confidential under paragraph (a)(4) of this section, the submitter shall provide the following, which may be disclosed to the public: (A) A written description of the nature of the subject information, and a justification for the request for its confidential treatment, and (B) a certification in writing under oath that substantially identical information is not available to the public.

(iii) Approval or denial of requests shall be made only by the FOIA officer or his or her designees. A denial shall be in writing, shall specify the reason therefore, and shall advise the submitter of the right to appeal to the Commission.

(iv) For good cause shown, the Commission may grant an appeal from a denial by the FOIA Officer or his or her designee if the appeal is filed within fifteen (15) days after receipt of the denial. An appeal shall be addressed to the FOIA Officer, Federal Election Commission, 1325 K Street, Northwest, Washington, D.C. 20463 and shall clearly indicate that it is a confidential submission appeal. An appeal will be decided within twenty (20) days after its receipt (excluding Saturdays, Sundays and legal holidays) unless an extension, stated in writing with the reasons therefore, has been provided the person making the appeal.

(v) Any business information submitted in confidence and determined to be entitled to confidential treatment shall be maintained in confidence by the Commission and not disclosed except as required by law. In the event that any business information submitted to the Commission is not entitled to confidential treatment, the submitter will be permitted to withdraw the tender unless it is the subject of a request under the Freedom of Information Act or of judicial discovery proceedings.

(vi) Since enforcement actions under 2 U.S.C. 437g are confidential by statute, the procedures outlined in § 4.5(a)(4) (i) thru (v) are not applicable.

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party in litigation with the Commission.

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel.

(b) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.

(c) If a requested record is one of another government agency or deals with subject matter to which a government agency other than the Commission has exclusive or primary responsibility, the request for such a record shall be promptly referred by the Commission to that agency for disposition or guidance as to disposition.

(d) Nothing in this part authorizes withholding of information or limiting the availability of records to the public, except as specifically provided in this

part; nor is this part authority to withhold information from Congress.

§ 4.6 Discretionary release of exempt records.

The Commission may, in its discretion, release requested records despite the applicability of the exemptions in § 4.5(a), if it determines that it is in the public interest and that the rights of third parties would not be prejudiced.

§ 4.7 Requests for records.

(a) A request to inspect or copy Commission public records as described in § 4.3(b) may be made in person or by mail. The Public Records Office is open Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. and is located on the first floor, 1325 K Street, Northwest, Washington, D.C. 20463.

(b) Oral or written requests for copies of records not available in the Public Records Office shall be addressed to FOIA Officer, Federal Election Commission, 1325 K Street, Northwest, Washington, D.C. 20463. The request shall reasonably describe the records sought with sufficient specificity with respect to names, dates and subject matter to permit the records to be located. A requestor will be promptly advised if the records cannot be located on the basis of the description given and that further identifying information must be provided before the request can be satisfied.

(c) Records or copies thereof will normally be made available either immediately upon receipt of a request or within ten working days thereafter, or twenty working days in the case of an appeal, unless in unusual circumstances the time is extended. In the latter event, the requestor shall be notified of the reasons for the extension and the date on which a determination is expected to be made, but in no case shall the extended time exceed ten working days. An extension may be made if it is (1) necessary to locate records or transfer them from physically separate facilities; or (2) necessary to search for, collect, and appropriately examine a large quantity of separate and distinct records which are the subject of a single request; or (3) necessary for consultation with another agency which has a substantial interest in the determination of the request, or with two or more components of the Commission which have a substantial subject matter interest therein.

(d) Any person denied access to records by the Commission shall be notified immediately giving reasons therefore, and notified of the right of such person to appeal such adverse determination to the Commission.

(e) The date of receipt of a request under this part shall be the date on which the FOIA Officer actually receives the request.

§ 4.8 Appeal of denial.

(a) Any person who has been notified pursuant to § 4.6(d) of this part that his/her request for inspection of a record or for a copy has been denied, or who has received no response within ten working days (or within such extended period as is permitted under § 4.7(c) of this part) after the request has been received by the Commission, may appeal the adverse determination or the failure to respond by requesting the Commission to direct that the record be made available.

(b) The appeal request shall be in writing, shall clearly and prominently state on the envelope or other cover and at the top of the first page "FOIA Appeal", and shall identify the record in the form in which it was originally requested.

(c) The appeal request should be delivered or addressed to the FOIA Officer, Federal Election Commission, 1325 K Street, Northwest, Washington, D.C. 20463.

(d) The requestor may state facts and cite legal or other authorities as he/she deems appropriate in support of the appeal request.

(e) For good cause shown, the Commission may disclose a record which is subject to one of the exemptions listed in § 4.5 of this part.

(f) The Commission will make a determination with respect to any appeal within twenty days (excluding Saturdays, Sundays and legal holidays) after receipt of the appeal (or within such extended period as is permitted under § 4.7(c) of this part). If on appeal, the denial of the request for a record or a copy is in whole or in part upheld, the Commission shall advise the requestor of the denial and shall notify him/her of the provisions for judicial review of that determination as set forth in 5 U.S.C. 552(a)(4).

(g) Because of the risk of misunderstanding inherent in oral communications, the Commission will not entertain any appeal from an alleged denial or failure to comply with an oral request. Any person who has orally requested a copy of a record that he/she believes to have been improperly denied should resubmit the request in writing as set forth in § 4.7.

§ 4.9 Fees.

(a) Fees will be charged for copies of records which are furnished a requestor under this part and for time spent in locating and reproducing them in accordance with the fee schedule below:

Record search time—1st ½ hour free; Each additional ½ hour	$2.50
Reproduction of documents, per page	.10
Transcript of tape-recorded matter, per page	3.00

(b) In the event fees for pending requests under this part from the same requestor exceed $25.00, such records will not be searched for or made available, nor copies furnished, unless the requestor first pays or make acceptable arrangements to pay the total amount due, or if the fee is not precisely ascertainable, the approximate amount due upon the completion of the Commission's search and/or copying. In the event an advance payment hereunder shall differ from the actual fees due, an appropriate adjustment will be made at the time the copies are delivered or made available or a denial of same is notified.

(c) The Commission may reduce or waive payments of fees hereunder if such reduction or waiver would be in the public interest.

[FR Doc. 79-17978 Filed 6-7-79; 8:45 am]

BILLING CODE 6715-01-M

federal register

Friday,
June 8, 1979

Part IX

Department of Housing and Urban Development

Office of Assistant Secretary for Community Planning and Development

Urban Development Action Grants; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-79-667]

Community Development Block Grants; Urban Development Action Grants

AGENCY: Department of Housing and Urban Development.

ACTION: Interim rule.

SUMMARY: This rule deletes the Urban Development Action Grant minimum standards of physical and economic distress established for fiscal year 1978 for small cities. It provides a method to revise the minimum standards for small cities when more recent data become available.

EFFECTIVE DATE: June 28, 1979.

COMMENTS DUE: August 7, 1979.

ADDRESSES: Send comments to Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Each person submitting a comment should include his/her name and address, refer to the document by the docket number indicated by the headings, and give the reasons for any recommendation. Copies of all written comments received will be available for examination by interested persons in the Office of the Rules Docket Clerk, at the address listed above. The proposal may be changed in light of the comments received.

FOR FURTHER INFORMATION CONTACT: Catherine Hare or Jane Hildt, Office of Action Grants, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, 202-472-3980.

SUPPLEMENTARY INFORMATION: On January 10, 1978 (43 FR 1602), the Department published final regulations governing the Urban Development Action Grant program which established eligibility requirements for metropolitan cities and urban counties. These regulations were amended March 29, 1978 (43 FR 13340) to set forth the eligibility requirements for small cities. On October 30, 1978 (43 FR 50668), an interim rule was published to delete the reference to minimum standards of physical and economic distress in fiscal year 1978 for metropolitan cities, other cities over 50,000, and urban counties and to provide for the publication in Notice form of the current minimum standards based on the most recent data from the Census Bureau.

In anticipation of the availability of more recent data for small cities, § 570.452(b)(2) is being amended to omit the specified minimum standards of physical and economic distress originally established for small cities for fiscal year 1978. In order to avoid constant changes in the regulations, the Department will publish, from time to time, in Notice form the exact standards which small cities must meet as new data become available. The separate designation for those small cities of less than 2500 population has been deleted as this size class must meet the same standards as those cities which have populations ranging from 2500 to 25,000. This redesignation does not represent a change in the requirements for small cities under 2500. In addition, it should be noted that the paragraph formerly designated (b)(2)(i) has been omitted and thus cities of less than 2500 population are no longer required to demonstrate capacity to successfully conduct an Action Grant project.

Furthermore, the Department wishes to call to the attention of all small cities the interim rule published October 30, 1978 (43 FR 50668). Section 570.452(c) added a provision allowing those cities and urban counties which become ineligible due to changes in the data to submit an Action Grant application during the two quarters following the announcement of a change in the data used to establish minimum standards of distress.

The administration of the program for this fiscal year depends upon the immediate effect of this rule, since the use of current data is necessary to meet the statutory intent in determining physical and economic distress for the Action Grant program. Accordingly, the Assistant Secretary for Community Planning and Development has determined that it is impracticable to follow notice of proposed rulemaking procedures and that good cause exists for making this rule effective June 28, 1979. However, interested persons are invited to participate in the making of the final rule by providing written comments. All comments received by August 7, 1979 will be considered in the development of the final rule. Such comments should be filed with the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. Copies of comments received will be available for inspection and copying at that address. The Department has determined that an environmental impact statement is not required with respect to this rule. A copy of the Finding of Inapplicability is available for inspection in the Office of the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

Accordingly, § 570.452(b)(2) is being amended to read as follows:

§ 570.452 Eligible applicants.

(a) * * *

(b) Minimum Standards of physical and economic distress—

(1) *Metropolitan cities, other cities over 50,000 and urban counties.* (i) * * *

(ii) * * *

(2) *Small Cities.* In order to qualify as applicants, small cities must meet the minimum standards of physical and economic distress for the categories appropriate to their size class as outlined below. Two size classes are used, based on the most recent population data estimated by the Bureau of the Census. One is for cities whose population is estimated to be at least 25,000 but not more than 50,000. The other is for cities whose estimated population is less than 25,000. From time to time, HUD will issue and publish in the **Federal Register** notice of the exact standards which small cities must meet for each distress category. All standards are based on data for the Community as a whole.

(i) Cities of less than 25,000 population whose percentage of poverty is at least one-half of the HUD established standard must meet minimum standards in three of the following four areas:

(A) Age of housing.

(B) Per capita income.

(C) Poverty.

(D) Population lag/decline.

(ii) Cities of less than 25,000 population whose poverty level is twice the HUD established standard must meet only one other minimum standard listed in paragraph (b)(2)(i) of this section.

(iii) Cities of less than 25,000 population whose percentage of year round housing units constructed prior to 1940 is twice the HUD established standard must meet only the poverty standard.

(iv) Cities of 25,000 population but not greater than 50,000 population must meet the minimum standards in three of the following five areas:

(A) Age of housing.

(B) Per capita income.

(C) Poverty.

(D) Population lag/decline.

(E) Job lag/decline.

(v) Cities of 25,000 population but not greater than 50,000 population whose percentage of poverty is twice the HUD established standard must meet only one other minimum standard in the categories listed in paragraph (b)(2)(iv) of this section.

(vi) Cities of 25,000 population but not greater than 50,000 population whose percentage of poverty is less than one-half of the HUD established standard must meet all four other minimum standards in the categories listed in paragraph (b)(2)(iv) of this section.

(vii) Cities of 25,000 population but not greater than 50,000 population whose percentage of year round housing units constructed prior to 1940 is twice the HUD established standard must meet only the poverty standard.

(Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*); Title I Housing and Community Development Act of 1977 (Pub. L. 95–128); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Issued at Washington, D.C., May 10, 1979.

Robert C. Embry, Jr.,

Assistant Secretary for Community Planning and Development.

[FR Doc. 79–17913 Filed 6–7–79; 8:45 am]

BILLING CODE 4210–01–M

federal register

Friday
June 8, 1979

Part X

Department of Labor

Employment and Training Administration

Comprehensive Employment and Training Act; Procedures for Waivers of Time Limitations on Public Service Employment

DEPARTMENT OF LABOR

Employment and Training Administration

[20 CFR Part 676]

Comprehensive Employment and Training Act; Procedures for Waivers of Time Limitations on Public Service Employment

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rules.

SUMMARY: The Comprehensive Employment and Training Act (CETA) places limitations on the length of time a person may participate in public service employment (PSE) under the Act. The Secretary of Labor, upon the application of a "prime sponsor" (generally, the State or local government which employs the participant), may grant a waiver of the time limitations under certain conditions. The purpose of this document is to propose new rules governing the application for, and the granting of, waivers.

DATES: Comments due by June 25, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Anderson, Administrator, Office of Comprehensive Employment Development, Employment and Training Administration, U.S. Department of Labor, Room 5002, 601 "D" Street NW., Washington, D.C. 20213; Telephone: (202) 376-6254.

SUPPLEMENTARY INFORMATION: On April 3, 1979, at 44 FR 19990, the Department published final regulations for prime sponsor programs under Titles I, II, VI and VII of the Comprehensive Employment and Training Act. Included in that document were regulations, to be codified at 20 CFR 676.30, containing procedures for the granting of waivers of the time limitations on public service employment participation. Since the regulations were published, the Department has been made aware of the need for a further elaboration and explanation of these procedures. Absent the granting of waivers, many thousands of public service employment participants will reach the end of their participation period on September 30, 1979. In order to properly plan for Fiscal Year 1980, many local governments have a need for more definitive guidance on the waiver procedures. In addition, the public service employment participants themselves have a need for a clearer indication of the circumstances regarding continued participation after September 30. The purpose of this document is to give such guidance.

Ordinarily, under Executive Order 12044, a 60-day comment period is to be afforded for proposed rules. In addition, under Section 126 of CETA, final rules become effective 30 days after their publication. Thus, if 60 days were allowed for comment, it would be mid-September before the proposed rules in this document could become effective. This would be much too late to give the necessary guidance in a timely fashion, and thereafter, to prepare, submit, and process the waiver applications. Consequently, only a 17-day comment period is being afforded. Accordingly, it is proposed to amend 20 CFR 676.30 by revising paragraphs (h)–(k) and adding new paragraphs (l)–(o) to read as follows:

§ 676.30 Termination conditions; participant limitations.

* * * * *

(h) A temporary waiver of the 78 week limitation may be granted by the Department to a prime sponsor for a limited number of PSE participants hired prior to October 1, 1978, if the prime sponsor demonstrates that it has faced unusually severe hardships in its efforts to transition PSE participants to regular public or private employment not supported under the Act (sec. 122(h)(4)(A)). The 30 month limitation for total CETA participation shall be considered as waived as long as a PSE participant, who is covered by this waiver, is in the PSE position.

(i) A temporary waiver of the 78 week limitation may be granted by the Department to a prime sponsor for PSE participants hired on or after October 1, 1978 if the prime sponsor demonstrates that it, or that a unit of general local government, at the time of the waiver request:

(1) Has an unemployment rate of at least 7 percent; and

(2) Has faced unusually severe hardship in its efforts to transition PSE participants into regular public or private employment not supported under the Act (sec. 122(h)(4)(B)).

(j) The Department shall provide waivers, conditioned on transition plans, to prime sponsors, which shall be only for the purpose of affording additional time to transition, transfer, or otherwise terminate a limited number of the individuals who are anticipated to reach the limit of their PSE participation. No specific individual shall be entitled to a waiver, or to a waiver of a specific period of time.

(k) A prime sponsor desiring a waiver of the 78 week limitation on PSE participation for itself or for any unit of general local government within its jurisdiction shall submit a written waiver request to the RA not more than 90, nor less than 60, days prior to the first day of the quarter during which the participants are anticipated to reach the 78 week limit except that, for participants anticipated to terminate on September 30, 1979, or during the first quarter of fiscal year 1980, the waiver request shall be submitted by August 15, 1979. Waiver requests covering participants reaching the 78 week limit on or after October 1, 1979 must be in a separate submission from waiver requests covering participants reaching the 78 week limit by September 30, 1979. Every waiver request shall include:

(1) A description of the unusually severe hardships experienced by the prime sponsor in transitioning PSE participants;

(2) The unemployment rate, for the most recent three consecutive months for which data is available;

(3) The employment growth rate, over the most recent 12 months for which data is available;

(4) Local hiring patterns in the last 12 months, broken down by occupational categories;

(5) A description of transition efforts over the past year;

(6) A description of the efforts which will be made to transition as many participants as possible by the scheduled termination date;

(7) A transition plan which specifies the number of participants, broken down by groups, who are covered by the waiver for each quarter, that is, who are to be transitioned, transferred or otherwise terminated during each three month period. The waivers will be granted for 3, 6, 9, or 12 months as set forth in the transition plan. For the purpose of transitioning participants by quarter, a prime sponsor shall group participants based on occupational or other categories determined on the basis of the difficulty of transitioning those groups of participants into unsubsidized employment. The transition plan shall assure that if the prime sponsor is unable to meet the terms of the plan, for a particular quarter, through transition and transfer efforts and normal attrition, then it will terminate participants from those groups specified in the plan. Except for waivers described in paragraph (o), the plan shall show no more than 35 percent of all participants covered by the waiver remaining at the end of the third quarter and shall not show any such participants remaining at the end of 12 months. The plan shall describe the continuing efforts that will

be undertaken to transition all the participants covered by the waiver as soon as possible;

(8) A description of consultation with appropriate labor orgnizations.

(l) *Comment and Publication.* (1) Ten days prior to submission of the waiver request to the RA, the prime sponsor shall submit the waiver request to its planning council for review and comment. Simultaneously, the prime sponsor, at a minimum, shall publish in a newspaper or newpapers of general circulation in the prime sponsor's area (including minority newspapers, where appropriate) a statement indicating the following information:

(i) The number of participants to be covered by the waiver;

(ii) The schedule for transitioning participants covered by the waiver;

(iii) The reason(s) for the waiver request;

(iv) The groups of participants to be covered by the waiver; and

(v) The location and hours where the complete waiver request can be reviewed and the address and phone number to which questions and comments may be directed.

(2) Copies of the comments of the planning council and appropriate labor organizations shall be submitted to the RA along with the waiver request, or, if the comments are received after the submission of the request, they may be sent separately to the RA.

(m) The RA, within 30 days of receipt of the waiver request, shall notify the prime sponsor in writing of the Department's approval or disapproval and specific reasons for any disapproval. Any waiver approvals will include a written condition that the prime sponsor is subject to disallowance of costs under its grant for non-compliance with terms of its approved waiver. All waiver approvals will also state that the prime sponsor must make continuing transition efforts on behalf of all participants. All waiver approvals shall be incorporated into the Annual Plan as a modification to the Annual Plan. No waiver request shall be approved for the total number of PSE participants anticipated to terminate.

(n)(1) Within 30 days of the date of the written notification of approval pursuant to paragraph (m) of this section, the prime sponsor shall provide to the RA:

(i) A list of the names of the PSE participants covered by the waiver;

(ii) The original termination date of the participant; and

(iii) A breakdown by significant segments of both the participants for whom a waiver is requested and those to be terminated without a waiver.

(2) As an addendum to the Quarterly Program Status Summary, the prime sponsor shall furnish the total number, the names, and the group (i.e. as described in the waiver request) of each participant transitioned, transferred, or otherwise terminated at the end of each quarter.

(o) *Subsequent waivers.*

(1) The Department will consider granting subsequent waivers of up to 6 months beyond the initial waiver period only if:

(i) The waiver covers only PSE participants hired prior to October 1, 1978; and

(ii) The prime sponsor demonstrates extraordinarily difficult transition problems in its request for a subsequent waiver, based on a consideration of criteria such as the following:

(A) The unemployment rate in the jurisdiction for each of the most recent 3 months for which data are available is at least 8 percent;

(B) The employment growth rate is significantly lower than the national average;

(C) The projected economic conditions and transition circumstances indicate a stagnant or worsening situation during the next 12 months;

(D) There is extreme difficulty in transitioning groups of participants being considered for subsequent waiver;

(E) There has been a good faith and full effort to transition participants;

(F) At least 65 percent of the persons receiving an initial waiver have been transitioned, transferred or otherwise terminated; and

(G) Any other factors indicating extraordinarily severe transition difficulties.

(2) The subsequent waiver request shall be submitted between 60 and 90 days prior to the end of the initial waiver request period.

(3) The Department shall not grant a subsequent waiver for more than a limited number of the participants covered by the initial waiver request.

(4) The subsequent waiver request shall include the information required in paragraph (k) of this section. The comment and publication procedures of paragraph (1) and the reporting requirements of paragraph (n) shall also be applicable.

Signed at Washington, D.C., this 6th day of June 1979.

Ray Marshall,

Secretary of Labor.

[FR Doc. 79-18001 Filed 6-7-79; 8:45 am]

BILLING CODE 4510-30-M

federal register

Friday
June 8, 1979

Part XI

Department of Agriculture

Food and Nutrition Service

Food Stamps; Miscellaneous Amendments and Interpretations

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, 274, 276

[Amdt. 132]

Food Stamp Act of 1977; Miscellaneous Amendments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Emergency rulemaking.

SUMMARY: This rulemaking amends the regulations, published October 17, 1978 (43 FR 47846), which implement the Food Stamp Act of 1977. The amendements correct oversights in the original rulemaking or provide interpretations of the intent of the October 17 rules. None of these amendments significantly affect program eligibility or level of benefits to food stamp households. In addition, the Department is publishing rules for determination of negligence by State agencies and an administrative review procedure for claims against a State agency which are effective immediately but which will also be published shortly for public comment. Both of these procedures are mandated by the Act.

DATES:

EFFECTIVE DATE: Amendment to § 273.9, January 1, 1979. All other provisions, June 8, 1979. Comments must be received on or before August 7, 1979 to be assured of consideration.

ADDRESS: Comments on the amendments to §§ 273.8, 273.9, 273.10, 273.15(i), (r) and (s), 276.3 and 276.6 should be submitted to: Claire Lipsman, Director, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250. A final rulemaking will be issued after considering the comments. All written comments, suggestions or objections will be open to public inspection at the office of the Food and Nutrition Service, USDA, during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 500 12th Street SW., Washington, D.C., Room 658. An Impact Analysis has been prepared and approved, and is available from Director Lipsman. A copy will also be open for public inspection at the offices shown above.

FOR FURTHER INFORMATION CONTACT: Claire Lipsman, Director, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, Washington, D.C., 20250 202–447–8325.

SUPPLEMENTARY INFORMATION:

Introduction

On October 17, 1978 (43 FR 47846), the Department published final rules concerning major aspects of the Food Stamp Act of 1977. After these rules were published, the Food and Nutrition Service undertook efforts to assist State agencies in converting to the new program. Based on inquiries from State agencies and public interest groups, and other considerations, there are several sections of the regulations which need to be changed to correct oversights in the original rulemaking or provide interpretations of the intent of the October 17 rules. The Department is publishing these as well as corrections to printing errors in the October 17 rulemaking as a final rule. However, changes to §§ 273.8, 273.9, 273.10, 273.15(i), (r) and (s), 276.3 and 276.6 represent substantive changes which are being published as emergency rulemaking. With one exception, these provisions are effective June 8, 1979. The amendment to § 273.9 is being published with an effective date of January 1, 1979, in order to make clear that all households receiving VISTA payments under current contracts at the time of conversion to the new program standards are entitled to an exclusion in the amount of those payments, regardless of when the State agency converted to the new standards, and that retroactive benefits may be necessary in some instances to afford the benefit of this exclusion to all such households. Although effective on publication or earlier, these substantive changes are subject to public comment and will be repromulgated in final form following the end of the comment period.

Amendments

The Department is amending the definition of "State" in the General Information and Definitions section of the regulations. The Northern Mariana Islands are added to the list that qualify as States.

The Department has discovered that there was some confusion about the basis for determining if bilingual certification materials and staff are needed for individual certification offices. The preamble to the October 17, 1978, rulemaking on page 47879 clearly states that the State agency should arrive at an estimate of low-income households that are a single language minority from the entire service area. However, the language of the actual rule can be interpreted to draw the estimate from a list of participating households. As a result, the Department is amending this language to state that the estimate must be based on the service area. In addition to amending the bilingual rule, the Department has added a phrase in the training requirements to emphasize that training in outreach techniques is part of the overall training for outreach workers.

In the application processing section, language was inadvertently omitted that would have permitted households to leave an application with any certification office within a project area. When an application is received at the wrong office, households shall have the option of having the application mailed to the appropriate office the same day or the household can take it directly to the appropriate office. The processing standards begin the day the application is filed at the appropriate office.

The Department is amending the rules for SSI cash-out States by adding California. The Cranston-Corman Act, (Pub. L. 95–458) reinstated California as an SSI cash-out State.

The resource eligibility rules are amended in three sections. The resource exclusion for earned income tax credits is revised to take into account Pub. L. 95–600, the Revenue Act of 1978, the legislative citation for youth employment and training programs under CETA has been updated and a resource exclusion was added for payments received from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94–540). In addition, the paragraph on handling excluded funds has been amended to clarify the handling of student and self-employment income which has been prorated. While the intent was never to count these payments as a resource, the rules on handling an excluded resource in a commingled account appeared to apply. As a result, the Department is specifying that prorated student and self-employment income is exempt as a resource as long as a portion is still being counted as income.

The preamble to the October 17, 1978 regulations discusses the income exclusion under Title I (VISTA) mandated by the Domestic Volunteer Service Act of 1973 (43 FR 47865). Section 404(g) of that Act states: "Notwithstanding any other provision of law except as may be provided expressly in limitation of this subsection, payment to volunteers under this chapter shall not in any way reduce or eliminate the level of eligibility for assistance or service any such volunteer may be receiving under any government program." (42 U.S.C. 5044(g))

It is clear under the quoted language that if the volunteer is already receiving a given level of food stamp benefits at the time of the first VISTA payment, that level shall not be affected by receipt of the VISTA payment. While it

is the Department's interpretation, as stated in the October 17, 1978 rulemaking (43 FR 47865), that this exclusion applies only to VISTA payments made to persons already receiving food stamps or public assistance at the time they became VISTA volunteers, all VISTA payments had been excluded under the previous policy. With regard to the ongoing food stamp caseload, the Department would be applying the income exclusion, as limited to those receiving food stamps or public assistance prescribed in the October regulations, for the first time as households are converted to the 1977 Food Stamp Act standards. These households are in fact receiving food stamps at the time the limited exclusion is initially applied to them.

In order to clarify the standing of households which were already receiving the income exclusion at the time they are converted to the new program, the Department is amending the regulations to specifically authorize a continued exclusion for the length of the VISTA contract in force at the time of conversion. The Department believes that, in addition to being in conformance with the above rationale, this new position is also the most equitable. A continued exclusion would prevent persons from being harmed who entered volunteer service on the understanding that the subsistence allowance would not affect food stamp eligibility.

The Department is aware that conversion timetables to implement the new program vary among State agencies and that some households with a VISTA member may have had the allowance counted as income prior to implementation of this rulemaking. In order to treat all households equitably, the Department is requiring State agencies to restore benefits to these households as far back as the first month of conversion, even though the household was correctly certified at that time.

Households which were not receiving food stamps or public assistance at the time a household member joined VISTA or households whose VISTA contract in force at the time of conversion has expired shall have their subsistence allowance included as earned income.

The Department is adding three income exclusions based on additional information which has become available since the October publication. One exemption is the income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94–540). The other exemptions are earned income tax credits received as a result of Pub. L. 95–600, the Revenue Act of 1978 and payments from certain CETA Youth Employment and Training Programs which are extended by Pub. L. 95–524. The Revenue Act continues the disregard of earned income tax credits for determining assistance payments until January 1, 1980. The Revenue Act also authorizes advance payment of earned income credits by the employer in accordance with tables prescribed by IRS. Until January 1, 1980, the statutory exclusion applies to advance payments of the credit as well as to any payment at the end of the tax year. Assuming that the January 1980 expiration date remains in effect, the advance payments will be counted as earned income after that date. However, the payment at the end of the tax year will continue to be an income exclusion because it is a lump sum payment.

In order to avoid confusion over the difference between an advance on wages to cover travel costs of a new employee and a travel advance that is not an advance on wages, the Department is amending the paragraph in the destitute accounting procedure dealing with advances. The change will define an advance on wages as a payment which by written contract stipulates that it will be subtracted from wages later earned by the employer. All other travel advances will be disregarded as a reimbursement to the extent that travel expenses are actually incurred. This will allow State agencies to make a clear distinction between a wage advance which is based on a written contract and a travel advance. A wage advance that is based on a written contract will be included as income but not as a new source of income for destitute accounting purposes.

The special accounting procedures for self-employment that represents the household's annual income are amended. Several State agencies requested authority to continue the procedure contained in FNS(FS) Instruction 732–1, which allowed a household's income to be averaged over 12 months for eligibility but prorated unevenly for level of benefits. Since this was inadvertently omitted in the October 17 rulemaking, the Department is allowing State agencies to elect to provide households the option to prorate self-employment income unevenly, provided that the net income assigned in any month cannot exceed the maximum monthly income eligibility standards for the household's size.

Due to an oversight, the section on residents of addict or alcoholic treatment and rehabilitation programs limited eligibility to residents of centers authorized by FNS as a meal service. This restriction is not supported by the Act, which states that residents of a center shall not be considered residents of an institution. This amendment corrects the original oversight and limits the requirement for FNS authorization to those centers that wish to act as a meal service as well as authorized representative. The procedures for providing benefits to residents who leave a center has also been amended to require centers to provide the departing resident with any untransacted ATP's in addition to the procedure for providing stamps.

The Department has added an exemption from the notice of adverse action for reported changes which increase a household's allotment but revert to the original benefit level for lack of verification. The intent of the October 17 regulations was clearly to authorize such an exemption because the original adjustment is made pending verification and the household is advised at the time benefits are increased that verification must be presented by the next issuance. The amendment cross references the change reporting and notice of adverse action rules and continues the statement that the State agency shall use a notice of adverse action if the household is being teminated for refusal to cooperate in verifying a change which increases benefits.

In the fair hearing rules, there were some questions posed about the time period for requesting a hearing. The October 17 regulations limited requests for hearings to those which are based on an act by the State agency or loss of benefits which occurred in the prior 90 days. However, the rules did not clearly define an action by the State agency. Language is added which includes as an action by the State agency any denial of a request for restoration of benefits even though the action which caused the loss of benefits occurred more than 90 days prior to the request for a hearing. However, if the State agency has denied a request for the restoration of benefits lost more than a year ago, that action will not be considered grounds for a fair hearing request.

The Department is concerned that certain households, such as migrant farmworkers, may be entitled to a restoration of benefits based on a fair hearing decision, but, because the household has left the project area, these restored benefits are not available to the household. As a result, fair hearing regulations are amended to require that State agencies process these households faster than others if necessary to receive a decision and to

restore benefits to households which are awarded benefits before the household leaves the project area. If, despite expedited processing of the hearing, the household has left the project area before the State agency can act, the State agency shall forward an authorization either directly to the household or to the new project area, if the household has left a forwarding address. The State agency can modify form FNS–286, Certification of Transfer of Household Benefits to forward the authorization or send an award notice. The new project area is required to honor a restoration of benefits notice and issue the appropriate benefits whether the notice is presented by the household or received directly from another project area.

The nonfraud claims section is revised to emphasize that collection action can be postponed to refer the overissuance for possible prosecution or for a fraud hearing. While this was the intent of the nonfraud claim rule, the number of questions the Department received indicated that a clarification was necessary.

In the issuance section of the October 17 regulations, the Department inadvertently continued the rule that a household must be currently certified to receive expedited issuance service for emergency replacement of ATPs. The Department intended to include a more specific statement that the State agency must determine if the household was properly issued the ATP which was reported lost. As a result, this oversight is corrected. In addition, issuance regulations are revised to authorize State agencies to round allotments of $1, $3, or $5 which restore lost benefits to even dollar amounts. The $1, $3, or $5 values are the only whole dollar values that coupon books cannot match. Only in very rare cases would a household receive an allotment that would come to these figures. For accounting purposes, it would be simpler to issue the household a dollar more in coupons rather than tearing out a coupon and then issuing a $2 book. Therefore, in those very few cases, the household will be issued $2, $4, or $6 in coupons.

The Food Stamp Act of 1977 provides that "If the Secretary determines that there has been negligence or fraud on the part of the State agency in the certification of applicant households, the State shall, upon request of the Secretary, deposit into the Treasury of the United States, a sum equal to the face value of any coupon or coupons issued as a result of such negligence or fraud." Section 11(h), 91 Stat. 973, 7 U.S.C. 2020(h). The major difference in this provision from the current law is that the term "gross negligence" has been changed to "negligence." The *House Report* indicates that by reducing "gross negligence" to "negligence", FNS should be able to collect an increased number of program losses. House *Report* p. 398. When determining losses, the Department intends to use the negligence provision when an actual loss has been documented, or when the loss of funds has been determined through the use of a statistically valid projection. The regulations cite three circumstances in which FNS would impose a negligence billing.

The first circumstance would occur when the State agency disregards any food stamp program requirement contained in the Food Stamp Act of 1977, regulations issued pursuant to the Act, or the State agency's FNS-approved State Plan of Operation and the action or failure to take action results in a loss of Federal funds. The Department intends this provision to include actions in which the State agency negligently disregards a requirement or fails to fulfill a requirement. An example is a State agency which does not implement the new resource requirement on licensed vehicles, or does not establish claims against households which have been overissued benefits.

The second action that would lead FNS to use the negligence billings is an instance where a State agency implements a procedure which deviates from FNS requirements without obtaining prior FNS approval and the procedure results in a loss of Federal funds. As an example, if a State agency which used an inflated and unapproved standard utility allowance and households were thereby overissued benefits, FNS could proceed with a negligence billing to recover the value of the overissuance of coupons.

The third general action which could result in a negligence billing would be a State agency's failure to implement and maintain proper controls over the certification of households and issuance of coupons and such failure results in a loss of Federal funds. Examples of this failure include but are not limited to: instances where State agencies fail to maintain proper computer controls; fail to adequately supervise certification procedures or fail to provide security and control over accountable documents.

The Department may establish negligence billings when an identifiable loss of Federal funds occurs as a result of circumstances noted above and the loss is not an absolute State agency liability. While the regulations reflect the legislative change from gross negligence to negligence, the Department does not intend to establish a negligence billing for all losses of Federal funds. Consideration would be given to the circumstances causing the loss and the steps the State agency took to prevent the loss from recurring before determining negligence. However, the right to make a negligence determination is reserved solely to the Department. FNS may also process negligence billings concurrently with sanctions against State agencies affecting administrative funds.

The regulations also set forth a definition of fraud for use in connection with State agency liability. The definition is a standard legal definition of the term adapted to the food stamp context.

If a State agency fails to implement or maintain a required control and the failure results in a loss of Federal funds, FNS may also issue warnings and initiate the sanction process. The Department intends that failure by the State agency to remit payment on demand by FNS may result in offsets to the Letter of Credit.

The Department is providing an administrative review process by which State agencies, aggrieved by a claim asserted against them by FNS, may appeal the case to the Secretary and be afforded a review by a designee of the Secretary.

The review authority selected by the Secretary can be a different official for each case, and the authority does not necessarily have to be an official without prior knowledge of the case being reviewed. Claims against States may be as a result of direct liability billing, negligence charges, and disallowance of Federal funds. The Regulations provide that after FNS has notified the State agency of a claim, the State agency shall have 10 days to request an appeal. Upon receipt of the request by the Secretary, FNS shall acknowledge the request and inform the State agency of the name and address of the official who shall review the case and the time period allowed for presenting information in support of the case. After the administrative review, State agencies aggrieved by the final determination may obtain judicial review.

The Department is also instituting a procedure for State agencies to receive a review of certain claims through a hearing in person. These claims are negligence billings and disallowances based on a failure to meet an FNS approved corrective action plan. The Department believes that negligence

claims and disallowance for failure to meet the corrective action plan may require a more detailed review of the circumstances with an opportunity for the State agency to respond to allegations of deficiencies. The claims may be more satisfactorily resolved if a State agency representative is entitled to present a case in person. In this way, the Department would be able to make a sound decision about a claim based on potentially complex circumstances. The Department is not proposing to allow a hearing based on all claims because this would require a significant commitment of manpower to hear claims that are more readily resolved by written factual information. Additional opportunity for hearings may also cause delays in the claim process.

Since the Department may be in a position of taking sanctions for delays in implementation of the 1977 Act and subsequent regulations, the Department believes this process should be immediately established. However, public comment is solicited. Therefore, the process may be amended in the future.

Robert Greenstein, Acting Administrator of the Food and Nutrition Service, has determined that amendments to §§ 273.8, 273.9, 273.10, 273.15(i), (r), and (s), 276.3 and 276.6 should be published as an emergency rulemaking. This is being done for several reasons. Many of the above provisions are technical modifications of the October 17, 1978 final rules. Since States are now in the process of converting caseloads to the October 17 rules, these modifications need to be instituted as soon as possible. In addition, some provisions primarily affect migrant farmworker households in the migrant stream. Failure to institute these rules now would cause delays beyond this year's migrant work season. Such delays would adversely affect migrant farmworker households. Concerning the appeal procedures for States agencies, no such procedures now exist. The Department believes that the Act mandates a State's right to such appeal and that this opportunity should be immediately available. Finally, the Department believes that it is in the interest of the efficient and effective operation of the Food Stamp Program to institute the negligence and fraud provisions of the 1977 Act without delay. Moreover, any claims made under such provisions can be appealed under the new administrative appeal procedures contained in this rulemaking. For these reasons, delays in promulgating this rulemaking would be contrary to the public interest. In addition, the Department will accept comments for 60 days from the date of this publication and consider all comments prior to publication of a final rulemaking.

Therefore, Parts 271, 272, 273, 274, and 276 are amended to read as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

§ 271.2 [Amended]

1. In § 271.2, Definitions, "State" is amended by adding "Northern Mariana Islands" after the word "Guam" and before the words "and the Virgin Islands of the United States."

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.4, paragraph (c)(3)(i) is amended and a new sentence is added to the end of paragraph (e)(1)(v). The amended subparagraph reads as follows:

§ 272.4 Program administration and personnel requirements.

* * * * *

(c) *Bilingual requirements.* * * *

(3) * * *

(i) In each individual certification office that provides service to an area containing approximately 100 single-language minority low-income households; and

* * * * *

(e) *Training.* * * *

(1) *Minimum requirements.* * * *

(v) * * * In addition to training in food stamp policy and procedures, State and local outreach workers shall be provided with training in outreach techniques.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.2, paragraph (c)(2)(ii) is amended and reads as follows:

§ 273.2 Application processing.

* * * * *

(c) *Filing an application.* * * *

(2) *Contacting the food stamp office.* * * *

(ii) Where a project area has designated certification offices to serve specific geographic areas, households may contact an office other than the one designated to service the area in which they reside. When a household contacts the wrong certification office within a project area in person or by telephone, the certification office shall, in addition to meeting the requirements in paragraph (c)(2)(i) of this section, give the household the address and telephone number of the appropriate office. The certification office shall also offer to forward the household's application to the appropriate office that same day if the household has completed enough information on the application to file. The household shall be informed that its application will not be considered filed and the processing standards shall not begin until the application is received by the appropriate office. If the household has mailed its application to the wrong office within a project area, the certification office shall mail the application to the appropriate office on the same day.

* * * * *

§ 273.6 [Amended]

4. In § 273.6, paragraphs (a)–(c) are revised to add the word "California" after the word "Massachusetts" and before the words "or Wisconsin."

5. In § 273.8, paragraph (e)(1) is amended to delete the word "inhabitability" after the words "illness or" and before the word "caused" and replace it with the word "uninhabitability". Paragraphs (e)(11)(v) and (e)(11)(vi) are amended, a new paragraph (e)(11)(vii) is added and paragraph (f) is amended. The amended paragraph, the new paragraph and the amended paragraph read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(e) *Exclusions from resources.* * * *

* * * * *

(11) * * *

* * * * *

(v) Earned income tax credits received before January 1, 1980, as a result of Pub. L. 95–600, the Revenue Act of 1978.

(vi) Payments received from the youth incentive entitlement pilot projects, the youth community conservation and improvement projects, and the youth employment and training programs under Title IV of the Comprehensive Employment and Training Act Amendments of 1978 (Pub. L. 95–524).

(vii) Payments received from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94–540).

* * * * *

(f) *Handling of excluded funds.* Excluded funds that are kept in a separate account, and that are not commingled in an account with nonexcluded funds, shall retain their resource exclusion for an unlimited period of time. The resources of students and self-employment households which are excluded as provided in paragraph

(e)(9) of this section and are commingled in an account with nonexcluded funds shall retain their exclusion for the period of time over which they have been prorated as income. All other excluded moneys which are commingled in an account with nonexcluded funds shall retain their exemption for six months from the date they are commingled. After six months from the date of commingling, all funds in the commingled account shall be counted as a resource.

* * * * *

6. In § 273.9, paragraph (c)(10)(iii) and (vi) are amended and new paragraphs (c)(10)(vii) and (viii) are added and read as follows:

§ 273.9 Income and deductions.

* * * * *

(c) *Income exclusions.* * * *

* * * * *

(10) * * *

* * * * *

(iii) Any payment to volunteers under title II (RSVP, Foster Grandparents and Others) and Title III (SCORE and ACE) of the Domestic Volunteer Services Act of 1973 (Pub. L. 93–113) as amended. Payments under Title I (VISTA) to volunteers shall be excluded for those individuals receiving food stamps or public assistance at the time they joined the Title I program, except that households which are receiving an income exclusion for a VISTA or other Title I subsistence allowance at the time of conversion to the Food Stamp Act of 1977 shall continue to receive an income exclusion for VISTA for the length of their volunteer contract in effect at the time of conversion. Temporary interruptions in food stamp participation shall not alter the exclusion once an initial determination has been made. New applicants who are not receiving public assistance or food stamps at the time they joined VISTA shall have these volunteer payments included as earned income.

* * * * *

(vi) Payments received from the youth incentive entitlement pilot projects, the youth community conservation and improvement projects, and the youth employment and training programs under Title IV of the Comprehensive Employment and Training Act Amendments of 1978 (Pub. L. 95–524).

* * * * *

(vii) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94–540).

* * * * *

(viii) Earned income tax credits received as a result of Pub. L. 95–600, the Revenue Act of 1978 which are received before January 1, 1980.

* * * * *

7. In § 273.10, subparagraph (e)(3)(v) is amended to read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(e) *Calculating net income and benefit levels.* * * *

(3) Destitute households. * * *

* * * * *

(v) Some employers provide travel advances to cover the travel costs of new employees who must journey to the location of their new employment. To the extent that these payments are excluded as reimbursements, receipt of travel advances will not affect the determination of when a household is destitute. However, if the travel advance is by written contract an advance of wages that will be subtracted from wages later earned by the employee, rather than a reimbursement, the wage advance shall count as income. In addition, the receipt of a wage advance for travel costs of a new employee shall not affect the determination of whether subsequent payments from the employer are from a new source of income, nor whether a household shall be considered destitute. For example, if a household applies on May 10, has received a $50 advance for travel from its new employer, on May 1 which by written contract is an advance on wages, but will not receive any other wages from the employer until May 30, the household shall be considered destitute. The May 30 payment shall be disregarded, but the wage advance received prior to the date of application shall be counted as income.

* * * * *

8. In § 273.11, paragraph (a)(2) is amended by adding a new subdivision (iv); the first sentence in paragraph (e)(1) is amended by deleting the words "FNS-authorized"; and the first sentence in paragraph (e)(5) is amended and a new sentence is added after the first sentence. The new subparagraph, the amended sentences and the new sentence read as follows:

§ 273.11 Action on households with special circumstances.

(a) *Self-employment income.* * * *

* * * * *

(2) *Determining monthly income from self-employment.* * * *

(iv) If a State agency determines that a household is eligible based on its monthly net income, the State may elect to offer the household an option to determine the benefit level by using either the same net income which was used to determine eligibility, or by unevenly prorating the household's total net income over the period for which the household's self-employment income was averaged to more closely approximate the time when the income is actually received. If income is prorated, the net income assigned in any month cannot exceed the maximum monthly income eligibility standards for the household's size.

* * * * *

(e) *Residents of drug/alcoholic treatment and rehabilitation programs.* (1) Narcotics addicts or alcoholics who regularly participate in drug or alcoholic treatment and rehabilitation programs on a resident basis may voluntarily apply for the Food Stamp Program. * * *

* * * * *

(5) The treatment center shall provide resident addicts or alcoholics with their ID card and any untransacted ATP cards issued for the household when the household leaves the treatment and rehabilitation program. If the ATP card has already been transacted and the household leaves the treatment and rehabilitation program prior to the 16th day of the month, the treatment center shall provide the household with one-half of its monthly coupon allotment. * * *

* * * * *

9. In § 273.12, paragraph (c) and paragraph (c)(1)(iii) are amended to read as follows:

§ 273.12 Reporting changes.

* * * * *

(c) *State agency action on changes.* The State agency shall take prompt action on all changes to determine if the change affects the household's eligibility or allotment. Even if there is no change in the allotment, the State agency shall document the reported change in the casefile, provide another change report form to the household, and notify the household of the receipt of the change report. If the reported change affects the household's eligibility or level of benefits, the adjustment shall also be reported to the household. The State agency shall also advise the household of additional verification requirements, if any, and state that failure to provide verification shall result in increased benefits reverting to the original allotment. The State agency shall document the date a change is reported, which shall be the date the State agency receives a report form or is advised of the change over the telephone or by a

personal visit. Restoration of lost benefits shall be provided to any household if the State agency fails to take action on a change which increases benefits within the time limits specified in paragraph (c)(1) of this section.

(1) *Increase in benefits.* * * *

(iii) Verification which is required by § 273.2(f)(9)(ii) must be obtained prior to the issuance of the second normal monthly allotment after the change is reported. If the household does not provide verification, the household's benefits will revert to the original benefit level without a notice of adverse action. In cases where the State agency has determined that a household has refused to cooperate as determined in § 273.2(d), the State agency shall terminate the household's eligibility following the notice of adverse action.

* * * * *

10. In § 273.13 paragraph (b)(10) is amended to read as follows:

§ 273.13 Notice of adverse action.

* * * * *

(b) *Exemptions from notice.* * * *

* * * * *

(10) The State agency must change the household's benefits back to the original benefit level as required in § 273.12(c)(1)(iii).

* * * * *

11. In § 273.15, paragraph (g), paragraphs (i)(2), (r)(2) and (s)(1) are amended and read as follows:

§ 273.15 Fair hearings.

* * * * *

(g) *Time period for requesting hearing.* A household shall be allowed to request a hearing on any action by the State agency or loss of benefits which occurred in the prior 90 days. Action by the State agency shall include a denial of a request for restoration of any benefits lost more than 90 days but less than a year prior to the request. In addition, at any time within a certification period a household may request a fair hearing to dispute its current level of benefits.

* * * * *

(i) *State agency responsibilities on hearing requests.* * * *

(2) The State agency shall expedite hearing requests from households, such as migrant farmworkers, that plan to move from the jurisdiction of the hearing official before the hearing decision would normally be reached. Hearing requests from these households shall be processed faster than others if necessary to enable them to receive a decision and a restoration of benefits if the decision so indicates before they leave the area.

* * * * *

(r) *Implementation of local level hearing decision.* * * *

(2) In the event the local hearing authority decides in favor of the household, benefits to the household shall begin or be reinstated, as required by the decision, within the 45 day time limit allowed for local hearing procedures. Any lost benefits due to the household shall be issued as soon as administratively feasible. The State agency shall restore benefits to households which are leaving the project area before the departure whenever possible. If benefits are not restored prior to the household's departure, the State agency shall forward an authorization to the benefits to the household or to the new project area if this information is known. The new project area shall accept an authorization and issue the appropriate benefits whether the notice is presented by the household or received directly from another project area.

* * * * *

(s) *Implementation of final State agency decisions.* * * *

* * * * *

(1) When the hearing authority determines that a household has been improperly denied program benefits or has been issued a lesser allotment than was due, lost benefits shall be provided to the household in accordance with § 273.17. The State agency shall restore benefits to households which are leaving the project area before the departure whenever possible. If benefits are not restored prior to the household's departure, the State agency shall forward an authorization to the benefits to the household or to the new project area if this information is known. The new project area shall accept an authorization and issue the appropriate benefits whether the notice is presented by the household or received directly from another project area.

* * * * *

12. In § 273.18, a new sentence is added to the end of paragraph (b)(3)(ii). The new sentence reads as follows:

§ 273.18 Claims against households.

* * * * *

(b) *Nonfraud claims.* * * *

* * * * *

(3) *Collecting nonfraud claims.* * * *

(ii) * * * The State agency may postpone collection action on nonfraud claims in cases where an overissuance is being referred for possible prosecution or for a fraud hearing and the State agency is advised in writing that collection action will prejudice the case.

* * * * *

PART 274—ISSUANCE AND USE OF FOOD COUPONS

13. In § 274.2, the fourth sentence of paragraph (f)(3), the phrase "and present the statement and the household" is added after the word "household" and before the word "ID". Paragraph (g)(3)(i)(A) and paragraph (h) are amended to read as follows:

§ 274.2 Issuance systems.

* * * * *

(g) *Expedited service.* * * *

(3) * * *

(i) * * *

(A) The household was properly issued the ATP which was reported lost.

* * * * *

(h) *Issuance of coupons to households.* The State agency shall issue coupon books in accordance with a table for coupon book issuance provided by FNS. The table provides participants with an efficient and economical distribution of the available coupons and coupon book types and assists FNS in maintaining proper inventory levels. The State agency may deviate from the table if the specified coupon books are unavailable. Exceptions from the table are authorized for blind and visually handicapped participants who request that all coupons be of one denomination. In very rare cases, allotments may have a value of $1, $3, or $5. Since coupon books cannot be issued in these values, the State agency shall authorize an issuance for the next higher coupon book value so that a whole book may be issued. The State agency shall issue the coupon books in consecutive serial number order whenever possible, starting with the lowest serial number in each coupon book denomination. The household member whose name appears on the ID card shall sign the coupon books.

* * * * *

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

14. Section 276.3 and 276.6 are added to read as follows:

§ 276.3 Negligence.

(a) *General.* If FNS determines that there has been negligence or fraud on the part of the State agency in the certification of applicant households, the State agency shall, on demand by FNS, pay to FNS a sum equal to the amount of

coupons issued as a result of such negligence or fraud.

(b) *Negligence provisions.* (1) FNS may consider negligence on the part of the State agency when:

(i) The State agency disregards Food Stamp Program requirements contained in the Food Stamp Act, regulations issued pursuant to the Act, or the FNS-approved State Plan of Operation and a loss of Federal funds results;

(ii) The State agency takes action to implement procedures which deviate from FNS requirements without obtaining prior FNS approval and the implementation of such procedures results in a loss of Federal funds.

(iii) The State agency fails to implement and maintain proper controls over the certification of households and issuance of coupons and such failure results in a loss of Federal funds.

(2) In computing amounts of losses of Federal funds, FNS may use actual documented amounts or amounts which have been determined through the use of a statistically valid projection.

(3) FNS shall use all information available in determining negligence on the part of a State agency. Management information sources include but are not limited to:

(i) State and Federal Performance Reporting System reviews;

(ii) State and Federal Audits and Investigations;

(iii) Financial Management Reviews;

(iv) State Corrective Action Plans;

(v) Any of the required Food Stamp Program reports.

(4) Failure by the State agency to remit payment on demand by FNS may result in offsets to the Letter of Credit in accordance with § 277.16(c).

(c) *Fraud provisions.* For purposes of this subsection, the term fraud shall mean the wrongful acquisition or issuance of food coupons by the State agency or its officers, employees or agents, including issuance agents, through false representation or concealment of material facts. State agencies shall be liable to FNS for the amount of loss of Federal funds as a result of fraud. Failure by the State agency to remit payment on demand by FNS may result in offsets to the Letter of Credit in accordance with § 277.16(c).

§ 276.6 Administrative Review Process.

When FNS asserts a claim against a State agency, the State agency may appeal the case and be afforded a review by a designee of the Secretary. FNS claims against State agencies may be as a result of financial losses involved in the acceptance, storage, and issuance of coupons, charges of negligence, and disallowance of Federal funds for State agency failure to comply with the Act, regulations or the FNS-approved State Plan of Operation. A State agency aggrieved by a claim as a result of a negligence charge or the disallowance of Federal funds under § 276.4 shall have the option of requesting a hearing before a designee of the Secretary's to present its position or accepting a review of the record including any written submission to be presented by the State agency. Administrative review of all other claims shall be through a review of the record, including written submissions.

(a) FNS shall provide a notice by certified mail or personal service when asserting claims against State agencies. The notice shall specify whether or not the State agency may request a personal hearing.

(b) Any State agency aggrieved by claims asserted against it may file a written request with the Secretary, U.S. Department of Agriculture, Washington, D.C. 20250, for a review and an opportunity to submit information in support of its position within ten days of the date of delivery of the notice. If the State agency does not request a review within ten days of delivery of the notice, or submit information in support of its position after filing a request, the administrative determination on the claim shall be final.

(c) Upon receipt by the Secretary of a request for review, FNS shall make written acknowledgement of the request.

(1) The acknowledgement shall include the name and address of the official designated by the Secretary to review the claim;

(2) The acknowledgement shall also notify the State agency that within ten days of receipt of the acknowledgement, the State agency shall submit information in support of its position.

(d) If the State agency requests a hearing pursuant to notification by FNS under paragraph (a) of this section that it may do so, FNS shall have 60 days from receipt of the request to schedule, and complete the hearing and shall advise the State agency of the time, date and location of the hearing at least ten days in advance of the hearing.

(e) When the State agency requests a hearing as provided above, the official designated by the Secretary shall make a final determination within 30 days after the hearing, and the final determination shall take effect 30 days after the date of the delivery or service of the notice of this final determination to the State agency.

(f) If a hearing is to be held, the official designated by the Secretary shall review the record, including information presented by the State agency and make a final determination within 30 days after the receipt of the State agency's information. The final determination shall take effect 30 days after the date of delivery or service of the notice of this final determination to the State agency.

(g) A State agency aggrieved by the final determination may obtain judicial review by filing a complaint against the United States in the United States District Court for the district in which the State capital is located within 30 days after the date of delivery or service of the final notice of determination requesting the court to set aside the final determination.

(h) The administrative final determination shall remain in effect during the period the judicial review is pending unless the court temporarily stays such administrative action pending disposition of trial or appeal.

16. At the end of the October 17, 1978 rulemaking a note is added after the note on compliance with Executive Order 11821 and OMB circular A–107 and before the Catalog of Federal Domestic Assistance Programs number as follows:

Note.—The reporting and/or record keeping requirements anticipated in Amendment 132 and in subsequent provisions implementing the Food Stamp Act of 1977 will be forwarded to the Office of Management and Budget for approval in accordance with the Federal Reports Act of 1942.

(91 Stat. 958 (7 U.S.C. 2011–2027))

Note.—The Food and Nutrition Service has prepared an impact statement which is available from Claire Lipsman, Director Program Development Division, Family Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250.

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps)

Dated: June 1, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79-17963 Filed 6-7-79; 8:45 am]

BILLING CODE 3410-30-M

federal register

Friday
June 8, 1979

Part XII

Department of Transportation

Federal Aviation Administration

Special Federal Aviation Regulation No. 40; Operation of Model DC-10 Airplanes in United States Prohibited

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 129

[Docket No. 19238; SFAR 40]

Special Federal Aviation Regulation No. 40; Operation of Model DC-10 Airplanes in United States Prohibited

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This special regulation prohibits the operation of any Model DC-10 airplane within the airspace of the United States. This emergency regulation is necessary to provide adequately for safety in air commerce within the United States.

DATES: Effective date: June 6, 1979, at 6 p.m. EDT.

Comments by: August 3, 1979.

ADDRESS: Send Comments to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket, AGC-24, 800 Independence Ave., S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Sullivan, Safety Regulations Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591, telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION:

Background

On or about May 25, 1979, an accident occurred involving a McDonnell Douglas DC-10 series ariplane at Chicago, Illinois. Subsequent to the accident the FAA issued several airworthiness directives applicable to all DC-10 series airplanes. As a result of the inspections required by the airworthiness directives, the FAA continued to be advised of the existence of cracks in the pylon mounting assemblies of certain airplanes and it appeared that the Model DC-10 airplane might not meet the applicable certification criteria of Part 25 of the Federal Aviation Regulations. Furthermore, the preliminary findings of an FAA post audit of the airplane type certification data indicated that it might not comply with the type certification basis set forth in § 25.571 of the Federal Aviation Regulations. As a consequence, there was reason to believe the Model DC-10 series airplane might not meet the requirements of section 603(a) of the Federal Aviation Act for a Type Certificate in that it might not be of proper design, material, specification, construction, and performance for safe operation, or meet the minimum standards, rules and regulations prescribed by the Administrator.

Therefore, on June 6, 1979, the Administrator of the FAA issued an emergency order suspending the Type Certificate issued for the Model DC-10 airplane. Notification of the Order was given to all known owners and operators of the airplane.

However, the FAA Order does not apply to or prohibit the operation of any Model DC-10 airplane that is not registered in the United States. In view of the serious safety problems currently involving operation of that airplane, the Administrator finds that a safety emergency exists which justifies adoption of a special regulation prohibiting operation in the United States of all Model DC-10 airplanes, including those on foreign registries.

Since a safety emergency exists which requires immediate action in the interest of ensuring safety in air commerce and air transportation, the Administrator finds that notice and public procedure are impractical and contrary to the public interest and that good cause exists for making this amendment effective in less than 30 days.

Interested persons are invited to submit such written data, views, or arguments as they may desire regarding the SFAR. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, S.W., Washington, D.C. 20591. All communications received on or before August 3, 1979, will be considered by the Administrator and this SFAR may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Adoption of the Amendment

Accordingly, the following Special Federal Aviation Regulations is adopted, effective immediately:

Section 1. Contrary provisions of Parts 91, 121 and 129 of the Federal Aviation Regulations notwithstanding, no person may land or takeoff any Model DC-10 airplane within the United States, except as authorized under Section 2 or otherwise authorized by the Administrator.

Section 2. This regulation does not apply to a foreign registered Model DC-10 airplane which, at the time this regulation takes effect, is enroute to a place in the United States or is at a place within the United States. These airplanes may depart from the airport at which they are located, or at which they arrive, for a place outside the United States, using the most direct, feasible route, and without passengers or cargo on board.

This Special Federal Aviation Regulation is effective until amended or terminated by the Administrator.

(Secs. 313(a), 307, 601 and 603 of the Federal Aviation Act of 1958 (49 U.S.C. Sections 1354, 1348, 1421 and 1423); and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. Section 1655(c)).)

Note.—The FAA has determined that this document involves a regulation which is significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this document is being issued as an emergency regulation, in accordance with DOT Policies and Procedures, an evaluation will be prepared and placed in the public docket as soon as possible.

Issued in Washington, D.C., on June 6, 1979 at 6:00 p.m. EDT.

Langhorne Bond,

Administrator.

[FR Doc. 79-18120 Filed 6-7-79; 9:32 am]

BILLING CODE 4910-13-M

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Federal Register

Vol. 44, No. 112

Friday, June 8, 1979

INFORMATION AND ASSISTANCE

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Code of Federal Regulations (CFR):

523-3419	
523-3517	
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523-5233	Executive Orders and Proclamations
523-5235	Public Papers of the Presidents, and Weekly Compilation of Presidential Documents

Public Laws:

523-5266	Public Law Numbers and Dates, Slip Laws, U.S.
-5282	Statutes at Large, and Index
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Other Publications and Services:

523-5239	TTY for the Deaf
523-5230	U.S. Government Manual
523-3408	Automation
523-4534	Special Projects

FEDERAL REGISTER PAGES AND DATES, JUNE

31599-31938.....1
31939-32192.....4
32193-32346.....5
32347-32634.....6
32635-33040.....7
33041-33390.....8

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:

12113 (Amended by EO 12141).....32635
12141.....32635

Proclamations:

4664.....32347

4 CFR

Proposed Rules:

331.....31655
332.....31655
351.....31655

5 CFR

294.....33041
720.....33046

Proposed Rules:

Ch. I.....31892
890.....32223

6 CFR

705.....32338

7 CFR

215.....33046
245.....33048
250.....32193
271.....33380
272.....33380
273.....33380
274.....33380
276.....33380
418.....31599
908.....32637
910.....31610, 33049
912.....31610
918.....31939
991.....32194
1421.....31611, 31614
1427.....32637
1980.....33050

Proposed Rules:

301.....32224
800.....32394
802.....32394
803.....32394
907.....32706
916.....32224
948.....32706
1099.....32708
1701.....33076

9 CFR

78.....31619
82.....31620, 32195, 33050
92.....31621
113.....31622, 33051

Proposed Rules:

317.....31665
318.....31665
381.....31665

10 CFR

19.....32349
20.....32349
51.....31939
211.....31623, 31626, 32196, 32643
212.....32645, 33052
508.....32199

Proposed Rules:

30.....32394
35.....32394
211.....32225
212.....32622
436.....33077
445.....33344
490.....31922
508.....31677

11 CFR

Proposed Rules:

Ch. I.....32608
Ch. IX.....32608
4.....33368

12 CFR

217.....32352, 32646
302.....32353
303.....32649
329.....32353, 32356
545.....32199
612.....31940
614.....31940
701.....32202, 32357, 32358

Proposed Rules:

11.....31984
217.....32395, 32396
329.....32397
335.....33077
701.....32202
742.....33094

13 CFR

303.....32359
304.....32359
307.....32359
311.....32359

Proposed Rules:

540.....32958

14 CFR

39.....31941, 31942, 32649, 32650
71.....31944-31947
91.....33389
97.....31947
121.....33389
129.....33389
207.....33053
208.....33054
212.....33055

214 33056
221 33056
302 32364
372 33060
380 33060

Proposed Rules:
Ch. I 32001, 32708, 32709
71 ..... 32001, 32002, 32709
73 32003
250a 32398
380 32399
382 32401

15 CFR

501 32651
806 32586
2301 31629

16 CFR

13 ..... 31949, 32365
438 32207
456 33061

Proposed Rules:
13 ..... 32231, 33097
305 32013

17 CFR

15 32209
200 32366
211 33061
230 33362
239 33362

Proposed Rules:
240 32608
301 32224
916 32224

18 CFR

Proposed Rules:
Ch. I 32710
154 33099
201 33099
204 33099
282 33099

19 CFR

4 31950
6 31950
10 ..... 31950, 31962
11 31962
18 31962
19 31962
54 31962
111 31962
112 31962
123 31950
133 31962
134 31962
148 31962
151 31962
159 ..... 31972, 33063
162 ..... 31950, 31962
171 31950
172 31950

Proposed Rules:
141 31668
142 31668

20 CFR

651 31629
655 ..... 32209, 32211

Proposed Rules:
401 31668
655 32233
676 33376

21 CFR

5 32212
136 32213
446 31636
520 32213

Proposed Rules:
2 33114
20 33238
110 33238
145 31669

22 CFR

41 32653

24 CFR

Ch. X 33064
570 33372
841 32516
1911 ..... 32214, 32215
1912 32215
1914 ..... 31973, 32654, 32656
1917 33065

Proposed Rules:
570 32407
803 31670
811 32711
882 31670
888 31670
1917 32003
3280 32711

25 CFR

256 32190

26 CFR

1 32657

Proposed Rules:
1 32235
7 32235
31 32251

27 CFR

Proposed Rules:
4 32014
5 32014
7 32014
178 32366

28 CFR

2 ..... 31637, 31638

Proposed Rules:
2 32252

29 CFR

451 33066
1601 31638
1952 33066
2520 ..... 31639, 31640

Proposed Rules:
1910 31670

30 CFR

11 33067
55 31908
56 31908
57 31908

Proposed Rules:
Ch. VII 32408

32 CFR

Ch. XIV 32681
505 32367
770 32408
806a 32681
807a 32681
1201 31976
1203 31976
1212 31976
1214 31976
1216 31976
1220 31976
1221 31976
1250 31976

33 CFR

164 32681

Proposed Rules:
110 32713
157 32713
161 32004
164 32713

36 CFR

Proposed Rules:
219 32715
223 32005

39 CFR

10 32369
111 ..... 32369, 33068
10 31976
111 31976
601 ..... 31976, 32369

40 CFR

6 32854
52 ..... 31976, 31980, 32681
65 ..... 32682, 32683
80 33069
115 32854
121 32854
122 32854
123 32854
124 32854
125 32854
162 32684
402 32854
403 32854

Proposed Rules:
Ch. I 33332
52 ..... 32005, 32253, 33116
65 ..... 32254, 32255, 32715, 32716, 32720
80 33116
100 32006
122 31673
123 31673
124 31673
146 31673

41 CFR

1 32687
2 32685
3 32684
3-50 33069
7 ..... 32685, 32687
16 32685
20 32685
25 32685

Proposed Rules:
Ch. 51 32011

42 CFR

57 32698
405 ..... 31641, 31802
466 32074

45 CFR

5a 31981
1611 31981
670 32699

Proposed Rules:
161d 33036
161j 33022
161n 33028

46 CFR

502 32369
512 32369
531 32369

Proposed Rules:
30 32713
31 32720
32 32713
34 32713
35 32720
536 32408
538 32408

47 CFR

0 32377
1 ..... 31643, 31650
2 32377
73 33070
74 32377
78 32377
81 ..... 31650, 33071
83 32383
90 32215

Proposed Rules:
0 32419
18 32419
73 ..... 31673, 32419, 33120-33126
74 32420
78 32420
90 31674
94 32720

49 CFR

393 31981
601 32705
1033 ..... 31982, 31983, 32221, 32384
1056 32384
1307 33071
1310 33071

Proposed Rules:
Ch. X 32427
172 32972
1300 32011

50 CFR

17 32604
32 33072
34 33073
263 32385
264 32388
266 32391
450 33127
452 33127
453 33127
611 ..... 31651, 31652
661 31983
662 31654
674 33250

Proposed Rules:
410 33127
661 32012
810 31858

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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
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	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.

Rules Going Into Effect Today

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Commissioner—Office of Assistant Secretary for Housing—

28659 5–16–79 / Moderate income projects; maximum mortgage amounts

Office of the Secretary—

28762 5–16–79 / Board of Contract Appeals, establishing procedures for National Housing Act contracts

Rules Going Into Effect Saturday, June 9, 1979

AGRICULTURE DEPARTMENT

Food and Nutrition Service—

3955 1–19–79 / Assessment of State nutrition education needs, development of State Plans, and operational requirements; authority citation

CIVIL AERONAUTICS BOARD

27383 5–10–79 / Alaskan Field Office; document filing

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing June 7, 1979

Just Released

PRIVACY ACT ISSUANCES, 1978 COMPILATION

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