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Highlights

Briefings on How to Use the Federal Register—For details on briefings in **Washington, D.C.; Boston, Mass.; Los Angeles,** and **San Francisco, Calif.,** see announcement in the Reader Aids Section at the end of this issue.

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Highlights

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Presidential Documents

Title 3—

The President

REORGANIZATION PLAN NO. 1 OF 1979

Prepared by the President and transmitted to the Senate and House of Representatives in Congress assembled, April 2, 1979, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

Office of the Federal Inspector for Construction of the Alaska Natural Gas Transportation System

Part I. Office of the Federal Inspector and Transfer of Functions

Section 101. *Establishment of the Office of Federal Inspector for the Alaska Natural Gas Transportation System*

(a) There is hereby established as an independent establishment in the executive branch, the Office of the Federal Inspector for the Alaska Natural Gas Transportation System (the "Office").

(b) The Office shall be headed by a Federal Inspector for the Alaska Natural Gas Transportation System (the "Federal Inspector") who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter prescribed by law for Level III of the Executive Schedule, and who shall serve at the pleasure of the President.

(c) Each Federal agency having statutory responsibilities over any aspect of the Alaska Natural Gas Transportation System shall appoint an Agency Authorized Officer to represent that authority on all matters pertaining to pre-construction, construction, and initial operation of the system.

Section 102. *Transfer of Functions to the Federal Inspector*

Subject to the provisions of Sections 201, 202, and 203 of this Plan, all functions insofar as they relate to enforcement of Federal statutes or regulations and to enforcement of terms, conditions, and stipulations of grants, certificates, permits and other authorizations issued by Federal agencies with respect to pre-construction, construction, and initial operation of an "approved transportation system" for transport of Canadian natural gas and "Alaskan natural gas," as such terms are defined in the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 *et seq.*), hereinafter called the "Act", are hereby transferred to the Federal Inspector. This transfer shall vest in the Federal Inspector exclusive responsibility for enforcement of all Federal statutes relevant in any manner to pre-construction, construction, and initial operation. With respect to each of the statutory authorities cited below, the transferred functions include all enforcement functions of the given agencies or their officials under the statutes as may be related to the enforcement of such terms, conditions, and stipulations, including but not limited to the specific sections of the statute cited. "Enforcement", for purposes of this transfer of functions, includes monitoring and any other compliance or oversight activities reasonably related to the enforcement process. These transferred functions include:

(a) Such enforcement functions of the Administrator or other appropriate official or entity in the Environmental Protection Agency related to compliance with: national pollutant discharge elimination system permits provided for in Section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342); spill prevention, containment and countermeasure plans in Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321); review of the Corps of Engineers' dredged and fill material permits issued under Section 404 of the

Federal Water Pollution Control Act (33 U.S.C. 1344); new source performance standards in Section 111 of the Clean Air Act, as amended by the Clean Air Act Amendments of 1977 (42 U.S.C. 7411); prevention of significant deterioration review and approval in Sections 160–169 of the Clean Air Act, as amended by the Clean Air Amendments of 1977 (42 U.S.C. 7470 *et seq.*); and the resource conservation and recovery permits issued under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 *et seq.*);

(b) Such enforcement functions of the Secretary of the Army, the Chief of Engineers, or other appropriate officer or entity in the Corps of Engineers of the United States Army related to compliance with: dredged and fill material permits issued under Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344); and permits for structures in navigable waters, issued under Section 10 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 403);

(c) Such enforcement functions of the Secretary or other appropriate officer or entity in the Department of Transportation related to compliance with: the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1671, *et seq.*) and the gas pipeline safety regulations issued thereunder; the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*) and authorizations and regulations issued thereunder; and permits for bridges across navigable waters, issued under Section 9 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 401);

(d) Such enforcement functions of the Secretary or other appropriate officer or entity in the Department of Energy and such enforcement functions of the Commission, Commissioners, or other appropriate officer or entity in the Federal Energy Regulatory Commission related to compliance with: the certificates of public convenience and necessity, issued under Section 7 of the Natural Gas Act, as amended (15 U.S.C. 717f); and authorizations for importation of natural gas from Alberta as predeliveries of Alaskan gas issued under Section 3 of the Natural Gas Act, as amended (15 U.S.C. 717b);

(e) Such enforcement functions of the Secretary or other appropriate officer or entity in the Department of the Interior related to compliance with: grants of rights-of-way and temporary use permits for Federal land, issued under Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185); land use permits for temporary use of public lands and other associated land uses, issued under Sections 302, 501, and 503–511 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1761, and 1763–1771); materials sales contracts under the Materials Act of 1947 (30 U.S.C. 601–603); rights-of-way across Indian lands, issued under the Rights of Way Through Indian Lands Act (25 U.S.C. 321, *et seq.*); removal permits issued under the Materials Act of 1947 (30 U.S.C. 601–603); approval to cross national wildlife refuges, National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668jj) and the Upper Mississippi River Wildlife and Fish Refuge Act (16 U.S.C. 721–731); wildlife consultation in the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*); protection of certain birds in the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*); Bald and Golden Eagles Protection Act (16 U.S.C. 668–668d); review of Corps of Engineers dredged and fill material permits issued under Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344); rights-of-way across recreation lands issued under the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 4601–4–4601–11); historic preservation under the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470–470f); permits issued under the Antiquities Act of 1906 (16 U.S.C. 432, 433); and system activities requiring coordination and approval under general authorities of the National Trails System Act, as amended (16 U.S.C. 1241–1249), the Wilderness Act, as amended (16 U.S.C. 1131–1136), the Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271–1287), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the Act of April 27, 1935 (prevention of soil erosion) (16 U.S.C. 590a–f), and an Act to Provide for the Preservation of Historical and Archeological Data, as amended (16 U.S.C. 469–469c);

(f) Such enforcement functions of the Secretary or other appropriate officer or entity in the Department of Agriculture, insofar as they involve lands and programs under the jurisdiction of that Department, related to compliance with: associated land use permits authorized for and in conjunction with grants of rights-of-way across Federal lands issued under Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185); land use permits for other associated land uses issued under Sections 501 and 503–511 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761, 1763–1771), under the Organic Administration Act of June 4, 1897, as amended (16 U.S.C. 473, 474–482, 551), and under Title III of the Bankhead-Jones Farm Tenant Act of 1937, as amended (7 U.S.C. 1010–1012); removal of materials under the Materials Act of 1947 (30 U.S.C. 601–603) and objects of antiquity under the Antiquities Act of 1906 (16 U.S.C. 432, 433); construction and utilization of national forest roads under the Roads and Trails System Act of 1964 (16 U.S.C. 532–538); and system activities requiring coordination and approval under general authorities of the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*); the Multiple Use-Sustained-Yield Act of 1960 (16 U.S.C. 528–531); the Forest and Rangelands Renewable Resources Planning Act of 1974 (16 U.S.C. 1601–1610); the National Trails System Act, as amended (16 U.S.C. 1241–1249); the Wilderness Act, as amended (16 U.S.C. 1131–1136); the Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271–1287); the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460 *et seq.*); the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1151 *et seq.*); the Fish and Wildlife Coordination Act and Fish and Game Sanctuaries Act (16 U.S.C. 661 *et seq.* and 694, 694a–b, respectively); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470–470f); an Act to Provide for the Preservation of Historical and Archeological Data, as amended (16 U.S.C. 469–469c); the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); the Watershed Protection and Flood Prevention Act, as amended (16 U.S.C. 1001 *et seq.*); the Soil and Water Conservation Act of 1977 (16 U.S.C. 2001 *et seq.*); and the Act of April 27, 1935 (prevention of soil erosion) (16 U.S.C. 590a–f);

(g) Such enforcement functions of the Secretary or other appropriate officer or entity in the Department of the Treasury related to compliance with permits for interstate transport of explosives and compliance with regulations for the storage of explosives, Title XI of the Organized Crime Control Act of 1970 (18 U.S.C. 841–848);

(h) (1) The enforcement functions authorized by, and supplemental enforcement authority created by the Act (15 U.S.C. 719 *et seq.*);

(2) All functions assigned to the person or board to be appointed by the President under Section 7(a)(5) of the Act (15 U.S.C. 719e); and

(3) Pursuant to Section 7(a)(6) of the Act (15 U.S.C. 719e), enforcement of the terms and conditions described in Section 5 of the *Decision and Report to the Congress on the Alaska Natural Gas Transportation System,* as approved by the Congress pursuant to Public Law 95–158 (91 Stat. 1268), November 2, 1977, (hereinafter the "*Decision*").

Part II. Other Provisions

Section 201. *Executive Policy Board*

The Executive Policy Board for the Alaska Natural Gas Transportation System, hereinafter the "Executive Policy Board", which shall be established by executive order, shall advise the Federal Inspector on the performance of the Inspector's functions. All other functions assigned, or which could be assigned pursuant to the *Decision,* to the Executive Policy Board are hereby transferred to the Federal Inspector.

Section 202. *Federal Inspector and Agency Authorized Officers*

(a) The Agency Authorized Officers shall be detailed to and located within the Office. The Federal Inspector shall delegate to each Agency Authorized Officer the authority to enforce the terms, conditions, and stipulations of each

grant, permit, or other authorization issued by the Federal agency which appointed the Agency Authorized Officer. In the exercise of these enforcement functions, the Agency Authorized Officers shall be subject to the supervision and direction of the Federal Inspector, whose decision on enforcement matters shall constitute "action" for purposes of Section 10 of the Act (15 U.S.C. 719h).

(b) The Federal Inspector shall be responsible for coordinating the expeditious discharge of nonenforcement activities by Federal agencies and coordinating the compliance by all the Federal agencies with Section 9 of the Act (15 U.S.C. 719g). Such coordination shall include requiring submission of scheduling plans for all permits, certificates, grants or other necessary authorizations, and coordinating scheduling of system-related agency activities. Such coordination may include serving as the "one window" point for filing for and issuance of all necessary permits, certificates, grants or other authorizations, and, consistent with law, Federal government requests for data or information related to any application for a permit, certificate, grant or other authorization. Upon agreement between the Federal Inspector and the head of any agency, that agency may delegate to the Federal Inspector any statutory function vested in such agency related to the functions of the Federal Inspector.

(c) The Federal Inspector and Agency Authorized Officers in implementing the enforcement authorities herein transferred shall carry out the enforcement policies and procedures established by the Federal agencies which nominally administer these authorities, except where the Federal Inspector determines that such policies and procedures would require action inconsistent with Section 9 of the Act (15 U.S.C. 719g).

(d) Under the authority of Section 15 of the Act (15 U.S.C. 719m), the Federal Inspector will undertake to obtain appropriations for all aspects of the Federal Inspector's operations. Such undertaking shall include appropriations for all of the functions specified in the Act and in the general terms and conditions of the *Decision* as well as for the enforcement activities of the Federal Inspector. The Federal Inspector will consult with the various Federal agencies as to resource requirements for enforcing their respective permits and other authorizations in preparing a unified budget for the Office. The budget shall be reviewed by the Executive Policy Board.

Section 203. *Subsequent Transfer Provision*

(a) Effective upon the first anniversary of the date of initial operation of the Alaska Natural Gas Transportation System, the functions transferred by Section 102 of this Plan shall be transferred to the agency which performed the functions on the date prior to date the provisions of Section 102 of this Plan were made effective pursuant to Section 205 of this Plan.

(b) Upon the issuance of the final determination order by the Director of the Office of Management and Budget for the transfers provided for by subsection (a) of this section, the Office and the position of Federal Inspector shall, effective on the date of that order, stand abolished.

Section 204. *Incidental Transfers*

So much of the personnel, property, records and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate agency or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for the terminating of the affairs of the Office and the Federal Inspector upon their abolition pursuant to this Plan and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Plan.

Section 205. *Effective Date*

This Plan shall become effective at such time or times as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5 of the United States Code, except that the provisions of Section 203 shall occur as provided by the terms of that Section.

Jimmy Carter

[FR Doc. 79-18507
Filed 6-11-79; 11:31 am]
Billing code 3195-01-M

LEGISLATIVE HISTORY:

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:

Vol. 15, No. 14: Apr. 2, Presidential message transmitting Reorganization Plan No. 1 of 1979 to Congress. (Also printed as House Document No. 83.)

HOUSE REPORT No. 96-222 accompanying H. Res. 199 (Comm. on Government Operations).

SENATE REPORT No. 96-191 accompanying S. Res. 126 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 125 (1979):

Apr. 3,	H. Res. 199,	resolution of disapproval, introduced in House and referred to Committee on Government Operations.
Apr. 4,	S. Res. 126,	resolution of disapproval, introduced in Senate and referred to Committee on Governmental Affairs.
May 23,	S. Res. 126,	rejected by Senate.
May 31,	H. Res. 199,	rejected by House.

Rules and Regulations

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FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 526, 531, 545, 563

[No. 79-304]

Federal Home Loan Bank System, Federal Savings and Loan System, Federal Savings and Loan Insurance Corporation; Revised Rates on Savings Accounts

May 30, 1979.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Bank Board has adopted the following amendments which are intended to provide additional returns to savers:

(1) Authorization of a maximum rate on regular (passbook) accounts of 5.5%.

(2) Creation of a new savings account category with a 4-year minimum maturity and a maximum rate of return one percent below the average 4-year rate based on the yield curve for United States Treasury Securities as determined by the U.S. Department of the Treasury.

(3) Elimination of prescribed minimum amounts on all certificate accounts except the money market certificate.

(4) Adoption of a new prescribed penalty for withdrawal prior to maturity applicable to all certificate accounts including money market certificates. On certificate accounts with a maturity of one year or less, the penalty is forfeiture of three months earnings on amounts withdrawn. On accounts with a maturity greater than one year, the penalty is forfeiture of six months earnings on amounts withdrawn.

(5) Adoption of a new Bank Board Policy Statement which would permit member institutions, in certain circumstances, to accept pooled funds. In addition, the Bank Board has adopted a Policy Statement reaffirming that member institutions are prohibited from offering repurchase-type agreements to consumers.

EFFECTIVE DATE: July 1, 1979.

FOR FURTHER INFORMATION CONTACT: John R. Hall, Attorney, or Kathleen E. Topelius, Attorney, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552, (202-377-6445 or 202-377-6444).

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board, by Resolution No. 79-223, dated April 3, 1979, proposed alternative amendments to Part 526 of the Regulations for the Federal Home Loan Bank System (12 CFR Part 526) to provide incentives to savers. The proposed alternatives were published in the **Federal Register** on April 7, 1979 (44 FR 21027-21029) with an invitation for public comment until May 4, 1979. In addition, the Bank Board by Resolution No. 79-237, published in the **Federal Register** on April 16, 1979, (44 FR 24299-24300), proposed to hold an informal public hearing on the proposed alternatives. Based on comments and testimony received, and on all other information available to it, and after consultation with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the National Credit Union Administration, and the Department of the Treasury, the Bank Board has determined to adopt two of the proposed alternatives, with certain modifications, and to make certain other amendments consistent with the purposes of the proposal.

The four alternatives originally proposed are summarized as follows:

(1) Creation of a new savings account category (a variable ceiling account) with a $500 minimum amount and a 5-year maturity. Member institutions would be authorized to pay interest on this account up to a maximum rate of one percent below the average 5-year rate based on the yield curve for United States Treasury securities as determined by the U.S. Department of the Treasury. The penalty required to be imposed upon withdrawal of funds from this account prior to maturity would be forfeiture of six months interest on the amount withdrawn.

(2) Authorizing member institutions to pay a lump sum interest bonus of up to one-half of one percent on the minimum balance on deposit in a regular (passbook) account during a designated 12-month period.

(3) Elimination of the minimum amount requirements currently imposed on savings certificates with maturities under 4 years and reduction of the minimum amount for other certificate accounts to $500. No change was proposed to the $10,000 minimum requirement on the 26-week (182 day) account tied to the U.S. Treasury Bill auction average on a discount basis (money market certificate).

(4) Creation of a new $500 minimum, 8-year rising rate certificate account with an increasing rate of interest during the period the account remains outstanding.

The Bank Board has determined to adopt proposed alternatives (1) and (3) with the following modifications:

Alternative 1: The variable ceiling account

The variable ceiling account has a minimum maturity of 4 years rather than 5 years, as proposed, and no minimum rather than the $500 minimum proposed. Beginning the first day of every month, a member institution will be permitted to pay interest at a ceiling rate of one per cent below the average 4-year yield as announced by the U.S. Treasury Department.

This ceiling rate will remain in effect until the first day of the next month, when a new ceiling rate will go into effect. The rate of return established at the time of issue will not change during the term of the account. The average 4-year yield will be announced three business days prior to the first day of the month and will represent an average of the 4-year yields for the preceding five business days. Thus, the ceiling rate that will be in effect beginning July 2 will be announced by the Treasury on June 27, based on the average daily yields on 4-year Treasury securities for June 20 through June 26.

The required penalty for early withdrawal on this certificate is, as proposed, forfeiture of six months earnings on amounts withdrawn prior to maturity.

Alternative 3: Elimination of minimums

Minimum amount requirements are eliminated for all certificate accounts, except the 10,000 minimum on the 26-week (182 day) account tied to the U.S. Treasury Bill auction average on a discount basis (money market certificates).

Additional revisions:

Early withdrawal penalties

As part of the Bank Board's proposal, comment was solicited regarding revision to existing penalty provisions. Based on comments received, the Bank Board has determined to modify the interest forfeiture penalty as follows:

(a) The minimum penalty for early withdrawal on accounts with a maturity of one year or less issued, renewed, or extended after July 1 is forfeiture of three months earnings on amounts withdrawn prior to maturity. If the amount withdrawn has remained on deposit for 3 months or less, all earnings shall be forfeited.

(b) The minimum penalty for early withdrawal on accounts with a maturity of greater than one year issued, renewed, or extended after July 1 is forfeiture of six months earnings on amounts withdrawn prior to maturity. If the amount withdrawn has remained on deposit for 6 months or less, all earnings shall be forfeited.

The Bank Board believes these penalty provisions will be simple and equitable, and will provide sufficient incentive for savers to maintain accounts until maturity.

Increase in passbook rate

In lieu of the proposed bonus on regular (passbook) accounts, the Bank Board has determined to raise the maximum authorized rate on passbook accounts to 5.5%. The Bank Board believes that adoption of this amendment will benefit savers without imposing additional administrative burdens on member institutions.

The ceiling rate on NOW accounts in New England and New York will remain at 5 percent.

New policy on pooling of accounts

The Bank Board has also determined to adopt a new Statement of Policy regarding pooled savings. Under that policy, member institutions may accept funds that have been pooled for the purpose of taking advantage of higher rates on large accounts. However, a member institution may not pool savers' funds or solicit pooled funds.

Reaffirmation of Bank Board policy regarding transfer and repurchase of government securities

The use of repurchase-type agreements is not intended to provide member institutions with a method of offering small denomination accounts to consumers, in avoidance of existing interest rate ceiling restrictions.

Therefore, the Bank Board has adopted a policy statement reaffirming that member institutions are prohibited from offering repurchase-type agreements to consumers, by requiring a $100,000 minimum on such agreements unless purchased by an insured financial institution or by a broker or dealer registered with the Securities and Exchange Commission.

The Bank Board has determined not to adopt the proposed 8-year rising rate account.

Comment Summary

The final amendments are based on the Bank Board's careful consideration of the various concerns expressed in the more than 1400 comments received on the proposed alternatives and on the testimony of 45 participants in the "small savers" hearing, May 1, 1979. A complete summary of comments and testimony is included under appropriate subheadings below. The Bank Board believes the final amendments will provide additional savings incentives to savers without necessitating a significant increase in mortgage rates.

General Comments

The two most frequent comments regarding the proposal as a whole were that the alternatives would be too confusing or too expensive. Commenters believe that, because of the large number of account alternatives currently offered, additional account types would lead to extreme customer confusion. They stated that additional alternatives would require extensive and costly training of savings institution personnel and that, even with such training, mistakes would increase, along with customer dissatisfaction. Commenters stated that the proposals would increase savings institutions' costs significantly and that such increases could have serious consequences. Commenters emphasized that simplicity should be a prime consideration.

Commenters noted that increased costs and expenses would come from either institution earnings or increased home mortgage rates. Because the cost of money market certificates has already reduced the spread between institutions' lending and savings rates, commenters contended that additional costs and erosion of profit may push some institutions into insolvency. They note that this problem would be particularly acute in states with usury ceilings which prohibit lending rate increases sufficient to offset rising savings costs.

In states in which mortgage rates are permitted to rise, borrowers would subsidize the increased earnings of savers, many commenters contended. One commenter noted that small savers tend to be large borrowers and that an increase in return on savings may produce a net loss for saver-borrowers.

Response. Because only one additional account classification is adopted, the Bank Board believes customer education and personnel training can be accomplished with a reasonable expenditure of resources. Furthermore, because most commenters assumed that all four alternatives would be adopted, their estimates for implementation expenses and increased average cost of funds exceed the anticipated cost of implementing the final amendments.

Many commenters argued that if savings rates are increased, the increase should be accompanied by national legislation to relieve institutions from state usury restrictions. Furthermore, others contended, institutions must be given additional authority to improve the asset side of their business. A large number of respondents favored nationwide authority for alternative mortgage instruments, particularly VRM's. Some commenters advocated a roll-over type mortgage, particularly as a means to offset the proposed variable ceiling savings account. Others stated that such changes in asset structure must come well before savings rate changes, because of institutions' present long term mortgage structure. However, other commenters opposed any expansion of VRM authority on the ground that risk of rising interest rates shifts to the borrower if the mortgage rate is allowed to fluctutate.

Response. The Bank Board believes the suggestions regarding changes in the asset structure of thrift institutions encompass issues that are beyond the scope of these amendments.

Several commenters recommended that changes be limited to providing a higher rate of return for longer term deposits because rates should be in reverse proportion to liquidity of savers' funds.

Response. The new 4-year account provides incentive for long term saving.

Most individual consumers commenting indicated that anything

done to increase the return to small savers would be beneficial. Some commenters favored the proposed alternatives on the basis that they would represent a step toward either (a) even greater return on small accounts or (b) total deregulation of savings account rates.

Response. The Bank Board believes the final amendments, as adopted, will provide greater opportunities for savers to receive an equitable return on their savings.

For the following reasons, many commenters argued that the proposed alternatives would have little effect on the income of small savers. First, they noted that small savers' primary need is liquidity and that any plan involving long term deposits will be of little benefit. If early withdrawal penalties apply, small savers, with greater account activity, may actually receive less earnings than from passbook accounts. Second, most passbook savings deposits could be earning a greater rate under the present account structure, but savers have chosen availability over return. Commenters noted that not all small accounts are held by small savers, and that the concept of the small saver is elusive. Third, the amount of earnings increase is minimal on small accounts. Increased rates would provide windfall earnings for large savers, while small savers could expect increased earnings of only a few dollars a year. The larger the account, the greater would be the benefit from the proposed alternatives.

Response. The Bank Board believes the amendments will be particularly beneficial to small savers because they provide for a greater return on small savings accounts with a liberalized provision for early withdrawal.

Among comments most frequently repeated were the following: (1) Implementation of any new accounts should be delayed, and if several are adopted, they should be authorized over a period of time sufficient to permit computer programming, training of personnel, printing of new information material, and advertising to the public; (2) the one-fourth of one percent differential should be maintained for any new account, and, (3) compounding should be retained and left to the discretion of the institution.

Response. (1) Because the scope of the final amendments is more limited than the proposal, the Bank Board does not believe institutions will have difficulty implementing them; (2) the differential has been maintained; (3) the final amendments do not change institutions' authority regarding compounding.

Reduction of Minimum Amount Requirements

The proposed alternative most uniformly approved was the reduction of minimum amount requirements for currently approved certificate accounts. Commenters differed on the amount of reduction, but even many commenters who strongly opposed all of the proposed new certificate classifications found reduced minimums desirable or unobjectionable. They believe that this alternative would be simple and marketable, that it would be easiest and least expensive to initiate, and that it would have the least effect on cost of savings. Commenters most often recommended a $100 minimum deposit on all certificate accounts. Some recommended $500 as a minimum, or simply that the minimum amounts be uniform. Others recommended different amounts for different terms. Suggestions included minimums of $500 for certificates with terms 4 years or over and $100 for certificates with terms under 4 years; minimums of $1000 for terms of 4 years and over, and $500 for terms under 4 years; and as proposed, a $500 minimum for terms 4 years and over and no minimum for terms under 4 years. Other commenters recommended total elimination of minimum amount requirements.

Many commenters, however, objected to any reduction in account minimums. They found the present requirements reasonable and argued that any amount less than $1000 does not belong in a certificate account. They noted that with a small amount in a certificate, the penalty for early withdrawal is an insufficient deterrent to withdrawal, and churning of certificates is encouraged. This, they contended, is particularly true for account holders with low reserves who are likely to require their funds before the term expires. Others argued that because small savers' primary requirement is liquidity, reduction in minimum amounts would have little effect. Commenters who considered the cost to institutions generally recognized that small accounts are less economical to maintain than larger accounts, but they did not suggest a definite minimum. Some of the commenters who recommended that passbook rates be increased found that such action would be a less expensive alternative than reduction of minimums on certificate accounts.

Most commenters who favored reduction of minimum certificate amounts specifically excluded money market certificates and strongly objected to any action regarding those certificates.

Response. The Bank Board believes that no minimum amounts, other than for money market certificates, should be prescribed by regulations. With no prescribed minimums, all savers will have an equal opportunity to choose from a full range of certificate accounts. While some institutions may find it prudent, based on their operating costs, to prescribe minimum amounts, the Bank Board believes that such determination should be left to individual institutions.

Five Year Variable Ceiling Account

Of the two proposed new accounts, the five year fixed rate, variable ceiling account was more often favored by commenters who expressed any preference. Often the preference was expressed in terms of "the least objectionable account."

Some argued that the account could reduce disintermediation in times of high interest rates with greater stability than money market certificates. Approval of the certificate was sometimes tied to authority for variable rate mortgages or elimination of fixed rate certificates—possibly replacing present certificates with a series of variable ceiling accounts with various maturities. Some commenters recommended this certificate as a replacement for the money market certificate. Many commenters observed that the account would be attractive to the consumer only in times of high interest rates. When interest rates are lower, consumers would receive an equal or better return on currently authorized certificates. Therefore, the account would create a floor for institutions' savings costs no lower than present certificate rates. Commenters argued that adoption of this certificate would raise the average cost of savings as much as 30–50 basis points depending on assumptions used in the calculation. Many found the cost increase unacceptable and stated that mortgage interest rates would rise to a similar extent.

Opponents of this account cited the increased cost of funds, administrative difficulties and expenses, the complexity of the rate setting mechanism, and merchandising problems, as grounds for disapproval. Commenters noted that as many as 60 rates could be outstanding on such accounts at any given time, causing extreme computer problems. Furthermore, it was argued, the esoteric nature of the rate setting mechanism would require extensive personnel training costs and increased time spent

explaining deposit options to savers. Commenters stated that a changing rate might be confusing for less sophisticated savers who might become angry if rates increase soon after they have committed for a five year term. Many commenters argued that the account would be difficult to sell to the public. Because of the 100 basis point differential, savers would prefer the Treasury instruments to which the rate would be tied. If compounding were permitted, the differential would be partially offset, but the lack of state tax on Treasury instruments would weigh against the proposed account. For less sophisticated savers, marketing efforts would serve to educate the consumer to alternative investments and encourage disintermediation. Some commenters suggested that if the account is adopted the rate should be the same as the Treasury instrument rate to which it is tied. Others objected to the entire concept of indexed rates. They argued that indexing would be inflationary, and that institutions would be unable to predict future costs of savings which are necessary to effective financial planning. Some commenters saw this certificate as a step toward elimination of rate control. Commenters were divided on the issue of whether a floating rate account would be a workable alternative. It was recognized that floating savings rates would necessarily be tied to similarly indexed floating rate mortgages.

While most commenters objected to this account generally, they commented as follows on specific aspects:

(a) Establishment of a rate monthly was generally found preferable to weekly or quarterly. Weekly was considered administratively difficult, while quarterly would permit too much interest rate shopping while institutions' rates are set and market rates fluctuate. Commenters preferred the ease of administration of establishing rates less often.

(b) The $500 minimum was generally acceptable, although higher and lower minimums were also suggested.

(c) A five-year term was generally considered acceptable but one-year and three-year terms were also suggested. Many commenters believe that small savers cannot commit funds for a five-year period. Allowing the institution to set the term was also suggested.

(d) The proposed index was found satisfactory, although indexing to one-year Treasury instruments, or to mortgage interest rates, was also suggested.

(e) Most commenters favored the rate of 1% below the index, but because of marketing problems discussed above, some commenters suggested a rate of ½% below the index. Others found the rate higher than necessary to attract savings.

(f) Commenters divided on whether compounding should be permitted on such accounts. Some believe that without compounding the rate would not be competitive, while others believe the rate would be high enough without compounding. As mentioned above, some commenters object to compounding on any account.

(g) The anticipated effect on savings flows varied, with more commenters anticipating little long-term effect.

Response. The Bank Board believes that this account will provide a means for the saver to receive a reasonable return on savings during periods of high interest rates. Although a term of 5 years was proposed for this account, the Bank Board believes a 4 year term will better serve the needs of small savers, who typically are unable to tie up their funds for extremely long periods. Present 4, 6, and 8 year certificate accounts continue to be authorized because the Bank Board believes these accounts will be attractive to savers during periods when the yield on the variable ceiling account declines.

While recognizing that institutions' average cost of savings may be increased by issuing such accounts in periods of high interest rates, the Bank Board believes that institutions will benefit from the stability of 4-year deposits attracted and retained during such periods.

Early Withdrawal Penalty

Commenters were divided approximately equally regarding the six month early withdrawal penalty proposed for the five year variable ceiling account. However, a large majority favored the simplicity of a single penalty provision for all accounts. Those favoring a six month penalty for early withdrawal from a variable ceiling account generally favored that penalty for all accounts. They believe that such a penalty would provide sufficient disincentive to early withdrawal, while providing relief from the hardship of the standard penalty during the late stages of the account term. Those favoring the present standard penalty noted that; (1) customers are already familiar with the present penalty, and (2) it has worked well in preventing early withdrawals. They also point out that the severity of the present penalty is somewhat mitigated by the saver's option to take a low interest share loan for the remaining period to maturity.

Commenters looking primarily for simplicity recommended that a 3 month penalty with no reversion to the passbook rate, as proposed for the 8-year rising rate certificate, be made applicable to all accounts. Those most concerned with strong disincentive to early withdrawal favored a penalty stronger than the present standard penalty—even a 100 percent penalty. They argued that lenient penalties encourage disintermediation in times of high interest rates. This would be a particular problem with respect to the 8-year rising rate account, as discussed below. Many commenters stressed that all certificate accounts should have early withdrawal penalties. To provide relief for withdrawals made late in the certificate term, some commenters recommended a penalty which would decrease over the term of the certificate. Another suggestion was to pay a rate equal to the rate the account would have received if it had been for a term expiring at the time of withdrawal. Other suggestions included: (1) leave the penalty provision to the institution's discretion; (2) have a penalty equal to a percentage of all accrued earnings; (3) have a 3-month penalty for certificates of 4 years or under, and a 6-month penalty for certificates over 4 years; and, (4) exempt elderly savers from withdrawal penalties in emergency situations.

Response. The Bank Board believes the new penalty for early withdrawal adopted by these amendments (1) is more easily understood and applied; (2) effectively inhibits disintermediation; and, (3) is fairer to savers who must make withdrawals during the final months of the certificate term. Furthermore, uniform application of the exemption from penalty for withdrawals made upon the death of the owner of the account is particularly beneficial to elderly savers who might otherwise be unwilling to commit funds for an extended term to achieve a higher return.

Eight Year Rising Rate Certificate

Most commenters objected to the proposed rising rate certificate (RRC) because of the administrative problems it would create and because of its lack of an early withdrawal penalty after the first year. Commenters stated that, due to the certificate's complexity, it would be difficult to explain to savers and to advertise. Furthermore, the account would require extensive computer changes.

Commenters did not view the RRC as advantageous to small savers. They noted that, except for the lenient penalty

provision, the certificate has no advantage over currently authorized certificate accounts. However, because of the lack of penalty, it would be an ideal repository for large sums presently held in passbook accounts for purposes of liquidity. A saver, with a large passbook account balance, could open an RRC with the minimum amount and maintain that amount for nearly a year. At the end of the year, the saver could take advantage of the provision for unlimited additions during the first year to greatly increase the amount. The account would then be, in effect, a high rate passbook account. If interest rates rise, the saver has the option of withdrawal and reinvestment in a high-rate, short-term certificate or other investment. Commenters anticipated that funds for RRC's would come primarily from existing accounts. One commenter estimated a 37 basis point rise in average cost of savings, with a ¾%–1½% rise in mortgage rates, based on projected transfers from passbooks to RRC's. Commenters generally believe adoption of this account would cause mortgage rates to rise.

Commenters who viewed this certificate favorably generally recommended that some early withdrawal penalty be applicable throughout the term of the certificate, or at least during the first five years while the rate is rising. They also offered other suggestions as follows:

(a) Allow no additions to the account, for the reason discussed above. However, it was noted that such a restriction is bad for small savers because many tend to accumulate small amounts of capital over an extended period of time;

(b) Simplify the structure to have a uniform rise in rate on an annual basis;

(c) Have rates rise on regular distribution dates;

(d) Permit withdrawal without penalty only for limited periods at each anniversary of the account;

(e) Do not end the term at 8 years. Allow the rate to continue at the maximum or to continue to rise, rather than reverting to the initial low rate;

(f) Have a rate based on a rising percentage of Treasury bill yields;

(g) To discourage disintermeditation, make the rise retroactive only after each year expires;

(h) Allow a "year" to be extended to the end of the month or quarter; and,

(i) If this certificate is adopted without a penalty provision, eliminate other long term certificates because they would be of little further use.

The eight year maturity was generally found acceptable, but longer and shorter terms were also suggested. Several commenters found the proposed term too long to be advantageous to small savers.

Bonus

Most commenters found the proposed ½% bonus provision too difficult to administer and without sufficient benefit to the saver. They argued that the bonus would be very difficult to program, that errors would be numerous, and the bonus would be difficult to explain to savers. One commenter predicted that it would take a year to implement the proposed bonus plan, at a cost of $500,000. Once implemented, the institution would have to make daily account reviews. Many commenters noted that the account would provide no greater return to the saver than the present 90 day notice account and that the notice account is not widely accepted by savers. They argue that, particularly with this account, the benefits to the large saver would be much greater than to the small saver.

Commenters noted that most passbook savings would be eligible for a bonus and the institution's cost would rise without any action or commitment by the saver. The account would have to be treated as withdrawable and would be, effectively, a 5.75% passbook. Estimates of increased cost ranged between 7 and 32 basis points, with 10 basis points as a typical figure. One commenter anticipated a 10 basis point rise in average cost of savings for the bonus account, compared with a 12–15 basis point rise for a 5.75% passbook.

Another problem anticipated by commenters was a proliferation of accounts. Because the bonus would be payable on the minimum amount for the year, there would be no incentive to add to a bonus account. Savers might open a series of small accounts and, rather than withdraw funds and lose the bonus, take share loans on the accounts. It was suggested that the rate on share loans be based on the bonus rate rather than the base account rate.

Institutions noted that they would be unable to accurately predict their liabilities until the end of the year. Several institutions believe that limiting the bonus to individuals and nonprofit organizations would be an unnecessary problem. They stated that, while commercial banks are so limited regarding certain accounts, the limitation is largely ignored.

Commenters made the following recommendations concerning adoption of this alternative.

(a) Set dates in the regulation which will determine the year, and pay the bonus on funds held for a year from those dates, e.g., quarterly, on January 1, on regular distribution dates, or on tax reporting dates;

(b) Pay the bonus yearly (a minority favored more frequent payment);

(c) Do not increase the bonus rate on funds held more than a year (a minority favored such an increase); and,

(d) Pay a bonus on the actual interest earned for the year.

Commenters divided approximately evenly on whether a bonus should be paid on an account eligible for other services, transfers, etc. Commenters did not believe adoption of the proposed bonus would have significant effect on savings flows.

Response. After considering the comments on the proposed 8-year rising rate certificate and on the proposed bonus plan, and in view of the anticipated complexity and cost of these plans, the Bank Board has determined that the benefits of these alternatives are not sufficient to justify their adoption. As stated above, the Bank Board believes that the increased rate on passbook accounts provides a simpler means to increase the return to savers than the proposed bonus.

Suggested Alternatives

The most frequently recommended alternative to the proposals was a tax incentive for saving. That concept was favored by both industry and consumer commenters. Exclusion of various amounts of savings was suggested, as well as limiting exclusion to certain types of accounts or classes of individuals.

Another frequent suggestion was to increase the passbook rate. Many commenters considered this a simple means to most directly increase the return to small savers. Suggested passbook rates ranged from 5.5% to 7.5%, with most suggestions falling between 5.5% and 6%. Some commenters recommended eliminating some of the currently approved certificates and raising rates on those remaining. Others recommended that institutions be permitted greater flexibility in setting rates within prescribed limits. Commenters suggested shorter terms for present certificates or $100 additions to accounts without extension of maturity. Another recommendation was payment of 6% only on funds withdrawn on quarterly distribution dates. Indexing with quarterly adjustment of the passbook rate was also suggested.

While many commenters recommended elimination of money market certificates, it was also suggested that the money market

certificate rate be based on the amount of the deposit or the term of the certificate, i.e., a greater amount or a longer term would receive a larger percentage of the Treasury Bill rate.

Another alternative often recommended was payment of higher rates to systematic savers. Commenters argued that such a plan is particularly beneficial for wage earners who are able to accumulate savings over an extended period of time.

Commenters recommended various ways to make funds available to pay earnings on savings accounts. They recommended revision of the liquidity, FIR, and net worth requirements. National VRM's and NOW accounts were suggested. A more lenient view toward due-on-sale clauses was also recommended.

Other recommendations were as follows:

(a) Prescribe methods of computation and compounding;

(b) Place a $1,000 maximum rate on money market certificates;

(c) Permit early withdrawal of 20% of a certificate account without penalty; and,

(d) Authorize a step-increase bonus account.

Response. The recommendation that the passbook account rate be increased is adopted. The Bank Board believes that the amendments that are being adopted represent alternatives which will provide a reasonable return to savers without necessitating a significant increase in mortgage rates.

Accordingly, the Bank Board hereby amends Parts 526 and 531 of the Regulations for the Federal Home Loan Bank System, Part 545 of the Rules and Regulations for the Federal Savings and Loan System, and Part 563 of the Rules and Regulations for Insurance of Accounts, as follows:

1. Amend § 526.2(b)(2) to read as follows:

§ 526.2 Maximum rate of return.

* * * * *

(b) *Exceptions.* Notwithstanding any reduction in such maximum prescribed rates, a member may pay a return on any savings account outstanding on the date of such reduction, as follows:

* * * * *

(2) *Certificate account.* At the rate specified in the certificate, for such period, including any renewal period, as the account remains outstanding (except that six month (26 weeks) certificate accounts may not be renewed at any rate in excess of the applicable maximum rate provided for under § 526.3(a)(8) and four year variable rate accounts may not be renewed at a rate in excess of the applicable maximum rate provided for under § 526.3(a)(5)(ii)).

* * * * *

2. Amend § 526.3(a) by revising paragraphs (1) and (5) thereof, to read as follows:

§ 526.3 Maximum rates of return payable by members on savings accounts.

(a) Except as provided in § 526.3–1 for certificate accounts of $100,000 or more, no member may pay an annual rate of return on a savings account exceeding the applicable maximum percentage, as follows:

(1) 5.50%—regular accounts.

* * * * *

(5)(i) 7.50%—certificate accounts with a term or qualifying period of 4 years or more

(ii) 1% below the average four year rate based on the yield curve for United States Treasury securities as determined by the U.S. Department of the Treasury immediately prior to the first day of the month—certificate accounts with a term or qualifying period of 4 years or more issued on or after the first day of the month

* * * * *

3. Further amend § 526.3(a) by deleting from each of paragraphs (3), (4), (6), and (7) the phrase "of $1,000 or more."

4. Amend § 526.3 (b) and (c), to read as follows:

§ 526.3 Maximum rates of return payable by members on savings accounts.

* * * * *

(b) A member may pay a rate of return as permitted by paragraph (a) of this section on certificate accounts issued under a plan providing for payment of a bonus if the account holder makes at least 12 regular monthly payments.

(c) *Exceptions as to terms or qualifying periods.* A member may pay a rate of return not exceeding the highest rate permitted under paragraph (a) of this section on (1) a public unit account which is a certificate account with a maturity of 30 days or more or a notice account, or (2) a certificate account which qualifies as a retirement account under subsections 401(d) or 408(a) of the Internal Revenue Code of 1954 and has a term of 3 years; *provided,* that such accounts under subdivision (a)(5)(ii) of this section must meet the maturity requirement, and accounts under subparagraph (a)(8) of this section must meet the minimum amount and maturity requirements, prescribed in those provisions.

5. Revise § 526.7(a) to read as follows:

§ 526.7 Penalty for early withdrawal.

(a) For any certificate account issued, extended, or renewed after June 30, 1979, a member shall impose (except as paragraph (b) of this section provides) the following conditions on any withdrawal before the end of the term or qualifying period:

(1) if the term or qualifying period is one year or less, the account holder shall pay a penalty on the amount withdrawn of at least 90 days (3 months) interest or dividends on the account. If the amount withdrawn has remained on deposit for 3 months or less, all interest or dividends shall be forfeited.

(2) if the term or qualifying period is more than one year, the account holder shall pay a penalty on the amount withdrawn of at least 180 days (6 months) interest or dividends on the account. If the amount withdrawn has remained on deposit for 6 months or less, all interest or dividends shall be forfeited.

* * * * *

6. Amend Part 531 by adding new §§ 531.11 and 531.12, to read as follows:

§ 531.11 Accepting pooled accounts.

A member institution may not pool or participate in pooling funds, or solicit, or promote pooled accounts. However, a member institution is authorized to accept pooled funds from existing or potential account holders who have pooled their funds in order to meet any prescribed minimum amount under this Part or to aggregate $100,000 or more.

§ 531.12 Transfer and repurchase of government securities.

A member institution may not issue obligations in denominations under $100,000 evidencing an indebtedness arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof that a member institution is obligated to repurchase, unless such obligations are issued to financial institutions the accounts of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or to a broker or dealer registered with the Securities and Exchange Commission.

7. Revise § 545.1–4(f)(1) and subdivisions (i) and (ii) thereof, to read as follows:

§ 545.1–4 Other savings accounts.

* * * * *

(f) *Withdrawal prior to expiration of term.*

(1) For any certificate account issued, extended, or renewed after June 30, 1979, a member shall impose (except as subparagraph (f)(4) of this section provides) the following conditions on any withdrawal before the end of the term or qualifying period:

(i) if the term or qualifying period is one year or less, the account holder shall pay a penalty on the amount withdrawn of at least 90 days (3 months) interest on the account. If the amount withdrawn has remained on deposit for 3 months or less, all interest shall be forfeited.

(ii) if the term or qualifying period is more than one year, the account holder shall pay a penalty on the amount withdrawn of at least 180 days (6 months) interest on the account. If the amount withdrawn has remained on deposit for 6 months or less, all interest shall be forfeited.

* * * * *

§ 545.3 [Amended]

8. Amend § 545.3(b) by deleting the words "such minimum amount, not less than $1,000."

9. Revise §545.3(b)(4) to read as follows:

§ 545.3 Bonus on monthly-payment and fixed-balance accounts.

* * * * *

(b) *Fixed balance accounts.*

* * * * *

(4) For any such bonus account issued, extended, or renewed after June 30, 1979, a member shall impose the following conditions on any withdrawal before the end of the term or qualifying period:

(i) if the term or qualifying period is one year or less, the account holder shall pay a penalty on the amount withdrawn of at least 90 days (3 months) earnings on the account. If the amount withdrawn has remained on deposit for 3 months or less, all earnings shall be forfeited.

(ii) if the term or qualifying period is more than one year, the account holder shall pay a penalty on the amount withdrawn of at least 180 days (6 months) earnings on the account. If the amount withdrawn has remained on deposit for 6 months or less, all earnings shall be forfeited.

(iii) if any earnings have been distributed to the account holder prior to such withdrawal, a deduction shall be made from the amount withdrawn to adjust for the penalty applicable to such earnings.

* * * * *

10. Revise § 545.3–1(c)(3), and subdivisions (i) and (ii) thereof, to read as follows:

§ 545.3–1 Distribution of earnings at variable rates.

* * * * *

(c) *Form of certificate.*

* * * * *

(3) For any certificate account issued, extended, or renewed after June 30, 1979, a member shall impose (except as subparagraph (c)(6) of this section provides), the following conditions on any withdrawal before the end of the term or qualifying period:

(i) if the term or qualifying period is one year or less, the account holder shall pay a penalty on the amount withdrawn of at least 90 days (3 months) earnings on the account. If the amount withdrawn has remained on deposit for 3 months or less, all earnings shall be forfeited.

(ii) if the term or qualifying period is more than one year, the account holder shall pay a penalty on the amount withdrawn of at least 180 days (6 months) earnings on the account. If the amount withdrawn has remained on deposit for 6 months or less, all earnings shall be forfeited.

* * * * *

11. Amend § 563.3–1(d)(1) and subdivisions (i) and (ii) thereof, to read as follows:

§ 563.3–1 Fixed-rate, fixed-term accounts.

* * * * *

(d) *Withdrawal prior to expiration of term.*

(1) Each certificate issued, extended, or renewed by an insured institution, other than an insured institution whose principal office is located on Guam, for a fixed-rate, fixed-term account shall provide that, in the event of withdrawal of all or any portion of such account prior to the expiration of its term, the following minimum penalty shall apply:

(i) if the term or qualifying period is one year or less, the account holder shall pay a penalty on the amount withdrawn of at least 90 days (3 months) interest on the account. If the amount withdrawn has remained on deposit for 3 months or less, all interest shall be forfeited.

(ii) if the term or qualifying period is more than one year, the account holder shall pay a penalty on the amount withdrawn of at least 180 days (6 months) interest on the account. If the amount withdrawn has remained on deposit for 6 months or less, all interest shall be forfeited.

* * * * *

12. Amend § 563.3–2(d)(1), and subdivisions (i) and (ii) thereof, to read as follows:

§ 563.3–2 Certificates evidencing other accounts.

* * * * *

(d) *Provisions relating to early withdrawal.*

(1) Each certificate issued by an insured institution, other than an insured institution whose principal office is located on Guam, for a certificate account shall provide that, in the event of withdrawal of all or any portion of such account prior to completion of its time eligibility period, the following minimum penalty shall apply:

(i) if the term or qualifying period is one year or less, the account holder shall pay a penalty on the amount withdrawn of at least 90 days (3 months) earnings on the account. If the amount withdrawn has remained on deposit for 3 months or less, all earnings shall be forfeited.

(ii) if the term or qualifying period is more than one year, the account holder shall pay a penalty on the amount withdrawn of at least 180 days (6 months) earnings on the account. If the amount withdrawn has remained on deposit for 6 months or less, all earnings shall be forfeited.

* * * * *

(Sec. 4, 80 Stat. 824 (12 U.S.C. § 1425 b); Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943–48 Comp., p. 1071; Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. § 1464, Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.; secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; 12 U.S.C. 1725, 1726, 1730.)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 79–18259 Filed 6–11–79; 8:45 am]

BILLING CODE 6720–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700 through 760

Final Rule; Terminology Change; Substitution of the "Board" for the "Administrator" and General Organization

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Final Rules.

SUMMARY: In accordance with the restructuring of the agency by Pub. L. 95–630, NCUA amends Title 12, Chapter VII as follows:

(1) Parts 700–760 are amended to provide that the term "Board" be substituted for the term "Administrator" wherever the term Administrator is used to refer to the Administrator of NCUA and the term Board is to be used to refer to the newly created National Credit Union Administration Board;

(2) Section 720.2(a) is amended to delete references to the abolished National Credit Union Board; and

(3) Part 722 is repealed and reserved for future use.

EFFECTIVE DATE: Effective June 12, 1979.

ADDRESS: National Credit Union Administration, 2025 M Street, NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Beatrix D. Fields, Staff Attorney, Office of General Counsel, at the above address or telephone (202) 632–4870.

SUPPLEMENTAL INFORMATION: Effective March 10, 1979, pursuant to Title V of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, Pub. L. 95–630, the Federal Credit Union Act (12 U.S.C. 1751 et al., the "FCU Act") was amended to provide for the restructuring of NCUA from management by a single Administrator to management by a three member Board. The members of the newly created National Credit Union Administration Board (the "Board") must be appointed by the President and confirmed by the Senate before taking office. Until the new Board members have taken office, Section 509 of Pub. L. 95–630 provides that the present Administrator shall continue to perform the functions of the Administrator as set forth in the FCU Act prior to the effectiveness of Pub. L. 95–630.

Consistent with the restructuring amendment to the FCU Act, the NCUA Rules and Regulations must be changed to reflect this amendment. Throughout the Rules and Regulations, the term "Administrator" shall be struck and the term "Board" inserted in lieu thereof. Additionally, the personal pronouns referring to the Administrator as "he," "him," and "his" shall be struck and "it," "them," and "its" inserted in their place when referring to the Board. NCUA will not reprint its publication of NCUA Rules and Regulations (NCUA Publication No. 8006) to reflect these terminology changes. Rather, these and other terminology changes resulting from Pub. L. 95–630 will be reflected in each affected regulation as it is updated or revised.

Previously, Section 102 of the FCU Act (12 U.S.C. 1752a) established an advisory board to the Administrator, i.e. the National Credit Union Board. Part 722 of the NCUA Rules and Regulations has implemented that provision. Section 501 of Pub. L. 95–630 amended Section 102 of the FCU Act by, among other things, eliminating the statutory authority for the advisory board. Accordingly, Part 722 is being repealed. In addition, § 720.2(a) which describes the general organization of the agency is being amended to eliminate references to the abolished advisory board and to distinguish the new three member Board from the former advisory board. After the new Board has taken office, it is anticipated that other amendments will be made to Part 720 to reflect changes in the central organization of the agency as a result of the restructuring of the agency.

These procedural amendments to the regulations are being made effective upon publication. Since these changes are merely technical in nature, reflecting amendments to the FCU Act presently in effect, and only affect agency organization and procedure in a non-substantive manner, NCUA hereby finds that the public notice and the delayed effective date requirements of 5 U.S.C. 553 are impracticable and unnecessary. Similarly, the procedures set forth in NCUA's Final Report "In Response to E.O. 12044: Improving Government Regulations" are not applicable. The official responsible for the decision to waive the Final Report procedures is Robert M. Fenner, Assistant General Counsel.

Lawrence Connell,

Administrator.

June 6, 1979.

(Sec. 120, 73 Stat. 635 (12 U.S.C. 1766), sec. 209, 84 Stat. 1014 (12 U.S.C. 1789), and secs. 501 and 502, 92 Stat. 3681, Pub. L. 95–630.)

PARTS 700–760 [Amended]

1. 12 CFR Parts 700 to 760 are amended as follows:

In each provision, the term "Administrator" is changed to the term "Board," and the personal pronouns, "he," "him," or "his," when referring to the Administrator of NCUA, are changed to "it," "them," and "its" respectively when referring to the National Credit Union Administration Board.

2. 12 CFR 720.2(a) is amended to read as follows:

§ 720.2(a) General organization.

The National Credit Union Administration (hereinafter referred to as the "Administration") is composed of the National Credit Union Administration Board (hereinafter referred to as the "Board"), with a central office in Washington, D.C. and six regional offices. The Board consists of three Members appointed by the President, with the advice and consent of the Senate, for six year terms except for two of the initial Members who will serve staggered two and four year terms. One Board member is designated by the President to be Chairman of the Board.

PART 722—[Reserved]

3. 12 CFR Part 722 is hereby repealed and reserved for future use.

[FR Doc. 79-18185 Filed 6-11-79; 8:45 am]

BILLING CODE 7535-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR 140

Delegation of Authority to the Secretary of the Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commission is announcing that it has determined to delegate to the Secretary of the Commission, or the Secretary's designee, the ministerial duty of signing on behalf of the Commission documents embodying Commission decisions or other actions, including, but not limited to, rules, regulations and orders.

EFFECTIVE DATE: June 7, 1979.

FOR FURTHER INFORMATION CONTACT: Mark N. Rae, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, telephone (202) 254–7285.

SUPPLEMENTARY INFORMATION: After the Commission has formally reached a decision or taken other action on a matter, including agreement upon the language of a document which embodies the Commission decision or other action, and directed that the document be issued, the Secretary of the Commission, or a person designated in writing by the Secretary, shall, under this delegation, sign the document on the Commission's behalf. The Commission declares that signature by the Secretary shall be a ministerial function and shall not be discretionary.

Delegation to the Secretary of the authority to sign documents on behalf of the Commission will not affect any other delegations which the Commission has already made, or may yet make, that authorize other officers or employees of the Commission to take action and to sign documents on the Commission's

behalf.[1] The Commission has also reserved to itself the authority to provide for signature on its behalf by the Chairman or any other member of the Commission in particular circumstances.

The foregoing rule shall become effective immediately. The Commission finds that this rule relates solely to agency practice and procedure and that compliance with the pre-adoption notice and public participation procedures, and the post-adoption publication prior to effective date requirement, of the Administrative Procedure Act, as codified, 5 U.S.C. § 553, are not, therefore, required.

In consideration of the foregoing, the Commission, pursuant to the authority contained in Section 2(a)(11) of the Commodity Exchange Act, 7 U.S.C. § 4a(j) (1976), hereby amends Part 140 of Chapter I of Title 17 of the Code of Federal Regulations by adding a new § 140.14 as follows:

§ 140.14 Delegation of authority to the Secretary of the Commission.

After the Commission has formally reached a decision or taken other action on a matter, has agreed upon the language of the document which embodies the Commission decision or other action, including, but not limited to, a rule, regulation or order, and has directed that the document be issued, the Secretary of the Commission (or a person designated in writing by the Secretary) shall sign the document on behalf of the Commission. Signature by the Secretary shall be a ministerial function and shall not be discretionary. The delegation to the Secretary of the authority to sign documents on the Commission's behalf shall not affect any other delegation which the Commission has made, or may make, which authorizes any other officer or employee of the Commission to take action and to sign documents on the Commission's behalf. In addition, the Commission reserves the authority to provide for signature on its behalf by the Chairman or any other member of the Commission in particular circumstances.

Issued in Washington, D.C., on June 7, 1979, by the Commission.

James M. Stone,

Chairman, Commodity Futures Trading Commission.

[FR Doc. 79-18255 Filed 6-11-79; 8:45 am]

BILLING CODE 6351-01-M

[1] See, *e.g.*, Commission rule 1.10e(d)(1), 43 FR 59340, 59342-59343 (December 20, 1978), which delegates to the Commission's Executive Director in certain circumstances the authority to determine an initial applicant's fitness for registration and to "issue" orders granting or refusing registration with the Commission.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 276

[Docket RM79-30]

Order Amending Final Regulations and Promulgating FERC Forms 122, 123, and 124 and Accompanying Affidavits and Instructions; Correction

AGENCY: Federal Energy Regulatory Commission.

ACTION: Errata Notice.

SUMMARY: This notice contains a correction to the preamble to the Commission's order issued March 23, 1979 (44 FR 18647, March 29, 1979). References to § 271.101 and § 271.101(b) in the sixth line of the first full paragraph on page 18650 shall be corrected to read § 276.101 and § 276.101(b) respectively.

FOR FURTHER INFORMATION CONTACT: Scott E. Koves, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, (202) 275-4808.

SUPPLEMENTARY INFORMATION: Please note that the following correction should be made to the preamble to the Commission's order issued March 23, 1979 in Docket No. RM79-30 (44 FR 18647, March 29, 1979): in the sixth line of the first full paragraph on page 18650 "§ 271.101" and "§ 271.101(b)" should be changed to read "§ 276.101" and "§ 276.101(b)" respectively, so that the paragraph reads as follows:

We also received several comments via the Commission's "Hotline" that expressed confusion as to the interrelationship between the exceptions created in paragraphs (b)(1) and (b)(2) in § 276.101. We have revised § 276.101(b) to make it clear that the exception in paragraph (b)(1) only applies in the case of a sale to someone other than a pipeline.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18260 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Parts 314 and 430

[Docket No. 78N-0379]

New Drug Applications and Antibiotic Drugs—General; Separation of Functions in Evaluating Requests for Hearing

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the drug regulations to eliminate the requirement of separation of functions before issuance of a notice of hearing in cases in which a bureau recommends granting a request for hearing on the proposed denial or withdrawal of drug product marketing approval. The rule permits the Bureau of Drugs and the Office of the Commissioner to communicate regarding issues on which a hearing is requested and thus expedites the agency's response to hearing requests.

EFFECTIVE DATE: July 12, 1979.

FOR FURTHER INFORMATION CONTACT: Thomas Scarlett, Office of the General Counsel (GCF-1), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1345.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 19, 1978 (43 FR 59095), FDA proposed to revise the separation of functions requirements that apply when a bureau evaluates a request for hearing on a proposed denial or withdrawal of drug marketing approval. The reason for the proposed change was to expedite the handling of hearing requests in cases where the bureau intends to recommend that a hearing be granted. Under the regulations as then written, separation of functions commenced with the receipt of a request for hearing and did not terminate until the matter was finally disposed of, either by an evidentiary hearing or by an order denying a request for hearing. Maintaining separation of functions before a notice of hearing is published serves a useful purpose if the bureau is considering denying a request for hearing. Denial of a hearing request is final agency action, and it is therefor appropriate for the Office of the Commissioner to evaluate the bureau's reasons for recommending that action from an independent point of view.

When, however, the bureau's recommendation is that the hearing request be granted, the next step is not final agency action, but an evidentiary hearing, during which the record for decision by the Office of the Commissioner is developed. The Office of the Commissioner then reviews the record without consulting the bureau involved in the hearing.

Thus, when a hearing is to be held, the reasons for maintaining separation of functions during the time period preceding the hearing are greatly diminished. In fact, there is often a need for consultation between the bureau and the Office of the Commissioner about the content and wording of the notice of hearing. Elimination of the separation of functions requirement in the period before a notice of hearing is issued will permit necessary communication between the parts of the agency responsible for initiating the hearing.

One comment was received in response to the proposal. The comment, which is unclearly written, apparently takes the position that the purpose of permitting the Office of the Commissioner to consult with the bureau before a notice of hearing is published is to avoid situations in which a hearing is held despite the absence of a substantial issue of fact. The comment asks FDA to make a comparison between the time involved in evaluating bureau recommendations and the time involved in holding hearings that are later found to be unnecessary because they involve no substantial issue of fact.

Without a more comprehensible explanation of the concerns addressed in the comment, the agency is unable to respond to the specific questions raised. In any case, the premise of the comment, that the purpose of eliminating separation of functions is to reduce the number of hearings that are held in the mistaken belief that there is an issue of fact, is wrong. The purpose of eliminating separation of functions before publishing a notice of hearing is to expedite the handling of hearing requests and notices of hearing. Accordingly, the final regulation is published as proposed, except that the following technical changes are incorporated in the text of the regulation:

1. A sentence is added to clarify that, when a bureau has recommended that a hearing be granted, the Commissioner may change the text of the issues proposed by the bureau but may not deny a hearing on those issues. This restriction was discussed in the preamble to the proposed regulation. See 43 FR 59097, column 1.

2. The regulation is revised to clarify that when a bureau recommends that a hearing be granted as to some issues and denied as to others, the Commissioner will not evaluate or rule upon the bureau's recommendation that a hearing be denied. The preamble to the proposed regulation discussed this point. See 43 FR 59097, column 1.

3. The regulation is revised to clarify that the presiding officer's ruling on whether to include in a hearing an issue with respect to which the bureau recommended that a hearing be denied is subject to interlocutory review by the Commissioner in accordance with the procedure that applies to all decisions by a presiding officer to add or delete an issue.

4. Minor editorial changes have been made in the text of the regulation.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 505, 507, 701(a), 52 Stat. 1052–1053 as amended, 1055, 59 Stat. 463 as amended (21 U.S.C. 355, 357, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Parts 314 and 430 are amended as follows:

1. Part 314 is amended in § 314.200 by revising paragraph (f) to read as follows:

§ 314.200 Notice of opportunity for hearing; notice of participation and request for hearing; grant or denial of hearing.

* * * * *

(f) Separation of functions commences upon receipt of a request for hearing. The Director of the Bureau of Drugs will prepare an analysis of the request and a proposed order ruling on the matter. The analysis and proposed order, the request for hearing, and any proposed order denying a hearing and response under paragraph (g) (2) or (3) of this section will be submitted to the Office of the Commissioner for review and decision. When the Bureau recommends denial of a hearing on all issues on which a hearing is requested, no representative of the Bureau will participate or advise in the review and decision by the Commissioner. When the Bureau recommends that a hearing be granted on one or more issues on which a hearing is requested, separation of functions terminates as to those issues, and representatives of the Bureau may participate or advise in the review and decision by the Commissioner on those issues. The Commissioner may modify the text of the issues, but may not deny a hearing on those issues. Separation of functions continues with respect to issues on which the Bureau has recommended denial of a hearing. The Bureau's recommendation on such issues will not be evaluated or ruled on by the Commissioner, and such issues will not be included in the notice of hearing. Participants in the hearing may make a motion to the presiding officer for the inclusion of any such issue in the hearing. The ruling on such a motion is subject to review in accordance with § 12.35(b) of this chapter. Failure to so move constitutes a waiver of the right to a hearing on such an issue. Separation of functions on all issues resumes upon issuance of a notice of hearing. The Office of the General Counsel will observe the same separation of functions.

* * * * *

2. Part 430 is amended in § 430.20 by revising paragraph (b)(7) to read as follows:

§ 430.20 Procedure for the issuance, amendment, or repeal of regulations.

* * * * *

(b) * * *

(7) Separation of functions commences upon receipt of a request for hearing. The Director of the Bureau of Drugs will prepare an analysis of the request and a proposed order ruling on the matter. The analysis and proposed order, the request for hearing, and any proposed order denying a hearing and response under paragraph (b)(8) (ii) or (iii) of this section will be submitted to the Office of the Commissioner for review and decision. When the Bureau recommends denial of a hearing on all issues on which a hearing is requested, no representative of the Bureau will participate or advise in the review and decision by the Commissioner. When the Bureau recommends that a hearing be granted on one or more issues on which a hearing is requested, separation of functions terminates as to those issues, and representatives of the Bureau may participate or advise in the review and decision by the Commissioner on those issues. The Commissioner may modify the text of the issues, but may not deny a hearing on those issues. Separation of functions continues with respect to issues on which the Bureau has recommended denial of a hearing. The Bureau's recommendation on such issues will not be evaluated or ruled on by the Commissioner, and such issues will not be included in the notice of hearing. Participants in the hearing may make a motion to the presiding officer for the inclusion of any such issue in the hearing. The ruling on such a motion is subject to review in accordance with § 12.35(b) of this chapter. Failure to so move constitutes a waiver of the right to a hearing on such an issue. Separation of functions on all issues resumes upon

issuance of a notice of hearing. The Office of the General Counsel will observe the same separation of functions.

* * * * *

Effective date. This regulation is effective July 12, 1979.

(Secs. 505, 507, 701(a), 52 Stat. 1052–1053 as amended, 1055, 59 Stat. 463 as amended (21 U.S.C. 355, 357, 371(a)))

Dated: June 5, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79–17983 Filed 6–11–79; 8:45 am]

BILLING CODE 4110–03–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commission

24 CFR Part 445

[Docket No. R–79–601]

Application of Payments on (Section 312) Rehabilitation Housing Loans

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: This rule amends 24 CFR Part 445 to require that payments on 312 loans serviced by HUD shall be applied first to accrued interest and then to the outstanding principal. This rule is necessary because the current practice reduces the effective rate below an acceptable three percent (3%) and results in a lower effective interest rate for borrowers who default, than for borrowers who remain current in payment.

EFFECTIVE DATE: July 12, 1979.

FOR FURTHER INFORMATION CONTACT: John L. Brady, Director, Title I Insured and 312 Loan Servicing Division, Room 9172, 451 7th Street, SW., Washington, D.C. 20410, (202) 755–6681. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On December 27, 1978, the Department published a Notice of Proposed Rulemaking (at 43 FR 60301) to amend 24 CFR Part 445. Part 445 now requires that all receipts on 312 accounts serviced by HUD be applied first to the reduction of the principal. Interest is not computed until the principal has been paid in full. This reduces the effective rate below an acceptable three percent (3%) level to as low as two and one-fifth percent (2⅕%). This practice is contrary to customary commercial practice and, in effect, gives more favored treatment to borrowers who default than to borrowers who maintain payment on a current basis. This amended rule will eliminate the disparate treatment and remove any incentives for defaulting which may exist. Comments on the proposed rule were invited until January 28, 1978. Only one comment was received. It supported the amendment; therefore, no changes are being made to the proposed rule.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding is available for public inspection during regular working hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

Accordingly, the Department is amending Title 24, CFR Part 445 by revising § 445.1 as follows:

§ 445.1 Application of payments.

When a debt is paid in installments and interest is collected for a Section 312 loan, the installment payments will first be applied to the payment of accrued interest and then to principal as prescribed in Section 102.10 of the Joint Regulations of the General Accounting Office and the Department of Justice. (4 CFR 102.10)

(Sec. 7(d), Department of HUD Act; (42 U.S.C. 3535(d)). (38 FR 27216 October 1, 1973.) Sec. 312 of the Housing Act of 1964, (42 U.S.C. 1452b).)

Issued at Washington, D.C., June 5, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 79–18155 Filed 6–11–79; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Clarification of CHAMPUS Last Pay Status

AGENCY: Office of the Secretary.

ACTION: Addendum to rule.

SUMMARY: The purpose of this addendum to 32 CFR Part 199 is to clarify DoD's position of "last pay" on CHAMPUS benefits when certain beneficiaries are entitled to duplicate coverage, in whole or in part, by insurance, medical service, health and medical plan, or other Government program available through employment, law, membership in an organization or as a student. Specifically, this addendum clarifies a provision contained in the DoD Regulation 6010.8–R (32 CFR 199) that indicated lack of understanding when considered at the public rulemaking hearings on September 7 and 8, 1977, and also at a specific case review which discussed DoD intent regarding the double coverage provisions.

EFFECTIVE DATE: January 10, 1977.

FOR FURTHER INFORMATION CONTACT: LTC L. Rowlette, Special Assistant for CHAMPUS, Office of the Deputy Assistant Secretary of Defense (Health Resources & Programs), OASD(HA), Washington, D.C. 20301, telephone 202–695–6281

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972) the Department of Defense published its regulation, DoD 6010.8–R, "Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)." In FR Doc. 79–9566, appearing in the **Federal Register** on March 29, 1979 (44 FR 19661) the Office of the Secretary of Defense published the regulation's first amendment. The following clarifies certain aspects of this regulation and responds to public comment.

CHAMPUS Beneficiary Population

Statutes pertaining to the CHAMPUS are contained in Chapter 55 of Title 10, United States Code. Section 1086 of that chapter as added by the Military Medical Benefits Amendments of 1966, Pub. L. 89–614, expanded the CHAMPUS beneficiary population to include retirees, spouses, and children of retirees, and spouses and children of deceased active duty members or retirees of the uniformed services, subject to certain conditions and exceptions. One such condition set forth in subsection 1086(d) denies payment for CHAMPUS benefits when the beneficiary is entitled to other insurance, medical service, or health plan provided by law or through employment.

Exclusionary Clause in Insurance Contracts

Following enactment of Pub. L. 89–614, an anomalous situation arose. That is, some beneficiaries whose CHAMPUS entitlement was newly established under the law could not receive

payment of medical care costs either from the CHAMPUS or from their insurance, medical service or health plan provided by law or through employment. This resulted from the position taken by certain insurance carriers that exclusionary clauses in health insurance contracts relieved them from medical expenses of the beneficiaries who happened to be covered by such contracts prior to the 1966 CHAMPUS Amendments. An exclusionary clause in insurance contracts is one which, generally, excludes from coverage expenses for services and supplies to the extent they are provided under any governmental plan or law under which the insured is or could be covered. The contention of the insurance carriers was that Section 1086(d) should not be construed as having retroactive application, thereby impairing their preexisting contractual rights.

To ease transitional implementation of the 1966 Amendments to the law governing the CHAMPUS, the so-called "October 1, 1966 Rule" was incorporated into the joint Uniformed Services regulation implementing the CHAMPUS. Under that rule, the CHAMPUS assumed the status of primary health care coverage ("primary payor") for beneficiaries entitled to CHAMPUS benefits under the 1966 Amendments if the beneficiary has been continuously covered since October 1, 1966 (the effective date of the 1966 Amendments) by an insurance, medical service, or health plan provided by law of through employment which has continuously contained an exclusionary clause.

Joint Uniformed Services Regulation

The Joint Uniformed Services regulation implementing the CHAMPUS was codified at 32 CFR 577.60 *et seq.* It was effective until various portions thereof were affected by implementation of Department of Defense Instruction 6010.8 and 6010.8–R (32 CFR 199, January 10, 1977). The "October 1, 1966 Rule" as incorporated into the CHAMPUS Regulation 6010.8–R, is set forth in Section D, Chapter VIII (32 CFR 199.14(d) and 42 FR 18020, April 4, 1977) as follows:

Title 32, § 199.14:

* * * * *

(d) *Retirees; Dependents of Retirees; and Dependents of Desceased Active Duty Members or Retirees.* Chapter 55 of Title 10, United States Code, is clear that the CHAMPUS Program is designed as an interim, secondary coverage for retirees, dependents of retirees and dependents of deceased active duty members or retirees. Therefore, CHAMPUS claims submitted for otherwise covered services and/or supplies provided these beneficiary classes, and which involve double coverage, shall be adjudicated as follows:

(1) *CHAMPUS Always "Last Pay".* In any double coverage situations, CHAMPUS benefits shall be "last pay."

(2) *Exclusionary Clause: October 1, 1966 Rule.* Generally if a double coverage plan has an exclusionary clause which precludes payment of benefits as "primary payor" if the insured is covered under a Federal health and medical benefits program, it is not recognized by CHAMPUS (refer to paragraph (h)(2) of this section). However, if the double coverage plan had an exclusionary clause that was in effect prior to October 1, 1966, CHAMPUS becomes primary payor: *Provided,* The following requirements are met:

(i) *Continuously in Effect.* The specific double coverage plan containing such exclusionary clause has been continuously in effect since October 1, 1966, or prior, and

(ii) *Other than FEHBP Plan.* The double coverage plan is other than one of the plans authorized under the Federal Employees Health Benefits Law (FEHBP) Chapter 89, Title 5, United States Code, as administered by the United States Civil Service Commission.

The intent of the above language is to limit application of an "exclusionary clause" to those limited number of transitional situations under the 1966 Amendments where (a) the exclusionary clause in the double coverage plan was in effect on or before October 1, 1966; (b) the exclusionary clause has been continuously in effect from October 1, 1966; (c) the double coverage plan has not changed, either in carriers or benefits (rate changes are not considered), nor changed from an insured plan to a self-insured plan nor from a self-insured plan to an insured plan;

(d) the beneficiary has been continuously enrolled in the double coverage plan with the "exclusionary clause" since on or before October 1, 1966; and (e) the beneficiary's eligibility for CHAMPUS was effective October 1, 1966. In all other cases, the CHAMPUS is "last pay" as required by law.

H. E. Lofdahl,

Director, Correspondence & Directives, Washington Headquarters Services, Department of Defense

June 7, 1979.

[FR Doc. 79–18244 Filed 6–11–79; 8:45 am]

BILLING CODE 3810–70–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1244–6]

Alabama: Approval of Plan Revisions; Correction

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: In the rulemaking notices of March 7 (44 FR 12420) and April 4 (44 FR 20074), 1979, approving revisions in the Alabama implementation plan, the numbering of the revisions in § 52.50, identification of plan, was incorrect. The xylene oxidation revision should have been listed as paragraph (c)(19) of 40 CFR 52.50, and coke oven revision, as paragraph (c)(18). Also, it has been noted that paragraph (c)(17) of 40 CFR 52.50, added on September 2, 1977 (42 FR 44234), contains no submittal date. With the appropriate editorial corrections, 40 CFR 52.50(c)(17) through (19) reads as set forth below.

EFFECTIVE DATE: June 12, 1979.

FOR FURTHER INFORMATION CONTACT: Walter Bishop of the Region IV Air Programs Branch, (404) 881–2864, FTS 257–2864.

Subpart B—Alabama

§ 52.50 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(17) Regulations equivalent to EPA's New Source Performance Standards (40 CFR Part 60) and continuous monitoring requirements for existing stationary sources (40 CFR 51.19), submitted by the Alabama Air Pollution Control Commission on October 28, 1976.

(18) Revised regulations for the charging and pushing of coke in existing conventional batteries, submitted by the Alabama Air Pollution Control Commission on July 14, 1978.

(19) Part 4.12, dealing with particulate emissions from xylene oxidation, submitted by the Alabama Air Pollution Control Commission on September 13, 1978.

Dated: May 29, 1979.

John C. White,

Regional Administrator.

[FR Doc. 79-18262 Filed 6-11-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 52

[FRL 1238-1]

Approval of Revisions of the Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Rulemaking.

SUMMARY: The Pennsylvania Department of Environmental Resources has submitted amendments to Article XVIII, Rules and Regulations of the Allegheny County Health Department. The revisions amend the Air Pollution Emergency Episode Regulations of Article XVIII. The revisions are designed to provide flexibility to deal with localized air pollution episodes. The amendments make provisions for declaring localized incidents where persistent winds cause high pollution levels and set forth specific actions, including ordering source curtailments, to be taken by the Bureau of Air Pollution Control. Other changes include authorizing the Director of the Allegheny County Health Department, rather than the County Commissioners, to declare Third Stage Alerts and adding provisions designed to make the regulations more consistent with Federal guidelines.

The Administrator, by this notice, announces his approval of the revision.

EFFECTIVE DATE: July 12, 1979.

ADDRESSES: Copies of the revision and accompanying support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Air Programs Branch (3AH10), Curtis Building, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, Attn: Ms. Patricia Sheridan.

Bureau of Air Quality Control, Department of Environmental Resources, Commonwealth of Pennsylvania, 200 North 3rd Street, Harrisburg, Pennsylvania 17120.

Allegheny County Health Department, Bureau of Air Pollution Control, 301 39th Street, Pittsburgh, Pennsylvania 15201.

Public Information Reference Unit, Room 2922—EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. William Belanger (3AH13), Air Programs Branch, U.S. Environmental Protection Agency, Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106.

SUPPLEMENTARY INFORMATION: On May 15, 1978, the Pennsylvania Department of Environmental Resources submitted to the Regional Administrator, EPA Region III, amendments to Article XVIII, Rules and Regulations of the Allegheny Health Department, and requested that they be reviewed and processed as a revision of the Pennsylvania State Implementation Plan (SIP) applicable to Allegheny County.

The proposed amendments affect Section 1800 (Definitions) and Section 1813 (Air Pollution Emergency Episode Regulations) of Article XVIII.

In November, 1975 a localized emergency episode occurred in the Liberty Borough—Clairton area of Allegheny County. Existing regulations required extensive county-wide actions even though emergency conditions occurred in only a small portion of the County. The amended regulations will provide the flexibility to declare localized Third Stage Alerts and for instituting curtailment actions in the exact area(s) affected. The amendments also provide for declaring localized incidents where persistent winds cause high pollution levels, and also provide guidance on specific actions to be taken in the case of wind-induced pollution incidents.

A public hearing on the proposed amendments was held on February 17, 1978 at the Bureau of Air Pollution Control, 301 39th St., Pittsburgh, Pennsylvania 15201.

On November 30, 1978 (43 FR 56060), the Regional Administrator announced receipt of these amendments, proposed them as a revision of the Pennsylvania SIP, and provided for a 30-day public comment period following publication in the Federal Register. During this public comment period, no comments were received.

The Environmental Protection Agency has evaluated the Allegheny County Episode Plan and concurs with the County's rationale in revising its plan to provide the ability to deal with a localized situation on less than a county-wide basis, and to deal with wind-induced incidents in an appropriate manner.

In view of the above evaluation and the fact that the amendments to Article XVIII of the Allegheny County regulations for the Control and Abatement of Air Pollution conform to the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, the Administrator approves them as a revision of the Pennsylvania State Implementation Plan, effective (30 days from date of publication of this notice). Concurrently, 40 CFR 52.2020 (Identification of Plan) is amended to incorporate these amendments into the Federally-approved Pennsylvania SIP.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Authority: 42 U.S.C. 7401-7642 et seq.

Dated: June 1, 1979.

Douglas Costle,

Administrator.

Part 52 of Title 40 of the Code of Federal Regulations is amended as follows:

Subpart NN—Pennsylvania

1. In Section 52.2020, paragraph (c)(17) is amended to read as follows:

§ 52.2020 Identification of Plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified***

(17) Amendment to Article XVIII, Rules and Regulations of the Allegheny County Health Department, Sections 1800 (Definitions) and 1813 (Air Pollution Emergency Episode Regulations). These amendments were submitted on May 15, 1978 by the Department of Environmental Resources.

[FR Doc. 79-18272 Filed 6-11-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 65

[FRL 1240-4]

Delayed Compliance Order of Blanchester Foundry Co.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: By this rule, the Administrator of U.S. EPA approves a Delayed Compliance Order to Blanchester Foundry Company. The Order requires the Company to bring air emissions from its grey iron cupola at

Blanchester, Ohio, into compliance with certain regulations contained in the federally approved Ohio State Implementation Plan (SIP). Blanchester Foundry Company's compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act (Act) for violations of the SIP regulations covered in the Order.

DATES: This rule takes effect June 12, 1979.

FOR FURTHER INFORMATION CONTACT: Cynthia Colantoni, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, Telephone (312) 353-2082.

SUPPLEMENTARY INFORMATION: On March 23, 1979, the Regional Administrator of U.S. EPA's Region V Office published in the **Federal Register** (44 FR 17758) a notice setting out the provisions of a proposed State Delayed Compliance Order for Blanchester Foundry Company. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order.

No public comments and no request for a public hearing were received in response to the notice.

Therefore, a Delayed Compliance Order effective this date is approved to Blanchester Foundry Company by the Administrator of U.S. EPA pursuant to the authority of Section 113(d)(2) of the Act, 42 U.S.C. 7413(d)(2). The Order places Blanchester Foundry Company on a schedule to bring its grey iron cupola at Blanchester, Ohio, into compliance as expeditiously as practicable with Regulations OAC-3745-17-07 and OAC-3745-17-11, a part of the federally approved Ohio State Implementation Plan. Blanchester Foundry Company is unable to immediately comply with these regulations. The Order also imposes interim requirements which meet Section 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Blanchester Foundry Company to delay compliance with the SIP regulations covered by the Order until July 1, 1979.

Compliance with the Order by Blanchester Foundry Company will preclude Federal enforcement action under Section 113 of the Act for violations of the SIP regulations covered by the Order. Citizen suits under Section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the Order, and for violations of the regulations covered by the Order which occurred before the Order was issued by U.S. EPA or after the Order is terminated. If the Administrator determines that Blanchester Foundry Company is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act.

U.S. EPA has determined that the Order shall be effective upon publication of this notice because of the need to immediately place Blanchester Foundry Company on a schedule for compliance with the Ohio State Implementation Plan.

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

Dated: June 1, 1979.

Douglas Costle,
Administrator.

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

PART 65—DELAYED COMPLIANCE ORDERS

By adding the following entry to the table in Section 65.401:

§ 65.401 U.S. EPA Approval of State Delayed Compliance Orders issued to major stationary sources.

The State Order identified below has been approved by the Administrator in accordance with Section 113(d)(2) of the Act and with this Part. With regard to this Order, the Administrator has made all the determinations and findings which are necessary for approval of the Order under Section 113(d) of the Act.

Source	Location	Order No.	Date of FR Proposal	SIP regulation involved	Final compliance date
*	*	*	*	*	*
Blanchester Foundry Company.	Blanchester, Ohio	None	Jan. 23, 1979	OAC-3745-17-07 OAC-3745-17-11.	July 1, 1979
*	*	*	*	*	*

[FR Doc. 79-18270 Filed 6-11-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 65

[FRL 1225-2]

Approval of Delayed Compliance Order Issued by the Connecticut Department of Environmental Protection to Ross and Roberts, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the Connecticut Department of Environmental Protection to Ross and Roberts, Inc. The Order requires the company to bring air emissions from its coating lines at Stratford, Connecticut into compliance with certain regulations contained in the federally-approved Connecticut State Implementation Plan (SIP). Because of the Administrator's approval, Ross and Roberts, Inc. compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on June 12, 1979.

FOR FURTHER INFORMATION CONTACT: Michael Gurchin at (617) 223-5061 or engineer Steven Fradkoff at (617) 223-5610, both at the following address:

U.S. Environmental Protection Agency, J. F. K. Federal Building, Room 2103, Boston, MA 02203.

ADDRESS: A copy of the Delayed Compliance Order, any supporting material, and any comments received in response to prior **Federal Register** notice proposing approval of the Order are available for public inspection and copying during normal business hours at the address indicated above.

SUPPLEMENTARY INFORMATION: On February 14, 1979, the Regional Administrator of EPA's Region I Office published in the **Federal Register**, 44 FR 9603, a notice proposing approval of a delayed compliance order issued by the Connecticut Department of Environmental Protection to Ross and Roberts, Inc. The notice asked for public comments by March 16, 1979 on EPA's

proposed approval of the Order. No public comments were received in response to the proposal notice.

Therefore, the delayed compliance order issued to Ross and Roberts, Inc., is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7414(d)(2). The Order places Ross and Roberts, Inc. on a schedule to bring its coating lines at Stratford, Connecticut into compliance as expeditiously as practicable with Section 19-508-18(a)(1)(i) and 19-508-23(a)(1) of the Connecticut Regulations for the Abatement of Air Pollution, a part of the federally-approved Connecticut State Implementation Plan. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and reporting requirements. The Order does not include emission monitoring requirements because their inclusion in the Order would be unreasonable. If the conditions of the Order are met, it will permit Ross and Roberts, Inc. to delay compliance with the SIP regulations covered by the Order until March 15, 1979. The company is unable to immediately comply with these regulations.

Because the Order has been approved by EPA, compliance with its terms will preclude federal enforcement action under Section 113 of the Act for violations of the SIP regulations covered by the Order during the period the Order is in effect. Citizen suits under Section 304 of the Act are similarly precluded. If the Administrator determines that Ross and Roberts, Inc. is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the need to immediately place Ross and Roberts, Inc., on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) of the Connecticut State Implementation Plan.

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

Dated: June 1, 1979.

Douglas Costle,

Administrator.

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

PART 65—DELAYED COMPLIANCE ORDERS

By adding the following entry to the table in § 65.111:

§ 65.111 EPA Approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order No.	SIP regulation(s) involved	Date of FR proposal	Final compliance date
*	*	*	*	*	
Ross and Roberts, Inc.	Norwalk, Conn.	707	19-508-18	Feb. 14, 1979	Mar. 15, 1979
*	*	*	*	*	

[FR Doc. 79-18272 Filed 6-11-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 65

[FRL 1240-5]

Delayed Compliance Order for the Defense Logistics Agency, Defense Electronics Supply Center

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: By this rule, the Administrator of U.S. EPA issues a Delayed Compliance Order to the Defense Logistics Agency, Defense Electronics Supply Center (DESC). The Order requires the facility to bring air emissions from its four boilers in Building 17 at Dayton, Ohio into compliance with certain regulations contained in the federally promulgated Ohio State Implementation Plan (SIP). DESC's compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act (Act) for violations of the SIP regulations covered in the Order.

DATES: This rule takes effect June 12, 1979.

FOR FURTHER INFORMATION CONTACT: Louise C. Gross, Attorney, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, Telephone (312) 353-2082.

SUPPLEMENTARY INFORMATION: On February 1, 1979, the Regional Administrator of the U.S. EPA's Region V Office published in the **Federal Register** (44 FR 6468) a notice setting out the provisions of a proposed Federal Delayed Compliance Order for DESC. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order. No public comments and no request for a public hearing were received in response to the notice.

Therefore, a Delayed Compliance Order effective this date is issued to DESC by the Administrator of U.S. EPA pursuant to the authority of Section 113(d)(1) of the Act, 42 U.S.C. 7413(d)(1). The Order places DESC on a schedule to bring its four boilers in Building 17 at Dayton, Ohio, into compliance as expeditiously as practicable with 40 CFR 52.1881(b)(46)(vii), a part of the federally promulgated Ohio State Implementation Plan. DESC is unable to immediately comply with this regulation. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emissions monitoring and reporting requirements. If the conditions of the Order are met, it will permit DESC to delay compliance with the SIP regulation covered by the Order until June 30, 1979.

Compliance with the Order by DESC will preclude Federal enforcement action under Section 113 of the Act for violations of the SIP regulation covered by the Order. Citizen suits under Section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the Order, and for violations of the regulation covered by the Order which occurred before the Order was issued by U.S. EPA or after the Order is terminated. If the Administrator determines that DESC is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act.

U.S. EPA has determined that the Order shall be effective upon publication of this notice because of the need to immediately place DESC on a schedule for compliance with the Ohio State Implementation Plan.

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

Dated: June 1, 1979.

Douglas Costle,

Administrator.

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

PART 65—DELAYED COMPLIANCE ORDERS

By adding the following entry to the table in § 65.400:

§ 65.400 Federal Delayed Compliance Orders Issued Under Section 113(d) (1), (3), and (4) of the Act.

Source	Location	Order No.	Date of FR proposal	SIP regulation involved	Final compliance date
*	*	*	*	*	*
Defense Logistics Agency, Defense Electronics Supply Center.	Dayton, Ohio	EPA-5-79-A-41	Feb. 1, 1979	40 CFR 52.1881(b)(46)(vii).	June 30, 1979
*	*	*	*	*	*

[FR Doc. 79-18271 Filed 6-11-79; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF STATE

Agency for International Development

41 CFR Part 7-1

[AIDPR Notice 79-1]

Small Business Concerns; Administrative Revisions

AGENCY: Agency for International Development, Department of State.

ACTION: Final rule.

SUMMARY: This regulation deletes the requirement for preparing a Small Business/Minority Business Enterprise Procurement Review Form (AID 1410-14) for proposed procurements with individuals for their personal services abroad.

EFFECTIVE DATE: June 1, 1979.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Courembis, CM/SD/POL, Agency for International Development, Department of State, Washington, D.C. 20523 (703) 235-9107.

Section 7-1.704-7, paragraph (d) is revised as follows:

§ 7-1.704-7 Reports on procurement actions that are exempted from screening.

* * * * *

(d) Personal services contract exemption. Preparation of AID From 1410-14 is not required for personal services contracts.

This AIDPR Notice is issued pursuant to 41 CFR 7-1.104-4.

Dated: May 31, 1979.

John F. Owens,

Deputy Assistant Administrator for Program and Management Services.

[FR Doc. 79-18218 Filed 6-11-79; 8:45 am]

BILLING CODE 4710-02-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1041, 1047, 1082

[No. MC-C-3437]

Motor Transportation of Property Incidental to Transportation by Aircraft

AGENCY: Interstate Commerce Commission.

ACTION: Notice of extension of effective date.

SUMMARY: The Interstate Commerce Commission has extended the effective date of the regulations adopted in this proceeding (44 FR 3295, January 16, 1979) from May 16, 1979, to June 26, 1979, in order to provide adequate time to dispose of certain petitions for reconsideration.

DATE: Effective June 26, 1979.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275-7292.

SUPPLEMENTARY INFORMATION: By decision of December 11, 1978 [*Motor Transp. of Property Incidental to Air,* 131 M.C.C. 87 (1978)], served January 11, 1979, the Commission adopted appropriate regulations which define and generally expand those areas (air terminal areas) within which the motor carrier transportation of property incidental to transportation by aircraft is exempt from economic regulation. The regulations were to become effective May 16, 1979.

Petitions for reconsideration have been filed, but a decision thereon could not be served prior to May 16, 1979. Also, certain of the petitioners have filed a petition for stay pending judicial review which cannot be disposed of until after the petitions for reconsideration have been acted upon. Accordingly, in order to provide time for the pending pleadings to be considered, the effective date of the decision served January 11, 1979 was extended to 20 days after the service date of the decision disposing of the petitions for reconsideration. The decision disposing of the petitions for reconsideration was served June 6, 1979.

Issued in Washington, D.C.

Dated: May 30, 1979.

By the Commission. Chairman O'Neal, vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18314 Filed 6-11-79; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 371

Fraser River Sockeye and Pink Salmon Fishery; Final Regulations

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Final regulations.

SUMMARY: These regulations for 1979 are similar to regulations adopted in previous years that implemented the Convention for Protection, Preservation, and Extension of the Sockeye Salmon and Pink Salmon Fisheries of the Fraser River System (Convention) between the United States and Canada. The regulations are amended by changing

the schedules of fishing by gillnets, purse seines and reef nets to 1979 calendar dates. The 1978 regulations provided for eight weeks of two-days-per-week fishing for sockeye salmon (pink salmon are available only in odd-numbered years); however, in-season emergency changes in fishing schedules by the International Pacific Salmon Fisheries Commission (Commission), in response to developing information on abundance and timing of the spawning races of Fraser River sockeye salmon, resulted in only three weeks of two-days fishing, two weeks of one-day fishing, one week of three days of fishing, and two weeks during which no fishing was permitted. The regulations for the ten-week season in 1979 for both sockeye and pink salmon fishing provide for six weeks of 2-days-a-week fishing and 4 weeks of one day of fishing each week. This schedule may be adjusted during the season to meet the objectives of the management program as prescribed in the Convention, as efforts to attain these objectives are affected by the abundance and timing of the salmon runs through U.S. Convention Waters. Another change in the 1979 regulations is the closure to commercial trolling during the period June 15 through June 30 in territorial waters of the State of Washington north of 48° N. latitude and U.S. Convention Waters westward of the line between the Tatoosh Island Lighthouse in Washington State and Bonilla Point on Vancouver Island, B. C.

These rules do not apply to treaty Indians exercising treaty-secured fishing rights at the tribes' usual and accustomed fishing places in accordance with regulations promulgated by the Department of Interior (25 CFR Part 256).

EFFECTIVE DATE: 1201 a.m. on June 15, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Donald R. Johnson, Regional Director, 1700 Westlake Avenue North, Seattle, Washington 98109, Telephone: (206) 442-7575.

SUPPLEMENTARY INFORMATION: On March 12, 1979, the Commission forwarded the proposed regulations for the 1979 commercial fishing season for sockeye and pink salmon in Convention Waters to the Government of the United States for approval, as required by Article VI of the Convention. The United States has provisionally approved those regulations, except that the regulations would not apply to treaty Indians exercising treaty-secured fishing rights at the tribes' usual and accustomed fishing places. These fisheries are regulated by 25 CFR Part 256, published by the Department of the Interior.

U.S. territorial waters of the State of Washington north of 48° N. latitude and U.S. Convention waters will be closed to commercial fishing with trolling gear from June 15 to June 30, both dates inclusive.

These regulations will become effective on June 15, 1979, in High Seas Convention Waters, and on June 24, 1979 in Convention Waters inside the Bontilla Point-Tatoosh Island line. These regulations are necessary to achieve the objectives of the Convention (e.g. assure adequate escapement of salmon within each spawning unit, and assure an equitable division of catch between U.S. and Canadian fishermen) and provide for a rational fishery by U.S. fishermen.

These regulations are being issued with respect to a foreign affairs function of the U.S. and, therefore, are exempt from the requirements of Executive Order 12044, pursuant to Section 6(b)(2) of that Order and the advance notice, public comment and delayed effectiveness procedures of 5 U.S.C., Section 553, pursuant to Section (a)(1) of that Act.

Signed at Washington, D.C. this 7th day of June, 1979.

Jack W. Gehringer,

Deputy Assistant Administrator, National Oceanic and Atmospheric Administration.

Accordingly, 50 CFR Part 371 is revised to read as follows:

PART 371—FRASER RIVER SOCKEYE AND PINK SALMON REGULATIONS

Subpart A—General Provisions

Authority: Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776–776f.

§ 371.1 Purpose of regulations.

The regulations in this Subpart A implement the convention between the United States and Canada for the protection of the sockeye and pink salmon fisheries of the Fraser River System, and the Sockeye Salmon or Pink Salmon Fishing Act of 1947.

§ 371.2 Scope of regulations.

This Part 371 applies to all commercial fishing for sockeye salmon and pink salmon and related activities conducted in U.S. Convention Waters during the time the Commission exercises jurisdiction over the sockeye salmon and pink salmon fisheries, except that these Regulations and Appendix A do not govern fishing by treaty Indians exercising treaty-secured fishing rights at the tribes' usual and accustomed fishing places.

§ 371.3 Definition of terms.

When used in this Subchapter C:

(a) *Act* means: The Sockeye Salmon and Pink Salmon Fishing Act of 1947, 16 U.S.C. 776–776f.

(b) *Commission* means: The International Pacific Salmon Fisheries Commission provided for by Article II of the Convention.

(c) *Convention* means: The convention between the United States of America and Canada for the protection, preservation, and extension of the sockeye salmon fisheries of the Fraser River system, signed at Washington on the 26th day of May, 1930, as amended by the protocol to the convention to include pink salmon, signed at Ottawa on the 28th day of December 1956.

(d) *Convention waters* means: Those waters described in Article I of the convention.

(e) *Enforcement Officer* means: (1) Any enforcement agent of the National Marine Fisheries Service.

(2) Any commissioned, warrant, or petty officer of the Coast Guard;

(3) Any Coast Guard personnel accompanying and acting under the direction of any person described in Paragraph (e)(2) of this Section.

(4) Any other person authorized by the Regional Director, Northwest Region, National Marine Fisheries Service to enforce the provisions of the convention, the Commission's regulations, the Act and this part 371.

(f) *Fish, Fishing* means: The fishing for, catching, or taking, or the attempted fishing for, catching, or taking, of any sockeye salmon or pink salmon in convention waters.

(g) *Fishing gear* means: Any net, trap, hook, or other device, appurtenance or equipment, of whatever kind or description, used or capable of being used, for the purpose or capturing fish or an aid in capturing fish.

(h) *Gillnet* means: Gillnet as defined in Washington Administrative Code, Chapter 220–16, and lawful gillnet as defined in Washington Administrative Code, Chapter 220–47.

(i) *Person* includes: The word "person" includes individuals, partnerships, associations, and corporations.

(j) *Pink salmon* means: That species of salmon known by the scientific name *Oncorhynchus gorbuscha.*

(k) *Purse seine* means: Purse seine as defined in Washington Administrative Code, Chapter 220–16 and lawful purse seine as defined in Washington Administrative Code, Chapter 220–47.

(l) *Reef net* means: Reef net as defined in Washington Administrative Code, Chapter 220–16 and lawful reef net as defined in Washington Administrative Code, Chapter 220–47.

(m) *Salmon preserves* means: Salmon preserves defined in Washington Administrative Code, Chapter 220–47.

(n) *Sockeye salmon* means: That species of salmon known by the scientific name *Oncorhynchus nerka.*

(o) *State areas* means: Fishing areas defined as Puget Sound Salmon Management and Catch Reporting Areas in Washington Administrative Code, Chapter 220–22.

(p) *Troll line* means: Troll line as defined in Washington Administrative Code, Chapter 220–16 and lawful troll line as defined in Washington Administrative Code, Chapter 220–47.

§ 371.4 Other laws and regulations.

Nothing in Part 371 shall be construed to relieve a person from any other requirements imposed by a statute or regulation of the United States or of the State of Washington.

§ 371.5 Reporting requirements.

(a) Any person receiving or purchasing fish caught by any person fishing under § 371.9 Commission Regulations (Appendix A) of this Part 371 shall comply with Washington Administrative Code, Chapter 220–69.

(b) Any person fishing under Section 371.9, Commission Regulations (Appendix A) of this Part 371 selling these fish directly to the consumer, restaurant, boathouse or any other retail outlet shall comply with Washington Administrative Code, Chapter 220–69.

(c) No person receiving or purchasing sockeye or pink salmon caught in U.S. Convention Waters during the time the Commission exercises control over fishing for sockeye salmon or pink salmon in U.S. waters shall fail to permit enforcement officers to inspect records or reports required by Washington Administrative Code, Chapter 220–69 or to inspect fish landing, holding or storage areas under the control of this person.

§ 371.6 Notice of change in regulations.

The regulations of the Commission regarding the times permissible to fish are subject to frequent change by emergency order. Emergency orders are published by news releases to radio stations and newspapers in the fishing area. In addition, these orders will be available by calling the National Marine Fisheries Service toll-free telephone Hotline 1–800–562–2870. The emergency orders will be effective from the time of publication or as stated in the order.

§ 371.7 Unlawful possession.

No person subject to this Part 371 shall possess or retain on board a fishing vessel a sockeye or pink salmon while engaged in a fishery for other species in U.S. Convention Waters during times these waters are closed by the Commission, except that this provision shall not prohibit the direct transport of legally-caught fish to off-loading areas.

§ 371.8 Forcible assault of enforcement officer.

No person shall forcibly assault, resist, oppose, impede, intimidate or interfere with an enforcement officer engaged in enforcing the convention, the Commission's regulations, the Act or this Part 371.

§ 371.9 Commission regulations.

Appendix A sets forth regulations and fishing schedules of the Commission for the 1979 fishing season. These regulations, as may be modified from time to time by emergency orders of the Commission and disseminated pursuant to Section 371.6 of this Part 371, are the "Regulations of the Commission," violation of which is unlawful under the Act.

Appendix A—International Pacific Salmon Fisheries Commission Regulations

1. No person shall fish for sockeye or pink salmon by commercial trolling gear in that portion of Convention Waters westerly of a straight line drawn from the Tatoosh Island Lighthouse in the State of Washington to Bonilla Point in the Province of British Columbia comprising the Territorial Waters of the United States and those High Seas waters contained in the U.S. Fishery Conservation Zone, from the 15th day of June, 1979 to the 30th day of June, 1979, both dates inclusive.

2. No person shall fish for sockeye or pink salmon with nets in Convention Waters of the United States from the 24th day of June, 1979 to the 14th day of July, 1979, both dates inclusive.

3. (1) No person shall fish for sockeye or pink salmon with purse seines in the Convention Waters of the United States lying westerly of a straight line drawn from Angeles Point in the State of Washington across Race Rocks to William Head in the Province of British Columbia (Puget Sound Salmon Management and Catch-reporting Areas 4B, 5 and 6C):

(a) From the 15th day of July, 1979 to the 4th day of August, 1979, both dates inclusive, except from 5:00 AM to 9:30 PM on Monday and Tuesday of each week; and

(b) From the 5th day of August, 1979 to the 18th day of August, 1979, both dates inclusive, except from 5:00 AM to 9:30 PM on Monday of each week.

(c) From the 19th day of August, 1979 to the 8th day of September, 1979, both dates inclusive, except from 5:00 AM to 9:00 PM on Monday and Tuesday of each week.

(d) From the 9th day of September, 1979 to the 15th day of September, 1979, both dates inclusive, except from 5:00 AM to 9:00 PM on Monday of each week.

(2) No person shall fish for sockeye or pink salmon with gillnets in the waters described in subsection (1) of this section:

(a) From the 15th day of July, 1979 to the 21st day of July, 1979, and from the 29th day of July, 1979 to the 4th day of August, 1979, all dates inclusive, except from 7:00 PM on Sunday to 9:30 AM on Monday and from 7:00 PM Monday to 9:30 AM on Tuesday of each week; and

(b) From the 22nd day of July, 1979 to the 28th day of July 1979, both dates inclusive, except from 7:00 PM on Monday to 9:30 AM on Tuesday and from 7:00 PM on Tuesday to 9:30 AM on Wednesday; and

(c) From the 5th day of August, 1979 to the 11th day of August, 1979, both dates inclusive, except from 7:00 PM on Monday to 9:30 AM on Tuesday; and

(d) From the 12th day of August, 1979 to the 18th day of August, 1979, both dates inclusive, except from 7:00 PM on Sunday to 9:30 AM Monday; and

(e) From the 19th day of August, 1979 to the 25th day of August, 1979, and from the 2nd day of September, 1979 to the 8th day of September, 1979, both dates inclusive, except from 6:00 PM on Monday to 9:00 AM on Tuesday, and from 6:00 PM on Tuesday to 9:00 AM on Wednesday of each week; and

(f) From the 26th day of August 1979, to the 1st day of September, 1979, both dates inclusive, except from 6:00 PM on Sunday to 9:00 AM on Monday, and from 6:00 PM on Monday to 9:00 AM on Tuesday; and

(g) From the 9th day of September, 1979 to the 15th day of September, 1979, both dates inclusive, except from 6:00 PM on Sunday to 9:00 AM on Monday.

(3) No person shall fish for sockeye or pink salmon with commercial trolling gear in the waters described in subsection (1) of this section from the 15th day of July, 1979 to the 15th day of September, 1979, both dates inclusive, except from Monday through Friday of each week on those days when purse seine fishing is permitted within that area.

4. (1) No person shall fish for sockeye or pink salmon with purse seines in the Convention Waters of the United States lying easterly of a straight line drawn from Angeles Point in the State of Washington across Race Rocks to William Head in the Province of British Columbia (Puget Sound Salmon Management and Catch-reporting Areas 6, 6A, 7, and 7A):

(a) From the 15th day of July, 1979 to the 4th day of August, 1979, both dates inclusive,

except from 5:00 AM to 9:30 PM on Monday and Tuesday of each week; and

(b) From the 5th day of August, 1979 to the 18th day of August, 1979, both dates inclusive, except from 5:00 AM to 9:30 PM on Monday of each week; and

(c) From the 19th day of August, 1979 to the 8th day of September, 1979, both dates inclusive, except from 5:00 AM to 9:00 PM on Monday and Tuesday of each week; and

(d) From the 9th day of September, 1979 to the 22nd day of September, 1979, both dates inclusive, except from 5:00 AM to 9:00 PM on Monday of each week.

(2) No person shall fish for sockeye or pink salmon with reef nets in the waters described in subsection (1) of this section:

(a) From the 15th day of July, 1979 to the 21st day of July, 1979, and from the 29th day of July, 1979 to the 4th day of August, 1979, both dates inclusive, except from 6:30 AM to 9:30 PM on Sunday and from 5:00 AM to 9:30 PM on Monday of each week; and

(b) From the 22nd day of July, 1979 to the 28th day of July, 1979, both dates inclusive except from 7:00 AM to 7:30 PM on Sunday, and from 5:00 AM to 7:30 PM on Monday; and

(c) From the 5th day of August, 1979 to the 11th day of August, 1979, both dates inclusive, except from 7:00 AM to 7:30 PM on Sunday; and

(d) From the 12th day of August, 1979 to the 18th day of August, 1979, both dates inclusive, except from 6:30 AM to 9:30 PM on Sunday; and

(e) From the 19th day of August, 1979 to the 25th of August, 1979 and from the 2nd day of September, 1979 to the 8th day of September, 1979, all dates inclusive, except from 7:00 AM to 7:30 PM on Sunday and from 5:00 AM to 7:30 PM on Monday of each week; and

(f) From the 26th day of August, 1979 to the 1st day of September, 1979, both dates inclusive, except from 6:30 AM to 9:00 PM on Sunday, and from 5:00 AM to 9:00 PM on Monday; and

(g) From the 9th day of September, 1979 to the 15th day of September, 1979, both dates inclusive, except from 6:30 AM to 9:00 PM on Sunday; and

(h) From the 16th day of September, 1979 to the 22nd day of September, 1979, both dates inclusive, except from 7:00 AM to 7:30 PM on Sunday.

(3) No person shall fish for sockeye or pink salmon with gillnets in the waters described in subsection (1) of this section:

(a) From the 15th day of July, 1979 to the 21st day of July, 1979, and from the 29th day of July, 1979 to the 4th day of August, 1979, all dates inclusive, except from 7:00 PM on Sunday to 9:30 AM on Monday and from 7:00 PM on Monday to 9:30 AM on Tuesday of each week; and

(b) From the 22nd day of July, 1979 to the 28th day of July 1979, both dates inclusive, except from 7:00 PM on Monday to 9:30 AM on Tuesday and from 7:00 PM on Tuesday to 9:30 AM on Wednesday; and

(c) From the 5th day of August, 1979 to the 11th day of August, 1979, both dates inclusive, except from 7:00 PM on Monday to 9:30 AM on Tuesday; and

(d) From the 12th day of August, 1979 to the 18th day of August, 1979, both dates inclusive, except from 7:00 PM on Sunday to 9:30 AM on Monday; and

(e) From the 19th day of August, 1979 to the 25th day of August, 1979, and from the 2nd day of September, 1979 to the 8th day of September, 1979, all dates inclusive, except from 6:00 PM on Monday to 9:00 AM on Tuesday and from 6:00 PM on Tuesday to 9:00 AM on Wednesday of each week; and

(f) From the 26th day of August, 1979 to the 1st day of September, 1979, both dates inclusive, except from 6:00 PM on Sunday to 9:00 AM on Monday, and from 6:00 PM on Monday to 9:00 AM on Tuesday; and

(g) From the 9th day of September, 1979 to the 15th day of September, 1979, both dates inclusive, except from 6:00 PM on Sunday to 9:00 AM on Monday; and

(h) From the 16th day of September, 1979 to the 22nd day of September, 1979, both dates inclusive, except from 6:00 PM on Monday to 9:00 AM on Tuesday.

5. (1) No person shall fish for sockeye or pink salmon with nets in that portion of the waters described in subsection (1) of section 4 lying northerly and westerly of a straight line drawn from Iwersen's Dock on Point Roberts in the State of Washington to Georgina Point Light at the entrance to Active Pass in the Province of British Columbia from the 26th day of August, 1979 to the 1st day of September, 1979, and from the 23rd day of September, 1979 to the 6th day of October, 1979, all dates inclusive.

(2) No person shall fish for sockeye or pink salmon with nets in that portion of the waters described in subsection (1) of section 4 lying westerly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary, across the east tip of Point Roberts to the East Point Light on Saturna Island, from the 2nd day of September, 1979 to the 22nd day of September, 1979, both dates inclusive.

6. The foregoing recommended regulations shall not apply to the following United States Convention Waters:

(1) Puget Sound Salmon Management and Catch-reporting Areas as follows: 6B, 7B, and 7C.

(2) Preserves previously established by the Director of Fisheries of the State of Washington for the protection of other species of food fish.

All times hereinbefore mentioned shall be Pacific Daylight Saving Time.

[FR Doc. 79-18350 Filed 6-11-79; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 44, No. 114
Tuesday, June 12, 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.

OFFICE OF PERSONNEL MANAGEMENT

[5 CFR Parts 831, 870, 871, and 890]

Retention of Benefits Upon Employment by Indian Tribal Organization

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management proposes rules to implement section 105(e)–(h) of Pub. L. 93–638, the Indian Self-Determination and Educational Assistance Act, which authorizes the retention of retirement, life insurance, and health benefits coverages by Federal employees who become employed by an Indian tribal organization without a break in service on or before December 31, 1985, in connection with activities which are or have been performed by employees in or for Indian communities.

DATE: Comments must be received on or before August 13, 1979.

ADDRESS: Comments should be directed to Craig B. Pettibone, Office of Policy Development and Technical Services (Retirement and Insurance), Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Gay Gardner, Office of Policy Development and Technical Services, Retirement and Insurance, Room 4351, 1900 E Street, N.W., Washington, D.C. 20415. 202–632–4634.

(1) It is proposed to add a new Subpart P to 5 CFR 831, as set out below:

PART 831—RETIREMENT

Subpart P—Employment of Federal Employees by Indian Tribal Organizations

Authority: 5 U.S.C. 8347; E.O. 11899, 41 FR 3459, Jan. 23, 1976.

Subpart P—Employment of Federal Employees by Indian Tribal Organizations

§ 831.1601 Basic records.

Every Indian tribal organization as defined in section 4(c) of the Indian Self-Determination Act (88 Stat. 2204) having employees subject to subchapter III of chapter 83 of title 5, United States Code, shall initiate and maintain individual retirement accounts for those employees as prescribed in Federal Personnel Manual Supplement 831–1 (5 U.S.C. 8334). Each tribal organization shall (a) verify the correctness of deductions withheld from employees' pay, as well as agency contributions; (b) transmit these withholdings and contributions to the Office of Personnel Management, Retirement and Insurance Division, for deposit; and (c) maintain retirement control accounts and prepare retirement accounting reports.

§ 831.1602 Counseling employees.

(a) Tribal organizations shall obtain from the Government Printing Office pertinent portions of the Federal Personnel Manual and other instructional materials needed to effectively administer this subpart.

(b) Tribal organization questions on retirement matters may be referred to the Retirement and Insurance Division of the Office of Personnel Management.

§ 831.1603 Credit for service.

(a) Employment with an Indian tribal organization as defined in Public Law 93–638 is not, of itself, creditable service. However, an employee serving under an appointment not limited to one year or less who, on or before December 31, 1985, leaves Federal employment which is subject to subchapter III of chapter 83 of title 5, United States Code, to be employed without a break in service (or after a separation from service of three days or less) by an Indian tribal organization in a function which is or has been performed by Federal employees in or for Indian communities is entitled to full retirement credit for such service provided that (1) prior to employment by the Indian tribal organization, the employee and the organization elect in writing, on a form prescribed by the Office of Personnel Management, to retain retirement coverage, and (2) the necessary employee deductions and agency contributions for the period of the employment with the tribal organization are currently deposited into the Civil Service Retirement and Disability Fund.

(b) The Office of Personnel Management shall determine whether an Indian tribal organization function is one which is or has been performed by an employee in or for Indian communities and shall consult with the Departments of Interior and Health, Education, and Welfare when necessary in making such determinations.

(c) An employee who elects to retain retirement coverage may decide to terminate such coverage at any time during his/her employment with a tribal organization. Coverage so terminated may not attach again during such employment.

§ 831.1604 Basic pay.

Subject to pay limitations in sections 5308 and 8331(3) of title 5, United States Code, salary received during tribal organization employment will be considered basic pay for annuity computation purposes.

§ 831.1605 Sick leave.

If retirement coverage is retained, days of unused sick leave to the credit of an employee under a formal leave system remain to the employee's credit for annuity computation purposes while employed by a tribal organization.

§ 831.1606 Employment of annuitants.

An annuitant under subchapter III of chapter 83 of title 5, United States Code, who becomes employed by an Indian tribal organization, shall not be considered a reemployed annuitant.

(2) It is proposed to add a new Subpart H to 5 CFR 870 as set out below:

PART 870—REGULAR LIFE INSURANCE

Subpart H—Employment of Federal Employees by Indian Tribal Organizations

Authority: 5 U.S.C. 8716, E.O. 11899, 41 FR 3459, Jan. 23, 1976.

Subpart H—Employment of Federal Employees by Indian Tribal Organizations

§ 870.801 Counseling employees.

(a) Tribal organizations shall obtain from the Government Printing Office pertinent portions of the Federal Personnel Manual and other instructional materials needed to effectively administer this subpart.

(b) Tribal organization questions on life insurance matters may be referred to the Retirement and Insurance Division of the Office of Personnel Management.

§ 870.802 Continuance of coverage.

(a) Employment with an Indian tribal organization as defined in section 4(c) of the Indian Self-Determination Act (88 Stat. 2204) is not, of itself, federal service and life insurance under this part cannot be acquired during such employment. However, an insured employee serving under an appointment not limited to one year or less who, on or before December 31, 1985, leaves Federal employment which is subject to subchapter III of chapter 83 of title 5, United States Code, to be employed without a break in service (or after a separation from service of three days or less) by an Indian tribal organization in a function which is or has been performed by Federal employees in or for Indian communities is entitled to continue life insurance coverage provided that (1) prior to employment by the Indian tribal organization, the employee and the organization elect in writing, on a form prescribed by the Office of Personnel Management, to retain life insurance coverage, and (2) the necessary employee deductions and agency contributions for the period of employment with the tribal organization are currently deposited into the Employees' Life Insurance Fund as prescribed in Federal Personnel Manual Supplement 870–1.

(b) The Office of Personnel Management shall determine whether an Indian tribal organization function is one which is or has been performed by an employee in or for Indian communities and shall consult with the Departments of Interior and Health, Education, and Welfare when necessary in making such determinations.

(c) An employee who elects to retain coverage under this part may decide to terminate such coverage at any time during his/her employment with a tribal organization.

§ 870.803 Annual rate of pay.

An individual's annual basic pay rate during employment with a tribal organization shall serve as the basis for determining the amount of insurance.

§ 870.804 Waiver of coverage.

An employee who elects not to retain life insurance coverage or who waives such coverage during employment with an Indian tribal organization may not cancel the waiver until reemployed in a Federal position in which the employee is not excluded from life insurance coverage.

§ 870.805 Employment of annuitants.

An annuitant under subchapter III of chapter 83 of title 5, United States Code, who becomes employed by an Indian organization, shall not be eligible as an employee for regular life insurance coverage under this part.

(3) It is proposed to add a new Subpart G to 5 CFR 871, as set out below:

PART 871—OPTIONAL LIFE INSURANCE

Subpart G—Employment of Federal Employees by Indian Tribal Organizations

Authority: 5 U.S.C. 8716, E.O. 11899, 41 FR 3459, Jan. 23, 1976.

Subpart G—Employment of Federal Employees by Indian Tribal Organizations

§ 870.701 Counseling employees.

(a) Tribal organization questions on optional insurance may be referred to the Retirement and Insurance Division of the Office of Personnel Management.

§ 871.702 Continuance of coverage.

(a) An insured employee serving under an appointment not limited to one year or less who, on or before December 31, 1985, leaves Federal employment which is subject to subchapter III of chapter 83 of title 5, United States Code, to be employed without a break in service (or after a separation from service of three days or less) by an Indian tribal organization in a function which is or has been performed by Federal employees in or for Indian communities is entitled to continue optional life insurance coverage provided that (1) prior to employment by the Indian tribal organization, the employee and the organization elect in writing, on a form prescribed by the Office of Personnel Management, to retain both regular and optional life insurance coverage, and (2) the necessary employee deductions for the period of employment with the tribal organization are currently paid into the Employees' Life Insurance Fund as prescribed in Federal Personnel Manual Supplement 870–1.

(b) The Office of Personnel Management shall determine whether an Indian tribal organization function is one which is or has been performed by an employee in or for Indian communities and shall consult with the Departments of Interior and Health, Education, and Welfare when necessary in making such determinations.

(c) An employee who elects to retain coverage under this part may decide to terminate such coverage at any time during his/her employment with a tribal organization.

§ 871.703 Cancellation of coverage.

(a) An employee who elects not to retain optional life insurance coverage or who cancels such coverage during employment with an Indian tribal organization may not reelect coverage until reemployed in a Federal position in which the employee is not excluded from optional life insurance coverage.

(b) Periods of non-coverage during Indian tribal organization employment must be considered as time during which the employee elected not to retain coverage in determining eligibility for optional life insurance coverage.

§ 871.704 Employment of annuitants.

An annuitant under subchapter III of chapter 83 of title 5, United States Code, who becomes employed by an Indian tribal organization, shall not be eligible as an employee for optional life insurance coverage under this part.

(4) It is proposed to add a new Subpart G to 5 CFR 890, as set out below:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS

Subpart G—Health Benefits Coverage During Employment With Indian Tribal Organizations Under Pub. L. 93–638

Authority: 5 U.S.C. 8913, E.O. 11899, 41 FR 3459, Jan. 23, 1976.

Subpart G—Health Benefits Coverage During Employment With Indian Tribal Organizations Under Pub. L. 93–638

§ 890.701 Counseling employees.

(a) Tribal organizations shall obtain from the Goverment Printing Office

pertinent portions of the Federal Personnel Manual and other instructional materials needed to effectively administer this subpart.

(b) Tribal organization questions on health benefits matters may be referred to the retirement and Insurance Division of the Office of Personnel Management.

§ 890.702 Continuance of coverage.

(a) Employment with an Indian tribal organization as defined in section 4(c) of the Indian Self-Determination Act (88 Stat. 2204) is not, of itself, Federal service and health benefits under this part cannot be acquired during such employment. However, an enrolled employee serving under an appointment not limited to one year or less who, on or before December 31, 1985, leaves Federal employment which is subject to subchapter III of chapter 83 of title 5, United States Code, to be employed without a break in service (or after a separation from service of three days or less) by an Indian tribal organization in a function which is or has been performed by Federal employees in or for Indian communities is entitled to continue health benefits coverage provided that (1) prior to employment by the Indian tribal organization, the employee and the organization elect in writing, on a form prescribed by the Office of Personnel Management, to retain health benefits coverage, and (2) the necessary employee deductions and agency contributions for the period of employment with the tribal organization are currently paid into the Employees Health Benefits Fund as prescribed in Federal Personnel Manual Supplement 890–1.

(b) The Office of Personnel Management shall determine whether an Indian tribal organization function is one which is or has been performed by an employee in or for Indian communities and will consult with the Departments of Interior and Health, Education, and Welfare when necessary in making such determinations.

(c) An employee who elects to retain coverage under this part may decide to terminate such coverage at any time during his/her employment with a tribal organization.

§ 890.703 Cancellation of enrollment.

(a) An employee who elects not to retain health benefits coverage or who cancels such coverage during employment with an Indian tribal organization may not reenroll until reemployed in a Federal position in which the employee is not excluded from health benefits coverage.

(b) Periods of non-coverage during Indian tribal organization employment must be considered as time during which the employee elected not to retain coverage in determining eligibility for health benefits coverage as an annuitant.

§ 890.704 Loss of coverage under another's enrollment.

An employee who is not enrolled but is covered by the enrollment of another under this part, may register to be enrolled 31 days after termination of his/her coverage under the other's enrollment, other than because of death or cancellation, and within 60 days after termination, because of death, of the other's enrollment, provided the employee and the tribal organization agree to such election and the necessary employee deductions and agency contributions are currently paid into the Federal Employees Health Benefits Fund.

§ 890.705 Employment of annuitants.

An annuitant under subchapter III of chapter 83 of title 5, United States Code, who becomes employed by an Indian tribal organization, shall not be eligible as an employee for health benefits coverage under this part.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79-18316 Filed 6-11-79; 8:45 am]

BILLING CODE 6325-01-M

FEDERAL HOME LOAN BANK BOARD

[12 CFR Parts 526, 545, 563]

[79-305]

Federal Home Loan Bank System, Federal Savings and Loan System, Federal Savings and Loan Insurance Corp.; Exemption from Early Withdrawal Penalty Upon Death of Account Owner

May 30, 1979.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rulemaking.

SUMMARY: The Bank Board's present regulations allow member institutions to exempt savings accounts from the early withdrawal penalty in the event of death of an account owner. The Bank Board believes that this exemption is in the public interest, and by this proposal would make it mandatory.

DATE: Comments must be received by July 9, 1979.

ADDRESS: Office of the Secretary, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

FOR FURTHER INFORMATION, CONTACT: Kathleen E. Topelius, Attorney, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552 (202–377–6444).

SUPPLEMENTARY INFORMATION: The Bank Board's regulations, set out at 12 CFR 526.7(b), 545.1–4(f)(4), 545.3–1(c)(6), 536.3–1(d)(4), and 563.3–2(d)(3), currently provide that upon the death of any account holder, a member institution, if it chooses, may allow withdrawal of deposits from the account prior to maturity without imposing the normally required early withdrawal penalty. The Bank Board proposes to amend each of these provisions to require member institutions to allow withdrawal of deposits from accounts prior to maturity without penalty upon the death of any account holder when requested to do so by an authorized representative or any other owner of the account. The Bank Board believes that the proposed amendments will more fully effectuate the intent of this exception to the early withdrawal penalty rule, which is to facilitate administration of estates as well as to ease the financial burdens occasioned by the death of an account holder. Public comment is specifically requested on whether the proposed amendment, if adopted, should apply to all existing accounts or only to accounts issued after the date of any final regulation.

Accordingly, the Bank Board hereby proposes to amend Part 526 of the Regulations for the Federal Home Bank Board System, Part 545 of the Rules and Regulations for the Federal Savings and Loan System, and Part 563 of the Rules and Regulations for Insurance of Accounts, to read as set forth below.

1. Amend § 526.7(b) to read as follows:

§ 526.7 Penalty for early withdrawal.

* * * * *

(b)(1) Such penalty shall not be applied if withdrawal is made after death of the owner of the account; the "owner" is an individual who at death had full legal and beneficial title to all or part of the account and full power of disposition or alienation with respect thereto, including but not limited to power of revocation with respect to any trust, regardless of whether such owner was a trustee, of which such account comprises all or part of the trust assets; and

(2) Such penalty need not be applied if the account qualified as a retirement

account under subsection 401(d) or 408(a) of the Internal Revenue Code of 1954, and withdrawal is made to distribute the funds in the account following disability or after the participant becomes 59½ years of age.

2. Amend § 545.1-4(f)(4) to read as follows:

§ 545.1-4 Other savings deposits.

* * * * *

(f) *Withdrawal prior to expiration of term.*

* * * * *

(4)(i) A federal association shall not penalize withdrawal of all or any portion of a fixed-term savings deposit prior to expiration of its term if withdrawal is made after death of the owner of the account; the "owner" is an individual who at death had full legal and beneficial title to all or part of the account and full power of disposition or alienation with respect thereto, including but not limited to power of revocation with respect to any trust, regardless of whether such owner was a trustee, of which such account comprises all or part of the trust assets; and

(ii) A Federal association need not penalize withdrawal of all or any portion of a fixed term savings deposit prior to expiration of its term if the account qualifies as a retirement account under subsection 401(d) or 408(a) of the Internal Revenue Code of 1954, and withdrawal is made to distribute the funds in the account following disability or after the participant becomes 59½ years of age.

3. Amend § 545.3-1(c)(6) to read as follows:

§ 545.3-1 Distribution of earnings at variable rates.

* * * * *

(c) *Form of certificate.*

* * * * *

(6)(i) A Federal association shall not penalize withdrawal of all or any portion of a certificate account issued pursuant to subparagraph (b)(3) of this section prior to completion of its time eligibility period if withdrawal is made after death of the owner of the account; the "owner" is an individual who at death had full legal and beneficial title to all or part of the account and full power of disposition or alienation with respect thereto, including but not limited to power of revocation with respect to any trust, regardless of whether such owner was a trustee, of which such account comprises all or part of the trust assets; and

(ii) A Federal association need not penalize withdrawal of all or any portion of a certificate account issued pursuant to subparagraph (b)(3) of this section prior to completion of its time eligibility period if the account qualified as a retirement account under subsection 401(d) or 408(a) of the Internal Revenue Code of 1954, and withdrawal is made to distribute the funds in the account following disability or after the participant becomes 59½ years of age.

* * * * *

4. Amend § 563.3-1(d)(4) to read as follows:

§ 563.3-1 Fixed-rate, fixed-term accounts.

* * * * *

(d) *Withdrawal prior to expiration of term.*

* * * * *

(4)(i) An insured institution shall not penalize withdrawal of all or any portion of a fixed-rate, fixed-term account prior to expiration of its term if withdrawal is made after death of the owner of the account; the "owner" is an individual who at death had full legal and beneficial title to all or part of the account and full power of disposition or alienation with respect thereto, including but not limited to power of revocation with respect to any trust, regardless of whether such owner was a trustee, of which such account comprises all of part of the trust assets; and

(ii) An insured institution need not penalize withdrawal of all or any portion of a fixed-rate, fixed-term account prior to expiration of its term if the account qualifies as a retirement account under subsection 401(d) or 408(a) of the Internal Revenue Code of 1954, and withdrawal is made to distribute the funds in the account following disability or after the participant becomes 59½ yers of age.

5. Amend § 563.3-2(d)(3) to read as follows:

§ 563.3-2 Certificates evidencing other accounts.

* * * * *

(d) *Provisions relating to early withdrawal.*

* * * * *

(3)(i) An insured institution shall not penalize withdrawal of all or any portion of a certificate account prior to completion of its time eligibility period if withdrawal is made after death of the owner of the account; the "owner" is an individual who at death had full legal and beneficial title to all or part of the account and full power of disposition or alienation with respect thereto, including but not limited to power of revocation with respect to any trust, regardless of whether such owner was a trust, of which such account comprises all or part of the trust assets; and

(ii) An insured institution need not penalize withdrawal of all or any portion of a certificate account prior to completion of its time eligibility period if the account qualifies as a retirement account under subsection 401(d) or 408(a) of the Internal Revenue Code of 1954, and withdrawal is made to distribute the funds of the account following disability or after the participant becomes 59½ years of age.

(Sec. 4, 80 Stat. 824 (12 U.S.C. § 1425b); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071; Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. § 1464, Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1947 Supp.; Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; 12 U.S.C. 1725, 1726, 1730.)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 79-18258 Filed 6-11-79; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[Docket No. 9122]

Lone Star Industries, Inc., Et Al.; 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 Greenwich, Conn. manufacturer of Portland cement and masonry cement, and the Keystone Portland Cement Co., an Allentown, Pa. competitor, among other things, to provide the Commission with evidence that their acquisition agreement has been terminated, and all non-public documents exchanged during negotiations returned. The firms would also be required to provide the Commission with 60 days' advance notice and liberal discovery rights, should merger plans be resumed before December 31, 1981.

DATE: Comments must be received on or before August 10, 1979.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/C, Alfred F. Dougherty, Jr., Washington, D.C. 20580. (202)523-3601.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6 (f) of the Federal Trade Commission Act. 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's rules of practice (16 CFR 3.25(f)), 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)).

Lone Star Industries, Inc.; Keystone Portland Cement Co.,

[Docket No. 9122]

The agreement herein, by and between Lone Star Industries, Inc., a corporation, by its duly authorized officer, and Keystone Portland Cement Co., a corporation, by its duly authorized officer, hereinafter sometimes referred to as respondents, and their attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's rules governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Lone Star Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at One Greenwich Plaza, in the City of Greenwich, State of Connecticut.

2. Respondent Keystone Portland Cement Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 2200 Hamilton Street, in the City of Allentown, State of Pennsylvania.

3. Respondents have been served with a copy of the complaint issued by the Federal Trade Commission charging them with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. Section 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. Section 45.

4. Respondents admit all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

5. Respondents waive:

(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.

6. This agreement shall not become a 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 related materials pursuant to Rule 3.25(f), 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 respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the said copy of the complaint issued by the Commission.

8. 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 § 3.25(f) of the Commission's rules, the Commission may without further notice to respondents, (1) issue its decision containing the following order 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 decision containing the agreed-to order to respondents' address as stated in this agreement shall constitute service. Respondents wave any right they might 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 in the agreement may be used to vary or to contradict the terms of the order.

9. Respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

It is ordered, That Lone Star Industries, Inc. ("Lone Star") and Keystone Portland Cement Company ("Keystone") shall forthwith provide evidence that the acquisition agreement between them has been and is terminated and further, that any and all non-public documents provided by either Lone Star or Keystone to the other in connection with the acquisition agreement be returned. This paragraph shall not relieve any party from any obligation of confidentiality imposed by agreement between them or by operation of law.

II.

It is further ordered, That until December 31, 1981 neither Lone Star nor Keystone shall acquire, directly or indirectly, all or any part of the assets (except in the ordinary course of business), or securities of the other until sixty (60) days following the receipt by the Director of the Bureau of Competition of the Federal Trade Commission of written notice of the proposed acquisition, which notice shall specifically refer to this order. If during the first thirty (30) days of the aforesaid sixty (60) day period, the Commission staff has issued any discovery request (including requests for the production of documents or witnesses) to either Lone Star or Keystone to which a complete response has not been made on or before the fiftieth (50th) day of the aforesaid sixty (60) day period, then the proposed acquisition shall not be consummated until ten (10) days after a complete response to such discovery request has been made. Neither the aforesaid sixty (60) day period nor the discovery provisions of this paragraph are in derogation of any of the rights conferred upon the Commission by statute or rule, and shall not be construed as supplanting any of these rights.

III.

It is further ordered, That Lone Star and Keystone each shall notify the Commission at least thirty (30) days prior to any proposed corporate change such as dissolution, assignment, or sale

resulting in the emergence of a successor corporation, the creation or disolution of subsidiaries or any other change, which may affect compliance obligations arising out of this order.

IV.

It is further ordered, That Lone Star and Keystone each shall, within sixty (60) days after service upon it of this order file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Lone Star Industries, Inc. and Keystone Portland Cement Company.

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 orders.

The complaint alleged that the acquisition of Keystone Portland Cement Company by Lone Star Industries, Inc. would violate Section 7 of the Clayton act and Section 5 of the Federal Trade Commission Act. Immediately after the complaint was issued the respondents abandoned their plans to merge and agreed to enter into a consent order with the Federal Trade Commission.

The proposed consent order requires that formal notice be given that the merger has been terminated; it requires the return of all non-public documents which may have been exchanged; and it also ensures, in the event that respondents resume their merger plans before December 31, 1981, that the Commission will be given sixty (60) days' advance notice and afforded liberal discovery rights.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Carol M. Thomas,

Secretary.

[FR Doc. 79-18187 Filed 6-11-79; 8:45 am]

BILLING CODE 6750-01-M

[16 CFR Part 13]

[Docket No. C-2884]

Diners Club, Inc., et al.; Consent Agreement With Analysis To Aid Public Comment

Correction

In FR Doc. 79-16962, appearing at page 31200 in the issue of Thursday, May 31, 1979, make the following changes:

1. On page 31202, third column, last paragraph, in the sixteenth and seventeenth lines, the words "with the terms of which this amended order has been issued." should be deleted and in the twentieth line the word "of" should read "or".

2. On page 31203, first column, the fourteenth line should read, "thereafter been in full and continuous force and".

3. On page 31204, second column, the fifth, sixth, and seventh lines of paragraph "8." should be deleted.

BILLING CODE 1505-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[20 CFR Part 655]

Labor Certification Process for the Temporary Employment of Aliens in Agriculture: Adverse Effect Wage Rate for Colorado; Notice of Proposed Rulemaking

Correction

In FR Doc. 79-17393, appearing at page 32233 in the issue of Tuesday, June 5, 1979, the third line of paragraph "2." in the third column of page 32233 should read, "decision of INS. It is INS policy, however, as".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 173 and 189]

[Docket No. 78N-0208]

Hydrazine; Proposed Removal from Food Additive Use

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This is a proposal to amend the food additive regulations by deleting provisions for use of hydrazine in the preparation of steam intended to contact food and listing it as a substance prohibited from use in human food.

DATES: Comments by August 13, 1979. Final regulations based on this proposal will issue no later than October 10, 1979, and shall be effective upon publication.

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: John J. McAuliffe, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St., SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Section 173.310 provides for zero hydrazine in steam when used as a boiler water additive in the preparation of steam that will contact food. This limitation was established by considering the boiling point of hydrazine (109.7° C), its high reactivity with oxygen and organic matter, and its low use level (0.1 ppm in feedwater).

The petitioner for this regulation, Olin Corp., formerly Olin Mathieson Chemical Corp., has recently notified the Food and Drug Administration (FDA) that analytical data, based on improved methodology, indicate that hydrazine is present in steam when the feedwater contains hydrazine in the range of 0.05 to 0.10 ppm. It was recognized, however, that the method used by Olin Corp. to generate the latest information was not specific for hydrazine but rather measured most primary and secondary amine species. Subsequently, analyses of hydrazine treated boiler water and its steam condensate were conducted in FDA laboratories using a method more specific for hydrazine. These analyses have confirmed the presence of hydrazine in hydrazine treated boiler water and in its steam condensate.

The safety of hydrazine has been reviewed by international experts and discussed in a monograph published by the International Agency for Research on Cancer (IARC) in "IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Man," volume 4, pages 127-136. The IARC evaluation, which is based on several studies, reports that oral administration of hydrazine in mice has caused a high incidence of multiple pulmonary adenomas and adenocarcinomas as well as the development of hepatomas, hepatocarcinomas, and lung tumors. Studies using newborn mice, rats, and hamsters are also discussed. The IARC report concludes that "hydrazine salts have been shown to be carcinogenic in

mice after oral and intraperitoneal administration and in rats following oral administration." A copy of IARC's report has been placed on public display at the office of the Hearing Clerk (address above).

Having evaluated the available data, the agency concludes: (1) the IARC report demonstrates that hydrazine is a carcinogen in test animals; (2) recent analyses demonstrate the presence of hydrazine in hydrazine treated boiler water and in its steam condensate; and (3) there is a reasonable expectation that hydrazine would be present in food as a result of the use of hydrazine as an additive in the preparation of steam that will contact food, and it has not been shown that hydrazine would be absent in food when used as a boiler water additive in the preparation of steam that will contact food. Accordingly, under the provisions of section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act, and the proviso thereto known as the Delaney clause (21 U.S.C. 348(c)(3)(A)), its use as a food additive may no longer be approved, and this document proposes to amend the food additive regulations to delete provisions for use of hydrazine as a boiler water additive and to list hydrazine as a substance prohibited from use in human food. The agency expects to issue the final regulation prohibiting the use of hydrazine as a food additive no later than October 10, 1979, which shall be effective upon publication under section 409(e) of the act (21 U.S.C. 348(e)). Elsewhere in this issue of the **Federal Register**, the Commissioner is proposing to declare that any human drug containing hydrazine or hydrazine salts is a new drug and deemed to be misbranded within the meaning of sections 201(p) and 502 of the act (21 U.S.C. 321(p) and 352).

The FDA has not received any direct evidence to show that hydrazine is a human carcinogen. Additionally, only small amounts of hydrazine would be expected to be in boiler water from its permitted use and only a very small amount of hydrazine could be expected to migrate into food. Therefore, it appears that the potential risk to the public health is not sufficient to require removal from the market of food containing hydrazine or the issuance of a public warning against the use of these products. Consequently, the agency concludes that the public health would be adequately served by permitting the use of existing stocks of products containing hydrozine that were processed before the effective date of the final regulation but prohibiting any future use of hydrazine as a food additive.

The Commissioner 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.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371)) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Parts 173 and 189 of Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

173.310 [Amended]

1. In Part 173, § 173.310 *Boiler water additives* is amended by deleting the item "Hydrazine" from the substances listed in paragraph (d).

2. In part 189, Subpart C, by adding a new section to read as follows:

189.150 Hydrazine.

(a) Hydrazine is the chemical N_2H_4 [Chemical Abstracts Registry Service No. 302–01–2]. It is characterized as a colorless, fuming, corrosive, hygroscopic liquid, and it is not found in natural products at levels detectable by the offical methodology. It has been used as a boiler water additive.

(b) Food containing any added or detectable level of hydrazine is deemed to be adulterated in violation of the act based upon an order published in the **Federal Register** of August 13, 1979.

Interested persons may, on or before August 13, 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 the hours of 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 rule making 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 Drug Administration.

Dated: June 5, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79–18154 Filed 6–11–79; 8:45 am]

BILLING CODE 4110–03–M

[21 CFR Part 250]

[Docket No. 78–0384]

Hydrazine in Human Drug Products; Declaration of New Drug Status

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: This proposal would amend regulations to ensure that hydrazine or hydrazine salts are not present in human drug products. A monograph published by the International Agency for Research on Cancer indicates that hydrazine poses a risk of cancer in humans.

DATES: Comments by August 13, 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: Howard P. Muller, Jr., Bureau of Drugs (HFD–30), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5220.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) is proposing to declare that any human drug product containing hydrazine or hydrazine salts (as active or inactive ingredients, or in residual amounts) is a new drug and deemed to be misbranded withing the meaning of sections 201(p) and 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(p) and 352).

The safety of hydrazine has been reviewed by international experts and discussed in a monograph published by the International Agency for Research on Cancer (IARC) in "IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Man," volume 4, pages 127–136. The IARC evaluation, which is based on several studies, concludes that "hydrazine or hydrazine salts have been shown to be carcinogenic in mice after oral and intraperitoneal administration and in rats following oral administration." A

copy of IARC's report has been placed on public display at the office of the Hearing Clerk (address above).

The FDA has reviewed the IARC report and other available data. Although it does not contain direct evidence that hydrazine induces cancer in humans, the IARC report of positive findings of cancer in test animals indicates hydrazine poses a risk of cancer for humans. Experience has indicated that, with one or two possible exceptions, compounds that are carcinogenic in humans are also carcinogenic in one or more experimental animal bioassay systems. In addition, several compounds first detected as a carcinogen in experimental animals have later been found to cause human cancer. The clear demonstration that a compound is carcinogenic in experimental animals must, therefore, be taken as evidence that it has the potential for carcinogenesis in humans unless there is strong evidence to the contrary. The agency believes that the risk to humans of exposure to a substance in human drugs that has been shown to be an animal carcinogen is contrary to the public health unless the benefit of such exposure clearly outweighs the risk.

The FDA is not aware of any currently marketed human drug that contains hydrazine or hydrazine salts as an active or inactive ingredient. Hydrazine is, however, used as a boiler water additive in high-pressure boilers to prevent hydrogen hardening of boiler tubes. Any benefits attributed to the use of hydrazine as a boiler water additive are outweighed by the risk of cancer in humans, and it is in the interest of the public health to ensure that hydrazine is not present in human drug products. The agency is therefore proposing to determine that hydrazine in human drug products may cause such products to be injurious to health and is unwarranted.

Elsewhere in this issue of the **Federal Register**, the Commissioner is proposing to amend the food additive regulations to delete provisions for use of hydrazine as a boiler water additive in the preparation of steam that will contact food, and to list hydrazine as a substance prohibited from use in human food. The FDA is not aware of the extent to which hydrazine or its salts may be present in human drug products in residual amounts from its use during manufacture or as a byproduct from the synthesis of an ingredient in a human drug product. Also, the FDA is not aware of any drug manufacturers who use high-pressue boilers to generate steam that would contact drug products or drug product contact surfaces. If any drug manufacturers are using hydrazine in a manner that may result in the presence of residual amounts of hydrazine in human drug products, they are urged to comment on such use. Comments should provide the following data and information:

1. The feasibility of developing and implementing viable substitutes for hydrazine;

2. The levels of residual hydrazine found in human drug products and drug product contact surfaces; and

3. The results of efforts to decrease to the least possible level, or to eliminate completely, residual hydrazine by using alternative manufacturing techniques.

The agency will consider the need for further action if evidence is submitted that the risk of a minimum level of hydrazine cannot be avoided and the benefits of a particular drug outweigh the risk.

The FDA is currently reviewing those drug products that contain hydrazine derivatives to determine whether any action should be proposed regarding them.

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

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 301, 502, 505, 701(a), 52 Stat. 1042–1043, 1050–1055, as amended (21 U.S.C. 331, 352, 355, 371(a)) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Part 250 be amended in Subpart B by adding new § 250.112, to read as follows:

§ 250.112 Hydrazine, use in drug products.

(a) Studies evaluated by the International Agency for Research on Cancer have demonstrated that hydrazine causes cancer in mice after oral and intraperitoneal administration and in rats after oral administration.

(b) Any drug product containing hydrazine or hydrazine salts as active or inactive ingredients, or in residual amounts, is a new drug within the meaning of section 201(p) of the act and is misbranded and subject to regulatory action under sections 301, 502, and 505 of the act.

Interested persons may, on or before August 13, 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 the hours of 9 a.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: June 5, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-18152 Filed 6-11-79; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[21 CFR Part 1312]

Proposed Limitations on Imports of Narcotic Raw Materials

June 6, 1979.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Advanced Notice of Proposed Rulemaking on Narcotic Importation Policy.

SUMMARY: This advance notice of proposed rulemaking requests public comment on how the United States should implement a United Nations resolution urging importing countries to limit importation of narcotic raw materials to the traditional supply countries.

DATES: Written comments should be received on or before July 12, 1979.

ADDRESS: Send comments to: Administrator, Drug Enforcement Administration, U.S. Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Donald E. Miller, Chief Counsel, Drug Enforcement Administration, telephone (202) 633–1276.

SUPPLEMENTARY INFORMATION: Presently, there exists a worldwide surplus of narcotic raw materials. Predictions by the United Nations International Narcotics Control Board

indicate that unless substantial changes are made, by 1982 morphine manufacturing capacity will be approximately 50% in excess of morphine demand. In the face of present as well as projected future oversupply of narcotic raw materials, there is a disturbing trend toward the proliferation of nations that produce narcotic raw materials for export.

During its February 1979 session, the United Nations Commission on Narcotic Drugs (CND), recognized these problems and adopted Resolution 471 as follows:

Title—Maintenance of a world-wide balance between the supply of narcotic drugs and the legitimate demand for those drugs for medical and scientific purposes

The Economic and Social Council:

Recalling the relevant provisions of the Single Convention on Narcotic Drugs, 1961, to limit the cultivation, production, manufacture and use of narcotic drugs to an amount required for medical and scientific purposes,

Noting that in recent years there has been considerable stepping up of morphine producing capacity for export, leading to a situation of substantial overproduction of opiates,

Having considered the report of the International Narcotics Control Board for 1978 on the world requirements and supply of narcotic drugs for medical use,

Noting with serious concern the Board's assessment that unless there is a large and unforeseen increase in demand between 1978 and 1982, morphine manufacturing capacity will be, on average, fifty percent greater than requirements,

Recognizing that it is essential to bring about a proper balance between the global supply and demand,

Taking note of the continued reliance placed by world community on countries constituting the traditional sources of supply for its medical needs of opiate raw materials and the positive response of these countries in meeting the world requirements and their contribution in the maintenance of effective control systems;

Bearing in mind that the treaties which establish this system are based on the concept that the number of producers of narcotic materials for export should be limited in order to facilitate effective control;

1. Calls upon importing countries, insofar as their constitutions and legal authority permit, to support the traditional supply countries and give all practical assistance they can to avoid the proliferation of producing/manufacturing sources for export;

2. Urges the governments of major producing countries which have set up additional capacities in recent years to take effective measures to restrict their production programmes so as to restore a lasting balance between supply and demand and to prevent any diversion to illicit channels;

3. Requests the International Narcotics Control Board to continue its efforts to make realistic projections of supply and demand in opiates and continue its dialogue with the concerned governments to ensure that the provisions of the relevant conventions are strictly adhered to by manufacturing, producing, exporting and importing countries;

4. Requests the Secretary-General to transmit the text of the present resolution to all governments for their consideration and appropriate action.

The CND resolution was confirmed by the United Nations Economic and Social Council on April 19, 1979.

The reasons behind this resolution stem from a trend firmly established by the world producers of narcotic raw materials toward bypassing the opium gum stage and extracting alkaloids directly through the poppy straw process. Only India remains a commercial exporter of opium gum to the morphine manufacturing nations. As a supplement to imports of opium from India, many morphine manufacturing nations have increasingly relied on importation of poppy straw and its extract concentrate of poppy straw (CPS). This is a matter of concern since present international regulatory framework under the *Single Convention on Narcotic Drugs, 1961*, 18 UST 1407 (Single Convention), is based upon strict control over the production of opium poppies to produce opium and on the exportation of opium (Art. 21 bis, Art. 24). However, these stringent controls do not apply to the production of opium poppies to produce CPS and do not limit to specified countries the exportation of poppy straw and CPS. The CND recognized this dilemma and urged importing countries, "to support the traditional supply countries and give all practical assistance they can to avoid the proliferation of producing/manufacturing sources for export; * * *"

The United States is a significant importer of narcotic raw materials. Its manufacturers account for one-third of the world morphine manufacturing capacity most of which is consumed within the United States in the form of codeine. The worldwide over-production of narcotic raw materials and the CND resolution make it necessary for the United States to re-evaluate past and present narcotic policies.

Historically, the United States has relied exclusively upon imports of opium gum to manufacture our narcotic medical supplies instead of cultivating opium poppies in the United States. The rationale behind this 57 year old policy, which foregoes U.S. self-sufficiency was to set an example to the world community to refrain from overproduction and to limit the number of opium-producing nations to a minimum. However, with only India remaining an exporter of opium to morphine manufacturing nations, it is not feasible for the United States to rely solely upon opium to satisfy its increasing demand for narcotic alkaloids.

As a supplement to imports of opium from India, the United States has authorized since 1975 the importation of poppy straw and CPS on an emergency basis. Although the importation of poppy straw has not yet proven to be a viable alternative, the importation of CPS now accounts for about one-half of the morphine manufactured in the United States.

The United States has become an attractive CPS import market for exporting nations, some of which cultivate their own poppies for the production of CPS. This development has significantly altered prior U.S. policy of importing only from traditional sources that produce opium for export, a limitation which has proven to be effective over the years. Through support of the CND resolution which requests importing countries to support traditional supply countries, the United States can contribute substantially to reducing the proliferation of countries that produce narcotic raw materials for export. Therefore, in coordination with the Department of State, and other concerned offices, the Drug Enforcement Administration is considering the following four point policy to implement the CND resolution:

U.S. Importation of Narcotic Raw Materials

1. Authorize imports of *Papaver somniferum* gum opium only from a country that during ten years immediately prior to January 1, 1961, exported opium which it produced, and has instituted and maintained adequate control systems for narcotic raw materials as required under the Single Convention.

2. Authorize imports of *Papaver somniferum* poppy straw only from a country that qualifies as a producer of opium for export in point 1, and has

instituted and maintained adequate control systems for narcotic raw materials as required under the Single Convention.

3. Authorize imports of *Papaver somniferum* concentrate of poppy straw (CPS) only if the CPS is produced from *Papaver somniferum* poppy straw grown in a country qualifying as a producer of opium for export under point 1, and only if that country has instituted and maintained adequate control systems for narcotic raw materials as required under the Single Convention.

4. Authorize exceptions to the above provisions as necessary in order to honor contracts of U.S. companies signed prior to January 1, 1979, or in order to ensure importation of sufficient supplies of narcotic raw materials at reasonable prices.

Until final resolution of United States policy in this matter, the Drug Enforcement Administration will hold in abeyance any application for a permit to import narcotic raw materials from any country that has not supplied commerical quantities of such materials to the United States in the past.

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

[FR Doc. 79-18186 Filed 6-11-79; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[24 CFR Part 2205]

[Docket No. R-79-676]

General Insurance Requirements

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of Transmittal of Proposed Rule to Congress under Section 7(o) of the Department of HUD Act.

SUMMARY: Recently enacted legislation authorizes Congress to review certain HUD rules for fifteen (15) calendar days of continuous session of Congress prior to each such rule's publication in the **Federal Register.** This Notice lists and summarizes for public information a rule which the Secretary is submitting to Congress for such review.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 7th Street, SW., Washington, D.C. 20410, (202) 755-6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairmen and Ranking Minority Members of both the Senate Banking, Housing and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the rulemaking document described below:

24 CFR Part 2205—Subpart J—General Insurance Requirements

This proposed rule would amend 24 CFR Part 2205 by redesignating existing Subpart F as new Subpart J; clarifying FDAA policy relating to treatment of delinquent insurance policies and requirements for treatment of delinquent insurance policies and requirements for flood insurance on buildings located outside of the base floodplain; adding provisions to permit the Regional Director to make determinations as to insurance requirements under certain conditions; and basing insurance requirements on eligible restorative work rather than on full insurable value.

(Sec. 7(o), Department of HUD Act (42 U.S.C. 3535(o)), sec. 324 of the Housing and Community Development Amendments of 1978).

Issued at Washington, D.C., June 5, 1979.

Jay Janis,

Acting Secretary, Department of Housing and Urban Development.

[FR Doc. 79-18156 Filed 6-11-79; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF LABOR

[29 CFR Part 92]

Redwood Employee Protection Program

AGENCY: Department of Labor.

ACTION: Proposed Regulations.

SUMMARY: The Department of Labor, through the Labor-Management Services Administration (LMSA), is proposing regulations to implement the Redwood Employee Protection Program established by Title II of the Redwood National Park Expansion Act of 1978 (Pub. L. 95-250). Under the proposed regulations, LMSA has responsibility for all provisions concerning affected employee benefits, including benefit amounts, determining eligibility for benefits, extent of relocation, reemployment and training assistance and job preference for certain employment. The citations included refer the reader to the appropriate statutory provision.

DATE: Written comments on these regulations must be received by the Department on or before August 16, 1979.

ADDRESS: All written comments (six copies) should be submitted to: Redwood Employee Protection Program, Division of Employee Protections, Room N-5646, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Paul F. Pothin of the department at (202) 523-6495. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On October 2, 1968, Congress established a 58,000 acre Redwood National Park in the State of California. Over the ensuing decade a considerable controversy developed over whether the Park's size was adequate to assure that certain key areas of the Park were protected from possible damage by upstream timbering. This debate was resolved on March 27, 1978, with the passage of Pub. L. 95-250, which provided for an addition of 48,000 acres to the Park. Under Title I of the Act, employees whose jobs were lost as a result of this Park expansion were designated to receive preference in hiring for both Federal civilian jobs and jobs with certain private employers. In addition, under Title II of the Act, these employees were provided with a program of income and benefit maintenance, and with retraining, job search, and job relocation allowances.

The Department of Labor proposes these regulations to describe (1) the eligibility requirements an individual must meet in order to qualify for benefits; (2) the level of benefits; (3) the procedures an individual msut follow to claim benefits; (4) the rights of an individual to appeal a decision of an application for benefits; and (5) certain other basic information concerning individual responsibilities and program requirements.

Accordingly, it is proposed to add a new Part 92, as set forth below. (Secretary of Labor Order No. 6-78, May 15, 1978.)

Signed at Washington, D.C., this 6th day of June 1979.

R. C. DeMarco,

Acting Assistant Secretary for Labor-Management Relations.

PART 92—REDWOOD EMPLOYEE PROTECTION PROGRAM

Subpart A—General

Sec.

92.1 Purpose and scope.

92.2 Terms relating to administration.

92.3 Terms relating to employees.

Authority Sections 202 and 213(c)(2), PL 95–250, dated March 27, 1978.

Subpart A—General

§ 92.1 Purpose and scope.

(a) *Implementation.* The regulations contained in this chapter are designed to implement Section 103(d) through (i) of Title I, and Title II of the Redwood National Park Act of 1968, as amended by Pub. L. 95–250 enacted March 27, 1978.

(b) *Application for benefits.* These regulations pertain to applications by individuals for Redwood Employee Protection Program (REPP) benefits such as: weekly layoff benefits, severance payments, vacation replacement benefits, retraining, job search allowances, and job relocation allowances. Applications for such benefits will be administered by the California Employment Development Department (EDD) with the assistance and cooperation of other State employment security agencies (SESAs). Applications by individuals for continuing entitlement to health and welfare benefits and accrual of pension rights and credits will be administered by the Labor-Management Services Administration (LMSA) of the United States Department of Labor.

Special Considerations

(c) *Conclusive presumption.* The total or partial layoff of a covered employee employed by an affected employer during the period beginning May 31, 1977 and ending September 30, 1980, is conclusively presumed to be attributable to the expansion of the Redwood National Park (Section 203, Pub. L. 95–250, 92 Stat. 175). No such presumption exists, however, if such employee has been laid off or terminated for a cause that would disqualify him/her for unemployment compensation with certain limited exceptions. The exceptions are listed in § 92.20(b)(5) (i) through (viii) herein.

(d) *Interpretation of Title II.* In implementing and interpreting Title II of the Act, the Secretary shall avoid inequities adverse to employees. In all cases where two or more interpretations of Title II of the Act would be reasonable, the Secretary shall adopt and apply that interpretation which is most favorable to employees (Section 213(f), Pub. L. 95–250, 92 Stat. 182).

§ 92.2 Terms relating to administration.

"Act" means the Redwood National Park Act of 1968 as amended by Pub. L. 95–250.

"ALJ" means an Administrative Law Judge of the California Unemployment Insurance Appeals Board.

"Applicant" means an individual who has made an application for REPP benefits under the Act.

"Assistant Secretary" means the Assistant Secretary of Labor for Labor-Management Relations, unless otherwise indicated.

"Benefits" means weekly layoff benefits, severance payments, vacation replacement payments for seasonal employees, retraining, job search allowances, job relocation allowances, and continuing entitlement to health and welfare benefits and accrual of pension rights and credits.

"CUIAB" means the California Unemployment Insurance Appeals Board.

"Days" means calendar days.

"EDD" means the California Employment Development Department.

"ETA" means the Employment and Training Administration of the U.S. Department of Labor.

"LMSA" means the Labor-Management Services Administration of the U.S. Department of Labor.

"REPP" means the Redwood Employee Protection Program.

"Referee" means an administrative law judge or any other designee who is empowered to act as the first level appellate authority for the EDD.

"SESA" means a State employment security agency.

"Secretary" means the Secretary of Labor.

"Severance payment" means a lump sum payment in lieu of other benefits to an affected employee or a retired employee (Section 208, Pub. L. 95–250, 92 Stat. 179).

"Vacation replacement benefit" means a payment to a seasonal employee which is equivalent to the payment the seasonal employee would have received for vacation pay had the individual remained employed in his/her seasonal occupation (Section 207(c)(3), Pub. L. 95–250, 92 Stat. 178).

"Weekly layoff benefit" means a weekly payment to an affected employee (other than a short-service employee) which is an amount equivalent to the level of weekly earnings he/she would be receiving if still working for his/her last affected employer (Section 207(a), Pub. L. 95–250, 92 Stat. 178).

§ 92.3 Terms relating to employees.

(a) *Employee.* "Employee" means any person employed by an affected employer with the exception of those persons who are engaged in managerial functions or functions directly auxiliary to management as described in Section 13(a)(1) of the Fair Labor Standards Act (Section 201(3), Pub. L. 95–250, 92 Stat. 172).

(b) *Covered employee* means an employee who:

(1) Had seniority under a collective bargaining agreement with an affected employer as of May 31, 1977, has at least twelve months of creditable service as of March 27, 1978, and has performed work (as defined in Section 201(17) of the Act) for one or more affected employers on or after January 1, 1977, or

(2) Has performed work for one or more affected employers for at least 1,000 hours from January 1, 1977 through March 27, 1978 and had a continuing employment relationship with an affected employer as of March 27, 1978, or if laid off on or after May 31, 1977 but before March 27, 1978 had such a relationship as of the date of layoff

(Section 201(10), Pub. L. 95–250, 92 Stat. 173).

(c) *Affected employee* means a covered employee who: (1) has been either totally or partially laid off by an affected employer within a time period beginning on or after May 31, 1977 and ending September 30, 1980, unless extended by the Secretary; or (2) has been specifically designated by a the Secretary; or (2) has been specifically designated by the Secretary as an individual adversely affected by the expansion of the Redwood National Park (Section 201(11), Pub. L. 95–250, 92 Stat. 173).

Special Classes of Employees

§ 92.4 Short-service employee.

(a) *Definition.* "Short-service employee" means an affected employee who:

(1) Will not reach age sixty before October 1, 1984; and

(2) As of the date of becoming an affected employee, has less than five full years of service credit under a pension plan contributed to by industry employers or has less than five full years of creditable service (Section 209, Pub. L. 95–250, 92 Stat. 180).

(b) *Weekly layoff and vacation replacement benefit.* A short-service employee shall not be eligible to receive weekly layoff or vacation replacement benefits.

(c) *Severance payment.* A short-service employee shall be eligible to receive a severance payment provided he/she meets the eligiblity requirements set forth in § 92.23 (b) or (c).

(d) *Retraining, job search and relocation allowances.* A short-service employee shall be eligible for retraining, job search allowances, and job relocation allowance, beginning on the date of his/her total layoff and extending through a period equal to the length of his/her creditable service. While in good faith engaged in training a short-service employee shall be paid the same stipends and allowances as are applicable to other individuals engaged in such training programs who are not covered by this Act.

(e) *Health and Welfare and pension benefits.* A short-service employee shall not have continuing entitlement to health and welfare benefits or accrual of pension rights and credits.

§ 92.5 Seasonal employee.

(a) *Definition.* "Seasonal employee" means an affected employee (including a short-service employee) whose highest paid job held, other than by temporary assignment, with one or more affected employers during the period from January 1, 1977 through March 27, 1978, ws in an occupation in which the average annual number of weeks during which work was actually performed by all covered employees employed in such occupation during the five calendar years preceeding March 27, 1978 was forty or less weeks (Section 207(c), Pub. L. 95–250, 92 Stat. 178).

A seasonal employee (other than a short-service employee) shall be eligible to receive weekly layoff and vacation replacement benefits during his/her usual season. A seasonal employee may elect to receive a severance payment in lieu of weekly layoff and vacation replacement benefits. In addition, he/she shall be eligible for retraining, job search allowances, and a job relocation allowance, during his/her period of protection, and for continuing entitlement to health and welfare benefits and to accrual of pension rights and credits.

§ 92.6 Retired employee.

(a) *Definition.* "Retired employee" means an employee who retired from employment with an affected employer, for reasons other than disability, on or after May 31, 1977 but not later than September 30, 1984 (Section 204(b)(1), Pub. L. 95–250, 92 Stat. 176). In order to be eligible for REPP benefits such employee must:

(1) be receiving pension benefits under a plan financed by an industry employer; and

(2) be at least 62 but less than 65 at the time of retirement; and

(3) not be eligible for benefits under Title XVIII of the Social Security Act (Medicare).

(b) *Weekly layoff and vacation replacement benefits.* A retired employee shall not be eligible to receive a weekly layoff or vacation benefit.

(c) *Severance payment.* An employee retiring early (between age 62 and age 65) who meets the other criteria set forth in § 92.6(a) ahsll be eligible to receive a severance payment upon presentation of evidence that he/she is retired on a plan financed by an industry employer (Section 204(b)(1)(2)(3), Pub. L. 95–250, 92 Stat. 176).

(d) *Retraining, job search and relocation allowances.* A retired employee shall not be eligible for retraining, job search allowances, and a job relocation allowance.

(e) Health and welfare benefits. A retired employee shall have continuing entitlement to health and welfare benefits (other than group life insurance and additional death, dismemberment and loss of sight benefits) if the employee lost entitlement to such benefits upon retirement.

§ 92.7 Contract employee.

(a) *Definition.* "contract employee" means an employee performing work pursuant to a contract or agreement for services within or directly related to the expansion area between an affected contract employer and an affected woods employer (Section 201(4), Pub. L. 95–250, 92 Stat. 172).

(b) *Limited number.* The number of contract employees who may be eligible for REPP benefits is limited. The determination by LMSA as to how many contract employees may become eligible for REPP benefits is calculated as follows: First determine what percent of the affected contract employer's employee hours were worked within or directly related to the expansion area in 1977. Then apply (multiply) that percent times the total of all employees on the contract employer's 1977 payroll. The product of this calculation becomes the number of that contract employer's employees who may receive REPP benefits. In order to assure benefits will be allocated to employees based upon priority of submission of claim, the date and time of application shall be recorded when such employees make application. For example, 40% of an employer's employee hours in 1977 were worked in expansion area. The employer had 175 total contract employees on the company's payroll in 1977. 175 multiplied by .40 equals 70; 70 employees would thereby be eligible for benefits.

§ 92.8 Terms relating to employers.

(a) *Industry employer.* "Industry employer" means a corporation, partnership, joint venture, person, or other form of business entity (including a predecessor or successor by purchase, merger, or other form of acquisition), of which a working portion or division is an affected employer (Section 201(5), Pub. L. 95–250, 92 Stat. 172).

(b) *Affected employer.* "Affected employer" means a corporation, partnership, joint venture, person, or other form of business entity (including a predecessor or a successor by purchase, merger, or other form of acquisition), or a working portion or division thereof, which is engaged in the harvest of timber or in related sawmill, plywood, or other wood processing operations, and which meets the qualifications set forth in the definition of affected woods employer, affected mill employer, or affected contract employer. For purposes of this Act, the Assistant Secretary shall detemine an

employer's status and shall provide a list of employers who qualify as affected employers (Section 201(6), Pub. L. 95–250, 92 Stat. 172).

(c) *Affected woods employer.* "Affected woods employer" means an affected employer engaged in the harvest of redwood timber who owns at least 3 per centum of the number of acres authorized to be included within the expansion area on January 1, 1977 and on March 27, 1978; provided, that an affected woods employer shall be only that major portion or divison of the industry employer directly responsible for such harvesting operations (Section 201(7), Pub. L. 95–250, 92 Stat. 172).

(d) *Affected mill employer.* "Affected mill employer" means an affected employer engaged in sawmill, plywood, or other wood processing operations in Humboldt or Del Norte Counties in the State of California who has either (1) obtained 15 per centum or more of its raw wood materials directly from affected woods employers during calendar year 1977, or (2) is a wholly owned mill of an affected woods employer; provided, that an affected mill employer shall be only that major portion or division of the industry employer directly responsible for such wood processing operations (Section 201(8), Pub. L. 95–250, 92 Stat. 173).

(e) *Affected contract employer.* "Affected contract employer" means an affected employer providing services pursuant to contract with an affected woods employer, if at least 15 per centum of said employer's employee-hours worked during calendar year 1977 were within or directly related to the expansion area pursuant to such contract or contracts (Section 201(9), Pub. L. 95–250, 92 Stat. 173).

(f) *Last affected employer.* "Last affected employer" means the affected employer by whom an affected employee was first laid off (totally or partially), terminated, or downgraded on or after May 31, 1977 but not later than September 30, 1980 (Section 206(b)(1), Pub. L. 95–250, 92 Stat. 179).

(g) *Performed work.* "Performed work" shall include any time during which an employee worked for an affected employer or with respect to which an employee received pay from such an employer for time not worked, and shall also include any time during which an employee would have been at work for such an employer if not for service in the armed forces, for a leave (approved by the employer) for work with an employee organization, or for a disability for which said employee received workers' compensation, disability compensation benefits provided under California law, or social security disability pension benefits: *Provided,* That contract employees shall be deemed to have performed work during the period of such service or disability only if—

(i) the employee worked within or directly related to the expansion area immediately prior to the occurrence of such service or disability and

(ii) the employee returned or sought to return to work for an affected contract employer immediately after the end of the service or disability if that was prior to the date of enactment.

The term "work performed", when used in relation to a period of time, shall also be deemed to include any period during which an employee is deemed to have performed work (Section 201(17), Pub. L. 95–250, 92 Stat. 174).

§ 92.9 Terms relating to employment.

(a) *Commuting area.* "Commuting area" means an area, for purposes of suitable work, within the commuting distance of an individual's place of residence. It is determined in accordance with policy established under California State law. However, for the purposes of a job relocation allowance, commuting area shall mean a work location which is within 30 or less normal highway miles of an affected employee's place of residence.

(b) *Continuing employment relationship.* "Continuing employment relationship" means that an employee has worked for an affected employer on a regular basis. Authorized absences are not considered a break in a continuing employment relationship. Summer or vacation relief employees or other temporary employee replacements are not considered to have a continuing employment relationship.

(c) *Continuous service.* "Continuous service" with respect to employees not having seniority under a collective-bargaining agreement with an affected employer or an industry employer shall mean a period of time measured in months equal to the sum of all hours during which the employee performed work for said employer plus all hours for which the employee received pay for time not worked divided by one hundred and seventy-three (Section 201(16), Pub. L. 95–250, 92 Stat. 174).

For example, an employee worked 1,367 hours in 1976, 1,824 hours in 1977, and 2,172 hours in 1978. The employee is then laid off. Add: 1,367 + 1,824 + 2,172 for a sum of 5,363; divide this sum (5,363) by 173; the result is then 31 months of continuous service.

(d) *Creditable service.* "Creditable service" means an affected employee's total length of service working for affected or industry employers. Creditable service when used to determine an employee's period of protection shall be computed as follows:

(1) A period equal to the length of an employee's seniority (or continuous service), with the employee's last affected employer at the time said employee is eligible to receive a weekly layoff benefit or vacation replacement benefit; plus

(2) a period equal to the sum of all prior periods during which the employee had seniority (or continuous service) with the same affected employer and with other industry employers.

However, if such seniority (or continuous service) was broken for more than three consecutive years, and periods of seniority (or continuous service) prior to the break shall be disregarded and shall not be counted as creditable service. Creditable service shall not be considered as broken if the cause for the break in service was one of the following:

(i) Employment with other affected employers or industry employers; or

(ii) Service in the Armed Forces; or

(iii) Disabilities for which the employee received any workers' compensation benefits; unemployment compensation disability benefits; or disability benefits under the Social Security Act.

Creditable service shall include only those periods of employment with his/her last affected employer and other industry employers (Section 206, Pub. L. 95–250, 92 Stat. 177). If necessary EDD will request the appropriate authorization to examine an applicant's social security wage record in order to establish an applicant's creditable service.

(e) *In the industry.* "In the industry" means employment with affected employers or, in general, with any employer whose Standard Industrial Classification (SIC) number is in the four digit Group No. 2411 (Logging Camps and Logging Contractors), 2421 (Sawmills and Planning Mills, General), 2435 and 2436 (Hardwood and Softwood, Veneer and Plywood), 2492 (Particle Board) or 2611 (Pulp Mills), or with an employer engaged in related types of activities that are "sawmill", "plywood", or other "wood processing operations" within the meaning of Title II.

(f) *Partial layoff.* "Partial layoff" or downgrading means a calendar week for which all pay received by a covered employee from affected employers is at least 10 per centum less than the weekly layoff benefit or vacation replacement

benefit that would have been payable for that week had the employee suffered a total layoff (Section 201(12), Pub. L. 95–250, 92 Stat. 173).

(g) *Period of protection.* "Period of protection" means a period of time equal to the length of an affected employee's creditable service during which period an affected employee is entitled to weekly layoff benefits or vacation replacement benefits and to continuation of health and welfare benefits and accrual of pension rights and credits. An employee's period of protection shall start with the beginning of the first week for which the employee is eligible to receive a weekly layoff benefit or vacation replacement benefit and shall continue until the earliest of:

(1) The date the employee accepts a severance payment;

(2) A period equal to the length of the employee's creditable service is exhausted; or

(3) The employee's sixty-fifth birthday.

In no event shall an employee's period of protection extend beyond September 30, 1984, except for an employee who reaches age 60 on or before September 30, 1984, in which case the employee's period of protection shall be extended until his/her 65th birthday (Section 206(a), Pub. L. 95–250, 92 Stat. 177).

(h) *Seniority.* "Seniority" with respect to an employee covered by a collective-bargaining agreement with an affected employer, shall be determined as provided in such agreement and shall be deemed to refer to company seniority, if the agreement provides for such seniority and, otherwise, to plant seniority (Section 201(15), Pub. L. 95–250, 92 Stat. 174).

(i) *Sixty-fifth birthday.* "Sixty-fifth birthday" means the last day of the month in which the sixty-fifth birthday occurs (Section 202, Pub. L. 95–250, 92 Stat. 175).

(j) *State job service.* "State job service" means that agency of the state government which performs the employment service functions.

(k) *Suitable work.* "Suitable work" means:

(1) Work defined as suitable in the California Unemployment Insurance Code; and

(2) With respect to an employee who has completed retraining paid for by the Secretary, a job paying no less than the prevailing wage rate in the area for the occupation for which said employee was retrained; or

(3) A job comparable with that which said employee would be required to accept pursuant to the seniority provisions of the applicable collective-bargaining agreement (or, if not covered by such an agreement, in accordance with the usual practice of the affected employer) (Section 201 (14), Pub. L. 95–250, 92 Stat. 173).

(l) *Total layoff.* "Total layoff" means a calendar week during which an affected employer has made no work available to a covered employee and has made no payment to a covered employee for the time not worked (Section 201(12), Pub. L. 95–250, 92 Stat. 173).

(m) *Usual season.* "Usual season" means those weeks commencing in each calendar year during which a seasonal employee is usually employed by an affected employer.

In the event of ambiguity of definition or meaning the express terms of the statute shall prevail.

Subpart B—Application for Benefits

§ 92.10 Who may apply.

(a) *Application.* An application for REPP benefits may be filed by a covered employee or a retired employee.

§ 92.10 When to apply.

(a) *Filing after layoff.* An initial application for REPP benefits by a covered employee may be filed with respect to a total or partial layoff by an affected employer which occurred on or after May 31, 1977 but not later than September 30, 1980, unless this date is extended by the Secretary.

(b) *Filing after retirement.* An initial application for REPP benefits by a retired employee may be filed with respect to the employee's retirement from employment with an affected employer on or after May 31, 1977, but not later than September 30, 1984.

§ 92.12 How to apply.

(a) *Application for unemployment compensation.* An application for unemployment compensation filed by a covered employee with the Employment Development Department or State Employment Security Agency (SESA) on or after April 3, 1978 shall be deemed an application for REPP benefits (Section 205(a), Pub. L. 95–250, 92 Stat. 176).

(b) *Eureka, Crescent City, and Redding field offices.* An initial application for REPP benefits may be filed directly in either the Eureka, Crescent City, or Redding, California field offices of the EDD.

(c) *Other EDD field offices.* An initial application for REPP benefits may also be filed at any other field office of the EDD.

(d) *SESA.* Persons residing outside of California may file an initial application for REPP benefits at their nearest local office of the SESA under special interstate procedures.

§ 92.13 Certified lists of employers.

(a) *Names of employers.* The Assistant Secretary shall publish and make available to the EDD Central Office and SESA offices certified lists containing the names of:

(1) industry employers;

(2) affected employers;

(3) affected contract employers (including the maximum number of contract employees who can become eligible for REPP benefits); and

(4) those local employers who have been determined not to qualify as affected employers.

(b) *Updating.* These lists were established originally based upon early survey information. Since all of the eligible affected employers may not have been identified, these lists are subject to challenge at any time to review the eligibility of any given employer.

§ 92.14 Processing applications.

EDD determinations. The EDD shall process all applications to determine whether an applicant is entitled to REPP benefits and the types and amounts of such benefits pursuant to policies, criteria, and standards set forth in these regulations.

Subpart C—Types of Benefits

§ 92.20 General.

This section discusses the types of benefits available under REPP. The amount of such benefits is discussed in Subpart D.

§ 92.21 Weekly layoff benefits.

(a) *EDD determination of entitlement.* The EDD shall determine the applicant's entitlement to weekly layoff benefits based upon the applicant's statement and other pertinent records.

(b) *Applicant eligibility.* To be eligible with respect to any week an applicant must:

(1) Have been determined to be an affected employee other than a short-service employee;

(2) Not be a retired employee;

(3) Not be receiving a Social Security retirement or disability benefit or a pension under a plan contributed to by an affected employer;

(4) Be registered with the State Job Service of the EDD or other SESA (unless the applicant is fully employed);

(5) Not have accepted a severance payment;

(6) Not have exhausted his/her period of protection; and

(7) Be eligible for unemployment compensation benefits under the California Unemployment Insurance Code; provided, however, he/she shall be eligible for weekly layoff benefits if the sole reason for ineligibility under the code is one or more of the following:

(i) Insufficient base period earnings; or

(ii) Exhaustion of benefit rights; or

(iii) Earnings in excess of the amount which would entitle the employee to a partial benefit for the week; or

(iv) The waiting week requirement; or

(v) Unavailability for work because of jury duty, National Guard duty, authorized retraining, or because of similar reason as determined by the Secretary pursuant to Section 201(14) of the Act; or

(vi) Refusal of work which is not "suitable work"; or

(vii) Receipt of workers' compensation or other benefit for partial disability which the employee would be entitled to receive while working; or

(viii) Any other cause of ineligibility with respect to which the Secretary determines that, under the circumstances, it would be unreasonable or otherwise contrary to the purpose of this Act to deny said employee a benefit provided for in the Act.

§ 92.22 Vacation replacement benefits.

(a) *EDD determination of entitlement.* The EDD shall determine the applicant's entitlement to vacation replacement benefits based upon the applicant's statement and other pertinent records.

(b) *Applicant eligibility.* Only seasonal employees will be eligible for a vacation replacement benefit. To be eligible the employee must meet the same eligibility criteria required for weekly layoff benefits.

§ 92.23 Health and welfare benefits; pension rights and credits.

(a) *Continuing entitlement.* Affected employees, other than short-service employees, have continuing entitlement to health and welfare benefits and accrual of pension rights and credits. The Assistant Secretary shall seek to enter into agreements with affected employees, affected employers, plan trustees, labor organizations, and/or others to maintain these benefits and rights.

(b) *Methods of continuation.* Continuation of coverage may be provided by:

(1) An employee's existing plan with his/her last affected employer; or

(2) An arrangement between the Assistant Secretary and others to provide equivalent coverage to the maximum extent feasible.

(c) *Selection of method.* The Assistant Secretary shall have the sole authority to select the appropriate method for benefit plan continuation.

(d) *Exemption from ERISA liability.* No person shall be subject to liability under the Employee Retirement Income Security Act of 1974, Section 302 of the Labor-Management Relations Act of 1947, or any other law, solely by reason of the receipt of payments from the Secretary or the payment of benefits to affected employees in accordance with this Section. Receipt of such payments and the payment of such benefits are deemed to be consistent with any relevant plan documents. None of these actions shall place the Secretary in the position of an employer or a party in interest (including a fiduciary) for purposes of the Employees' Retirement Income Security Act of 1974 (Section 204(d), Pub. L. 95–250, 92 Stat. 176).

(e) *Level of coverage.* If the last affected employer's health and welfare or pension benefit levels change during an employee's period of protection, the employee's benefits shall be changed so as to provide a level of benefit comparable to that which he/she would otherwise have received except for his/her current status as an affected employee.

(f) *Responsibility of affected and retired employees.* Affected and retired employees must retain medical records in order to substantiate claims for reimbursement.

(g) *Retired employee's entitlement.* A retired employee's continuing entitlement is contained in § 92.6(e).

§ 92.24 Severance payment.

(a) *EDD determination of entitlement.* The EDD shall determine the applicant's entitlement to a severance payment based upon the applicant's statement and other pertinent records.

(b) *Applicant eligibility.* To be eligible an applicant must meet the basic eligibility requirements of an affected employee or retired employee and must:

(1) (i) Have been on continuous layoff from employment with the employee's last affected employer for a period of at least 20 weeks subsequent to December 31, 1977; provided, that for a short-service seasonal employee the period of continuous layoff will not be considered broken by the employee's off season although off season weeks will not count toward the 20 weeks of layoff; and

(ii) Have no definite recall date for work with the affected employer by whom the employee was laid off and no offer of suitable work by any affected employer; and

(iii) Apply for severance payment during a week with respect to which the employee has not performed work for an affected employer; *or*

(2) If not (b)(1) (i) (ii) and (iii) of this section, then, have been permanently separated from employment with an affected employer during the period beginning May 31, 1977 and ending March 27, 1978, as a result of the closure of the mill or plant in which said employee was employed and, since said separation, have not been employed by an affected employer (Section 208(a) (1) (2) (3) (4), Pub. L. 95–250, 92 Stat. 179).

(c) *Disabled employee's eligibility.* An employee shall not be denied a severance payment for failure to comply with the requirements of paragraph (b)(1)(iii) of this section if the employee is otherwise eligible but is totally and permanently disabled as defined in the Social Security Act (Section 208(a)(3), Pub. L. 95–250, 92 Stat. 179).

(d) *Repayment agreement requirement.* An affected employee (other than a short-service employee) or a retired employee must, as a condition of receiving a severance payment, sign a repayment agreement pledging to return a severance payment if said affected employee or retired employee resumes employment with an affected employer or resumes employment in the industry within Humboldt, Del Norte, Trinity, Mendicino, or Siskiyou Counties in California prior to October 1, 1980, or such later date as established by the Secretary (Section 208(e), Pub. L. 95–250, 92 Stat. 180).

(e) *Repayment agreement liability.* An affected employee or a retired employee who signs a repayment agreement shall be liable for repayment of a severance payment if the individual returns to work in the industry prior to September 30, 1980 (or such later date as the Secretary determines but in no case later than September 30, 1984). All earnings received by an individual who has returned to the industry prior to September 30, 1980 (or as extended) shall be subject to a repayment deduction.

(f) *Arrangements for repayment.* The repayment agreement shall include the employee's agreement to arrange with his/her employer for the withholding of the applicable amounts from the employee's pay and/or shall further include authorization for the Secretary to make such arrangements with the employer.

(g) *Repayment amounts.* Repayment amounts shall be in weekly installments equal to a specified percentage of the

employee's earnings in the industry which shall not exceed the amounts specified in the Consumer Credit Protection Act, as amended. Repayment shall continue until the full amount of overpayment is recovered.

§ 92.25 Retraining (Section 210, Public Law 95-250, 92 Stat. 181).

(a) *EDD approval.* The EDD shall approve technical and professional and other types of training for an affected employee (including a short-service employee) until September 30, 1984, provided:

(1) There is no suitable work available within a reasonable commuting area. For the purpose of this section, suitable work shall include any full consideration job vacancy (see Section 92.42(b)) which EDD determines the applicant can be trained for; and

(2) There is substantial reason to believe that successful completion of training will enhance the affected employee's employment prospects; and

(3) The affected employee makes application and can complete the training during the employee's period of protection. However, a short-service employee must make application during the period which begins on the date of his/her total layoff and extends for that period of time which is equal to the length of his/her creditable service. In no instance shall authorized training for any employee extend beyond September 30, 1984.

(b) *Training criteria.* The EDD shall determine the applicant's ability to successfully complete such training, the appropriateness of the length of training, the hours of attendance, and whether the training facility and the trainee are engaged in training in good faith. Training costs as well as the weekly layoff benefits or vacation replacement benefits which the trainee would otherwise be eligible to receive, will be paid for the duration of approved training as long as the EDD determines good faith is being observed. If good faith is not observed, the EDD shall take appropriate corrective action. The criteria for determining good faith are adherence to scheduled hours of attendance and satisfactory progress as normally measured for the type of training being received. The criteria to be used in determining suitable length and hours of training are:

(1) The training is of suitable duration to achieve the desired skill or knowledge level; and

(2) The scheduled hours of attendance are in accordance with the prevailing practices of other like training available in the commuting area.

(c) *No cost training and purchased training.* In determining whether training to be secured for an affected employee shall be no cost training or purchased training, the EDD shall consider, as the primary objective, increasing the affected employee's employability so as to enhance the opportunities for the affected employee to return to full employment.

(1) The EDD shall, as far as possible, refer an affected employee to retraining which is provided at no cost. This training may be provided under the Comprehensive Employment and Training Act of 1973, as amended, as offered by a prime sponsor or under any other Federal or State law.

(2) The EDD may purchase training to assist the affected employee's return to full employment. This training may be institutional training or on-the-job training. If institutional, vocational, or professional training is purchased, the training institution must be approved as meeting applicable standards by the appropriate State educational agency, or by a recognized accreditation association.

§ 92.26 Job search allowance (Section 211, Public Law 95-250, 92 Stat. 181).

(a) *EDD approval.* The EDD shall approve a job search allowance for an eligible affected employee (including a short-service employee) to assist the employee to obtain a job within the United States. To be eligible, an affected employee must:

(1) Be totally laid off from employment with an affected employer;

(2) File an application for a job search allowance during the employee's period of protection, or, for a short-service employee, an application must be filed during the period which begins on the date of his/her total layoff and extends for that period of time which is equal to the length of his/her creditable service, but in no case less than one year.

(3) Be registered with the State Job Service in the area in which the affected employee is residing;

(4) Have no reasonable expectation of obtaining suitable work in the commuting area;

(5) Have received a good faith referral to suitable work or have been referred by a State Job Service to suitable work outside the commuting area or have a reasonable expectation of obtaining suitable work of a long term duration in the area where the job search will be conducted; and

(6) Complete the job search within a reasonable period not exceeding 30 calendar days, after the day on which the job search began.

(b) *Job search completion.* A job search shall be deemed complete when the individual has either secured employment or has contacted each employer to whom referred by the State Job Service in connection with a job search.

(c) *Verification of employer contacts.* The Job Service in the State in which the affected employee resides shall verify employer contacts certified by the affected employee.

(d) *Entitlement to reimbursement.* An affected employee who has incurred expenses as a result of any job search undertaken from the period beginning May 31, 1977 and ending June 30, 1979 shall be entitled to reimbursement of authorized expenses, provided the employee furnishes adequate evidence to support his/her claims for expenses and provided further, that the employee furnishes adequate evidence to the EDD that the job search was undertaken as required by paragraphs (a)(4) and (a)(5) of this section and has completed the job search as required by paragraph (a)(6) of this section.

§ 92.27 Job relocation allowance (Section 212, Public Law 95-250, 92 Stat. 181).

(a) *EDD approval.* The EDD shall approve a job relocation allowance for an eligible affected employee (including a short-service employee) who obtains employment outside the commuting area, to meet the reasonable and necessary travel expenses incurred in obtaining a residence and in transporting self, family, household, and personal effects to the new residence in the area of relocation. A job relocation allowance shall not be paid for more than one relocation nor shall it be paid to more than one member of a family in the same household for the same relocation.

(b) *Relocation on or prior to June 30, 1979.* For an affected employee (including a short-service employee) who relocated on or before June 30, 1979 to be eligible, the employee must:

(1) File an application for a job relocation allowance during the employee's period of protection; provided, that a short-service employee must file an application during the period which begins on the date of his/her total layoff, and extends to the end of that period of time which is equal to the length of his/her creditable service;

(2) Have relocated during the period beginning May 31, 1977 and ending June 30, 1979, to accept employment requiring a change in residence to a location outside the commuting area in which the employee resided immediately prior to becoming an affected employee.

(c) *Relocation after June 30, 1979.* For an affected employee (including a short-service employee) who relocated after June 30, 1979 to be eligible, the employee must:

(1) File an application as described in paragraph (b)(1) above;

(2) Be registered with the State Job Service in the area in which the affected employee is residing;

(3) Have no reasonable expectation of obtaining suitable work in the commuting area;

(4) Have obtained suitable work affording reasonable expectation of long-term duration, or a bona fide offer of such work, in the area in which the affected employee wishes to relocate.

(d) *Reimbursable expenses.* An affected employee shall be eligible to reimbursement for:

(1) Expenses incurred in moving household and personal effects;

(2) Traveling and living expenses in moving self and any family members from the same household, not to exceed 10 working days;

(3) Traveling and living expenses for self and spouse not to exceed 10 days which need not be consecutive days to obtain a residence;

(4) Any loss or cost incurred by the affected employee in the sale of a home for less than the fair market value or any loss or cost in securing the cancellation of an unexpired lease on a dwelling occupied by the affected employee as a home.

Subpart D—Amount and Calculations of Benefits

§ 92.30 Weekly layoff benefit, vacation replacement benefit, and/or severance payment.

The EDD shall determine the amount of an affected employee's weekly layoff benefit, vacation replacement benefit, and/or severance payment in accordance with the methods for calculation set forth in Sections 207, 208, and 209 of the Act and in the procedures and guidelines issued by the Assistant Secretaries for Labor-Management Relations and Employment and Training.

§ 92.31 Job search allowance (19 U.S.C. 2297).

(a) *Travel by commercial carrier.* For travel by commercial carrier, an affected employee shall receive 80% of the cost of transportation by the most economical and practical public transportation from the employee's regular place of residence to the area in which the job search will be conducted and return.

(b) *Travel by privately owned car.* For travel by privately owned automobile, an affected employee shall receive a travel allowance of 9.6 cents per mile, for the mileage of the usually traveled route from and to the affected employee's regular place of residence to the area in which the job search will be conducted, and for the mileage covered during the actual job search activities within the designated area.

(c) *Lodging costs.* In connection with an authorized job search, an affected employee shall receive 80% of the costs of lodging, not exceeding $12.00 per night, and 80% of the costs of meals, not exceeding $5.00 per day. Lodging costs must be verified by receipt.

(d) *Maximum amount.* The maximum amount of job search allowance payable to an affected employee in connection with an application shall not exceed $500.

(e) *Advance payment.* The EDD shall advance upon request by an affected employee within 5 days prior to commencement of a job search, 60% of the estimated job search allowance, but not exceeding $300. Such advance shall be deducted from any payments made under this part.

(f) *Overpayment.* If it is found that an affected employee failed without good cause to complete a job search, any job search allowance paid or advanced to the affected employee under this Section shall constitute an overpayment. Any overpayment shall be recovered from the affected employee by repayment in cash or by deduction from benefits due the affected employee under the Act as provided in § 92.34.

§ 92.32 Job relocation allowance (Public Law 93-236).

(a) *Travel allowance.* Travel expenses, for a period not to exceed 10 days (which need not be consecutive days), for an affected employee and spouse but not dependent children or other family members shall be reimbursed for a round trip to obtain a residence at the new work location. Travel expenses for an affected employee, spouse, and dependent children shall be reimbursed for a one-way trip in connection with moving.

(1) Reimbursement shall be made for travel by commercial carrier, provided that the most economical public transportation means available is used in view of the circumstances.

(2) Reimbursement shall be made for travel by each privately owned automobile at the rate of 15 cents per mile for the usually traveled route, for necessary bridge and highway tolls, and for parking fees.

(3) If for good cause a member or members of an affected employee's family must travel separately, the affected employee shall be reimbursed for the travel of such family member(s) in accordance with paragraphs (a) (1) and (2) of this section and lodging and living expenses in accordance with paragraphs (b) (1) and (2) of this section.

(b) *Lodging and living expenses.* An affected employee and family members shall be reimbursed for lodging and living expenses incurred while in transit from the old residence to the new residence, including the day of departure and the day of arrival, not to exceed 10 days, except that if the new residence is not ready for occupancy upon arrival, additional living expenses may be reimbursed up to 10 days. Living expenses for an affected employee and spouse shall be reimbursed, for a period not to exceed 10 days which need not be consecutive days, for a round trip to obtain a residence at the new work location.

(1) Lodging shall be reimbursed at actual cost. Rooms must be occupied when feasible so that double room rates will apply. Moderately priced hotels and motels shall be used.

(2) Meals and related gratuities shall be reimbursed at actual cost to a maximum of $16.00 per person per day for the affected employee, spouse, and children. Gratuities for meals must be included in the cost of the meals.

(c) *Moving allowance.* The cost of transporting household effects and other personal effects of the affected employee and family members shall be reimbursed when transported by licensed commercial carrier and/or by use of rental truck or trailer.

(1) Reimbursement shall be made for packing, insuring, shipping, and unpacking of standard household items and personal effects. Insurance shall be provided for a valuation of $1.50 per pound; additional insurance for exceptionally valuable items may be obtained by the employee; however, the cost of such additional insurance shall not be reimbursed. Reasonable expenses for storage of household effects and personal property at the new location shall be paid when necessary because the residence at the new location is not ready for occupancy upon arrival.

(2) For each affected employee, reimbursement shall be made for transporting as many as two automobiles, by commercial carrier, provided that the low blue book value of each automobile exceeds the cost of shipment. Automobiles eligible to be shipped must be owned by the employee, the employee's spouse, or a dependent child of the employee.

Insurance up to the low blue book value of the automobile shipped shall be reimbursed.

(3) Expenses for the shipment, including insurance, of other personal non-business property such as boats, trailers, camping equipment, and mobile homes shall be reimbursed provided that the property shipped was owned by the employee or the employee's spouse prior to the offer of employment at the new location and provided further that shipping costs, including insurance, do not exceed the fair market value of the property shipped. Storage charges for such property shall not be reimbursed.

(4) Reasonable expenses for disconnecting at the former residence and reconnecting at the new residence shall be reimbursed for the following items, provided they are owned by the affected employee or spouse prior to the offer of employment at the new location: mobile home and major appliances (such as ranges, washers, dryers, dishwashers, refrigerators, freezers, television sets, and television antennae). Expenses for installation of a 220 volt power line at the new location shall not be reimbursed.

(5) Reasonable service charges by utility companies, including installation charges for telephone service, shall be reimbursed. Refundable deposits or advance billing for telephone service shall not be reimbursed.

(6) Reasonable expenses for the common carrier transportation of pets, including feeding, shall be reimbursed when such transportation is necessary.

(7) Reimbursement shall be made for actual rental fee, mileage charges, and gas for rental truck or trailer used to move the household and personal effects subject to following conditions:

(i) the time limit allowable for rental fees for a truck or trailer may not exceed 10 days; and

(ii) expenses detailed in paragraph (c)(1), (c)(3), (c)(4), and (c)(5) of this section shall be reimbursed, where applicable.

(d) *Advance payment.* Advances shall be granted for moving expenses, living expenses, and travel expenses based on estimates the affected employee obtains from common carriers or from a truck leasing agency. The amount advanced may not exceed 80% of the estimated total cost.

(e) *Relocation on or prior to June 30, 1979.* An affected employee who relocated during the period beginning May 31, 1977 and ending on June 30, 1979, shall furnish to the EDD within 90 days following June 30, 1979 the appropriate documentation supporting a claim for a job relocation allowance and a notarized affidavit that the listed expenses and amounts claimed are correct to the best of his/her knowledge.

(f) *Relocation after June 30, 1979.* An affected employee who relocates after June 30, 1979 must submit receipts or invoices and mileage costs to the EDD within 90 days after completion of the relocation.

(g) *Reimbursement for losses or cost.* In connection with a job relocation, if an affected employee relocates after June 30, 1979, and incurs costs or a loss in the sale of a home or the cancellation of an unexpired lease, a statement describing same and requesting reimbursement shall be submitted to the EDD field office where the request for the job relocation was originally filed within 90 days after completion of the relocation. If an affected employee relocated during the period beginning May 31, 1977 and ending on June 30, 1979, the statement must be submitted to the appropriate EDD field office within 90 days following June 30, 1979. To obtain reimbursement for a loss on the sale of a home, an affected employee must:

(1) Offer the home for sale in the customary manner, at or near the fair market value for a reasonable period of time, and

(2) Furnish EDD with the following information and documents on the residence sold:

(i) Location, including street address, city or town, county, and state;

(ii) Name of the owner or owners;

(iii) Date of sale;

(iv) Copy of the closing statement, verifying the selling price;

(v) Fair market value of the house one year before the date of sale based on the average of two appraisals by licensed residential real estate appraisers (three if the appraisals vary by more than five percent);

(vi) Copies of appraisals and receipts or cancelled checks in payment; and

(vii) Amount to be reimbursed (loss on the sale plus the cost of the appraisals).

(3) A protected employee may elect to waive the reimbursement of loss on sale of home and to receive, in lieu thereof, an amount equal to his closing costs which are ordinarily paid for and assumed by a seller of real estate in the jurisdiction in which the residence is located. Such costs shall include a real estate commission paid to a licensed realtor (not to exceed $3,000 or 6 per centum of sale price, whichever is less), and any prepayment penalty required by the institution holding the mortgage; such costs shall not include the payment of any "points" by the seller.

(4) To obtain reimbursement for costs incurred in cancelling a lease of an apartment or a principal residence, an affected employee must submit the following information and documents:

(i) Location, including street address, city or town, and state;

(ii) Date leased premises were vacated;

(iii) Name, address, and telephone number of the party who was advised that the leased premises would be vacated and whether the party advised was the owner or the leasing agent;

(iv) The cancelled check or receipt for payment of a cancellation charge;

(v) The landlord's statement discharging the affected employee from the obligations of a tenant under the lease; and

(vi) The affected employee's lease.

(h) *Challenge on claims for loss or costs.* Should the EDD challenge the value of the home, the costs or loss sustained in its sale, the costs or loss under a contract for purchase, loss or cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee or his representative, and the LMSA Regional Office. In the event they are unable to agree, the dispute or controversy may be referred by either party to a board of competent real estate appraisers, selected in the following manner: One to be selected by the employee or his representative and one by the LMSA Regional Office and these two, if unable to agree upon a valuation within 30 days, shall endeavor by agreement within 10 days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the National Mediation Board to designate within 10 days a third qualified real estate appraiser whose designation will be binding upon the parties. A decision of the majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(1) The EDD will be guided in its decision to challenge a loss by the following considerations:

(i) Length of time the home was offered for sale at or near the fair market value;

(ii) Length of time homes of reasonably comparable value and type were on the market prior to sale; and

(iii) The total amount of the loss claimed relative to other claims for loss submitted to the EDD.

(2) The EDD will honor a reimbursement claim for up to three monthly mortgage payments which an affected employee made while trying to sell his/her home at or near the fair market value.

(i) *Overpayment.* If it is found that an affected employee failed without good cause to complete a job relocation, any amount of relocation allowance paid or advanced to the affected employee under this section shall constitute an overpayment. Any overpayment recovered from the affected employee shall be by repayment in cash or by deduction from benefits due the affected employee under the Act or by any other authorized legal action.

§ 92.33 Overpayment—general.

If the EDD, a referee, the Assistant Secretary, or a court of competent jurisdiction finds that an individual has received benefits to which the individual was not entitled under the Act then the individual shall be liable to repay the total sum to which the individual was not entitled. However, in certain cases where the recovery of the overpayment would be against equity and good conscience, recovery may be waived.

§ 92.34 Recovery of overpayments.

(a) The EDD shall take all reasonable measures under State or Federal law to recover for the account of the United States the sum of the payment to which the individual was not entitled in accordance with the provisions of § 92.33.

(b) When recovery is undertaken the EDD shall recover, insofar as is possible, the amount of any overpayment which is not repaid by the individual, by deductions from any benefits or allowances payable to the individual under the Act from any compensation payable to the individual under any Federal unemployment compensation law administered by the EDD, or under any other federal law administered by the SESA of any other state, or, by the EDD which provides for the payment of any assistance or allowance with respect to any week of unemployment. The amount of this deduction shall not exceed the amount which might be withheld if the Consumer Credit Protection Act were applicable.

§ 92.35 Final decision.

Recovery of any overpayment of benefits shall not be required or enforced until the determination establishing the overpayment has been approved by the Assistant Secretary.

Subpart E—Preferential Hiring

(Section 103, Pub. L. 95–250, 92 Stat. 167)

§ 92.40 Full consideration obligation.

(a) *Types of jobs.* Any employer specified in § 92.40(b) who is filling a job vacancy located primarily in Humboldt, Del Norte or an adjoining California county must give full consideration for employment in that job vacancy to affected employees if:

(1) The job involves skills and training that could reasonably be expected to have been gained by individuals who have been employed as logging and related woods employees or sawmill, plywood, and wood processing employees, or office employees, or that can reasonably be expected to be gained while so employed; or

(2) The applicant has the ability, or can reasonably be expected to have the ability after appropriate training of reasonable duration to perform the duties of the job.

(b) *Types of employers.* It shall be an obligation of any employer designated in this section to give full consideration to affected employee applicants for a job vacancy as described in (a) above if the employer is:

(1) A federal agency;

(2) A private employer designated by a federal agency as receiving federal funding assistance in any form or receiving the right after March 27, 1978 to use federal property in the conduct of harvesting and related activities, or replanting and land rehabilitation, or the conduct of wood processing and related activities or the conduct of highway construction and related activities;

(3) An affected or industry employer who has entered into an agreement with the EDD or other State Job Services to give full consideration to affected employees; or

(4) The State of California government, or a county and local government within Humboldt and Del Norte Counties in California which has agreed to cooperate with the EDD in giving full consideration to affected employees when filling government job vacancies.

(c) *Selection.* An employer specified in § 92.40(b) shall have met the obligation to provide full consideration to affected employee applicants if the employer has used its normal employment standards to evaluate the applicant's qualifications for the position to be filled, and

(1) Selected a qualified affected employee applicant over non-affected employee applicants.

(2) Selected from among qualified affected employee applicants the applicant with the greatest creditable service where the qualifications of the applicants are approximately equal, or

(3) Held the full consideration job vacancy open for a non-qualified affected employee applicant who can be expected to qualify for the job after undergoing training approved by EDD.

(d) *Listing.* Any employer specified in § 92.40(b) who is filling a job described in § 92.40(a) shall provide notice of such job vacancy and the job requirements through the offices of the EDD in Humboldt and Del Norte Counties, California.

§ 92.41 Employee full consideration obligation.

(a) *Employee application requirements.* Any affected employee desiring to apply for a full consideration job vacancy must:

(1) Advise an EDD office of the full consideration position for which he/she wishes to be considered, and

(2) Demonstrate that the full consideration job vacancy involves skills and training which he/she could reasonably be expected to have gained in his/her affected employment, or

(3) If not already in possession of the requisite skill, demonstrate that he/she can reasonably be expected to have the ability to perform the job after appropriate training of reasonable duration.

§ 92.42 EDD full consideration responsibility.

(a) *Lists.* The EDD shall maintain lists of full consideration job vacancies as reported by Federal agencies; affected industry and other private employers; and the State of California, and its county and local governments in Humboldt, Del Norte and adjacent California counties.

(b) *Training.* The EDD shall determine whether an applicant for a full consideration job vacancy can reasonably be expected to have the ability to perform the job after appropriate training, and whether the period of work following training is commensurate with the time and funds required to provide the necessary training. Full consideration of an applicant shall not be required when the EDD has determined that the period of work following training is not commensurate with the training time and funds.

(c) *Referral.* Where two or more affected employee applicants for a full consideration job vacancy have approximately equal qualifications the EDD shall give preference in referral and listing to the applicant with the greatest creditable service.

§ 92.43 Violations of full consideration obligations.

(a) *Right of appeal.* Any employee who alleges that his/her rights to full consideration have been disregarded may file a complaint with the Eureka office of the EDD which shall forward the complaint to the Eureka office of the LMSA for processing. Where noncompliance with the full consideration obligation is determined, the Department shall take appropriate corrective action.

§ 92.44 Judicial review.

Determinations under this section shall be subject to Judicial Review under the same conditions as provided in § 92.50(t).

§ 92.45 Preexisting rights.

Nothing in this Subpart shall be construed to affect any additional or alternative rights under law, contract or regulation in effect as of March 27, 1978.

§ 92.46 Period of preferential hiring.

The requirement for full consideration as contained in this Subpart, shall remain in effect from March 27, 1978 through September 30, 1984.

Subpart F—Appeal Procedure

(Section 213(d)(2), Public Law 95-250, 92 Stat. 182)

§ 92.50 Administration.

(a) *Parties.* The parties to a proceeding on an application for benefits are:

(1) The applicant;

(2) The EDD;

(3) Other SESA's if involved; and, in addition,

(4) Any other individual or organization who is or may be adversely affected by grant or denial of an application for benefits may request leave to participate as an intervening party with respect to the application for REPP benefits in proceedings before a referee or before the Assistant Secretary. Leave to intervene shall be granted on such terms and conditions as are deemed appropriate.

(b) *Parties may appeal.* Any party to a proceeding on an application for benefits may appeal the determination or redetermination.

(c) *Reconsideration of determination.* The EDD may reconsider a determination on an application for benefits under the same conditions and subject to the same time limits as apply to reconsideration or determinations of entitlement to unemployment insurance under the California Unemployment Insurance Code and California Unemployment Insurance Appeals board regulations under Title 22 of the California Administrative Code.

(d) *Notice of determination.* Each party to a proceeding on an application for benefits shall be given written notice of the determination or reconsidered determination by EDD.

(e) *Notice of appeal rights.* All parties shall receive notice of each determination, reconsidered determination, or decision on an application for benefits. The notice shall advise each applicant of his/her right to appeal or to request reconsideration of the determination or decision. Such notice shall include the manner in which the appeal or request for reconsideration should be made, and the time period for making such appeal or request for reconsideration.

(f) *Appeal from determination.* A party aggrieved by or dissatisfied with a determination or reconsidered determination on an application for REPP benefits may appeal to an Administrative Law Judge (ALJ) of the California Unemployment Insurance Appeals Board.

(g) *Contents of appeal to ALJ.* An appeal to an ALJ under paragraph (f) of this Section must:

(1) Be mailed to or filed at the EDD field office where the application was initially filed within 20 days after notice of such determination or reconsidered determination was mailed or personally served on the party;

(2) Be in writing;

(3) Identify or include a copy of the determination or reconsidered determination;

(4) State that the party desires to appeal to a referee;

(5) Contain a statement of the reason(s) why the appealing party believes that an error has occurred; and

(6) Be signed by the appealing party or an authorized representative.

Notwithstanding the requirements in (g)(5) of this section, any written document indicating that a party is aggrieved by or dissatisfied with a determination or reconsidered determination on an application for REPP benefits which is received by the EDD field office where the application was initially filed within 20 days after notice of such determination was personally served or mailed to the party shall be accepted as a valid notice of appeal; provided, that the ALJ may require the appealing party, prior to the hearing on his/her appeal, to submit a written statement of the reason(s) why the appealing party believes that an error has occurred.

(h) *Notice of hearing before ALJ.* Upon the filing of an appeal, a hearing shall be promptly scheduled and a notice of the hearing shall be mailed to each party.

(i) *Rules of evidence.* (1) The technical rules of evidence shall not apply. Any evidence may be received at any stage of the appeal; a referee or the Assistant Secretary may exclude any evidence or offer of proof which is immaterial, irrelevant, unduly repetitious, or customarily privileged.

(2) A party shall have the right to present its case by oral and documentary evidence and to submit rebuttal evidence.

(j) *Hearing before an ALJ.* The ALJ shall have jurisdiction to decide all relevant issues with respect to an applicant's entitlement to REPP benefits without regard to whether such issues were set out in the appeal. The ALJ may issue subpoenas to obtain the appearance of witnesses or the presentation of documents and exhibits on the same terms and conditions as apply with respect to the issuance of subpoenas in unemployment insurance benefit appeal hearings under the California Unemployment Insurance Code.

(k) *Notice of an ALJ's decision.* Notice of an ALJ's decision on an appeal of an application for REPP benefits shall be sent to each party. In addition, a copy shall be sent to both the LMSA local office in Eureka and to the LMSA national office. Each party shall be notified of his/her right of appeal and shall be informed that the Assistant Secretary has 30 days to review the case on his/her own motion.

(l) *Appeal from an ALJ's decision.* A party aggrieved by or dissatisfied with an ALJ's decision on an application for REPP benefits may appeal such decision to the Assistant Secretary.

(m) *Appeal to Assistant Secretary.* An appeal to the Assistant Secretary must:

(1) Be addressed to the Assistant Secretary of Labor for Labor-Management Relations; U.S. Department of Labor; 200 Constitution Avenue, NW; Washington, D.C., 20216; and delivered or mailed to the Assistant Secretary within 20 days after the day on which notice of the ALJ's decision was handed or mailed to such party;

(2) Be in writing;

(3) Identify or include a copy of the referee's decision appealed from;

(4) State that the party desires to appeal from the referee's decision;

(5) Contain a statement of the reason(s) why the appealing party believes that an error has occurred; and

(6) Be signed by the appealing party or an authorized representative.

Notwithstanding the requirement in (m)(5) of this section, the Assistant Secretary shall accept as a valid appeal any written document indicating that a party is aggrieved by or dissatisfied with a referee's decision on an application for REPP benefits if such document is received by the Assistant Secretary within 20 days after notice of such referee's decision was handed or mailed to such party; provided, that the Assistant Secretary may rerquire the appealing party to submit a written statement of the reason(s) why the appealing party believes that an error has occurred.

(n) *Briefs.* Briefs are not required unless specifically requested by the Assistant Secretary. However, they are welcome and will be considered carefully. Any party may file a brief or written argument in response to a brief or other written argument filed by another party not later than 30 days after such brief or written argument is filed. Briefs or written arguments can not exceed 25 pages unless permission to file a lengthier document is obtained form the Assistant Secretary.

(o) *Service.* A party filing a brief is required to furnish each party with a copy. For purposes of service to the EDD, a copy of the brief must be sent to:

Legal Office, MIC 53, California Employment Development Department, 800 Capital Mall, Sacramento, California 95814.

(p) *Delegation of authority.* The Assistant Secretary may delegate to any employee of the United States Department of Labor the function of reviewing an appeal and preparing a recommended decision with respect thereto, but no employee of the United States Department of Labor who personally participated in any way in any proceedings with respect to an application for benefits will be assigned to prepare a recommended decision on such application for benefits.

(q) *Transmittal of record and transcript.* On receipt of a notice from the Assistant Secretary or his/her designee that an appeal from a referee's decision with respect to an application for REPP benefits has been filed, or the Assistant Secretary has decided to review the decision, the CUIAB shall promptly transmit to the Assistant Secretary or his/her designee a complete record of the proceedings before the referee, including all exhibits and documents received or tendered in such proceedings, and a complete copy of the administrative file as to the application for benefits. Upon request from the Assistant Secretary, the CUIAB shall promptly transmit an official transcript of the proceedings to the Assistant Secretary.

(r) *Processing of appeal.* The Assistant Secretary shall review the file with respect to the application for REPP benefits in issue to ascertain whether substantial error adversely affecting the rights of a party has occurred, regardless of whether such error is alleged by an appealing party.

(s) *Decision of Assistant Secretary.* The Assistant Secretary may affirm, reverse, or modify in whole or in part the decision of an ALJ as to an application for REPP benefits, or may remand the case to an ALJ for further proceedings.

(t) *Judicial review.* A party aggrieved by or dissatisfied with a decision of the Assistant Secretary has 60 days after notice of such decision to file for judicial review in the same manner and under the same conditions as provided by Section 250 of the Trade Act of 1974 which provides:

(1) A worker, group of workers, certified or recognized union, or an authorized representative of such worker or group aggrieved by a final determination by the Secretary may, within 60 days after notice of such determination, file a petition for review of such determination with the United States court of appeals for the circuit in which such worker or group is located or in the United States Court of Appeals for the District of Columbia Circuit. The clerk of such court shall send a copy of such petition to the Secretary. Upon receiving such petition, the Secretary shall promptly certify and file in such court the record on which he based such determination.

(2) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(3) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in Section 1254 of Title 28, United States Code.

(u) *Late appeals.* An appeal to an ALJ under paragraph (f) of this Section or an appeal to the Assistant Secretary under paragraph (1) of this Section which is not filed within the time for appeal stated in those paragraphs will be dismissed as untimely unless the ALJ or the Assistant Secretary finds that the appealing party has shown good cause for failure to file the appeal within the proper time. The party who fails to appear at a hearing on an appeal may apply to the ALJ within 20 days of said hearing (or longer if the ALJ determines this delay in applying is for good cause) to have the hearing reopened. Such application will be granted if the ALJ finds that the party had good cause for failure to appear.

(w) *Payment of benefits in case of appeal.* (1) Weekly layoff benefits and vacation replacement benefits awarded by a determination, reconsidered determination, or referee's decision shall be promptly paid for each week of total or partial unemployment occurring after the date on which the applicant's initial application for benefits was filed, notwithstanding the non-expiration of the period for appeal, or the pendency of an appeal, from such determination, reconsidered determination, or decision. Weekly layoff benefits and vacation replacement benefits, or other benefits awarded by a determination, reconsidered determination, or a referee's decision for a week or weeks of total or partial unemployment occurring prior to the date on which the applicant's initial application for benefits was filed, shall not be paid until the determination, reconsidered determination, or referee's decision awarding them becomes final.

(2) In all cases, a severance payment awarded by a decision of a referee or the Assistant Secretary shall not be paid until the decision awarding such payment becomes final.

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Pension and Welfare Benefit Programs

[29 CFR Part 2520]

Exemption From Reporting and Disclosure Requirements With Regard to Apprenticeship and Other Training Plans

AGENCY: Department of Labor.

ACTION: Proposed rulemaking.

SUMMARY: This document sets forth proposed revisions to existing regulations that would provide a limited exemption from the reporting and disclosure requirements of the Employee Retirement Income Security Act of 1974 (hereinafter the Act) with respect to employee welfare benefit plans that provide exclusively: (1) apprenticeship training benefits, (2) other training benefits, or (3) apprenticeship and other training benefits. The proposed revisions are designed to avoid unnecessary reporting and disclosure requirements.

DATES: Written comments concerning the proposed revisions must be submitted on or before August 21, 1979.

ADDRESSES: Interested persons are invited to submit written data, views or arguments concerning the proposed revisions to "Reporting and Disclosure Exemption for Apprenticeship and Other Training Plans," Room N-4661, Office of Reporting and Plan Standards, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20016, on or before the date indicated above. All such submissions will be open to public inspection in the Public Documents Room, Pension and Welfare Benefit Programs, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Barry Barbash, Esq., Office of the Solicitor, U.S. Department of Labor, (202) 523-8298. (This is not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department of Labor (the Department) has under consideration certain proposed amendments to 29 CFR 2520.104-22. Regulation § 2520.104-22, which was adopted in August, 1975, grants a limited exemption from certain of the reporting and disclosure requirements of the Act with respect to plans that provide solely apprenticeship training benefits. Specifically, under the regulation, administrators of these plans are exempted from all the provisions of Part 1 of the Act,[1] except the requirements to file a short form plan description (applicable only to plans subject to Part 1 on or before January 31, 1976), an initial plan description and an annual report. As will be explained in detail below, the Department is proposing to expand the class of plans for which exemption is available under § 2520.104-22 and to change the reporting and disclosure requirements applicable to such expanded class of plans.[2]

Amended Exemption for Plans Providing Solely Apprenticeship Training. On June 1, 1979, (44 FR 31640) the Department published final regulations, 29 CFR 2520.102-1 and 104a-2, which eliminate for most plans the requirement to file a Form EBS-1 plan description. Following the publishing of proposed §§ 2520.102-1 and 104a-2 for public comment, a question was raised about the effect of these regulations on the reporting requirements of plans providing solely apprenticeship benefits. To avoid the possibility that § 2520.102-1 and 104a-2 taken together with § 2520.104-22 might be read to require plans providing solely apprenticeship training to file a summary plan description, the Department adopted §§ 2520.102-1(b) and 104a-2(b)(2), which state that those apprenticeship plans, exempt under § 2520.104-22 from the requirement to file a summary plan description, shall continue to satisfy the statutory obligation to file a plan description by filing a Form EBS-1.

In adopting 29 CFR 2520.102-1 and 104a-2, the Department noted that retaining the Form EBS-1 for plans providing solely apprenticeship training was an interim measure. The Department is proposing in this notice to rescind §§ 2520.102-1(b) and 104a-2(b)(2) and to adopt with respect to such plans the regulation described below. As noted previously by the Department,[3] plans providing only apprenticeship training differ from most other welfare plans. Frequently, apprenticeship training plans are established by the terms of collective bargaining agreements under which employers are required to make contributions to those plans based, generally, on the number of hours worked or on the compensation earned by their employees. However, only few, if any, of those employees in respect to whose services or earnings contributions are made, receive any training or other direct benefits from the apprenticeship plan. The individuals who do receive direct benefits from an apprenticeship plan are individuals who may not even be employed by contributing employers when beginning their apprenticeship training. Thus, unlike the participants or beneficiaries of a typical welfare plan, the participants or beneficiaries within the meaning of §§ 3(7) and 3(8) of the Act of an apprenticeship plan are not those individuals with respect to whose service contributions have been made to the plan.

Because employees of employers contributing to apprenticeship plans appear to have a more indirect interest in the benefits provided by such plans than employees of employer-sponsors generally have in the benefits provided under other welfare plans, the Department believes that to require administrators of apprenticeship plans to file with the Department, and to furnish those employees, all information required by Part 1 of the Act would be unnecessarily burdensome and costly. The Department also believes that administrators of apprenticeship plans would have significant difficulty in furnishing apprentices with all information required by Part 1 of the Act, since the group of apprentices receiving training from a particular plan may change frequently as new apprentices begin training and as other apprentices either drop out of the apprenticeship program or graduate and become journeymen.

For these reasons, the Department is proposing to revise 29 CFR 2520.104-22 to exempt a plan that provides solely apprenticeship training from all the reporting and disclosure provisions of Part 1 of the Act, so long as the administrator of such plan files with the Department a notice containing certain information.[4] The required notice would include the name of the plan, the name of the plan administrator, the name and address of an office or person from whom an interested individual can obtain pertinent information about the courses or apprenticeship program and a description of the procedure by which to

[1] Under the reporting and disclosure provisions contained in Part 1 of Title 1 of the Act, administrators of employee benefit plans generally must file with the Department a plan description, summary plan description, annual report, and summary of material modifications or changes. Plan administrators must also furnish each plan participant and beneficiary with a summary plan description, a statement of material modifications and changes, and a summary annual report.

[2] With regard to training programs established by employers, the Department notes that, under 29 CFR 2510.3-1(b)(3)(iv), payment of compensation out of an employer's general assets on account of periods of time during which an employee performs little or no productive work while engaged in training (whether or not subsidized in whole or in part by federal, state or local government funds) is a payroll practice not included within the definitions of "employee welfare benefit plan" and "welfare plan" contained in section 3(1) of the Act for purpose of Title I of the Act.

[3] 40 FR 34526, 34529, August 15, 1975.

[4] The amended exemption contained in § 2520.104-22 also requires the plan administrator to: (a) take steps reasonably designed to ensure that the information contained in the notice is disclosed by employers sponsoring or contributing to the plan to those employees eligible to enroll in any courses to study sponsored or established by the plan; and (b) make the notice available to such employees upon request. Presumably, these conditions would not be applicable in practice to jointly sponsored plans providing solely apprenticeship training, since persons eligible to become apprentices would often not be employees of contributing employers.

enroll in the courses or apprenticeship program.

Exemption for Training Plans. Employee welfare benefit plans that provide welfare benefits including training other than, or in addition to, apprenticeship training, are not covered by the existing exemption contained in 29 CFR 2520.104–22.[5] It has been suggested to the Department that § 2520.104–22 is too restrictive and that the exemption contained in that regulation should be available with respect to all plans that provide training or retraining benefits.[6] This suggestion appears to the Department to have merit, at least with respect to plans that provide exclusively training benefits or provide a combination of apprenticeship and training benefits. Like contributions to apprenticeship plans, employer contributions to training plans are often based on the service of a class of employees of which only a relatively small group of employees at any one time would appear to be interested in, or receive a direct benefit from, a training program. Because only a relatively few employees receive direct benefits from plans providing solely training benefits or a combination of apprenticeship and training benefits, the Department believes it may be unnecessarily burdensome and costly to continue to require the administrators of such plans to comply fully with the reporting and disclosure provisions of Part 1 of the Act.

The Department is proposing to revise 29 CFR 2520.104–22 to exempt a plan providing solely training benefits or a combination of apprenticeship and training benefits from all of the reporting and disclosure provisions of Part 1 of the Act, so long as the administrator of such plan files with the Department the notice described in proposed § 2520.104–22(b). In addition, the administrator would be required to make such notice available upon request to employees of employers contributing to the plan who are eligible to enroll in any course or program of study offered under the plan. Finally, the administrator must take steps reasonably designed to ensure that the information contained in the required notice is furnished to such employees. The administrator can satisfy this requirement in a number of ways including arranging to have employers make the required information available to employees by mail or personal delivery or by posting the notice in a conspicuous location at all job sites. In appropriate situations, the administrator could also make arrangements to have the information required to be included in the notice published in publications of general circulation of employee organizations to which participants in the plan belong.

The revisions proposed herein do not meet the criteria for significant regulations set forth in the Department's guidelines [7] issued to implement Executive Order 12044.[8]

Statutory Authority: The proposed revisions set forth below are issued under the authority of sections 104, 109 and 505 of the Act (29 USC 1024, 1029, and 1135).

In consideration of the matters discussed above, it is proposed to amend Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

1. Rescind §§ 2520.102–1(b) and 2520.104a–2(b)(2).

2. Amend § 2520.102–1 to read as follows:

§ 2520.102–1 Plan description.

The plan description required by section 102 of the Act shall consist of a summary plan description as described in section 102(b) of the Act and § 2520.102–2 and 2520.102–3 thereunder.

3. Amend § 2520.104a–2 by deleting paragraph (b)(2) and revising (b) to read as follows:

§ 2520.014a–2 Plan Description reporting requirements.

* * * * *

(b) Fulfilling the filing obligation. The administrator of an employee benefit plan shall satisfy the requirements of section 104(a)(1)(B) of the Act and paragraph (a) of this section by filing with the Secretary a summary plan description and an updated summary plan description in accordance with section 104(a)(1)(C) of the Act and regulations issued thereunder.

* * * * *

4. Amend § 2520.104–22 to read as follows:

§ 2520.105–22 Exemption from reporting and disclosure requirements with regard to apprenticeship and other training plans.

(a) An employee welfare benefit plan that provides exclusively apprenticeship training benefits or other training benefits or that provides exclusively apprenticeship and training benefits shall not be required to meet any requirements of Part 1 of the Act, provided that the administrator of such plan: (1) files with the Secretary the notice described in paragraph (b) of this section; (2) takes steps reasonably designed to ensure that the information required to be contained in such notice is disclosed to employees of employers contributing to the plan who may be eligible to enroll in any course of study sponsored or established by the plan; and (3) makes such notice available to such employees upon request.

(b) The notice referred to in paragraph (a) of this section shall contain: (1) the name of the plan; (2) the name of the plan administrator; (3) the name and location of an office or person from whom an interested individual can obtain a description of any existing or anticipated future course of study sponsored or established by the plan, including any prerequisites for enrolling in such course; and, (4) a description of the procedure by which to enroll in such course.

Signed at Washington, D.C., this 6th day of June 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration.

[FR Doc. 79–18279 Filed 6–11–79; 8:45 am]

BILLING CODE 4510–29–M

[5] In a January, 1978 release, the Department made clear that § 2520.104–22 is applicable only with respect to plans providing benefits solely for apprenticeship training. *See* News release USDL 78–38, January 17, 1978.

[6] *See e.g.*, letter from National Coordinating Committee for Multiemployer Plans to F. Ray Marshall, (July 11, 1978), and letter from International Brotherhood of Electrical Workers to Ian D. Lanoff, (December 13, 1978). These letters and other letters received by the Department concerning regulation § 2520.104–22 are open to public inspection in the Public Documents Room of the Pension and Welfare Benefit Programs, the address of which is listed above.

[7] 44 FR 5570, January 26, 1979.

[8] 43 FR 12661, March 23, 1978.

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 161]

Tank Vessel Operations—Puget Sound

Correction

In FR Doc. 79–17355 appearing on page 32004 in the issue of Monday, June 4, 1979, make the following correction:

The formula appearing at the top of the first column of page 32005 now given as "V–F/KD" should have been given as "V–F$\sqrt{KD}$."

BILLING CODE 1505–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

[36 CFR Chapter II]

Procedures for Involving the Public in the Formulation of Standards, Criteria, and Guidelines That Apply to Forest Service Programs

AGENCY: Forest Service, USDA.

ACTION: Proposed Rule—Extension of Time for Comments.

SUMMARY: Section 14 of the Forest and Rangeland Renewable Resources Planning Act of 1974, added by Section 11 of the National Forest Management Act of 1976, provides for the establishment by regulations of procedures *"to give the Federal, State and local governments, and the public adequate notice and opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs."* Draft regulations describing a process to accomplish this were published in **Federal Register**, Vol. 44, No. 75, FR Doc. 79-11890, Tuesday, April 17, 1979, p. 22759. Comments on the draft were to be received on or before June 18, 1979. The due date for comments to be received is hereby extended to July 9, 1979.

DATES: Comments must be received on or before July 9, 1979.

ADDRESS: Send comments to: Chief, Forest Service, P.O. Box 2417, Washington, D.C. 20013. All written comments will be available for public review in Room 3250, South Agriculture Building, 12th and Independence Avenue, S.W., Washington, D.C., 8:00 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Wayne R. Nicolls, Office of Information, P.O. Box 2417, Washington, D.C. 20013, 202/447-7013.

John R. McGuire,

Chief, Forest Service.

June 6, 1979.

[FR Doc. 79-18242 Filed 6-11-79; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1245-8]

Ohio; Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: These proposed rules are revisions to the sulfur dioxide emission limitations for Cleveland Electric Illuminating Company's Avon Lake and East Lake power plants in Ohio. The revisions are based on new monitoring information and dispersion modeling analyses and on the installation of new stacks at each of the plants. Comments are being solicited on the revisions.

DATE: Comments must be received by August 13, 1979. A public hearing will be held on the revisions from 9 a.m. to 4 p.m. on July 11, 1979, at The Anthony J. Celebrezze Federal Building, 31st Floor, 1240 East 9th St., Cleveland, Ohio. The record on the revisions (Docket No. 5A-79-1) will be open for thirty days after the hearing to allow the submission of rebuttal or additional information.

ADDRESSEES: Written comments and requests to make an oral presentation at the hearing should be submitted to: Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. The docket for the revision is available for inspection and copying during normal business hours at the above address and at: Public Information Reference Unit, Room 2922, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Steve Rothblat, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, 312/353-2205.

SUPPLEMENTAL INFORMATION: In 1976 and 1977, the Environmental Protection Agency (EPA) promulgated regulations that established sulfur dioxide emission limitations for sources in Ohio. 40 C.F.R. 52.1881. Following promulgation, the Cleveland Electric Illuminating Company (CEI) requested that the emission limitations for its Avon Lake and East Lake power plants be revised. In support of the revision request, CEI submitted dispersion modeling analyses and monitoring data collected since the original emission limitations were promulgated by EPA. The sumbission takes into account CEI's installation of "Good Engineering Practice" (GEP) stacks at the two plants. The GEP stack heights were not utilized by EPA in the modeling performed to set the original emission limitations. The new stacks will result in lower ground-level emission concentrations near the plants.

The agency has evaluated the information submitted by CEI and has determined that under Section 110(a)(3) of the Clean Air Act a revision of the originally promulgated emission limitations is appropriate. Specifically, based on dispersion modeling analyses of the new stacks and new air quality monitoring data, the agency is proposing to revise the emission limitations to status quo emission limitations for the two plants. The agency has determined that such revisions should not interfere with attainment and maintenance of the national ambient air quality standards. Furthermore, as a condition of approval of the revised emission limitations, the agency is requiring CEI to install and operate an even more extensive monitoring system surrounding the plants than now exists.

The emission limitations originally promulgated for the Avon Lake and East Lake plants were determined through dispersion modeling using the urban version of the RAM model. CEI has consistently maintained that the use of the urban RAM results in overly stringent emission restrictions for the two plants. Until the CEI petition was submitted, there have been no data to support the claim. While the on-site data relied on in the petition are not adequate to give complete ambient air quality coverage of the area impacted by the plants, the data, however, do indicate that the urban RAM is inappropriate for setting emission limitations for the two plants. At the same time, the air quality data collected by CEI Indicates that the use of the rural RAM to set emission limitations is also not appropriate. The rural RAM does not account for lake-breeze and fumigation effects on emissions; both effects usually result in greater ground-level concentrations, particularly at locations near the emission source. The use of the rural RAM, therefore, may result in emission limitations tht would not be adequate to attain and maintain the national standards. In the absence of a more appropriate modeling technique, an emission limit based on the status quo emissions represents a reasonable margin of safety (pending collection of further monitoring data) to compensation for the uncertainty associated with the results of the RAM rural model. Current air quality data also does not contradict the agency conclusion that the status quo emissions are adequate to protect the standards.

In short, neither the RAM urban model used by EPA In the original promulgation nor the RAM rural model used by CEI in its request for revision are appropriate for use at the two plants. The air quality data collected by CEI demonstrate that neither model accurately predicts the air quality

impacts of the plants. However, based on the changed dispersion characteristics caused by the new GEP stack heights at the plants which will reduce ground-level concentrations at locations close to the plants where lake-breeze and fumigation effects have their greatest impact, it has been determined that status quo emissions limitations should be proposed for approval at both plants.

The agency is requiring the installation of an expanded monitoring system to further insure that the status quo emission limitations will, in fact, protect the national standards and to develop site-specific information on ground-level concentrations caused by the plants. This information will be used to develop plant-specific dispersion analyses if it should be necessary to revise the emission limitations in the future. The specific details of the expanded monitoring system will be available at the Region V Air Programs Branch within thirty days. Comments on the monitoring system should be submitted by the close of the comment period on the revisions. Final promulgation of the revisions will follow review of all written comments submitted and any public hearing statements.

The Agency has determined that this document is not a significant regulation and does not require preparation of a regulatory analysis under Executive Order 12044.

(Section 110 of the Clean Air Act, as amended 42 U.S.C. 7410)

Dated: June 4, 1979.

Douglas M. Costle,

Administrator.

Section 52.1881 part 52 of Chapter 1, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

Subpart KKK—Ohio

§ 52.1881 Control Strategy: Sulfur oxides (sulfur oxide).

* * * * *

(b) Regulations for the control of sulfur dioxide in the State of Ohio.

* * * * *

(35) In Lake County:

* * * * *

(vi) The Cleveland Electric Illuminating Co. or any subsequent owner or operator of the East Lake Plant in Lake County, Ohio shall not cause or permit the emission of sulfur dioxide at the East Lake Plant in excess of 6.58 pounds of sulfur dioxide per million BTU actual heat input from any stack.

(vii) [Revoked]

* * * * *

(38) In Lorain County:

* * * * *

(iii) The Cleveland Electric Illuminating Co., or any subsequent owner or operator of the Avon Lake Plant in Lorain County, Ohio, shall not cause or permit the emission of sulfur dioxide at Avon Lake Plant in excess of 1.35 pounds of sulfur dioxide per million BTU actual heat input from any stack at units 1 through 4 and 6.09 pounds of sulfur dioxide per million BTU actual heat input from any stack at units 6 through 9.

(iv) [Revoked]

* * * * *

[FR Doc. 79-18264 Filed 6-11-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR PART 52]

[FRL 1245-2]

Proposed Revision of the Virginia State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Commonwealth of Virginia has submitted a proposed revision of its State Implementation Plan (SIP) consisting of a variance for the E. I. du Pont de Nemours and Company's Spruance, Virginia plant. The variance would exempt one of the company's boilers from the State's emission standard for particulate emissions from fuel burning equipment until December 31, 1980. Sulfur dioxide (SO_2) and opacity emission limitations would not be changed by this variance. Diffusion modeling done by the company indicates that the increase in emissions allowed by the variance would not significantly affect ambient air quality.

DATE: Comments must be submitted on or before July 12, 1979.

ADDRESSES: Copies of the proposed SIP revision and the accompanying support documents are available for inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Air Programs Branch, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106, Attn: Mark E. Garrison.

State Air Pollution Control Board, Commonwealth of Virginia, Room 1106, Ninth Street Office Building, Richmond, Virginia 23219, Attn: W. R. Meyer.

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W. (Waterside Mall), Washington, D.C. 20460.

All comments on the proposed revision submitted within 30 days of publication of this notice will be considered and should be directed to:

Mr. Howard Heim, Chief, Air Programs Branch (3AH10), Air & Hazardous Materials Division, U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, Attn: AH018VA.

FOR FURTHER INFORMATION CONTACT: Mark E. Garrison (3AH13), U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, PA 19106, telephone number (215) 597-2745.

SUPPLEMENTARY INFORMATION: On December 13, 1978 the Secretary of Commerce and Resources of the Commonwealth of Virginia submitted for the Governor a proposed revision of the Virginia SIP consisting of a variance for the E. I. du Pont de Nemours and Company's Spruance, Virginia plant. The variance exempts one of the company's boilers from Part IV, Rule EX-3 of Virginia's Regulations for the Control and Abatement of Air Pollution. This regulation deals with emissions standards for particulate emissions from fuel burning equipment. On February 22, 1979 the State submitted additional information regarding the proposed revision, including an addition to the variance specifying an emissions limitation for particulates that the Company's boiler will have to meet while the variance is in effect. The additional information included a certification that the variance was approved in accordance with the public hearing and notice requirements of 40 CFR Part 51.4.

The proposed revision would allow the Company to burn coal in one of its boilers prior to the planned installation of particulate control equipment consisting of electrostatic precipitators (ESPs). The installation of this control equipment will be completed by December 31, 1980 at which time the Company intends to commence burning coal in a total of four of the Spruance plant's boilers. Since the variance expires on December 31, 1980 the Company thereafter will be required to meet the State emission limitation for particulates.

The proposed revision further places the following conditions on the Company:

1. Only one of the boilers numbered 5 through 8 can burn coal at any given time.

2. The maximum ash content of the coal cannot exceed 10%; furthermore, the particulate emission rate from the

boiler burning coal cannot exceed 201 pounds per hour.

3. Monitoring and reporting requirements include notifying the State prior to the first burning of coal and whenever the burning of coal is changed from one boiler to another. In addition, progress reports must be submitted on a quarterly basis.

Diffusion modeling performed by the company indicates that the allowed increase in particulate emissions will not significantly affect ambient air quality. The modeling was done using EPA's CRSTER model with one year's (1964) meteorology. The meteorological data was obtained from the Richmond airport and supplemented by mixing height data from National airport in Washington, D.C.

The variance exempts the boiler in question from Part IV, Rule EX-3, of Virginia's Regulations. This regulation was adopted by the State and submitted to EPA as part of a SIP revision which was proposed by EPA in the Federal Register on February 8, 1977 (42 FR 7969). EPA had not taken final action on that proposed SIP revision as of the effective date of the variance (i.e. December 1, 1978), and thus Virginia's former regulation, § 4.03.01, was still in effect as a matter of Federal law. EPA believes that its decision on the approvability of the variance for DuPont as a SIP revision is independent of the final action with respect to Part IV, Rule EX-3 and that the variance will correctly exempt the boiler in question from section 4.03.01 (for the purposes of Federal enforcement) as well as from Part IV, Rule EX-3 until December 31, 1980 as long as the conditions of the variance are met.

Based on the foregoing, it is the tentative decision of the Administrator to approve the proposed revision of the Virginia State Implementation Plan.

The public is invited to submit to the address stated above, comments on whether the DuPont variance should be approved as a revision of the Virginia State Implementation Plan.

The administrator's decision to approve or disapprove the proposed revision will be based on the comments received and on a determination whether the amendments meet the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(42 U.S.C. 7401)

Dated: May 22, 1979.

Jack J. Schramm,

Regional Administrator.

[FR Doc. 79-18265 Filed 6-11-79; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 52

[FRL 1244-3]

Proposed Revision of the Commonwealth of Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Commonwealth of Pennsylvania has submitted a proposed revision of certain of the provisions contained in the State Implementation Plan. The proposed revisions are to Chapter 121, relating to general provisions, Chapter 123, relating to standards for contaminants, and to Chapter 129, relating to standards for sources. The revisions to these chapters are intended to clarify terms and the intent of the provisions contained in these chapters. The EPA solicits comments on whether to approve or to disapprove these proposed revisions.

DATE: Comments must be received on or before July 12, 1979.

ADDRESSES: Copies of the proposed SIP revision and accompanying support documents are available for public inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Air Programs Branch, 6th & Walnut Sts., Philadelphia, Pennsylvania 19106, ATTN: Patricia Sheridan.

Department of Environmental Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, Pennsylvania 17120, ATTN: Mr. James Hambright, Director.

Public Information Reference Unit, Room 2922—EPA Library, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

All comments on the proposed revision submitted on or before July 12, 1979, will be considered and should be directed to:

Mr. Howard Heim, Chief, Air Programs Branch (3AH10), U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, ATTN: AH019PA.

FOR FURTHER INFORMATION CONTACT: Patricia Sheridan (3AH10), U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, PA 19106, telephone (215) 597-8176.

SUPPLEMENTARY INFORMATION: On September 20, 1978, the Commonwealth of Pennsylvania submitted to the Regional Administrator, EPA, a revision of the Commonwealth's State Implementation Plan (SIP). The Commonwealth requested approval of amendments which consist of the following:

(1) A detailed definition of "stockpiling" to include as the act of placing or storing material upon and removing material from piles exposed to the outdoor atmosphere.

(2) Clarification of the intent of Section 121.2 that unless explicit reference is made to another section of the regulations, each section shall be construed and enforced according to its own terms.

(3) The establishment of a clear mechanism for evaluating minor fugitive emissions and providing written approval of such emissions as stated in § 123.1(a)(9) and (b) and § 129.15 (c) and (d).

(4) The carrying out of legislative policy mandated by an amendment to § 4.1 of Air Pollution Control Act adopted on December 12, 1976, which indicated that the Department of Environmental Resources should not regulate air contaminants from production of agricultural commodities in their unmanufactured state (Section 123.1(d), 123.31(c), 123.42(4) and 129.14(c)).

The public is invited to submit to the address stated above comments on whether the above listed modifications should be approved as a revision of the Commonwealth of Pensylvania's State Implementation Plan. The Commonwealth of Pennsylvania has certified that public hearings were held on April 5, 7 and 12, 1977 in accordance with the requirements of 40 CFR 51.4.

The Administrator's decision to approve or disapprove this proposed SIP revision will be further based on a final determination as to whether it meets the requirements of Section 110 of the Clean

Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Dated: May 30, 1979.

(42 U.S.C. 7401)

Jack J. Schramm,

Regional Administrator.

[FR Doc. 79-18261 Filed 6-11-79; 8:45 am]

BILLING CODE 6560-01-M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

[41 CFR Parts 101-17, 101-18, and 101-19]

Federal Space Management; Extension of Comment Period of Proposed Rulemaking

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Notice of extension of comment period.

SUMMARY: This notice extends the period for comments on the proposed rule, published March 29, 1979 (44 FR 18705), proposing amended regulations for the planning, acquisition, utilization, and management of Federal space facilities. Requests for additional commenting time were received. This notice extends the comment period to July 13, 1979.

DATE: Comments must be received on or before July 13, 1979.

ADDRESS: Comments should be addressed to the General Services Administration (PR), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Joseph P. Yiakis, Acting Assistant Commissioner for Space Management (202-566-1025).

Dated: June 6, 1979.

Dennis J. Keilman,

Acting Commissioner, Public Buildings Service.

[FR Doc. 79-18153 Filed 6-11-79; 8:45 am]

BILLING CODE 6820-23-M

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1039]

[Ex Parte No. 364 [1]]

Railroad—Freight Forwarder Contract Rates; General Policy Statement; Proposed Change

AGENCY: Interstate Commerce Commission.

ACTION: Proposed Policy Statement; request for comments.

SUMMARY: The Commission proposes to issue a general policy statement permitting railroads to file in tariff form freight forwarder contract rates. Having concluded that there is nothing inherently unlawful in railroads and shippers voluntarily entering into long-term commitments for the transportation of a specified volume of freight at agreed rates, the Commission believes that similar arrangements between railroads and freight forwarders would also be within the permissible scope of the law. As the acceptance for filing of railroad tariffs containing freight forwarder contract rates represents a change in policy, interested parties will be permitted to file comments before a final policy statement is adopted. All interested parties are invited to comment.

DATE: Comments are due on or before July 12, 1979.

ADDRESS: Comments should be filed with the Office of Proceedings, Room 5342, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Janice M. Rosenak or Harvey Gobetz (202-275-7693).

SUPPLEMENTARY INFORMATION: In Ex Parte No. 358, *Change of Policy Railroad Contract Rates*, 43 Fed. Reg. 58189 (December 13, 1978) the Commission announced a change in policy with respect to contract rates. Railroad contract rates with shippers, once "deemed unlawful *per se*," will, under the policy statement, be examined on an individual basis and, where lawful, be permitted to become effective. However, in the Ex Parte No. 358 policy statement, a decision on whether to permit railroads to publish contract rates for freight forwarders was deferred for the following reason:

It has been suggested that freight forwarders should be allowed to enter into contract rates with railroads. In the past the Commission has found that contract rates between railroads and freight forwarders are prohibited by the Interstate Commerce Act. We are not prepared to re-examine that holding in the context of this policy statement.

Upon further study, we believe it is appropriate to permit a railroad to file contract rates with respect to freight forwarder traffic.

As a consequence of our decision to defer action with respect to freight forwarders, the forwarding industry may have been placed at a competitive disadvantage vis-a-vis shippers' associations, the forwarders' principal competitors.[2] Such a result would be inconsistent with the Commission's finding in Ex Parte No. 266, "that the freight forwarding industry should be given every opportunity to prove its continued usefulness and to demonstrate that it still has a vital role to play on the national transportation scene." As we continue to subscribe to this belief, we believe that additional action is necessary in the area of railroad contract rates.

The correct nexus between the forwarding and railroad industry is crucial for the forwarders' continued survival as common carriers. We recognized in our freight forwarder investigation that the great bulk of freight forwarder shipments move by rail between concentration and break-bulk points and that the use of TOFC service by the forwarding industry was extensive and growing. Generally, we found that motor carrier service tends to be more expensive than rail per ton mile and that as a result most forwarder traffic handled by motor carrier moved under section 10766 contracts [3] in assembly and distribution service.[4] Whereas the motor carrier industry was found to be both competitor to and customer of the freight forwarder industry, the Western Railroads [5] regarded the forwarding industry as their most important ally and their means to retain a share of the small shipment and less-than-carload traffic.

The Commission has long recognized the dual nature of the forwarding industry. On the one hand, forwarders hold themselves out in their own name to provide the public with a transportation service. They publish their own tariffs, issue bills of lading, and assume primary responsibility for

[1] This number is assigned for informational and retrieval purposes only.

[2] Ex Parte No. 266, *Investigation Into Status of Freight Forwarders* 399 I.C.C. 711 at 792 (1971).

[3] Formerly section 409(a) of the Interstate Commerce Commission Act.

[4] In contrast to collection and delivery service, assembly and distribution service requires movement outside the terminal area with the result that freight forwarders are required to purchase the underlying transportation from common carriers.

[5] 399 I.C.C. at 740 and 785.

the safe transportation of the freight. That they were to be considered common carriers in certain respects was made clear on December 20, 1950, when Congress revised part IV, section 402(a)(5) of the Interstate Commerce Act, 64 Stat. 1113, 1114.[6] The report accompanying the legislation noted that forwarders are clearly common carriers in their relations to the public.[7] On the other hand the Commission and those carriers who perform the actual movement of goods have traditionally looked upon freight forwarders as shippers with regard to their reliance on others for the underlying line-haul and assembly and distribution service. Indeed, in Ex Parte No. 266, shipper associations opposed extending any form of volume rate relief to forwarders. Their principal contention was that if volume economies are to be made available, they should be open to everyone including those shippers capable of tendering consolidated traffic to the railroads under similar transportation conditions. Now that the benefit of contract rates has been extended to shippers, we propose to broaden the extension to freight forwarders as well.

Although there has never been an explicit statutory prohibition against freight forwarders entering into contracts with railroads, the Commission has nevertheless construed its jurisdiction under the Interstate Commerce Act as permitting freight forwarders to enter into only those agreements explicitly authorized by statute.[8] The presumption was that in authorizing some agreements between freight forwarders and other common carriers, Congress meant to prohibit the entry into all other types of arrangements. In turn, this presumption was predicated upon the view that freight forwarders are shippers vis-a-vis the underlying carriage. To permit them to negotiate rates would amount to affording them an illegal favoritism over other shippers utilizing the same carrier facilities.

Recent developments in the law have given us cause to reconsider the scope of our jurisdiction with respect to railroad-freight forwarder contract rates. In *Commonwealth of Pennsylvania* v. *Interstate Commerce Commission*, 561 F.2d 278 (D.C. Cir. 1978),[9] the court affirmed a change in Commission policy established in 1908. The policy change resulted in our prescription of rules requiring the filing of international joint rates and through routes participated in by rail, motor, and water carriers regulated by the ICC and ocean carriers regulated by the Federal Maritime Commission. The prescribed rules required that divisions be broken out, and we limited our substantive regulation to the domestic portion of the rate.

However, prior to the court decision, the Commission in Ex Parte No. 261 (Sub-No. 1), *Joint Rates Through Routes Frt. Forwarders & NVO*, 355 I.C.C. 913 (1977), concluded that it lacked statutory authority to permit freight forwarders to establish and participate in international joint rates and through routes. The forwarders appealed the decision in a proceeding entitled *New York Foreign Freight Forwarders & Brokers Ass'n* v. *Interstate Commerce Commission*, Nos. 75–1867 and 77–1353 (U.S.C.A., D.C. Cir). Their challenge relied upon the portion of the decision in the *Commonwealth of Pennsylvania* case where the petitioners had challenged the Commission's decision to permit domestic water carriers to enter into international joint rates and through routes notwithstanding the lack of explicit statutory authority of the sort provided for rail and motor carriers. The Court of Appeals disagreed with the petitioners stating.

> We find nothing in Part III purporting to prohibit filing voluntarily adopted joint rates in foreign commerce between FMC and ICC-regulated water carriers.
>
> The question is whether Congress, without explicitly stating that domestic and foreign water carriers can voluntarily enter into and file joint rates, intended, *sub silentio*, to preclude the ICC from issuing rules permitting domestic water carriers voluntarily to do so just as their competitors, the rail and motor carriers, do.
>
> We do not think that Part III can be read so narrowly or that Congress' silence on this point can be elevated into such significance as to put Part III carriers in a different posture than their motor and rail carrier competitors. (561 F.2d at 290).

The freight forwarders argued that their position was no different than that of the domestic water carriers, concerning the absence of specific statutory authority with respect to joint rates and through routes.

The Court of Appeals, on review in the *NYFFF&BA* case, disagreed with the freight forwarders' analogy to domestic water carriers. After reviewing the history of the Commission [10] and court interpretations of the status of freight forwarders and the legislative history of the 1950 amendment to the definition of a freight forwarder, as contained in former section 402(a)(5), the court concluded: [11]

> The overall emanation from the 1950 amendment is that while Congress made no immediate change in the law as to joint rates it did not necessarily intend to freeze the development of the law of freight forwarders. The underlying law that was left unchanged was one that recognized a discretionary role for the ICC in adjusting the "common law" of the Interstate Commerce Act to changes in economic realities. The rules that had evolved to prevent overreaching by the freight forwarders, viewed as shippers, were subject to reconsideration if this danger receded and the carrier quality of forwarders advanced. (Slip op. 18–19)

Pointedly the Court of Appeals affirmed our decision in *NYFFF&BA* on a policy basis while disagreeing with our conclusion as to statutory authority. In fact, the Court's opinion "emphasize[d] * * * that the Commission retains flexibility to reconsider its conclusions in the light of future developments."

Although *NYFFF&BA* is concerned with international joint rates and through routes, the Court's interpretation of the effect of the 1950 amendment upon the status of freight forwarders is clearly not so limited. Also noteworthy for its broad application is the court's acceptance of the long-term recognition of the dual qualities of freight forwarders as both shippers and carriers and its conclusion that the legislative history of the 1950 amendment "reflects a continuing recognition of the quality of freight forwarders as shippers."

In view of the court decisions in *Commonwealth of Pennsylvania* and *NYFFF&BA*, and the 1950 amendment, we no longer believe that the absence of express statutary authority is determinative of our jurisdiction with regard to whether we may permit the establishment of railroad-freight forwarder contract rates. In recognition of those qualities freight forwarders share with shippers and the extension of contract rates to shippers in general, we propose to modify the statement of policy appearing in part 1039 to subchapter A of chapter X of title 49 of

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[6] Recodified at 49 U.S.C. 10102(1) and (8).

[7] H. Rept. 2489 to H.R. 5967, 81st Cong. 2d Sess.

[8] 49 U.S.C. 10725 (formerly sections 407 and 408) authorizes (1) subchapter I, II, and III carriers to establish forwarder assembly and distribution rates lower than those charged shippers who were not similarly situated, and (2) motor carriers to establish reduced forwarder rates for small parcel traffic.

49 U.S.C. 10766(b) authorizes freight forwarders to enter into agreements with motor carriers for transportation at a distance of 450 highway miles or less at rates less than those established in the motor carriers' regular tariffs.

[9] Ex Parte No. 261, *International Joint Rates and Through Routes*, fifth and final decision at 351 I.C.C. 490 (1976).

[10] This included our disclaimers of jurisdiction in both Ex Parte Nos. 266 and 261(1) as to freight forwarder contract rates and joint rates and through routes.

[11] NYFFF&BA. (Slip op. 18).

the Code of Federal Regulations.[12] The following additional sentence will be added after the last sentence to 49 CFR 1039.1, the definitional section:

§ 1039. Definition.

* * * For the purposes of this policy statement the term "shipper" shall also refer to freight forwarders.

As in the case of our general policy statement in railroad contract rates, we do not perceive the need for specific rules at this time. Each individual railroad-freight forwarder contract rate proposal will be evaluated on its own merits. In this evaluation process we propose to consider the same six factors listed in our earlier general policy statement.

Comments by any interested party concerning any matter discussed in this policy statement or relevant thereto are requested.

Dated: May 31, 1979.

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. 79-18280 Filed 6-11-79; 8:45 am]

BILLING CODE 7035-01-M

[49 CFR Part 1252]

[No. 34364 (Sub-No. 4)]

Public Inspection of Piggyback Traffic Statistics Reports

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed rulemaking.

SUMMARY: This Notice proposes to make piggyback traffic statistics reports open to public inspection and to incorporate the reports as part of the carriers' annual report.

DATES: Comments should be filed on or before: June 30, 1979.

ADDRESSES. Send comments with 10 copies, if possible, to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr. (202) 275-7448.

SUPPLEMENTARY INFORMATION: Beginning with the first quarter of 1964, class I railroads, class I intercity motor carriers of property, class A water carriers and class A freight forwarders were required to file quarterly reports of piggyback traffic statistics on forms PTR-R, PTR-M, PTR-W, and PTR-FF, respectively. Effective January 1, 1978, the filing frequency of piggyback data was changed from a quarterly to a semiannual basis (order No. 34364 (Sub-No. 2), served October 21, 1977). Effective January 1, 1979, the filing frequency of piggyback data was changed from a semiannual to an annual basis and filing was extended to class II rail carriers and to class II intercity motor carriers (Order No. 34364 (Sub-No. 3), served October 6, 1978).

In Order No. 34364 (Sub-No. 3), the Commission requested comments from the public concerning the need to continue to keep the piggyback statistical reports confidential. No comments were received on this issue. Now, we propose to open these reports to public inspection and to incorporate these reports with the carriers' annual report forms submitted to the Commission. Data on form PTR-R for class I railroads would be included as a separate schedule in annual report R-1; data on form PTR-R for class II railroads would be included as a separate schedule in annual report R-2; data on form PTR-M for class I and class II intercity motor carriers would be included as a separate schedule in annual report form M; data on form PTR-FF for class A freight forwarders would be included as a separate schedule in annual report form F-1; data on form PTR-W for class A water carriers would be included as a separate schedule in annual report form W-1; and data on form PTR-W for all maritime carriers would be included as a separate schedule in annual report form W-4.

Accordingly, we propose to eliminate Part 1252, sections 1252.1 through 1252.4, of Title 49 of the Code of Federal Regulations and to amend carriers' annual report forms to include piggyback traffic statistics.

This proposed rule does not significantly affect the quality of the human environment.

These rules are proposed under the authority of 49 U.S.C. §§ 10311, 11145, 11142, and 10321.

Decided: May 21, 1979.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18315 Filed 6-11-79; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 44, No. 114
Tuesday, June 12, 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

Forest Service

Forest Land and Resource Management Plan; Wenatchee National Forest, Chelan, Douglas, Yakima, and Kittitas Counties, Wash.; Intent To Prepare an Environmental Impact Statement

Pursuant to the National Environmental Policy Act of 1969, and the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, the Forest Service, Department of Agriculture, will prepare an Environmental Impact Statement for a Forest Land and Resource Management Plan for the Wenatchee National Forest.

The Forest Plan will be prepared according to regulations being promulgated by the Secretary of Agriculture. The regulations will implement Section 6 of the National Forest Management Act of 1976.

A Land Management Plan has been prepared and implemented on the Chelan Planning Unit. A Draft Environmental Statement on the Kittitas Land Management Plan was filed with the Environmental Protection Agency (EPA) on July 31, 1978. Public comment to the Kittitas Draft has been analyzed and incorporated into a Final Environmental Statement planned to be filed with the EPA in July 1979. A completed Land Use Plan for the Alpine Lakes Management Unit and subsequent legislation established the Alpine Lakes Wilderness and Intended Wilderness in July 1976. A planning team is now in the process of developing a Wilderness Management Plan for the Alpine Lakes Wilderness and Intended Wilderness and specific management direction for the nonwilderness lands. A Final Environmental Statement is planned to be filed with the EPA in June 1980, with implementation by September 1980. Draft Environmental Statements on the Cougar Lakes Wilderness Study and the Naches-Tieton-White River Land Management Plan were filed with the EPA in August 1977. These Plans will be carried through to completion as part of the Forest Plan.

The Forest Plan will replace all previous Plans and provide direction for all lands on the Wenatchee National Forest plus the Naches and Tieton Ranger Districts of the Mt. Baker-Snoqualmie National Forest which are administered by the Wenatchee National Forest.

The Forest Plan will be coordinated with local, county, State and other Federal agencies. Public involvement will be encouraged and sought throughout the planning process. The following public workshops are scheduled to help the Forest identify issues, opportunities, and concerns:

7 p.m., June 18, Thunderbird Motel Inn, Wenatchee, WA.;
7 p.m., June 19, Davis High School, Yakima, WA.;
7 p.m., June 26, Sherwood Inn, Seattle, WA.;
7 p.m., June 28, Holiday Inn, 3518 Pacific Highway East, Tacoma, WA.

Alternatives will be displayed in an Environmental Impact Statement and will include as a minimum (1) a no-action alternative, (2) one or more alternatives which will result in eliminating all backlogs of needed treatment for the restoration of renewable resources, (3) an alternative which approximates the levels of goods and services assigned by the Regional Plan, and (4) one or more alternatives formulated to resolve the major public issues or concerns.

R. E. Worthington, Regional Forester, Pacific Northwest Region is the responsible official. Robert C. Benson, Wenatchee National Forest will be the Team Leader for the Environmental analysis and Impact Statement.

A Draft Environmental Impact Statement on the Forest Plan is scheduled to be filed by December 1981. The Final Environmental Impact Statement will be filed December 1982.

Comments on this Notice of Intent for the Forest Plan should be sent to John L. Rogers, Forest Supervisor, Wenatchee National Forest, P.O. Box 811, Wenatchee, Washington 98801.

June, 1, 1979.

Frank J. Kopecky,

Acting Regional Forester.

[FR Doc. 79-18133 Filed 6-11-79; 8:45 am]

BILLING CODE 3410-11-M

Office of the Secretary

Change in Boudary of National Forest

Pursuant to authority vested in me by section 11 of the Act of March 1, 1911 (36 Stat. 961) as amended, and the delegation of authority and assignment of functions by the Secretary of Agriculture to the Assistant Secretary of Agriculture for Conservation, Research, and Education, the boundary of the Uwharrie National Forest is retracted as described below.

Uwharrie National Forest, North Carolina

(Lands to be Excluded)

Randolph County:
Forest Service Tracts No. U-365 and U-367;
Montgomery County:
Forest Service Tracts No. U-120 and U-1265;
The areas described aggregate 443.30 acres.

Effective Date: This order shall become effective June 12, 1979.

David G. Unger,

Deputy Assistant Secretary.

June 7, 1979.

[FR Doc. 79-18180 Filed 6-11-79; 8:45 am]

BILLING CODE 3410-11-M

Change in Boundary of National Forest

Pursuant to authority vested in me by Section 11 of the Act of March 1, 1911 (36 Stat. 961) as amended, and the delegation of authority and assignment of functions by the Secretary of Agriculture to the Assistant Secretary of Agriculture for Conservation, Research, and Education, the boundary of the Angelina National Forest is extended as described below and all lands within the Angelina National Forest as adjusted that have been or hereafter are acquired by the United States under provisions of the aforsaid Act, or which otherwise attain status as National Forest land subject to such Act, are hereby designated for administration as part of the Angelina National Forest.

Angelina National Forest, Texas

Angelina County:

That part of Forest Service Tract No. A-100-1 lying in Angelina County;

Nacogdoches County:

That part of Forest Service Tract No. A-100-1 lying in Nacogdoches County;
Forest Service Tract No. A-100-2;
Forest Service Tract No. A-100-3;
Forest Service Tract No. A-100-4;
That part of Forest Service Tract No. A-100-5 lying in Nacogdoches County;

San Augustine County:

That part of Forest Service Tract No. A-100-5 lying in San Augustine County;
That part of Forest Service Tract No. A-100-6 lying outside the existing National Forest boundary;
Forest Service Tract No. A-100-20;

The areas described aggregate 10,931.95 acres.

Effective Date: This order shall become effective June 12, 1979.

David G. Unger,

Deputy Assistant Secretary.

June 7, 1979.

[FR Doc. 79-18181 Filed 6-11-79; 8:45 am]

BILLING CODE 3410-11-M

Change in Boundary of National Forest

Pursuant to authority vested in me by Section 11 of the Act of March 1, 1911 (36 Stat. 961) as amended, and the delegation of authority and assignment of functions by the Secretary of Agriculture to the Assistant Secretary of Agriculture for Conservation, Research, and Education, the boundary of the Daniel Boone National Forest is extended as described below and all lands within the Daniel Boone National Forest as adjusted that have been or hereafter are acquired by the United States under provisions of the aforesaid Act, or which otherwise attain status as National Forest Land subject to such Act, are hereby designated for administration as part of the Daniel Boone National Forest.

Daniel Boone National Forest, Kentucky

Bath County:

That part of Forest Service Tract No. CRR-105 lying outside the existing National Forest boundary;

Rowan County:

That part of Forest Service Tracts No. C-67a and C-75 lying outside the existing National Forest boundary;

Morgan County:

Forest Service Tracts No. CRR-5305, CRR-5306, CRR-5307, CRR-5308, CRR-5402, CRR-5403, CRR-5404-1, CRR-5404-2, CRR-5405-1, CRR-5405-2, CRR-5406, CRR-5407, CRR-5410, CRR-5413;
Corps of Engineers Tracts No. 4603, 4603-C, 4605, 4801, 4804, 4805, 4806, 4900, 4901, 4902, 4904, 5100, 5101, 5102, 5103, 5104, 5105, 5106, 5200, 5203, 5300, 5301, 5302, 5303, 5304, 5401, 5409, 5411, 5414, 5600, 5601, 5602, 5603, 5603-C, 5700, 5701, 5702, 5703, 5704, 5705, 5706, 5707;
That part of Corps of Engineers Tracts No. 4800, 4802, and 4803 lying outside the existing National Forest Boundary;

Laurel County:

Forest Service Tracts No. LRL-1007, LRL-1008, LRL-1012-1, LRL-1012-2, LRL-1013, LRL-1017, LRL-1021, LRL-1023, LRL-1061-1, LRL-1061-2;
That part of Forest Service Tract No. LRL-1058 lying outside the existing National Forest boundary;
Corps of Engineers Tracts No. 1003, 1004, 1005, 1006, 1009, 1014-1, 1014-2, 1016, 1018, 1020, 1022, 1024;
That part of Corps of Engineers Tract No. 1002 lying outside the existing National Forest boundary;

Whitley County:

Forest Service Tracts No. LRL-1029, LRL-1036, LRL-1037 (part), LRL-1038, LRL-1043, LRL-1058 (part);
Corps of Engineers Tracts No. 1030, 1031, 1032, 1033, 1034, 1035, 1037 (part), 1039, 1040, 1041, 1042, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1053.

The areas described aggregate 3,582.96 acres.

Effective Date: This order shall become effective June 12, 1979.

David G. Unger,

Deputy Assistant Secretary.

June 7, 1979.

[FR Doc. 79-18182 Filed 6-11-79; 8:45 am]

BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

[Order 79-6-20; Docket 35745]

Additional Great Lakes—Florida Service Show-Cause Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause (79-6-20), *Additional Great Lakes—Florida Service Show-Cause Proceeding, Docket 35745.*

SUMMARY: The Board is proposing to grant nonstop authority in the following markets: Buffalo/Cleveland/Rochester-Ft. Lauderdale/Miami/Tampa; Pittsburgh-Daytona Beach/Orlando/Ft. Lauderdale/Miami/Tampa; and Albany/Detroit/Syracuse-Daytona Beach/Ft. Lauderdale/Miami/Orlando/Ft. Myers/Sarasota/Tampa to American Airlines and any other fit, willing and able applicants whose fitness can be established by officially noticeable data. The complete text of this order is available as noted below.

DATES: Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below, no later than July 12, 1979, 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.

Additional Data: All existing and would-be applicants who have not filed (a) illustrative service proposals, (b) environmental evaluations, and (c) an estimate of fuel to be consumed in the first year are directed to do so no later than June 27, 1979.

ADDRESSES: Objections or Additional Data should be filed in Docket 35745, Docket Section, Civil Aeronautics Board, Washington D.C., 20428.

FOR FURTHER INFORMATION CONTACT: M. Mikolajczyk, Bureau of Domestic Aviation, Civil Aeronautics, Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5918.

SUPPLEMENTARY INFORMATION: Objections would be served upon the following persons: American Airlines and Eastern Air Lines.

The complete text of Order 79-6-20 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 79-6-20 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: June 5, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-18252 Filed 6-11-79; 8:45 am]

BILLING CODE 6320-01-M

[Order 79-6-34; Docket 34758]

Aerolineas Terrotoriales de Colombia Ltda.; Foreign Air Carrier Permit

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause: Order 79-6-34.

SUMMARY: The Board proposes to approve the following application: Applicant: AEROLINEAS TERROTORIALES DE COLOMBIA LTDA. "AEROTAL". Application Date: February 14, 1979. Docket 34758. Authority Sought: Foreign air carrier permit to engage in scheduled cargo service between Cali, Colombia and Miami, Florida.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall file a statement of such objections NO LATER THAN July 2, 1979, with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the

Department of State, and the Ambassador of Colombia in Washington, D.C. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to the disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit or certificate.

ADDRESSES FOR OBJECTIONS:

Docket *34758*, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

Aerolineas Territoriales de Colombia Ltda. "AEROTAL" c/o Arent, Fox, Kintner, Plotkin and Kah, Attn: Robert H. Huey, 1815 "H" Street NW., Washington, D.C. 20006.

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 516, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: the Regulatory Affairs Division of the Bureau of International Aviation, Civil Aeronautics Board; (202) 673-5183.

By the Civil Aeronautics Board: June 5, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-18253 Filed 6-11-79; 8:45 am]

BILLING CODE 6320-01-M

[Order 79-6-47; Agreement CAB 2698, R-41, et al.]

Conditions of Carriage—Cargo; Order Granting Stay

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 5th day of June, 1979.

In the matter of Agreements adopted by the International Air Transport Association regarding Agreement CAB 2698, R-41; Agreement CAB 2699, R-49; Agreement CAB 2700, R-43; Agreement CAB 3119; Agreement CAB 7648, R-107; Agreement CAB 24475, R-4 and R-5, Docket 25280; Agreement CAB 25186, R-12, Docket 27573; Agreement CAB 25954, R-1, R-2 and R-3, Docket 27573; and Agreement CAB 26701, R-9.

On May 15, 1979, The Flying Tiger Line Inc. filed a motion to stay the effectiveness of ordering paragraphs (1) and (6) of Order 78-8-10, August 3, 1978, for a period of six months from date of final Board approval of newly amended conditions of carriage submitted by the International Air Transport Association (IATA) on May 15, 1979. Order 78-8-10 approved (some conditionally) and disapproved provisions in two IATA resolutions (Resolutions 600b and 600j) restating the condition of carriage of cargo to appear on the back and face of cargo air waybills. By Order 78-11-146, November 30, 1978, on motion of IATA, we stayed the effectiveness of paragraphs (1) and (6) of Order 78-8-10 until June 5, 1979,[1] in order to give the carriers lead time to use up their existing stock of air waybills and to print and distribute new air waybills.

In support of its motion, Flying Tiger states that the newly amended conditions of carriage deal with those provisions of the IATA Resolution 600b which were either disapproved or approved conditionally. In order to accomplish this, it was necessary to use the IATA machinery, which involved a Cargo Traffic Procedures Committee meeting recommending the proposed amendments, and then circulation for approval by all IATA member carriers. As a result, the newly amended conditions were filed with the Board on May 15, 1979.

Answers in support of Flying Tiger's motion have been filed by TWA, Pakistan International and CPAir, El Al, LAN, SAS and Varig (jointly). No objections to the motion have been received.

Based on the foregoing, we have decided to grant a stay. No useful purpose would be served in now requiring the carriers to print and distribute new air waybills, and then repeat the process very shortly following our action on the newly amended provisions.[2] We anticipate that no further amendments are presently contemplated. In these circumstances, we shall grant the stay *pendente lite* until we have had an opportunity to act on the new amendments.

Accordingly, we grant a stay of ordering paragraphs (1) and (6) of Order 78-8-10 until further order of the Board.

We will publish this order in the **Federal Register.**

[1] Paragraphs (1) and (6) of Order 78-8-10 withdrew the approval granted in 1949 of the conditions of carriage now appearing on air waybills.

[2] It is understood that we are not passing on the merits of the newly amended conditions of carriage, a matter with which we expect to deal shortly.

By the Civil Aeronautics Board:[3]

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-18249 Filed 6-11-79; 8:45 am]

BILLING CODE 6320-01-M

[79-6-23; Docket 35746]

Corpus Christi-Houston/San Antonio Show Cause Proceeding; Proposed Grant of Authority to Continental Air Lines

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause (79-6-23), *Corpus Christi-Houston/San Antonio Show Cause Proceeding*, Docket 35746.

SUMMARY: The board is proposing to grant Corpus Christi-Houston/San Antonio authority to Continental Air Lines (Docket 35339) 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 11, 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 35746, which we have entitled the *Corpus Christi-Houston/San Antonio Show Cause Proceeding.*

In addition, copies of such filings should be served on Continental Air Lines.

FOR FURTHER INFORMATION CONTACT: Charles Stohr, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C., 20428, (202) 673-5348.

SUPPLEMENTARY INFORMATION: The complete text of Order 79-6-23 is available from the Distribution Section, Room 516, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 79-6-23 to that address.

[3] All Members concurred.

By the Civil Aeronautics Board: June 5, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-18251 Filed 6-11-79; 8:45 am]

BILLING CODE 6320-01-M

Federal Express Corp.; Application for Pick-up and Delivery Service

June 6, 1979.

In accordance with Part 222 (14 CFR Part 222) of the Board's Economic Regulations (effective June 12, 1964), notice is hereby given that the Civil Aeronautics Board has received an application, Docket 35758, from Federal Express Corporation, Memphis International Airport, AMF Box 30167, Memphis, Tennessee 38130, for authority to provide pick-up and delivery service between sixteen of the airports served by Federal Express to points located from thirty to sixty-eight miles from such airports.

Under the provisions of section 222.3(c) of Part 222, interested persons may file an answer in opposition to or in support of this application on or before June 27, 1979. An executed original and nineteen copies of such answer shall be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. It shall set forth in detail the reasons for the position taken and include such economic data and facts as are relied upon, and shall be served upon the applicant and state the date of such service.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-18248 Filed 6-11-79; 8:45 am]

BILLING CODE 6320-01-M

[79-6-24; Docket 35747]

New York/Newark-Pittsburgh and Phoenix-Palm Springs Show-Cause Proceeding; Proposed Grant to American

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79-6-24, the *New York/Newark-Pittsburgh and Phoenix-Palm Springs Show-Cause Proceeding*, Docket 35747.

SUMMARY: The Board is proposing to grant New York/Newark-Pittsburgh turnaround authority and Phoenix-Palm Springs unrestricted authority to American and any other fit, willing and able applicant whose fitness can be established by officially noticeable data. The complete text of this order is available as note below.

DATES: Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below, no later than July 11, 1979, a statement of objection, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections.

Additional Data: All existing and would-be applicants who have not filed (a) illustrative service proposals, (b) environmental evaluations, and (c) an estimate of fuel to be consumed in the first year are directed to do so no later than June 26, 1979.

ADDRESSES: Objections or Additional Data should be filed in Docket 35747, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Mary C. Terry, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Ave., Washington, D.C. 20428, (202) 673-5384.

SUPPLEMENTARY INFORMATION: Objections should be served upon the following person: American Airlines and Allegheny Airlines.

The complete text of Order 79-6-24 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metroplitan area may send a postcard request for Order 79-6-24 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: June 5, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-18250 Filed 6-11-79; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

United States Travel Service

Supplement to Final Environmental Impact Statement for Energy Expo '82

Notice is hereby given that a Supplement to the Final Environmental Impact Statement (FEIS) on the proposed International Energy Exposition (Energy Expo '82) to be held in Knoxville, Tennessee, in 1982 is now available for public review and comment. This document was prepared pursuant to Section 102(2)(C) of the National Environment Policy Act. The Supplement contains the results and conclusions of the Department of Commerce's analysis of the proposed U.S. Pavilion and the results of its on-going environmental monitoring and research concerning the overall exposition program.

Copies of the Supplement and FEIS can be obtained by submitting a written request for either or both documents to the address set forth below. To be considered, written comments on the Supplement must be received at the same address by July 12, 1979.

Mr. C. C. Pusey, United States Travel Service, Room 1858, U.S. Department of Commerce, Washington, D.C. 20230.

Questions or requests for further information should be directed to Mr. C. C. Pusey at the above address or by calling telephone 202/377-5211.

Lee Wells,

Acting Assistant Secretary for Tourism.

[FR Doc. 79-18254 Filed 6-11-79; 8:45 am]

BILLING CODE 3510-11-M

DEPARTMENT OF DEFENSE

Department of the Army

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Savannah River Basin Study (Oates Creek Flood Control Study)

June 4, 1979.

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. **Proposed Action:** The purpose of the Savannah River Basin Study is to investigate the nature and scope of water resources problems and needs in the Savannah River Basin. The problems and needs addressed by the study include flood control, water supply, navigation, hydropower, and recreation. Seven projects in the watershed were analyzed, and the Oates Creek Flood Control Project was the only project determined to be economically feasible and environmentally sound. The Oates Creek watershed is contained completely within Richmond County, Georgia. Urban development in the Oates Creek watershed has resulted in 283 buildings being located in the 100-year flood plain. Average annual damages resulting from flooding are estimated at $1.6 million. Nine alternatives were evaluated, and the selected plan involves channel modification along Oates Creek from Gordon Highway (U.S. Highway 78) to Olive Road. Sixteen bridges and culverts will also be replaced. Of the 2.33 mile reach to be channelized, about 5,800 feet would be lined with concrete and have vertical sides. The remaining

6,500 feet would be grass-lined with sloping sides.

2. **Alternatives:** In developing the selected plan, the alternatives of no action, flood warning, floodproofing and evacuation, evacuation only, clearing and snagging, enlargement of bridge and culvert openings, levees, and upstream dam and channel modification were investigated.

3. **Scoping Process:** Public involvement to date includes a public meeting held on 6 June 1978 and a workshop held on 8 November 1978. Although no formal scoping meeting is planned, the public and concerned government agencies will be able to express their views at a public meeting and workshop scheduled for July, 1979. The main environmental impacts resulting from the channel modification would be associated with the construction work and the altering of the existing channel. Since the area is already heavily developed and the stream suffers from urban pollution, the overall impacts on the environment would be minor. Social impacts would be mainly beneficial resulting from the reduced flooding. Much of the Oates Creek study area is located in an economically depressed part of Augusta, Georgia. Many of the residents affected by flooding suffer financial and personal hardship when flooding occurs. Because of the unique characteristics of the area and social climate, primary consideration was given to relocating as few people as possible. Other significant issues may be identified at the public meeting and workshop.

4. **DEIS Preparation:** The DEIS should be available to the public in June, 1979.

ADDRESS: Questions about the proposed action and DEIS can be answered by: David Coleman, U.S. Army Engineer District, Savannah, P.O. Box 889, Savannah, GA 31402, Telephone (912) 233-8822, Ext. 371.

Tilford C. Creel,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 79-18199 Filed 6-11-79; 8:45 am]

BILLING CODE 3710-HP-M

Office of the Secretary

Defense Science Board Task Force on EMP Hardening of Aircraft

The meeting date for the Defense Science Board Task Force on EMP Hardening of Aircraft scheduled for a closed session on 20-21 June 1979 at Wright-Patterson Air Force Base, Dayton, Ohio, as published in the **Federal Register** (Vol. 44, No. 103, dated Friday, May 25, 1979, FR Doc 79-16461) has been changed to 10-11 July 1979 in Washington, D.C. In all other respects, the original notice cited above remains the same.

H. E. Lofdahl, Director,

Correspondence and Directives, Washington Headquarters Services, Department of Defense.

June 6, 1979.

[FR Doc. 79-18196 Filed 6-11-79; 8:45 am]

BILLING CODE 3810-70-M

ENDANGERED SPECIES COMMITTEE

Review Board Consideration of Pittston Company Exemption Applications

AGENCY: Endangered Species Committee; Endangered Species Review Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that endangered species review boards have commenced considering two applications filed by the Pittston Company, to exempt its proposed oil refinery and marine terminal in Eastport, Maine from requirements of section 7(a) of the Endangered Species Act. The review boards must decide by August 3, 1979, whether Pittston's exemption applications met certain threshold requirements before the application qualifies for further consideration by the Endangered Species Committee. This notice announces that the review boards will hold a prehearing conference on June 27, 1979, and may, depending on the outcome of that conference, proceed to hold an oral hearing and decision meeting on threshold determinations concerning Pittston's application.

DATES:

June 18—Deadline for filing a motion to intervene and suggestions for issues to be discussed at prehearing conference.

June 25—Deadline for filing written comments on prehearing issues.

June 27—Prehearing conference.

TENTATIVE DATES:

July 9—Deadline for filing written subsmissions for the oral hearing by parties and intervenors.

July 16—Oral hearing.

July 24—Deadline for filing briefs by parties and intervenors.

July 30—Review board decision meeting.

ADDRESSES: Please send all written submissions to the Endangered Species Review Board, c/o Office of Policy Analysis, Department of the Interior, 18th & C Streets, N.W., Washington, D.C. 20240.

The prehearing conference will be held at the Federal Communications Commission, Room 252, 1919 M Street, N.W., Washington, D.C. 20554, at 9:00 a.m. on June 27, 1979.

FOR FURTHER INFORMATION CONTACT: Raphaelle Semmes, Office of Policy Analysis, Department of the Interior, 18th & C Streets, N.W., Washington, D.C. 20240. (202) 343-5978.

SUPPLEMENTARY INFORMATION

The Exemption Process

The Endangered Species Act Amendments of 1978 establish a procedure for obtaining exemptions from section 7(a) of the Endangered Species Act, 16 U.S.C. 1536(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 an agency 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 may, at his discretion, determine if it is timely and otherwise adequate. It is then evaluated by a review board and, if certain criteria are met, decided upon by the Endangered Species Committee.

Background of Pittston's Exemption Application

Pittston's exemption applications concern the Environmental Protection Agency (EPA)'s denial of a National Pollutant Discharge Elimination System (NPDES) permit pursuant to section 402 of the Clean Water Act of 1972. Pittston applied to EPA on September 26, 1975 for this permit for a proposed 250,000 barrel/day oil refinery and marine terminal in the City of Eastport, Maine. EPA published a final environmental impact statement on Pittston's proposed refinery on June 19, 1978, along with its tentative decision to grant Pittston the NPDES permit.

The Fish & Wildlife Service requested EPA on September 1, 1978 to initiate consultation under the Endangered Species Act on the northern bald eagle, a species designated as endangered on February 14, 1978. Following consultation, FWS issued a biological opinion on December 21, 1979 that the refinery is likely to jeopardize the continued existence of the bald eagle.

Renewed consultation between EPA and FWS, with Pittston's participation, terminated on June 4, 1978, and resulted in FWS re-affirming the conclusion of its earlier biological opinion.

NMFS requested EPA to initiate consultation on August 18, 1978 concerning the refinery's effects on endangered species of whales. Following consultation, NMFS concluded in statements of November 20, 1978 and March 8, 1979 that there was insufficient information to make a determination whether or not Pittston's refinery would jeopardize endangered whales, and that granting the permit may therefore violate section 7(a) of the Act.

EPA denied Pittston's application for an NPDES permit in a letter of January 15, 1979 on the basis of the Endangered Species Act and the National Environmental Policy Act; this denial was supplemented by a letter dated April 17, 1979. Pittston has appealed the denial and EPA will hold a formal adjudicatory hearing on the matter pursuant to 40 CFR 125.36. EPA has scheduled a prehearing conference on Pittston's appeal for June 28, 1978 at EPA's regional office in Boston, Mass.

Review Board Considerations and Procedures

Exemption Applications

Pittston has filed exemption applications with both the Secretary of the Interior and the Secretary of Commerce. The application to the Secretary of the Interior was filed on January 26, 1979, but processing of the application was deferred until June 4, 1979 because of the renewed consultation between FWS and EPA on the bald eagle. The application to the Secretary of Commerce was filed on May 4, 1979.

Two review boards have been assembled to consider the applications. The same members have been appointed to each board, however, and it is anticipated that consolidated proceedings on the two applications will be held.

Members

The review board for the Pittston applications consists of Dr. Laurence E. Lynn, Professor of Public Policy, Harvard University; John E. Menario, President of the Greater Portland Chamber of Commerce, Portland, Maine; and Administrative Law Judge Francis L. Young.

Parties

The parties before the review boards are the applicant, the Pittson Company, and the Federal agencies involved in the endangered species consultations: EPA and FWS, consulting agency for the bald eagle, and NMFS, consulting agency for the endangered whales.

Prehearing Conference

The Review Board will hold a prehearing conference in Washington, D.C. on June 27, 1979.

The primary issue to be considered at the prehearing conference will be whether Pittston's exemption application is ripe for adjudication. the Endangered Species Act is ambiguous as to whether a permit applicant such as Pittston must first complete any administrative appeals of its permit denial within the permitting agency, in this case EPA, or whether it may apply for an exemption following the initial denial of its permit. Letters are on file from the Environmental Defense Fund and the National Wildlife Federation, and from the Pittston Company, which address this question. Oral argument will be heard on this issue.

The Review Board will also consider at its prehearing conference what issues should be addressed at its oral hearing in July.

If a party or intervenor applicant feels any other matter should be considered by the review board at the prehearing conference, it should submit a written request to the review board stating the topic and the reasons for its consideration, by June 18, 1979.

In order to participate in the review board proceedings, a person must file a motion to intervene by June 18, 1979. The motion must set forth the petitioner's name and address, the name of any representative, the petitioner's interest in the proceeding, and must show that the petitioner's participation will assist in resolving the issue in question. The review board will act on the motions to intervene at or before the start of the prehearing conference.

The review board must receive all briefs and written submissions of the parties and intervenors by June 25, 1979. Because there are only seven days between when an intervenor must file a motion to intervene and when written submissions are due, all parties and intervenors will receive actual notice around June 18, 1979 of what has been filed and of any additional issues the review board will consider at the June 27 prehearing conference. In addition, all material filed concerning Pittson's exemption application will be available for public inspection at Room 4160, Interior Building, 18th & C Streets, N.W., Washington, D.C.

Oral Hearing And Decision Meeting Tentatively Scheduled

The oral hearing is tentatively scheduled to be in Washington, D.C. on July 16, 1979, and the decision meeting is tentatively scheduled to be in Washington, D.C. on July 30, 1979. These dates and places may change if the prehearing conference demonstrates a new schedule is called for, or if Pittston's application is determined not ripe.

The issues to be addressed at the oral hearing and decision meeting will involve the threshold determinations to be made by the review board:

(1) Whether the Federal agency and permit or license applicant 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 would avoid jeopardy to the species or critical habitat;

(2) Whether the Federal Agency and permit or license applicant 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 would avoid jeodardy to the species or critical habitat;

(3) Whether there is an irresolvable conflict; and

(4) Whether any required biological assessment was conducted.

Regulations Available

Proposed regulations governing the content of exemption applications are found at 44 Fed. Reg. 7777 (Feb. 1979). Interim final regulations governing the review board and Endangered Species Committee procedures, which shall be in effect for 240 days, are found at 44 Fed. Reg. 33127 (June 8, 1979).

Dated: June 7, 1979.

Francis L. Young,

Administrative Law Judge for the Review Board.

[FR Doc. 79-18246 Filed 6-11-79; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Claiborne Gasoline Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against potential refunds that may be deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: May 25, 1979. Comments by July 12, 1979.

ADDRESS: Send comments to: Wayne I. Tucker, District Manger of Enforcement, Southwest District Office, P.O. Box 35228, Dallas, Texas 75235.

FOR FURTHER INFORMATION CONTACT: Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, P.O. Box 35228, Dallas, Texas 75235. [phone] 214/749-7626.

SUPPLEMENTARY INFORMATION: On May 25, 1979, the Office of Enforcement of the ERA executed a Consent Order with Claiborne Gasoline Company of Dallas, Texas. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of $500,000 or more in the aggregate, excluding penalties and interest, becomes effective upon its execution only if the DOE expressly finds it to be in the public interest to do so.

Because of the complexity and the quantity of recomputations necessitated by this settlement, as well as the likelihood of only minor refund obligations as a result of the recalculations, the DOE has determined that it is in the public interest to make the Consent Order with the Claiborne Gasoline Company effective as of the date of its execution by the DOE and Claiborne Gasoline Company.

I. The Consent Order

Claiborne Gasoline Company, with its home office located in Dallas, Texas, is a firm engaged in the refining of crude oil and natural gas liquids, and is subject to the Mandatory Petroleum Price and Allocation regulations at 10 CFR, Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Claiborne Gasoline Company, the Office of Enforcement, ERA, and Claiborne Gasoline Company entered into a Consent Order, the significant terms of which are as follows:

1. Claiborne Gasoline Company has agreed to recompute its increased cost of crude oil in each month of measurement, for the period of August 1973 through December 1978, to reflect an upward adjustment to its May 1973 crude cost referred to in I. 2 below. Claiborne Gasoline Company's increased crude cost will be reduced by $1,815,566.59 during the aforemention period.

2. Claiborne Gasoline Company failed to include a $.25 per barrel retroactive price increase for certain crude oil purchases in its computation of May 1973 crude cost.

3. By entering into this Consent Order, Claiborne Gasoline Company is not admitting that it has violated any regulation or overcharged any of its customers.

4. The provisions of 10 CFR 205.199J, including the publication of this notice, are applicable to the Consent Order.

II. Disposition of Potential Overcharges

In this Consent Order, Claiborne Gasoline Company agrees to refund any potential overcharges, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the recomputations specified in I. 1 above. Any refund obligations arising out of the use of the revised increased crude cost computations will be implemented pursuant to the procedures set forth in 10 CFR Part 205, Subpart V.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the potential refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the potential refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, P.O. Box 35228, Dallas, Texas 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling 214/749-7626.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Claiborne Gasoline Company Consent Order." We will consider all comments we receive by 4:30 pm, local time, on July 12, 1979. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Washington, DC on the 7th day of June, 1979.

Wayne I. Tucker,

District Manager of Enforcement, Southwest District Office, Economic Regulatory Administration.

[FR Doc. 79-18221 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

Fuel Oil Marketing Advisory Committee; Change in Meeting Date and Place

This notice is given to advise of a change in date and place of the meeting of the Fuel Oil Marketing Advisory Committee. The Committee will meet Wednesday, July 18, 1979, from 1:00 p.m. to 6:00 p.m., and Thursday, July 19, 1979, from 8:00 a.m. to 4:00 p.m., in the Savoy Room, Holiday Inn Union Square, 480 Sutter Street, San Francisco, California, rather than Tuesday, June 19, 1979, and Wednesday, June 20, 1979, at the Radisson Hotel, 45 South Seventh Street, Minneapolis, Minnesota, as previously announced. A notice of meeting was

published in the issue of June 1, 1979 (44 FR 31701 and 31702).

Issued at Washington, D.C. on June 7, 1979.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 79-18332 Filed 6-11-79; 8:45]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP73-77]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

June 5, 1979.

Take notice that on June 1, 1979, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), P.O. Box 918, Florence, Alabama 35630, tendered for filing as part of its FPC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet:

Thirtieth Revised Sheet No. 3-A Superseding.

Second Substitute Twenty-Ninth Revised Sheet No. 3-A.

This revised tariff sheet is proposed to become effective as of July 1, 1979.

Alabama-Tennessee states that the purpose of such revised tariff sheet is to reflect the effect of Tennessee Gas Pipeline Company's Twenty-Fifth Revised Sheet No. 12-A, of its FERC Gas Tariff Ninth Revised Volume No. 1, filed with the Commission on May 31, 1979 to be effective July 1, 1979.

The revised sheet to Alabama-Tennessee's tariff provides for the following rates:

Rate schedule	Thirtieth revised sheet No. 3-A
G-1:	
Demand	$2.07
Commodity	200.88¢
SG-1:	
Commodity	216.00¢
I-1:	
Commodity	207.69¢

Alabama-Tennessee states that the purpose of such revised tariff sheet is to reflect the rate increase of Tennessee Gas Pipeline Company issued May 31, 1979.

Alabama-Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected State regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 18, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18138 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-386]

Boston Edison Co.; Filing

June 4, 1979.

The filing Company submits the following:

Take notice that on May 29, 1979, Boston Edison Company ("Edison") tendered for filing as a rate schedule a letter agreement between itself and the New England Power Company ("NEP") of Westboro, Massachusetts for the support by NEP of a 115 KV transmission line.

The line, designated Line 201-502, is approximately 2 miles in length and is located in Medway, Massachusetts. The line is owned, operated and maintained by Edison and used exclusively by NEP.

Edison requests that the rate schedule be allowed to become effective on August 1, 1979. Edison has served copies of this filing on NEP and the Massachusetts Department of Public Utilities.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426, in accordance with paragraph 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 22, 1979. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this Application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18139 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP70-196 et. al.]

Distrigas Corp.; Further Extension of Time

June 1, 1979.

Docket Nos. CP70-196 and CP74-227, CP73-135 and CP74-137.

On April 11, 1979, Distrigas Corporation filed a motion for stay of Ordering Paragraph (E) of the Commission's order of January 2, 1979, pending judicial review. The motion also asked for an extension of time for compliance with that paragraph pending Commission action on the request for a stay. By order issued June 1, 1979, the Commission denied the motion for stay.

Notice is hereby given that Distrigas shall comply with the refund requirement of Ordering Paragraph (E) on or before June 22, 1979; the report of refunds and interest shall be filed on or before July 2, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18140 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-308]

Iowa-Illinois Gas and Electric Co.; Application

May 29, 1979.

Take notice that on May 15, 1979, Iowa-Illinois Gas and Electric Company (Applicant), 206 East Second Street, P.O. Box 4350, Davenport, Iowa 52808, filed in Docket No. CP79-308 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to construct and operate approximately 0.17 mile of six-inch replacement pipeline within the City of Iowa City, Iowa and for permission and approval to abandon in place approximately 0.16 mile of four-inch pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon in place approximately 0.16 mile of four-inch pipeline which is a portion of approximately 1.40 miles of predominantly four-inch pipeline heretofore certificated by the Commission in Docket No. G-303 and

constructed in 1933 to supply Applicant's Benton Street Station located within the boundaries of Iowa City, Iowa. It is stated that the facilities to be abandoned would be mechanically cut from the remaining facilities, purged and capped, meeting the requirements of the U.S. Department of Transportation, Office of Pipeline Safety.

It is indicated that Applicant also proposes to construct approximately 0.17 mile of six-inch replacement pipeline within Iowa City, Iowa. The replacement pipeline would be constructed within the same private and adjacent public street right-of-way as the facilities proposed to be physically abandoned, it is stated. Applicant states that after installation of the replacement pipeline, 15,120 Mcf per day of natural gas would be transported, an increase in capacity of 720 Mcf per day over the 14,400 Mcf per day capability of the existing pipeline. Applicant indicates that the proposal herein is necessitated by residential development along Benton Street which over time has so changed the grade that the facilities may be of a depth insufficient for prudent and reliable service. Increased flow capability and pressure level maintenance at this location would be required to meet future load and to provide adequate and reliable service in this section of Iowa City, it is asserted.

Applicant estimates that the cost of the proposed pipeline is $19,869 which would be financed from funds now on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 20, 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) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18141 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-283]

The Kansas Power & Light Co.; Order Accepting for Filing and Suspending Proposed Increased Rates, Denying Motion To Reject, Denying Motions for Summary Judgment, Granting Interventions and Establishing Procedures

Issued May 29, 1979.

On March 30, 1979, the Kansas Power and Light Company (KPL) tendered for filing schedules containing proposed rates and charges for wholesale service to supersede those rate provisions of KPL's contracts with 17 wholesale cooperative customers and 41 wholesale municipal customers all located in the State of Kansas.[1] KPL states that the proposed rates would increase annual revenues to the company by $2,657,847 (9.49%), based on the twelve-month test period ending March 31, 1980. The changes in rates contemplate increased capacity charges for cooperative and municipal wholesale services.

KPL requests an effective date of June 1, 1979, for the proposed rates with the exception of four municipal customers whose contracts do not permit unilateral rate filings by KPL.[2] KPL requests that the proposed rates be permitted to become effective for each of the four customers from the date of a final order in this proceeding or upon the expiration, termination or renegotiation of their respective contracts, at which time KPL would file a superseding service agreement for each expired contract. If the proposed rates for all customers are not permitted to become effective without suspension and a hearing is ordered under Section 205, KPL further requests a simultaneous hearing under Section 206 in order to determine prospectively the just and reasonable rates for service to these four municipal customers and that such hearing be consolidated with the Section 205 proceedings.[3]

Public notice of the filing was issued on April 5, 1979. Protests and petitions to intervene were due on or before April 27, 1979.

On April 27, 1979, the cooperative customers (Cooperatives) filed a protest and petition to intervene in the proceeding, a motion to reject and alternatively, a motion for summary disposition, hearing and suspension. In support of their motion to reject KPL's filing, the Cooperatives characterize KPL's increased rates as grossly excessive. They state that KPL's letter of transmittal indicates aggregate rate increases of $2,657,847 to cooperative and municipal customers. However, that figure is based on the revenues that the proposed rates in this filing would produce compared to the rates in ongoing Docket No. ER78-1. A settlement agreement between KPL and the Cooperatives has been recently approved by the Commission in Docket No. ER78-1. Based on settlement rates, Cooperatives assert that the actual increase in this docket amounts to $3,127,959, or 15.8 percent. Cooperatives also move to reject the filing due to deficiencies in workpapers and supporting data. We conclude that this motion should be denied, because KPL's filing substantially complies with our filing regulations.[4] The issues of rate level and cost support should be addressed during the hearing which we shall order.

Cooperatives' reading of the workpapers accompanying KPL's rate filing lead them to conclude that KPL may have capitalized AFUDC on construction work in progress related to pollution control facilities included in rate base under Section 2.16 of our Regulations. If true, this would violate Section 2.16(c) of the Regulations, and

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[1] See Appendix A for schedule designations of the 17 wholesale cooperative customers and 37 of the wholesale municipal customers.

[2] The four Kansas municipals and their contract expiration dates are: City of Morrill (July 1, 1980); City of Toronto (April 6, 1980); City of Seneca (November 1, 1982); and City of Waterville (May 1, 1983).

[3] The Commission has previously established this procedure for changing the rates to these four municipal customers prior to termination of their respective contracts. *See*, Orders issued December 22, 1975 and February 18, 1976 in Docket No. ER76-39; and Order issued December 1, 1977 in Docket No. ER78-1.

[4] *City of Groton, et al.* v. *F.E.R.C.*, 584 F.2d 1067 (D.C. Cir. 1978); *Municipal Light Boards* v. *F.P.C.*, 450 F.2d 1341 (D.C. Cir. 1971), *cert. den.*, 405 U.S. 989 (1972).

Cooperatives suggest that summary disposition may be appropriate. However, we cannot reach that conclusion peremptorily on the basis of the pleadings. Cooperatives also allege that KPL has failed to synchronize its interest expenses with debt costs, in that KPL has used an interest expense which is substantially different from the cost of long term debt shown in the capital structure to calculate its Federal income taxes. We conclude that the CWIP and the interest synchronization issues are not ripe for summary disposition and can only be resolved through the hearing process.

Finally, Cooperatives state that a comparison of several KPL retail rates with the wholesale rates proposed in this filing indicate that rate differentials will seriously undermine Cooperatives' ability to compete with KPL for retail loads. We find it appropriate, therefore, to institute the price squeeze procedures set forth in Order No. 563 and Section 2.17 of our Regulations.[5]

On April 27, 1979, the Kansas Municipal Group (Municipals) filed a protest, petition to intervene and motion to reject. Municipals request initiation of price squeeze procedures and a full five month suspension of the proposed changes in rates.

The Municipals' motion to reject is based on KPL's alleged violation of the *Sierra-Mobile* doctrine.[6] As discussed above, this issue was resolved by the Federal Power Commission in earlier KPL proceedings involving these customers; Municipals have presented no reasons for reconsideration of those rulings.[7] KPL will be allowed to litigate the justness and reasonableness of its proposed wholesale rates for service to the four municipal customers whose contracts only "allow the rates to be altered from time to time to reflect changes authorized by this Commission in a manner consistent with Section 206(a). * * *[8] KPL shall not be required to meet the *Sierra-Mobile* burden of proof, as the FPC previously concluded. The notice requirement of Section 35.3 of our regulations, which would otherwise prevent the filing of rates not to become effective within 120 days, . . shall be waived.

Our review of KPL's filing indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or otherwise unlawful. With the exception of rate applicable to the Cities of Morrill, Toronto, Seneca and Waterville, we shall accept the proposed rates for filing and suspend them until October 30, 1979, when they shall become effective, subject to refund. Rates for service to the four excepted municipals shall become effective only as permitted by their contracts with KPL.

The Commission orders:

(A) The Cooperatives and the Municipals are hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission; *Provided, however,* that the participation of these intervenors shall be limited to matters set forth in their petitions to intervene; and *Provided, further,* that the admission of these intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders by the Commission entered in this proceeding.

(B) The motions of Cooperatives and Municipals to reject the filing are hereby denied.

(C) Cooperatives' motion for summary disposition is hereby denied.

(D) KPL's proposed rates, for service to wholesale customers other than the Cities of Morrill, Toronto, Seneca and Waterville, are hereby accepted for filing and suspended until October 30, 1979, when they shall become effective, subject to refund.

(E) The 120 days notice requirement of Section 35.3(a) of our regulations is hereby waived with regard to the filing of proposed rate schedules applicable to the Cities of Morrill, Toronto, Seneca and Waterville. Any rate change for service to these customers will become effective upon issuance of a final order in this proceeding, or upon the expiration, termination, or renegotiation of their respective contracts and the filing of a superseding service agreement for each contract.

(F) A public evidentiary hearing shall be held concerning the justness and reasonableness of the rates proposed by KPL in this proceeding. KPL's filing shall represent its case-in-chief in the hearing under Section 206(a) of the Federal Power Act which is ordered regarding rates for services to the Cities of Morrill, Toronto, Seneca and Waterville.

(G) Pursuant to Order No. 563 and Section 2.17 of Commission's General Rules, price squeeze procedures are hereby instituted.

(H) The Staff shall prepare and serve top sheets on all parties for settlement purposes on or before July 16, 1979.

(I) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose shall preside at a preharing conference in this proceeding to be held within ten (10) days after the serving of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 Capitol Street, N.E., Washington, D.C. 20426. Said Judge is authorized to establish procedural dates and to rule upon all motions (except motions to consolidate and sever, and motions to dismiss) as provided for in the Commission's Rules or Practice and Procedure. The Presiding Administrative Law Judge shall convene a prehearing conference within fifteen (15) days of the issuance of this order for the purpose of hearing intervenors' requests for data required to present their case, including *prime facie* showing, on price squeeze issues.

(J) The Secretary shall cause prompt publication of this order to be made in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

The Kansas Power & Light Co., Docket No. ER79-283

Designation	Other party	Description
Supplement No. 8 to Rate Schedule FPC No. 148 (Supersedes Supp. No. 7).	Ark Valley ECA, Inc	Schedule RCW-79.
Supplement No. 6 to Rate Schedule FPC No. 149 (Supersedes Supp. No. 5).	Brown-Atchison ECA, Inc	Do.
Supplement No. 6 to Rate Schedule FPC No. 150 (Supersedes Supp. No. 5).	Butler Rural ECA, Inc	Do.
Supplement No. 6 to Rate Schedule FPC No. 151 (Supersedes Supp. No. 5).	The C&W ECA, Inc	Do.
Supplement No. 6 to Rate Schedule FPC No. 152 (Supersedes Supp. No. 5).	Coffey County Rural ECA, Inc	Do.
Supplement No. 7 to Rate Schedule FPC No. 153 (Supersedes Supp. No. 6).	D.S. & O. Rural ECA, Inc	Do.
Supplement No. 7 to Rate Schedule FPC No. 154 (Supersedes Supp. No. 6).	Doniphan ECA, Inc	Do.
Supplement No. 7 to Rate Schedule FPC No. 155 (Supersedes Supp. No. 6).	Flint Hills Rural ECA, Inc	Do.
Supplement No. 6 to Rate Schedule FPC No. 156 (Supersedes Supp. No. 5).	The Kaw Valley ECC, Inc	Do.
Supplement No. 8 to Rate Schedule FPC No. 157 (Supersedes Supp. No. 7).	Leavenworth-Jefferson EC, Inc	Do.
Supplement No. 7 to Rate Schedule FPC No. 158 (Supersedes Supp. No. 6).	Lyon County EC, Inc	Do.

[5] Cooperatives have raised several other issues which we do not address, that are clearly appropriate for this evidentiary hearing.

[6] *United Gas Pipeline Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *F.P.C.* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

[7] *See also, Municipal Electric Utility Association of Alabama* v. *F.P.C.*, 485 F. 2d 967 (D.C. Cir. 1975).

[8] *Kansas Power & Light Co.*, Docket No. ER 76-39, Order Denying Rehearing, issued February 18, 1976.

The Kansas Power & Light Co., Docket No. ER79-283—Continued

Designation	Other party	Description
Supplement No. 6 to Rate Schedule FPC No. 159 (Supersedes Supp. No. 5).	Nemaha-Marshall ECA, Inc	Do.
Supplement No. 7 to Rate Schedule FPC No. 160 (Supersedes Supp. No. 6).	Nennescah Rural ECA, Inc	Do.
Supplement No. 6 to Rate Schedule FPC No. 161 (Supersedes Supp. No. 5).	P.R. & W. ECA, Inc	Do.
Supplement No. 6 to Rate Schedule FPC No. 162 (Supersedes Supp. No. 5).	The Smoky Hill ECA, Inc	Do.
Supplement No. 6 to Rate Schedule FPC No. 163 (Supersedes Supp. No. 5).	The Smoky Valley ECA, Inc	Do.
Supplement No. 6 to Rate Schedule FPC No. 164 (Supersedes Supp. No. 5).	The Twin Valley EC, Inc	Do.
Supplement No. 3 to Rate Schedule FPC No. 129 (Supersedes Supp. No. 2).	City of Scranton	Do.
Supplement No. 4 to Rate Schedule FPC No. 147 (Supersedes Supp. No. 3).	City of Wathena	Do.
Supplement No. 4 to Rate Schedule FPC No. 165 (Supersedes Supp. No. 3).	City of Goff	Do.
Supplement No. 4 to Rate Schedule FPC No. 166 (Supersedes Supp. No. 3).	City of Netawaka	Do.
Supplement No. 4 to Rate Schedule FPC No. 167 (Supersedes Supp. No. 3).	City of Muscotah	Do.
Supplement No. 4 to Rate Schedule FPC No. 171 (Supersedes Supp. No. 3).	City of Severence	Schedule WSM-79.
Supplement No. 4 to Rate Schedule FPC No. 172 (Supersedes Supp. No. 3).	City of Altamont	Do.
Supplement No. 4 to Rate Schedule FPC No. 173 (Supersedes Supp. No. 3).	City of Marion	Do.
Supplement No. 4 to Rate Schedule FPC No. 174 (Supersedes Supp. No. 3).	City of Oswengo	Do.
Supplement No. 3 to Rate Schedule FPC No. 175 (Supersedes Supp. No. 2).	City of Enterprise	Do.
Supplement No. 3 to Rate Schedule FPC No. 176 (Supersedes Supp. No. 2).	City of Chapman	Do.
Supplement No. 3 to Rate Schedule FPC No. 177 (Supersedes Supp. No. 2).	City of Herington	Do.
Supplement No. 3 to Rate Schedule FPC No. 178 (Supersedes Supp. No. 2).	City of Clay Center	Do.
Supplement No. 3 to Rate Schedule FPC No. 179 (Supersedes Supp. No. 2).	City of De Soto	Do.
Supplement No. 3 to Rate Schedule FPC No. 180 (Supersedes Supp. No. 2).	City of Axtell	Do.
Supplement No. 3 to Rate Schedule FPC No. 181 (Supersedes Supp. No. 2).	City of Robinson	Do.
Supplement No. 3 to Rate Schedule FPC No. 182 (Supersedes Supp. No. 2).	City of Horton	Do.
Supplement No. 3 to Rate Schedule FPC No. 183 (Supersedes Supp. No. 2).	City of Eudora	Do.
Supplement No. 4 to Rate Schedule FPC No. 184 (Supersedes Supp. No. 2).	City of Wamego	Do.
Supplement No. 4 to Rate Schedule FPC No. 185 (Supersedes Supp. No. 2).	City of Sabetha	Do.
Supplement No. 4 to Rate Schedule FPC No. 186 (Supersedes Supp. No. 2).	City of Minneapolis	Do.
Supplement No. 3 to Rate Schedule FPC No. 187 (Supersedes Supp. No. 2).	City of Sterling	Do.
Supplement No. 3 to Rate Schedule FPC No. 188 (Supersedes Supp. No. 2).	City of Hillsboro	Do.
Supplement No. 3 to Rate Schedule FPC No. 189 (Supersedes Supp. No. 2).	City of Holton	Do.
Supplement No. 2 to Rate Schedule FPC No. 190 (Supersedes Supp. No. 1).	City of Reserve	Do.
Supplement No. 3 to Rate Schedule FPC No. 191 (Supersedes Supp. No. 2).	City of Larned	Do.
Supplement No. 3 to Rate Schedule FPC No. 192 (Supersedes Supp. No. 2).	City of Ellinwood	Do.
Supplement No. 3 to Rate Schedule FPC No. 193 (Supersedes Supp. No. 2).	City of Stafford	Do.
Supplement No. 3 to Rate Schedule FPC No. 194 (Supersedes Supp. No. 2).	City of Osage City	Do.
Supplement No. 3 to Rate Schedule FPC No. 195 (Supersedes Supp. No. 2).	City of St. Marys	Do.
Supplement No. 2 to Rate Schedule FPC No. 196 (Supersedes Supp. No. 1).	City of Vermillion	Do.
Supplement No. 2 to Rate Schedule FPC No. 197 (Supersedes Supp. No. 1).	City of Alma	Do.
Supplement No. 2 to Rate Schedule FPC No. 198 (Supersedes Supp. No. 1).	City of Centralia	Do.
Supplement No. 2 to Rate Schedule FPC No. 199 (Supersedes Supp. No. 1).	City of Lindsborg	Do.
Supplement No. 2 to Rate Schedule FPC No. 200 (Supersedes Supp. No. 1).	City of Elwood	Do.
Supplement No. 2 to Rate Schedule FPC No. 201 (Supersedes Supp. No. 1).	City of Troy	Do.
Supplement No. 2 to Rate Schedule FPC No. 202 (Supersedes Supp. No. 1).	City of St. John	Do.

[FR Doc. 79-18142 Filed 6-11-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. RP79-71]

Natural Gas Pipeline Co. of America; Proposed Changes in FERC Gas Tariff

June 5, 1979.

Take notice that on May 31, 1979, Natural Gas Pipeline Company of America (Natural) tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1 and Second Revised Volume No. 2 to become effective July 1, 1979. (Waiver was requested to make certain tariff sheets effective January 1, 1980.)

Natural states that the proposed rate changes indicate an annual revenue decrease of $24,122,000 when compared with the rates presently effective subject to refund at Docket No. RP78-78. However, Natural states that it is presently drafting a proposed settlement position in the docket No. RP78-78 proceedings which projects rates considerably lower than the rates effective subject to refund that were used, pursuant to the Commission's Regulation, in the calculation of the above stated revenue decrease. A comparison of the revised rates as proposed with rates derived on a proposed Docket No. RP78-78 settlement cost of service, indicate an estimated annual revenue increase of approximately $44.0 million.

Natural further states that the principal reasons for the proposed rate changes are: (1) a proposed increase in overall rate of return to 10.98% which would permit a rate of return to equity of 14.75%; (2) substantial investments in facilities, including offshore facilities, and a 31.03 mile looping of the Gulf Coast system; and (3) increased operation and maintenance expenses, including increased costs incurred for transmission and compression of gas by others from offshore and onshore purchase locations.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C 20426, in accordance with requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 1.10). All such petitions or protests must be filed on or before June 18, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18143 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP78-220]

Northwest Pipeline Corp.; Petition To Amend

June 1, 1979.

Take notice that on May 2, 1979, Northwest Pipeline Corporation (Northwest), 315 East Second South, Salt Lake City, Utah 84111, filed in Docket No. CP78-220 a petition to amend the order issued October 4, 1978, in the instant docket pursuant to Section 7(c) of the Natural Gas Act to authorize the exchange of up to 10,000 Mcf per day of natural gas with Rocky Mountain Natural Gas Company (Rocky Mountain) and RMNG Gathering Company (RMNG), and further to add acreage in the Great Divide area, Colorado pursuant to the Exchange Agreement, as amended, so that any gas produced thereon can be made available to Northwest's system, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Pursuant to a gas gathering and transportation agreement between Northwest and Colorado Interstate Gas Company (CIG), Northwest would purchase 25 percent of the natural gas which CIG has or will have available in the Great Divide area in Colorado and would transport the remaining volumes, for CIG's account, from the wellhead to Northwest's existing point of interconnection with CIG in Sweetwater County, Wyoming, it is indicated in the application.

The authorization of up to 10,000 Mcf per day would enable Northwest [1] to make available to its mainline system the volumes of gas which Northwest intends to purchase from or transport for CIG, it is said.

A purchase contract, dated December 5, 1977, as amended June 5, 1978, between Northwest and Northwest Exploration Company (Exploration) allows additional acreage in the Great Divide area to be subject to the said purchase contract, it is said. Northwest desires to make this additional acreage subject to the exchange agreement so that any gas produced therefrom can be made available to Northwest's system.

Northwest states that with the additional sources of gas to be made subject to the exchange agreement, as amended, it estimates it will deliver, initially, 4,000 Mcf of natural gas per day to Rocky Mountain for exchange under the exchange agreement, as amended. This volume would increase during the coming year as additional wells subject to the exchange agreement, as amended, are connected to Northwest's Great Divide Gathering System, it is asserted.

The transportation rate of 14.3 cents per Mcf of gas which Rocky Mountain is presently authorized to charge Northwest for all volumes redelivered would be applicable to the additional volumes proposed to be exchanged pursuant to the exchange agreement, as amended, it is further asserted.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 25, 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) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18144 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

[1] Pursuant to an exchange agreement amended June 6, 1978, November 20, 1978, and March 12, 1979.

[Docket No. RR79-72]

Southern Natural Gas Co.; Proposed Rate Increase

June 5, 1979.

Take notice that Southern Natural Gas Company (Southern) on May 31, 1979, tendered for filing proposed changes in its FPC Gas Tariff, Sixth Revised Volume No. 1. The proposed changes are based on the twelve-month period ending July 31, 1978 and, as adjusted, would increase jurisdicitonal revenues by $98,600,000.

Southern states that the rate increase reflects only increases in the cost of purchasing regasified LNG from Southern Energy Company.

Copies of the filing have been served upon Southern's jurisdictional customers

and interested state public service commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 20, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18145 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RR71-11 (PGA 79-2)]

Tennessee Natural Gas Lines, Inc.; PGA Rate Change

June 5, 1979.

Take notice that, on June 1, 1979, Tennessee Natural Gas Lines, Inc. ("TNGL") tendered for filing a rate change, pursuant to the purchased gas cost adjustment ("PGA") provisions of its F.E.R.C. Gas Tariff, consisting of the following tariff sheet:

Thirtieth Revised Sheet No. PGA-1

TNGL states that the purpose of said PGA filing is to reflect in its rates the changed rates of its sole supplier, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., ("TGP"), which will become effective on July 1, 1979. TNGL requests the same effective date, July 1, 1979, for the tariff sheet filed by it. TNGL further states that such proposed PGA rate change also provides for recoupment of the net balances in its Unrecovered Purchased Gas Cost and LNG Surcharge Accounts.

TNGL states that copies of the filing were served upon its jurisdictional customer and the interested state regulatory commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 18, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18146 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. RP73-114, RP74-24, RP74-73 and RP79-52]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Proposed Rate Change Under Tariff Rate Adjustment Provisions

June 5, 1979.

Take notice that on May 31, 1979, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), tendered for filing Twenty-Fifth Revised Sheet Nos. 12A and 12B to Ninth Revised Volume No. 1 of its FERC Gas Tariff to be effective on July 1, 1979.

Tennessee states that the purposes of the revised tariff sheets is to adjust Tennessee's rates pursuant to Articles XXIII, XXIV, XXV and XXVIII of the General Terms and Conditions of its FERC Gas Tariff, consisting of a PGA rate adjustment, a rate adjustment to reflect curtailment credits, and R. & D. adjustment, and a First Use Tax Rate Adjustment.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 20, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18147 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-310]

United Gas Pipe Line Co.; Application

May 29, 1979.

Take notice that on May 16, 1979, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP79-310 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 2,000 Mcf of natural gas per day for Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that Transco individually and as agent for certain working interest owners has acquired the right to purchase up to 2,000 Mcf of natural gas per day produced in Lake Hatch Field, Louisiana, from McMoran Exploration Company, Apache Corporation and Transco Exploration Company. In order to receive this gas into its system, Transco has entered into a transportation agreement dated March 30, 1979, with Applicant. It is indicated that pursuant to the terms of the transportation agreement Transco would deliver or cause to be delivered to Applicant for Transco's account said volumes of gas at an existing authorized point on Applicant's line in the Lake Hatch Field (delivery point) in Terrebonne Parish, Louisiana, and that Applicant would redeliver equivalent volumes of gas to Transco, less 2.3 percent for fuel and unaccounted for gas, at the outlet side of applicant's existing authorized measuring and regulating station at Gibson, Terrebonne Parish (redelivery point).

It is stated that Transco would pay Applicant for gas transported under said transportation agreement an amount per Mcf equal to ½ of Applicant's jurisdictional transmission rates in effect from time to time in Applicant's Southern Rate Zone as such may be determined by Applicant based on rate filings made from time to time with the Commission, less any amount included in such jurisdictional transmission rate which is attributable to fuel and unaccounted for gas. The current jurisdictional transmission rate,

exclusive of the cost of gas utilized in Applicant's operation, is 19.4 cents per Mcf in Applicant's Southern Rate Zone, it is stated. Applicant states that ½ of its jurisdictional transmission rate in its Southern Rate Zone excluding a component for gas utilized in the operation of Applicant's pipeline system is 9.7 cents per Mcf.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 20, 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) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18148 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

Utah; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 4, 1979.

On June 1, 1979 the Federal Energy Regulatory Commission received notice of a determination pursuant to 18 CFR 274.104 of the Natural Gas Policy Act of 1978 applicable to:

State of Utah, Department of Natural Resources, Division of Oil, Gas and Mining

FERC Control Number: JD79-6615
API Well Number: 43-047-302334
Section: 103
Operator: Belco Petroleums Corporation
Well Name: Chapita Wells Unit 33-16 number 30234
Field: Chapita Wells Field
County: Uintah
Purchaser: Mountain Fuel Supply Co.
Volume:

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission within fifteen (15) days of the date of publication of this Notice. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18137 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP74-85 (PGA 79-1 and 79-1a)]

Western Gas Interstate Co.; Revised PGA Rate Adjustment

June 5, 1979.

Take notice that on May 29, 1979, Western Gas Interstate Company ("Western") filed herein Second Substitute Twelfth Revised Sheet No. 3A to its FERC Gas Tariff, Original Volume No. 1, in accordance with the Commission's letter order in Docket No. RP74-85 (PGA 79-1 and 79-1a) dated May 4, 1979. Said tariff sheet is proposed to become effective on May 1, 1979.

Western states that the rates shown on the above described tariff sheet have been determined in accordance with the Commission's letter order and Appendix A therein dated May 4, 1979, which reflect the elimination of gas costs which Western 's producer-suppliers and pipeline-suppliers were not authorized to charge Western on or before May 1, 1979. The effect of this revision reduced Western's substitute filing (PGA79-1a) by .01¢ per Mcf in the Northern Division and 7.33¢ per Mcf in the Southern Division.

Any person desiring to be heard and to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 20, 1979. Protests will be considered by the Commission 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 must file a petition to intervene. Western's filing is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18149 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-150]

Southern California Edison Co.; Order Granting Rehearing and Denying Reconsideration

Issued June 5, 1979.

On April 13, 1979, Southern California Edison Company (Edison) petitioned for rehearing and reconsideration of the Commission's March 15, 1979 order in this proceeding.[1] In its petition, Edison objects to the Commission's suspension of the proposed wholesale rates for five months and summary exclusion of Electric Power Research Institute (EPRI) contributions from its cost of service. For the reasons discussed below, we grant rehearing of the EPRI issue and deny reconsideration of our suspension of Edison's proposed rate increase.

In support of its request for rehearing, Edison states that the Commission has not adequately explained its policy of disallowing EPRI contributions included in cost of service studies. Edison suggests that further analysis of the purpose of EPRI contributions and the mechanism whereby such contributions are made is a necessary predicate to the formulation of a sound regulatory policy on this issue.

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[1] *Southern California Edison Company*, Docket No. ER79-150, Order Accepting For Filing and Suspending Proposed Rate Increases, Providing for Hearing, Granting Motion For Summary Judgment In Part, and Establishing Procedures, issued March 15, 1979. On May 14, 1979, the Commission issued a Notice of Intent to Act which tolled 30 day limit on Commission action pursuant to 18 CFR Section 1.34(c).

Summary disposition of EPRI contributions had its genesis in *Connecticut Light & Power Company*, Docket No. ER78-517, Order issued August 31, 1978, where the Commission relied on *Carolina Power & Light Company*, Opinion No. 19, issued August 2, 1978, as a basis for summary exclusion of EPRI contribution. On rehearing of Connecticut Light & Power,[2] the Commission affirmed its summary exclusion of EPRI contributions, stating:

> The Initial Decision in Carolina as affirmed in Opinion No. 19, then disposed of the LMFBR contribution allocation on three grounds: (1) avoidance of "double contribution" by wholesale customers; (2) preservation of the voluntary nature of contributions; and (3) elimination of the deterrence to independent contributions by wholesale customers. Clearly, the latter two arguments apply with equal force whether or not the wholesale customers have yet made contributions. Thus, the summary disposition of the inclusion of EPRI costs in the instant case, was appropriate under Carolina Power & Light, despite the lack of factual evidence of independent wholesale customer contributions. (at p. 3).[3]

In the March 15, 1979 order in this proceeding; we relied on this statement as a basis for summary disposition of the EPRI issue.

We have determined that the proper treatment of EPRI contributions for ratemaking purposes should be considered in a proposed rulemaking, which will be forthcoming. In the meantime, we do not believe that EPRI contributions should be summarily excluded from costs of service and filed rates. Those few utilities, which have already excluded EPRI contributions pursuant to Commission orders in ongoing rate cases, will be informed that they need not make a second refiling to preserve their right to this disputed cost-of-service item. If it is determined in the rulemaking proceeding that EPRI contributions are properly recovered through wholesale rates, these utilities will be allowed to offset allocated EPRI costs against any refund obligation to wholesale customers or, if necessary, devise a surcharge to recover EPRI contributions.

Edison's request for reconsideration of the five-month suspension of its rate increase raises no new substantive issue. There is nothing in the petition which warrants modification of our discretionary finding in this case that Edison's customers are entitled to the protection of the five-month suspension authorized by Section 205(e) of the Federal Power Act. *See Municipal Light Boards of Reading and Wakefield, Mass.* v. *FPC*, 450 F.2d 1341 (D.C. Cir 1971), *cert. den.*, 405 U.S. 989 (1972). Edison errs in assuming that we failed to consider its supplementary pleading, filed on the date of our deliveration of the suspension order.[4] This document was brought to the attention of the Commission prior to the decision to suspend Edison's proposed rate increase for five months.

The Commission orders: (A) Edison's petition for rehearing of the Commission's summary exclusion of EPRI contributions from its cost of service is hereby granted.

(B) Ordering Paragraph (G) of the Commission's order in this proceeding, dated March 15, 1979, is hereby modified to delete all reference to EPRI contributions, including the requirement that Edison revise its cost of service standing and its proposed rates to reflect the exclusion of EPRI contributions from its cost of service.

(C) The stay of Ordering Paragraph (G) of our order in this proceeding, dated March 15, 1979, which was granted in our Notice of Intent To Act, dated May 14, 1979, is hereby lifted. Edison shall revise its cost of service study and its proposed rates to reflect the treatment of Accumulated Deferred Investment Tax Credit contained in the order of March 15, 1979, and submit such revised rates and cost of service to the Commission within thirty days from the issuance of this order.

(D) Edison's petition for reconsideration of the five-month suspension of its proposed rate increase is hereby denied.

(E) The Secretary shall cause prompt publication of this order to be made in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18191 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

[2] *Connecticut Light & Power Company*, Docket No. ER78-517, Order on Rehearing, issued November 22, 1978.

[3] *Id.*, at 2 and 3.

[4] On March 14, 1979, Edison filed a document entitled: "Motion to Strike and Response of Southern California Edison Company To Supplemental Memorandum Of Resale Cities of Anaheim, Riverside, Banning, Colton, And Azuza, California" (Motion).

Michigan; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 1, 1979.

On May 16, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of Michigan, Department of Natural Resources

FERC Control Number: JD79-5863
API Well Number: 21-079-32212
Section of NGPA: 103
Operator: Amoco Production Company
Well Name: Simpson "P" 3A-19
Field: Rapid River 24-28N-7W
County: Kalkaska
Purchaser: Michigan Consolidated
Volume: 285 MMcf.

FERC Control Number: JD79-5864
API Well Number: 21-055-32401
Section of NGPA: 102
Operator: Amoco Production Company
Well Name: State Union "O" 1-22
Field: Union 22-26N-9W
County: Grand Traverse
Purchaser: Michigan Consolidated
Volume: 1,460 MMcf.

FERC Control Number: JD79-5865
API Well Number: 21-137-31806
Section of NGPA: 103
Operator: Amoco Production Company
Well Name: Geraldine 2-35
Field: Bagley 35A-30N-3W
County: Otsego
Purchaser: Consumers Power Co.
Volume: 86.9 MMcf.

FERC Control Number: JD79-5866
API Well Number: 21-045-31711
Section of NGPA: 103
Operator: Amoco Production Company
Well Name: J. R. Smith Unit 1A-21
Field: Eaton Rapids 21A-2N-3W
County: Eaton
Purchaser: Consumers Power Company
Volume: 53.3 MMcf.

FERC Control Number: JD79-5867
API Well Number: 21-079-31689
Section of NGPA: 102
Operator: Amoco Production Company
Well Name: East Big Twin Lake Unit 4-18
Field: Blue Lake 18A-28N-5W
County: Kalkaska
Purchaser: Consumers Power
Volume: 2,617 MMcf.

FERC Control Number: JD79-5868
API Well Number: 21-045-31818
Section of NGPA: 102
Operator: Amoco Production Company
Well Name: Miller Dairy Farms 2-35
Field: Eaton Rapids 35A-2N-3W
County: Eaton
Purchaser: Consumers Power Company
Volume: 71 MMcf.

FERC Control Number: JD79-5869
API Well Number: 21-079-32003
Section of NGPA: 102
Operator: Amoco Production Company
Well Name: Sedwarft-La Furgey Unit 4-29
Field: Cold Springs 29A-28N-6W
County: Kalkaska
Purchaser: Michigan Consolidated
Volume: 198.2 MMcf.

FERC Control Number: JD79-5870
API Well Number: 21-079-31952
Section of NGPA: 102
Operator: Amoco Production Company
Well Name: Simpson State Blue Lake Unit "A" 1-16
Field: Blue Lake 16-28N-5W
County: Kalkaska

Purchaser: Consumers Power
Volume: 154.4 MMcf.

FERC Control Number: JD79-5871
API Well Number: 21-079-32232
Section of NGPA: 102
Operator: Amoco Production Company
Well Name: Simpson "U" 4-21
Field: Cold Springs 21-28N-5W
County: Kalkaska
Purchaser: Michigan Consolidated
Volume: 0 MMcf.

FERC Control Number: JD79-5872
API Well Number: 21-079-32117
Section of NGPA: 102
Operator: Amoco Production Company
Well Name: State Blue Lake "G" 1-20
Field: Blue Lake 20-28N-5W
County: Kalkaska
Purchaser: Consumers Power
Volume: 159.9 MMcf.

FERC Control Number: JD79-5873
API Well Number: 21-137-32157
Section of NGPA: 102
Operator: Amoco Production Company
Well Name: State Chester Unit "C" 1-5
Field: Chester 5-29N-2W
County: Otsego
Purchaser: Michigan Consolidated
Volume: 124 MMcf.

FERC Control Number: JD79-5874
API Well Number: 21-137-32335
Section of NGPA: 102
Operator: Amoco Production Company
Well Name: State Chester "E" 1-34
Field: Chester 34-30N-2W
County: Otsego
Purchaser: Consumers Power
Volume: 132.13 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 27, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18192 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

Tennessee; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 1, 1979.

On May 18, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of Tennessee; State Oil and Gas Board

FERC Control Number: JD79-5808
API Well Number: 41-129-202919
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Burghardt #1
Field: Unnamed
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 18 MMcf.

FERC Control Number: JD79-5809
API Well Number: 41-129-20119
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Melton #1A
Field: Unnamed
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 36 MMcf.

FERC Control Number: JD79-5810
API Well Number: 41-129-20111
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Plateau-Aytes Unit#1
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 15 MMcf.

FERC Control Number: JD79-5811
API Well Number: 41-129-10038
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: O. Cole #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 0.1 MMcf.

FERC Control Number: JD79-5812
API Well Number: 41-129-10039
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: J. Bye #2
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 0.5 MMcf.

FERC Control Number: JD79-5813
API Well Number: 41-129-20091
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Plateau Properties #2 (Harrison)
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 15 MMcf.

FERC Control Number: JD79-5814
API Well Number: 41-129-20089
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: L. Duncan #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 7 MMcf.

FERC Control Number: JD79-5815
API Well Number: 41-129-10041
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: J.D. Mize #1
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 7 MMcf.

FERC Control Number: JD79-5816
API Well Number: 41-129-10033
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: A Bigoness et al Unit #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 3 MMcf.

FERC Control Number: JD79-5817
API Well Number: 41-129-00084
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: J. Bye #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 0.5 MMcf.

FERC Control Number: JD79-5818
API Well Number: 41-129-10034
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: S. Luchin #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 0.5 MMcf.

FERC Control Number: JD79-5819
API Well Number: 41-129-20104
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: M. Branstetter #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 10 MMcf.

FERC Control Number: JD79-5820
API Well Number: 41-129-20290
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: W.W. Ivey #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 0.5 MMcf.

FERC Control Number: JD79-5821
API Well Name: 41-129-20131
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Plateau Properties #3 (Harrison)
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 15 MMcf.

FERC Control Number: JD79-5822
API Well Number: 41-129-20120
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: E. Howard #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 16 MMcf.

FERC Control Number: JD79-5823
API Well Number: 41-129-10035
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: S. Luchin #2

Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 3 MMcf.

FERC Control Number: JD79-5824
API Well Number: 41-151-20-125
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: C.L. Criscillis #1
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5825
API Well Number: 41-151-20148
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Brimstone #3
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5826
API Well Number: 41-151-20135
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Brimstone #2, Permit No. 1248
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5827
API Well Number: 41-151-20338
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Fred Walker #3
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5828
API Well Number: 41-151-20316
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Criscillis #2
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5829
API Well Number: 41-151-20324
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Fred Walker #2
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5830
API Well Number: 41-151-20316
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Fred Walker #1
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5831
API Well Number: 41-151-20276
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Bowling Carson #1
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5832
API Well Number: 41-151-20270
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Brimstone-Bowling #1
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5833
API Well Number: 41-151-20263
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Bowling-Brimstone et at #1
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5834
API Well Number: 41-151-20252
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: R. Henry Bowling #1
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5835
API Well Number: 41-151-20201
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: R. Bowling-Radseck-Burress #1
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5836
API Well Number: 41-129-20048
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Plateau Properties #1 (Harrison)
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 15 MMcf.

FERC Control Number: JD79-5837
API Well Number: 41-129-20344
Section of NGPA: 103
Operator: Universal Land & Mineral Leasing Co.
Well Name: David Summer #2 Permit #1652
Field: Sunbright Gas Field
County: Morgan County
Purchaser: Intrastate Energy Corp.
Volume: 36 MMcf.

FERC Control Number: JD79-5838
API Well Number: N/A
Section of NGPA: 103
Operator: Universal Land & Mineral Co.
Well Name: David Summer #1 Permit #1292
Field: Sunbright Gas Field
County: Morgan County
Purchaser: Intrastate Energy Corp.
Volume: 36 MMcf.

FERC Control Number: JD79-5839
API Well Number: M/A
Section of NGPA: 103
Operator: Universal Land & Mineral Co.
Well Name: David Summer #3 Permit #1927
Field: Sunbright Gas Field
County: Morgan County
Purchaser: Intrastate Energy Corp.
Volume: 36 MMcf.

FERC Control Number: JD79-5840
API Well Number: 41-129-20374
Section of NGPA: 103
Operator: Cumberland Oil Producing Co., Inc.
Well Name: R. Aytes et al Unit #1
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 26 MMcf.

FERC Control Number: JD79-5841
API Well Number: 41-129-20111
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Plateau-Aytes Unit #1
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co., Inc.
Volume: 15 MMcf.

FERC Control Number: JD79-5842
API Well Number: 41-129-20190
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: E. Scott #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 10 MMcf.

FERC Control Number: JD79-5843
API Well Number: 41-133-20045
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: Wesley Mansell & Edward Fleming Unit #1 Pt. 1931
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas Co. City of Livingston, TN
Volume: 109 MMcf

FERC Control Number: JD79-5844
API Well Number: 41-133-20048
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: James Meadows #1 Permit #1948
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas Co. City of Livingston, TN
Volume: 116 MMcf.

FERC Control Number: JD79-5845
API Well Number: 41-133-20047
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: D. Dailey ETAL Unit #1 Permit #1947
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas Co. City of Livingston, TN.
Volume: 103 MMcf.

FERC Control Number: JD79-5846
API Well Number: 41-133-20046
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: Carl Gilpatrick #1 Permit #1932
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City of Livingston, TN.
Volume: 123 MMcf.

FERC Control Number: JD79-5847
API Well Number: 41-133-20053
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: Bob Upchurch #4 Permit #1981
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City of Livingston, TN.
Volume: 149 MMcf.

FERC Control Number: JD79-5848
API Well Number: 41-133-20042
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: Ed Fleming #2 Permit #1884
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City of Livingston, TN.
Volume: 162 MMcf.

FERC Control Number: JD79-5849
API Well Number: 41-133-20027
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: W. E. Smith #1 Permit #1699
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City of Livingston, TN.
Volume: 344 MMcf.

FERC Control Number: JD79-5850
API Well Number: 41-133-20038
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: Bob Upchurch #1 Permit #1842
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City of Livingston, TN
Volume: 44 MMcf.

FERC Control Number: JD79-5851
API Well Number: 41-133-20049
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: Bob Upchurch #3 Permit #1949
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City Of Livingston, TN
Volume: 45 MMcf.

FERC Control Number: JD79-5852
API Well Number: 41-133-20037
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: W.E. Smith #3 Permit #1837
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City Of Livingston, TN
Volume: 60 MMcf.

FERC Control Number: JD79-5853
API Well Number: 41-133-20031
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: W.E. Smith #2 Permit #1747
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City Of Livingston, TN
Volume: 75 MMcf.

FERC Control Number: JD79-5854
API Well Number: 41-133-20051
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: Wells Thomas #1 Permit #1140
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City Of Livingston, TN
Volume: 22 MMcf.

FERC Control Number: JD79-5855
API Well Number: 41-133-20055
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: Nell Ogletree #1 Permit #2028
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City Of Livingston, TN
Volume: 30 MMcf.

FERC Control Number: JD79-5856
API Well Number: 41-133-20052
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: Carl Gilpatrick #2 Permit #1978
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City Of Livingston, TN
Volume: 30 MMcf.

FERC Control Number: JD79-5857
API Well Number: 41-133-20044
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: Bob Upchurch #2 Permit #1899
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City Of Livingston, TN
Volume: 45 MMcf.

FERC Control Number: JD79-5858
API Well Number: 41-133-20041
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: W.E. Smith #4 Permit #1869
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City Of Livingston, TN
Volume: 75 MMcf.

FERC Control Number: JD79-5859
API Well Number: 41-133-20040
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: ED. Fleming #1 Permit #1868
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas
Volume: 30 MMcf.

FERC Control Number: JD79-5860
API Well Number: 41-133-20050
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: NA Permit #1959
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City Of Livingston, TN
Volume: 30 MMcf.

FERC Control Number: JD79-5861
API Well Number: 41-133-20043
Section of NGPA: 102
Operator: Energy Resource Corporation
Well Name: Hubert Pigg #1 Permit #1885
Field: Flat Creek
County: Overton
Purchaser: East Tennessee Nat. Gas City Of Livingston, TN
Volume: 45 MMcf.

FERC Control Number: JD79-5862
API Well Number: 41-133-20005
Section of NGPA: 102
Operator: Tartan Oil Co.
Well Name:
Field: Flat Creek
County: Overton
Purchaser: Energy Resource Corporation
Volume: 21.5 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations, may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 27, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18193 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

New Mexico Office; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 4, 1979.

On May 9, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to Natural Gas Policy Act of 1978.

U.S. Geological Survey (New Mexico Office)

FERC Control Number: JD79-4975
API Well Number: 30-039-20752
Section of NGPA: 108
Operator: Elpaso Natural Gas Company
Well Name: Canyon Largo Unit #218
Field: Ballard-Pictured Cliffs Gas
County: Rio Arriba, New Mexico
Purchaser: Elpaso Natural Gas Company
Volume: 9.1 MMcf.

FERC Control Number: JD79-4976
API Well Number: 30-045-22397
Section of NGPA: 103
Operator: Elpaso Natural Gas Company
Well Name: Barnes 1A
Field: Blanco
County: San Juan, New Mexico
Purchaser: Elpaso Natural Gas Company
Volume: 360 MMcf.

FERC Control Number: JD79-4977
API Well Number: 30-045-22395
Section of NGPA: 103
Operator: Elpaso Natural Gas Company

Well Name: Barnes 2A (Pictured Cliffs)
Field: Blanco
County: San Juan, New Mexico
Purchaser: Elpaso Natural Gas Company
Volume: 334 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any those final determination, may, in acordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission . Please referrence the FERC Control Number in any correspondence concerning a determination on or before June 27, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18194 Filed 6-11-79; 8:45 am]

BILLING CODE 6450-01-M

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 1, 1979.

On May 18, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

U.S. Geological Survey Conservation Division

FERC Control Number: JD79-6058
API Well Number: 30045207880000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: NYE 5
Field: Aztec Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 18.0 MMcf.

FERC Control Number: JD79-6059
API Well Number: 30015210210013
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: Rocky Arroyo D Com 2 Can
Field: Rocky Arroyo Canyon Gas
County: Eddy
Purchaser: El Paso Natural Gas Company
Volume: 8.0 MMcf.

FERC Control Number: JD79-6060
API Well Number: 30045090650000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: Stewart A Com 1
Field: Aztec Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 4.4 MMcf.

FERC Control Number: JD79-6061
API Well Number: 30045093220000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: Murphy
Field: Aztec Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 2.2 MMcf.

FERC Control Number: JD79-6062
API Well Number: 30045087190000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: Florence E !
Field: Blanco Mesaverde Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 12.8 MMcf.

FERC Control Number: JD79-6063
API Well Number: 30039206740000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: San Juan 28-4 Unit #36
Field: Basin Dakota Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 7 MMcf.

FERC Control Number: JD79-6064
API Well Number: 30039072880000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: San Juan 28-6 Unit #9
Field: Blanco Mesaverde Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 12.8 MMcf.

FERC Control Number: JD79-6065
API Well Number: 30039211780000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: Donahue 2
Field: Ballard Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 21.5 MMcf.

FERC Control Number: JD79-6066
API Well Number: 30045213970000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: Huerfano Unit 68
Field: Basin Dakota Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 9.0 MMcf.

FERC Control Number: JD79-6067
API Well Number: 30039208850000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: San Juan 27.4 Unit #72
Field: Tapacito Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 10.6 MMcf.

FERC Control Number: JD79-6068
API Well Number: 30039068780000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: San Juan 27-5 Unit #66
Field: Blanco Mesaverde Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 15 MMcf.

FERC Control Number: JD79-6069
API Well Number: 30045066460000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: Piplin 5
Field: Fulcher Kutz Pictured Cliffs
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 7.0 MMcf.

FERC Control Number: JD79-6070
API Well Number: 3003906070000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Number: Donohue 1
Field: Ballard Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 11.3 MMcf.

FERC Control Number: JD79-6071
API Well Number: 30045072380000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Lackey B 15
Field: Basin Dakota Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 8.0 MMcf.

FERC Control Number: JD79-6072
API Well Number: 30045087940000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Riddle A 4
Field: Blanco Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 18.3 MMcf.

FERC Control Number: JD79-6073
API Well Number: 30-045-02967
Section of NGPA: 108
Operator: W. M. Gallaway
Well Name: Delo #6
Field: Fulcher Kutz Pictured Cliffs
County: San Juan
Purchaser: Southern Union Gathering Co.
Volume: 2 MMcf.

FERC Control Number: JD79-6074
API Well Number: 30-039-20444
Section of NGPA: 108
Operator: W. M. Gallaway
Well Name: Mechel #6
Field: Tapacito Pictured Cliffs
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 12 MMcf.

FERC Control Number: JD79-6075
API Well Number: 30-045-22584
Section of NGPA: 103
Operator: Northwest Pipeline Corporation
Well Name: Cox Cayon Com #19
Field: Blanco PC
County: San Juan
Purchaser: Northwest Pipeline Corporation
Volume: 37 MMcf.

FERC Control Number: JD79-6076
API Well Number: 30-039-20120
Section of NGPA: 108
Operator: W. M. Gallaway
Well Name: Pat #1
Field: Gavilan Pictured Cliffs
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 10 MMcf.

FERC Control Number: JD79-6077
API Well Number: 30045215610000
Section of NGPA: 108

Operator: El Paso Natural Gas Company
Well Name: Hancock B #12
Field: Harris Mesa Chacra Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 15.3 MMcf.

FERC Control Number: JD79–6078
API Well Number: 30045099660000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Atlantic B #12
Field: Blanco Mesaverde Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 15.3 MMcf.

FERC Control Number: JD79–6079
API Well Number: 30039823530000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Klein 9
Field: Blanco, South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 7.7 MMcf.

FERC Control Number: JD79–6080
API Well Number: 30039054290000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Tonkin Federal 2
Field: Blanco, South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 4.0 MMcf.

FERC Control Number: JD79–6081
API Well Number: 30039064180000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Quantius 2
Field: Blanco, South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 3.0 MMcf.

FERC Control Number: JD79–6082
API Well Number: 30039070150000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Ripley #2Y
Field: Blanco, South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 6.2 MMcf.

FERC Control Number: JD79–6083
API Well Number: 30045068180000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Turner Hughes #8
Field: Blanco, South Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 12.4 MMcf.

FERC Control Number: JD79–6084
API Well Number: 30039069280000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Rincon Unit NP #84
Field: Blanco Mesaverde Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 13.5 MMcf.

FERC Control Number: JD79–6085
API Well Number: 30039209470000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit #275
Field: Ballard Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 15.7 MMcf.

FERC Control Number: JD79–6086
API Well Number: 30039209180000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Lindrith Unit 78
Field: Blanco, South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 8.0 MMcf.

FERC Control Number: JD79–6087
API Well Number: 30039207150000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit #190
Field: Ballard Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 12.4 MMcf.

FERC Control Number: JD79–6088
API Well Number: 30039205370000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit #174
Field: Ballard Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 8.8 MMcf.

FERC Control Number: JD79–6089
API Well Number: 30039208590000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 28–6 Unit 200
Field: Blanco, South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 19.0 MMcf.

FERC Control Number: JD79–6090
API Well Number: 30039206360000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Lindrith Unit #75
Field: Blanco, South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 13.5 MMcf.

FERC Control Number: JD79–6091
API Well Number: 30039205330000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit 167 CH
Field: Otero Chacra Gas
County: RIO ARRIBA
Purchaser: El Paso Natural Gas Company
Volume: 19.0 MMcf.

FERC Control Number: JD79–6092
API Well Number: 30045069240000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Thompson C 5
Field: Kutz, West Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 4.0 MMcf.

FERC Control Number: JD79–6093
API Well Number: 30045062920000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: McAdams 2
Field: Fulcher Kutz Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 5.0 MMcf.

FERC Control Number: JD79–6094
API Well Number: 30045130370000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Day B 7
Field: Blanco, South Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 15.0 MMcf.

FERC Control Number: JD79–6095
API Well Number: 30045104170000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Mudge 1
Field: Blanco Mesaverde Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 18.3 MMcf.

FERC Control Number: JD79–6096
API Well Number: 30039054810000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Tonkin Federal X 1
Field: Blanco, South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 4.0 MMcf.

FERC Control Number: JD79–6097
API Well Number: 30–015–22290
Section of NGPA: 103
Operator: Mesa Petroleum Co.
Well Name: Bindel Federal Com #1
Field: Carlsbad So Morrow
County: Eddy
Purchaser: El Paso Natural Gas Company
Volume: 20 MMcf.

FERC Control Number: JD79–6098
API Well Number: 30–045–21828
Section of NGPA: 103
Operator: Mesa Petroleum Co.
Well Name: Decker Primo #1A
Field: Blanco Mesaverde
County: San Juan
Purchaser: Southern Union Gathering Company
Volume: 211 MMcf.

FERC Control Number: JD79–6099
API Well Number: 30039207860000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit #224
Field: Blanco, South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 18.3 MMcf.

FERC Control Number: JD79–6100
API Well Number: 30039210930000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 28–7 Unit 242
Field: Basin Dakota Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 20.0 MMcf.

FERC Control Number: JD79–6101
API Well Number: 30039209300000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit #276

Field: Ballard Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 21.9 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 10000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 27, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-18195 Filed 6-11-79; 8:45 am]
BILLING CODE 6450-01-M

[FRL 1245-6; OPP-180311]

Department of Agriculture; Issuance of Specific Exemption TO Use Acephate TO Control the West Indian Sugarcane Rootstalk Borer Weevil on Citrus in Florida

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

ACTION: Issuance of a specific exemption.

SUMMARY: EPA has granted a specific exemption to the Animal and Plant Health Inspection Service, U.S. Department of Agriculture (hereafter referred to as the "Applicant") to use acephate to control the West Indian Sugarcane Rootstalk Borer Weevil on 5,000 acres of citrus in two counties in Florida. The specific exemption expires on November 1, 1979.

FOR FURTHER INFORMATION CONTACT: Emergency Response Section, Registration Division (TS-767), Office of Pesticide Programs, 401 M Street SW., 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: The West Indian Sugarcane Rootstalk Borer was introduced into the United States from Puerto Rico in 1964. The first serious infestation of the pest occurred in 1968 on approximately 2,500 acres of citrus in Orange County. Currently the pest has become established on approximately 5,000 acres in Orange and Seminole Counties. A quarantine has been enacted by the State of Florida under which about 38,000 acres are being regulated.

The adult weevil feeds on foliage of a variety of plants with most damage occurring to tender new growth. It has a wide host range including many commercial crops, two of which are sugarcane and citrus.

Eggs are laid in clusters of 30 to 300 and hatch in seven days. The larvae drop to the ground and burrow into the soil where they find suitable roots to feed on. The larvae have the ability to survive several years in soil and may be found at depths of up to seven feet below the surface. In Florida, the adult is present throughout the year with the major population peaks occuring during May/June and September/October. There is no registered pesticide to control this pest.

Little information is available on the economic losses which would occur to citrus without the use of acephate. According to the Applicant, the potential damage from this pest could be tremendous if it is allowed to spread beyond the approximately 5,000 acres in Florida in which it has become established. The Applicant stated that in initial areas found infested, more than 1,670 citrus trees have shown severe decline symptoms and suffered complete production loss. More than 600 trees were killed outright.

The Applicant proposed to use a total of 13,000 pounds of acephate in Orange and Seminole Counties. Application will be by air, and will be made only after knowledgeable experts have determined the need.

EPA has determined that residues from the proposed use are not likely to exceed 4 parts per million (ppm) of acephate (of which no more than 0.7 ppm is methamidophos, a metabolite) in or on citrus. These residue levels have been deemed adequate to protect the public health. Since foraging mammals and birds may be affected from the proposed use, EPA has imposed a restriction against application in areas where rare or endangered species occur.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of West Indian Sugarcane Rootstalk Borer Weevil has occurred; (b) there are no effective pesticides currently registered and available to control this pest in Florida; (c) there are no alternative means of control taking into account the efficacy and hazard; (d) significant economic problems may result if the West Indian Sugarcane Rootstalk Borer Weevil is 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, the Applicant has been granted a specific exemption to use the pesticide noted above until November 1, 1979, in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. Acephate may be used at a dosage rate of one pound in six to ten gallons of water per acre;

2. A maximum of three applications may be made per acre per season;

3. A 21-day interval between applications shall be observed;

4. A 21-day pre-harvest interval shall be observed;

5. Application is limited to 5,000 acres of citrus located in the counties named above;

6. Acephate may not be applied in areas where rare or endangered species are known or expected to occur;

7. Application is to be made by Plant Protection and Quarantine Programs personnel, and Florida Department of Agriculture and Consumer Services personnel, or State-certified applicators under their supervision;

8. Citrus treated according to the above provisions should not exceed residue levels of acephate in excess of 4 ppm (of which no more than 0.7 ppm is methamidophos). Treated citrus within this residue level may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action; and

9. The Applicant is responsible for assuring that all of the provisions of this specific exemption are met and must submit a report summarizing the results of this program by March 31, 1980.

(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. 79-18266 Filed 6-11-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1245-4; OPP-C30142B]

FMC Corp., Approval of Application to Conditionally Register Pesticide Product Containing New Active Ingredient

On March 1, 1978, notice was given (43 FR 8293) that FMC Corp., 2000 Market St., Philadelphia, PA 19103 had filed an application (EPA File Symbol 279-GNRG) with the Environmental Protection Agency (EPA) to register the pesticide product Pounce Technical containing 92.0% of the active ingredient permethrin [(3-phenoxyphenyl) methyl (±) cis-trans-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] which was not previously registered at the time of submission. Notice of this registration is given in accordance with 40 CFR 162.7(d)(2).

This application was conditionally approved May 7, 1979 and the product has been assigned EPA Registration No. 279-3013. As stated in the March 1, 1978 notice, Pounce Technical is an insecticide for formulating use only. A copy of the approved label and list of data references used to support registration are available for public inspection in the office of the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, Rm. E-401, 401 M St., SW., Washington, DC 20460. The data and other scientific information used to support registration, except for the material specifically protected by Section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136), will be available for public inspection in accordance with section 3(c)(2) of FIFRA within 30 days after the registration date of May 7, 1979. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), EPA, at the above address. Such requests should: 1) identify the product by name and registration number and 2) specify the data or information desired.

Dated: June 5, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-18269 Filed 6-11-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1246-1]

Financial Assistance for Resource Recovery Project Development Under The President's Urban Policy; Class Deviation

Under authority of 40 CFR 30.1000, EPA has issued a class deviation from the provisions of 40 CFR 35.716 for the Financial Assistance for Resource Recovery Project Development Under the President's Urban Policy program funded under section 4008(a)(2) of the Resource Conservation and Recovery Act of 1976.

The regulations in 40 CFR Part 30, 40 CFR 35.400 through 35.425, and 40 CFR 35.700 through 35.744 will apply to all assistance awarded under this program. The class deviation waives the provision of 40 CFR 35.716 which specifies that the budget period shall be the Federal fiscal year. The Financial Assistance for Resource Recovery Project Development Under the President's Urban Policy program is project specific and the time required to perform the tasks will vary greatly from the project to project.

Under our policy to publish class deviation in the **Federal Register**, EPA is publishing the deviation as part of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Alexander J. Greene, Director, Grants Administration Division (PM-216), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (Tel. No. 202 755-0850).

Dated: June 6, 1979.

C. W. Carter,

Acting Assistant Administrator for Planning and Management.

Dated: May 11, 1979.

Thomas C. Jorling

Assistant Administrator for Water and Waste Management.

[FR Doc. 79-18263 Filed 6-11-79; 8:45]

BILLING CODE 6560-01-M

[FRL 1245-5; Opp-180312]

Rhode Island Department of Environmental Management; Issuance of Specific Exemption To Use Permethrin to Control Colorado Potato Beetle on Potatoes

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

ACTION: .Issuance of a specific exemption.

SUMMARY: EPA has granted a specific exemption to the Rhode Island Department of Environmental Management (hereafter referred to as the "Applicant") to use permethrin on 3,700 acres of potatoes for the control of the Colorado potato beetle in Rhode Island. The specific exemption expires on December 31, 1979.

FOR FURTHER INFORMATION CONTACT: Emergency Response Section, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW., Room: E-124, Washington, D.C. 20460, Telephone: 202/426-2691. It is suggested that interested persons telephone before visiting the EPA Headquarters, sothat the appropriate files may be made conveniently available for review purposes.

SUPPLEMENTARY INFORMATION: The potato beetle is perhaps the best known beetle in the United States. Both the larvae and the adults feed on leaves of potato plants. This feeding may result in defoliation of the vines which prevents development of tubers or greatly reduces yield. Although Guthion, Imidan, methoxychlor, Monitor, parathion, Furadan, Temik, and Thiodan are registered for use on potatoes to control this pest, the Applicant claims tha these pesticides are unsatisfactory for Colorado potato beetle control due to pesticidal resistance. Last year Vydate was registered for control of the beetle on potatoes; however, Vydate is effective against the larvae only, not the adult, and it is not so effective as permethrin. The Applicant estimates a loss of 1.85 million dollars due to the Colorado potato beetle.

The Applicant proposes to use permethrin, manufactured under the trade names Pounce and Ambush, at a rate of 0.1 to 0.2 pound active ingredient (a.i.) per acre per application, using ground or air equipment, observing a 7-day pre-harvest interval.

EPA has determined that residues of permethrin on potatoes would not be expected to exceed 0.1 part per million (ppm) as a result of the proposed use

provided that no more than six applications of either Ambush or Pounce are made and a 7-day pre-harvest interval is observed. This residue level as been judged to be adequate to protect the public health. Since permethrin is highly toxic to bees and aquatic vertebrates and invertebrates, appropriate restrictions have been imposed. This use of permethrin is not expected to pose an unreasonable hazard to the environment.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of Colorado potato beetle has occurred or is about to occur; (b) there is no effective pesticide presently registered and available for use to control the Colorado potato beetle in Rhode Island; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the Colorado potato beetle is 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, the Applicant has been granted a specific exemption to use the pesticide noted above until December 31, 1979, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The products Ambush, manufactured by ICI Americas, Inc., and Pounce, manufactured by FMC Corporation, may be applied;

2. Permethrin may be applied at a rate of 0.1 to 0.2 pound a.i. per acre;

3. A maximum of three applications may be made with a pre-harvest interval of seven days;

4. A maximum of 3,700 acres may be treated;

5. Applications may be made with air or ground equipment;

6. Spray mixture volumes of 20–100 gallons of water will be applied by gound equipment, 5–10 gallons by aircraft;

7. Applications will be made by State-certified private or commerical applicators or persons under the direct supervision of a State-certified applicator;

8. Ambush and Pounce are toxic to fish, birds, and other wildlife. They must be kept out of any body of water. They may not be applied where run-off is likely to occur. They may not be applied when weather conditions favor drift from treated areas. Care must be taken to prevent contamination of water by cleaning of equipment or disposal of wastes;

9. In order to minimize spray drift, the following restrictions will be observed for applications of permethrin:

a. Aerial applications will not be made when wind speed exceeds five miles per hour;

b. A buffer zone of 200 feet (horizontal distance) between treated areas and aquatic areas will be observed; and

c. Aerial applications should be staggered in time in areas where fish and shellfish are important resources.

10. Permethrin is highly toxic to bees exposed to direct treatment or residues on crops or weeds. It may not be applied or allowed to drift to weeds in bloom on which an economically significant number of bees are actively foraging. Protective information may be obtained from the State Cooperative Agricultural Extension Service;

11. Potatoes treated according to the above provisions will not have residues of permethrin in excess of 0.1 ppm. Potatoes with residues of permethrin which do not exceed this level may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;

12. A 60-day crop rotation restriction will be observed;

13. The EPA will be immediately informed of any adverse effects resulting from the use of permethrin in connection with this exemption; and

14. The Applicant is responsible for assuring that all of the provisions of this specific exemption are met and must submit a report summarizing the results of this program by March 31, 1980.

(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. 79-18267 Filed 6-11-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1245-8; OPP-C30143B]

Pesticide Programs; Approval of Application To Conditionally Register Pesticide Product Containing New Active Ingredient

On March 10, 1978, notice was given (43 FR 9856) that ICI Americas Inc., Concord Pike and New Murphy Road, Wilmington, DE 19897, had filed an application (EPA File Symbol 10182-RT) with the Environmental Protection Agency (EPA) to register the pesticide product Permethrin Technical containing 91.0% of the active ingredient permethrin [(3-phenoxyphenyl)methyl (±)-cis, trans-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] which was not previously registered at the time of submission. Notice of this registration is given in accordance with 40 CFR 162.7(d)(2).

This application was conditionally approved May 7, 1979 and the product has been assigned EPA Registration No. 10182-17. As stated in the March 10, 1978 notice, Permethrin Technical is an insecticide for formulating use only. A copy of the approved label and list of data references used to support registration are available for public inspection in the office of the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, Rm. E-401, 401 M St., SW, Washington, DC 20460. The data and other scientific information used to support registration, except for the material specifically protected by Section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136), will be available for public inspection in accordance with section 3(c)(2) of FIFRA, within 30 days after the registration date of May 7, 1979. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), EPA, at the above address. Such requests should: 1) identify the product by name and registration number and 2) specify the data or information desired.

Dated: June 6, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-18268 Filed 6-11-79; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL MARITIME COMMISSION

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for review and approval, if required, pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10423; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico.

Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before June 22, 1979. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Agreement No.: T-3813.

Filing Party: John R. Kuykendall, Vice-President, Matson Navigation Company, 444 North Capitol Street, N.W., Suite 514, Washington, D.C. 20001.

Summary: Agreement No.T-3813, between the State of Hawaii (State) and Matson Terminals, Inc. (Matson) is an agreement for the design, construction and lease of new Sand Island container terminal facilities. The purpose of the agreement is to provide for the transfer of Matson's container operations from its Diamond Head Terminal to its Sand Island Terminal, thus consolidating all of its Honolulu container terminal operations at Sand Island for the purpose of achieving a more effective and efficient operation, and effectuate the State's desire to have Matson remove its container operations from the Diamond Head Terminal in order that the land area there can be made available for other purposes beneficial to the State. Pursuant to the agreement, the State and Matson will develop and coordinate design and construction schedules for enlarging the Sand Island container terminal complex to include Berths 52 and 53, with the necessary support area and facilities, to effectuate this transfer in an orderly manner as soon as it is practical to do so. The agreement further provides that the proponents will negotiate and execute a lease for the new facilities.

By order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

Dated: June 7, 1979.

[FR Doc. 79-18136 Filed 6-11-79; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Octane Certification and Posting; Grant of Exemption to Sun Mark Industries

AGENCY: Federal Trade Commission.

ACTION: Partial Exemption from Commission Rule.

SUMMARY: The Commission has responded to the petition of Sun Oil Company requesting permission to post octane labels in a manner that differs from certain provisions of the Commission's Octane Certification and Posting Rule. The Commission has granted the partial exemption with respect to Sun Oil Company's multi-blend gasoline dispensers.

EFFECTIVE DATE: May 22, 1979.

FOR FURTHER INFORMATION CONTACT: James Mills, Federal Trade Commission, PE-S-7317, Washington, D.C. 20580, (202) 724-1967.

SUPPLEMENTARY INFORMATION: On March 30, 1979, the Commission published the Octane Certification and Posting Rule in the **Federal Register** (44 FR 19160). The rule established procedures for determining, certifying and posting, by means of a label on the fuel dispenser, the octane rating of automotive gasoline intended for sale to consumers.

Section 306.9 of the rule provides that retailers must post at least one octane rating label on each face of each gasoline dispenser. Retailers (like Sun) who sell two or more kinds of gasoline with different octane ratings from a single dispenser must post separate octane rating labels for each kind of gasoline on each face of the dispenser. Labels must be placed conspicuously on the dispenser so as to be in full view of consumers and as near as reasonably practical to the price per gallon of the gasoline. A provision is included to the effect that retailers may petition the Commission for an exemption from the placement requirements.

Section 306.11 of the rule details specifications for the labels themselves. Labels must be 2½ by 3 inches, and Helvetica type must be used for all text except the octane rating number, which must be in Franklin Gothic type. The size for the text and numbers is specified, and the type and border must be process black on a process yellow background. The line "MINIMUM OCTANE RATING" must be in 12 point Helvetica bold, all capitals, with letter space set at 12½ points. The line "(R+M)/2 METHOD" must be in 10 point Helvetica bold, all capitals, with letter space set at 10½ points. The octane number must be in 96 point Franklin Gothic condensed, with ⅛ inch spacing between the numbers.

By letter dated April 3, 1979, Sun Mark Industries, a division of Sun Oil Company of Pennsylvania, requested permission to post octane ratings, with respect to certain gasolines they blend and sell through multi-blend dispensers at retail, in a manner that differs from the requirements of Sections 306.9 and 306.11 of the Commission's Rule.

Sun Oil Company proposed the following labeling system for its multi-blend dispensers: A strip of 1¾ inch wide by 1 3/16 inch high labels on which the octane number would be displayed in Franklin Gothic type. On each strip, the words "MINIMUM OCTANE RATING/(R+M)/2 METHOD" would appear twice—once on each end of the strip—in 2 9/16 inches long by 1 3/16 inches high boxes forming arrows that point in the direction of the octane numbers. An octane number, as described above, would be displayed for each grade of gasoline dispensed by the Sun Company's multi-blend dispensing pumps.

The Commission has decided that the above described labeling is adequate to meet the posting objective and therefore has decided to grant Sun Oil Company permission to use its proposed labeling system on the multi-blend dispensers, providing that Sun Oil Company will also conform to the final rule's print and color requirements in all other respects.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 79-18245 Filed 6-11-79; 8:45 am]

BILLING CODE 6750-01-M

P Shirt Acquiring Corp.; Early Termination of Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the 30-day waiting period of the premerger notification rules.

SUMMARY: P Shirt Acquiring Corp. is granted early termination of the 30-day waiting period provided by law and the premerger notification rules with respect to its proposed acquisition of the assets of Publix Shirt Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any

action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: June 1, 1979.

FOR FURTHER INFORMATION CONTACT: Malcolm R. Pfunder, Assistant Director for Evaluation, Bureau of Competition, Room 394, Federal Trade Commission, Washington, D.C. 20580, (202-523-3404).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act and § 803.11 of the rules implementing the Act permit the agencies, in individual cases, to terminate this waiting period prior to its expiration and to publish notice of this action in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 79-18198 Filed 6-11-79; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 79M-0102]

Syntex Ophthalmics, Inc., Premarket Approval of Polycon Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug administration (FDA) announces approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Polycon (silafocon A) Contact Lens sponsored by Syntex Ophtalmics, Inc., Palo Alto, CA. After reviewing the Ophtalmology Device Classification Panel's recommendation, FDA notified the sponsor that the application was approved because the device has been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by July 12, 1979.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be addressed to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Keith Lusted, Bureau of Medical Devices (HFK-402), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

SUPPLEMENTARY INFORMATION: The sponsor, Syntex Ophtalmics, Inc., Palo Alto, CA 94304, submitted an application for premarket approval of the Polycon (silafocon A) Contact Lens to FDA on January 20, 1978. The application was reviewed by the Ophthalmology Device Classification Panel, an FDA advisory committee, which recommended approval of the application. On January 19, 1979, FDA approved the application by a letter to the sponsor from the Director of the Bureau of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (Pub. L. 94-295; 90 Stat. 539-583) (the amendments), soft contact lenses and solutions were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic (FFDC) Act (21 U.S.C. 321(h)) (the act), soft contact lenses and solutions are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to insure continuation of premarket approval requirements for class III devices formerly considered new drugs.

Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft contact lenses or solutions comply with the records and reports provisions of 21 CFR Part 310, Subpart D, until these provisions are replaced by similar requirements under the amendments.

A summary of the information on which the FDA's approval is based is available upon request from the Hearing Clerk (address above). Requests should be identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document.

The laveling of the Polycon Contact Lens, like that of other approved soft contact lenses, states that the lens is to be used only with certain solutions for disinfection and other purposes. Such restrictive labeling helps to inform new lens users that they must avoid purchasing inappropriate products, e.g., solutions for use with hard contact lenses. Such restrictive labeling, however, needs to be updated periodically to refer to new solutions that FDA approves for use with an approved lens. A sponsor who does not update such restrictive labeling may violate the misbranding provisions of section 502 of the FFDC Act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41-58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93-637). Furthermore, failure to update such restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the FFDC Act (21 U.S.C. 360e(e)(1)(F)). Accordingly, whenever FDA publishes a notice in the **Federal Register** of the agency's approval of a new solution for use with an approval lens, the sponsor of the lens shall correct its labeling to refer to the new solution at the next printing or at such other time as FDA prescribes by letter to the sponsor. FDA is considering alternatives to the current restrictive labeling requirements for soft contact lenses and solutions.

Opportunity for Administrative Review

Section 515(g) of the FFDC Act (21 U.S.C. 360e(g)) authorizes any interested person to petition for administrative review of the FDA decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of the FDA administrative practices and procedures regulations or a review of the application and the agency's action by an independent advisory committee of experts. A petition must be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petition must designate the form of review that the petitioner requests (hearing or independent advisory committee) and must be accompanied by supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing any petition, FDA will decide whether to grant or deny the petition by a notice published in the **Federal Register.** If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may at any time on or before July 12, 1979, file with the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4065, 5600 Fishers Lane, Rockville, MD 20857, four

copies of each petition and supporting data and information, identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document. Received petitions may be seen in the above office from 9 a.m. to 4 p.m., Monday through Friday.

Dated: June 6, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-18134 Filed 6-11-79; 8:45 am]

BILLING CODE 4110-03-M

HEALTH RESOURCES ADMINISTRATION

National Advisory Council on Nurse Training; Change of Meeting Dates

In **Federal Register** Document 79-165527 appearing at page 30760 in the issue for Tuesday, May 29, 1979, the June 26-28 meeting of the "National Advisory Council on Nurse Training" has been changed to August 21-23, 1979. All other information is correct as appears.

Dated: June 5, 1979.

James A. Walsh,

Associate Administrator for Operations and Management.

[FR Doc. 79-18189 Filed 6-11-79; 8:45 am]

BILLING CODE 4110-83-M

Office of Human Development Services

Federal Council on the Aging, Senior Services Committee; Amended Notice of Meeting; Change in Location

Notice is hereby given of the change in location of the meeting of the Senior Services Committee of the Federal Council on the Aging originally scheduled for June 28, 1979 in room 204, 522 N. Central Avenue, Phoenix, Arizona 85001. The new location is room 1006, Federal Building, 230 N. First Avenue, Phoenix, Arizona.

Further information on the Council and the Committee may be obtained from Dr. Thomas F. Davis, Staff Economist, Federal Council on the Aging, Washington, D.C. 20201, telephone (202) 245-0441. FCA meetings are open for public observation.

Dated: June 5, 1979.

Nelson H. Cruikshank,

Chairman, Federal Council on the Aging.

[FR Doc. 79-18247 Filed 6-11-79; 8:45 am]

BILLING CODE 4110-92-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Alaska Native Claims Settlement Act

Correction

In FR Doc. 79-13858 appearing on page 25945 in the issue of Thursday, May 3, 1979, add the following under Kateel River Meridian, Alaska (Unsurveyed) (first column, page 25946): "Secs. 3 to 10, inclusive, all;".

BILLING CODE 1505-01-M

[F-20517]

Alaska Native Claims Selection

On January 3, 1917, Executive Order 2508, reserved and set aside certain lands in the Norton Bay area for use of the United States Bureau of Education and Alaska Natives, as amended by Executive Order 2525 on February 6, 1917 and Executive Order 5207 on October 12, 1929.

Section 19(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 710; 43 U.S.C. 1601, 1618 (1976)), revoked, subject to any valid existing rights of non-Natives, the various reserves set aside for Native use or administration of Native affairs. Public Land Order 5156, dated February 10, 1972, withdrew, subject to valid existing rights, the lands set aside for Native use or for administration of Native affairs in furtherance of the right of any Native village corporation or corporations to acquire title to the surface and subsurface estates in the reservations pursuant to Sec. 19(b) of the Alaska Native Claims Settlement Act.

On November 13, 1973, the Board of Directors for Elim Native Corporation certified that their stockholders had elected to acquire title to the surface and subsurface estates of the reserve as provided by Sec. 19(b) of the Alaska Native Claims Settlement Act (ANCSA). Under 43 CFR 2654.2(a), submission of such certifications constituted application to acquire reserve lands.

The State of Alaska filed general purposes grant selection application F-44562 on November 14, 1978, as amended, for all unpatented lands within Tps. 13 S., Rs. 20 and 21 W., Kateel River Meridian, pursuant to Sec. 6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, Sec. 6(b) (1976)). The Elim Native Corporation (Norton Bay Reservation) properly elected to acquire all of U.S. Survey No. 2548 on November 13, 1973. Section 6(b) of the Alaska Statehood Act of July 7, 1958 provides that the State may select *vacant, unappropriated* and *unreserved* public lands in Alaska.

Therefore, in view of the above, State selection F-44562 is hereby rejected as to that portion of T. 13 S., R. 20 W., Kateel River Meridian lying within U.S. Survey No. 2548.

As to the lands described below, the application is properly filed and meets 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 acquisition of title.

In view of the foregoing, the surface and subsurface estates of the following described lands, containing 297,982 acres, are considered proper for acquisition by Elim Native Corporation and are hereby approved for conveyance pursuant to Sec. 19(b) of the Alaska Native Claims Settlement Act:

U.S. Survey No. 2548, Alaska, comprising the Norton Bay Reservation. Containing 297,982 acres.

The conveyance issued for the surface and subsurface estates of the lands described above shall contain the following reservation to the United States:

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 identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F-20517-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 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.

a. (EIN 1 C3, D1, 0) An easement for an existing access trail twenty-five (25) feet in width from Moses Point in Sec.

23, T. 9 S., R. 17 W., Kateel River Meridian, northwesterly to Sec. 16, T. 8 S., R. 17 W., Kateel River Meridian. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

b. (EIN 2 C1, C3, D1, D9, 0) An easement for an existing access trail twenty-five (25) feet in width from Sec. 15, T. 11 S., R. 20 W., Kateel River Meridian, northeasterly through the selection to Sec. 16, T. 8 S., R. 14 W., Kateel River Meridian. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement. The season of use will be limited to winter.

c. (EIN 9 C3) An easement for a proposed access trail twenty-five (25) feet in width from trail easement EIN 1 C3, D1, 0 in Sec. 16, T. 8 S., R. 17 W., Kateel River Meridian, northerly to public lands in Sec. 28, T. 7 S., R. 17 W., Kateel River Meridian. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

d. (EIN 13 D9) A one (1) acre site easement upland of the ordinary high-water mark in Sec. 22, T. 9 S., R. 17 W., Kateel River Meridian, on the right bank of Kwiniuk River. The uses allowed are those listed above for a one (1) acre site.

The grant of lands shall be subject to:

1. 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) (1976))), 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;

2. The following third-party interests, in valid, created and identified by the Bureau of Indian Affairs as provided by Sec. 14(g) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(g) (1976)):

a. Use Permit, to Alaska Village Electric Cooperative, Inc., Anchorage, Alaska, for use and occupancy of approximately 20,000 square feet of land located within protracted Sec. 15 T. 10 S., R. 18 W., Kateel River Meridian.

b. Use Permit, to United States Department of the Army, Alaska National Guard, Elim, Alaska for use and occupancy of approximately 1.01 acres of land located within protracted Sec. 15, T. 10 S., R. 18 W., Kateel River Meridian.

There are no inland water bodies considered to be navigable within the land described.

In accordance with Departmental regulations 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 NOME NUGGETT. 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 12, 1979 to file and 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 to be taken, the adverse party to be served with a copy of the notice of appeal is:

Elim Native Corporation, Elim, Alaska 99739.
State of Alaska, Division of Lands, 323 East Fourth Avenue, Anchorage, Alaska 99501

Sue A. Wolf,

Chief, Branch of Adjudication.

[FR Doc. 79-18197 Filed 6-11-79; 8:45 am]

BILLING CODE 4310-84-M

Nevada, Wilderness Meeting; Correction

FR Doc. 79-16346, page 30449-50 for Friday, May 25, 1979 is changed to correct the time for the Reno meeting as follows: June 19—Reno, Pioneer Inn, 221 S. Virginia Street, beginning at 2 p.m. and 7 p.m.

Dated: June 4, 1979.

Ed Evatz,

Acting State Director.

[FR Doc. 79-18200 Filed 6-11-79; 8:45 am]

BILLING CODE 4310-84-M

[2880, U-41544 (U-942)]

Utah; Application

June 4, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corporation has applied for a 6⅝ inch buried natural gas pipeline right-of-way across the following lands:

Salt Lake Meridian, Utah

T. 17 S., R. 23 E.,
Secs. 1 and 3.

The needed right-of-way is a portion of applicant's gas gathering system located in Grand County, Utah.

The purpose of this notice is to inform the public that the Bureau will be proceeding with the preparation of environmental and other analyses necessary for determining whether the application should be approved, and if so, under what terms and conditions.

Interested persons should express their interest and views to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532.

Dell T. Waddoups,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-18201 Filed 6-11-79; 8:45 am]

BILLING CODE 4310-84-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 1, 1979. Pursuant to section 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 20240. Written comments or a request for additional

time to prepare comments should be submitted by June 22, 1979.

Charles A. Herrington,

Acting Keeper of the National Register.

ALASKA

Nome Division

Solomon, *Solomon Roadhouse*, Nome-Council Hwy.

ARIZONA

Pima County

Tucson, *Manning, Levi H., House*, 9 Paseo Redondo

Pinal County

Casa Grande vicinity, *Peralta Rock Site*
Sacaton vicinity, *Ha-ak Site*

CALIFORNIA

Contra Costa County

Richmond, *Point Richmond Historic District*, off CA 17

Los Angeles County

Los Angeles, *Wilton Historic District*, S. Wilton Pl., S. Wilton Dr. and Ridgewood Pl.
Torrance, *Torrance School*, 2200 W. Carson

San Francisco County

San Francisco, *Girls Club*, 362 Capp St.

San Joaquin County

Stockton, *Fox California Theater*, 242 E. Main St.

Santa Clara County

Campbell, *Campbell Union Grammar School*, 11 E. Campbell Ave.

COLORADO

Chaffee County

St. Elmo, *St. Elmo Historic District*, Pitkin, Gunnison, 1st, Main and Poplar Sts.

El Paso County

Colorado Springs, *Midland Terminal Railroad Roundhouse*, 600 S. 21st St.

Mesa County

DeBeque vicinity, *Archeology Site 5ME82*

DELAWARE

New Castle County

Newark vicinity, *Ferguson, Robert, House*, E of Newark at 636 Chestnut Hill Rd.
Newark vicinity, *Walnut Lane*, E of Newark at 4133 Ogletown Rd.

ILLINOIS

Macon County

Decatur, *Millikin Building*, 100 N. Water St.

Madison County

Edwardsville, *LeClaire Historic District*, roughly bounded by RR tracks, Wolf St., Hadley and Madison Aves.

Vermilion County

Danville vicinity, *Collins Archeological District*

IOWA

Polk County

Des Moines, *Iowa-Des Moines National Bank Building*, 520 Walnut St.

Pottawattamie County

Shelby vicinity, *Carstens Farmstead*, S of Shelby on IA 168

Scott County

Davenport, *Northwest Turner Society Hall*, 1602 Washington St.

KENTUCKY

Fayette County

Lexington vicinity, *Todd, William Lytle, House*, W of Lexington at 3725 Bowman Mill's Rd.

McCraken County

Paducah, *Nashville, Chattanooga and St. Louis Railway Office and Freight House*, 300 S. 3rd St.

Powell County

Bowen vicinity, *Terrace Archeological District*

Wolfe County

Hazel Green, *Hazel Green Academy Historic Buildings*, KY 191

LOUISIANA

Natchitoches Parish

Natchitoches, *Natchitoches Historic District*, LA 6 (boundary increase)

MAIN

Androscoggin County

Lewiston, *Continental Mill Housing*, 66–82 Oxford St.
Turner Center, *Turner Town House*, ME 117

Cumberland County

Naples, *Perley, Sam, Farm*, Perley Rd.
Portland, *Minott, William, House*, 45 Park St.
Scarborough vicinity, *Atlantic House*, S of Scarborough on Kirkwood Rd.
Yarmouth, *Grand Trunk Railroad Station*, ME 115

Knox County

Rockland, *Rockland Public Library*, Union St.

Lincoln County

Edgecomb vicinity, *Moore, John, House*, SW of Edgecomb on Cross Point Rd.

Oxford County

Rumford vicinity, *Deacon Hutchins House*, NW of Rumford on ME 5

Sagadahoc County

Bath, *Crooker, W. D., House*, 71 South St.
Phippsburg, *Fort Baldwin Historic Site*, Sabino Hill

Waldo County

Searsport, *Searsport Historic District*, Main St.

MISSISSIPPI

Claiborne County

Port Gibson, *Port Gibson Multiple Resource Area*, U.S. 61

MISSOURI

Adair County

Novinger vicinity, *Cabins Historic District*, S of Novinger off MO 6

Buchanan County

St. Joseph, *Hall Street Historic District*, roughly bounded by Isadore, Corby, 6th and 9th Sts.

Clay County

Kansas City, *Compton, Dr. James, House*, 5410 NE. Oak Ridge Rd.

Cooper County

New Lebanon, *New Lebanon Cumberland Presbyterian Church and School*, MO A

Grundy County

Trenton, *St. Philip's Episcopal Church*, 141 E. 9th St.

Jasper County

Joplin, *Joplin Carnegie Library*, 9th and Wall Sts.

Marion County

Hannibal, *Hannibal Old Police Station and Jail*, 4th and Church St.

Pettis County

Sedalia, *Harris House*, 705 W. Sixth St.

Ray County

Richmond, *Ray County Poor Farm*, W. Royale St.

NEW MEXICO

Mora County

Cleveland, *Cassidy, Daniel, and Sons General Merchandise Store*, NM 3

Valencia County

Los Lunas, *Atchison, Topeka, and Santa Fe Railroad Depot*, U.S. 85

NEW YORK

Erie County

Buffalo, *Blessed Trinity Roman Catholic Church Buildings*, 317 LeRoy Ave.

Rensselaer County

Rensselaer, *Beverwyck Manor (St. Anthony-on-Hudson Seminary)* Washington Ave.

OHIO

Fairfield County

Pickerington vicinty, *Stemen Road Covered Bridge*, NE of Pickerington over Sycamore Creek (proposed move).

OREGON

Multnomah County

Portland, *Neighborhood House*, 3030 SW. 2nd Ave.

SOUTH CAROLINA

Anderson County

Belton, *Belton Depot*, Public Sq.

Barnwell County

Barnwell, *Bethlehem Baptist Church*, Wall and Gilmore Sts.

Beaufort County

Beaufort vicinty, *Seaside Plantation*, 10 mi. E of Beaufort on SC 21.

Chesterfield County

McBee vicinity, *Kirkley, Evy, Site (38CT25)*.

Clarendon County

Manning, *Manning Library*, 211 No. Brooks St.

Lexington County

Lexington vicinity, *Meetze, Maj. Henry A., House*, S of Lexington at 723 S. Lake Dr.

Marlboro County

Clio, *Clio Historic District*, SC 9 and SC 381.

Sumter County

Mayesville, *Mayesville Historic District*, irregular pattern along Lafayette St.

SOUTH DAKOTA

Clark County

Clark, *Elrod, Gov. S. H. House*, 301 N. Commercial St.

TENNESSEE

Davidson County

Nashville, *Germantown Historic District*, bounded by Jefferson, Van Buren, and Taylor Sts., 3rd and 8th Aves. North.

UTAH

Iron County

Parowan vicinity, *Long Flat Site (42In330)*.

Sanpete County

Mt. Pleasant, *Staker, Alma, House*, 81 E. 300 South.

Sevier County

Salina vicinity, *Aspen-Cloud Rock Shelters*, NE of Salina.

WYOMING

Albany County

Laramie, *Blair House*, 170 N. 5th St., Wheatland vicinity, *Halleck Creek Historic District*, W of Wheatland.

Converse County

Douglas, *College Inn Bar*, 103 N. 2nd St.

Laramie County

Cheyenne, *Castle on 19th Street*, 1318 E. 19th St.

Cheyenne, *Crook House*, 314 E. 21st St.

Cheyenne, *Lafrentz, Ferdinand, House*, 2015 Warren Ave.

Sheridan County

Sheridan vicinity, *Fort Mackenzie*, N of Sheridan on WY 337.

[FR Doc. 79-17612 Filed 6-11-79; 8:45 am]

BILLING CODE 4310-03-M

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 1, 1979. Pursuant to section 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 20240. Written comments or a request for additional time to prepare comments should be submitted by June 22, 1979.

Charles A. Herrington,

Acting Keeper of the National Register.

New Jersey

Morris County

Mountain Lakes, *Grimes Homestead*, 45 Bloomfield Ave. (proposed move)

[FR Doc. 79-18132 Filed 6-11-79; 8:45 am]

BILLING CODE 4310-03-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 79-10

David H. Blanck and Co., Philadelphia, Pennsylvania; Hearing

Notice is hereby given that on March 21, 1979, the Drug Enforcement Administration, Department of Justice, issued to David H. Blanck and Company, Philadelphia, Pennsylvania, an Order To Show Cause as to why the Drug Enforcement Administration should not deny Respondent's application for registration, executed June 19, 1978, under Section 303 of the Controlled Substances Act (21 U.S.C. 823).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, June 19, 1979, in the Hearing Room, Room 1210, Drug Enforcement Administration, 1405 I Street, N.W., Washington, D.C.

Dated: June 5, 1979.

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

[FR Doc. 79-18184 Filed 6-11-79; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Youth Community and Conservation Projects (YCCIP) and Youth Employment and Training Programs (YETP) for Youth Who are Members of Migrant and Other Seasonally Employed Farmworkers

AGENCY: Employment and Training Administration.

ACTION: Announcement of Potential Sponsors.

SUMMARY: The following are the applicants selected as potential sponsors to operate programs for youth who are members of migrant and other seasonally employed farmworker families—for program year 1979. Each applicant so designated shall be notified in writing of the amount of funds, target areas to be served, items to be negotiated and the time and place of negotiations. These sponsors are designated under section 423(b) of CETA; a total of $12.1 million for YETP and $2.1 million for YCCIP.

EFFECTIVE DATE: July 1, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Lindsay L. Campbell, Acting Director, Office of Farmworker Programs, U.S. Department of Labor, 601 D Street, N.W., Room 6308 Patrick Henry Building, Washington, D.C. 20213. Telephone: (202) 376-6128.

YETP

ARIZONA

Migrant Opportunities Programs, Inc., Phoenix, Ariz.	$712,216

CALIFORNIA

Campesinos Unidos, Inc., Brawley, Calif	600,000
Center for Employment & Training, San Jose, Calif	1,500,000
Central Coast Counties Development Corporation, Salinas, Calif	700,000
California Human Development Corp., Windsor, Calif	1,000,000
Proteus Adult Training, Inc., Visalia, Calif	1,387,784

DELAWARE	
Migrant & Seasonal Farmworkers Association, Raleigh, N.C.	175,000
FLORIDA	
Florida Department of Education, Tallahassee, Fla	800,000
HAWAII	
State of Hawaii, Department of Industrial Relations, Honolulu, Hawaii	300,000
ILLINOIS	
Illinois Migrant Council, Chicago, Ill	700,000
MARYLAND	
Migrant & Seasonal Farmworker Association, Raleigh, N.C.	219,194
MICHIGAN	
Michigan Economic for Human Development, Grand Ledge, Mich	400,000
MONTANA	
State of Montana, Helena, Mont	650,000
NEW YORK	
Rural New York Farmworker Opportunities, Inc., Rochester, N.Y	506,594
OREGON	
California Human Development Corp., Windsor, Calif	1,000,000
PUERTO RICO	
Commonwealth of Puerto Rico, Hato Rey, P.R	600,000
VIRGINIA	
Migrant & Seasonal Farmworker Association, Raleigh, N.C.	500,000
WYOMING	
Northwestern Community Action Programs, Worland, Wyo	348,784
YCCIP	
ARIZONA	
Portable Practical Educational Preparation, Inc., Tucson, Ariz	261,116
HAWAII	
State of Hawaii, Department of Industrial Relations, Honolulu, Hawaii	216,926
OKLAHOMA	
ORO Development Corp., Oklahoma City, Okla	223,082
TEXAS	
Motivation, Education & Training, Inc., Cleveland, Tex	547,000
Community Action Council of South Texas, Rio Grand City, Tex	594,576
Colonias del Valle, Inc., San Juan, Tex	257,300

Signed at Washington, D.C., this 7th day of June 1979.

Lamond Godwin,

Administrator, Office of National Programs.

[FR Doc. 79-18212 Filed 6-11-79; 8:45 am]

BILLING CODE 4510-30-M

Migrant and Seasonal Farmworker Programs; Acceptance of Preapplications Beyond Deadline Dates

AGENCY: Employment and Training Administration, Labor.

ACTION: . Notice.

SUMMARY: A Notice in the **Federal Register** of April 13, 1979, stated that Preapplication forms for Fiscal Year 1980 Section 303 funding must be postmarked no later than June 1. Applicants are hereby informed that the Department will accept Preapplication forms which are postmarked June 1 through June 25.

FOR FURTHER INFORMATION CONTACT: Lindsay L. Campbell, Acting Director, Office of Farmworker Programs, 601 D Street NW., Room 6308, Washington, D.C. 20213, Phone 202-376-6128.

SUPPLEMENTARY INFORMATION: The Notice of April 13, 1979, stated that all states and Puerto Rico are open for competition in Fiscal Year 1980 and that Preapplications and Funding Requests had to be postmarked June 1 and July 15 respectively. The Department is hereby notifying all interested organizations that it will continue to accept Preapplications until but not later than June 25, 1979. The deadline for Funding Requests remains July 15, 1979. This action results from the delay in the publication of the CETA, Title III, Section 303 regulations, which were published in the **Federal Register** of May 25, 1979.

Preapplications are to be sent to the address above. The Department would greatly appreciate it if Preapplications are submitted as quickly as possible in order to arrange for the workload associated with this grant funding process. Preapplications submitted prior to June 1 will naturally be maintained by the Office of Farmworker Programs as the Official Notice of Intent to apply. Applicants are cautioned that Preapplications must also be sent to all appropriate state and area clearinghouses. Addresses of area clearinghouses can be obtained from state clearinghouses. It is the responsibility of the applicant to assure that all clearinghouses with responsibility for reviewing applications for the area involved are sent Preapplication forms. Three copies of the Funding Request must be sent by registered mail to the address above. At the same time two copies must also be sent to the Department's Regional Office and one copy to each of the following:

(a) the state and/or area clearinghouse(s); and

(b) all eligible applicants which request an opportunity for review and comment as provided in Section 689.205 of the Section 303 regulations. Applicants must specify the action taken to comply with these requirements in an attachment to the copy of the Form 424 which is included in their Funding Request.

Applicants which have not previously received Section 303 funds are invited to attend a training conference in Washington, D.C., June 13, 1979, to be held in the multi-purpose room in the Patrick Henry Building, 601 D Street NW.

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

Lamond Godwin,

Administrator, Office of National Programs.

[FR Doc. 79-18211 Filed 6-11-79; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-79-27-C]

Action Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Action Coal Company, P.O. Box 835, Elkhorn City, Kentucky 41522, has filed a petition to modify the application of 30 CFR 75.1710 (canopies), to its No. 1 Mine, located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164.

The substance of the petition follows:

1. The petition concerns the use canopies on electric face equipment in the petitioner's mine.

2. The petitioner is mining in coal seam heights ranging from 44 to 50 inches and is constantly encountering undulations in the coal bed.

3. If canopies were installed low enough to prevent possible destruction of roof support, only 23 inches of vertical space would exist in the equipment operator's compartment.

4. This restricted space would limit the vision of the equipment operator, creating hazards for the operator and other miners in the area.

5. For these reasons, the petitioner believes that the application of the standard to its mine would result in a diminution of safety to its miners.

Request for Comments

Persons interested in this petition may furnish written comments on or before July 12, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: June 4, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-18213 Filed 6-11-79; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-79-16-M]

Climax Molybdenum Co.; Petition for Modification of Application of Mandatory Safety Standard

Climax Molybdenum Company, 13949 West Colfax Avenue, Golden, Colorado 80401, has filed a petition to modify the application of 30 CFR 57.9-22 (berms) to its Climax Mill located in Climax, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

The substance of the petition follows:

1. The petition concerns the installation of berms along a 3,900 foot stretch of roadway on the petitioner's property.

2. The roadway averages 30 feet in width, measuring 20 feet at its narrowest point.

3. The petitioner states that the installation of berms or guards on the outer banks of the roadway would create the following hazards:

(a) The roadway would become so narrow that safe passage could not be guaranteed for the movement of traffic.

(b) Approximately 258 inches of snow falls annually in the area. Berms or guards would prevent effective and efficient removal of snow and ice.

(c) Run-off water would be channeled down the roadway into a parking lot where freezing would occur, creating slippage hazards.

4. As an alternative, the petitioner proposes the following:

(a) Warning signs consisting of 15 foot lengths of pipe covered with fluorescent paint will be installed at regular intervals along the outer edge of the roadway so that men and equipment do not proceed over the edge. During the months when snow is not present, these pieces of pipe will be connected by a cable positioned three feet above the roadway (when snow is present, a cable would hamper snow removal).

(b) Traffic flow control signs as outlined in the petition will be installed at appropriate locations along the roadway.

5. The petitioner believes that this alternative will achieve no less protection than that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before July 12, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administrattion, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: June 4, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-18215 Filed 6-11-79; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-79-15-C]

Kentucky Heritage Coal, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Kentucky Heritage Coal, Inc., Box 102, Matewan, West Virginia 25678 has filed a petition to modify the application of 30 CFR 75.1710 (canopies) to its Nos. 2 and 3 Mines, located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition follows:

1. The petition concerns the use of cabs or canopies on battery-powered tractors in the petitioner's mines.

2. The petitioner states that cabs or canopies would restrict the vision of its tractor operators.

3. For this reason, the petitioner believes that the application of the standard to its tractors would result in a reduction of safety for its miners.

Request for Comments

Persons interested in this petition may furnish written comments on or before July 12, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: June 4, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-18214 Filed 6-11-79; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-79-25-C, et al.]

Wyomac Coal Company, Inc.; Petitions for Modification of Application of Mandatory Safety Standard

Wyomac Coal Company, Inc., Post Office Drawer G, Welch, West Virginia 24801 has filed separate petitions to modify the application of 30 CFR 75.1710 (canopies), to its following mines: Virginia Crews #2 (M-79-68-C), Virginia Crews #4 (M-79-25-C), Twin Branch (M-79-73-C), Banacek (M-79-74-C), Missy (M-79-75-C), Cannon (M-79-76-C) and Leslie (M-79-77-C) located in McDowell County, West Virginia; and Lynco #2 (M-79-71-C) and Carol (M-79-72-C) located in Wyoming County, West Virginia. These petitions are filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164.

The substance of the petitions follows:

1. The petitioner believes that the use of cabs or canopies on electric face equipment in its mines would reduce the safety of its miners for the following reasons:

(a) Cabs or canopies do not allow the operator sufficient visibility for safe equipment operation while remaining under the cab or canopy.

(b) Cabs or canopies collide with the roof in areas of uneven tops or bottoms.

(c) A cab or canopy does not allow an equipment operator to rapidly escape from its confines in the event of an emergency.

2. To avoid these safety problems, the petitioner proposes the following alternate method:

(a) The petitioner will replace its present electrical face equipment as it wears out with lower profile equipment. Cabs or canopies will be installed on this equipment to the extent feasible to avoid the safety problems listed above.

(b) If the petitioner's engineers and safety specialist find a workable design for cabs or canopies, the design will be used under actual working conditions on an experimental basis for evaluation by the petitioner, union personnel and MSHA. If the design proves successful, the petitioner will retrofit its equipment with cabs or canopies so designed.

(c) In addition to complying with the roof control plan in effect at each of its mines, the petitioner will reinstruct all its face workers, section supervisors and inspection personnel in roof and rib fall recognition and prevention techniques, as well as safe equipment operation.

Request for Comments

Persons interested in these petitions may furnish written comments on or before July 12, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petitions are available for inspection at that address.

Dated: June 5, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-18216 Filed 6-11-79; 8:45 am]

BILLING CODE 4510-43-M

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Department of Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either or both of the following: that an alternative method exists at the petitioner's mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard to the petitioner's mine will result in a diminution of safety to the affected miners.

Summaries of petitioners received by the Secretary appear periodically in the **Federal Register.** Final decisions on these petitions are based upon the petitioner's statement, comments and information submitted by interested persons and a field investigation of the conditions at the petitioner's mine. The Secretary has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon the petitioner's compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION: The petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: June 6, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

Affirmative Decisions on Petitions for Modification

Docket No.	FR notice	Petitioner	Regulation affected	Summary of findings
M-76-30	40 FR 58672	Rochester & Pittsburgh Coal Co	30 CFR 75.1101-8	Use of a single branch line of sprinklers on belt-conveyors considered acceptable alternative method of fire control. Granted with conditions.
M-76-67	40 FR 5326	Maple Meadow Mining Company	30 CFR 75.326	Due to a high rate of methane liberation and conditions preventing the development of additional airways, the use of belt entries as intake airways considered acceptable alternative method of ventilation. Granted with conditions.
M-78-160	41 FR 41937	McClure River Coal Company	30 CFR 75.1710	Use of cabs or canopies on petitioner's scoops would result in diminution of safety in current low mining heights. Granted in part with conditions.
M-78-366	41 FR 34802	L & M Coal Company	30 CFR 75.1710	Use of cabs or canopies on petitioner's continous miner would result in diminution of safety in current low mining heights. Granted in part with conditions.
M-78-430	41 FR 22287	Mullins Coal Co., of Virginia	30 CFR 75.1710	Use of cabs or canopies on petitioner's continuous miner, shuttle cars, roof bolting machine and scoop would result in diminution of safety in current low mining heights. Granted with conditions.
M-78-496	41 FR 48148	Rita Coal Company	30 CFR 75.1710	Use of cabs or canopies on petitioner's shuttle cars and scoop would result in a diminution of safety in prescribed areas. Granted in part with conditions.
M-78-508	41 FR 35001	McCoy Elkhorn Coal Corp	30 CFR 75.1710	Use of cabs or canopies on petitioner's loading machine would result in a diminution of safety in current low mining heights. Granted in part with conditions.
M-78-562	41 FR 48586	E & C Coal Co., Inc	30 CFR 75.1710	Use of cabs or canopies on petitioner's continuous miner and shuttle cars would result in diminution of safety in current low mining heights. Granted in part with conditions.
M-78-564	41 FR 48605	South East Coal Co.	30 CFR 75.1710	Use of cabs or canopies on petitioner's shuttle car would result in a diminution of safety in current low mining heights in prescribed area of petitioner's mine. Granted in part with conditions.
M-78-578	41 FR 47529	Harper Valley Coal Co., Inc.	30 CFR 75.1710	Use of cabs or canopies on petitioner's shuttle cars would result in diminution of safety in current low mining heights. Granted in part with conditions.
M-78-689	41 FR 52919	V.P. No. 5 Mining Co	30 CFR 75.326	Due to a high rate of methane liberation and conditions limiting the development of additional airways, double split face ventilation involving belt entries considered acceptable alternative method of ventilation. Granted with conditions.
M-78-691	41 FR 52920	V.P. No. 5 Mining Co	30 CFR 75.1103	Use of a carbon monoxide detection system considered acceptable alternative automatic fire warning device. Granted with conditions.
M-78-695	41 FR 50492	Maggard Coal Co., Inc	30 CFR 75.1710	Use of cabs or canopies on petitioner's continuous mining machine and roof bolting machine would result in diminution of safety in current low mining heights. Granted with conditions.
M-77-119	41 FR 14758	Electromet Fuel	30 CFR 75.1710	Use of cabs or canopies on petitioner's roof bolting machine and shuttle cars would result in diminution of safety in current low mining heights. Granted with conditions.
M-77-120	41 FR 14758	J & J Mining Co., Inc	30 CFR 75.1710	Use of cabs or canopies on petitioner's roof bolting machine and shuttle cars would result in diminution of safety in current low mining heights. Granted with conditions.
M-77-159	41 FR 21331	Alrosha Coal Co., Inc	30 CFR 77.1605(k)	Proposed maintenance procedures, traffic control system and safeguards for petitioner's elevated roadway considered acceptable alternative to berms for road control. Granted with conditions.

Affirmative Decisions on Petitions for Modification—Continued

Docket No.	FR notice	Petitioner	Regulation affected	Summary of findings
M-77-180	41 FR 31659	United States Steel Corp	30 CFR 75.305	Due to poor roof conditions, weekly inspections of specified return airways would result in a diminution of safety. Petitioner's proposal to establish air measurement checkpoints considered acceptable alternative of ventilation inspection. Granted in part with conditions.
M-77-181	41 FR 43687	Ranger Fuel Corp	30 CFR 75.326	Due to a high rate of methane liberation and conditions limiting the development of additional airways, proposed split face ventilation involving belt entries considered acceptable alternative method of ventilation. Granted with conditions.
M-77-235	41 FR 40499	McCoy Elkhorn Coal Corp	30 CFR 75.1710	Use of cabs or canopies on petitioner's continuous mining machine and scoops would result in diminution of safety in current low mining heights. Granted in part with conditions.
M-77-235	41 FR 40499	McElkhorn Coal Corp	30 CFR 75.1710	Use of cab or canopy on petitioner's roof bolting machine would result in diminution of safety in current low mining heights. Granted with conditions.
M-77-254	41 FR 47889	Mill Branch Mining Co., Inc	30 CFR 75.1710	Use of cabs or canopies on petitioner's loading machine, coal drill, scoops, shuttle cars and roof bolting machine would result in a diminution of safety in current low mining heights. Granted with conditions.
M-77-260	41 FR 1014	Imperial Coals Inc	30 CFR 77.1605(k)	Berms or guards on the outer bank of the petitioner's elevated roadway would limit usable driving area, impair drainage and hamper snow removal, resulting in a diminution of safety. Granted with conditions.
M-78-4	41 FR 57562	Spring Ridge Coal Company	30 CFR 75.1710	Use of cabs or canopies on petitioner's scoops and cutting machines would result in a diminution of safety in current low mining heights. Granted with conditions.
M-78-13	41 FR 62217	Kentucky Carbon Corp	30 CFR 75.300	Forced mechanical ventilation in petitioner's refuse belt entry would cause roof deterioration and result in a diminution of safety. Natural ventilation considered acceptable alternative method of ventilation. Granted with conditions.
M-78-17	41 FR 62217	Peerles Eagles Coal Co	30 CFR 75.1710	Use of cabs or canopies on petitioner's cutting machine and roof drills would result in a diminution of safety in current low mining heights. Granted in part with conditions.
M-78-20	42 FR 64445	Lovilia Coal Company	30 CFR 75.1710	Use of cabs or canopies on petitioner's shuttle cars, loading machines, cutting machines and roof bolters would result in a diminution of safety in current low mining heights. Granted in part with conditions.
M-78-22	43 FR 1013	D. C. Coal Company, Inc	30 CFR 77.1605(k)	Berms on petitioner's elevated roadway would limit usable driving area and interfere with drainage, resulting in a diminution of safety. Proposed maintenance procedures and supervised traffic system considered acceptable alternative method of road control. Granted.
M-78-25	43 FR 1015	Sewell Coal Company	30 CFR 75.1105	Proposed fire prevention procedures and fire fighting equipment for petitioner's locomotive repair station considered acceptable alternative to coursing air used to ventilate the station directly to a return airway. Granted with conditions.
M-78-31	43 FR 8193	United States Steel Corp	30 CFR 77.1914	Proposed safeguard procedures for use of nonpermissible transformer to power blind shaft borer considered acceptable alternative to use of only permissible transformers below collar of shaft. Granted with conditions.
M-78-42	43 FR 45654	M.S.W. Coal Company	30 CFR 75.301	Proposed airflow reduction in petitioner's anthracite mine, which would maintain a safe and healthful atmosphere, considered acceptable alternative method of ventilation. Granted with conditions.
M-78-76-C	43 FR 30921	Frailey Coal Company	30 CFR 75.301	Proposed airflow reduction in petitioner's anthracite mine, which would maintain a safe and healthful atmosphere, considered acceptable alternative method of ventilation. Granted with conditions.
M-78-78-C	43 FR 34550	Solar Fuel Company	30 CFR 75.1100	Due to wet conditions, proposed use of dry chemical-type fire extinguishers instead of rock dust considered acceptable alternative method of fire protection. Granted.
M-78-81-C	43 FR 35759	U.M.W.A. Local Union No. 1599	30 CFR 75.1710	Use of cabs or canopies on petitioner's continuous miners and shuttle cars would result in diminution of safety in current low mining heights. Granted in part with conditions.
M-78-86-C	43 FR 49582	K.L.M. Coal Company	30 CFR 75.301	Proposed airflow reduction in petitioner's anthracite mine, which would maintain a safe and healthful atmosphere, considered acceptable alternative method of ventilation. Granted with conditions.
M-78-89-C	43 FR 49584	United States Steel Corp	30 CFR 75.1700	Proposed plan to plug and mine through abandoned oil and gas wells considered acceptable alternative to leaving coal barriers around the wells. Granted with conditions.
M-78-92-C	43 FR 49059	Consolidation Coal Company	30 CFR 75.1101-8	Use of a single branch line of automatic sprinklers on belt conveyors considered acceptable alternative method of fire control. Granted with conditions.
M-78-96-C	43 FR 49584	Westmoreland Coal Company	30 CFR 75.1710	Use of roof bolting in specified areas would result in a diminution of safety in current low mining heights. Granted in part with conditions.
M-78-98-C	43 FR 49583	Shally Coal Company	30 CFR 75.301	Proposed airflow reduction in petitioner's anthracite mine, which would maintain a safe and healthful atmosphere, considered acceptable alternative method of ventilation. Granted with conditions.

Affirmative Decisions on Petitions for Modification—Continued

Docket No.	FR notice	Petitioner	Regulation affected	Summary of findings
M-78-99-C	43 FR 50273	Valley Camp Coal Company	30 CFR 75.1403-9	Due to adverse rib and roof conditions, petitioner's proposal to construct shelter holes at intervals greater than 105 feet and to implement safeguard procedures in these areas considered acceptable alternative method of shelter hole construction. Granted with conditions.
M-78-103-C	43 FR 55476	United Pocahontas Coal Company	30 CFR 75.305	Due to poor roof conditions, petitioner's proposal to establish air measurement checkpoints on specified return airways considered acceptable alternative to making weekly inspections of the airways. Granted with conditions.
M-78-104-C	43 FR 54305	Consolidation Coal Company	30 CFR 75.1100	Due to freezing conditions in winter, use of dry-pipe fire suppression system instead of a charged waterline system considered acceptable alternative method of fire protection. Granted with conditions.
M-78-105-C	43 FR 49581	Gateway Coal Company	30 CFR 75.1105	Proposed dry-chemical deluge fire suppression system for petitioner's transformer stations considered acceptable alternative to coursing air passing through the stations directly to return airways. Granted with conditions.
M-78-115-C	43 FR 56951	Garden Creek Pocahontas Co	30 CFR 77.214	Proposal to cover three abandoned mine openings and an auger-mined coal seam outcrop with compact, noncombustible soil and then to construct refuse piles over these areas considered acceptable alternative method of refuse pile placement. Granted with conditions.
M-78-116-C	43 FR 55475	Marrowbone Development Co	30 CFR 75.1700	Proposed plan to plug and mine through abandoned oil and gas wells considered acceptable alternative method to leaving coal barriers around the wells. Granted with conditions.
M-78-117-C	43 FR 55473	Bethlehem Mines	30 CFR 75.305	Due to poor roof conditions, petitioner's proposal to establish air measurement checkpoints on specified return airways considered acceptable alternative to making weekly inspections of the airways. Granted with conditions.
M-78-118-C	43 FR 55474	Consolidation Coal Co	30 CFR 75.305	Due to poor roof conditions, petitioner's proposal to establish air measurement checkpoints on specified return airways considered acceptable alternative to making weekly inspections of the airways. Granted with conditions.
M-78-31-M	43 FR 29042	Rio Blanco Oil Shale Co	30 CFR 57.4-58	Proposed procedures relating to use of fire in underground shale oil production retorts considered acceptable alternative method of fire protection. Granted with conditions.
M-78-33-M	43 FR 47795	Idarado Mining Company	30 CFR 57.19-83	Operation of petitioner's electric hoist without a motor drive torque device but with an overtravel warning horn considered acceptable alternative method of hoist control. Granted with conditions.
M-78-38-M	43 FR 49582	Hitchcock Corporation	30 CFR 57.11-50	Due to geological conditions in the vicinity of the petitioner's mine, a single shaft escapeway and proper maintenance of conditions within the mine considered acceptable alternative to presence of two separate escapeways. Granted with conditons.
M-78-40-M	43 FR 47795	Jessie S. Morie & Son, Inc	30 CFR 56.16-14	Operation of petitioner's overhead crane without an uptravel switch on the clam bucket considered acceptable method of crane operation. Granted with conditions.
M-78-43-M	43 FR 54305	Demar Boren	30 CFR 57.19-3	Operation of petitioner's man-hoist with multiple V-belt drive considered acceptable alternative method of man-hoisting. Granted with conditions.
M-78-44-M	43 FR 51469	United States Steel Corp	30 CFR 55.12-16	Use of numbered locks on power switches by maintenance personnel in addition to operation locks considered acceptable alternative to signed warning notices on the switches. Granted.
M-78-45-M	43 FR 47795	New Jersey Zinc Company	30 CFR 57.19-11	Due to structural configuration of petitioner's hoist, extension of the hoist's drum flanges would result in a diminution of safety. Granted with conditions.
M-78-49-M	43 FR 54304	American Gilsonite Co	30 CFR 57.19-3	Operation of petitioner's man-hoist multiple V-belt drive considered acceptable alternative method of man-hoisting. Granted with conditions.
M-78-50-M	43 FR 49580	Cities Service Company	30 CFR 57.19-18	Use of two independent upper limit switches on hoist, in addition to a manually-operated overtravel by-pass switch, considered acceptable alternative method of overtravel control on hoist. Granted.
M-78-57-M	43 FR 54304	Demar Boren	30 CFR 57.19.3	Operation of petitioner's man-hoist with multiple V-belt drive considered acceptable alternative method of man-hoisting. Granted with conditions.
M-78-54-M	43 FR 58124	Climax Molybdenum Company	30 CFR 57.19-22	Petitioner's proposed procedures for attaching wire rope to hoist drum considered acceptable alternative method of wire rope attachment. Granted with conditions.

[FR Doc. 79-18217 Filed 6-11-79; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Puerto Rico 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 August 30, 1977, notice was published in the **Federal Register** (42 FR 43628) of the approval of the Puerto Rico plan and the adoption of Subpart FF to Part 1952 containing the decision.

The Puerto Rico plan provides for the adoption of Federal standards as State standards by reference. Section 1953.20 of 29 CFR provides that "where any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required."

In response to a Federal standard change, the State has submitted by letter dated March 28, 1979, from Assistant Secretary John Cinque to Assistant Regional Administrator Richard Andree, and incorporated as part of the plan, a State standard comparable to the Occupational Safety and Health Administration Permanent Standard for Arcylonitrile 29 CFR 1910.1045, as published in the **Federal Register** (43 FR 45762) dated October 3, 1978. This standard which is contained in the Pureto Rico Regulations, Number Four (equivalent to 29 CFR Part 1910) was promulgated by resolution adopted by the Puerto Rico Department of Labor and Human Resources on July 20, 1978, pursuant to the Puerto Rico Act Number 16 and Chapter 43 of the Puerto Rico Rules and Regulations Act of 1958.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standard it has been determined that the State standard is identical to the Federal standard and accordingly is hereby approved.

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, Room 3445, 1515 Broadway, New York, New York 10036; Puerto Rico Department of Labor and Human Resources, 414 Barbosa Avenue, Hato Rey, Puerto Rico 00917; and the Technical Data Center, Room N2439R, 200 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 Puerto Rico State plan as a proposed change and making the Assistant Regional Director's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirement of State law and further paticipation would be unnecessary.

The decision is effective June 12, 1979.

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

Signed at New York City, New York, this seventh day of May 1979.

Alfred Barden,

Regional Administrator.

[FR Doc. 79-18207 Filed 6-11-79; 8:45 am]

BILLING CODE 4510-26-M

Virginia 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 September 28, 1976, notice was published in the **Federal Register** (41 FR 42655) of the adoption of Subpart EE to Part 1952 containing the decision.

The Virginia plan provides for the adoption of Federal standards as State standards after public hearing. Section 1952.373 of Subpart EE sets forth the State's schedule for the adoption of Federal standards. By letter dated November 11, 1978, from Robert F. Beard, Jr., Commissioner, Virginia Department of Labor and Industry to David H. Rhone, Regional Administrator and incorporated as part of the plan, the State submitted State standards comparable to 29 CFR Part 1928 for Agriculture as published in the **Federal Register** (41 FR 10195, 22267) dated March 9, 1976, and June 2, 1976 respectively.

These standards were promulgated after hearings held on November 15, 1976 by the Virginia Occupational Safety and Health Codes Commission, pursuant to the Administrative Process Act, Chapter 1.1:1 of Title 9 of the Code of Virginia.

2. *Decision.* Having reviewed the State submission in comparision with the Federal standards it has been determined that the State standards are identical 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, Suite 2100, 3535 Market Street, Philadelphia, PA 19104; the Office of the Commissioner, 205 North Fourth Street, Richmond, Virginia 23241; and the Technical Data Center, Room N2439R, Third and Constitution Avenues, NW., Washington, DC 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 Virginia 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 which were promulgated in accordance with Federal law including meeting requirements for public participation.

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 12, 1979.

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

Signed at Philadelphia, PA this 19th of December, 1978.

David H. Rhone,

Regional Administrator.

[FR Doc. 79-18208 Filed 6-11-79; 8:45 am]

BILLING CODE 4510-26-M

Virginia 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 September 28, 1976, notice was published in the **Federal Register** (41 FR 42655) of the approval of the Virginia plan and the adoption of Subpart EE to Part 1952 containing the decision.

The Virginia plan provides for the adoption of Federal standards as State standards after Public Hearing. Section 1952.373 of Subpart EE sets forth the State's schedule for the adoption of Federal standards. By letter dated November 14, 1978, from Robert F. Beard, Jr., Commissioner, Virginia Department of Labor and Industry to David H. Rhone, Regional Administrator and incorporated as part of the plan, the State submitted State standards comparable to 29 CFR Part 1910, Subpart T for Commercial Diving Operations, as published in the **Federal Register** (42 FR 37668) dated July 22, 1977.

These standards were promulgated after hearings held on November 1, 1977 by the Virginia Occupational Safety and Health Codes Commission, pursuant to the Administration Process Act, Chapter 1.1:1 of Title 9 of the Code of Virginia.

2. *Decisions.* 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 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, Suite 2100, 3535 Market Street, Philadelphia, PA 19104; the Office of the Commissioner, 205 North Fourth Street, Richmond, Virginia 23241; and the Technical Data Center, Room N2439R, Third and Constitution Avenue, NW, Washington, DC 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 Virginia 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 which were promulgated in accordance with Federal law including meeting requirements for public participation.

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 12, 1979.

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

Signed at Philadelphia, PA this 19th of December, 1978.

David H. Rhone,

Regional Administrator.

[FR Doc. 79-18209 Filed 6-11-79; 8:45 am]

BILLING CODE 4510-26-M

Virginia 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 September 28, 1976, notice was published in the **Federal Register** (41 FR 42655) of the approval of the Virginia State plan and the adoption of Subpart EE to Part 1952 containing the decision.

The Virginia State plan provides for the adoption of Federal standards as State standards after public hearing. Section 1952.373 of Subpart EE sets forth the State's schedule for the adoption of Federal Standards. By letter dated March 7, 1979, from Commissioner Robert F. Beard, Jr., Virginia Department of Labor and Industry, to David H. Rhone, Regional Administrator, and incorporated as part of the plan, the State submitted State standards comparable to (1) 29 CFR 1910.19(e), 1910.1018, and amendment to 29 CFR 1910.1000 (Title Z-1) pertaining to Inorganic Arsenic, as published in the **Federal Register** (43 FR 19624) dated May 5, 1978; (2) 29 CFR 1910.20, pertaining to Preservation of Records, as published in the **Federal Register** (43 FR 31309) dated July 19, 1978, and republished in the **Federal Register** (43 FR 31329) dated July 21, 1978; (3) 29 CFR 1910.1044 pertaining to 1,2-dibromo-3-chloropropane, as published in the **Federal Register** (42 FR 45544) dated September 9, 1977; and (4) amendment to 29 CFR 1926.605, pertaining to Commercial Diving Operations under Marine operations and equipment, as published in the **Federal Register** (42 FR 37674) dated July 22, 1977.

These standards, which are contained in the Virginia Safety and Health Codes, were promulgated after public hearings held on January 4, 1979, pursuant to the Code of Virginia, Title 40.1, Section 40.1-22.

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 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, 3535 Market Street, Suite 2100, Philadelphia, PA 19104; Office of the Commissioner of Labor and Industry, 204 North Fourth Street, Richmond, VA 23241; and the Technical Data Center, Room N2439R, Third and Constitution Avenue, NW, Washington, DC 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 Virginia 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 which were promulgated in accordance with Federal law including meeting requirements for public participation.

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 12, 1979.

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

Signed at Philadelphia, PA this 15th day of March, 1979.

David H. Rhone,

Regional Administrator.

[FR Doc. 79-18210 Filed 6-11-79; 8:45 am]

BILLING CODE 4510-26-M

Office of the Solicitor

Privacy Act; Notice of Systems of Records

AGENCY: Office of the Secretary, Department of Labor.

ACTION: Notice of Systems of Records.

SUMMARY: Pursuant to 5 U.S.C. 552a(e)(4) and (11), sections of the Privacy Act, the Department of Labor hereby publishes for comment the establishment of systems of records DOL/LMSA-20, "Redwood Employee Protection Program Application File". Consistent with Title II of Pub. L. 95-250, dated March 27, 1978, the Department of Labor has assumed full responsibility for all Redwood Employee Protection Program activities. Pursuant to Section 213(d)(2) of Pub. L. 95-250 the Secretary has delegated to LMSA responsibility for administration of the Program. To facilitate application for benefits a program office has been set up in Eureka, California. This office will maintain records subject to the Privacy Act of 1974 and be responsible for accepting and forwarding requests from members of the public under that Act.

EFFECTIVE DATE: July 12, 1979, unless otherwise published. Comments may be submitted to:

Redwood Employee Protection Program, Division of Employee Protections, Room N-5639, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Paul F. Pothin of the department at (202) 523-6495. (This is not a toll-free number.)

Dated: June 6, 1979.

Ray Marshall,

Secretary of Labor.

DOL/LMSA-20

SYSTEM NAME:

LMSA, Division of Employee Protections.

SYSTEM LOCATION:

Redwood Program Office, Federal Office Building, Room 101, 5th & H Streets, Eureka, California 95501.

CATEGORY OF INDIVIDUALS (COVERED BY THE SYSTEM)

Redwood Employee Protection Program Applicants.

CATEGORY OF RECORDS IN THE SYSTEM:

Financial, medical, and personal information concerning applicant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 95-250.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Not disclosed to public. Used as supporting and background information in eligibility determinations for Program benefits. Information can be shared with the following agencies:

California Economic Development Department.

All participating Health & Welfare Trusts, Administrators, and Pension Insurance Carriers.

Prospective employers of affected employees.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

3 x 5 index cards; letter size folders.

RETRIEVABILITY:

Filed alphabetically, manually, and by Social Security Number.

SAFEGUARDS:

Maintained in Eureka branch office of LMSA, accessible to Program personel only.

RETENTION AND DISPOSAL:

September 30, 1996.

SYSTEMS MANAGER(S) AND ADDRESS:

Mr. Michael Venuto, Program Officer, Redwood Program Office, Federal Office Building, Room 101, 5th & H Streets, Eureka, California 95501.

NOTIFICATION PROCEDURE:

Address as above.

RECORD ACCESS PROCEDURES:

Written requests should be submitted to: Ms. Beatrice Burgoon, Disclosure Officer; Room N-5653; U.S. Department of Labor; 200 Constitution Avenue NW., Washington, D.C. 20216.

CONTESTING RECORD PROCEDURES:

See "Record access procedures."

RECORD SOURCE CATEGORIES:

Individual applicants, employer health and welfare trusts, California Economic Development Department.

[FR Doc. 79-18282 Filed 6-11-79; 8:45 am]

BILLING CODE 4510-23-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 79-61]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

The NAC Aeronautics Advisory Committee will meet June 27-29, 1979 in the Auditorium of Building #3, Goddard Space Flight Center, Greenbelt, MD. The meeting will be open to the public.

The Committee was established to advise NASA senior management through the NAC in the area of aeronautical research and technology. The Chairperson is Dr. Robert G. Loewy. There are currently 49 members on the Committee. Following is the approved agenda for the meeting:

Agenda

June 27, 1979

8:30 a.m.—Registration
8:50 a.m.—Introductory Remarks
9:10 a.m.—Subcommittee Chairperson's Reports
1:45 p.m.—NASA Aeronautical Research and Technology FY 1981-85 5-Year Plan Review
5:00 p.m.—Adjourn

June 28, 1979

8:30 a.m.—Group Review and Discussion of NASA Aeronautical FY 1981-85 5-Year Plan Elements
5:00 p.m.—Adjourn

June 29, 1979

8:30 a.m.—Reports by Group Leaders of Recommendations and Comments on the NASA Aeronautical FY 1981-85 5-Year Plan
12:00 NOON—Adjourn

For further information contact Mr. C. Robert Nysmith, Executive Secretary of the Committee, Code RP-4, NASA

Headquarters, Washington, DC 20546, Telephone 202/755-3252.

June 6, 1979.

Russell Ritchie,

Acting Associate Administrator for External Relations.

[FR Doc. 79-18183 Filed 6-11-79; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Radiological Effects and Site Evaluation; Meeting

The ACRS Subcommittee on Radiological Effects and Site Evaluation will hold an open meeting on June 27, 1979 in Room 1046, 1717 H St., N.W., Washington, D.C. 20555 to discuss changes in the NRC research program budget and several other matters in the areas of radiological effects and site evaluation. Notice of this meeting was published on May 24, 1979 (44 FR 30177).

In accordance with the procedures outlined in the **Federal Register** on October 4, 1978 (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Wednesday, June 27, 1979

8:30 a.m. until conclusion of business.

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions pertinent to this review with representatives of the NRC Staff and invited speakers from outside NRC.

The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Ragnwald Muller, (telephone 202/634-1413) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: June 5, 1979.

John C. Hoyle,

Advisory Committee, Management Officer.

[FR Doc. 79-17830 Filed 6-11-79; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on the Floating Nuclear Plant; Meeting

The ACRS Subcommittee on the Floating Nuclear Plant will hold a meeting on June 27, 1979, in Room 1167, 1717 H Street, N.W., Washington, DC 20555 to continue its review of the Offshore Power Systems' application for a manufacturing license for the Floating Nuclear Plant. The specific topic of this meeting will be the review of the proposed core ladle design using magnesium oxide bricks. Notice of this meeting was published on May 24, 1979 (44 FR 30177).

In accordance with the procedures outlined in the **Federal Register** on October 4, 1978, (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Wednesday, June 27, 1979

8:30 a.m. until the conclusion of business.

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, Offshore Power Systems, et al., and their consultants, pertinent to this review.

The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered.

In addition, it may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring matters involving proprietary information. I have determined, in accordance with Subsection 10(d) of Public Law 92-463, that, should such sessions be required, it is necessary to close these sessions to protect proprietary information (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Gary R. Quittschreiber, (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EDT.

Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street, N.W., Washington, DC 20555 and at the Jacksonville Public Library, 122 North Ocean St., Jacksonville, FL 32204, the Business and Science Division, New Orleans Public Library, 219 Loyola Ave., New Orleans, LA 70140, and the Stockton State College Library, Pomona, NJ 08240.)

Dated: June 6, 1979.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 79-18046 Filed 6-11-79; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. MC79-3]

Red-Tag Proceeding, 1979; Deferring Procedural Deadlines

June 5, 1979.

As directed in the Order Denying Motion to Postpone Proceeding issued on April 24, 1979, the United States Postal Service submitted a testimonial filing in this docket on May 31, 1979. A preliminary examination of the Service's filing reveals that it contains technically

detailed information concerning the volumes and market characteristics of red-tag mail matter. In the letter transmitting its filing, however, the Postal Service states that it is not thereby filing, nor will it file, a case-in-chief.

According to the schedule establishing in the Commission's Order of January 4, 1979, instituting this proceeding, discovery directed to the Postal Service was to be completed by June 1, 1979, the cases-in-chief of the Officer of the Commission and of the intervenors were to be due on June 15, 1979, and hearings were to commence on June 25, 1979. In light of the detailed volume and market information contained in the Postal Service's filing, the absence of cost information from the Service's filing, and interrogatories directed to the Service that have not yet been answered, we believe that all these deadlines should be deferred. In order to give parties other than the Postal Service an ample opportunity to complete their discovery upon the Service and to prepare cases-in-chief treating all pertinent issues, the Commission will extend the deadline for filing cases-in-chief to June 29, 1979, and extend the deadline for discovery directed to the Service to July 13, 1979. An order specifying the date on which hearings will begin in this docket shall issue hereafter; at present, we anticipate that hearings will begin during September, 1979.

In the interest of expediting this proceeding, all parties are encouraged to utilize technical conferences and other forms of informal discovery in order to reduce the volume or written and oral cross-examination.

The Commission Orders

(A) The deadline for the filing of cases-in-chief by the Officer of the Commission and by the intervenors in this proceeding is hereby deferred to June 29, 1979.

(B) The deadline for the completion of discovery directed to the Postal Service is hereby deferred to July 13, 1979.

(C) The currently scheduled date of June 25, 1979, for the commencement of hearings in this docket is hereby deferred indefinitely, pending issuance of a subsequent order rescheduling hearings in this docket.

By the Commission.

David F. Harris,

Secretary.

[FR Doc. 79-18202 Filed 6-11-79; 8:45 am]

BILLING CODE 7715-01-M

DEPARTMENT OF STATE

Bureau of Oceans and International Environmental and Scientific Affairs

[Public Notice 671]

Convention on Migratory Species of Wild Animals; Availability of Draft Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the U.S. Department of State has prepared a Draft Environmental Impact Statement on the Convention on the Conservation of Migratory Species of Wild Animals, dated May 25, 1979. The Draft EIS considers the potential environmental effects of a proposed international convention for the conservation of migratory species of wild animals, which will be the subject of international negotiations on June 11–23, 1979.

Copies of the Draft EIS may be obtained by contacting William H. Mansfield, Office of Environmental Affairs, Department of State, Room 7820, Washington, D.C. 20520 (tel: 202/632-2418).

The Department of State will receive written and oral comments on the Draft EIS in a public meeting on June 1, 1979 at 10 a.m. in Room 1107 at the Department of State, 2201 C Street, N.W., Washington, D.C. The Department will receive additional written comments through July 13, 1979.

May 25, 1979.

William Alston Hayne,

Deputy Assistant Secretary for Environmental Affairs.

[FR Doc. 79-18203 Filed 6-11-79; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No.11—Notice 7]

Louisville and Nashville Railroad Co.; Emergency Order Limiting Movement of Hazardous Materials; Partial Removal of Order

On February 7, 1979, the Federal Railroad Administration (FRA) issued FRA Emergency Order No. 11 (44 FR 8402), which placed certain restrictions on the movement of railroad freight cars containing materials required to be placarded in accordance with Department of Transportation regulations, 49 CFR Parts 170–189, over track owned or leased by the Lousiville and Nashville Railroad Company (L&N). That Order provided, in part, that FRA would consider gradual removal of its restrictions dependent upon the L&N's progress in rectifying its safety deficiencies. On April 6, 1979, FRA rescinded the Order with respect to the 204 miles of the L&N's system between Flomaton, Alabama, and Chattahoochee, Florida. (44 FR 21725.)

As discussed at length in the Order, FRA found substantial evidence that the L&N had inadequately dealt with a number of factors that had led, or contributed, to train derailments on its system during the 37 months preceeding issuance of that Order. Consequently, one of the purposes of the Order was to call the L&N's attention to the safety hazards created by its actions and omissions with the expectation that the L&N would take appropriate remedial action to improve the safety of operations over its system.

On March 1, March 23, March 28, April 20, and May 7, 1979, the L&N made separate requests that, taken together, requested that the Order be modified to exclude coverage of its mainline between the following locations: Nashville, Tennessee-Memphis, Tennessee; Nashville-Atlanta, Georgia; Nashville-New Orleans, Louisiana; and Corbin, Kentucky-Cartersville, Georgia. These track segments total approximately 1,350 miles. In support of those requests, L&N stated that such segments were in full compliance with the FRA's Track Safety Standards (49 CFR Part 213).

Following the earliest L&N request, which covered its track between Nashville and Montgomery, Alabama, FRA performed a thorough investigation of all aspects of railroad operations over that segment that bear on safety, including the condition of track and equipment, adequacy of training and testing of L&N operating personnel, L&N compliance with Federal safety regulations and its own rules, accident history, and the volume and character of hazardous materials moved. The FRA investigation was designed to accomplish two objectives; first, to ascertain whether the L&N had identified all significant safety problems with respect to that segment and had instituted the remedial action necessary to abate the emergency situation that existed at the time the Order was issued; and second, to determine whether the L&N had taken appropriate steps to ensure that another emergency situation would not develop on that segment in the future. The focus of the FRA investigation was on whether hazardous materials operations over that segment, absent the restrictions of the Order, would still create and

emergency condition. The FRA investigation indicates that, as a result of extensive corrective action taken by the L&N following issuance of the Order, an emergency condition no longer exists with respect to hazardous materials operations over L&N's track between Nashville and Montgomery, with the exception of an 11 mile segment (milepost 386 to milepost 397) in Birmingham, Alabama, that still requires extensive maintenance.

FRA has not yet completed similar investigations of the remaining segments referenced above. However, FRA track inspectors have concluded examinations of the condition of the track involved, and have discussed the L&N's planned and completed remedial action with local L&N track maintenance personnel. Those examinations indicated, in general, that a substantial number of major track problems had been identified through L&N and FRA track inspections, including the double inspections and walking inspection mandated by paragraphs 3 and 4 of the Order, and that the L&N had either completed or commenced appropriate remedial action. Consequently, the objective of paragraphs 3 and 4, namely to remedy L&N's past failures to identify many major track problems on its system, had been achieved with respect to those segments.

Based on the results of the FRA investigation of railroad operations over L&N's Nashville-Mongomery segment, I hereby order that, effective 12:01 p.m., June [date of publication of this notice in the **Federal Register**], 1979, the requirements of FRA Emergency Order No. 11, with the exception of paragraph 6 of that Order, are rescinded with respect to the L&N's mainline between Nashville, Tennessee and Birmingham, Alabama (milepost 197 to milepost 386), and between Birmingham and Montgomery, Alabama, (milepost 397 to milepost 485). Paragraph 6 of the Order, which requires the L&N to investigate, and prepare a report to FRA on, each railroad accident on L&N trackage involving a train transporating a placarded hazardous materials car, is being retained for the present time to facilitate FRA's continued monitoring of the safety of hazardous materials movements over the L&N.

Based on the results of the FRA track examinations discussed above, I further order that, efective 12:01 p.m., June [date of publication of this notice in the **Federal Register**], 1979, the requirements of paragraph 3 of the Order are rescinded with respect to the following L&N track segments; Corbin, Kentucky, Cartersville, Georgia (milepost 176 to milepost 423); Nashville, Tennessee-Memphis, Tennessee (milepost 0 to milepost F-370); Nashville, Tennessee-Chattanooga, Tennessee (milepost 7 to milepost 132); Montgomery, Alabama-New Orleans, Louisiana (milepost 485 to milepost 800.4); and Birmingham, Alabama (milepost 386 to milepost 397).

Issued in Washington, D.C. on June 8, 1979.

John M. Sullivan,

Administrator.

[FR Doc. 79-18402 Filed 6-11-79; 8:45 am]

BILLING CODE 4910-06-M

Federal Railroad Administration

[FRA Waiver Petition Docket HS-79-9]

Magna Arizona Railroad Co.; Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR 211.41 and 211.9, notice is hereby given that the Magna Arizona Railroad (MAA) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)). That petition requests that the MAA be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

The MAA seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS-79-9, and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Trans Point Building, 2100 Second Street, SW., Washington, D.C. 20590.

Communications received before July 23, 1979, will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 4406, Trans Point Building, 2100 Second Street, SW., Washington, D.C. 20590.

Authority: Section 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d).

Issued in Washington, D.C. on June 5, 1979.

R. H. Wright,

Acting Chairman, Railroad Safety Board.

[FR Doc. 79-18129 Filed 6-11-79; 8:45 am]

BILLING CODE 4910-06-M

[FRA Waiver Petition Docket HS-79-10]

San Manuel Arizona Railroad Co.; Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR 211.41 and 211.9, notice is hereby given that the San Manuel Arizona Railroad (SMA) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)). That petition requests that the SMA be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

The SMA seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments.

FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS-79-10, and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Trans Point Building, 2100 Second Street, SW., Washington, D.C. 20590.

Communications received before July 23, 1979, will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 4406, Trans Point Building, 2100 Second Street, SW., Washington, D.C. 20590.

Authority: Section 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d).

Issued in Washington, D.C. on June 5, 1979.

R. H. Wright,

Acting Chairman, Railroad Safety Board.

[FR Doc. 79-18130 Filed 6-11-79; 8:45 am]

BILLING CODE 4910-06-M

Office of the Secretary

[Notice 79-11]

Bicycle Transportation for Energy Conservation Study

AGENCY: Department of the Transportation, Office of the Secretary.

ACTION: Request for public comments.

SUMMARY: Section 682 of the National Energy Conservation Policy Act of 1978 requires the Department of Transportation to conduct a study of Bicycle Transportation for Energy Conservation, and report the results to the President and the Congress. The purpose of this notice is to advise the public of this study and to invite comments from interested parties.

DATE: Written comments and recommendations should be submitted on or before August 1, 1979.

ADDRESS: Responses should refer to the Bicycle Transportation for Energy Conservation Study and be submitted in writing to the Director, Office of Environment and Safety, P-20, U.S. Department of Transportation, Washington, D.C. 20590. Comments received will be available for public inspection during normal working hours in Rm. 9422, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: William C. Wilkinson III, Office of Environment and Safety, P-20, Room 9422, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 426-4414.

SUPPLEMENTARY INFORMATION: A Bicycle Transportation for Energy Conservation Study is required to be submitted to the President and to the Congress by Section 682 of the National Energy Conservation Policy Act of 1978, which reads as follows:

"(a) FINDINGS.—The Congress recognizes that bicycles are the most efficient means of transportation, represent a viable commuting alternative to many people, offer mobility at speeds as fast as that of cars in urban areas, provide health benefit through daily exercise, reduce noise and air pollution, are relatively inexpensive, and deserve consideration in a comprehensive national energy plan."

"(b) STUDY.—Not more than one year after the date of the enactment of this Act, the Secretary of Transportation shall complete a study of the energy conservation of potential bicycle transportation, determine institutional, legal, physical, and personal obstacles to increased bicycle use, establish a target for bicycle use in commuting, and develop a comprehensive program to meet these goals. In developing the program, consideration should be given to educational programs, Federal demonstrations, planning grants, and construction grants. The Secretary of Transportation shall submit a report to the President and to the Congress containing the results of the report to the President and to the Congress containing the results of such a study."

The Report of the Ad Hoc Committee on Energy of the U.S. House of Representatives dated July 27, 1977 includes the following additional comment on Section 682:

"The study is designed to determine the steps necessary to implement a comprehensive and effective program which would increase the use of bicycles as an integral mode of transportation."

This notice invites public comment to assist the Department in conducting the study. Specifically, interested parties are invited to identify and describe:

(a) data or studies related to current bicycle use;

(b) problems with, or limitations of current public programs related to bicycle use;

(c) obstacles to increased bicycle use;

(d) strategies and ideas for increasing bicycle use;

(e) innovative or exemplary programs to enhance or encourage bicycle use;

(f) research, development, and demonstrations needs related to bicycle use; and

(g) technical assistance needs.

Issued in Washington, D.C. on May 31, 1979.

John J. Fearnsides,

Deputy Under Secretary.

[FR Doc. 79-18127 Filed 6-11-79; 8:45 am]

BILLING CODE 4910-62-M

VETERANS ADMINISTRATION

Veterans Administration Wage Committee; Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, notice is hereby given that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, July 12, 1979
Thursday, July 26, 1979
Thursday, August 9, 1979
Thursday, August 23, 1979
Thursday, September 6, 1979

The meetings will be convene at 2:30 p.m. and will be held in Room 304, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC. 20420.

The Committee's primary responsibility is to consider and make recommendations to the Chief Medical Director, Department of Medicine and Surgery, on all matters involved in the development and authorization of wage rate schedules for Federal Wage System (blue-collar) employees.

At these scheduled meetings, the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92-463, the Federal Advisory Committee Act, as amended by Public Law 94-409, meetings may be closed to the public when they are concerned with matters listed under section 552b, Title 5, United States Code. Two of the matters so listed are those related solely to the internal personnel rules and practices of an agency (5 U.S.C. 552b(c)(2)), and those involving trade secrets and commerical or financial information obtained from a person and privileged or confidential (5 U.S.C. 552b(c)(4)).

Accordingly, I hereby determine that all portions of the meetings cited above will be closed to the public because the matters considered are related to the internal rules and practices of the Veterans Administration (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who wish to do so are invited to submit material in writing to the Chairman regarding matters believed to be deserving of the Committee's attention.

Additional information concerning these meetings may be obtained by contacting the Chairman, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC. 20420.

Dated: June 6, 1979.

Max Cleland,

Administrator.

[FR Doc. 79-18178 Filed 6-11-79; 8:45 am]

BILLING CODE 8320-01-M

INTERSTATE COMMERCE COMMISSION

[Notice No. 94]

Assignment of Hearings; Denver-Midwest Motor Freight, Inc., et el.

June 7, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponments of hearings in which they are interested.

Correction

MC-F-13723, Denver-Midwest Motor Freight, Inc. Merger—Load and Go Truck Line, MC 127602 (Sub-17F), Denver Midwest Motor Freight, Inc., now assigned for hearing on June 5, 1979, at Phoenix, AZ, is postponed to September 10, 1979 (1 week), at Phoenix, AZ, and continued to September 17, 1979 (1 week), at Denver, CO., in hearing rooms to be later designated.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18275 Filed 6-11-79; 8:45]

BILLING CODE 7035-01-M

[Notice No. 93]

Assignment of Hearings; Ritchie Bus Lines, et al.

June 7, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 143130 (Sub-1F), Ritchie Bus Lines, Inc., transferred to Modified Procedure.

MC 134286 (Sub-90F), Illini Express, Inc., transferred Modified Procedure.

MC 103926 (Sub-84F), W. T. Mayfield Sons Trucking Co., transferred to Modified Procedure.

MC 145669F, Petroleum Tank Line, transferred to Modified Procedure.

MC 109324 (Sub-38F), Garrison Motor Freight, Inc., now assigned for hearing on June 12, 1979, at Dallas, TX and continued to June 18, 1979 at Little Rock, AR, is cancelled and transferred to Modified Procedure.

MC 117574 (Sub-312F), Daily Express, Inc., now being assigned for continued hearing on June 14, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 124679 (Sub-95F), C. R. England & Sons, now being assigned for continued hearing on July 31, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

AB 109 (Sub-1F), Quanah, Acme and Pacific Railway Company abandonment near Acme and Floyada in Hardeman, Cottle, Motley and Floyd Counties, TX, now assigned for hearing on July 10, 1979, at Paducah, TX, is postponed indefinitely.

MC F-13763F, Crown Transport, Inc.—Purchase (Portion)—Masterson Transfer Co., Inc. and MC 4484 (Sub-5F), Crown Transport, Inc., now being assigned for continued hearing on July 23, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 143059 (Sub-24F), Mercer Transportation Co., now being assigned for continued hearing on July 19, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 124306 (Sub-46F), Kenan Transport Company, Inc., now being assigned for continued hearing on July 16, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 117574 (Sub-312F), Daily Express, Inc., now being assigned for continued hearing on June 14, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 138713 (Sub-3F), R & G Transit Corp., now assigned for hearing on June 18, 1979 (1 week), at St. Louis, MO, and will be held in Room 313, U.S. Court & Custom House, 1114 Market St.

MC 124988 (Sub-5F), Truck Service Company, now assigned for continued hearing on June 11, 1979 (1 week), at Springfield, MO, and will be held in Room No. 315, City Hall, 830 Boonville Ave.

AB-43 (Sub-54F), Illinois Central Gulf Railroad Company Abandonment in Pike, Walthall, and Marion Counties, MS, now assigned for hearing on July 10, 1979 (4 days), at Tylertown, MS, in a hearing room to be later designated.

AB-43 (Sub-45), Illinois Central Gulf Railroad Company Abandonment at Rio, Louisiana and Lexie, Mississippi in Washington Parish, Louisiana, and Walthall County, Mississippi, now assigned for hearing on July 16, 1979 (5 days), at Bogalusa, LA, in a hearing room to be later designated.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18274 Filed 6-11-79; 8:45 am]

BILLING CODE 7035-01-M

[Exception No. 10 to Revised Service Order No. 1312]

Soo Line Railroad Co.; Authorization Grant

Because of the inability of the railroad to assemble the cars, a movement of 60 empty covered hopper cars has been seriously delayed on Soo Line Railroad Company enroute to Minneapolis, Minnesota, for loading. ConAgra desires to ship a sixty (60) car unit-grain-train of wheat to Martins Creek, Pennsylvania, route Soo Line-ConRail. The consignee at Martins Creek, Pennsylvania, is badly in need of the wheat. Only 25 empty covered hoppers have arrived at Minneapolis, Minnesota. Section (a) of Revised Service Order No. 1312 authorizes any railroad which is unable to supply the number of covered hopper cars required by its tariffs to transport unit-grain-trains of fewer cars in accordance with the scale in Section (b).

Pursuant to the authority vested in the Director, Bureau of Operations, by Section (h) of Revised Service Order No. 1312, Soo Line Railroad Company is authorized to operate a sixty (60) car unit-grain-train from Minneapolis, Minnesota, to Martins Creek, Pennsylvania, comprised of sixty (60)

railroad owned covered hoppers, on a one trip basis, with a minimum of 25 loaded cars operated in the first movement, and the remaining cars of the unit-train operated together in the final movement of this unit-grain-train. The total tariff minimum weight will be transported as required except if the railroad is unable to move all of the empty covered hoppers to the loading point on the final movement, the train can be reduced by the allowable number of cars or allowable weight percentage, as set forth in section (b) of this Service Order.

This exception applies to railroad owned covered hopper cars.

The bills of lading and waybills shall bear the following endorsement:

"Unit-grain-train of ( ) tons or ( ) cars. Partial movement of ( ) tons or ( ) cars forwarded authority Exception No. 10 to ICC Revised Service Order No. 1312. ( ) tons or ( ) cars to follow".

Demurrage rules will be treated as if each of the movements of the unit-train is a complete movement in itself.

Effective May 25, 1979.

Expires 11:59 p.m., June 15, 1979.

Issued at Washington, D.C., May 25, 1979.

Joel E. Burns,

Director.

[FR Doc. 79-18276 Filed 6-11-79; 8:45 am]

BILLING CODE 7035-01-M

[Notice No. 23]

Motor Carrier Temporary Authority Applications

Correction

In FR Doc. 79-5267 appearing at page 10482 in the issue for Tuesday, February 20, 1979, on page 10487, second column, eigth line of MC 146068 (Sub-1A), insert "NY"after "NJ".

BILLING CODE 1505-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 114
Tuesday, June 12, 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

1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., June 15, 1979.

PLACE: 2033 K Street, N.W., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1162-79 Filed 6-8-79; 10:09 am]

BILLING CODE 6351-01-M

2

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: At the conclusion of the open meeting to be held at 9:30 a.m., June 14, 1979.

PLACE: 1700 G Street, N.W., Sixth Floor, Washinton, D.C.

STATUS: Closed meeting.

CONTACT PERSON FOR MORE INFORMATION: Franklin O. Bolling, 202-377-6677.

MATTERS TO BE CONSIDERED: Consideration of 1978 Financial Audits of the District Banks.

Announcement is being made at the earliest practicable time.

No. 245, June 8, 1979.

[S. 1166-79 Filed 6-8-79; 2:27 pm]

BILLING CODE 6720-01-M

3

FEDERAL RESERVE SYSTEM (Board of Governors).

TIME AND DATE: 9 a.m., Friday, June 15, 1979.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed space consolidation plan, involving competitive bidding, for the Federal Reserve Bank of New York.
2. Construction management agreement for the Federal Reserve Bank of San Francisco's proposed building project.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving, individual Federal Reserve System employees.
4. Any agenda items carried forward from a previously announced meeting.

[S- 1165-79 Filed 6-8-79; 12:00 p.m.]

BILLING CODE 6210-01-M

4

NATIONAL SCIENCE BOARD.

DATE AND TIME: June 21, 1979, 9:30 a.m., Open Session. June 22, 1979, 10:30 a.m., Open Session. June 22, 1979, 12 noon, Closed Session.

PLACE: Headquarters, Association of Universities for Research in Astronomy and Kitt Peak National Observatory, Tucson, Arizona.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN SESSION:

Thursday, June 21

1. Minutes—Open Session—29th Annual (206th) Meeting.
2. Chairman's Report.
3. Director's Report:
   a. Report on Grant and Contract Activity—5/17-6/19, 1979,
   b. Organizational and Staff Changes,
   c. Congressional and Legislative Matters,
   d. NSB Budget for Fiscal Year 1980, and
   e. Other Items.
4. Board Committees—Reports on Meetings:
   a. Executive Committee,
   b. Committee on Eleventh NSB Report,
   c. Committee on Twelfth NSB Report,
   d. Ad Hoc Committee on Deep Sea and Ocean Margin Drilling Programs,
   e. Ad Hoc Committee on NSB Nominees, and
   f. Ad Hoc Committee on NSB Act Review.
5. NSP Advisory Groups.
6. Annual Reviews of RSB Centers at NSB.
7. Board Representation at Future Site Visits of Materials Research Laboratories.
8. Other Business.
9. Next Meetings.
10. Comments on Planning Environment Review.
11. Interim Reports of Discussion Groups.
12. Review of NSB Act of 1950 as Amended.

Friday, June 22

13. Final Reports of Discussion Groups.

MATTERS TO BE CONSIDERED AT THE CLOSED SESSION:

A. Minutes—Closed Session—29th Annual (206th) Meeting.
B. NSB Budgets for Fiscal Year 1981 and Subsequent Years.
C. NSB Annual Reports.

CONTACT PERSON FOR MORE INFORMATION: Miss Vernice Anderson, Executive Secretary, 202-632-5840.

[S-1163-79 Filed 6-8-79; 10:09 am]

BILLING CODE 7555-01-M

5

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published.

STATUS: Open meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Monday, June 4, 1979.

CHANGES IN THE MEETING: Additional items.

The following additional items will be considered at an open meeting scheduled for Wednesday, June 13, 1979 at 10 a.m.:

1. Consideration of whether to adopt an amendment to Regulation S-X [17 CFR Part 210.3-18(k)] to permit financial statement disclosure of oil and gas reserve information to be designated "unaudited" for fiscal years ending before December 26, 1980. For further information, please contact James D. Hall at (202) 755-0222.
2. Consideration of whether to re-open the comment period on the "Supplemental Earnings Summary" which was proposed in Securities Act Release No. 5969 [43 FR 40726] and extend the new comment period through July 25, 1979. For further information, please contact James D. Hall at (202) 755-0222.

Commissioners Loomis, Evans, and Karmel determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact: Mike Rogan at (202) 755-1638.

June 7, 1979.

[S-1164-79 Filed 6-8-79; 10:09 am]

BILLING CODE 8010-01-M

federal register

Tuesday
June 12, 1979

Part II

Department of Agriculture

Food and Nutrition Service

Food Stamp Program; Procedures for Reduction or Cancellation of Allotments to Eligible Households

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, and 273

[Amdt. 146]

Food Stamp Program; Procedures for Reduction or Cancellation of Allotments to Eligible Households

AGENCY: Food and Nutrition Service, USDA.

ACTION: Emergency rulemaking.

SUMMARY: This emergency rulemaking sets forth the procedures that are to be followed if the Secretary of Agriculture determines that it is necessary to reduce or cancel the food stamp allotments distributed to households eligible to receive food stamps. Such a reduction or cancellation would be necessary if it is determined that the value of full monthly food stamp allotments distributed to all eligible households will exceed the amount of funds appropriated by Congress. This rulemaking implements the provisions of Section 18(b) of the Food Stamp Act of 1977, Title XIII, P.L. 95–113, 91 Stat. 979, September 29, 1977, 7 U.S.C. 2525. Since there is a possibility that a reduction or cancellation of allotments may be necessary during this fiscal year, the Acting Administrator of the Food and Nutrition Service, Robert Greenstein, has determined that an emergency rulemaking is necessary to establish these procedures as expeditiously as possible. Comments are invited, however, for use in developing a final rule.

DATES: Effective date: Effective upon publication. Comments must be received on or before August 13, 1979, to be assured of consideration.

ADDRESSES: Comments should be submitted to: Alberta Frost, Acting Deputy Administrator for 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 offfice 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, S.W., Washington, D.C., Room 650. An Impact Analysis has been prepared, and is available from Acting Deputy Administrator Frost. A copy will also be open for public inspection at the office shown above.

FOR FURTHER INFORMATION CONTACT: Sue McAndrew, Chief, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, Washington, D.C. 20250, (202) 447–6535.

SUPPLEMENTARY INFORMATION:

Information

Section 18(b) of the Food Stamp Act of 1977 directs the Secretary to reduce monthly food stamp allotments if program requirements are in excess of the amount appropriated. In part, Section 18(b) states: "If in any fiscal year the Secretary finds that the requirements of participating States will exceed the limitation set herein, the Secretary shall direct State agencies to reduce the value of such allotments to be issued to households certified as eligible to participate in the food stamp program to the extent necessary to comply with the provisions of this subsection." This rulemaking establishes the procedures that will be used in carrying out this provision of the Act. Since there is a possibility that the procedures will have to be used during this fiscal year, they are being issued as an emergency rulemaking, effective immediately. The rules are subject to public comment, however, and will be reissued in final form following the end of the comment period.

The Department's General Counsel and the Comptroller General of the United States have ruled that only a *pro rata* benefit reduction is legally permissible under Section 18(b) of the Act. The procedures in this rulemaking provide for such a *pro rata* benefit reduction.

Nature of reduction action. If the Secretary determines that a reduction in food stamp allotments is necessary, a decision must be made as to how this reduction is to be affected. Based on the best information available on levels of participation and amounts of benefits, FNS will monitor the expenditure of funds to determine if a budgetary shortfall is likely to occur. If it appears that the available appropriated funds will not be sufficient to provide all households with full monthly allotments for the remainder of the fiscal year, the Secretary will determine the best manner in which to make up the shortfall. The choices available are to reduce allotments for one or more months, cancel allotments for one or more months or use a combination of reduced and cancelled allotments. The manner in which the Secretary decides to make up the shortfall will depend on the extent of the shortfall and the number of months available to make up the shortfall.

As noted earlier, any reduction or cancellation of allotments deemed necessary by the Secretary shall have an equal effect on all households. Reductions will be accomplished by providing households with a certain percentage of their normal full monthly allotments. Thus, if the Secretary determines that a 25 percent reduction in allotments will produce an adequate savings of money so that appropriations will not be exceeded, *all* households will have their allotments reduced by 25 percent. If it is determined that a cancellation of allotments is necessary, *all* allotments to all households for a given month will be cancelled.

Enactment of allotment reductions. Since State agencies are responsible for issuing food stamps to eligible households, they will be responsible for implementing reductions and cancellations of allotments. This rulemaking establishes the procedures that States are to follow in carrying out such directives.

All project areas with computerized issuance systems will be required to add an element to their computer programs to allow for percentage reductions in allotments to be made if the Secretary so directs. This element would be a new, final computation to reduce benefits by a specified percentage. The computation would be structured in one of two ways. States could choose to add a two step computation which would first multiply the full allotment by the percentage reduction factor and then subtract the result from the full allotment to arrive at the reduced allotment. Thus, if a 25 percent reduction was ordered, the full allotment would be multiplied by 25 percent and the result subtracted from the full allotment. Alternatively, State agencies could subtract the percentage reduction factor from 1.00 and multiply the full allotment by this result. For example, if a 25 percent reduction was ordered, States would multiply the full allotment by 0.75 to arrive at the reduced allotment. State agencies may use either of these two computations to reduce allotments. To ensure that this adaptation is made now, however, the implementation segment of these rules suggests that State agencies include this field in their computers when they update their data bases to reflect the July 1979 cost-of-food increases.

Any project area with a computerized issuance system that cannot be changed in the manner described above must be changed in some way to allow for the issuance of reduced allotments. The method adopted in these areas must

ensure that reduced allotments can be issued within 15 days of a notice from FNS to reduce allotments. Furthermore, the change in the computer system must be accomplished in time to reduce allotments for August 1979 if it is necessary to do so.

In project areas with manual issuance systems, preparation for a reduction in allotments in these areas includes the printing and distribution of new allotment tables or conversion tables to be used with current allotment tables. The Department will prepare and distribute them for State agencies to use. It is the responsibility of the State agencies, however, to ensure that sufficient copies are obtained and distributed in time to effect reductions in allotments.

A reduction in allotments in an area with an HIR card system can be accomplished in one of two ways. State agency personnel can either adjust all of the Household Issuance Records prior to the affected month's issuance or they can adjust the records as each household appears at the issuance office to pick up its monthly allotment. The choice of which method to use is up to the State agency.

It should be emphasized that if a reduction or cancellation of allotments is directed, the action is to affect all allotments for the month the cancellation or reduction is ordered. Thus, if August allotments are to be reduced by 50 percent, all allotments issued to eligible households for August are to be reduced by 50 percent. In States with fiscal months, this reduction shall be applied to all normal allotments for August, even if the allotment is not received until September. At the same time, allotments issued in the reduced month, but which actually represent the household's benefits for the previous month, shall not be reduced if no benefit reduction had been ordered for the previous month. Likewise, any retroactive or restored benefits for a period other than the reduced month should not be affected by the ordered reduction.

Along with putting a reduction or cancellation into effect, State agencies must notify households of the action. The rulemaking points out that the reduction or cancellation of allotments is to be considered a mass change and that the normal requirements for notifying households of mass changes are to be applied, with the one exception discussed below. Those requirements direct States to notify households through the news media, through posters in certification and issuance offices or through general explanatory notices mailed to participating households. Those requirements also give States the option of mailing individual notices of adverse action to households affected by the change. In view of the requirements of the law and the time element involved, this rulemaking prohibits States from using notices of adverse action. Households may not, under any circumstances, be entitled to continued benefits at their former level.

Included in this rulemaking is a provision that denies households an entitlement to the restoration of benefits lost as a result of a reduction or cancellation of allotments. Thus, if a reduction or cancellation of allotments results in a surplus of appropriated funds, the Department would not have to return these funds to the households affected by the reduction or cancellation. However, while households do not have an entitlement to the restoration of benefits and the Department would not be required to issue retroactive benefits the Department pledges to restore benefits to households affected by an allotment reduction or cancellation if the Secretary determines such a restoration is practicable.

In the event of a reduction or cancellation in benefits, the Department will endeavor to provide State agencies with as much lead-time as possible. Once the percentage reduction factor field is entered into computers, State agencies with computerized issuance will not require a great deal of lead-time to change the reduction factor on the computer. State agencies with manual systems will require more lead-time. The Department will make every effort to provide a minimum of one month lead-time for reductions in benefits and one-half month lead-time for cancellation. The Department anticipates that in the event a reduction or cancellation does occur, a longer lead-time than these minimums would be provided.

Effects of reductions and cancellations on ongoing Program operations. The reduction or cancellation of allotments is not intended to affect any aspect of Program operations other than the amount of benefits distributed to households. As noted in this rulemaking, applications are to be accepted and processed the same way during a month in which allotments are reduced or cancelled as they are in a normal month. Eligibility determinations are to be made according to the criteria in Part 273 and certification periods are to be assigned on a normal basis. Recertifications are also to be processed and not delayed.

As noted above, households affected by reductions and cancellations would not have an entitlement to a continuation of benefits if they object to the reduction or cancellation action. Households may request fair hearings and State agencies are required to honor and process the requests. However, fair hearings will not result in a reversal of the reduction or cancellation of a household's allotment. They will result in a correction to an incorrectly calculated allotment though, and to restored benefits if the reduction was too large because it was incorrectly computed.

Penalties

This rulemaking explains the penalties that may be invoked if State agencies fail to comply with a directive issued by FNS to reduce or cancel allotments. The penalties were developed with the realization that, in order to assure that the mandate of Congress is met, swift action would be necessary to induce to noncomplying State agencies to take immediate corrective action. Failing that, the penalties include a provision for the recovery of funds from State agencies that do not comply.

The first two penalty provisions describe what may occur if the Department discovers that a State agency does not intend to comply with an order to reduce or cancel allotments. FNS may issue a warning to such a State agency that will advise the State agency that if the ordered reduction or cancellation of allotments does not occur, FNS will cancel 100 percent of the Federal share of the State agency's administrative costs for the affected month. The warning period will be short and action to cancel the funding will come quickly following confirmation of the State's noncompliance. At the same time that this activity is taking place, FNS may, through the Attorney General, seek a court injunction against the State in question in an effort to compel the State to comply with the ordered allotment reduction or cancellation.

The last penalty provision involves the recovery of funds that are lost due to a State's failure to comply with an order to reduce or cancel allotments. As the rulemaking indicates, State agencies will be held liable for 100 percent of any overissuances that occur due to a State's failure to implement a reduction or cancellation order. It is obvious that if such an order is issued and a State ignores it, the effect of the order will be compromised, and both the food Stamp Act and the Anti-Deficiency Act, 31 U.S.C. 665, as amended, could be in

danger of violation. Since the reason for the order is to stay within the limits set by the amount of funds appropriated by Congress and since the State agency's action will serve to force spending outside these limits, the Department determined that the noncomplying State agency should be liable for making up the overissuances it caused.

If a State agency fails to comply with an order to reduce or cancel benefits, FNS will bill the State agency for any resultant overissuances. The billing will prescribe a period of time in which FNS expects to receive payment of the bills. If payment is not made within that time period, steps will be taken to recover the billed amount through offsets to the Federal share of the State's administrative costs.

The penalty provisions in the rulemaking are strict. However, since orders to reduce or cancel allotments will only be issued if they are absolutely necessary, full compliance by all States is imperative.

Amendments

In order to ensure that there are no misunderstandings, Section 273.10(e) is being amended with the issuance of this rulemaking. This section explains how net income and benefit levels are to be calculated. The amendment in this rulemaking clarifies that the procedures for calculating benefit levels in paragraph (2) of that section apply only when a reduction or cancellation of allotments is not in effect. Further, the amendment suspends the requirement that all one and two person households be given a monthly $10 minimum allotment during months when allotments have been reduced or cancelled.

Implementation

Along with the rules establishing a procedure for reducing or cancelling allotments are requirements for the implementation of the procedure. The Department believes that there is a possibility that a reduction or cancellation of allotments may be necessary within the next few months. Therefore, expeditious implementation of the procedures is needed. To ensure that the procedures are put in place as swiftly as possible with as little disruption as possible in State agency operations, the adaptations to computer programs to add the new benefit computation can be made at the same time the issuance program is updated to reflect the July 1979 cost-of-food increases. In addition, all State agencies are required to establish internal procedures they need to have in palce so that they will be able to reduce allotments promptly if this proves necessary.

Parts 271, 272 and 273 are amended to include the following provisions:

PART 271—GENERAL INFORMATION AND DEFINITIONS

New § 271.7 is added to read as follows:

§ 271.7 Allotment reduction procedures.

(a) *General purpose.* This section sets forth the procedures to be followed if the monthly food stamp allotments determined in accordance with the provisions of § 273.10 are to be reduced or cancelled. A reduction in allotment levels would be necessary if it is determined by the Secretary that the amount of food stamp benefits that are to be distributed to households during a fiscal year, or remaining months of a fiscal year, will exceed the amount of funds appropriated. The best available data pertaining to the number of people participating in the program and the amount of benefits being issued shall be used in making this determination.

(b) *Nature of reduction action.* If the Secretary determines that the funds appropriated will not allow full monthly food stamp allotments for the remainder of a fiscal year, a decision shall be made as to the type of action needed to ensure that the appropriated funding level is not exceeded. Such action may be either a reduction in the allotment level for one or more months, a cancellation of allotments for one or more months or a combination of these two actions. All households shall be affected equally by a decision to either reduce or cancel food stamp allotments. If a reduction in allotments is deemed necessary, all households shall have their allotments reduced at the same rate. For example, if it is determined that a 25 percent reduction is necessary for two months, *all* allotments shall be reduced by 25 percent for two months. If cancellation is necessary, *all* eligible households shall have their allotments cancelled.

(c) *Implementation allotments reductions.* (1) *Reductions.* (i) If a decision is made to reduce monthly food stamp allotments, FNS shall notify State agencies of the date the reduction is to take effect and by how much they are to be reduced.

(ii) Upon receiving notification that a percentage reduction is to be made in an upcoming month's allotments, State agencies shall act immediately to implement the reduction. Such action would differ from State to State depending on the nature of the issuance systems in use. Where there are computerized issuance systems, the program used for issuing the affected month's ATP cards shall be altered to reflect the percentage reduction ordered in the FNS notice. In States where manual issuance is used, either through an HIR card system or through manually prepared ATP cards, new allotment tables or conversion tables reflecting the reduced allotments shall be prepared and distributed before the affected month's issuance activity begins. In an HIR card system State agencies have the option of enacting the reduction in benefits either by changing all HIR cards before issuance activity for the affected month begins or by adjusting allotments at the point of issuance as each household appears at the issuance office. FNS will assist State agencies in the preparation of issuance tables needed to implement a reduction in allotments.

(2) *Cancellations.* If a decision is made to cancel the distribution of food stamp benefits in a given month, FNS shall notify State agencies of the date the cancellation is to take effect. Upon receiving notification that an upcoming month's issuance is to be cancelled, State agencies shall take immediate action to effect the cancellation. This action would involve making necessary computer adjustments, and notifying issuance agents and personnel.

(3) *Affected allotments.* Whenever a reduction or cancellation of allotments is ordered for a particular month, all allotments issued for the designated month are to be reduced or cancelled. However, allotments or portions of allotments representing restored or retroactive benefits for a prior, unaffected month would not be reduced or cancelled, even though they are issued during an affected month.

(4) *Notification of eligible households.* Reductions and cancellations of allotments shall be considered to be Federal adjustments to allotments. As such, State agencies shall notify households of reductions and cancellations of allotments in accord with the notice provisions of § 273.12(e)(1), except that State agencies shall not provide notices of adverse action to households affected by reductions or cancellations of allotments.

(5) *Restoration of benefits.* Households whose allotments are reduced or cancelled as a result of the enactment of these procedures are not entitled to the restoration of the lost benefits at a future date. However, if there is any surplus of funds as a result of the reduction or cancellation, and the

Secretary determines that such a restoration is practicable, FNS will direct State agencies to provide affected households with retroactive benefits.

(6) *Records of reductions and cancellations.* State agencies must be able to produce a record of the amount of benefits each household receives during a month in which a percentage reduction is in effect along with a record of the amount of benefits each household would have received had full monthly allotments been distributed. Similarly, in the event that allotments are cancelled, State agencies must be able to produce a record of the amount of benefits each household would have received had full monthly allotments been distributed. These records will be used if FNS directs the provision of retroactive benefits.

(d) *Effects of reductions and cancellations on the certification of eligible households.* (1) Determinations of the eligibility of applicant households shall not be affected by a reduction or cancellation of allotments. State agencies shall accept and process applications during a month(s) in which a reduction or cancellation is in effect in accordance with the requirements of Part 273. Determinations of eligibility shall also be made according to the provisions of Part 273. If an applicant is found to be eligible for benefits, the amount of benefits shall first be figured in accordance with the provisions of § 273.10 and then either converted to reflect the percentage reduction in effect or not provided to reflect the cancellation in effect.

(2) The reduction or cancellation of allotments in a given month shall have no effect on the certification periods assigned to households. Those participating households whose certification periods expire during a month in which allotments were reduced or cancelled shall be recertified according to the provisions of § 273.14. Households found eligible to participate during a month in which allotments have been reduced or cancelled shall have certification periods assigned in accordance with the provisions of § 273.10.

(3) Any household that has its allotment reduced or cancelled as a result of the implementation of the requirements of this subpart may request a fair hearing if it disagrees with the action. However, since the reduction or cancellation would be necessary to avoid an expenditure of funds beyond those appropriated by Congress, the household does not have a right to a continuation of benefits. A household may receive retroactive benefits in an appropriate amount if it is determined that its benefits were reduced by more than the amount by which the State agency was directed to reduce benefits.

(e) *Penalties.* Notwithstanding any other provision of this subchapter, FNS may take one or more of the following actions against a State agency that fails to comply with a directive to reduce or cancel allotments in a particular month.

(1) If FNS ascertains that a State agency does not plan to comply with a directive to reduce or cancel allotments for a particular month, a warning will be issued advising the State agency that if there is not compliance, FNS may cancel 100 percent of the Federal share of the State's administrative costs for the affected month.

(2) If FNS ascertains after warning a State agency as provided in (1) above, that the State agency does not plan to comply with a directive to reduce or cancel allotments, a court injunction will be sought to compel compliance.

(3) If a State agency fails to reduce or cancel allotments as directed by FNS, FNS will bill the State agency for all overissuances that result. If a State agency fails to remit the billed amount to FNS within a prescribed period of time the funds will be recovered through offsets against the Federal share of the State agency's administrative costs, or any other means available under law.

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PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

Paragraph 272.1(g)(3) is added and reads as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) Implementation.

* * * * *

(3) *Amendment.* The procedures contained in amendment shall be implemented by State agencies as quickly as possible. All State agencies shall complete implementation in time to be able to issue reduced food stamp allotments in August 1979 if such action is determined to be necessary. State agencies with computerized issuance systems shall adjust these systems so that they are capable of issuing reduced coupon allotments. These adjustments may be made at the same time State agencies reprogram their computers to reflect the July 1979 cost-of-food increases.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

In Section 273.10, subparagraph (e)(2)(ii) is amended and the words "Except as provided in subparagraph (iii) below," are added at the beginning. In addition, subparagraph (e)(2)(iii) is added to Section 273.10 and reads as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(e) Calculating net income and benefit levels.

* * * * *

(2) Eligibility and benefits.

* * * * *

(iii) During a month when a reduction or cancellation of allotments has been ordered pursuant to the provisions of § 271.7, eligible households shall first have their benefits calculated as follows:

(A) If the action in effect is a reduction action, eligible households shall have their allotment levels calculated according to the procedures of subparagraph (ii) above, and then reduced by the percentage reduction in effect, and rounded to the nearest whole dollar.

(B) If the action in effect is a cancellation action, eligible households shall have their allotment levels calculated according to the procedures of subparagraph (ii) above. However, the allotments shall not be issued for the month the cancellation is in effect.

(C) The $10 minimum allotment level for one- and two-person households shall be applied in calculating allotment levels *before* a percentage reduction or cancellation is applied to the month's issuance. The actual allotments issued to one- and two-person households in a month in which allotments are reduced or cancelled may be less than $10.

* * * * *

Authority: 91 Stat. 958 (7 U.S.C. 2011–2027).

Note.—This interim final rule has been designated as significant and is being published in accordance with the emergency procedures of Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by Assistant Secretary of Agriculture Carol Tucker Foreman that the emergency nature of this interim final rule warrants publication without opportunity for prior public comment. This interim final rule implements regulations in Parts 271, 272 and 273. A Draft Impact Analysis regarding this regulation is available from Alberta Frost, Acting Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, 500 12th Street, Washington, D.C. 20250.

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps.)

Dated: June 6, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79-18043 Filed 6-7-79; 8:45 am]

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Part III

Department of Health, Education, and Welfare

Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

45 CFR Part 90

Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance

AGENCY: Department of Health, Education, and Welfare.

ACTION: Final rule.

SUMMARY: These regulations implement the provisions of the Age Discrimination Act of 1975, as amended (Act). They are general regulations designed to guide the development of agency specific regulations by each Federal agency which administers programs of Federal financial assistance. The Age Discrimination Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act also contains certain exceptions which permit, under limited circumstances, continued use of age distinctions or factors other than age which may have a disproportionate effect on the basis of age. These regulations discuss what is age discrimination under the Act, the circumstances under which the statutory exceptions may be invoked, the responsibilities of Federal agencies and recipients to enforce the Act, and the procedures for investigation, conciliation, and enforcement. Each Federal agency which administers programs of Federal financial assistance must issue age discrimination regulations which conform to these general regulations.

EFFECTIVE DATE: July 1, 1979.

FOR FURTHER INFORMATION CONTACT: Bayla F. White, Director Age Discrimination Task Force, Room 711-E, Hubert Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201, (202) 245-6284.

SUPPLEMENTARY INFORMATION:

Background

In November 1975, Congress enacted the Age Discrimination Act (42 U.S.C. 6101, *et seq.)* as part of the Amendments to the Older Americans Act (P.L. 94-135). At that time, the express purpose of the Act was to prohibit unreasonable discrimination based on age in programs and activities receiving Federal financial assistance, including the State and Local Fiscal Assistance Act of 1972. The Act also permitted federally assisted programs and activities, and recipients of Federal funds, to continue to use: (1) some age distinctions, and (2) "reasonable factors other than age." The Act applied to persons of all ages.

Prior to the enactment of any regulations, the Act required the Commission on Civil Rights to conduct a study of age discrimination in federally funded programs and activities. The Commission transmitted its study to the President and the Congress on January 10, 1978. The Commission published the second part of its study in January 1979. The Act also required each affected Federal agency to respond to the Commission's findings and recommendations.

After the receipt of the report of the Commission on Civil Rights and the Federal agency responses to that report, the Congress considered amendments to the Age Discrimination Act of 1975. In October 1978, Congress amended the Act (P.L. 95-478). Congress struck the word "unreasonable" from the statement of purpose clause, so that the purpose of the Act is to prohibit discrimination based on age in programs and activities receiving Federal financial assistance. However, the Congress retained the exceptions to the prohibition against age discrimination. Thus, the Act still permits the use of: (1) some age distinctions, and (2) "reasonable factors other than age." The Act continues to apply to persons of all ages.

According to the language of the Act, the prohibition against age discrimination will become effective when regulations are issued to enforce the Act. The Act requires the Secretary of HEW to publish proposed and then final general regulations. HEW issued proposed general regulations on December 1, 1978. These regulations are the final general regulations required by the Act. They set standards for other Federal agencies to follow in the development of agency specific regulations. The Act also requires each agency which provides Federal financial assistance to issue proposed and then final specific regulations. All agency specific regulations must conform to these general regulations and must be approved by the Secretary of HEW.

Rulemaking History

The Department of Health, Education, and Welfare has been vitally concerned about the need for public participation in the development of these regulations because of the substantial impact the Age Discrimination Act will have on the operation of federally assisted programs.

As the first step of its obligation to issue general regulations, HEW published in the **Federal Register** (43 FR 8756) a Notice of Intent To Issue Age Discrimination Regulations (NOI) on March 2, 1978. The NOI briefly identified some of the major issues addressed later in the regulatory process. Persons wishing additional information on the age discrimination regulations were asked to write to HEW. Over 600 individuals and organizations responded to the NOI. These names were incorporated into a mailing list for distribution of materials developed during the rulemaking process.

Since these general regulations apply to all Federal departments and agencies which administer programs of Federal financial assistance, HEW created an Interagency Age Discrimination Task Force to coordinate the development of the regulations. The Interagency Task Force consists of at least one representative from every department or agency which ultimately must issue its own age discrimination regulations, as well as observers, from other interested Federal agencies. The Interagency Task Force met five (5) times during the development of the age discrimination regulations to consider both substantive and procedural matters. Consultations were also held with individual Federal agencies. The Interagency Task Force will continue to function during the development of agency specific regulations.

The Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** (p. 56428-56446) on December 1, 1978. The NPRM contained a discussion of the major issues and a section-by-section analysis of the proposed regulations as well as the text of the proposed rules. At certain key places in the proposed rules, HEW presented options for public consideration and comment. Publication of the proposed rules inaugurated a 90-day public comment period.

HEW distributed more than 16,000 copies of the proposed rules. Copies were mailed to every member of Congress, every State governor, the head of every Federal agency which provides Federal financial assistance, adminstrators of federally assisted programs, recipients of Federal funds at the State and local levels, interested individuals and groups. Special efforts were made to distribute copies of the NPRM to groups representing the interests of the elderly and of children and youth.

In January and early February, the Department held public hearings in Washington, D.C., and in each of HEW's 10 Regions in order to obtain public comment on the proposed rules. A total of 170 witnesses made presentations at those hearings. In addition, 246 letters were received containing comments,

criticisms and suggestions on nearly every section of the proposed rules. Comments made at the public hearings and in writing have come from individuals, from State and local governmental units, from providers of federally supported services, from public officials at the Federal, State and local levels, and a large number have come from groups representing the interests of the elderly. The comments and verbatim transcripts from the eleven hearings have been analyzed and used in the development of these final regulations. A summary of the comments received and the responses to those comments follow the text of these regulations.

Although the final government-wide regulations have been significantly affected by the comments received, the implementation of the Age Discrimination Act is a continuing process which provides several opportunities for public participation. Each agency providing Federal financial assistance must now issue its own proposed and then final, specific age discrimination regulations. The issuance of proposed agency regulations 90 days after these general regulations are published will provide another opportunity for the public to participate in the shaping of age discrimination policies. The actual impact of the Age Discrimination Act and the problems which recipients of Federal financial assistance may encounter in implementing these general age discrimination regulations will be examined after 30 months time. Similarly, each agency will examine and publish for comment its own assessment of the effectiveness of its age discrimination regulations after they have been in effect for 30 months.

HEW will amend and revise the government-wide regulations as need and experience dictate.

Overview of the Regulations

The following paragraphs summarize the text of the final regulations. The last section of the preamble contains a discussion of the resolution of certain major issues which were raised in the NPRM and an explanation of key parts of the text of the final regulations.

Subpart A—General

The four sections in Subpart A explain the purpose of the Age Discrimination Act (§ 90.1), the purpose of the general age discrimination regulations (§ 90.2), the programs and activities covered by the Act (§ 90.3) and the meaning of important terms used in the regulations (§ 90.4).

The Age Discrimination Act is designed to prohibit discrimination on the basis of age in programs or activities which receive Federal financial assistance. The Act also contains certain exceptions which permit age distinctions and factors other than age to continue in use under certain circumstances (§ 90.1). The Act applies to persons of all ages.

The Act generally covers all programs and activities which receive Federal financial assistance. However, the Act does not apply to any age distinction "established under authority of any law" which provides benefits or establishes criteria for participation on the basis of age or in age related terms. Thus, age distinctions which are "established under authority of any law" may continue in use. These regulations (§ 90.3) define the phrase "any law" to mean Federal statutes, State statutes or local statutes adopted by elected, general purpose legislative bodies.

The Act also excludes from its coverage most employment practices, except for programs funded under the public service employment titles of the Comprehensive Employment and Training Act (CETA). These regulations do cover any program or activity which is both a program of Federal financial assistance and provides employment such as the College Work Study Program (42 U.S.C. 2751, *et seq.*) and the Work Incentive Program (42 U.S.C. 630, *et seq.*). The Age Discrimination in Employment Act (ADEA) which is administered by the Department of Labor, [Equal Employment Opportunity Commission (EEOC) after July 1, 1979], continues to be the Federal statute that prohibits employment discrimination for persons between the ages of 40 and 70. Individuals in this age range who experience employment discrimination, other than in CETA public service employment programs, must look to the ADEA for relief, not to the Age Discrimination Act.

Section 90.4 defines important terms used throughout these regulations.

Subpart B—What Is Age Discrimination?

This subpart sets out the rules against age discrimination and the conditions under which the statutory exceptions apply.

No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance (§ 90.12(a)). This general rule is limited by the exceptions which are contained in section 304 of the Act and which are explained in §§ 90.14 and 90.15 of these regulations. The specific prohibited actions, are patterned after the regulations issued under Title VI of the Civil Rights Act of 1964 (45 CFR Part 80). As a general rule, separate or different treatment which denies or limits service from or participation in a program receiving Federal financial assistance will be prohibited by these regulations.

The Act contains several exceptions which limit the general prohibition against age discrimination. Section 304(b)(1) of the Act permits the use of age distinctions which are necessary to the normal operation or to the achievement of a statutory objective. It also permits actions which are based on reasonable factors other than age. The regulations provide definitions for two terms which are essential to an understanding of those exceptions: "normal operation" and "statutory objective" (§ 90.13). "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives. "Statutory objective" is defined to mean any purpose which is explicity stated in a Federal statute, State statute or local statute or ordinance.

The regulations establish a four part test, all parts of which must be met for an explicit age distinction to satisfy one of the statutory exceptions and to continue in use in a Federally assisted program (§ 90.14). This four part test will be used to scrutinize age distinctions which are imposed in the administration of Federally assisted programs, but which are not explicitly authorized by a Federal, State or local statute.

Recipients of Federal funds are also permitted to take an action otherwise prohibited by the Act, if the action is based on "reasonable factors other than age." In that event, the action may be taken even though it has a disproportionate effect on persons of different ages. However, according to the regulations (§ 90.15), the factor other than age must bear a direct and substantial relationship to the program's normal operation or to the achievement of a statutory objective.

The regulations place on the recipient the burden of proving that an age distinction or a factor other than age qualifies for an exception (§ 90.16).

Subpart C—What Are the Responsibilities of the Federal Agencies?

This subpart contains four sections which explain the responsibilities that

Federal agencies have to implement the ADA.

Each agency which extends Federal financial assistance must issue proposed and then final regulations to enforce the Act (§ 90.31). The agency specific regulations must be consistent with these government-wide regulations and must be approved by the Secretary of HEW. The final agency specific regulation must contain an appendix listing all age distinctions which appear in Federal statutes and regulations which affect the agency's programs of Federal financial assistance. The appendix is the first step of a process set in motion by these regulations to inform the public of those age distinctions used in Federal Program administration. The appendix will *not* constitute agency approval or disapproval of the age distinctions contained in its regulations.

As a second step in this public information process, each Federal agency must review the age distinctions it imposes on its recipients by regulation or by administrative action to determine whether these age distinctions are permissible under the Act (§ 90.32). This review must be completed within 12 months after publication of the agency final regulations and must be published for public comment in the **Federal Register**. The report must indicate which age distinctions meet the requirements of the Act and will be continued and which will be eliminated. The report must identify age distinctions not in regulations which meet the requirements of the Act and which will subsequently be incorporated into regulations. Beginning with the effective date of an agency's specific regulations, no new age distinction may be imposed, unless it is adopted by regulation using the notice and comment procedures of the Administrative Procedure Act (5 U.S.C. 553). Beginning one year from the publication of an agency's specific regulations, no existing age distinction may be continued unless it has already been adopted by regulation or is adopted by regulation using the notice and comment procedures of the Administrative Procedure Act (5 U.S.C. 553).

The next two sections of the regulations (§§ 90.33 and 90.34) reflect HEW's goal of reducing administrative burden on recipients while still ensuring compliance with the Act. To avoid or minimize conflicting actions by different Federal agencies which deal with the same recipient, the Secretary of HEW may designate "lead agencies" to coordinate compliance and enforcement activities in those instances where two or more agencies provide assistance to the same recipient (§ 90.33). Interagency cooperation may extend to all compliance and enforcement activities *except* for the actual termination of funds and the notification to Congress of that termination.

The Act requires each agency to report annually to the Congress, through HEW, on its compliance and enforcement activities. The final regulations adopt a targeted approach to data collection and analysis, which will maximize the opportunity to measure and analyze actual progress in complying with the Act and, at the same time, minimize the burden of unnecessary data collection on recipients (§ 90.34).

The targeted approach to data collection builds on the analysis of existing data about compliance, such as complaint data and information from compliance reviews. The regulations also provide for agencies to collect data which are directly relevant to particular patterns or practices of discrimination revealed by complaints, compliance reviews or other compliance activities. This targeted approach gives each agency the authority to tailor its own data collection to the characteristics of its programs, rather than establishing specific reporting requirements for every federally assisted program.

Subpart D—Investigation, Conciliation and Enforcement Procedures

This subpart of the regulations is divided into 10 sections dealing with various aspects of the compliance and enforcement process.

Each agency is required to establish procedures for compliance, investigation, conciliation and enforcement (§ 90.41). A recipient has primary responsibility to ensure that its programs and activities are in compliance with the Act and must take necessary steps to eliminate any violations. An agency has responsibility to attempt to secure recipient compliance with the Act by voluntary means. An agency must enforce the Act when a recipient fails to eliminate violations of the Act (§ 90.42).

Each agency is required to provide written notice to each recipient of the recipient's obligations under the Act, to provide technical assistance to recipients where necessary and to make available educational materials explaining the rights and obligations of beneficiaries and recipients (§ 90.43(a)).

Moreover, each Federal agency must direct its recipients which employ the equivalent of 15 or more persons on a full-time basis to prepare a written self-evaluation (§ 90.43(b)). A recipient's self-evaluation will focus on age distinctions which are imposed directly by the recipient and not on any factors other than age. Each recipient must justify the continued use of any distinction as sanctioned under these regulations. A recipient must take corrective and remedial action whenever the self-evaluation indicates a violation of the Act. The recipient self-evaluation must be completed 18 months after the effective date of agency regulations. The self-evaluation must be available to the agency or the public for a period of three years following its completion.

Every agency must establish a procedure for processing complaints of age discrimination (§ 90.43(c)). The complaint handling procedure must include an initial screening by the Federal agency and notice to complainants and recipients of their rights and obligations in the complaint process. All complaints which fall within the coverage of the Act will be referred to a mediation process which will be managed by a single agency designated by the Secretary of HEW. That agency is the Federal Mediation and Conciliation Service (FMCS).

Complainants and recipients are required to participate in the effort to reach a mutually satisfactory mediated settlement of the complaint, although they need not meet with the mediator at the same time. The mediation process may last no more than 60 days from the date the agency first receives the complaint. The mediator will have the authority to terminate the mediation at any time before the end of the 60-day period if the process appears to have broken down. The terms of settlement that are satisfactory to both parties will be reduced to writing and sent to the Federal agency which referred the complaint. The Federal agency will take no further action on a complaint which has been successfully mediated.

If mediation does not succeed, or if a mediated settlement is violated, Federal agencies will engage in informal fact finding and then, if necessary, proceed to formal investigation of the complaint. The formal investigation may result in an administrative hearing before an administrative law judge. A Federal agency may terminate a recipient's Federal funds if the administrative law judge finds that the recipient has violated the Act.

The regulations of each Federal agency must provide that the agency may conduct compliance reviews, preaward reviews and use other similar procedures to determine compliance with the Act. These procedures are *not*

dependent on the filing of a complaint of age discrimination (§ 90.44).

To help determine whether a recipient is in compliance with the Act, each Federal agency may require its recipients to make their records reasonably accessible to the agency and to furnish information to the agency (§ 90.45). Recipients are prohibited from acts of retaliation or intimidation against individuals who file age discrimination complaints or who cooperate in any aspect of the enforcement process (§ 90.46).

After a hearing before an administrative law judge, a Federal agency may terminate Federal funds to a recipient found to have violated the Act or regulations implementing the Act. Termination must be limited to the particular recipient which has violated the Act and to the program where the violation has been found. An agency may delay granting new Federal funds to a recipient when termination proceedings have been initiated (§ 90.47).

When Federal funds are terminated, the agency may pay those funds to another qualified recipient which can demonstrate the ability to achieve the goals of the Federal program's authorizing statute and to comply with the Age Discrimination Act (§ 90.48). If a Federal agency or an administrative law judge, finds that a recipient has engaged in age discrimination, the recipient must take remedial action as the agency requires. Even in the absence of a finding of discrimination, recipients may voluntarily take affirmative action to encourage the participation of persons in age groups where participation has been limited in the past. The regulations permit a recipient to provide special benefits to children or the elderly provided that the benefits do not result in the exclusion of persons who are eligible to participate in the recipients' program (§ 90.49).

The Act authorizes a private right of action, when an individual has exhausted administrative remedies. The regulations implement that provision (§ 90.50). Administrative remedies are exhausted when either 180 days have elapsed from the filing of the complaint and the agency has made no finding or the agency issues a finding in favor of the recipient. The complainant may then file a suit in a U.S. district court. The complainant must indicate at the time the suit is filed, if attorney's fees will be demanded in the event that the complainant is successful. No action can be brought if the same alleged violation by the same defendant is the subject of a pending action in any U.S. court. Complainants who wish to file an action must give 30 days notice to the Attorney General, the Secretary of HEW, the head of the granting agency and the recipient.

Subpart E—Future Review of Age Discrimination Regulations

HEW must review the effectiveness of these general age discrimination regulations 30 months after the regulations take effect (§ 90.61). In addition, each agency must review the effectivess of its own regulations 30 months after they become effective (§ 90.62). These reviews must be published in the **Federal Register** with an opportunity for public comment.

Critical Issues

Comments were submitted on many sections of the proposed regulations and on many different issues raised in the NPRM. These comments and the responses to them are set forth in the appendix which follows the text of the regulations. Some of the comments concerned critical policy issues with respect to the implementation of the Act. These critical issues are discussed in the following paragraphs.

1. *What Ages Does the Act Cover?* Section 303 of the Act prohibits discrimination on the basis of age in federally funded programs or activities. Although the legislative history indicates Congressional concern for the problems of the elderly in particular, the Congress made it clear in its Conference Committee report that the Act is intended to apply to persons of all ages.

When the Act was originally passed in 1975, Congress directed the United States Commission on Civil Rights to conduct a study of age discrimination in federally funded programs, and required each affected Federal agency to respond to the Commission's study. After reviewing the Commission's report and Federal agency responses to it, Congress considered amendments to the Act. Nowhere in the amendment process was there any discussion of limiting or changing the coverage of the Act. It continues to extend protection to persons of all ages.

Various advocacy groups for older persons have suggested that HEW construe these general implementing regulations to protect only the elderly or to provide greater protection for older persons than for other age groups. This construction is not legally supportable in view of the legislative history and the plain language of the Act.

However, the Congress has consistently made clear its support for the concerns of older persons. It is therefore unlikely that Congress intended the Act to call into question the generally accepted special benefits which are provided to older persons in programs that are otherwise available to a wider age range of the population. Public comment on the regulations was almost unanimously supportive of these benefits, which often take the form of special discounts. Similarly, no one has suggested that similar benefits for children should be questioned under the Act.

HEW supports the continuation of special benefits for children and older persons. Therefore, these regulations permit special benefits for the elderly persons and for children that are extended by recipients so long as they do not result in the exclusion from the program of otherwise eligible persons. [§ 90.49(c)].

2. *Does the Act Require Proportional Allocation of Services and Funds by Age?* Commenters also asked whether the Act requires proportional allocation by age of the services and the benefits of federally assisted programs. Some believe that certain groups, especially the elderly, do not get their "fair share" of funds in certain programs or that certain program participation rates among age groups like the elderly are disproportionately low.

These final regulations do not require proportional program participation by age or the proportional allocation of funds by age. Discrimination has not been defined in this way in other non-discrimination regulations. However, disproportionate allocation of funds or program participation may be one of the elements which triggers an examination of whether age discrimination exists in the federally funded program or activity. If further inquiry is necessary, the recipient may show that the disparity in rates of participation, fund allocation, or services has nondiscriminatory causes. Comments on the NPRM suggested that there may be nondiscriminatory reasons which adequately explain the disproportionately low participation of the elderly in some programs.

3. *What Programs or Activities are "Established Under Authority of Any Law"?* The Age Discrimination Act exempts from coverage age distinctions contained in a program or activity "established under authority of any law" which provides benefits on the basis of age or in age related terms. Congress did not expressly indicate anywhere in the legislative history of the Act what it meant by the term "any law." The regulations must, nevertheless, define the phrase "established under authority of any

law" in order to determine which age distinctions are exempted by this provision of the Act.

The NPRM presented four options for interpreting the phrase "any law" and asked for comments on those or any other reasonable interpretations. The NPRM cited two overriding issues to be considered in determining the meaning of "any law" (a) whether to include age distinctions contained in regulations; and (b) whether to include age distinctions enacted by State and local legislative bodies.

The narrowest option interpreted "any law" to mean only Federal statutes. The broadest option intepreted "any law" to include Federal, State and local statutes and Federal, State and local regulations. Supporters of defining "any law" to mean only Federal statutes argued that any other interpretation seriously weakens the Act. Congress could not have intended to give discretion to State or local legislative bodies to exempt any age distinction from the coverage of the Act. To do so would be an abdication of Federal responsibility which defeats the purpose of the Act.

Those who argued that "any law" should mean Federal and State statutes argued that the Act should permit the States to use age in exercising their traditional power in such areas as defining the age of majority, controlling access to a driver's license, and regulating compulsory school attendance. On the other hand, extending this exemption to local statutes and ordinances would permit thousands of local jurisdictions to introduce age distinctions into the administration of Federal programs which would fatally weaken the Act.

Supporters of defining "any law" to mean Federal, State and local statutes and ordinances argued that there is no clear basis for limiting the interpretation of "any law" to Federal statutes. Congress rejected an amendment to the Act in 1978 which would have defined "any law" to mean Federal statutes. Furthermore, there is no basis for excluding local statutes and ordinances if State statutes are included in the definition. They argued that no case has been made that age discrimination occurs as a result of age distinctions in State and local statutes and ordinances and that beneficial age distinctions are enacted by State and local legislative bodies.

Defining "any law" to include all regulations had relatively little support. Some suggested defining "any law" to mean Federal statutes and regulations. Supporters of including regulations in the definition argued that regulations have the force and effect of law and should be included in the "any law" exemption. This position has been rejected on the grounds that it would permit administrators of federally funded programs to impose age distinctions which are not authorized by a legislative body. In addition, HEW does not believe that the language "established under authority of any law" necessarily includes regulations having the force and effect of law.

The final regulations define "any law" to mean Federal, State and local statutes and ordinances. The language of the statute, and the general lack of legislative history to justify any narrower interpretation of that language support the conclusion that Federal and State statutes, and statutes or ordinances enacted by general purpose, elected local governments should be exempt from coverage of the Act. This is particularly appropriate in the absence of any clear indication that age discrimination occurs as a result of State and local statutes. This definition of "any law" recognizes the authority of State and general purpose, elected local governments to enact statutes which condition benefits or participation on the basis of age.

Examples: "Established Under Authority of Any Law".

1. *Federal statutes.* The Adult Education Act (20 U.S.C. 1201–1213) is statutorily designed to provide services or instruction below college level for adults. The Act defines adults as individuals who have attained the age of 16. This limitation on participation in adult education programs is not covered by the Act. The Runaway Youth Program (42 U.S.C. 5701) authorized under the Juvenile Justice & Deliquency Prevention Act, awards grants for the development and/or strengthening of local facilities to address the immediate needs of runaway youth in a manner which is outside of the law enforcement and juvenile justice systems. The terms "runaway youth," "juveniles," and "young people" are used in the statute without further definition. Reasonable definitions of these terms would not be covered by the Act.

2. *State statutes.* Statutes setting age limitations on obtaining a driver's license or fixing age limits for compulsory school attendance are not covered by the Act.

3. *Local statutes or ordinances.* Age limitations on consuming alcoholic beverages or possessing firearms are not covered by the Act as long as these are adopted by an elected general purpose legislative body.

Note.—Any age distinction not exempted from coverage by the "any law" provision, may still qualify for an exception under another provision of the Act or these regulations.

4. *What are the Rules Against Age Discrimination?* Many commenters asked for clarification of the rules against age discrimination contained in § 90.12 of the regulations. Section 90.12 sets forth a general rule against age discrimination which is based on Section 303 of the Act, and then presents specific rules against age discrimination. These rules are limited by the exceptions contained in the Act and these regulations.

The general rule in § 90.12 reflects the language of the Act: except as provided in the Act and these regulations, ". . . no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance." It means that, unless sanctioned by one of the exceptions, recipients of Federal financial assistance may not, either directly or indirectly, do anything to exclude persons from their programs or activities on the basis of age. Nor may recipients do anything not sanctioned by one of the exceptions to deny or limit persons in their efforts to participate in federally funded programs or activities on the basis of their age. For example, a medical school may not exclude persons from admission solely because of their age.

The prohibition against age discrimination does not include an absolute prohibition against separate or different treatment on the basis of age. As a general rule, separate or different treatment which denies or limits services from, or participation in, a program receiving Federal financial assistance would be prohibited by these regulations. On the other hand, these regulations do not automatically invalidate the provision of services through separate or different treatment on the basis of age. Separate or different treatment necessary to normal operations or to the achievement of a statutory objective would qualify for an exception under these regulations.

Section 90.49 of these regulations contains language which affects the rules against discrimination in two important ways: a recipient may voluntarily act to overcome the effects of conditions which, in the past, have limited participation in a federally assisted program on the basis of age; and, a recipient may provide special benefits for children or the elderly if, by so doing, the recipient does not exclude others who are eligible from participating in the federally assisted program. As mentioned earlier, HEW does not believe that Congress meant to disturb the practices of recipients which provide special benefits to children or

the elderly. For example, reduced fares for children and for senior citizens on public transportation or on railways or airlines would qualify as a special benefit under § 90.49 of these regulations. The definition of who qualifies as "children" or "elderly" for purposes of receiving a special benefit will be left to the reasonable discretion of the recipients who voluntarily provide the benefit.

5. *What are the Statutory Exceptions to the Rules Against Age Discrimination?* a. *Definitions of Statutory Objective and Normal Operation.* Many commenters questioned the meaning, clarity, and interpretation of the statutory exceptions to the prohibition against age discrimination contained in the proposed rules §§ 90.14 and 90.15.

Two phrases, "normal operations" and "statutory objective" are used in these regulations in interpreting the Act's exceptions for explicit age distinctions (§ 90.14) and for the use of factors other than age (§ 90.15). Critical to an understanding of these statutory exceptions is the definition of "statutory objective" and the definition of "normal operation."

The NPRM stated that statutory objective would mean either: (1) any purpose of a program or activity expressly stated in a statute, or (2) any purpose of a program or activity expressly stated in a statute or reasonably inferred from its provisions or legislative history. Because legislative history is a broad concept and because statutory objectives will be used to justify the use of administratively imposed age distinctions or factors other than age which have a disproportionate effect, HEW believes that the term "statutory objective" should be construed to mean only expressly stated objectives.

The NPRM was silent about whether the term "statutory objective" referred to Federal statutes, or State statutes, or local statutes, or all statutes. HEW believes the definition of "any law" in § 90.3 and the definition of "statutory objective" in § 90.13 should be parallel. Therefore, the final regulations define "statutory objective" to mean "any purpose of a program or activity expressly stated in any Federal statute, State statute or local statute or ordinance adopted by an elected, general purpose legislative body."

The final regulations have not changed the definition of "normal operation." "Normal operation" continues to mean "the operation of a program or activity without significant changes that would impair its ability to meet its objectives." This definition of "normal operation" means that a recipient of Federal funds may not use the statutory exceptions to justify refusing to make changes in program operation because those changes disturb administrative routine or are inconvenient.

b. *The four-part test for determining when an explicit age distinction is necessary to normal program operations or necessary to achieve a statutory objective.* Section 90.14 establishes a four-part test for explicit age distinctions which are claimed to be necessary to the normal operation of a program or activity, or to the achievement of a statutory objective of a program or activity.

The NPRM provided that an action reasonably takes age into account as a factor necessary to the normal operation or the achievement of a statutory objective of a program or activity, if:

(a) Age is used as a measure or approximation of one or more other characteristics (e.g., maturity);

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity;

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) The other characteristic(s) are difficult, costly, or otherwise impractical to measure directly.

The final regulations retain the four-part test, with some changes. The word "and" has been added after parts (a) and (b) to clarify the intent that an age distinction must meet all four parts in order to qualify for an exception. The reference to "maturity" has been deleted as an example of a characteristic for which age may be an approximation, because commenters felt that the term was too vague and did not illustrate what was meant in the test. The first part of the test in § 90.14 refers to a situation in which a program uses an age distinction as an indicator of some other characteristic, such as susceptibility to disease.

The third change occurs in part (d) of the test. The final regulations no longer contain a reference to cost or difficulty; however, part (d) now requires that the characteristics for which age is an approximation must be impractical to measure directly on an individual basis.

Thus, to qualify for an exception under § 90.14, all four of the following conditions must be met: (a) the age distinction in question must be used as an indicator or measure of some other (non-age) characteristic; (b) the *other* characteristic must be necessary for "normal operation" or for the achievement of a "statutory objective"; (c) the other characteristic must be capable of being reasonably approximated by age; and (d) the other characteristic must be impractical to measure directly on an individual basis.

The test set out in § 90.14 is designed to require careful scrutiny of age distinctions in programs receiving Federal financial assistance. It is not intended to serve as a basis for permitting continued use of age distinctions for the sake of administrative convenience if this results in denial or limitation of services on the basis of age.

HEW encourages recipients to apply age distinctions flexibly; that is, to permit a person, upon a proper showing of the necessary characteristic to participate in the activity or program even though he or she would otherwise be barred by the age distinction. Other things being equal, an age distinction is more likely to qualify under one of the statutory exceptions if it does not automatically bar all those who do not meet the age requirements.

Examples:* "Necessary to the Normal Operation of the Program."

1. A youth organization receiving Federal financial assistance imposes a maximum age limitation on membership. The organization claims that it has as an objective, the training, education and character development of youth. The use of a maximum age limit *is necessary* to the normal operation of the recipient's program because:

(a) Age is used as a measure of the need for training, education, and character building experiences preparing for the assumption of adult responsibility; and

(b) The need for the service must be measured in order for the youth organization's objective to be met; and

(c) Age is highly related to the need for this service and is thus a reasonable measure of it; and

(d) It is not practical to measure this need on an individual basis (i.e., while some persons over the age limit might benefit from the service and some persons under the age limit might not need it, there is no practical way to identify them on an individual basis).

2. A medical school receiving Federal financial assistance generally does not admit anyone over 35 years of age, even though this results in turning away highly qualified applicants over 35.

The school claims that it has an objective, the teaching of qualified medical students who, upon graduation, will practice as long as possible. The school believes that this objective requires it to select younger applicants over older ones.

The use of such an age distinction *is not necessary* to the normal operation of the

*The examples illustrate general situations in which the regulations are applied to hypothetical recipients.

recipient's program because it does not meet the requirement of § 90.14(b).

Age of the applicant may be a reasonable measure of a non-age characteristic (longevity of practice). This characteristic may be impractical to measure directly on an individual basis. Nevertheless, achieving a high average longevity of practice for its graduates cannot be considered a program objective for a medical school within the meaning of the Act. The "normal operation" exception is not intended to permit a recipient to use broad notions of efficiency or cost-benefit analysis to justify exclusion from a program on the basis of age. The basic objectives of the medical school involve training competent and qualified medical school graduates. These objectives are not impaired if the average length its graduates practice medicine is lowered by a fraction of a year (or even more) by the admission of qualified applicants over 35 years of age.

Examples:* "Necessary to the Achievement of a Statutory Objective."

1. Applications for grants for disease control programs under the Public Health Service Act can only be approved if they "(B) contain assurances satisfactory to the Secretary that . . . the applicant will conduct such programs as may by necessary (i) to develop an awareness in those persons in the area served by the applicant who are most susceptible to the disease or conditions . . . of appropriate preventive behavior and measures (including immunization) and diagnostic procedures for such disease, and (ii) to facilitate their access to such measures and procedures," (42 U.S.C. 247b).

Under the test of § 90.14, *it is necessary* to the achievement of this explicit statutory objective to give priority in immunization to age categories most at risk to the disease in question because:

(a) Age is being used as a measure of susceptibility to a disease; and

(b) Susceptibility to disease must be measured for the statutory objective to be met; and

(c) Age is a reasonable measure of susceptibility to the particular disease; and

(d) Susceptibility to the disease is impractical to measure directly on an individual basis.

2. The purpose of the Adult Education Act (20 U.S.C. 1201 *et seq.*) is to provide education that will "enable all adults to continue their education . . . and . . . enable them to become more employable, productive, and responsible citizens." (20 U.S.C. 1201.) The Act defines an adult as "any individual who has attained the age of 16." (20 U.S.C. 1201(a).)

A recipient limits participation in its adult education program to adults under 35 on the grounds that this is necessary to achieve the explicit Adult Education Act objective of increasing employability, productivity, and responsibility.

It *is not necessary* to the achievement of this statutory objective to limit participation to those under 35. This age limitation fails at least two elements of the four-part test set out in § 90.14. Employability, productivity and responsibility need not be measured in order to meet the statutory objective of making adults more employable, productive or responsible because the objective is comparative rather than absolute. The statute only requires an effort to improve these characteristics in an individual, not to maximize the degree of improvement.

These characteristics have no demonstrable correlation with age and cannot be reasonably measured by the use of age (§ 90.14(c)).

Whether or not these characteristics can practically be measured directly on an individual basis need not be considered, since the characteristics do not have to be measured in order to meet the statutory objective.

c. *Use of Reasonable Factors Other than Age.* Section 90.15 of the NPRM set out four options to characterize the relationship between a factor other than age that may have a discriminatory effect and the normal operation of a program or the achievement of a statutory objective. Those four options were rational, direct, substantial, and necessary. Commenters disagreed about what relationship a factor other than age should bear to the normal operation or the statutory objective of a program or activity.

The final regulations require that a factor other than age bear a direct and substantial relationship to the normal operation of the statutory objective of a program or activity. The "rational" option, which was equated in the NPRM with the rational basis test used under the equal protection clause of the Fourteenth Amendment, has been rejected on the grounds that many serious discriminatory effects created by factors other than age would be likely to survive a rational basis level of scrutiny.

The "necessary" option has been rejected because it requires a test which is not sufficiently flexible to deal with the variety of factors other than age and the variation in facts and circumstances that contribute to whether those factors other than age are "reasonable."

The regulations adopt the "direct and substantial" standard because it provides the appropriate flexibility and, at the same time, avoids the weaknesses inherent in the "rational" standard. Use of the "direct and substantial" standard means that use of factors other than age must be carefully examined in light of the individual facts and circumstances surrounding their use. This examination will determine whether use of the factor other than age is a sufficiently effective method of achieving a worthwhile program purpose to justify limiting or denying services or participation to adversely affected persons.

Examples:* "Reasonable Factors Other Than Age."

1. A federally assisted training program uses a physical fitness test as a factor for selecting participants to train for a certain job. The job involves frequent heavy lifting and other demands for physical strength and stamina. Even though older persons might fail the test more frequently than younger persons, the physical fitness test measures a characteristic that is *directly and substantially* related to the job for which persons are being trained and is, therefore, permissible under the Act.

2. The same program referred to in (1) above uses the same physical fitness test to select participants for a training program for clerical work. It claims that persons who pass the test are likely to do better work than those who are unable to pass the test. Even if this were true, the relationship between the requirements of the test and the requirements of the type of job for which training is being offered *is not direct and substantial.* It is so tenuous and limited that it will not justify the test's age discriminatory effect. In this situation, use of the test would violate the Act.

6. *Cost/Benefit Analysis.* The NPRM raised the issue of whether cost-benefit considerations can justify the use of age distinctions or factors other than age. A majority of commenters expressed support for the NPRM position that a cost-benefit consideration by itself cannot be the sole justification for an exception under § 90.14 and § 90.15. Others, however, opposed any use of cost-benefit analysis in the administration of federally assisted programs.

The use of an explicit age distinction in the operation of a federally assisted program will have to be justified as necessary to the normal operation of the program or to the achievement of a statutory objective. That is, the explicit age distinction will have to meet the four part test of § 90.14 and cannot be disqualified or justified because it reflects a cost-benefit consideration. Use of a factor other than age will have to meet the test established in § 90.15 and cannot be disqualified or justified because it reflects a cost-benefit consideration. The scrutiny afforded age distinctions and factors other than age under these regulations should have the effect of screening out discriminatory cost-benefit considerations.

7. *Relationship Between General and Age-Targeted Programs.* Another major issue in the NPRM concerned similar services provided by both general and

*The examples illustrate general situations in which the regulations are applied to hypothetical recipients.

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age-targeted programs. The question was whether the existence of an age-targeted program in any way relieved a general program of its obligation to serve the age group eligible for the age-targeted program.

Many commenters expressed the view that the general program was not relieved in any way of its obligation to serve everyone regardless of age. They reasoned that: the age targeted program was intended to supplement service for the eligible population, not to replace the services provided by the general program; an age-targeted program recognizes the special or additional needs of an age group, so that any restriction on the availability of services in a general program based solely on the existence of an age-targeted program would be discriminatory; administrators should not be given discretion to limit participation on the basis of age in a general program which Congress created to serve all ages.

Some commenters did say, however, that there are occasions when a general program should be permitted to deny services to an age group which is served elsewhere. They reasoned that the general programs can then focus on those in need who are not being served elsewhere; services offered in a general program should be based on the needs of the community as a whole and should take into account what is offered elsewhere; to require a general program to spread its limited resources to all age groups, regardless of the availability of similar services, would weaken the quality of the services provided. There was no support for the view that the general program's obligation was unconditionally lessened by the existence of the age targeted program.

The final regulations continue the policy expressed in the NPRM that, for a general program, any deviation from a policy of serving all eligible persons regardless of age that results in a denial or limitation of service on the basis of age is only permissible if it meets one of the statutory exceptions under § 90.14 Or § 90.15.

A general program can focus its services by referring persons to existing age targeted programs only if those actions do not result in the denial of services to the individual or in the provision of lesser or different services. However, HEW is persuaded that there are situations when referral to an age targeted program does not result in a denial or limitation of services. For example, a program which serves all ages may be aware of an age targeted program which, because of its specialization, offers better services to that age group. A general program may have a waiting list of applicants while a similar age targeted program has space available. In situations like these, a general program could refer an applicant to the age targeted program provided that it had sufficiently well established relationship with the age targeted program to assure that the person referred actually received the service sought.

8. *Mediation of Age Discrimination Complaints.* The NPRM proposed that complaints of age discrimination be subject to mediation after initial screening by the Federal agency. The NPRM also proposed that participation in mediation be mandatory for both complainant and recipient and that administration of the mediation process be centralized in one government agency, the Federal Mediation and Conciliation Service (FMCS). These provisions of the NPRM have been kept in the final regulations.

While most commenters supported the proposed use of mediation, some commenters questioned the appropriateness of requiring mediation as the first step in resolving an age discrimination complaint. They argued that mediation promotes inappropriate bargaining over civil rights, that mediation may jeopardize the rights of complainants, that not every complaint is suitable for mediation, that mediation introduces a new and different step in the complaint resolution process which will be unnecessarily confusing to complainants and recipients.

HEW continues to believe that the mediation process is an important innovation in resolution of age discrimination complaints. Mediation is an effort to provide faster and more creative resolution of complaints through informal methods of dispute resolution. Attempts to reach a mediated settlement of the complaint must be completed in the first 60 days after the complaint is received. While mediation does represent a new step in the complaint resolution process, the experience in resolving complaints under other civil rights statutes has been that the 60 days set aside for mediation will not significantly delay the enforcement process.

Experience with mediation in other areas indicates that even the most intransigent parties can arrive at a mutually satisfactory resolution of their dispute. Consequently, HEW believes it is desirable to require that mediation be attempted in all complaints. Mediation does not necessarily mean that the two parties to the dispute must meet face to face; each may meet separately with the mediator. Since the mediated settlement must be satisfactory to both parties, neither the complainant nor the recipient is compelled to settle the complaint. Since the cost of the mediator will be paid by the Federal government, the financial burden on complainants and recipients will be minimal. HEW believes that the ADA offers a unique opportunity to try this innovative approach to the resolution of disputes.

These regulations require that the management of the mediation process be centralized in one agency, designated by the Secretary of HEW. The FMCS will be that agency. Commenters critical of this decision questioned the wisdom of introducing a new agency into the civil rights enforcement process. Some suggested that each agency should manage its own mediation process, to permit the use of staff who would be more familiar with the program and problems of the Federal agency receiving the complaint.

HEW believes that the benefits to be realized by centralizing the management of the mediation process are substantial and that the FMCS is the appropriate agency for the job. The use of a single agency to manage the mediation process assures that uniform standards will be used in the recruitment and training of mediators, that the training will be centralized, that consistent procedures will be followed in the mediation, and that there can be a comprehensive and coherent evaluation of the process as part of the 30 month review of the effectiveness of these regulations. While the use of the FMCS does introduce a new agency into civil rights enforcement, one of the key elements in mediation is that both sides have confidence that the mediator is an independent third party. HEW believes that mediation of age discrimination complaints has a better chance to succeed if the mediator is not part of the staff of a Federal agency responsible for enforcing the Age Discrimination Act. The FMCS, which has an established reputation for mediating disputes, will draw on some of its experienced staff and will recruit and train a cadre of community based mediators who will work on age discrimination complaints.

After 30 months, HEW will evaluate the mediation process in accordance with § 90.61 of these regulations. The process will be used, revised or restructured as indicated by the results of that review.

The Department of Health, Education, and Welfare adds Part 90 to Title 45 of the Code of Federal Regulations as set forth below.

Dated: June 5, 1979.

Joseph A. Califano Jr.,

Secretary, Department of Health, Education, and Welfare.

The Department of Health, Education, and Welfare adds Part 90 to Title 45 of the Code of Federal Regulations as set forth below:

PART 90—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—General

Subpart B—What is Age Discrimination?

(Standards for Determining Discriminatory Practices)

Subpart C—What are the Responsibilities of the Federal Agencies?

Subpart D—Investigation, Conciliation and Enforcement Procedures

Subpart E—Future Review of Age Discrimination Regulations

Authority: *Age Discrimination Act of 1975, 42 U.S.C. 6101 et seq.*

Subpart A—General

§ 90.1 What is the purpose of the Age Discrimination Act of 1975?

The Age Discrimination Act of 1975, as amended, is designed to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act also permits federally assisted programs and activities, and recipients of Federal funds, to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and these regulations.

§ 90.2 What is the purpose of these regulations?

(a) The purpose of these regulations is to state general, government-wide rules for the implementation of the Age Discrimination Act of 1975, as amended, and to guide each agency in the preparation of agency-specific age discrimination regulations.

(b) These regulations apply to each Federal agency which provides Federal financial assistance to any program or activity.

§ 90.3 What programs and activities does the Age Discrimination Act of 1975 cover?

(a) The Age Discrimination Act of 1975 applies to any program or activity receiving Federal financial assistance, including programs or activities receiving funds under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221 *et seq.*).

(b) The Age Discrimination Act of 1975 does not apply to:

(1) An age distinction contained in that part of a Federal, State of local statute or ordinance adopted by an elected, general purpose legislative body which:

(i) Provides any benefits or assistance to persons based on age; or

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except for any program or activity receiving Federal financial assitance for public service employment under the Comprehensive Employment and Training Act of 1974 (CETA), (29 U.S.C. 801 *et seq.*).

§ 90.4 How are the terms in these regulations defined?

As used in these regulations, the term:

"Act" means the Age Discrimination Act of 1975, as amended, (Title III of Public Law 94–135).

"Action" means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

"Age" means how old a person is, or the number of elapsed years form the date of a person's birth.

"Age distinction" means any action using age or an age-related term.

"Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult," "older persons," but not "student").

"Agency" means a Federal department or agency that is empowered to extend financial assistance.

"Federal financial assistance" means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(a) Funds;

(b) Services of Federal personnel; or

(c) Real and personal property or any interest in or use of property, including:

(1) Transfers or leases of property for less than fair market value or for reduced consideration; and

(2) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government.

"Recipient" means any State or its political subdivision, any instrumentality of a State or its political sub-division, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes the ultimate beneficiary of the assistance.

"Secretary" means the Secretary of the Department of Health, Education, and Welfare.

"United States" means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, the Trust Territory of the Pacific Islands, the Northern Marianas, and the territories and possessions of the United States.

Subpart B—What is Age Discrimination?

Standards for Determining Discriminatory Practices

§ 90.11 Purpose of this subpart.

The purpose of this subpart is to set forth the prohibitions against age discrimination and the exceptions to those prohibitions.

§ 90.12 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in sections 90.14, and 90.15 of these regulations.

(a) *General rule:* No person in the United states shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

(b) *Specific rules:* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program or activity receiving Federal financial assistance, or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

§ 90.13 Definitions of "normal operation" and "statutory objective."

For purposes of sections 90.14, and 90.15, the terms "normal operation" and "statutory objective" shall have the following meaning:

(a) "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(b) "Statutory objective" means any purpose of a program or activity expressly stated in any Federal statute, State statute, or local statute or ordinance adopted by an elected, general purpose legislative body.

§ 90.14 Exceptions to the rules against age discrimination. Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action, otherwise prohibited by section 90.12, if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(a) Age is used as a measure or approximation of one or more other characteristics; and

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) The other characteristic(s) are impractical to measure directly on an individual basis.

§ 90.15 Exceptions to the rules against age discrimination. Reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by section 90.12 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 90.16 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in sections 90.14 and 90.15 is on the recipient of Federal financial assistance.

Subpart C—What are the Responsibilities of the Federal Agencies?

§ 90.31 Issuance of regulations.

(a) The head of each agency which extends Federal financial assistance to any program or activity shall publish proposed and final age discrimination regulations in the **Federal Register** to:

(1) Carry out the provisions of section 303 of the Age Discrimination Act of 1975; and

(2) Provide for appropriate investigative, conciliation, and enforcement procedures.

(b) Each agency shall publish its proposed agency age discrimination regulations no later than 90 days after the publication date of the final general, government-wide age discrimination regulations.

(c) Each agency shall submit its final agency regulations to HEW for review no later than 120 days after publication of proposed agency age discrimination regulations.

(d) Final agency age discrimination regulations shall be consistent with these general, government-wide age discrimination regulations and shall not be published until the Secretary approves them.

(e) Each agency shall include in its regulations a provision governing the operation of an alternate funds disbursal procedure as described in section 90.48 of these regulations.

(f) Each agency shall publish an appendix to its final age discrimination regulations containing a list of each age distinction provided in a Federal statute or in regulations affecting financial assistance administered by the agency.

§ 90.32 Review of agency policies and administrative practices.

(a) Each agency shall conduct a review of age distinctions it imposes on its recipients by regulations, policies, and administrative practices. The purpose of this review is to identify how age distinctions are used by each Federal agency and whether those age distinctions are permissible under the Act and implementing regulations.

(b) No later than 12 months from the date the agency published its final regulations, the agency shall publish, for public comment, a report in the **Federal Register** containing:

(1) The results of the review conducted under paragraph (a) of this section;

(2) A list of the age distinctions contained in regulations which are to be continued;

(3) The justification under the requirements of the Act and these regulations for each age distinction to be continued;

(4) A list of the age distinctions not contained in regulations but which will be adopted by regulation under the Administrative Procedure Act using the notice and comment procedures specified in 5 U.S.C. 553; and

(5) A list of the age distinctions to be eliminated.

(c) Beginning with the effective date of an agency's final regulations, the agency may not impose a new age distinction unless the age distinction is adopted by regulation under the Administrative Procedure Act using the notice and comment procedures specified in 5 U.S.C. 553.

(d) Beginning 12 months after the publication of its age discrimination regulations, an agency may not continue

an existing age distinction, unless the age distinction has already been adopted by regulation or is adopted by regulation under the Administrative Procedure Act using the notice and comment procedures specified in 5 U.S.C. 553.

§ 90.33 Interagency cooperation.

Where two or more agencies provide Federal financial assistance to a recipient or class of recipients, the Secretary may designate one of the agencies as the sole agency for all compliance and enforcement purposes with respect to those recipients, except for the ordering of termination of funds and the notification of the appropriate committees of Congress.

§ 90.34 Agency reports.

Each agency shall submit to the Secretary not later than December 31 of each year, beginning in 1979, a report which:

(a) Describes in detail the steps taken during the preceding fiscal year to carry out the Act; and

(b) Contains data on the frequency, type, and resolution of complaints and on any compliance reviews, sufficient to permit analysis of the agency's progress in reducing age discrimination in programs receiving Federal financial assistance from the agency; and

(c) Contains data directly relevant to the extent of any pattern or practice of age discrimination which the agency has identified in any programs receiving Federal financial assistance from the agency and to progress toward eliminating it; and

(d) Contains evaluative or interpretative information which the agency determines is useful in analyzing agency progress in reducing age discrimination in programs receiving Federal financial assistance from the agency; and

(e) Contains whatever other data the Secretary may require.

Subpart D—Investigation, Conciliation and Enforcement Procedures

§ 90.41 What is the purpose of this Subpart?

This subpart sets forth requirements for the establishment of compliance, investigation, conciliation, and enforcement procedures by agencies which extend Federal financial assistance.

§ 90.42 What responsibilities do recipients and agencies have generally to ensure compliance with the Act?

(a) A recipient has primary responsibility to ensure that its programs and activities are in compliance with the Age Discrimination Act and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford access to its records to an agency to the extent required to determine whether it is in compliance with the Act.

(b) An agency has responsibility to attempt to secure recipient compliance with the Act by voluntary means. This may include the use of this services of appropriate Federal, State, local, or private organizations. An agency also has the responsibility to enforce the Age Discrimination Act when a recipient fails to eliminate violations of the Act.

§ 90.43 What specific responsibilities do agencies and recipients have to ensure compliance with the Act?

(a) *Written notice, technical assistance, and educational materials.* Each agency shall: (1) Provide written notice to each recipient of its obligations under the Act. The notice shall include a requirement that where the recipient initially receiving funds makes the funds available to a sub-recipient, the recipient must notify the sub-recipient of its obligations under the Act.

(2) Provide technical assistance, where necessary, to recipients to aid them in complying with the Act.

(3) Make available educational materials setting forth the rights and obligations of beneficiaries and recipients under the Act.

(b) *Self-evaluation.* (1) Each agency shall require each recipient employing the equivalent of 15 or more full time employees to complete a written self-evaluation of its compliance under the Act within 18 months of the effective date of the agency regulations.

(2) Each recipient's self-evaluation shall identify and justify each age distinction imposed by the recipient.

(3) Each recipient shall take corrective and remedial action whenever a self-evaluation indicates a violation of the Act.

(4) Each recipient shall make the self-evaluation available on request to the agency and to the public for a period of 3 years following its completion.

(c) *Complaints.*—(1) *Receipt of complaints.* Each agency shall establish a complaint processing procedure which includes the following:

(i) A procedure for the filing of complaints with the agency;

(ii) A review of complaints to assure that they fall within the coverage of the Act and contain all information necessary for further processing;

(iii) Notice to the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure; and

(iv) Notice to the complainant and the recipient (or their representatives) of their right to contact the agency for information and assistance regarding the complaint resolution process.

(2) *Prompt resolution of complaints.* Each agency shall establish procedures for the prompt resolution of complaints. These procedures shall require each recipient and complainant to participate actively in efforts toward speedy resolution of the complaint.

(3) *Mediation of complaints.* Each agency shall prompty refer all complaints which fall within the coverage of the Act to a mediation agency designated by the Secretary.

(i) The referring agency shall require the participation of the recipient and the complainant in the mediation process, although both parties need not meet with the mediator at the same time.

(ii) If the complainant and recipient reach a mutually satisfactory resolution of the complaint during the mediation period, they shall reduce the agreement to writing. The mediator shall send a copy of the settlement to the referring agency. No further action shall be taken based on that complaint unless it appears that the complainant or the recipient is failing to comply with the agreement.

(iii) Not more than 60 days after the agency receives the complaint, the mediator shall return a still unresolved complaint to the referring agency for initial investigation. The mediator may return a complaint at any time before the end of the 60 day period if it appears that the complaint cannot be resolved through mediation.

(iv) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the agency appointing the mediator.

(4) *Federal initial investigation.* Each agency shall investigate complaints unresolved after mediation or reopened because of a violation of the mediation agreement. As part of the initial investigation, the agency shall use informal fact finding methods including joint or individual discussions with the complainant and the recipient to establish the facts, and, if possible,

resolve the complaint to the mutual satisfaction of the parties. The agency may seek the assistance of any involved State program agency.

(5) *Formal investigation, conciliation, and hearing.* If the agency cannot resolve the complaint during the early stages of the investigation, it shall:

(i) Complete the investigation of the complaint.

(ii) Attempt to achieve voluntary compliance satisfactory to the agency, if the investigation indicates a violation.

(iii) Arrange for enforcement as described in section 90.47, if necessary.

§ 90.44 Compliance reviews.

(a) Each agency shall provide in its regulations that it may conduct compliance reviews, pre-award reviews, and other similar procedures which permit the agency to investigate, and correct, violations of the Act without regard to its procedures for handling complaints.

(b) If a compliance review or pre-award review indicates a violation of the Act, the agency shall attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, the agency shall arrange for enforcement as described in section 90.47.

§ 90.45 Information requirements.

Each agency shall provide in its regulations a requirement that the recipient:

(a) Provide to the agency information necessary to determine whether the recipient is in compliance with the Act; and

(b) Permit reasonable access by the agency to the books, records, accounts, and other recipient facilities and sources of information to the extent necessary to determine whether a recipient is in compliance with the Act.

§ 90.46 Prohibition against intimidation or retaliation.

Each agency shall provide in its regulations that recipients may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act; or

(b) Cooperates in any mediation, investigation, hearing, or other part of the agency's investigation, conciliation, and enforcement process.

§ 90.47 What further provisions must an agency make in order to enforce its regulations after an investigation indicates that a violation of the act has been committed?

(a) Each agency shall provide for enforcement of its regulations through:

(1) Termination of a recipient's Federal financial assistance under the program or activity involved where the recipient has violated the Act or the agency's regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or the agency's regulations.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency which will have the effect of correcting a violation of the Act or implementing regulations.

(b) Any termination under section 90.47(a)(1) shall be limited to the particular recipient and particular program or activity receiving Federal financial assistance or portion thereof found to be in violation of the Act or agency regulations. No termination shall be based in whole or in part on a finding with respect to any program or activity which does not receive Federal financial assistance.

(c) No action under paragraph (a) of this section may be taken until:

(1) The head of the agency involved has advised the recipient of its failure to comply with the Act or the agency's regulations and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the head of the agency involved has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the Federal program or activity involved. A report shall be filed whenever any action is taken under paragraph (a) of this section.

(d) An agency may defer granting new Federal financial assistance to a recipient when termination proceedings under section 90.47(a)(1) are initiated.

(1) New Federal financial assistance includes all assistance administered by or through the agency for which an application or approval, including renewal or continuation of existing activities, or authorization of new activities, is required during the deferral period. New Federal financial assistance does not include assistance approved prior to the beginning of termination proceedings or to increases in funding as a result of changed computation of formula awards.

(2) A deferral may not begin until the recipient has received a notice of opportunity for a hearing under section 90.47(a)(1). A deferral may not continue for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the agency. A deferral may not continue for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

§ 90.48 Alternate funds disbursal procedure.

When an agency withholds funds from a recipient under its regulations issued under section 90.31, the head of the agency may disburse the withheld funds so directly to any public or non-profit private organization or agency, or State or political subdivision of the State. These alternate recipients must demonstrate the ability to comply with the agency's regulations issued under this Act and to achieve the goals of the Federal statue authorizing the program or activity.

§ 90.49 Remedial and affirmative action by recipients.

(a) Where a recipient is found to have discriminated on the basis of age, the recipient shall take any remedial action which the agency may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, both recipients may be required to take remedial action.

(b) Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

(c) If a recipient operating a program which serves the elderly or children in addition to persons of other ages, provides special benefits to the elderly or to children the provision of those benefits shall be presumed to be voluntary affirmative action provided that it does not have the effect of excluding otherwise eligible persons from participation in the program.

§ 90.50 Exhaustion of administrative remedies.

(a) The agency shall provide in its regulations that a complainant may file a civil action following the exhaustion of adminstrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and the agency has made no finding with regard to the complaint; or

(2) The agency issues any finding in favor of the recipient.

(b) If either of the conditions set forth in § 90.50(a) is satisfied the agency shall:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right, under section 305(e) of the Act, to bring a civil action for injunctive relief that will effect the purposes of the Act; and

(3) Inform the complainant:

(i) That a civil action can only be brought in a United States district court for the district in which the recipient is found or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that these costs must be demanded in the complaint;

(iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Secretary, the Attorney General of the United States, the head of the granting agency, and the recipient;

(iv) That the notice shall state: the alleged violation of the Act; the relief requested; the court in which the action will be brought; and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That no action shall be brought if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

Subpart E—Future Review of Age Discrimination Regulations

§ 90.61 Review of general regulations.

The Secretary shall review the effectiveness of these regulations in securing compliance with the Act. As part of this review, 30 months after the effective date of these regulations, the Secretary shall publish a notice of opportunity for public comment on the effectiveness of the regulations. The Secretary will assess the comments and publish the results of the review and assessment in the Federal Register.

§ 90.62 Review of agency regulations.

Each agency shall review the effectiveness of its regulations in securing compliance with the Act. As part of this review, 30 months after the effective date of its regulations, each agency shall publish a notice of opportunity for public comment on the effectiveness of the agency regulations. Each agency shall assess the comments and publish the results of the review in the Federal Register.

Note.—The following comment analysis will not appear in the Code of Federal Regulations.

Comment Analysis

The following comments suggestions and criticisms were made at public hearings or submitted in writing in response to the proposed rules. After the summary of each comment, a response is set forth stating the changes which have been made in the regulations or the reasons why no change was deemed necessary or appropriate. The comments are grouped according to sections of the proposed rules and are arranged in sequence.

Subpart A—General

§ 90.1 *What is the purpose of the Age Discrimination Act of 1975?*

§ 90.1 *Exclusive protection for the elderly.*

Comment: A number of commenters stated that Congress intended the ADA to protect the elderly exclusively or to a greater extent than other age groups. These commenters cited the fact that the ADA is part of the Older Americans Act and that most of the debate on the Act concerned discrimination against the elderly.

Response: The House/Senate Conference Committee report is clear in stating that the ADA applies to persons of all ages. The regulations do not, therefore, limit protection to the elderly or to any other age group. HEW does not believe that this interpretation of the coverage of the Act will in any way diminish protection of the elderly.

§ 90.1 *Reference to statutory exceptions*

Comment: Several commenters were concerned specifically about the second sentence in § 90.1 of the NPRM which stated that the ADA permits the use of certain age distinctions and factors other than age. They felt the sentence weakened the intent of the ADA by emphasizing that some age distinctions are permitted.

Response: HEW agrees that the proposed wording may have created a wrong impression. HEW has modified the sentence to serve the intended purpose of informing the reader, early in the regulations, that the ADA specifically allows certain age distinctions.

§ 90.3 *What programs and activities does the Age Discrimination Act of 1975 cover?*

§ 90.3(b)(1) *"Any law" exemption.*

Comment: Many commenters responded to the issue presented in the NPRM of how "any law" should be interpreted. Although a number of commenters stated that "any law" should be interpreted to mean either Federal, State and local statutes and regulations, or Federal, State and local statutes, the majority of commenters favored either Federal and State statutes, or Federal statutes only. A small number of commenters supported an interpretation of Federal statutes and Federal regulations.

Response: A discussion of the four options (presented in the NPRM) for interpreting "any law", the commenters' reasons for supporting one of the options, and HEW's final choice appears in the preamble to these regulations.

§ 90.3(b)(2) *Coverage of employment practices.*

Comment: Many commenters discussed employment practices. Some requested clarification of the distinction between the ADA and Age Discrimination in Employment Act of 1967 (ADEA), which only covers persons between 40 and 70 years of age. These commenters were uncertain if persons under 40 or over 70 were covered under the ADA. Although the commenters recognized that CETA public service employment is covered by the ADA, they were concerned that the ADA regulations fail to reach other types of employment.

A few commenters supported the NPRM position that the ADA covers programs which are both financial assistance and employment, like the College Work Study Program and the Work Incentive Program. Many commenters suggested that mandatory retirement ages be prohibited.

Response: HEW has made no change in the text of the regulations. Section 304(c)(1) of the ADA excludes employment practices from coverage, except for CETA-funded public service employment. The final regulations continue to apply only to programs that are both employment and Federal financial assistance, for example: the College Work Study Program. Other types of employment and employment practices, including mandatory retirement ages, clearly are not covered by the ADA and are not addressed in these regulations.

The ADEA, which the Equal Employment Opportunity Commission (EEOC) will administer beginning July 1, 1979, is the statute that addresses age discrimination in employment. However, the ADEA applies only to persons between the ages of 40 and 70.

§ 90.4 *How are the terms in these regulations defined?*

§ 90.4 *Definition for the term United States.*

Comment: Several commenters questioned whether the regulations applied to *territories.* The proposed rules defined the word "recipient" in terms of a State or its political subdivision, but did not mention territory.

Response: HEW has added *"United States"* to the definitions and has defined United States to include the territories.

This is consistent with the regulations implementing Title VI of the Civil Rights Act of 1964 (45 CFR Part 80) which define United States to include territory.

§ 90.4 *Definition of other terms.*

Comment: A few commenters suggested that the word *action* be defined to include the failure to take an action. Other commenters suggested that additional terms should be defined in this section, including *benefits* or *assistance, discriminate, undersirable age distinction, person, program or activity.* Commenters also suggested additions or changes to the definitions of *Federal financial assistance* and *recipient.*

Response: HEW has not changed the definition of *action.* A failure to act is an action and is covered by the definition. Many of the definitions including *Federal financial assistance* and *recipient* are designed to

coincide with the definitions in other civil rights regulations (covering prohibitions against race, sex, and handicap discrimination). HEW believes that definitions appearing in more than one of the civil rights regulations, should be consistent with one another.

HEW believes that the regulations are sufficiently clear concerning the meaning of the suggested terms and that further additions to the definition section would not add to the clarity of the regulations. The phrase *cooperative agreement* has been added to the definition of Federal financial assistance to reflect another type of assistance.

Subpart B—What is Age Discrimination? (Standards for Determining Discriminatory Practices)

§ 90.13 *Definitions of "normal operation" and "statutory objective."*

§ 90.13(a) *Definition of normal operation.*

Comment: Several commenters supported the NPRM definition. Several other commenters stated that it was either unclear or too broad. Suggestions for making the definition clearer included the following: explain how the term will apply to new operations; define what constitutes a significant change; define how long a program's ability to meet its objectives must be impaired; and define how the program objectives should be determined. Suggestions for restricting the definition included: limiting the "normal operation" to a statutory objective; requiring that the operation be appropriate and not for administrative ease; or requiring that a change must impair substantially the program's achievement of a statutory objective.

Response: HEW has not changed the definition of "normal operation." The existing definition provides other governmental agencies flexibility in applying the definition to their own programs which receive Federal financial assistance. Since there is a wide variation in federally funded programs, HEW does not want to restrict other agencies from refining the definition of "normal operation" to suit the characteristics of their individual programs.

"Normal operation" is defined in a way that does not require a program to make any change in its operation so significant as to impair achievement of its objectives. At the same time, a recipient would be required to make a change that merely disturbs administrative routine or causes administrative inconvenience.

§ 90.13(b) *Definition of statutory objective.*

Comment: A number of commenters stated that the definition of "statutory objective" should include reasonable inferences from its provisions or legislative history.

Several commenters suggested that a statutory objective must be expressly stated in the statute. They feared that anything may be inferred from a statute or its legislative history.

A few commenters stated that the regulations should contain a discussion of the relationship between the normal operation and a statutory objective.

Another commenter stated that a statutory objective should be limited to a Federal statutory objective. One commenter stated that no definitions were necessary since § 90.14 provided a "functional way" of interpreting the terms.

Response: HEW has changed the definition of "statutory objective" to clarify that it refers to the objective of any applicable Federal, State or local statute. The final regulations provide that a "statutory objective" means expressly stated objectives of Federal, State or local statutes. HEW believe that the definitions of "statutory objective" and "any law" should coincide.

Since "legislative history" is a broad concept, and because the "statutory objective" exception will be used to justify the use of administratively imposed age distinctions or factors other than age which have a disproportionate effect, HEW believes that "statutory objective" should be construed to mean only the expressly stated objectives of any Federal, State or local statute which affects the provision of Federal financial assistance.

§ 90.14 *Exceptions to the rules against age discrimination. Normal operation or statutory objectives of any program or activity.*

§ 90.14 *General use of this exception.*

Comment: A large number of commenters stated that either age distinctions should not be permitted or should be permitted only under narrow circumstances. Several of these commenters cited the Civil Rights Commission's conclusion that factors other than age are nearly always available and should be used. Commenters suggested restricting the use of age distinctions to children's programs; situations where individual or public safety is concerned; or situations where alternative characteristics are not available.

Response: The ADA makes specific provisions for exceptions to the general prohibition against the use of age distinctions. Section 304(b)(1)(A) of the ADA permits an exception for actions which reasonably take into account age as a factor necessary to the normal operation or the achievement of a statutory objective of a program or activity. Section 304(b)(1)(B) permits a further exception from coverage under the Act for reasonable factors other than age. HEW believes that the intent of the ADA is conveyed most accurately by adoption of the specific statutory language into § 90.14 and § 90.15 of the regulations together with a strict four part test in § 90.14 and a narrow interpretation of reasonable factors other than age in § 90.15.

§ 90.14 *Restriction on use of the exceptions.*

Comment: Several commenters stated that the regulations should be altered to require that a program must accept any person who does not meet the program's age requirements, if the person possesses the characteristics for which age is a measure or approximation.

A few commenters suggested that the regulations should make clear that persons must not be excluded from programs or activities on the presumption that because of their age they are economically, mentally, socially, or physically unqualified. An age classification, based on that kind of presumption, is an improper subterfuge for the real consideration.

Response: The ADA allows the use of age distinctions which are necessary to the normal operation or to the achievement of a statutory objective of a program or activity. The regulations implement this legislative provision and establish standards for determining whether an age distinction is necessary to the normal operation or to the achievement of a statutory objective. HEW believes that the four part test in § 90.14 establishes an appropriate standard. In determining whether an age distinction qualifies for one of the exceptions, it may be relevant that as a matter of policy the age distinction is not rigidly applied. That is, the recipient employing an age distinction may permit a person, upon a proper showing of the necessary characteristic, to participate in the program or activity even though that person would otherwise be barred by the age distinction.

§ 90.14 *General comments on the four-part test for determining when an action reasonably takes age into account as a factor necessary to the normal operation or statutory objective.*

Comment: Several commenters supported the four-part test. Several others stated that the criteria used in the test are unclear and difficult to interpret. Their reasons were that many of the terms used cannot be defined and that the issue of whether an action meets the criteria must be resolved on the basis of individual judgments.

Another commenter said that it was not clear whether all of the four-part test had to be met. A few commenters suggested that the regulations should include a list of programs or activities that meet the test and qualify under the exceptions.

A few commenters stated that the criteria were too strict and might prohibit many desirable programs and activities, such as extracurricular school activities. Another commenter stated the exception should permit age distinctions that are reasonably necessary to achieve any statutory objective or normal program operation.

Several commenters said the test was too broad or too general. As a result, all age distinctions could meet the test and agencies would have too much latitude in applying the test.

Response: HEW has retained the four part test in the final regulations. The word "and" has been added after parts (a)–(c) of the test to make clear that all four criteria must be met for the age distinction to qualify for an exception.

HEW believes the test will prohibit the use of age distinctions that violate the ADA and will permit the use of age distinctions that meet the requirements of the ADA. The test set out in § 90.14 is similar to the criteria which agencies have used successfully under the Age Discrimination in Employment Act to show exceptions for age distinctions which are *bona fide* occupational qualifications.

§ 90.14(a) *Age is used as a measure or approximation of other characteristics.*

Comment: A commenter stated there is an incorrect presumption in § 90.14(a) and (c) that the relationship between age and other characteristics is the same at both ends of the age continuum.

Response: HEW does not agree that this section makes the stated presumption. The only presumption made is that age may represent, in varying degrees, other characteristics in persons of all ages. Since the Act applies to persons of all ages, HEW believes it is neither necessary nor desirable to provide different standards for different age groups.

Comment: Several commenters suggested that the term "maturity" used as an example in this section be omitted or further defined. The reasons were that it is too vague a term or that age may be an indicator of physical maturity but not mental or emotional maturity.

Response: HEW agrees with the suggestion and has deleted the example. HEW does believe, however, that age may be, in some circumstances, a reasonable measure or approximation of characteristics reflecting either physical or emotional maturity.

Comment: A commenter said that the regulations should not limit the use of age to situations where it is used as a proxy only. A few other commenters stated that the term "proxy" should be defined and one suggested that the word "indicator" be used instead of "proxy".

Response: HEW has made no change in § 90.14(a). Where age is used by itself and does not represent another characteristic, that use of age would not pass the four-part test of § 90.14. The term "proxy" was not used in the text of the proposed regulations but only for discussion purposes in the preamble to the NPRM.

§ 90.14(b) *The other characteristic(s) must be measured or approximated.*

Comment: A few commenters suggested that the regulations should explain the meaning of the phrases "must be measured" and "necessary characteristic".

Response: HEW believes no change is necessary. A characteristic that "must be measured" is one that, if omitted from the program or activity, would significantly impair the normal operation or the achievement of a statutory objective. The phrase "necessary characteristic" does not appear in the text of the proposed regulations but was used for discussion purposes in the preamble to the NPRM. A necessary characteristic is one which meets the four part test. For example, age may be used as a measure of the likelihood of catching a communicable childhood disease. A program would be permitted to use age as a factor in identifying those persons to be vaccinated only if, in addition to the other requirements of the four part test, identification of individuals who are likely to get the disease is necessary in order to achieve a statutory objective of the program or to allow normal operation of the program.

§ 90.14(c) *The other characteristic can be reasonably measured or approximated by age.*

Comment: A commenter said that age should not be a proxy for adult characteristics. Several commenters said there must be a close relationship between age and the characteristic it represents because anything less is typically the basis for stereotyping or other discriminatory practices. A few commenters suggested the relationship should be mathematically, or statistically valid. A few other commenters suggested omitting the term "reasonable".

Response: HEW has not changed the final regulations. When age is used as a measure of one or more adult characteristics, the age distinction must still meet the remaining parts of the four part test. Implicit in the requirement that a characteristic be reasonably measured or approximated by the use of age, is the idea that there must be a close relationship between age and the characteristic being measured.

§ 90.14(d) *The other characteristics are difficult, costly, or otherwise impractical to measure directly.*

Comment: Several commenters stated that cost factors should never be used or should be used only if the other characteristics are impossible to measure. A few stated that if the other characteristic is so difficult or costly to determine it should not be an eligibility factor.

A few other commenters stated that, as an alternative, age be considered if direct measurement of the other characteristic is either impossible or so onerous to recipients or participants that it would impair the normal operation or achievement of any statutory objective.

Response: HEW has changed part four of the test to require that the characteristics for which age is an approximation must be impractical to measure directly on an individual basis. The references to cost and difficulty in measuring the factor have been deleted.

§ 90.14 *Exceptions for clubs or programs that have no basis in Federal statutes.*

Comment: A number of commenters said that the regulations either should provide a special or additional exception for, or should clarify how, senior citizens and other clubs may continue to apply an age criteria. Most said that a separate exception is needed in order for these types of programs to continue.

Suggestions for exempting or providing for the effective continuation of these age-related programs under the regulations included: permitting an exception for administrative action by any governmental level in developing and funding programs; provide a definition of "program" that allows an age-focused group to administer Federal funds as long as absolute age restrictions are not used in that portion of the program receiving Federal funds; permitting affirmative action that addresses the needs of various constituent groups.

A few commenters said that these organizations should either be prevented from using age criteria or be allowed to do so only if they meet the exceptions stated in § 90.14.

Response: It is not HEW's intention to prohibit the existence of such age-focused groups as senior citizens clubs or Junior Chambers of Commerce. If the organization receives Federal financial assistance, however, the age distinctions used by these organizations must qualify under § 90.14 of the final regulations.

§ 90.15 *Exceptions to the rules against discrimination. Reasonable factors other than age.*

§ 90.15 *General comments about the exception.*

Comment: A few commenters suggested that the meaning of the phrase, "disproportionate effect" be explained or defined. Another commenter suggested that a list of examples be included to show how the exception applies.

Response: This phrase has an established meaning in other civil rights statutes, like Title VI of the Civil Rights Act of 1964. HEW intends the phrase to have a similar meaning in these regulations; i.e., to prohibit those actions which do not make use of express age distinctions, but which result in discrimination on the basis of age. This means, for example, that due to the recipient's use of a factor other than age which does not have a direct and substantial relationship to a statutory objective or to the normal operation of a program, persons of a certain age group do not receive services under the recipient's program in proportion to their needs for those services.

§ 90.15 *Rational for linking this exception to statutory objective/normal operation.*

Comment: A commenter stated that reasonable factors other than age need not bear any relationship to the normal operation of a program or to a statutory objective. The reason stated was that these terms are not used in Section 304(b)(1)(B) of the ADA, which is the basis for the exception provided under § 90.15. The commenter said that it is only necessary to show that the factors used are reasonable.

Response: HEW believes it is necessary to establish a standard for what may be considered reasonable factors other than age. If no standard is set, the interpretation of what is reasonable could be so broad and inclusive that few factors would be prohibited. If this were true, the Act would provide little protection against factors other than age used to discriminate against various age groups.

§ 90.15 *Relationship of factors other than age to statutory objective/normal operation.*

Comment: A number of commenters suggested that factors other than age must bear a rational relationship to a program's statutory objectives or normal operation. A rational relationship is less restrictive, permits greater flexibility in considering individual factors such as needs, and is consistent with the legislative history and reflects the language of the ADA. Several commenters said the use of a stricter standard would impose great hardships and would disrupt worthwhile programs.

A number of commenters stated that a stricter standard is needed. They stated that the rational standard is too subjective and is easily influenced by traditional modes of operation. It is too easy for a recipient to meet on the one hand, and too difficult for a plaintiff to overcome in proving a claim of discrimination on the other hand.

A few commenters stated that by deleting the term "unreasonable" from the purpose clause of the original ADA, Congress intended that any action, in order to qualify for an exemption, should be subject to strict scrutiny. A few commenters stated that since the use of age must be "necessary" to the normal operation or statutory objective, the use of factors other than age should also be "necessary."

Another commenter stated that there would be a discrepancy between § 90.14 and § 90.15 if the rational standard were used. While a program may be prevented from using an age distinction because the factor it represents is not necessary to its statutory objective, the factor itself may be used under § 90.15 if it is only rationally related to the statutory objective.

Another commenter stated that the ADEA contains a similar exception for the use of reasonable factors other than age. The regulations for the ADEA and court decisions made on this issue have successfully applied a standard of careful scrutiny.

Response: HEW has concluded that the relationship of factors other than age to the normal operation or statutory objective of a program must be a "direct and substantial" relationship. This relationship requires use of a standard of careful review and examination of uses of factors other than age on a case-by-case basis. The exception in § 90.15 for a factor other than age becomes an issue for resolution if raised in a complaint or in a compliance review.

To use a rational relationship or minimal scrutiny standard would leave open the possibility of purposefully circumventing the ADA by allowing administrators to use factors other than age to operate a program when an explicit use of age would be prohibitied. HEW also believes that a minimal scrutiny standard would permit activities that should be prohibited. The use of that standard would make it very difficult to establish that an activity is in violation of the ADA. Therefore, HEW has adopted the "direct and substantial" test to define the relationship between "factors other than age" and the "normal operation" or "statutory objective" of a federally assisted program or activity.

§ 90.15 *Cost-benefit considerations as justification for age-distinctions.*

Comment: A number of commenters supported the NPRM position that a cost-benefit consideration by itself cannot be the justification for an exception under § 90.14 or § 90.15. Several commenters suggested factors to be considered in applying the tests, such as availability of adequate alternative services, relative equality of services in a given locale over a longer time period, effectiveness of program coordination at the local level, and the degree of necessity of limiting services based on extent of need and resources available. A few commenters stated that examples of specific programs should be included in the ADA regulations to illustrate where cost-benefit considerations will be allowed.

A few commenters opposed any use of cost-benefit analysis because it is too difficult to quantify the benefits involved in human services and it is impossible to predict the benefits a person will derive from services.

Several commented that the use of cost-benefit considerations is especially harmful to the elderly, and two commented that young people are even more vulnerable, being without political power. A few commenters stated that cost-benefit analysis should be specifically disallowed in the regulations.

Several commenters supported providing wider latitude for targeting programs based on cost-benefit considerations. They stated that programs with limited funds are unable to function without cost-benefit allocations and that program administrators should not be required to compose lengthy justifications for those allocations.

Response: The final regulations do not permit a cost-benefit consideration alone to justify an age distinction or a factor other than age. They allow the use of cost-benefit justifications for age distinctions or factors other than age only where those actions meet the tests of §§ 90.14–90.15. The tests of § 90.14 and § 90.15 should be sufficient to eliminate the misapplication of cost-benefit analysis.

§ 90.15 *Services rendered under age-specific programs.*

Comment: A number of commenters stated that the responsibility of a general program is not diminished by the existence of or referral to an age-specific program which provides the same service. Several commenters stated that the main thrust of the ADA is to make certain that the elderly receive their fair share of services, which requires full participation by both types of programs. Commenters cited several adverse effects of relieving a general program's obligation by using an age-specific program: separate and unequal treatment; overloading the age-specific program; and creating gaps of unserved populations.

Several commenters suggested that, to prevent duplication of services, a general program could be permitted to fulfill its obligations by referring people to a special program if: the general program could prove that the specific program's services were available; the general program used outreach to identify those ineligible for the specific program; the general program did not use more than its proportional share of funding as compared to the funding of the specific program; the general program did not deny services to anyone wishing to participate in its program.

Response: General programs may not restrict eligibility solely because of the existence of a similar age-targeted program if the result is a denial or limitation of services. A general program can focus its services by referring persons to existing age-targeted programs only if those actions do not result in a denial of services to the individual, or in the provision of lesser or different services. The recipient operating a general program should establish procedures to insure that a person referred to an age-targeted program in fact receives service.

§ 90.16 *Burden of proof.*

Comment: Several commenters supported the position that the burden is on the recipient to prove whether an age distinction or other action falls within an exception. A few commenters disagreed. Commenters in favor of placing the burden of proof upon the recipient stated that only the recipient has sufficient program knowledge.

Another commenter stated that the burden should be on the recipient only after a charging party makes a reasonable showing of discrimination. A few commenters agreed that the recipient should have the burden when the complaint concerns advancing age, but that the burden should shift to the complainant when he or she is denied the benefits of the program because he or she is too young.

Response. The final regulations continue to require that the recipient has the burden of proving that an age distinction or other action used in its program qualifies for one of the statutory exceptions.

HEW believes that the recipient is best able to demonstrate that an age distinction or factor other than age is entitled to an exception under § 90.14 or § 90.15. The recipient (rather than the complainant) is the party most knowledgeable about its program or activity, the normal operation of the program or activity, and any statutory objective governing the program or activity.

Subpart C—What Are the Responsibilities of the Federal Agencies?

§ 90.31 *Issuance of regulations.*

§ 90.31(d) *HEW approval of other agency regulations.*

Comment: A number of commenters supported the ADA's requirement that HEW review and approve the specific regulations issued by co-equal Federal agencies because this review will ensure that all agency regulations are consistent with both the ADA and the general regulations. Several commenters opposed a review role for HEW because HEW lacks sufficient knowledge of other agency programs to review their regulations effectively. Another commenter suggested the HEW seek clarification of its evaluation role from Congress.

Response: Under Section 304(a)(4) of the ADA, HEW is required to approve all agency age discrimination regulations. The final regulations have been changed to make clear that the regulations of each agency must be submitted to HEW and may not be published in final form until approved by the Secretary.

§ 90.31 *Mechanics and timetable for HEW review of other agency regulations.*

Comment: A few commenters suggested that interagency teams be established to assist HEW in reviewing regulations of other agencies. Several commenters expressed concern that the mechanics and the timetable for the review process are unclear and noted that there is insufficient time allowed in § 90.31 of the NPRM for HEW to complete the

review and approval of other agency regulations required by the ADA.

Response: HEW has involved in the development of these regulations an Interagency Task Force composed of those agencies affected by the ADA. This Task Force will continue to function during the development of specific regulations by each agency. The final regulations have been revised to require that each agency submit its final regulations to HEW at the end of 120 days for review and approval. An agency's final regulations may not be published until approved by the Secretary.

§ 90.32(f) *Appendix listing age distinctions.*

Comment: Several commenters suggested that the appendix containing existing age distinctions be published together with the agency's proposed regulations so that the public has an opportunity to comment on existing age distinctions as well as on the regulations proposed.

Response: For information purposes, HEW requires each Federal agency to publish, together with its final regulations, a list of age distinctions found in statutes and regulations. During the 12 months following the publication of its final regulations and appendix listing age distinctions, each agency is further required to review and evaluate against the tests and criteria outlined in §§ 90.13 and 90.14 all the agency's existing and proposed age distinctions. At the end of 12 months, each agency must publish in the **Federal Register** a report of this review indicating for each age distinction: (1) its elimination, or (2) a justification for its retention in agency regulations or, if not contained in regulations, its proposed adoption in regulation form.

§ 90.32 *Review of agency policies and administrative practices.*

§ 90.32 (a) and (b) *Twelve month review.*

Comment: A few commenters suggested that HEW be the sole agency responsible for evaluating the appropiateness of any age distinctions proposed by other agencies in their 12 month reviews, prior to the adoption of those age distinctions by regulations. A few other commenters suggested that HEW outline in the general regulations criteria for judging whether an agency may continue an age distinction so that these criteria are available to other agencies as they assess their age distinctions.

Response: HEW does not have the necessary knowledge of other agencies' programs to determine whether specific age distinctions are or are not appropriate. Agencies must justify the age distinctions used in their programs as lawful under the Act and these final regulations. HEW believes each agency is in the best position to assess which of its age distinctions should be retained or eliminated. The publication of each agency's assessment of its age distinctions and the accompanying opportunity for public comment on that assessment should provide information useful to agencies in reviewing their age distinctions. HEW will comment, where appropriate, on those distinctions during that public comment process.

§ 90.32(c) *Adopting age distinctions through regulations.*

Comment: Several commenters supported the position that only Congress has the authority to create age distinctions. These commenters opposed the adoption of age distinctions through agency regulations.

Response: Congress, through the ADA, has prohibited the use of age distinctions, with certain specific legislative exceptions. These exceptions permit age distinctions to be imposed not only through Congressional action, but also by way of agency regulations, policies and guidelines. HEW has required that in the case of federally imposed age distinctions, agencies must adopt those age distinctions by regulation under the Administrative Procedure Act (APA). In doing so, agencies must use the notice and comment procedure specified in 5 U.S.C. 553 of the APA.

§ 90.33 *Interagency cooperation.*

Comment: The commenters supported interagency cooperation for those recipients receiving funds from more than one Federal agency. They stated cooperation would eliminate duplication of enforcement procedures and reporting requirements. Commenters noted that the problem of duplication was particularly acute for State agencies, counties, and local governments receiving funds from a number of Federal agencies.

A number of commenters suggested that HEW be responsible for developing uniform government-wide procedures for complaint processing, compliance investigations, and enforcement proceedings. One suggested that given HEW's authority to review regulations, HEW should also act as a clearinghouse to review government-wide procedures.

Some commenters questioned what constitutes a "class of recipients," asking whether State agencies, counties or local governments would be considered a "class" for the purpose of designating a lead agency, and whether senior citizens could be considered a "class". [If so, would an Area Agency on Aging be an appropriate lead agency for that class?] Several commenters stated that criteria need to be established for designating the lead agency responsible for each class of recipients.

Response: HEW has revised this section of the regulations to provide further guidance in the setting up of a system of interagency cooperation. The revised § 90.33 provides that where two or more agencies provide Federal financial assistance to a recipient, the Secretary may designate one of the agencies as the sole agency for all compliance and enforcement purposes with respect to those recipients, except for ordering the termination of funds and the notification of appropriate committees of Congress.

§ 90.34 *Agency reports.*

Comment: Many commenters favored the targeted approach to data collection proposed by HEW because it minimizes the paper-work burden. Others supported a targeted approach but questioned what criteria would be used to select the data for targeting and collection. Some commenters opposed the targeted approach. They believe it will not provide sufficient information to meet the Act's reporting requirements because program participation and service population data are necessary to track age discrimination.

Some commenters opposed relying exclusively on complaints to satisfy the ADA data requirements because complaints may not reflect accurately the extent of age discrimination. Other commenters supported the use of complaints as part of a targeted data collection approach because complaints may help identify programs in which discriminatory practices are occurring.

Reponse: HEW believes that targeting is the most effective way to satisfy the ADA's reporting requirements without increasing the burden on recipients. The targeted approach does not rely exclusively on tracking complaints but recognizes that complaint data have been useful in uncovering patterns of discrimination in other civil rights statutes. In all cases, each agency should seek data that appear to be most useful in identifying age discrimination and that will impose the least burden on recipients.

§ 90.34(e) *Data requirements.*

Comment: Some commenters suggested deleting the data requirement in § 90.34(e) because it permits HEW to require potentially unlimited additional data without giving agencies fair notice of what data they will be expected to collect.

Response: This section remains unchanged. Under the ADA it is HEW's responsibility to review the performance of each agency in complying with the ADA. HEW is committed to exercising this responsibility in the least burdensome way while retaining the flexibility to require the data necessary to fulfill that responsibility.

Subpart D—Investigation, Conciliation, and Enforcement Procedures

§ 90.43 *What responsibilities do recipients and agencies have specifically to ensure compliance with the act?*

§ 90.43(b)(3) [renumbered § 90.43(a)(3)] *Providing information to beneficiaries.*

Comment: Several commenters said that the regulations should place more emphasis on informing citizens of their rights under the Act.

Response: HEW has made no change. The regulations require that each agency make available educational materials on the rights and obligations of beneficiaries and recipients. Agencies are free to use whatever methods they deem appropriate to accomplish this.

§ 90.43(c) [renumbered § 90.43(b)] *Self-evaluation generally.*

Comment: Several commenters stated that all self-evaluations should be subjected to a review, either by the specific funding agency or by an objective third party. Other commenters suggested that the funding agency spot check recipients' self-evaluations for compliance purposes. Generally commenters stated that self-evaluations alone would be insufficient to meet the ADA reporting requirements.

Several commenters expressed a need for guidelines for self-evaluations, and suggested the development of uniform guidelines for all Federal recipients. Most commenters urged the importance of keeping the self-evaluation simple, while a few supported a broader examination of recipients' policies and practices. A few commenters suggested that recipients seek assistance in completing their self-evaluations from young people and the elderly.

Response: HEW believes that the primary purpose of the self-evaluation is internal review by the recipient. The self-evaluation process is not intended to yield sufficient information to satisfy the ADA reporting requirements. However, funding agencies will be able to review recipient self-evaluations where they might provide useful information. HEW plans to issue self-evaluation guidelines for HEW recipients after the publication of HEW specific regulations. Other agencies may choose to use HEW's guidelines as a model. The self-evaluations are intended to be simple and straight-forward, with each age distinction capable of being analyzed in a page or less. HEW's position is that agency regulations should avoid imposing conflicting requirements on recipients. Although the general regulation is silent on the question of public participation in the self-evaluation process, agencies have discretion to provide in their regulations for public participation in recipient self-evaluations.

§ 90.43(c) [renumbered § 90.43(b)] *Self-evaluation timetable and application.*

Comment: Most commenters stated that 18 months is an appropriate time for recipients to complete their self-evaluations. Some commenters stated that 18 months is too long and suggested that Federal agencies be required to review their age distinctions within six months after publication of their final regulations (rather than the 12 months allowed under § 90.32 of the proposed regulations). Recipients would then be required to complete their self-evaluations six months later, or one year from publication of the agency's final regulations.

Several commenters stated that restricting self-evaluations to recipients with 15 or more employees is reasonable. A few suggested including recipients with fewer than 15 employees. Some commenters stated that requiring self-evaluations from recipients with as few as 15 employees is unreasonable; cutoffs of 50, 100 or 500 were suggested. Alternative bases suggested for self-evaluations were the amount of funding received, or the number of people served by the recipient.

Response: HEW has retained the 18 month self-evaluation period because the Federal agencies need a year to analyze and review the age distinctions imposed in their programs through statutes and administrative actions. HEW expects recipients to use the information in these Federal agency reviews in their self-evaluations.

HEW has retained a cut-off based on the equivalent of 15 or more employees in the ADA self-evaluation requirement because it is consistent with self-evaluation requirements in other civil rights statutes and regulations. In addition, HEW has determined that it would be impractical to use the number of people served, or the amount of Federal financial assistance received, as a basis for requiring recipients to perform the one-time self-evaluation.

§ 90.43(d)(1)(i) [renumbered § 90.43(c)(1)(i)] *Complaints by organizations or groups.*

Comment: A few commenters suggested that the complaint procedure specifically cover group complaints. They defined group complaints as complaints by an organization representing older persons; e.g. on behalf of one or more individuals. Inclusion of this type of complaint would permit advocates for older persons to assert rights on behalf of many individuals who would be reluctant to do so on their own.

Response: The regulations do not prohibit this kind of complaint. A complaint may be made by an individual, a class, or by an organization on behalf of its members or on behalf of other persons.

§ 90.43(d)(1)(ii) [renumbered § 90.43(c)(1)(ii)] *Agency screening of complaints prior to mediation.*

Comment: Several commenters stated that there should be an investigation prior to assigning the dispute to a mediator. Frivolous complaints could be eliminated by this process and many legitimate complaints could be settled without progressing to a more formal procedure. Several commenters said that this investigation period should be 60 days in length. A few commenters expressed similar concerns but stated only that HEW should clarify the steps for initiating mediation and provide more information regarding the initial stages of the process.

Response: HEW believes that the present screening process is the most effective possible without resorting to immediate investigation, which would be time consuming and duplicative. Each agency will screen complaints for those programs it administers which receive Federal financial assistance. Screening will eliminate complaints about actions which are not covered by the ADA, and thereby reduce the number of groundless complaints which might otherwise go forward in the process.

§ 90.43(d)(2) [renumbered § 90.43(c)(2)] *Length of time for the complaint process.*

Comment: Many commenters were concerned with the length of time that was involved to process a complaint. Several commenters stated that specific time lines were needed for each step in the complaint procedure. Other commenters stressed that even a few months was too long a time, for the elderly to wait for complaint resolution.

Response: HEW is aware of the damaging effect of long drawn out complaint resolution procedures. It has adopted mediation and an informal investigation step as part of the complaint resolution process in an attempt to improve the responsiveness of that process. However, HEW has decided not to impose government-wide timeframes for every step of the complaint process. This is a drastic step to take in advance of any specific indication that there will be unusual problems of delay. Accordingly, no additional timeframes have been placed in the regulations.

§ 90.43(d)(3) [renumbered § 90.43(c)(3)] *Mediation—mandatory mediation.*

Comment: A number of commenters discussed the proposal to make mediation a mandatory step in the complaint process. Several commenters supported mandatory mediation; a few stated that mediation should be made mandatory only after a successful trial period. Several other commenters stated that mediation should not be a mandatory step. Those opposing mandatory mediation through age discrimination should not be subject to such a broad experiment that might diminish the effectiveness of the ADA.

Response: HEW believes that making the mediation process voluntary is not a reliable way of testing its effectiveness. The need to get away from the the traditional problems of complaint backlogs in civil rights enforcement requires us to carry out this effort. HEW has instead sought to rely on other safeguards such as the presence of a trained Federal mediator, the 60-day time limit, the policy of mediator confidentiality, the informality of the process and continuous monitoring of the process to insure that mediation is effective.

§ 90.43(d)(3) [renumbered § 90.43(c)(3)] *Mediation: Effectiveness of the mediation process.*

Comment: A large number of commenters addressed the issue of the effectiveness of the mediation process. While many commenters thought the process would be quick and effective in resolving complaints, others cited problems regarding possible harm to or discouragement of complainants which could make the process ineffective.

The major problems cited were:

(1) Complainants would be discouraged or intimidated from seeking their full rights through the formal administrative process;

(2) Mediation would impose a burden of expense upon the parties to the complaint, including travel expenses to the mediation site;

(3) Complainants might desire legal assistance but would be unable to afford the expense;

(4) Mediation would not always be appropriate for a complaint; and

(5) Mediation would impose another layer on the complaint process thereby delaying relief to the complainant.

Response: HEW has tried to structure the mediation process to protect the complainant and insure that valid complaints are pursued and successfully resolved.

The mediation will be conducted by a specially trained mediator who will explain the procedure to both parties. A complainant who does not believe that he is obtaining full satisfaction through mediation need not agree to a settlement. A complainant will have to wait no more than 60 days for the agency enforcement process to begin. This 60 days will count as part of the 180 day period which the agency has to resolve the complaint before a court action can be filed by the complainant.

The mediation process has been designed to minimize expenses to the parties. The mediator can travel to the location of the parties and the mediator's services will be paid for by the Federal government. The mediation process is designed to allow a party to participate in mediation without resort to an attorney and without having to build a formal legal case. Experience with other processes similar to the proposed mediation system suggest that the expense to the parties will not be significant.

These concerns about the effectiveness of the mediation process will be carefully monitored, as part of the 30 month evaluation of the use of mediation.

§ 90.43(d)(3) [renumbered § 90.43(c)(3)] *Should mediation be conducted by a single mediation agency or by each Federal agency subject to the ADA?*

Comment: A majority of the commenters favored having a single agency manage all mediation under the ADA rather than having agencies develop their own mediation capabilities.

Response: The final regulations provide that the Secretary shall designate one agency to be responsible for administering a centralized mediation process for all age discrimination complaints. A single agency insures uniform policy and practice, efficiency and centralized accountability for purposes of monitoring and evaluation. In the early stages of implementing the ADA, it would be particularly inefficient to have each Federal agency develop it own separate mediation capability.

§ 90.43(d)(3) [renumbered § 90.43(c)(3)] *Use of the Federal Mediation and Conciliation Service (FMCS).*

Comment: Most commenters supported using the FMCS to coordinate the mediation process. A few favored using a private mediation agency. Many commenters favored the use of private individuals as mediators at the local level rather than FMCS staff mediators. Some Federal agency commenters expressed a desire for additional information regarding the procedures to be used in managing the national mediation system.

Response: HEW has designated the FMCS to coordinate the mediation of ADA complaints. As is the case with every other aspect of mediation, the results of this decision will be closely monitored and evaluated as part of the 30-month review of these regulations. The FMCS is the only Federal government agency with extensive expertise in mediation. The Service has a national staff of more than 300 experienced full-time mediators located in field offices around the country.

As currently planned, mediators will be drawn from both the professional staff of FMCS and from among private citizens experienced in resolving community disputes, who will be trained by the FMCS. HEW and the FMCS intend to work closely with other Federal agencies to implement mediation.

§ 90.43(d)(3) [renumbered § 90.43(c)(3)] *Availability of qualified mediators.*

Comment: A number of commenters raised problems about obtaining mediators. A commenter stated that all parties should be allowed to approve or disapprove the mediator. Several commenters stated that older persons who are familiar with the problems of the elderly should be trained as mediators. This group would not be limited to mediating complaints of the elderly.

Several commenters stated that although mediation has been used in labor-management disputes, different methods would be required to deal with age discrimination. The mediator should have knowledge of age discrimination in program services and knowledge of alternatives available in the delivery of services. The different requirements in mediating discrimination complaints might require development of a corps of Federal program specialists trained in mediation.

Response: Mediation is proving useful in resolving a wide variety of disputes outside the traditional labor-management area. Mediators will be selected by the FMCS in order to insure their neutrality. All mediators selected to resolve age discrimination complaints will receive thorough training in the ADA and applicable regulations. Moreover, mediators will be drawn from both FMCS staff and from private citizens who have experience in resolving community disputes.

§ 90.43(d)(3) [renumbered § 90.43(c)(3)] *Length of the mediation trial period.*

Comment: A number of commenters stated that mediation should be used only on an experimental basis. Some suggested limiting the mediation experiment to geographic regions or Federal agencies. Several commenters stated that the trial period should be 30 months; a few others suggested 12, 15, 18 or 24 months.

Response: HEW is aware that the use of mediation to resolve complaints on this scale is highly innovative. Accordingly, close monitoring and evaluation are planned. However, the likelihood of success appears high enough, and the problems of traditional methods are serious enough, that mediation will be attempted nationwide rather than as a regional demonstration project.

The final regulations continue to provide for a review of the mediation experiment 30 months after these regulations are published. No complaint of age discrimination can be processed until final agency regulations are effective. Therefore, mediation will not begin until late 1979. As a result, the 30 month review will report on approximately two years of mediation.

§ 90.43(d)(3) [renumbered § 90.43(c)(3)] *Confidentiality of mediation.*

Comment: Some commenters were concerned with the adequacy of confidentiality protections in the mediation process. A few others suggested that reports of mediated settlements shoud have restricted availability.

Response: The confidentiality provision of the regulations has been changed to deal exclusively with the protection of the neutrality of the mediator and the public interest in the success of the mediation process. The parties must be able to speak freely in the mediation without fear that the mediator will testify or provide information in a later enforcement proceeding. The parties must not be bound in subsequent administrative or court proceedings by the statements made in mediation. The terms of any settlement agreed to in mediation will be sent to the agency which received the complaint originally.

§ 90.43(d) [renumbered § 90.43(c)] *Mediation of multiple jurisdiction complaints.*

Comment: A few commenters were concerned about how agencies would handle complaints that involved charges of multiple types of discrimination (e.g., age and race). They were concerned about the usefulness of mediation with this type of complaint. A few commenters stated that in such complaints, each charge of discrimination should be processed individually.

Response: The potential problem with the multiple complaint is that the ADA mediation procedure is not required in other civil rights areas. HEW expects that agencies will be able to separately mediate the age element of a complaint. A successful mediation might also resolve all the issues which gave rise to the dispute in the first instance. If a successful mediation failed to do this or mediation was unsuccessful, the agency could further process the complaint following its normal procedures for handling multiple jurisdiction complaints.

§ 90.43(d)(3) [renumbered § 90.43(c)(3)] *Initial efforts to resolve complaints.*

Comment: Several commenters were concerned that a mediation process would preclude initial efforts to informally resolve complaints.

Response: Nothing in the regulations prohibits informal resolutions between parties. However, once a formal complaint has been filed, the Federal agency has a responsibility to become involved in the process. The mediation procedure is an attempt to achieve informal resolution of complaints and to avoid lengthy and costly litigation.

§ 90.43(4)(d) [renumbered § 90.43(c)(3)(iii)] *Mediation time limits.*

Comments: Several commenters addressed the issue of the length of time which should be allowed for mediation. Some stated that the period for mediation should be 60 days; others recommended 30 days; 90 days or 120 days.

Response: HEW has changed the final regulations to allow a maximum of 60 days for mediation. The 60 day period begins as soon as the complaint is received by the Federal agency. The mediator has been given authority to terminate mediation early if it appears no agreement can be reached. The 60 day period leaves at least 120 days for agencies to investigate an unresolved complaint before the expiration of the 180 day time limit for exhaustion of administrative remedies. Because the mediation period is part of the 180 day time limit, a short mediation period is important if complaints are going to be resolved administratively rather than in court.

§ 90.44(a) *Compliance reviews.*

Comments: Several commenters supported a requirement for mandatory compliance reviews. A few other commenters supported the retention of a requirement for optional compliance reviews.

Response: Compliance reviews will be conducted at the option of the agency. HEW has modified the regulations to require that every agency include in its regulations a provision that it may conduct compliance reviews if the need should arise, regardless of the size of the agency or its programs.

§ 90.45 [renumbered § 90.45 and § 90.46] *Information requirements and prohibition against intimidation or retaliation.*

Comment: A commenter recommended that HEW set minimum record keeping requirements and specify a length of time for retention of records by recipients.

Response: HEW has specified only general data provisions and record keeping requirements because it is almost impossible to achieve the desired level of detail in general regulations. As a matter of policy, HEW is committed to minimizing record keeping requirements whenever possible by avoiding duplicative and unnecessary requirements. A time limit for record retention may be considered if specific record keeping requirements are implemented in the future.

§ 90.45 *Information requirements—assurances of compliance.*

Comment: Some commenters suggested that the regulations should require recipients to submit assurances of compliance with the ADA, similar to those required under other civil rights statutes.

Response: The regulations remain unchanged. There is no requirement in these regulations that each recipient submit a general assurance of compliance with the ADA. However, even without an assurance of compliance, the legal obligation of a recipient remains unchanged. HEW wishes to avoid imposing any unnecessary burden on recipients with respect to the compliance and enforcement procedures and accordingly has decided not to require assurances of compliance with the ADA.

§ 90.46 [renumbered § 90.47] *What further provisions must an agency make in order to enforce its regulations after an investigation indicates that a violation of the act has been committed?*

§ 90.46(d)(1) [renumbered § 90.47(d)(1)] *Deferral of funds.*

Comment: A commenter recommended that the deferral of funds apply only to the program area where non-compliance is found.

Response: Deferral precedes any final finding of non-compliance through an administrative hearing. The enforcing agency must have discretion to defer Federal financial assistance in any program affected by the agency's preliminary findings. There would be no basis for deferring any other Federal financial assistance. Accordingly, it is not necessary to make any change in the regulations.

§ 90.47 [renumbered § 90.48] *Alternate funds disbursal procedure.*

Comment: A commenter suggested that the regulations further clarify the process of selecting the alternate recipient when a recipient's funds have been terminated for noncompliance with the ADA. The question was asked "Should the alternate recipient have to satisfy the requirements of the grant statute?"

Response: The regulations permit an agency to disburse withheld funds to an appropriate alternate recipient. The recipient must demonstrate the ability both to achieve the goals of the Federal statute authorizing the program or activity and to comply with the agency's regulations issued under the ADA. Each Federal agency is authorized and required to publish its own regulations implementing this process for its programs. These regulations may consider all relevant factors to determine if the required ability has been demonstrated. HEW believes that any amplification on this process should be made in each agency's own regulations consistent with the relevant requirements of the ADA.

§ 90.50 *Exhaustion of administrative remedies.*

Comment: A few commenters stated that the time period of 180 days before civil action may commence should be reduced to 90 or 120 days. A major reason cited in support of a reduced period was that six months is too long for the elderly to wait.

Response: The period of 180 days is expressly required by the Age Discrimination Act and accordingly cannot be changed by the regulations.

Subpart E—Future Review of Age Discrimination Regulations

§ 90.61 and § 90.62 *Review of General and Agency Regulations.*

Comment: A few commenters stated that 30 months is too long a time to wait for a review of the regulations. Some commenters stated that 30 months is an adquate time but another commenter suggested that waiting longer than 30 months would be wiser.

Response: HEW intends to wait 30 months before asking for public comment on the effectiveness of these regulations. The 30 month time period was selected because use of a 30 month period will enable HEW to have information from at least one complete cycle of complaints, mediation, data collection and report preparation and time to analyze that information.

[FR Doc. 79-18104 Filed 6-11-79; 8:45 am]

BILLING CODE 4110-12-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Age Discrimination Regulations; Designation of Mediation Agency

The Secretary of Health, Education, and Welfare hereby designates the Federal Mediation and Conciliation Service as the agency to manage the mediation activities required under the age discrimination regulations issued by the Department set forth in 45 CFR Part 90 to implement the Age Discrimination Act of 1975.

Dated: June 5, 1979.

Joseph A. Califano, Jr.,

Secretary, Department of Health, Education, and Welfare.

[FR Doc. 79-18103 Filed 6-11-79; 8:45 am]

BILLING CODE 4110-12-M

federal register

Tuesday
June 12, 1979

Part IV

Department of Housing and Urban Development

New Community Development Corporation

Park Central New Town Project in Port Arthur, Texas; Proposal To Support Flood Plain Development

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

New Community Development Corporation

[Docket No. N-79-933]

Park Central New Town Project in Port Arthur, Texas; Proposal To Support Flood Plain Development

AGENCY: New Community Development Corporation, HUD.

ACTION: Notice of Proposal To Support Flood Plain Development. Park Central New-Town-In-Town.

SUMMARY: NCDC is proposing to approve the Park Central New Town project in Port Arthur, Texas, as a new community meeting eligibility standards of Title VII of the Housing and Urban Development Act of 1970 thereby making the project eligible for Community Development Block Grants from the new communities portion of the Secretary's Discretionary Fund and new communities assisted housing set-asides. The project is being developed in a hurricane flood-plain area. Public Notice is required by E.O. 11988.

FOR ADDITIONAL INFORMATION CONTACT:

Edwin Baker, Environmental Control Officer (Acting), New Community Development Corporation, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone: (202)755-5365 (not a toll free number).

In accordance with Executive Order 11988 (floodplain management guidelines) and HUD's draft regulations concerning Executive Order 11988, the New Community Development Corporation (NCDC), a corporate body within the Department of Housing and Urban Development (HUD), issues the following public notice of its proposed action:

Notice of Proposal To Support Floodplain Development, Park Central New Town In Town

Table of Contents:

Description of Proposed Action

The New Community Development Corporation has issued a conditional commitment to New-Town-In-Town, Inc. (the Developer) for a "Determination of Eligibility" for a new community known as Park Central in Port Arthur, Texas (the project), in accordance with provisions of Title VII of the Housing and Community Development Act of 1970 (the Act). If approved by the Board of Directors of NCDC, the Developer and NCDC propose to enter into a project agreement and NCDC will determine that the project meets the eligibility standards for a new community under the Act. This determination will make the project eligible for grant assistance under Section 107(a)(1) of the Housing and Community Development Act of 1974 for Federal flood insurance eligibility. This determination enabled the Department to initially endorse a Title X insured mortgage for land acquisition and development in the project in December 1976. EIS and A-95 clearances by state and local agencies were attained prior to the endorsement of the Title X insured mortgage, and prior to E.O. 11988.

The final Environmental Impact Statement for Park Central was issued on December 12, 1975. While it is recognized that compliance with the National Flood Insurance Program (NFIP) does not assure compliance with E.O. 11988, the Secretary's determination of eligibility for Federal flood insurance was issued prior to Title X approval. Copies of the final EIS and the Secretary's determination are available for review at the New Community Development Corporation at HUD in Washington, D.C., and at the HUD Area Office loacted at 2001 Bryan Tower, 4th floor, Dallas, Texas (Telephone: (214) 749-1601).

Comments concerning this Notice are invited from all affected and interested parties. The comment period for the Notice will be 15 calendar days. Please send comments within 15 days to:

Edwin Baker, U.S. Department of Housing and Urban Development, New Community Development Corporation, Room 5186, Washington, D.C. 20410.

Telephone inquiries about this Notice may be directed to Edwin Baker, Acting Environmental Control Officer at (202) 755-5365.

SUPPLEMENTAL INFORMATION: The U.S. Department of Housing and Urban Development, New Community Development Corporation, Washington, D.C. proposes to approve the Park Central New-Town-In-Town project in Port Arthur, Texas, as a new community meeting the eligibility standards of Title VII of the Housing and Urban Development Act of 1970 thereby making the project eligible for Community Development Block Grants from the Secretary's Discretionary Funds and housing set-asides for new communities. The project is being developed in a hurricane flood plain area but the land is partially protected by a Hurricane Flood Control Project of the Army Corps of Engineers which is 85 percent complete and will be totally completed in 1981. In the event of a standard project flood (an occurrence with less than a 5 percent chance of happening in a given year; or, once in two hundred years) 30 percent of the project land is totally protected from flooding, 50 percent will pond to depths of 3'0" or less and 20 percent will pond to depths of 5'0" or less. 100 percent of the ponding above 3'0" would be on land used for open space, golf course, drainage canals or other similar uses. Of the balance of the project land, less than half will have any ponding and the maximum depth will be less than 3'0". No structures will be built below the ponding level according to the project agreement between HUD and the new town developer.

The New-Town-In-Town project area consists of 729 acres of a 1,600 acres new town within the city limits of Port Arthur. The present population of the entire 1,600 acres is approximately 2,300. As planned, the project has a completion goal of 12,000 people, 1,480 housing units of various types, and a mix of residential, commercial, institutional and open space land uses.

The Notice will describe the impact of the project development on the environment taking into account the implications of Executive Order 11988 relative to flood plain management guidelines. The Secretary of Housing and Urban Development has determined that Port Arthur meets all the conditions set forth in the National Flood Insurance Act of 1968 as amended by the Housing and Urban Development Act of 1974 (the new communities portion of the Secretary's Discretionary Fund). NCDC anticipates approving grant assistance of approximately $6.8 million over the next 2 years to finance construction of infrastructure in the project. The following analysis and findings concerning the project and the proposed action are made public in accordance with provisions of E.O. 11988.

Description of Project

The project is a 729 acre part of a 1,600 acre new town within the city limits of Port Arthur, Texas which has been construction since 1972. In December 1976, HUD initially endorsed a mortgage for insurance under Title X

of the National Housing Act for land acquisition and land development for the 729 acres. While the project is in a hurricane floodplain, it is partially protected by a substantially complete Corps of Engineers' Hurricane Flood Control Project. In the event of a standard project flood 30 percent of the project land is totally protected from flooding, 50 percent will pond to depths of 3'0" or less and 20 percent will pond to depths of 5'0" or less. The 1,600 acre development now has a population of approximately 2,300 people and $70,000,000 of public and private investment has occurred on site. NCDC's additional support for this project has been actively requested by the City of Port Arthur. When completed, the project will consist of a mix of residential, commercial, institutional, and open space land uses in accordance with an approved master plan.

Prior to issuance of E.O. 11988 on May 24, 1977, the public had received full notice and explanation of the project through the environmental impact assessment process. A final Environmental Impact Statement (EIS) for the Title X project (which is substantially the same project which the NCDC Board is expected to approve) was published by HUD on December 12, 1975. The local A-95 agency will receive a copy of this Notice. The NCDC Board will be relying on the 1975 EIS in taking the proposed action. A review of the significant facts considered in originally making the Title X decision can be found in that EIS.

Probable Environmental Impact of Proposed Action

Most land development in the project is expected to be financed through current and future Title X insured land development mortgages, as anticipated in the EIS. The primary effect of the proposed NCDC action is to enable some of the infrastructure to be financed through Federal grants instead of alternative sources of financing, thereby increasing the financial feasibility of the project, and making the project eligible for NCDC assisted housing set-asides. The type and location of development is not expected to be significantly changed from the planned development studies in the EIS and currently underway, except that there will be greater assurance of a substantial amount of low-and-moderate income housing (LMIH) included in the project.

Alternatives to the Proposed Action

Since the proposed action supports a project being developed in accordance with previously approved plans for federally-assisted land development, NCDC has only two alternatives to the proposed action—to assist the existing project or to not assist the project. These alternatives are discussed below:

(1) Do Not Assist—The project was eligible for the Title VII approval under all relevant regulations prior to the Executive Order. The project is underway and is likely to obtain enough funding to continue no matter what NCDC does. A decision not to provide NCDC assistance to the project solely on the basis of E.O. 11988 would not necessarily affect the ultimate physical development. Mitigating measures are required under Port Arthur's "Flood damage protection ordinance" and "Emergency plan for hurricanes or tropical storms" and Jefferson County's "Emergency Operations Plan". A NCDC decision not to assist would probably lengthen the project's development period, would not make provisions of housing for families of low and moderate income, and would prevent NCDC site plan and landscape provisions from being required.

(2) Make Substantial Modifications to the Development Plan Prior to Title VII Approval—Having reviewed the project development plan in detail prior to recommending the conditional commitment, NCDC found the plan sensitive to environmental and social concerns and found no need to recommend substantial modification. NCDC has assessed the factors relating to minimization of harm to lives, property, flood plain values, and restoration and preservation of these values. It has found that 100 percent of the site is protected from storm surge, 30 percent of the site protected from both surge and ponding and 70 percent subject to City, County, and Federal Regulations to protect people and property from harm in a shallow (less than 5') ponding situation. NCDC will require that prior to Board action, a firm plan for provision of housing for persons of low and moderate income be included in the agreements between the Developer and NCDC. In addition, since past actions have eliminated natural values, NCDC will require that additional site landscaping also be provided.

The following section describes the probable environmental impact of development in the project, including development financed through the grants, Title X mortgage insurance, and other sources.

Probable Environmental Impact of Development

The site under consideration is essentially a flat coastal prairie land that is almost devoid of trees. Until recently, the land had been unsuitable for development because it was unprotected by the City's levee system and, consequently, subject to flooding. Today, the land is partially protected by the nearly completed $76 million U.S. Army Corps of Engineers' Hurricane Flood Control Project scheduled to be completed in 1981. When the Corps has completed its flood protection system, approximately 70 percent of the project will remain in a ponding area. It can be expected that during a standard project flood a portion of the site (20 percent) will pond to a maximum depth of 5' with the majority of the area (50 percent) ponding to less than 3'. The complete site will be protected from wave damage from the standard project flood. The Housing and Urban Development Act of 1974 amended the National Flood Insurance Act of 1968 to provide that any community "that has made adequate progress, acceptable to the Secretary" on the construction of a flood protection system for the 100-year frequency flood, "will be eligible for Federal flood insurance". While it is recognized that compliance with the National Flood Insurance Program does not assure compliance with E.O. 11988, the Secretary of Housing and Urban Development has determined that Port Arthur meets all of the conditions set forth in the 1974 amendment, and, therefore, is eligible for flood insurance. The determination enabled HUD to initially endorse the Title X insured mortgage for land acquisition and development.

This previously undeveloped relatively close-in area can now be developed to fill the gap that has created urban sprawl and leapfrog development in the general area. Most of the areas surrounding the Park Central site have been developed to their capacities. Park Central constitutes the only large tract of vacant land under development by a single developer in the Port Arthur metropolitan area. This project provides an opportunity for the City of Port Arthur to capture a significant proportion of future growth within its corporate limits. Also, it offers amenities and employment opportunities that are not available in the older established neighborhoods.

There are no apparent adverse effects to the natural environment of major consequence or significance that cannot be avoided if the proposed project is

developed. The physical appearance of the land will change from its coastal state. However, the land had no delicate econsystem and the site poses no great obstacles for development. The project will result in the minor loss to wildlife on site. It will remove existing scrub vegetation.

The social features of this area should not be drastically changed if this proposed project is implemented. It is true that all aspects of the human environment will be influenced by this project. The addition of 12,000 residents and the accompanying growth will affect the social and civic environment. However, the impact of these changes will be minimized by the long-term nature of the development plan.

The construction activities may temporarily disrupt the activities of some residents. Added movement of trucks and equipment associated with construction will result in temporary localized increases in noise and air pollution.

The general area around the proposed project is currently experiencing transition to a multiple-use center including residences, offices, and commercial facilities. This transitional process is expected to continue. This Title X project developed within the city limits will contribute to the urbanization of the land. Therefore, the use of the site proposed in the project action under consideration is in accordance with the maintenance and enhancement of its long-term productivity as an urban land resource.

Because of the large portion of the site that will be developed with single-family detached houses to be sold to individual purchasers, approval of this project would be expected to result in a commitment of the land resources to this type of urban development for at least 30 to 40 years.

Alternatives to the Planned Development

Since the Park Central site represents the single largest tract of undeveloped land that is under single ownership in the entire southern portion of the county, no other location for a project this size is feasible for the developer. Most of the area west of the site is undeveloped but lies within Aircraft Noise Zone #2 which the Department of Housing and Urban Development rates as normally unacceptable for residential development. The basic question concerns that highest and best use for the tract that will benefit social and environmental needs. Furthermore, the flexible zoning allows the developer to make changes as the market dictates.

Alternatives uses for the proposed tract evaluated in the project's EIS include the following:

(1) Total Commercial—The site is far too large and the market too small for the site to be entirely used for commercial purposes.

(2) Industrial—According to the Port Arthur *Comprhensive Plan*, most of the land west of the site will be used for industrial purposes. This land is adequate for a 25-year development. Thus, the project does not appear to have potential for industrial purposes. Without the amount of residential development proposed for the project the timely development of industrial land will be impossible. If the proposed site were developed as an industrial park, it would increase the area's already acute housing needs. Industrial development would probably increase air and water pollution levels and create some peak hour traffic problems. If feasible, industrial development would have a positive public fiscal impact, and would increase area employment opportunities.

(3) Institutional—Other than the Port Arthur Independent School District, no other educational institutions have expressed an interest in the land. Lamar University is located 15 miles to the north and Port Arthur College is approximately 4 miles to the south. The impact of such insititutional development would result in a negative public fiscal impact.

(4) Park and Recreation—The site, taken as a whole—has no particular potential for development or preservation as public open space. There is a 155 acre golf course in the middle of the development and a 60 park site south of the area. The developer also plans a greenbelt within the project. Park and recreation development would have a negative public fiscal impact and would not assist in solving the area housing needs.

(5) Conventionally Financed Residential and Commercial Development—This method of development financing has been the major source of growth in Port Arthur in recent years. The net impact of this alternative would be comparable to the proposed project, but would be less well-planned, less environmentally sensitive and less balanced racially and economically.

(6) Agricultural—The potential as an agricultural site is limited because it is subject to zoning restrictions set forth by the City of Port Arthur.

(7) Leave in Present Condition—The site's location, land value and property tax consequences would realistically eliminate this as a possible alternative once the Corps of Engineers Hurricane Flood Control Project is completed.

Reasons for Proposed Action

The following facts overwhelmingly outweigh any other in supporting the proposed action. Park Central is an existing federally supported project being built in conformity with Federal and local rules and guidelines. It is superior to any likely alternative land use. NCDC support for the project is being solicited by the City of Port Arthur.

The development of Park Central was cleared with state and local agencies through the EIS and A-95 processes prior to initial endorsement of the Title X insured mortage. The proposed NCDC action supports the continuation of that project.

The project has been designed to comply with Federal and local standards to minimize harm to property and occupants and storage of flood waters to prevent impact on other flood area residents. The Corps of Engineers' Hurricane Flood Control Project is 85 percent complete. The City of Port Arthur has enacted a "Flood damage prevention ordinance which requires siting of new construction at an elevation above the maximum ponding level for a standard project flood and flood proofing of all structures, and requires that all utility systems developed within such ponding areas also be protected from infiltration and outflow under base flood conditions. The city has also instituted a "Emergency plan for Hurricanes and Tropical Storms" to protect current and future residents from flood hazards. Through its project agreement NCDC will require landscaping and planning requirements which are intended to improve the quality of the living environment in the completed project. NCDC is also requiring the development of housing units for persons of low or moderate income to be constructed on the site to further insure that the project support the city's needs.

The natural and beneficial values of the site (except for flood water storage) have long been compromised. The area has been diked, vegetation and wildlife habitat associated with floodplain and wetlands are gone and the land has been drained with major canals and crossed by pipelines and roadways. In addition of significant portion of the 1,600 acre new town which includes the project has been developed. The flood water storage capacity will remain unchanged, and through careful design and landscaping some environmental

amenities will be added to what is now a barren site.

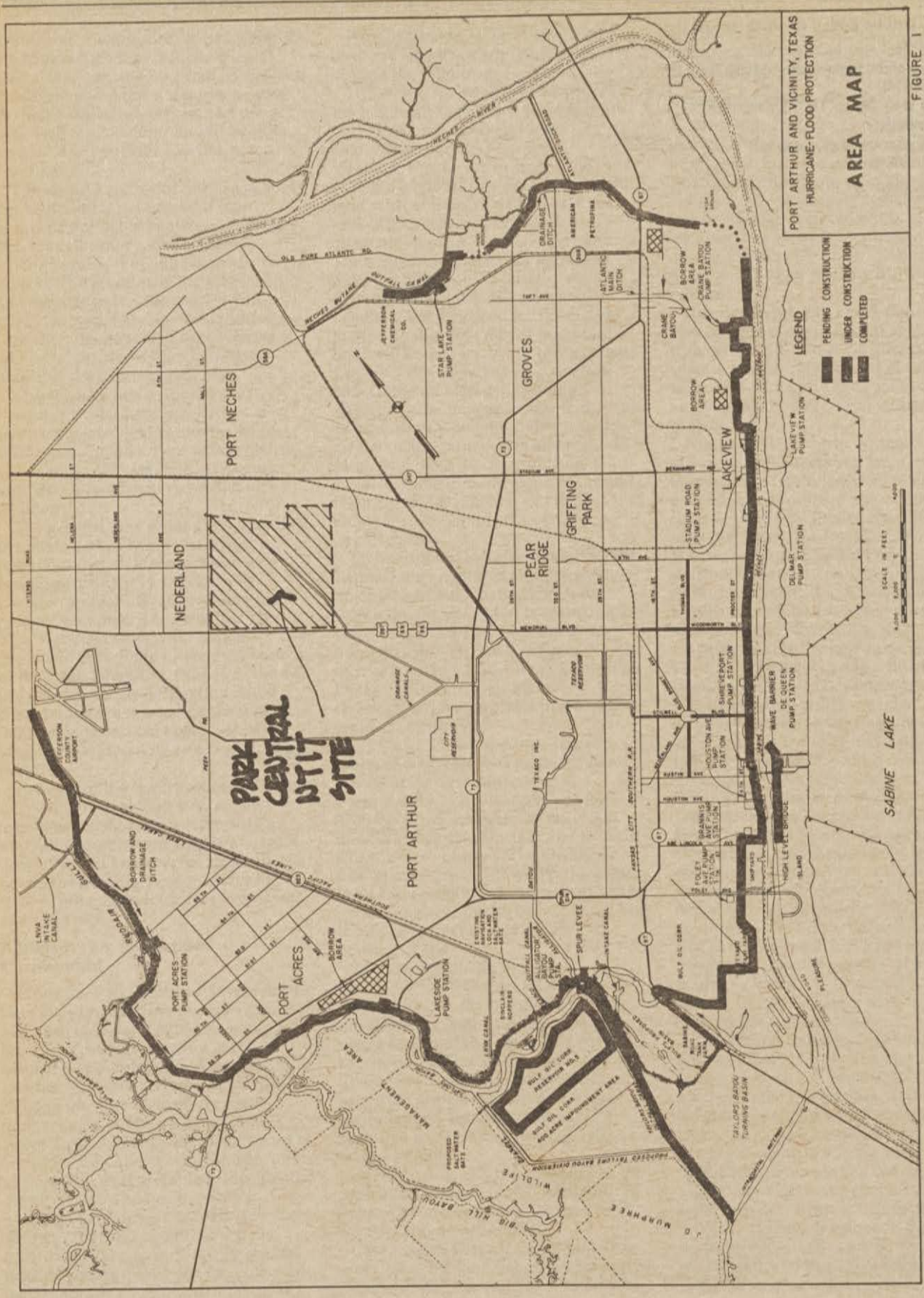
(Section 7(d) of the Department of HUD Act, 42 U.S.C. 3535(d))

Issued at Washington, D.C., June 8, 1979.

William J. White,

General Manager New Community Development Corporation.

BILLING CODE 4210-01-M



[FR Doc. 79-18313 Filed 6-8-79; 8:45 am]
BILLING CODE 4210-01-C

federal register

Tuesday
June 12, 1979

Part V

Federal Election Commission

Multicandidate Political Committees Index

FEDERAL ELECTION COMMISSION

[Notice 1979-7]

Multicandidate Political Committees; Index

The Federal Election Commission today publishes a comprehensive Index of "Multicandidate Political Committees," which is defined by 2 U.S.C. § 441a(a)(4) of the Federal Election Campaign Act of 1971, as amended, as a political committee "* * * registered under Section 433 for a period not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office."

The Multicandidate Committee Index contains two sections—Party-Related Committees and Non-Party Related Committees—and has been derived from a review of the reports and statements filed with the Commission, the General Accounting Office, the Clerk of the U.S. House of Representatives and the Secretary of the U.S. Senate since April 7, 1972. Please note that all committees which had met the qualifications for Multicandidate Committee status prior to January 1, 1975, are determined to have been qualified as of January 1, 1975, the effective date of the 1974 amendments to the Federal Campaign Act.

In addition, 11 CFR § 100.14 states "all committees * * * established, financed, and maintained or controlled by the same corporation, labor organization, person, or group of persons, including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated." Therefore, committees have been included in this Index specifically identifying their connected or affiliated organization(s) as reported by each committee.

The Commission is publishing this notice of an Index as prescribed by 2 U.S.C. § 438(a)(6), requiring periodic publication in the **Federal Register** of an Index of Multicandidate Committees, including the date of registration of such committees and the committees' dates of qualification under 2 U.S.C. § 441a(a)(4). Copies of this Index are available upon request from the Federal Election Commission's Office of Public Records, 1325 K Street, N.W., Washington, D.C. 20463 for $5 per copy or by calling (202) 523-4181 or toll free 800-424-9530.

Any person who believes that a committee not included on this Index has, in fact, met the qualifications for multicandidate status, should so advise the Commission in writing and provide documentation as appropriate, so that the Commission can correct or update its records.

Para Persona De Hablar Espanol

Si usted tiene difficultades en entender el indice, escriba a Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463.

Dated: May 25, 1979.

Robert O. Tiernan,

Chairman, Federal Election Commission.

[FR Doc. 79-18151 Filed 6-11-79; 8:45 am]

BILLING CODE 6715-01-M

federal register

Tuesday
June 12, 1979

Part VI

Department of Agriculture

Animal and Plant Health Inspection Service

Ventilation of Animal Shipping Containers; Request for Information

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[9 CFR Ch. I]

Ventilation of Animal Shipping Containers; Request for Information

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of request for information relative to minimum ventilation standards for animal shipping containers.

SUMMARY: The purpose of this document is to give interested persons an opportunity to provide views, data, and other information regarding the minimum amount of ventilation area required of shipping containers used to transport warmblooded animals in commerce.

DATE: Written comments must be filed on or before August 13, 1979.

ADDRESSES: Written comments to the Deputy Administrator, USDA, APHIS, VS, Room 703, Federal Building, 6505 Blecrest Road, Hyattsville, MD 20782

FOR FURTHER INFORMATION CONTACT: Dr. Dale F. Schwindaman (301) 436–8271.

SUPPLEMENTARY INFORMATION: As a result of requests and comments from the National Committee on Animal Transport, and from other interested persons for reconsideration of the Department's present standards regarding the minimum ventilation requirements for shipping containers used to transport dogs and cats in commerce, the Department is soliciting the submission of data, views, and opinions relative to such ventilation requirements for shipping containers used to transport warmblooded animals in commerce. Although the requests regarding this subject were primarily concerned with dogs and cats, the Department will consider comments relative to other animals as well since the transporation standards contained in the regulations pertain to all warmblooded animals subject to the Animal Welfare Act. The Department's present standards regarding ventilation state that, "Primary enclosures, * * * used to transport live (various animals subject to the Act) shall be constructed in such a manner that * * *; (4) * * *, there are ventilation openings located on two opposite walls of the primary enclosure and the ventilation openings on each such wall shall be at least 16 percent of the total surface area of each such wall, or there are ventilation openings located on all for walls of the primary enclosure and the ventilation openings on each such wall shall be at least 8 percent of the total surface area of each such wall; *Provided, however,* That at least one-third of the total area providing ventilation for the primary enclosure shall be located on the lower one-half of the primary enclosure and at least one-third of the total area providing the ventilation for the primary enclosure shall be located on the upper one-half of the primary enclosure; * * *." The National Committee on Animal Transport and other persons requested that the Department "increase the minimum ventilation requirement in shipping containers to 25 percent for the six months from April 1 through October 1."

The purpose of this notice is to give all interested persons an opportunity to express opinions and comments and to submit pertinent facts, data, or arguments, in writing, regarding the amount of ventilation available to animals in shipping containers. Such opinions and comments should contain information regarding any factual data which might be available concerning the adequacy or inadequacy of the present ventilation requirements, as well as, any suggested changes. Opinions and comments, which the Department has already received with regard to this issue, will be given consideration and persons who have provided them need not submit these again unless they wish to supply new or additional information to the Department.

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, Room 703, 6505 Belcrest Road, Hyattsville, Maryland, during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Dated: June 7, 1979.

Norvan L. Meyer,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 79-18190 Filed 6-11-79; 8:45 am]

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June 12, 1979

Part VII

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

Section 8 Housing Assistance Payments Program for New Construction

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 880]

[Docket No. R-79-663]

Section 8 Housing Assistance Payments Program for New Construction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Proposed rule.

SUMMARY: The regulation governing the Section 8 new construction program is being revised to accomplish three major objectives. First, the language of the regulation has been simplified and the format altered to make the regulation easier to read and use. Also, the regulation has been reviewed to make sure that all necessary material is included and that material which is not appropriate for inclusion no longer appears. Second, rent, cost and amenities limitations, and requirements for cost justification of rents in certain cases, have been added in order to control and reduce the costs of the program. Third, processing changes have been made to assure coordination of Section 8 and HUD mortgage insurance programs with fewer developer submissions and to reduce and level out field office workload in order to improve the efficiency and quality or processing.

In addition, marketing requirements are revised so that owners of non-elderly family projects located in non-impacted jurisdictions will adopt and implement a marketing plan for outreach to persons residing in impacted jurisdictions.

This regulation does not apply to projects developed under other Section 8 regulations including Parts 881, 882, 883 and 885, except as provided in those Parts.

COMMENTS DUE: August 13, 1979.

ADDRESS: Comments should be filed with the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: George Hipps, Office of Multi-family Housing Development, Room 6128, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, 202-755-5720. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Since this is a proposed regulation, it will not be implemented until after it is published for effect. The Department is greatly interested in receiving comments on all of the proposed changes so that they may be carefully considered in developing the final regulation. The major change included in the proposed regulation are discussed below.

Language and Format

A primary purpose of this proposed revision of Part 880 is to simplify the language of the regulation and generally to improve readability and ease of use. A brief summary has been added as Subpart A so that the general concepts of the program can be understood without reading the entire regulation. To improve usability, the remainder of the regulation has been divided into various segments which generally flow chronologically from proposal submission through project occupancy and management.

In order to aid in understanding the program, the proposed regulation makes several changes in the basic terms used to describe the rent and assistance concepts of the program.

1. The term "total housing expense" has replaced the term "gross rent" which was confusing because the utility allowance (formerly "allowance for utilities and other services") making up part of the gross rent was not rent at all but rather an estimate of tenant-paid utilities and other services not included in the contract rent. Total housing expense is the sum of the contract rent and utility allowance, if any, for a unit.

2. The term "total family contribution" has replaced the term "gross family contribution." It consists of the "tenant rent," a new term which has been added to describe the portion of the total family contribution payable directly by the family to owner, and any utility allowance for the unit the family is leasing.

3. The term "housing assistance payments" includes two payments—the "housing assistance payment to the owner" and in some cases an additional "housing assistance payment to the family." The housing assistance payment to the owner for a leased unit is the difference between the contract rent and the tenant rent described in number 2 above. An owner may also receive a housing assistance payment for a vacant unit. An additional housing assistance payment to the family is made only if the utility allowance described in number 1 above is greater than the total family contribution, in which case the family is paid the difference between the two in order that the allowed total family contribution is not exceeded.

With these new terms, the basic rent and assistance concepts of the program can now be expressed in several simple formulas:

(1) Total housing expense = contract rent + utility allowance.

(2) Total family contribution = tenant rent + utility allowance. (Where the utility allowance is greater than the total family contribution, the tenant rent is 0 and housing assistance payment to family = utility allowance − total family contribution.)

(3) Housing assistance payment to owner = contract rent − tenant rent.

(4) Housing assistance payments (to owner and to family, where applicable) = total housing expense − total family contribution.

Several other terms have been introduced or revised for purposes of clarification or simplification. For example, the proposed regulation now uses "contract administrator" to describe either HUD or the PHA as the party contracting with the owner for housing assistance payments.

Cost Containment

In the interest of providing housing at the lowest possible costs and rents, and thereby serving more families with available funding, the proposed regulation includes the addition of several major cost containment features.

1. *Revised Limitation on Rents Including Cost Justification.* Although rent reasonableness has been a major determination of Section 8 project acceptability since the inception of the program, it has been implemented mainly through HUD handbooks, and an adequate explanation has never been included in the regulation. In addition to explaining rent reasonableness, the proposed regulation includes more stringent standards in determining the reasonableness of rents.

The current rent reasonableness test allows rents in Section 8 projects to exceed rents for comparable unassisted units by up to 15 percent without cost justification of any kind (to compensate for increased security and management costs for family housing, and the additional costs for management and special amenities and design features for elderly housing, and for higher financing costs for all assisted housing), and by anadditional 5 percent with cost justification. Two changes have been made in this area: (1) the proposed

reasonableness test would permit Section 8 rents to exceed comparable rents by a maximum of 10 percent, and (2) any rents above comparable rents would have to be justified by cost estimates during processing and by cost certification at the time the project is completed. Small and partially-assisted projects for non-elderly families would be exempt from this cost justification.

These changes, as well as the continuation of current Fair Market Rent limitations, are contained in Section 880.204(b). These revisions represent a major policy change which is expected to help avoid excessive expenditures under this program.

2. *Limitation on Replacement Costs.* To aid in controlling costs and assuring that Section 8 projects will be of "modest design," limits on project replacement costs have been included in § 880.204(d). For the purpose of obtaining comments, the numerical limits are included in the proposed regulation; however, the final regulation will state that the limits will be established initially, and updated periodically thereafter, by notice to the field offices.

The numerical limits as proposed are high enough to allow the use of all HUD mortgage insurance programs. Also, the proposed regulation contains provisions similar to HUD mortgage insurance programs which provide for increases in the limits in high cost areas and additional increases in Alaska, Guam and Hawaii.

This limitation will require the submission of a replacement cost estimate by the developer at the preliminary proposal stage and a certification of actual cost after completion of the project, except in the case of partially-assisted projects for non-elderly families which are exempt from the limitation because of their predominantly unassisted nature.

3. *Limitation on Amenities.* The currrent regulation does not expressly exclude amenities or design features considered luxurious, and some fear has been expressed that luxury level projects could result under the program. The proposed regulation prohibits the inclusion of amenities or design features which would exceed the standards of modest quality housing in the area in which the project is proposed. Partially-assisted projects for non-elderly families are exempt from this limitation because of their predominantly unassisted nature. See § 880.204(e).

4. *Amendments.* The Department may include in the final regulation provisions designed to reduce the volume of amendments to Section 8 new construction projects. One change currently under consideration would place a cap on the percentage increase allowable beyond the point of initial reservation of funds. The Department invites the public to comment on this potential change as well as to suggest alternative measures for improving control of amendments.

Limitation on Distributions

Section 880.205 of the proposed regulation limits the distributions that can be made to profit-motivated owners out of surplus project funds, with different rates of return for syndicated and non-syndicated owners, and for family and elderly housing. The Department believes that a lower rate of return for syndicated owners is justified by the fact that in a case of syndicated ownership a substantial profit is received initially. Accordingly, HUD believes that a lower rate of return in these cases provides sufficient incentive to promote development. The higher rates of return for family projects are intended to provide additional incentive for developers to provide this "hard to get" type of housing.

The proposed rates of return are at levels similar to those used by many state housing finance and development agencies participating in the Section 8 program. For non-syndicated owners, the permitted rate of return after the first year will be applied to total housing expense, so that the amount of the return will keep pace with annual increases in total housing expense.

Return is to be calculated annually, and shortfalls in one year may be paid from excess funds accumulated in the next five years.

The appropriate FHA programs regulations will be amended by the addition of a provision stating that distribution of project funds to mortgagors and the use of funds remaining after distribution will be governed by the Part 880 regulation in those cases where an insured project receives Section 8 assistance.

Pipeline Processing

The proposed regulation, in § 880.302, requires that previously submitted approvable proposals "in the pipeline" which have not been funded be reviewed first when any new contract authority becomes available. This will both reduce the level out field office workload by requiring the offices to consider previously submitted, high quality proposals before issuing the Notification of Fund Availability soliciting the submission of new proposals which would require full reviews. These provisions are contained in § 880.302.

Preapproved Sites

Currently, requests for preapproved sites may be submitted at any time. Such requests may be received when no contract authority is available, or when the field office has little time to review such requests. Also, scattered submissions preclude comparison of requests. The proposed regulation (§ 880.303) states that to the extent feasible such requests should be submitted early in the fiscal year. The purpose is to enable field offices to compare and approve requests prior to publication of the Notification of Fund Availability.

The proposed regulation also permits local government selection of developers on a competitive basis for preapproved sites acquired with Community Development Block Grant (CDBG) funds.

Finally, in order to reduce field office processing, projects on preapproved sites not subject to competitive selection may skip the preliminary proposal stage. The first submission would be comparable to a final proposal.

NOFA

Under current procedures, a field office issues various Notifications of Fund Availability (NOFAs) throughout the year requesting the submission of proposals for the various allocation areas within its jurisdiction. The process is repetitive and time-consuming for the field office, and occasionally permits NOFAs to be deferred until so late in the fiscal year that proper processing and selection become difficult. Also, developers are frequently unaware of when NOFAs will be issued for areas in which they are interested and, therefore, are unable to begin preparing proposals in advance of the NOFA.

Section 880.304 of the proposed regulation requires a single publication which will provide notice that the field office will accept proposals for the various allocation areas within its jurisdiction. Specific information for each allocation area will be contained in a detailed NOFA which will be provided by the field office on request.

Proposals for projects for non-elderly families will be accepted as long as contract authority remains available and will be reviewed on a monthly cycle. Proposals for projects for the elderly will be accepted only up to a set deadline date. The reason for the differentiation between proposals for family and elderly projects is the

relatively small number of proposals for family projects.

Small and Partially-Assisted Projects for Non-Elderly Families

In order to aid in deconcentration of assisted family housing, and thereby increase economic integration while at the same time lessening the impact of such housing on a neighborhood, the proposed regulation contains exemptions from program requirements and special preferences to encourage development of small projects for non-elderly families (20 units or fewer) and partially-assisted projects for non-elderly families, i.e., projects of more than 50 units of which 20 percent or less are assisted under Section 8.

1. *Small Projects.* Exempt from cost justification requirement of § 880.204(b)(2) and limitation on distributions of § 880.205. Special preferences in selection for technical processing (§ 880.306(b)) and ranking (§ 880.307).

2. *Partially-Assisted Projects.* Exempt from cost justification requirement of § 880.204(b)(2), limitation on replacement costs of § 880.204(c), limitation on amenities of § 880.204(e) and limitation on distributions of § 880.205. Special preferences in selection for technical processing (§ 880.306(b)) and ranking (§ 880.307).

Changes in Selection Procedures

The current regulation permits field offices to (1) place all acceptable proposals in technical processing and then rank all those found approvable in order to make selections or (2) identify clearly superior proposals, place only those clearly superior proposals in processing, and select those projects without further comparison to any others submitted. In some cases, field offices have processed far more proposals than could be funded, which creates costly delays to both the field office and the prospective developers. In other cases, where the clearly superior standard was used to reduce the processing burden on the field office, it was not applied in a consistent manner because it was not defined but was left to subjective judgment.

The proposed regulation continues the requirement for a preliminary evaluation of all proposals. If the number found acceptable for further processing substantially exceeds the number which can be processed expeditiously, the field office is authorized to reduce the number of proposals to be placed in technical processing by the use of specified comparison factors (see § 880.306(b)) instead of the clearly superior standard. This approach assures that competition is maintained, and a pipeline of approvable proposals is identified, without causing undue delay and processing burden.

Improved Coordination of Section 8 and Mortgage Insurance Programs

The proposed regulation has eliminated any request at preliminary proposal for special submissions for projects requesting mortgage insurance. At later stages of processing, all duplication of documents and reviews between the two programs has been eliminated. Section 8 documents and processing will constitute only a minor addition to the HUD mortgage insurance program requirements. (See §§ 880.306(d) and 880.308(b).)

Review of Architectural Drawings

The proposed regulation requires field office review of all final architectural drawings and specifications to assure that excessive amenities are not included. (See § 880.310.) HUD also reserves the right to review on a case-by-case basis for compliance with HUD Minimum Property Standards; this review is now and will continue to be done for all HUD mortgage-insured projects as part of mortgage insurance processing.

Site and Neighborhood Standards Unchanged

The proposed regulation does not alter the current site and neighborhood standards. Revisions to these standards have been published for comment. Comments have been received and are currently under study. When new standards are published, they will replace the standards contained in this regulation.

Rent Increase During Construction

The current regulation prohibits rent increases during the construction period except in very limited circumstances. A number of requests for waivers of this provision have been received, and many have been granted because of the unforeseeable nature of the circumstances which occasioned the requests and the hardships which would result if increases were not granted. The proposed regulation would permit rent increases during construction under certain circumstances described in § 880.403. These provisions are similar to, but not the same in all respects as, the current bases for mortgage increases under HUD mortgage insurance programs.

Contract Provisions

Two major changes in the Housing Assistance Payments Contract are included in the proposed regulation. First, the provision for an initial term of five years renewable at the sole option of the owner for up to the maximum total term of the Contract has been deleted. Under § 880.502 of the proposed regulation, the Contract will be executed for a single term without optional renewals. The reason for this change is to assure that units built under the Section 8 program remain available as assisted housing for the total term of the Contract. The second change, in § 880.504, has the same purpose. It places a 10 percent limitation on the leasing of assisted units to ineligible families without the prior approval of HUD and provides for appropriate remedies, including a reduction of the number of units covered by the Contract.

A new provision is included in § 880.501(a), similar to a provision in 24 CFR, Part 811. It permits execution of the Contract upon acceptable physical completion of the project, even though evidence of completion in other respects is not yet acceptable. In such cases, however, and until acceptable completion of all such other requirements, housing assistance payments will be limited to the amount of debt service, and rent-up and occupancy will be subject to field office conditions.

Changes have been made in § 880.502(a) to limit the availability of a 40-year maximum Contract term to projects which:

(1) Are not financed with the aid of a loan insured, co-insured, made, guaranteed or intended for purchase by the Federal Government,

(2) Are owned or financed by a loan or loan guarantee from a state or local agency,

(3) Are intended for occupancy by non-elderly families, and

(4) Are located in an area designated by HUD as requiring special financing assistance.

Increased Housing Opportunities for Non-elderly Families Residing in Impacted Jursidictions

The revised regulation includes new provisions under which owners of non-elderly family projects that are located in non-impacted jurisdictions will be required to adopt and implement a marketing plan to promote occupancy in these projects by families living in impacted jurisdictions.

An impacted jurisdiction is defined in § 880.201 as a jurisdiction (smallest unit of general local government) in a Standard Metropolitan Statistical Area (SMSA) where the ratio of lower income families to total families is materially higher than the ratio of lower income families to total families for the entire SMSA.

The objective of these provisions is to help achieve the Departmental policy of increasing housing opportunities for lower income families, and to promote the objective contained in the Housing and Community Development Act of 1974, as amended, for spatial deconcentration of housing opportunities for lower income families and reduction of isolation of such families.

These provisions will be coordianted with other HUD actions to be taken in the near future with respect to housing and community development programs aimed at promoting mobility and increased housing choice. This will involve participation by public housing agencies, local government community development program agencies, area-wide planning organizations, and nonprofit and other private sector agencies and organizations concerned with these objectives.

Section 880.308(a) provides that final proposals for non-elderly family projects located in non-impacted jurisdictions will contain a marketing plan to achieve occupancy of units by families from impacted jurisdictions. The plans will include activities and efforts needed to achieve an appropriate level of initial and subsequent occupancy by such families. This would be similar to the affirmative fair housing marketing activities pursuant to current requirements for achieving occupancy by minority households.

Section 880.601(a) provides that initial marketing to impacted area families is to begin one month prior to marketing to non-impacted area families. However, applications from such families will not be accepted until the date of initiation of marketing to other families, which date will also be the announced date for acceptance of applications from all applicants.

Section 880.311(c) provides for HUD notification of PHAs, community development agencies, metropolitan-wide clearinghouses, and fair housing organizations as to projects that are about to begin construction. These agencies may then inform impacted area families who may be interested in occupying the housing. Owners will contact these agencies again for specific referrals during the initial and subsequent marketing periods.

As further incentive for owners to meet these requirements and implement effective marketing plans, the ranking system for selecting among competing proposals established pursuant to § 880.307(b) will include the extent of previous experience or other evidence of competence of the owner and other participants in the development of non-elderly family housing, and in marketing units located in non-impacted jurisdictions to families from impacted jurisdictions subsequent to the establishment of this requirement. These same factors will also be used in the selection of proposals for further technical processing as provided in § 880.306(b).

In addition, compliance with the various marketing requirements established pursuant to § 880.601 is one of the conditions for making vacancy payments to owners under § 880.611.

HUD intends to monitor compliance with these requirements and with the affirmative fair housing marketing requirements through the management review checklist in the appropriate Section 8 handbooks. This will focus on reviews of initial and subsequent marketing activities and the records of owners as to the race and place of previous occupany of both applicants and occupants of projects, for comparison with the marketing standards established pursuant to § 880.308(a)(4) and (5).

Residency Requirements and Preferences

Section 880.603(b)(1) prohibits residency requirements and preferences in establishing criteria for the selection of tenants. This provision is being added to the regulation as part of the Department's efforts to promote the objective of spatial deconcentration of housing opportunities for lower income families.

Project Reserves

Two project reserves, an operating deficit escrow and a replacement reserve, have been added in § 880.602. Experience with both HUD mortgage insurance programs and the state agency program indicates that reserves are an important form of insurance against default on the basis of operating shortfalls during the early years of a project and extraordinary maintenance, repair and capital costs in later years.

The operating deficit escrow is set at 2 percent of total replacement cost for all profit-motivated owners; there is no escrow requirement for nonprofit owners. One-half of the unused escrow will be released at the end of the third year of project operation and the remainder at the end of the fourth year.

The replacement reserve is to be built up by annual deposits equal to 5 percent of total housing expenses for elderly projects and 7 percent for non-elderly family projects. Total housing expense was used as the basis for these annual deposits to the replacement reserve rather than replacement cost because it reflects cost increases over time. The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve achieve that level, the rate of deposits may be reduced with the approval of HUD. On the other hand, should withdrawals from the reserve and projected requirements make this necessary, higher rates of deposit may be required by HUD from time to time.

Termination of Tenancy and Modification of Leases

The provisions regarding termination of tenancy have been expanded considerably. Section 880.607 now specifies that a tenancy may be terminated by the owner only for good cause and provides detailed notice requirements. This section also contains provisions concerning modification of leases as of the end of any lease term.

Other Management Changes

1. Section 880.601(d) adds a requirement for the submission annually of audited financial and operating statements so that HUD can assure that a project is being properly managed.

2. Section 880.603(c) provides that owners will use their best efforts to achieve occupany by families with incomes averaging at least 40 percent of the median income in the area for the purpose of promoting economically-mixed housing as stated in Section 8(a) of the U.S. Housing Act of 1937, as amended.

3. Section 880.603(d) requires annual reexamination of the incomes of all assisted families, including the elderly. Currently, only biennial review is required for elderly families.

4. A new provision is added permitting a family to report at any time a change in income or other circumstances that would result in a decrease of its required family contribution. However, an owner may not require a family to report increases in income between scheduled reexaminations.

5. Section 880.608 contains a requirement for a security deposit from

the tenant, rather than the permissive provision included in the current regulation.

Related Section 8 Changes

1. *Other Section 8 Regulations.* The program regulations for substantial rehabilitation (Part 881) and housing finance and development agencies (Part 883) are currently in the process of being revised also. Each of these regulations will reflect the revised new construction regulation (Part 880), particularly as it relates to major programmatic changes such as the addition of new cost containment factors. In addition, the regulations will contain provisions which pertain to the unique aspects of the individual programs.

2. *Mobile Homes.* This regulation does not include provisions for a Section 8 program which would assist mobile home owners in renting space in newly-constructed mobile home parks, as authorized in Section 8(j) of the United States Housing Act of 1937 which was added by the Housing and Community Development Amendments of 1978. Comments on such a program are invited at this time to assist the Department in developing a proposed regulation.

Applicability of Proposed Regulation

1. The revised Part 880 will apply to all proposals for which a notification of selection was not issued before the effective date of the revision. Where a notification was issued for a proposal before the effective date, the revised Part will apply if the owner notifies HUD within 60 calendar days that it wishes the revision to apply and promptly brings the proposal into conformance.

2. Subparts E and F will apply to all projects for which an Agreement was not executed before the effective date of the revision. Where an Agreement was so executed:

(a) The owner and HUD may agree to make the revised Subpart E applicable and to execute appropriate amendments to the Agreement and/or Contract.

(b) The owner and HUD may agree to make the revised Subpart F applicable (with or without the limitation on distribution) and to execute appropriate amendments to the Agreement and/or Contract.

3. However, § 880.607, Termination of Tenancy and Modification of Leases, will apply to all projects, including those for which an Agreement or Contract was executed before the effective date of the revision.

4. In the interest of uniformity of management standards in Section 8 new construction projects, the Department is exploring the extent to which Subparts E and F should be made applicable in the final regulation to all projects, consistent with the rights of owners under existing Contracts. Comments are specifically invited on this matter.

Inapplicability of NEPA

A finding of inapplicability regarding the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this finding of inapplicability will be available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

Accordingly, it is proposed to amend Part 880 in its entirety as follows:

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

Subpart A—Summary and Applicability

Subpart B—Definitions, Project Eligibility and Other Requirements

Subpart C—Proposal Submission to Start of Construction

Subpart D—Construction Period and Cost Certification

Subpart E—Housing Assistance Payments Contract

Subpart F—Management

Subpart A—Summary and Applicability.

880.101 General.

(a) *Purpose.* The purpose of the Section 8 program is to provide lower-income families with decent, safe and sanitary rental housing through the use of a system of housing assistance payments. This Part contains the policies and procedures applicable to the Section 8 new construction program. In addition to this regulation, Section 8 new construction assistance may also be made available through State housing finance and development agencies (24 CFR, Part 883, Subparts A–D), in connection with financing by the Farmers' Home Administration (24 CFR, Part 883, Subparts G and H) or in connection with direct HUD loans for housing for the elderly or handicapped (24 CFR Part 885). The assistance may be provided to public housing agency owners or to private owners either directly from HUD or through public housing agencies. Section 8 may also provide assistance in substantially

rehabilitated housing (24 CFR, Part 881) or in existing housing in acceptable condition or needing only moderate rehabilitation (24 CFR, Part 882). This Part does not apply to projects developed under other Section 8 program regulations, including Parts 881, 882, 883, and 885, except to the extent specifically stated in those Parts.

(b) *Housing Assistance.* Under the Section 8 new construction program, monthly payments are made directly by the contract administrator (HUD or a public housing agency) to the project owner to assist an eligible family leasing an assisted unit or for vacancies in certain cases. These payments, known as "housing assistance payments," are made pursuant to a Housing Assistance Payments Contract, which is executed upon satisfactory completion and HUD acceptance of a project and which has a maximum term of between 20 and 40 years. This Contract is discussed in Subpart E.

(c) *Tenant Rents and Eligible Families.* In addition to the housing assistance payment, the project owner receives a tenant rent directly from the eligible family occupying an assisted unit. The total amount received by the owner for rent is called the contract rent and is set forth in the Contract. "Eligible families," including elderly and handicapped individuals, must have incomes within the HUD specified limits (based on 80 percent of median income for the area), and pay between 15 percent and 25 percent of their income, as adjusted in accordance with HUD regulations for housing (including utilites).

(d) *Rent, Cost and Amenities Limitations.* In the Section 8 new construction program, rents, replacement costs and amenities must comply with limitations contained in Subpart B. These limitations serve to establish the modest nature of housing assisted under the program and to assure that the rents in Section 8 housing are reasonable in relation to comparable unassisted housing in the area. After occupancy, rents will be adjusted to reflect changes in the costs of owning and operating rental housing.

(e) *Financing.* The Section 8 program provides only rental assistance. It does not provide construction or permanent financing. Section 8 may be used with any type of construction or permanent financing, such as FHA, mortagage insurance programs, tax exempt financing (see 24 CFR, Parts 811 and 883) and loans from conventional lending institutions. The owner can use the commitment contained in the Contract to make housing assistance payments to support financing.

(f) *Eligible Owners.* All types of private developers and sponsors, including profit-motivated and non-profit, and public housing agency developers and sponsors are eligible to develop and own housing assisted under this program. In all cases, the owner is responsible for the determination of eligibility and selection of tenants and for all ordinary management and maintenance functions. The provision governing project management are contained in Subpart F.

(g) *Allocation of Contract Authority.* HUD commits funding for new projects under the Section 8 program and increases the funding commitment for previously approved projects pursuant to contract authority provided by Congress. The contract authority for new projects is allocated to HUD field offices on the basis of a "fair share" formula reflecting population, poverty, overcrowding, housing condition and similar indices of housing need. Each field office, in turn, suballocates its contract authority among the various allocation areas within its jurisdiction on essentially the same "fair share" basis. Not every area receives an allocation of contract authority for new construction. A further description of this process is contained in 24 CFR, Part 891, Subpart D.

§ 880.102 Processing.

Proposals for housing to be assisted under this Part are submitted to HUD field offices and processed differently depending on several criteria.

(a) Previously submitted "pipeline" proposals which were found approvable but not funded are reviewed first when any new contract authority becomes available. If additional authority remains, HUD may consider preapproved sites, and, in certain areas, permit selections of developers by local governments. Where there are set-asides for projects to be owned by local public housing agencies or to be located in HUD-approved New Communities or for other purposes, proposals may be received, processed and approved without the need to await specified acceptance periods or to undergo formal competition. Sections 880.302 and 880.303 of Subpart C detail these procedures.

(b) Other proposals under this Part are received by HUD from owners (developers) in response to public invitations, called Notifications of Fund Availability (NOFA), which request the submission of preliminary proposals containing a maximum number and type of units in a particular area. Interested owners obtain copies of the detailed developer's packet from the HUD field office which published the NOFA. All proposals received in response to a NOFA are reviewed for deficiencies in documentation and content in order to determine eligibility for further processing. If there are more acceptable proposals than can be approved under available Section 8 contract authority, the proposals are evaluated and ranked, and the highest ranking proposals are selected. Those not selected are placed in the pipeline for possible later funding. Proposals for projects for non-elderly families are accepted as long as contract authority remains available and are reviewed on a monthly cycle. Proposals for projects for elderly families must be submitted by the specified deadline date and are reviewed at the end of the submission period. Details of this process are contained in Subpart C, §§ 880.304 through 880.307.

(c) After a preliminary proposal is selected, the owner of the selected proposal submits a final proposal for the project. This proposal contains a more detailed description of the project, including cost and expense estimates where required, and more detailed plans for design, construction, financing and management. After HUD review and approval of the final proposal, the working drawings are completed by the owner's architect and reviewed by HUD for compliance with program amenities limitations. When these drawings are found to be acceptable, an Agreement is executed by the owner and the contract administrator (either HUD or a public housing agency) and construction begins. Details of this process are contained in Subpart C, §§ 880.308 through 880.311. The Agreement provides that a Contract will be executed upon proper construction, completion and acceptance by HUD of the project.

§ 880.103 Construction and management.

(a) *Construction.* Construction of the project is carried out in conformance with the HUD-approved final proposal. Increases in contract rents or utility allowances are permitted with HUD approval during construction if they are necessary to cover cost increases as specified in § 880.403. The project will be accepted by HUD and a Contract executed upon completion in accordance with the Agreement. These provisions are contained in Subpart D, §§ 880.401 through 880.404.

(b) *Cost Certification.* As soon as possible after completion of a project, the owner, except in the case of

exempted projects, will provide HUD with cost certifications. HUD will review the contract rents based on the owner's certified cost and reduce them where not justified. Section 880.405 details this process.

(c) *Contract.* The Contract will be executed on satisfactory completion of the project. It provides that the owner will receive housing assistance payments for the units covered by the Contract. The housing assistance payments include payments for units being leased by eligible families and payments for vacant units. The Contract provides that the owner may not reduce the number of units in a project available for lower-income families by more than 10 percent without the prior approval of HUD. The term of the Contract varies depending on the type of financing used by the owner. Administration of the Contract is done either by HUD or by a public housing agency under an Annual Contributions Contract with HUD. Subpart E contains provisions concerning the Contract.

(d) *Management.* Subpart F contains management provisions. The owner is responsible for all management functions, including marketing, selection of tenants, reexamination of family incomes, evictions and other terminations of tenancy and collection of rents. The owner must also provide for an operating deficit escrow, except in the case of non-profit owners, and a replacement reserve. Contract rents will be adjusted annually in accordance with 24 CFR, Part 888.

§ 880.104 Applicability of revised regulation.

(a) The revised Part 880 applies to all proposals for which a notification of selection was not issued before the effective date of the revision. Where a notification was issued for a proposal before the effective date, the revised Part will apply if the owner notifies HUD within 60 calendar days that it wishes the revision to apply and promptly brings the proposal into conformance.

(b) Subparts E and F apply to all projects for which an Agreement was not executed before the effective date of the revision. Where an Agreement was so executed:

(1) The owner and HUD may agree to make the revised Subpart E applicable and to execute appropriate amendments to the Agreement and/or Contract.

(2) The owner and HUD may agree to make the revised Subpart F applicable (with or without the limitation on distributions) and to execute appropriate amendments to the Agreement and/or Contract.

(c) However, § 880.607, Termination of Tenancy and Modification of Leases, applies to all projects, including those for which an Agreement or Contract was executed before the effective date of the revision.

§ 880.105 Applicability to proposals and projects under 24 CFR, Part 881.

Proposals and projects involving financing with tax exempt obligations under 24 CFR, Part 811 will be subject to the provisions of this Part, with the following modifications:

(a) The term "replacement cost" used in this Part will mean "development cost" as defined in 24 CFR, Part 811, adjusted to include the same components as the definition contained in § 880.201.

(b) Preliminary proposals and final proposals will contain such additional information as may be required under 24 CFR, Part 811.

(c) The preliminary evaluation and technical processing of preliminary proposals and the review of final proposals will include such additional reviews and determinations as may be required under 24 CFR, Part 811.

(d) Additional inspections during construction will be provided as required under 24 CFR, Part 811.

(e) The additional provisions in 24 CFR, Part 811 concerning completion and acceptance of the project will also be applicable and, in case of any conflict with § 880.404, will be controlling.

(f) In lieu of § 880.405, non-HUD-insured projects will be subject to the provisions of 24 CFR, Part 811 concerning the submission of certified statements as to amounts actually expended for development and other costs, yield on the obligations and amount of debt service, and specifying the actions to be taken in the light thereof.

(g) In lieu of the provisions of § 880.504, such projects will be subject to the provisions of 24 CFR, Part 811 designed to assure that all the units will continue to be available for lower-income occupancy throughout the term of the tax-exempt financing.

(h) A debt service reserve may be established and maintained in accordance with the provisions of 24 CFR, Part 811.

(i) The forms of ACC, Agreement and Contract will be modified in accordance with the provisions of 24 CFR, Part 811.

Subpart B—Definitions, Project Eligibility and Other Requirements

§ 880.201 Definitions.

ACC. (Annual Contributions Contract) For a private-owner/PHA project, for which the Contract is administered by a PHA, the ACC is the contract between the contract administrator PHA and HUD under which HUD commits to provide the PHA with the funds needed to make housing assistance payments to the owner and to pay the PHA for HUD-approved administrative fees and the PHA agrees to perform the duties of a contract administrator.

Agreement. (Agreement to Enter into Housing Assistance Payments Contract) The agreement between the owner and the contract administrator which provides that, upon satisfactory completion of the project in accordance with the HUD-approved final proposal, the administrator will enter into the Contract with the owner.

Allocation Area. A municipality, county, one or more Indian areas, or group of contiguous municipalities or counties identified by HUD or in an approved Areawide Housing Opportunity Plan for the purpose of allocating housing assistance to support economically feasible housing projects.

Assisted Unit. A dwelling unit eligible for assistance under a Contract.

Contract. (Housing Assistance Payments Contract) The contract entered into by the owner and the contract administrator upon satisfactory completion of the project, which sets forth the rights and duties of the parties with respect to the project and the payments under the Contract.

Contract Administrator. The entity entering into the Contract with the owner. The contract administrator is a PHA in the case of private-owner/PHA projects, and HUD in private-owner/HUD and PHA-owner/HUD projects.

Contract Rent. The total amount of rent specified in the Contract as payable by HUD and the tenant to the owner for an assisted unit.

Decent, Safe and Sanitary. Housing is decent, safe and sanitary at project completion if the dwelling units and related facilities are accepted by HUD as meeting the requirements of the Agreement. Housing continues to be decent, safe and sanitary if it is maintained in a condition substantially the same as at the time of acceptance.

Elderly Family. An elderly family as defined in 24 CFR, Part 812, including a disabled or handicapped individual.

Fair Market Rent. HUD's determinations of the rents, including utilities (except telephone), ranges and

refrigerators, parking, and all maintenance, management and other essential housing services, which would be required to obtain privately developed and owned, newly constructed rental housing of modest quality with suitable amenities and sound architectural design.

Family. (Eligible Family) A family which qualifies as a lower-income family, as defined in this section. For purposes of this definition, "family" will have the meaning of "family" contained in 24 CFR, Part 812 (including single elderly, handicapped, disabled and displaced persons and the remaining member of a tenant family).

Final Proposal. The detailed description of a proposed project to be assisted under this Part, which an owner submits after selection of the preliminary proposal, except where a preliminary proposal is not required under § 880.303(c).

Housing Assistance Payment. The payment made by the contract administrator to the owner of an assisted unit as provided in the Contract. Where the unit is leased to an eligible family, the payment is the difference between the total housing expense and the total family contribution. A housing assistance payment, known as a "vacancy payment," is made to the owner when an assisted unit is vacant. An additional housing assistance payment is made to the family if the utility allowance is greater than the total family contribution.

Housing Assistance Plan. A housing plan submitted by a unit of general local government and approved by HUD as being acceptable under the standards of 24 CFR, Part 570.

HUD. The Department of Housing and Urban Development.

Impacted Jurisdiction. A jurisdiction in a Standard Metropolitan Statistical Area (SMSA) where the ratio of lower-income families to total families is materially higher than the ratio of lower-income families to total families for the entire SMSA.

Jurisdiction. The smallest unit of general local government for which adequate population and income data are available for determining whether a jurisdiction is an impacted or non-impacted jurisdiction.

Lower-Income Family. A family whose income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for the size of the family. HUD may establish income limits higher or lower if necessary in certain cases. For purposes of this definition, "income" shall have the meaning of "income for eligibility" contained in 24 CFR, Part 889.

New Communities. New community developments approved under Title IV of the Housing and Urban Development Act of 1968 and Title VII of the Housing and Urban Development Act of 1970.

Non-Impacted Jurisdiction. A jurisdiction which is not an impacted jurisdiction and which is located in an SMSA having one or more impacted jurisdictions.

NOFA. (Notification of Fund Availability) The notice published by HUD announcing the availability of contract authority for housing assistance and inviting the submission of proposals.

Non-Syndicated Owner. Any owner other than a limited partnership, and a limited partnership if it falls within the following definition. A limited partnership is a non-syndicated owner if its general partners, in the aggregate, receive or bear, as general partners, more than 25 percent of each of the following: income, gain, loss, deduction, credit and distributive share upon sale or refinancing of the project, as determined by the general partners' interest in the partnership. The general partners' interest shall be determined by the partnership agreement, or where not set forth therein, by other relevant documents. In applying this definition, the distributive shares of income, gain, loss, deduction, credit and distributive share upon sale or refinancing, of limited partners who are members of the family of a general partner will be added to the distributive shares of that general partner where such treatment would be authorized by Section 2657(c)(4) of the Internal Revenue Code.

Owner. Any private person or entity (including a cooperative) or a PHA having the legal right to lease or sublease newly constructed dwelling units assisted under this Part. The term owner also includes the person or entity submitting a proposal under this Part.

Partially-Assisted Project. A project for non-elderly families under this Part which includes more than 50 units of which 20 percent or fewer are assisted.

PHA. (Public Housing Agency) Any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of housing for lower-income families.

PHA-Owner/HUD Project. A project under this Part which is owned by a PHA. For this type of project, the Agreement and the Contract are entered into by the PHA, as owner, and HUD, as contract administrator.

Preliminary Proposal. The application describing a proposed project under this Part which an owner submits in response to a NOFA in order to be selected for housing assistance.

Private-Owner/HUD Project. A project under this Part which is owned by a private owner. For this type of project, the Agreement and Contract are entered into by the private owner, as owner, and HUD, as contract administrator.

Private-Owner/PHA Project. A project under this Part which is owned by a private owner. For this type of project, the Agreement and Contract are entered into by the private owner, as owner, and the PHA, as contract administrator, pursuant to an ACC between the PHA and HUD. The term also covers the situation where the ACC is with one PHA and the owner is another PHA.

Project Account. A specifically identified and segregated account for each project which is established in accordance with Section 880.503(b) out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the Contract or ACC, as applicable, each year.

Rent. In the case of an assisted unit in a cooperative project, rent means the carrying charges payable to the cooperative with respect to occupancy of the unit.

Replacement Cost. The construction cost of the project when the improvements are completed. The replacement cost may include the land, the physical improvements, utilities within the boundaries of the land, architect's fees, miscellaneous charges incident to construction as approved by the Assistant Secretary for Housing.

Secretary. The Secretary of Housing and Urban Development (or designee).

Small Project. A project for non-elderly families under this Part which includes 20 or fewer units.

Syndicated Owner. A limited partnership which does not qualify under the definition of non-syndicated owner.

Tenant Rent. The portion of the contract rent payable directly to the owner by an eligible family occupying an assisted unit. Tenant rent equals the total family contribution less any utility allowance.

Total Family Contribution. The portion of an eligible family's income payable toward the family's total housing expense, as determined in accordance with 24 CFR, Part 889.

Total Housing Expense. The total monthly cost of housing an eligible family, which is the sum of the contract rent and any utility allowance for the assisted unit occupied by the family.

Utility Allowance. An estimate, made or approved by HUD, of the cost of utilities (except telephone) and other essential housing services for an assisted unit which are not included in the contract rent paid directly to the owner but which are the responsibility of the eligible family leasing the unit.

Vacancy Payment. The housing assistance payment made to the owner by the contract administrator for a vacant assisted unit if certain conditions are fulfilled as provided in the Contract. The amount of the vacancy payment varies with the length of the vacancy period.

Very Low-Income Family. An eligible family whose income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for the size of the family.

§ 880.202 Project eligibility.

(a) For purposes of this Part, "new construction" refers to (1) housing for which construction starts after execution of the Agreement, or (2) housing which is already under construction when the Agreement is executed provided that:

(i) At the date of application to HUD, a substantial amount of construction (generally at least 25 percent) remains to be completed;

(ii) At the date of application to HUD, the project cannot be completed and occupied by eligible families whithout assistance under this Part; and

(iii) At the time construction was initiated, all parties reasonably expected that the project would be completed without assistance under this Part.

(b) The Section 8 new construction program under this Part is applicable to rental housing only; no asssistance will be provided for any unit occupied by an owner. Cooperatives are considered rental housing rather than owner-occupied housing for purposes of this Part.

(c) The types of new construction rental housing which can be assisted under this Part Include: (1) single-family houses, mobile homes, where appropriate, and multifamily structures; (2) housing designed for the elderly, disabled or handicapped, and (3) single-room occupant housing planned specifically as a relocation resource for eligible single persons.

(d) High-rise elevator projects for families whith children are prohibited unless HUD determines that there is no practical alternative.

(e) High-rise elevator projects for the elderly may be approved only if HUD determines that high-rise construction is appropriate after taking into account land costs, safety and security factors.

(f) Housing assisted under other provisions of the U.S. Housing Act of 1937, such as public housing assisted with annual contributions under Section 5 and 9 of the act, is not eligible for assistance under this Part. Tax exemption under Section 11(b) of the Act is not considered assistance for this purpose.

(g) Conversions of new construction projects under the Section 23 Leased Housing Program to the section 8 program will be permitted, where appropriate, provided that the Section 23 project qualifies as new construction under paragraph (a) of this section and that all parties, including HUD, agree.

(h) No proposal for housing under this Part may be approved unless the requirements of 24 CFR, Part 891, implementing Sections 213(a), (b) and (c) of the Housing and Community Development Act of 1974, as amended, concerning review and cómment by units of general local government, have been satisfied. (See Section 880.306(c)(1).)

§ 880.203 Fair market rents.

(a) Fair Market Rents are HUD's determinations of the rents, including utitlities (except telephone), ranges and refrigerators, parking, and all maintenance, management and other essential housing services, which would be required to obtain privately developed and owned, newly constructed rental housing of modest quality with suitable amenities and sound architectural design.

(b) Separate Fair Market Rents are establlished by unit size (number of bedrooms), basic structure type (detached, semi-detached/row, walk-up and elevator apartments) and occupant group (non-elderly family and elderly family, including handicapped) for individual market areas.

(c) Fair Market Rents for mobile homes may be established for an area upon application to HUD. The application must show that there ia a need and demand for mobile homes in the area for which they are proposed, and that mobile homes are acceptable under local requirements in that area.

(d) Fair Market Rents are published in the Federal Register at least annually in accordance with 24 CFR, Part 888. Interim revisions for one or more market areas may be initiated by HUD at any time and may be published as market conditions dictate.

§ 880.204 Limitations on contract rents, replacement costs and amenities.

(a) *Purpose and Applicability of Limitations.* The purpose of the Section 8 program is to assist lower-income families in renting decent, safe and sanitary housing of modest quality with suitable amenities and sound architectural design. This section sets limitations on the contract rents, replacement costs and amenities of projects contructed under this Part. These limitations are intended to permit production of suitable housing without excessive costs, design features or amenities.

(b) *Limitation on Contract Rents.* The contract rents for a project from proposal submission through cost certification, must be within both of the following limitations:

(1) *Fair Market Rent.* The contract rent plus any utility allowance for the unit must not exceed the Fair Market Rent in effect at the time of processing. The published Fair Market rents will include an estimate of anticipated rent increases in order to allow for the period of construction as stated in the publication. If the scheduled construction time for a project is less, an appropriate reduction will be made in determining the approvable Contract Rent. On the other hand, the applicable Fair Market Rent may be exceeded under special circumstances or if needed to implement a local Housing Assistance Plan or Areawide Housing Opportunity Plan:

(i) By up to 10 Percent with the approval of the HUD field office manager, or

(ii) By up to 20 percent with the approval of the HUD Assistant Secretary for Housing; and

(2) *Rent Reasonableness.* The contract rent must be reasonable. Contract rents will be considered reasonable only if HUD determines that:

(i) The rents are comparable to or below the rents of unassisted units of similar age, design and location which provide comparable amenities and services, or

(ii) For small projects and partially-assisted projects, the rents exceed the comparable rents by no more than 10 percent; or

(iii) For all other proposals, the rents do not exceed the comparable rents by more than 10 percent and the owner has provided cost and expense estimates at final proposal and cost certification, as specified in §§ 880.308 and 880.405, which justify the need for rents above

comparable rents and which have been accepted by HUD.

(c) *Limitation on Replacement Costs:*

(1) No proposal for a project to be assisted under this Part will be selected or approved by HUD, and no Agreement may be executed for a project, with an estimated replacement cost greater than the following limits plus any additional cost not attributable to dwelling use to the extend approved by HUD. The limits applicable to the part of the project attributable to dwelling use, as determined by HUD, depending on the number of bedrooms, are as follows:

(i) The basic limits are: (A) $23,720 per dwelling unit without a bedroom; (B) $27,129 per dwelling unit with one bedroom; (C) $32,983 per dwelling unit with two bedrooms; (D) $42,217 per dwelling unit with three bedrooms; and (E) $47,032 per dwelling unit with four or more bedrooms.

(ii) Where necessary to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, HUD may increase the limits provided in paragraph (c)(1)(i) of this section, not to exceed: (A) $24,962 per dwelling unit without a bedroom; (B) $28,614 per dwelling unit with one bedroom; (C) $34,795 per dwelling unit with two bedrooms; (D) $45,011 per dwelling unit with three bedrooms; and (E) $49,409 per dwelling unit with four or more bedrooms.

(iii) For any market area where cost levels so require, the Assistant Secretary for Housing may increase, at the request of the field office, the dollar amount limits set forth in paragraphs (c)(1)(i) and (ii) by up to 50 percent.

(iv) If the Assistant Secretary finds that, because of high costs, it is not feasible to construct dwellings in Alaska, Guam, or Hawaii without the sacrifice of sound standards of construction, design, and within the limits in paragraphs (c)(1) (i) and (ii), livability, the principal amount of the replacement cost limits may be increased by amounts as are necessary to compensate for additional costs, but not to exceed the maximum, including high cost area increases under paragraph (c)(1)(iii), if any, otherwise applicable by more than 50 percent.

(2) Partially-assisted projects are exempt from the replacement cost limitation of this paragraph.

(3) The mortgage amount of a HUD-insured proposal will also be subject to the mortgage limits of the applicable mortgage insurance program.

(d) *Excess Costs.* The limitation of paragraph (c) will not prohibit the actual cost of a project from exceeding the limit referred to in that paragraph in the event of cost overruns or other unforeseeable causes. However, in determining or adjusting contracts rents, or housing assistance payment, HUD will not take into account or give credit for any cost which exceeds the applicable replacement cost limit.

(e) *Limitation on Amenities.* Amenities in projects assisted under this Part will be limited to those amenities which are generally provided in unassisted housing of modest quality in the market area, as determined by HUD. Generally, the amenities included in the determination of Fair Market Rents for the area may be included in a project. Other amenities will not be permitted unless the owner provides justification for each additional amenity to HUD, and its inclusion is approved by HUD. Partially-assisted projects are exempt from the limitation of this paragraph.

§ 880.205 Limitation on distributions.

(a) For the purposes of this Part, there will be two types of owners—non-profit and profit-motivated. In the case of HUD-insured projects, profit-motivated owners will include both general mortgagors and limited distribution mortgagors as defined in applicable HUD mortgage insurance regulations.

(b) Non-profit owners are not entitled to distributions of project funds.

(c) For the life of the Contract, project funds may only be distributed to profit-motivated owners at the end of each fiscal year of project operation following the effective date of the Contract after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met. The first year's distribution may not be made until cost certification, where applicable, is completed. Distributions may not exceed the following maximum returns:

(1) For projects for elderly families that have syndicated owners, 6 percent on equity per year;

(2) For projects for non-elderly families that have syndicated owners, 8 percent on equity per year;

(3) For projects for elderly families that have non-syndicated owners, the first year's distribution will be limited to 8 percent on equity. Subsequent years' distributions will be determined by applying to each subsequent year's sum of total housing expenses the percentage arrived at by dividing the first year's allowable return by the sum of the first year's total housing expenses.

(4) For projects for non-elderly families that have non-syndicated owners, the first year's distribution will be limited to 10 percent on equity. Subsequent years' distributions will be determined by applying to each subsequent year's sum of total housing expenses the percentage arrived at by dividing the first year's allowable return by the sum of the first year's total housing expenses.

(d) For the purpose of determining the allowable distribution, an owner's equity investment in a project is deemed to be 10 percent of the replacement cost of the part of the project attributable to dwelling use accepted by HUD at cost certification (see Section 880.405).

(e) Any short-fall in return may be made up from surplus project funds at the end of any of the next five fiscal years of the project.

(f) If HUD determines at any time that project funds are more than the amount needed for project operations, reserve requirements and permitted distribution, HUD may require the excess to be placed in an account to be used to reduce housing assistance payments or for other project purposes. Upon termination of the Contract, any excess funds must be remitted to HUD.

(g) Owners of small projects or partially-assisted projects are exempt from the limitation on distributions contained in this section.

(h) In the case of HUD-insured projects, the provisions of this section will apply in lieu of the otherwise applicable mortgage insurance program provisions.

§ 880.206 Site and neighborhood standards.

Proposed sites for new construction projects must be approved by HUD as meeting the following standards:

(a) The site must be adequate in size, exposure and contour to accommodate the number and type of units proposed; and adequate utilities (water, sewer, gas and electricity) and streets must be available to service the site.

(b) The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, and HUD regulations issued pursuant thereto.

(c) The site must not be located in:

(1) An area of minority concentration unless (i) sufficient, comparable opportunities exist for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration, or (ii) the project is necessary to meet overriding housing needs which cannot otherwise feasibly be met in that

housing market area. An "overriding need" may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise feasibly be met is that discrimination on the basis of race, color, religion, creed, sex, or national origin renders sites outside areas of minority concentration unavailable; or

(2) A racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

(d) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(e) The site must be free from adverse environmental conditions, natural or manmade, such as instability, flooding, septic tank back-ups, sewage hazards, or mudslides; harmful air pollution, smoke or dust; excessive noise vibration, or vehicular traffic; rodent or vermin infestation; or fire hazards. The neighborhood must not be one which is seriously detrimental to family life or in which substandard dwellings or other undesirable elements predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(f) The site must comply with any applicable conditions in the local Housing Assistance Plan approved by HUD.

(g) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(h) Travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive. (While it is important that elderly housing not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.)

(i) The project may not be built on a site that has occupants unless the relocation requirements referred to in § 880.209(a) are met.

(j) The project may not be built in an area that has been identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the project is covered by flood insurance as required by the Flood Disaster Protection Act of 1973, and it meets any relevant HUD standards and local requirements.

§ 880.207 Property standards.

Projects must comply with:

(a) HUD Minimum Property Standards;

(b) In the case of mobile homes, the American National Standards Institute Standard No. A–119.1, or applicable State standards, in accordance with applicable HUD regulations as to certification, and standards issued pursuant to Title I of the National Housing Act, 24 CFR 201.520–1;

(c) In the case of congregate or single room occupant housing, the appropriate HUD guidelines and standards;

(d) HUD requirements pursuant to Section 209 of the Housing and Community Development Act of 1974 for projects for the elderly or handicapped:

(e) HUD requirements pertaining to noise abatement and control; and

(f) Applicable State and local laws, codes, ordinances and regulations.

§ 880.208 Financing.

(a) *Types of Financing.* Any type of construction financing and long-term financing may be used, including: (1) conventional loans from commercial banks, savings banks, savings and loan associations, pension funds, insurance companies or other financial institutions; (2) mortgage insurance programs under the National Housing Act; (3) mortgage and loan programs of the Farmers' Home Administration of the Department of Agriculture compatible with the Section 8 program; and (4) financing by tax-exempt bonds or other obligations.

(b) *HUD Approval.* The terms and conditions of the financing must be approved by HUD. As a condition of obtaining this approval, all issuers of tax-exempt obligations purporting to be exempt from Federal taxation under any provision of law or governmental regulation other than 24 CFR Part 811 (except an issuer which is a qualified participating agency pursuant to 24 CFR Part 883) must submit all documents required by 24 CFR 811.107, 811.108, 811.109 and 811.110 to the field office for review and approval. The terms and use of such obligations and the operation of the project must comply with the requirements of 24 CFR Part 811. (See also 24 CFR 811.117.)

(c) *Pledge of Contracts.* An owner may pledge, or offer as security for any loan or obligation, an Agreement, Contract or ACC entered into pursuant to this Part: Provided, however, that such security is in connection with a project constructed pursuant to this Part. Any pledge of the Agreement, Contract, or ACC, or payments thereunder, will be limited to the amounts payable under the Contract or ACC in accordance with its terms. If the pledge or other document provides that all payments will be paid directly to the mortgagee or the trustee for bondholders, the mortgagee or trustee will make all payments or deposits required under the mortgage or trust indenture and remit any excess to the owner.

(d) *Foreclosure and Other Transfers.* In the event of foreclosure, assignment or sale approved by HUD in lieu of foreclosure, or other assignment or sale approved by HUD,

(1) The Agreement, the Contract and the ACC, if applicable, will continue in effect, and

(2) Housing assistance payments will continue in accordance with the terms of the Contract.

§ 880.209 Other Federal requirements.

(a) *Relocation and Land Acquisition Requirements.*

(1) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) is applicable only to displacement resulting from acquisition of real property by a Federally-assisted public agency. However, in the evaluation or selection of all proposals, consideration will be given to whether there are site occupants who would have to be displaced, whether the relocation of site occupants is feasible, and the degree of hardship which displacement might cause. Preference points will be given to proposals which do not require displacement, or, where displacement is required, which will involve the least amount of hardship.

(2) Where the site for a project is acquired by a PHA and the site has occupants, the Agreement will provide that, pursuant to the Uniform Act, the PHA undertakes responsibility for:

(i) The provision of relocation payments and assistance as prescribed in Sections 202, 203 and 204 of the Uniform Act;

(ii) The provision of relocation assistance programs offering the services described in Section 205 of the Uniform Act;

(iii) Assuring that within a reasonable period of time prior to displacement, decent, safe and sanitary replacement dwellings will be available to displaced persons; and

(iv) Compliance with Title III of the Uniform Act. The Agreement must also provide that the PHA will provide full funding for the required relocation

payments and assistance unless other commitments, satisfactory to HUD, have been made for the funding of such payments and assistance.

(b) *Equal Opportunity Requirements.* Participation in this program requires compliance with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights of 1968, Executive Orders 11063 and 11246, and Section 3 of the Housing and Urban Development Act of 1968, and all related rules, regulations and requirements.

(c) *National Environmental Policy Act.* Participation in this program requires compliance with the National Environmental Policy Act and all related rules, regulations and requirements.

(d) *Clean Air Act and Federal Water Pollution Control Act.* Participation in this program requires compliance with the Clean Air Act and the Federal Water Pollution Control Act and all related rules, regulations and requirements.

(e) *Davis-Bacon Wage Rates.* Not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (49 Stat. 1011), must be paid to all laborers and mechanics employed in the development of any project with nine or more assisted units.

(f) *Rehabilitation Act.* Participation in this program requires compliance with the Rehabilitation Act of 1973 and Executive Order 11914 and all related rules, regulations and requirements.

(g) *Other Federal Statutes and Regulations.* Participation in this program requires compliance with the National Historic Preservation Act (Public Law 89–665), the Archeological and Historic Preservation Act of 1974 (Public Law 93–291), and Executive Order 11593 on Protection and Enhancement of the Cultural Environment, including the procedures prescribed by the Advisory Council on Historic Preservation in 36 CFR, Part 800.

Subpart C—Proposal Submission To Start of Construction

§ 880.301 Allocation of contract authority to field offices.

(a) Funding authorization for the Section 8 program is assigned to HUD field offices annually in the form of contract authority, which is the maximum amount authorized for annual payments under Contracts. Assignments are made pursuant to 24 CFR, Part 891, Subpart D. Each field office suballocates this authority to the areas within its jurisdiction, also in accordance with Part 891, Subpart D.

(b) In the allocation process, the field office determines the amount of contract authority and the approximate number of units of Section 8 new construction specifically designed for elderly families, for non-elderly families and for large non-elderly families (3 or more bedrooms) which will be made available in each allocation area.

(c) For the contract authority made available in each allocation area, the HUD field office will process proposals as provided for in §§ 880.302, 880.303 and 880.304.

§ 880.302 Procedures for resumption of processing of proposals and preapproved site requests.

(a) Prior to the publishing of a NOFA or the consideration of requests for preapproved sites, the pipeline of approvable proposals and preapproved site requests proposals will be reviewed to determine whether to resume processing any or all of them. In making the decision as to whether to resume processing, the following will be considered:

(1) Whether the proposal or preapproved site request is consistent with the final or tentative allocation plan for the area in which the project is proposed to be located;

(2) Whether the proposal or preapproved site request conforms to the housing type and household type requirements of any applicable Housing Assistance Plan;

(3) Whether the proposal or preapproved site request is consistent with priorities for targeting of contract authority to localities which have previously been underfunded relative to their needs and the funding of the needs of other localities in that allocation area; and

(4) Whether the proposal or preapproved site request is considered to be of high quality relative to the standards and requirements of this Part.

(b) Owners of proposals or local governments with preapproved site requests which are eligible in accordance with paragraph (a) to resume processing will be sent a letter requesting them to advise HUD within 5 days as to whether or not they wish processing to be resumed on their proposals or requests and, if their decision is in the affirmative, to submit to HUD within an additional 10 days (for a total of 15 days):

(1) For proposals, updated proposed rents;

(2) For proposals, the replacement cost estimate required by Section 880.305;

(3) Up-to-date evidence of site control; and

(4) Any information on other factors which might affect the current approvability of their proposals or requests.

Owners or local governments may submit any other information they wish, but the field office is not required to consider this additional information.

(c) Upon receipt of notification from an owner that it wishes processing of a proposal to be resumed, the unit of general local government and A–95 clearinghouse will be notified under Part 891 of the resumption of processing and asked for comments if the proposal is more than 6 months old or if there has been a substantive change in the local Housing Assistance Plan.

(d) Upon receipt of the updated information, the field office will resume processing of the proposal or request in accordance with § 880.306(c) or 880.303(a).

(e) Owners of proposals and local governments with preapproved site requests for which processing is not resumed because of failure to meet the requirements of paragraphs (a) and (b), or for which owners or local governments do not request resumption of processing will be notified in writing that their proposals or requests will not be processed further. One file copy of each will be retained by the field office.

§ 880.303 Special procedures for certain categories of proposals.

(a) *Preapproved Sites.* (1) Units of general local government may submit written requests to the field office for preapproval of sites. Requests for preapproval must indicate the anticipated number of units, structure type, household type, bedroom distribution and the price at which the site will be made available. Further, the local governemnt must indicate if it wishes to select the proposal as allowed under paragraph (a)(5) of this section. To the extent feasible, such requests should be submitted early in the fiscal year.

(2) If the field office determines that use of a site for which preapproval has been requested may be appropriate, it will review the request to determine compliance with site and neighborhood standards (§ 880.206) and environmental standards, and to determine the acceptability, as to both reasonableness and feasibility, of the proposed price at which the site will be made available. The request will also be reviewed for consistency with the allocation plan for the area, any applicable Housing

Assistance Plan and targeting priorities described in § 880.302(a)(3).

(3) If the site meets all of these requirements, the field office will advise the unit of general local government:

(i) That the site is approvable for Section 8 use;

(ii) Of the approximate number of units, by structure type, household type and bedroom distribution that may be assisted;

(iii) Of the contract authority required;

(iv) Whether HUD has reserved such contract authority, will do so as soon as sufficient contract authority becomes available or will retain the request in the pipeline for consideration in accordance with Section 880.302; and

(v) How processing will proceed, including how selection of the proposal will be accomplished.

(4) Reservations of contract authority for preapproved sites may only be made after the amount of authority necessary for pipeline proposals has been determined.

(5) For approvable sites in Federally-assisted urban renewal areas (including unsold land in closed out urban renewal areas), selection of the proposal may be under applicable urban renewal procedures, subject to the field office approval. For sites acquired or to be acquired with Community Development Block Grant funds or located in non-Federally-assisted urban renewal areas, the local government may select the proposal in accordance with a competitive method approved by the field office and consistent with State law.

(6) For approvable sites outside those areas set forth in paragraph (a)(5) of this section, selection of the proposal will be accomplished by the field office by publishing a NOFA requesting proposals for that site pursuant to § 880.304.

(b) *Other Categories.* Where set-asides are made for projects to be owned by PHAs, for projects to be located in New Communities or for other purposes, proposals may be obtained by invitation or other appropriate means, as determined by the field office, or the New Communities Development Corporation where appropriate. Selection procedures may be modified, as approved by the Assistant Secretary for Housing, to meet the objectives of the set-asides. Prior to submission of proposals, prospective owners will be advised of the modified procedures.

(c) *Proposal Submissions for Special Categories of Projects.* Preliminary proposals are not required for projects submitted pursuant to paragraphs (a) or (b), except in the case of proposals under paragraph (a)(6) of this section. The first proposal submitted for such projects may be a final proposal in accordance with § 880.308.

§ 880.304 Publication of NOFA and receipt of proposals.

(a) After determination of the amount of contract authority necessary for pipeline proposals as provided in § 880.302, and any commitments of contract authority for preapproved sites as provided in § 880.303, the field office will publicize the availability of the remaining contract authority, if any, in accordance with paragraph (b) of this section.

(b) A summary notification of fund availability (NOFA) for all allocation areas within the jurisdiction of the field office will be published at least once a week for two consecutive weeks in a newpaper(s) of general circulation in the allocation areas. Specific information for each allocation area will be contained in a detailed NOFA which will be provided upon request. The detailed NOFA will identify the geographic area of each allocation area for which contract authority is available and include the following information for each area:

(1) The contract authority available for new construction and the approximate numberr of units for elderly, non-elderly and large non-elderly families that the contract authority is expected to support;

(2) The first and last dates for acceptance of preliminary proposals for projects for elderly families and the first date for acceptance of proposals for projects for non-elderly families;

(3) The fact that proposals for projects for non-elderly families will be accepted at any time after the initial acceptance date so long as contract authority remains available, and that all such proposals received during one monthly period will be processed and, if necessary, ranked against each other;

(4) The fact that the NOFA will be cancelled for an allocation area when all available contract authority has been or is expected to be used or when a decision by HUD pursuant to Section 891.405 to reallocate any unused contract authority has been made;

(5) The fact that developer's packets for each allocation area and type of proposal will be available prior to the opening date for submission of proposals and that information and assistance are available from the field office.

(6) A listing of non-impacted jurisdictions within the allocation area for which a marketing plan with respect to families in impacted areas will be required for non-elderly family projects.

(c) Copies of the detailed NOFA will be provided to minority and fair housing organizations and media in the allocation area.

(d) Field offices may issue Conditional NOFAs subject to the sufficiency of the allocation of contract authority.

Proposals received in response to a Conditional NOFA will be processed in accordance with the provisions of § 880.306, but notifications of selection will not be sent until contract authority becomes available and is reserved.

(e) Proposals will be accepted by the field office beginning on the published opening date for submission and may be opened for review immediately. The contents will remain confidential until sent by the field office to the A-95 clearinghouses or local government for review or, in the case of projects for elderly families, until the deadline date has passed, whichever is earlier.

§ 880.305 Contents of preliminary proposal.

Each preliminary proposal must contain:

(a) A description of the proposed housing, including sketches of the proposed building, unit plans, listing of amenities, esitmated date of completion and whether it will be completed in stages, and other information requested in the developer's packet.

(b) Identification and description of the proposed site, site plan and neighborhood, and evidence of site control or a description of actions likely to result in site control, as requested in the developer's packet;

(c) Evidence that the proposed construction is permitted by current zoning ordinances or regulations or evidence to indicate that needed rezoning is likely and will not delay the project;

(d) The proposed contract rent per unit, including an indication of which utilities, services and equipment are included in the rent and which are not. For those utilities and services which are not included, an estimate of the average monthly cost for each unit type for the first year of occupancy.

(e) The estimated replacement cost per unit.

(f) A statement describing how the proposal is consistent with any applicable Housing Assistance Plan, and/or Areawide Housing Opportunity Plan;

(g) Information concerning displacement of site occupants: if any displacement will occur; the number of families, individuals, and business

concerns affected, by race, and whether they own or rent; and a demonstration that relocation is feasible. In the case of a project involving acquisition of real property by a PHA, a statement as to how necessary relocation payments will be funded;

(h) A signed certification on the prescribed form of the owner's intention to comply with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, Executive Order 11246, and Section 3 of the Housing and Urban Development Act of 1968. If the proposed project is to be located within the area of a Housing Assistance Plan, include certification that the owner will take affirmative action to provide the opportunity to apply for units in the proposed project to persons expected to reside in the community as a result of current or planned employment, as indicated in the Housing Assistance Plan. If the proposed project is a non-elderly family project to be located in a non-impacted jurisdiction, include a certification that the owner will comply with the requirements for marketing with respect to families in impacted jurisdictions as contained in §§ 880.308(a)(5) and 880.601(a)(3).

(i) The identity of the owner, developer, builder, architect, management agent (and other participants) and the names of officers and principal members, shareholders, investors, and other parties having a substantial interest; the previous participation of each in HUD programs on the prescribed HUD form; and a disclosure of any possible conflict of interest by any of these parties which would be a violation of the Agreement, the Contract, or the ACC, if any; and information on the qualifications and experience of the principal participants;

(j) The proposed financing method and proposed terms of financing. For proposals not requesting mortgage insurance, written evidence of review and interest by a lender, including a state housing finance agency or financing agency under Part 811, or bond underwriter, indicating that the financing is likely to be available for the proposed project;

(k) The proposed term of the Contract, and justification for the term, in accordance with § 880.502; and

(l) The identity of the contract administrator entity (PHA or HUD).

§ 880.306 Preliminary Evaluation and Technical Processing.

(a) *Preliminary Evaluation.*

(1) After receipt of a preliminary proposal for a project for elderly families received prior to the deadline date in the NOFA, the field office will make a preliminary evaluation of the proposal in accordance with paragraph (a)(3) of this section. Proposals received after the deadline date will be returned unopened.

(2) After receipt of a preliminary proposal for a project for nonelderly families, the field office will, so long as contract authority remains available, make a preliminary evaluation of each such proposal in accordance with paragraph (a)(3) of this section.

(3) In performing the preliminary evaluation, the field office will determine whether it appears, without field review, that:

(i) The proposal contains all of the required documentation in the proper form; and

(ii) The proposal is responsive to and in compliance with the requirements of the NOFA, developer's packet, and program policies and regulations, including Fair Market Rent, replacement cost, and amenities limitations.

(4) If a proposal is found deficient in accordance with paragraph (a)(3), it may be rejected. If a deficiency is minor, or if there are not sufficient proposals to use the available contract authority, the field office may request correction of the deficiency within a specified time period.

(5) If the proposal is not deficient, or if necessary corrections are made within the time limit established by the field office, the proposal will be considered in accordance with paragraph (b) or (c) as appropriate.

(b) *Selection for Technical Processing.* In the event the number of proposals found eligible for technical processing exceeds the number that the field office can process expeditiously, the field office may limit the proposals placed into technical processing to those which comprise a total number of units approximately equal to two to four times the number of units which can be approved. In order to determine which proposals to place into technical processing, the field office will, in order to eliminate the excess, rank the proposals by household type (elderly family and nonelderly family) considering the following factors and such other factors as may have been recommended by the field office and approved by the Assistant Secretary:

(1) The previous experience and qualifications of the owner, developer, builder, architect, management agent, and other participants in development, marketing and management (particularly of non-elderly family housing);

(2) Responsiveness to the preferences and priorities contained in any applicable Housing Assistance Plan;

(3) The current availability of the site for development and the availability of utilities and services;

(4) The permissiveness of current zoning;

(5) The likelihood of financing and the relative speed with which a firm financing commitment can be obtained; and

(6) the relative need for and prior housing assistance to the jurisdiction in which the housing would be located. Preference points in selection of proposals for technical processing will be given to small projects and partially-assisted projects, and to projects not involving the displacement of site occupants. The owners of proposals not selected for technical processing will be notified that their proposals will not be processed further and will not be considered for selection under the provisions of Section 880.302. One copy of each proposal will be retained by the field office.

(c) *Technical Processing.*

(1) In accordance with the procedures in 24 CFR, Part 891, a description of each proposal proceeding to technical processing will be sent to the unit of general local government for review and comment. In accordance with OMB Circular A-95, a copy of each proposal will also be sent to the A-95 state and areawide clearinghouses.

(2) Technical processing in the field office will include a review of the rents (see paragraph (c)(3)), site, design, experience of the owner and other participants, local government and A-95 clearinghouse comments, extent of displacement, feasibility of the project as a whole (including financing and marketability) and compliance with all applicable standards and requirements. Any deficiencies found will be treated in the same manner as deficiencies found during preliminary evaluation (see paragraph (a)(4) of this section).

(3) The field office will evaluate proposed rents in accordance with Section 880.204(b)(2).

(i) If the proposed rents are no more than the rents determined to be comparable, or are within 110 percent of comparable for small and partially-assisted proposals, the rents will be accepted.

(ii) If the proposed rents exceed the comparable rents by not more than 10 percent, they will be tentatively accepted subject to cost estimation at final proposal (see Section 880.308(a)) and cost certification after completion (see Section 880.405).

(iii) If the proposed rents exceed the comparable rents by more than 10 percent, the field office may either reject the proposal or tentatively accept rents at 110 percent of the comparable rents subject to cost estimation at final proposal and cost certification after completion.

(4) Amenities and design features will be reviewed to assure that they do not exceed those normally provided in modest quality housing in the general area of the proposed project.

(d) *Proposals Requiring Mortgage Insurance.* Proposals requiring mortgage insurance need not contain more information than is required for a preliminary proposal not requiring mortgage insurance. Technical processing of such proposals will include a preliminary determination of eligibility under the applicable mortgage insurance program. If such proposals are selected, subsequent processing will be in accordance with § 880.308(b), and applicable mortgage insurance requirements. If the proposal is ineligible for mortgage insurance, it may be rejected, or the field office may request the owner to submit documentation showing availability of an alternative method of financing.

§ 880.307 Selection of proposals and use of remaining or additional contract authority.

(a) All of the proposals found approvable in technical processing may be selected if sufficient contract authority was available in the NOFA or has subsequently become available prior to selection. In no case will proposals be selected prior to completion of and without compliance with the final allocation plan.

(b) If the available contract authority is insufficient to select all proposals found approvable in technical processing, all approvable proposals will be ranked by household type (elderly family and nonelderly family). The ranking factors are: rents; site (including minority concentration considerations); design; previous experience of the owner and other participants in development, marketing and management (particularly of non-elderly family housing); comments from the A-95 clearinghouse and local government and responsiveness to preferences and priorities of any applicable Housing Assistance Plan and/or Areawide Housing Opportunities Plan; extent of displacement; and feasibility of the project as a whole (including likelihood of financing and marketability). Within the ranking for nonelderly family proposals, preference points will be given to small projects and partially-assisted projects. Any deviation in the ranking procedures as set forth in this paragraph and the program handbook must be approved by the Assistant Secretary for Housing.

(c) Owners who submit proposals will be notified in writing as to whether their proposals have been found not approvable, found approvable but not selected, or selected. Selection notifications will include any special conditions or requirements applicable to the proposal. Owners who are notified of the selection of their proposals must notify the field office of their acceptance of the notification within the time period specified in the notification and must submit a final proposal by the deadline stated in the notification unless an extension of the deadline is approved by the field office. Owners of proposals found not approvable will be notified of the reason for the finding. One file copy of each proposal will be retained by the field office. Proposals found approvable but not selected will be retained by the field office for reconsideration when additional contract authority becomes available in the same or subsequent fiscal years (see § 880.302).

(d) Units of general local government and A-95 clearinghouses notified under Paragraph 880.306(c) will be notified of the field office's decision regarding the proposals within their jurisdiction.

(e) When contract authority remains available after selection of proposals for housing for elderly families, or after a decision is made to reallocate unused contract authority for housing for nonelderly families, or additional contract authority becomes available due to cancellation or recapture of contract authority for a selected proposal, or due to the assignment of additional contract authority within the same fiscal year, the field office will determine the allocation areas and types of housing for which the contract authority will be used and proceed in accordance with §§ 880.302, 880.303, and 880.304.

§ 880.308 Contents of final proposal.

(a) *Proposals for Uninsured Projects.* Final proposals for all projects except those requesting mortgage insurance will contain:

(1) Preliminary architectural drawings, including site plans, landscape plans, unit plans, general floor plans, elevations at the prescribed scale, outline specifications on the prescribed form and a listing of amenities.

(2) A statement that the documentation submitted with the preliminary proposal as required by § 880.305 (b) through (g) and (i) through (l) has not changed or a statement of the changes. In the case of special categories of projects submitted in accordance with § 880.303(c), the original documentation required by § 880.305 (b) through (l) must be submitted.

(3) Description of the terms and conditions of construction and permanent financing, including copies of the commitments for such financing from a lender or bond underwriter, or satisfactory evidence that commitments will be forthcoming before execution of the Agreement. Copies of the financing documents should also be furnished if available; otherwise, they must be submitted as soon as possible but no later than with the working drawings and specifications.

(4) For proposals for projects of five units or more, an Affirmative Fair Housing Marketing Plan.

(5) For proposals for non-elderly family projects located in non-impacted jurisdictions, a marketing plan to achieve occupancy of units by families residing in impacted juriscictions. The plan must be consistent with HUD instructions for preparation of final proposals and other requirements set forth in these regulations. The marketing plan must include marketing activities directed at families from impacted jurisdictions for purposes of achieving an appropriate level of initial and subsequent occupancy by such families. The activities may include: information and publicity; recruiting efforts through local and community organizations; transportation and other assistance for interested applicants; contacting families on existing waiting lists or lists developed by PHAs or other agencies; and other activities or efforts as agreed to by the owner and HUD. In preparing the plan, consideration will be given to: the extent of housing need among lower income families in impacted jurisdictions as compared to the need in non-impacted jurisdictions in the SMSA; the likelihood of occupancy by families from impacted jurisdictions; the nature and extent of need in the jurisdiction in which the project is located; the availability of public transportation and travel time between the project site and essential facilities, such as shopping, schools, employment, and recreation; the availability of other non-elderly assisted housing in the jurisdiction in which the project is located and in other non-impacted jurisdictions; the sizes and types of units to be made available; and other relevant factors.

(6) For proposals for projects to be located within the jurisdiction of a unit

of general local government with a Housing Assistance Plan, a statement of the affirmative actions the owner intends to take the opportunity to apply for units in the proposed project to persons expected to reside in the community as a result of current or planned employment, as indicated in the Housing Assistance Plan. Examples of such efforts include: participation in regional or semi-regional application pools; establishment of a referral system with PHAs and other Section 8 owners and managers in surrounding jurisdictions; contacts with and provisions of information about the project to local industries and their employees.

(7) Evidence of management capability, a proposed management plan and certification in the prescribed form, a copy of any proposed contracts for management services, and the proposed form of lease (see § 880.606).

(8) An indication of the estimated time for completion of the project after the Agreement is signed and, if the project is to be completed in stages, identification of the units and the scheduled completion of each stage.

(9) Estimates in the HUD prescribed form of the replacement cost, operating expenses, income, and debt service, sufficient to enable the field office to determine the cost justified rent, where required under § 880.204(b)(2). The cost estimate must indicate and reflect any anticipated benefits from land write-down, tax abatement, favorable financing terms and similar savings.

(b) *Proposals for Insured Projects.*

(1) For projects requiring mortgage insurance, except special categories of proposals which are discussed in paragraph (b)(3), the complete final proposal will consist of the application for firm commitment, plus statements in accordance with paragraphs (a)(2), (a)(6) and (a)(8), the proposed form of lease, and, where applicable, the marketing plan required by (a)(5).

(2) Although it is preferable for projects requiring mortgage insurance to proceed directly from preliminary proposal to the application for firm commitment/final proposal stage, an owner may elect to submit an application for SAMA or conditional commitment first. In these cases, no additional documentation other than that normally submitted for the mortgage insurance processing stage is required. SAMA letters or conditional commitments issued for mortgage-insured projects which are infeasible without Section 8 assistance will be conditioned upon the subsequent review and approval of the application for firm commitment/final proposal.

(3) In the case of special categories of proposals submitted in accordance with § 880.303 which are requesting mortgage insurance, the first proposal may be an application for conditional or firm commitment plus the proposed form of lease, applicable information on staging, if any, and the documentation required by § 880.305 (f), (g), (h), (i) (with respect to possible conflicts of interest), (k) and (l).

§ 880.309 Review of final proposals.

(a) All final proposals will be reviewed for compliance with program policies and standards. Material deviations from the preliminary proposal will be reviewed and may cause rejection of the proposal.

(1) Preliminary architectural drawings will be reviewed for compliance with amenity standards. In addition, HUD reserves the right to review for conformance with the HUD Minimum Property Standards, adequacy of design for tenant security and efficiency in construction and design; however, HUD has no obligation to do so and any such review or non-review will not constitute approval as to these standards.

(2) The field office will review the projected replacement cost to assure compliance with the limitations of § 880.204(c) in effect of the time. The field office will also review the proposed rents to assure that the rents are within the limitations of § 880.204(b)(1) and cost justified, where required under § 880.204(b)(2). Cost justification at this stage will consist of a review by the field office of the cost and expense estimates to determine whether the estimates justify the need for rents above comparable rents based on a debt service calculation.

(3) Where the final proposal requests rents higher than were approved with the preliminary proposal, such rents may be approved only after the review required in paragraph (a)(2). In addition, the field office may approve the request for an increase only if it determines, based on documentation by the owner, that the need for increased rents is due to:

(i) Factors beyond the owner's control which could not reasonably have been foreseen and which (A) will result in substantial delay in the originally estimated completion date, or (B) will result in substantial cost increases which would make the project infeasible.

(ii) Design changes approved by the field office which are necessary because of additional requirements imposed by governmental agencies or HUD; or

(iii) HUD-approved changes in the method or terms and conditions of financing.

(b) Each owner will be notified as to whether the final proposal has been approved, rejected, or could be approved with the submission of additional information or after correction of specified deficiencies. Notifications of approval will indicate a deadline for acceptance of the notification and, for projects not requiring mortgage insurance, a deadline for submission of working drawings and architect's certifications.

§ 880.310 Submission and review of working drawings, architect's certification and requested changes.

(a) For projects which do not involve mortgage insurance, working drawings and specifications must be submitted to the field office for review after approval of the proposal. The owner must also submit an architect's certification in the prescribed form that the drawings and specifications and proposed construction comply with the HUD Minimum Property Standards, local codes and ordinances, and zoning requirements. The working drawings and specifications will be reviewed for compliance with amenity standards. Any project may, at HUD's option, be reviewed for conformance with the HUD Minimum Property Standards, adequacy of design for tenant security and efficiency in construction and design; however, HUD has no obligation to do so and any such review or non-review will not constitute approval as to these standards.

(b) Any requests for rent increases or any material deviations from preliminary or final proposal which are submitted with the working drawings will be reviewed in the same manner as required in § 880.309(a).

(c) For projects involving mortgage insurance, working drawings are reviewed as part of the review of the application for firm commitment/final proposal.

§ 880.311 Execution of agreement (and ACC, if applicable).

(a) Upon receipt of the working drawings and acceptance of the architect's certification for projects not involving mortgage insurance, or at the time of initial endorsement in the case of projects involving mortgage insurance:

(1) HUD and the owner will execute the Agreement in the case of private-owner/HUD and PHA-owner/HUD projects; or

(2) HUD and the PHA will execute the ACC, and thereafter the PHA and the owner will execute the Agreement and HUD will approve it, in the case of private-owner/PHA projects.

(b) No Agreement will be executed unless HUD has approved the financing for the project, including a definite commitment from a lender, and the final proposal is in all other respects unconditionally approved.

(c) In the case of non-elderly family projects located in non-impacted jurisdictions, the field office will promptly notify PHAs and Community Development Agencies in impacted jurisdictions in the SMSA, as well as any metropolitan-wide clearinghouse, or fair housing organizations where there is no metropolitan-wide clearinghouse, of the execution of the Agreement; the size and bedroom distribution of the project; and the expected time of initial marketing and occupancy. The notification will indicate that the agencies will be contacted again by the owner for referrals of families from impacted jurisdictions.

Subpart D—Construction Period and Cost Certification

§ 880.401 Timely performance of work.

(a) After execution of the Agreement, the owner must proceed promptly with construction as provided in the Agreement and complete the project within the time stated in the Agreement. If the owner fails to start, diligently continue or complete construction, the contract administrator will have the right to rescind the Agreement or take other appropriate action.

(b) Extensions of the time may be granted for the reasons stated in the Agreement. However, contract rents will be increased only for the reasons stated in § 880.403.

§ 880.402 Inspections during construction.

(a) All projects will be inspected by HUD periodically to determine compliance with Davis-Bacon Act requirements.

(b) Projects which involve HUD mortgage insurance, or another type of financing which requires HUS construction inspection, will be subject to the applicable inspection requirements.

(c) A review to determine contractor compliance with equal opportunity requirements may be conducted at any time during the construction period.

§ 880.403 Increased in contract rents or utility allowances before contract execution.

(a) Increases in contract rents or utility allowances after execution of the Agreement and prior to execution of the Contract are permitted with HUD approval only:

(1) To correct substantial errors by HUD in the original processing which would otherwise result in serious inequities;

(2) To reflect substantial and necessary changes in the plans and specifications which have been approved by HUD (no optional betterments may result in rent increases);

(3) To reflect additional costs for interest, taxes, hazard insurance, mortgage insurance premiums, and commitment fees, due to construction delays excusable under the Agreement;

(4) To reflect additional costs which result from new requirements imposed by local governments, HUD or other Federal agencies, which are beyond the control of the owner, which have been approved by HUD and which could not have been anticipated at the time the Agreement was executed; or

(5) To reflect increased costs which result from a change in contractors which is necessary because the original contractor became bankrupt, was terminated by the owner due to inadequate performance or abandoned the job.

(b) Such increases will be:

(1) Limited to the amount necessary to cover the specific cost increase associated with the applicable item cited in paragraph (a); and

(2) Reviewed and approved only in accordance with the Fair Market Rent and rent reasonableness limitations of § 880.204(b) and the replacement cost limitations of § 880.204(c) all in effect at the time of the review of the request.

(c) All requests for increases must be submitted promptly to the field office for review as soon as the need for the increases becomes apparent.

§ 880.404 Project Completion.

(a) *Notification and Evidence of Completion.* The owner must notify HUD and the PHA, where the PHA is the contract administrator, when work is completed and provide HUD with:

(1) A set of as-built drawings;

(2) A certificate of occupancy and any other official approvals necessary for occupancy;

(3) A certification in the prescribed form that the project has been completed and is ready for occupancy in accordance with the requirements of the Agreement; and

(4) For projects where HUD construction inspection is not required during construction, a certification from the inspecting architect in the prescribed form which states that the project has been constructed in accordance with the certified work drawings and specifications, HUD Minimum Property Standards, local codes and ordinances, and zoning requirements.

(b) *Review and Inspection.* After receipt of the notification and evidence of completion, HUD will review the evidence of completion for adequacy and will inspect the project to determine whether it appears that the project has been completed in accordance with the Agreement.

(c) *Acceptance of the Project.*

(1) If HUD determines from review and inspection that the project (or a stage of the project) has been completed in accordance with the Agreement, the project (or stage) will be accepted.

(2) If there are any items of delayed completion which are minor items or which are incomplete because of weather conditions, and in any case which do not preclude or affect occupancy, and all other requirements of the Agreement have been met, the project (or stage) will be accepted. An escrow fund determined by HUD to be sufficient to assure completion for items of delayed completion will be required, as well as a written agreement between HUD and the owner, to be included as an exhibit to the Contract, specifying the schedule for completion. If the items are not completed within the agreed time period, the contract administrator may terminate the Contract or exercise other rights under the Contract.

(3) If other deficiencies exist, HUD will determine whether and to what extent the deficiencies are correctable, and whether the contract rents should be reduced. The owner will be notified of HUD's decision. If the corrections required by HUD are possible, HUD and the owner will enter into an agreement for the correction of the deficiencies. If the deficiencies are corrected within the period of time allowed, HUD will accept the project.

(4) Otherwise, the project will not be accepted, and the owner and the PHA, where applicable, will be notified with a statement of the reasons for nonacceptance. (However, see § 880.501(a) for action where evidence of completion is acceptable only with respect to physical completion of the project.)

(d) *Pending Davis-Bacon Act Claims.* If there are pending claims under the

provisions in the Agreement relating to place a sufficient amount, as determined by HUD, in escrow as approved by HUD to assure such payments. The amount withheld may be disbursed by HUD for and on account of the owner or any subcontractor to the employees to whom it is due.

§ 880.405 Cost certification and adjustment of contract rents.

(a) As soon as possible after acceptance of the project by HUD, the owner will certify the actual cost, except in the case of partially-assisted projects, and submit a cost certification including the unqualified certificate of an Independent Public Accountant to HUD in the manner and form prescribed by HUD, based on the following guidelines:

(1) Projects which involve HUD mortgage insurance will be subject to the cost certification requirements of the applicable insurance program;

(2) For projects not insured by HUD, a simplified form of cost certification will be completed and submitted;

(3) There will be no cost certification submission required for projects with rents that are equal to or less than comparable rents or for small projects or partially-assisted projects; and

(4) The provisions of paragraphs (a)(2) and (3) do not preclude the imposition of different cost certification requirements appropriate as part of project financing requirements (such as tax exempt financing under 24 CFR, Part 811).

(b) The cost certification for projects with rents that are higher than comparable rents will be subject to review by HUD. As part of this review, additional documentation may be required.

(c) If the owner's certified costs provided in accordance with paragraph (a) of this section, as approved by HUD, are less than the cost estimate provided for in § 880.308(a)(9), the contract rents will be reduced accordingly.

(d) If the contract rents are reduced pursuant to paragraph (c) of this section, the maximum annual Contract commitment (and the Maximum ACC commitment, in the case of private-owner/PHA projects) will be reduced. If contract rents are reduced based on certification after Contract execution, any overpayment since the effective date of the Contract will be recovered from the owner by HUD.

Subpart E—Housing Assistance Payments Contract

§ 880.501. The contract.

(a) *Contract.* The Housing Assistance Payments Contract sets forth rights and duties of the owner and the contract administrator with respect to the project and the housing assistance payments. It is entered into upon satisfactory completion of the project. If the field office finds that the evidence of completion is acceptable with respect to the physical completion of the project, including the certificate of occupancy and/or other official approvals required for occupancy, but the evidence of completion in other respects is not acceptable, the field office will, upon request by the owner, execute or approve the execution of the Contract; in such case, however, until the remaining evidence of completion is submitted to and found acceptable by the field office:

(1) The contract rent for the purpose of computing housing assistance payments with respect to any unit will be the monthly amount of the debt service on the permanent obligations attributable to the unit, and

(2) Rent-up and occupancy will be subject to such conditions as the field office may require.

(b) *Effective Date of Contract.* The effective date of the Contract may be earlier than the date of execution, but no earlier than the date HUD inspects and accepts the project, except as provided in paragraph (a).

(c) *Housing Assistance Payments to Owners under the Contract.* The housing assistance payments made under the Contract are:

(1) Payments to the owner to assist eligible families leasing assisted units, and

(2) Payments to the owner for vacant assisted units ("vacancy payments") if the conditions specified in § 880.610 are satisfied.

The housing assistance payments are made monthly by the contract administrator upon proper requisition by the owner, except payments for vacancies of more than 60 days which are made semi-annually by the contract administrator upon requisition by the owner.

(d) *Amount of Housing Assistance Payments to Owner.* (1) The amount of the housing assistance payment made to the owner of a unit being leased by an eligible family is the difference between the contract rent for the unit and the tenant rent payable by the family.

(2) A housing assistance payment will be made to the owner for a vacant assisted unit in an amount equal to 80 percent of the contract rent for the first 60 days of vacancy, subject to the conditions in § 880.611. If the owner collects any tenant rent or other amount for this period which, when added to this vacancy payment, exceeds the contract rent, the excess must be repaid as HUD directs.

(3) For a vacancy that exceeds 60 days, a housing assistance payment for the vacant unit will be made, subject to the conditions in § 880.611, in an amount equal to the principal and interest payments required to amortize that portion of the debt attributable to the vacant unit for up to 12 additional months.

(e) *Additional Housing Assistance Payments to Families.* In those cases where the total family contribution of a family leasing an assisted unit is less than the utility allowance for the unit, the difference will be paid to the family as an additional housing assistance payment. The Contract will provide that the owner will make this payment on behalf of the contract administrator. Funds for this purpose will be paid to the owner in trust solely for the purpose of making the additional payment.

§ 880.502 Term of contract.

(a) *Maximum Term (Except for Mobile Homes).* The term of the Contract will be for the total number of years approved by the field office within the following limits:

(1) For assisted units in a project financed with the aid of a loan insured or co-insured by the Federal government (except for units in a co-insured project owned by or financed by a loan or loan guarantee from a state or local agency) or a loan made, guaranteed or intended for purchase by the Federal government, the maximum term is 20 years.

(2) For units in a project financed other than as described in paragraph (a)(1), the maximum term is the lesser of (i) the term of the project's financing (but not less than 20 years), or (ii) 30 years, except that this maximum will be 40 years if (A) the project is owned or financed by a loan or loan guarantee from a state or local agency, (B) the project is intended for occupancy by non-elderly families and (C) the project is located in an area designated by HUD as one requiring special financing assistance.

(b) *Maximum Term for Mobile Homes.* For mobile homes, the maximum initial term of the Contract is 5 years, subject to renewal by the owner for additional terms of not more than 5 years each with the approval of the contract administrator (and HUD if the

contract administrator is a PHA), up to a maximum total term of 20 years. In this paragraph, the term "mobile home" means the original mobile home and any replacement(s) combined.

(c) *Staged Projects.* If the project is completed in stages, the term of the Contract must relate separately to the units in each stage. The total Contract term for the units in all stages, beginning with the effective date of the Contract for the first stage, may not exceed the overall maximum term allowable for any one unit under this section, plus two years.

§ 880.503 Maximum Annual Commitment and Project Account.

(a) *Maximum Annual Commitment.* For a private-owner/HUD or PHA-owner/HUD project, the maximum annual amount that may be committed under the Contract is the total of the contract rents and utility allowances for all assisted units in the project. For a private-owner/PHA project, the maximum annual contribution that may be contracted for in the ACC is the total of the contract rents and utility allowances for all assisted units plus the HUD-approved fee for PHA administration. Where the PHA is a State Housing Finance and Development Agency, the maximum total annual contribution will not include a fee payable by HUD for the regular costs of administration of the Contract, nor will the agency be eligible for a fee payable by HUD for the preliminary costs of administration of the Contract, if the amount charged for the permanent loan by the agency to the owner ancillary is greater than the agency's cost of borrowing including costs of servicing the obligations, such as trustee fees, maintenance of books and accounts and audit expenses.

(b) *Project Account.*

(1) A project account will be established and maintained by HUD as a specifically identified and segregated account for each project. The account will be established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the Contract or ACC each year. Payments will be made from this account when needed to cover increases in contract rents or decreases in tenant rents for:

Housing assistance payments (and fees for PHA administration, if appropriate), and

(ii) Other costs specifically approved by the Secretary.

(2) Whenever a HUD-approved estimate of required annual payments under the Contract or ACC for a fiscal year exceeds the maximum annual commitment and would cause the amount in the project account to be less than 40 percent of the maximum, HUD will, within a reasonable period of time, take such additional steps authorized by Section 8(c)(6) of the U.S. Housing Act of 1937, as may be necessary, to assure that payments under the Contract or ACC will be adequate to cover increases in Contract rents and decreases in tenant rents.

§ 880.504 Reduction of number of units covered by contract.

(a) *Limitation on Leasing to Ineligible Families.* Owners may not lease more than 10 percent of the assisted units in a project to ineligible families without the prior approval of HUD. Failure on the part of the owner to comply with this prohibition is a violation of the Contract and grounds for all available legal remedies, including suspension or debarment from HUD programs and reduction of the number of units under the Contract, as set forth in paragraph (b) of this section.

(b) *Reduction for Failure to Lease to Eligible Families.* If, at any time beginning six months after the effetive date of the Contract, the owner fails for a continuous period of six months to have at least 90 percent of the assisted units leased or available for leasing by eligible families, HUD (or the PHA at the direction of HUD, as appropriate) may, on at least 30 days' notice, reduce the number of units covered by the Contract. HUD may reduce the number of units to the number of units actually leased or available for leasing plus 10 percent (rounded up). This reduction, however, will not be made if the failure to lease units to eligible families is permitted in writing by HUD under paragraph (a) of this section.

(c) *Restoration.* HUD will agree to an amendment of the ACC or the Contract, as appropriate, to provide for subsequent restoration of any reduction made pursuant to paragraph (b) if:

(1) HUD determines that the restoration is justified by demand,

(2) The owner otherwise has a record of compliance with his obligation under the Contract, and

(3) Contract authority is available.

§ 880.505 Contract administration and conversions.

(a) *Contract Administration.* For private-owner/PHA projects, the PHA is primarily responsible for administration of the Contract, subject to review and audit by HUD. For private-owner/HUD and PHA-owner projects HUD is responsible for administration of the Contract, but may contract with another entity for the performance of some or all of its contract administration functions.

(b) *PHA Fee for Contract Administration.* A PHA will be entitled to a reasonable fee, determined by HUD, for administering a Contract except under certain circumstances (see 24 CFR Section 883.203) where a state housing finance agency is the PHA and finances the project.

(c) *Conversion of Projects from One Ownership/Contractual Arrangement to Another.* Any project may be converted from one ownership/contractual arrangement to another (for example, from a private-owner/HUD to a private-owner/PHA project) if:

(1) The owner, the PHA and HUD agree,

(2) HUD determines that conversion would be in the best interest of the project, and

(3) In the case of conversion from a private-owner/HUD to a private-owner/PHA project, contract authority is available to cover the PHA fee for administering the Contract.

§ 880.506 Default by owner (private-owner/HUD and PHA-owner/HUD projects).

The Contract will provide:

(a) That if HUD determines that the owner is in default under the Contract, HUD will notify the owner of the actions required to be taken to cure the default and of the remedies to be applied by HUD including reduction or suspension of housing assistance payments and recovery of overpayments, where appropriate; and

(b) That if the owner fails to cure the default, HUD has the right to terminate the Contract or to take other corrective action.

§ 880.507 Default by PHA and/or owner (private-owner/PHA projects).

(a) *Rights of Owner if PHA Defaults under Agreement.* The ACC and the Agreement will provide that, in the event of failure of the PHA to comply with the Agreement with the owner the owner will have the right, if he is not in default, to demand that HUD determine whether a substantial default exists. HUD will first give the PHA a reasonable opportunity to take corrective action. If HUD determines that a substantial default exists, HUD will assume the PHA's rights and obligations under the Agreement and meet the obligations of the PHA under the Agreement, including the obligations to enter into the Contract.

(b) *Rights of Owner if PHA Defaults under Contract.* The ACC and the Contract will provide that, in the event

of failure of the PHA to comply with the Contract with the owner, the owner will have the right, if he is not in default, to demand that HUD determine whether a substantial default by the PHA exists. HUD will first give the PHA a reasonable opportunity to take corrective action. If HUD determines that a substantial default exists, HUD will assure that the obligations of the PHA to the owner are met.

(c) *Rights of HUD if PHA Defaults under ACC.* The ACC will provide that, if the PHA fails to comply with any of its obligations, HUD may determine that there is a substantial default and require the PHA to assign to HUD all of its rights and interests under the Contract; however, HUD will continue to pay annual contributions in accordance with the terms of the ACC and the Contract. Before determining that a PHA is in substantial default, HUD will give the PHA a reasonable opportunity to take corrective action. The PHA's obligations include enforcing its rights under the Contract, in the event of a default by the owner, to achieve compliance to the satisfaction of HUD or to terminate the Contract in whole or in part, as directed by HUD.

(d) *Rights of PHA and HUD if Owner Defaults under Contract.* The Contract will provide:

(1) That if the PHA determines that the owner is in default under the Contract, the PHA will notify the owner, with a copy to HUD, of the actions required to be taken to cure the default and of the remedies to be applied by the PHA including abatement of housing assistance payments and recovery of overpayments, where appropriate; and

(2) That if he fails to cure the default, the PHA has the right to terminate the Contract or to take other corrective action, in its discretion or as directed by HUD. If the PHA is the lender, the Contract will also provide that HUD has an independent right to determine whether the owner is in default and to take corrective action and apply appropriate remedies, except that HUD will not have the right to terminate the Contract without proceeding in accordance with paragraph (c) of this section.

Subpart F—Management

§ 880.601 Responsibilities of owner.

(a) *Marketing.* (1) The owner must commence diligent marketing activities in accordance with the Agreement not later than 90 days prior to the anticipated date of availability for occupancy of the first unit of the project.

(2) Marketing must be done in accordance with the HUD-approved Affirmative Fair Housing Marketing Plan and all Fair Housing and Equal Opportunity requirements. The purpose of the Plan and requirements is to assure that eligible families of similar income in the same housing market area have an equal opportunity to apply and be selected for a unit in projects assisted under this Part regardless of their race, color, creed, religion, sex or national origin.

(3) In addition, in the case of a non-elderly family project located in a non-impacted jurisdiction, initial and subsequent marketing must be done in accordance with the HUD-approved plan for outreach to families from impacted jurisdictions. Initial marketing to such families must commence one month before the initiation of marketing to families living in non-impacted jurisdictions. However, applications from such families will not be accepted until the date of initiation of marketing to other families, which date will also be the announced date for acceptance of applications from all families.

(4) At the time of Contract execution, the owner must submit a list of leased and unleased units, with justification for the unleased units, in order to qualify for vacancy payments for the unleased units. (See §§ 880.501(c) and (d) and § 880.609.)

(b) *Management and Maintenance.* The owner is responsible for all management functions (including selection of tenants, reexamination of family incomes, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

(c) *Contracting for Services.* With HUD approval, the owner may contract with a private or public entity (except the contract administrator) for performance of the services or duties required in paragraphs (a) and (b). However, such an arrangement does not relieve the owner of responsibility for these services and duties.

(d) *Submission of Financial and Operating Statements.* After execution of the Contract, the owner must submit to the contract adminstrator:

(1) Within 60 days after the end of each fiscal year of the project, financial statements for the project audited by an Independent Public Accountant in the form required by HUD, and

(2) Other statements as to project operation, financial conditions and occupancy as HUD may require pertinent to administration for the Contract and monitoring of project operations.

(e) *Use of Project Funds.* Project funds must be used for the benefit of the project, to make required deposits to the replacement reserve in accordance with Section 880.602(b), and to provide distributions to the owner as provided in Section 880.205. Any remaining project funds must be deposited with the mortgagee or other HUD-approved depository in a residual receipts account. Withdrawals from this account will be made only for project purposes and with the approval of HUD. In the case of HUD-insured projects, the provisions of this paragraph will apply in lieu of the otherwise applicable mortgage insurance provisions.

§ 880.602 Project reserves.

(a) *Operating Deficit Escrow.* (1) Prior to the execution of the Contract, a profit-motivated owner must provide an escrow, in the form of cash, and unconditional, irrevocable letter of credit, or other negotiable instrument, to meet any potential operating deficit during the early years of project operation. The escrow will at least 2 percent of the total replacement cost, as determined by HUD. This does not preclude more stringent requirements that may be imposed as part of HUD mortgage insurance or other project financing requirements. If the owner is not in default under the Contract or project mortgage, one-half of the unused escrow will be released to the owner at the end of the project's third fiscal year after the Contract becomes effective and the remainder will be released at the end of the project's fourth fiscal year.

(2) Funds will be held by the mortgagee or trustee for bondholders, and may be drawn from the escrow and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

(b) *Replacement Reserve.* (1) A replacement reserve must be established and maintained in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items. An amount equivalent to 5 percent of total housing expenses for elderly family projects, and 7 percent of this total for projects other then those designed for the elderly, or any higher rate as required by HUD from time to time, will be deposited in the replacement reserve annually.

(2) The reserve must be built up to and maintained at a level determined by

HUD to be sufficient to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of HUD.

(3) All earnings including interest on the reserve must be added to the reserve.

(4) Funds will be held by the mortgage or trustee for bondholders, and may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

(c) In the case of HUD-insured projects, the provisions of this section will apply in lieu of the otherwise applicable mortgage insurance provisions.

§ 880.603 Selection and admission of tenants.

(a) *Application.* The owner must accept applications for admission to the project in the form prescribed by HUD. Both the owner (or designee) and the applicant must complete and sign the application. On the request, the owner must furnish copies of all applications to HUD and the PHA, if applicable.

(b) *Determination of Eligibility and Selection of Tenants.* The owner is responsible for determining whether the applicant is eligible, in accordance with 24 CFR, Parts 812 and 889, and for the selection of families:

(1) In establishing criteria for selection, no local residency requirements or preferences may be used.

(2) If owner determines that the family is eligible and is otherwise acceptable and units are available, the owner will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit is available, the owner will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list if so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason.

(3) If the owner determines that an applicant is ineligible on the basis of income or family composition, or that the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination, the reasons for the determination, and that the applicant has the right to meet the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he has the right to request a review by HUD of the PHA's determination. The applicant may also exercise other rights if he believes he is being discriminated against on the basis of race, color, creed, religion, sex, or national origin.

(4) Records on applicants and approved eligible families, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be maintained and retained for three years.

(c) *Income Mix.* In the initial renting of assisted units, the owner must lease at least 30 percent of the assisted units to very low-income families. After initial renting, the owner must use his best efforts to maintain at least 30 percent occupancy by very low-income families. In addition, at all times, the owner will use his best efforts to achieve leasing to families with a range of incomes so that the average of incomes of all families in occupancy is at or above 40 percent of the median income in the area.

(d) *Reexamination of Family Income and Composition.*

(1) The owner is responsible for reexamining the income and composition of all families, including elderly families, at least once each year and, upon verification of the information provided by the family, making appropriate adjustments in the total family contribution in accordance with the provisions of 24 CFR, Part 889. The owner will adjust tenant rent and the housing assistance payment in accordance with any change in total family contribution. The owner may schedule reexaminations at intervals of less than one year when it is not possible to make a reasonable estimate of the family's income for a full year.

(2) If the family reports a change in income or other circumstances that would result in a decrease of total family contribution between regularly scheduled reexaminations, the owner, upon receipt of verification of the decrease in income, must promptly make appropriate adjustments in the total family contribution. The owner may not require families to report increases in income between scheduled reexaminations.

§ 880.604 Tenant rent.

The tenant rent is paid directly to the owner by the eligible family to whom as assisted unit is leased in partial payment of the contract rent. It is equal to the family's total family contribution minus any utility allowance for the unit. If the family's total family contribution is less than the utility allowance for the unit which it occupies, the tenant rent payable by the family to the owner is zero.

§ 880.605 Overcrowded and underoccupied units.

If the contract administrator determines that because of change in family size an assisted unit is smaller than appropriate for the eligible family to which it is leased, or that the unit is larger than appropriate, housing assistance payments with respect to the unit will not be reduced or terminated until the eligible family has been relocated to an appropriate alternative unit. If possible, the owner will, as promptly as possible, offer the family an appropriate unit. The owner may receive vacancy payments for the vacated unit if he complies with the requirements of § 880.610.

§ 880.606 Lease requirements.

(a) *Term of Lease.* The term of the lease will be for not less than one year. The lease may, or in the case of a lease for a term of more than one year must, contain a provision permitting termination on 30 days advance written notice by the family.

(b) *Form.* The form of lease must contain all required provisions, and none of the prohibited provisions specified in the developer's packet, and must conform to the form of lease included in the approved final proposal.

§ 880.607 Termination of tenancy and modification of leases.

(a) *Entitlement of Families to Occupancy.*

(1) *General.* The owner may not terminate any tenancy except upon the following grounds:

(i) Material noncompliance with the lease;

(ii) Material failure to carry out obligations under any state landlord and tenant act; or

(iii) Other good cause.

No termination by an owner under paragraph (b)(1) (i) or (ii) of this section will be valid to the extent it is based upon a lease or a provision of State law permitting termination of a tenancy solely because of expiration of an initial or subsequent renewal term.

(2) *Notice of Good Cause.* The grounds for termination cannot be deemed "other good cause" under paragraph (b)(1)(iii) unless the owner has given the family prior notice that the grounds constitute a basis for termination of tenancy. The notice will be served on the family in the same

manner as that provided for termination notices in paragraph (c)(2).

(3) *Material Noncompliance.* Material noncompliance with the lease will include:

(i) One or more substantial violations of the lease, or

(ii) Repeated minor violations of the lease which disrupt the livability of the project, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities, interfere with the management of the project or have an adverse financial effect on the project. Nonpayment of rent or any other financial obligation due under the lease (including any portion thereof) beyond any grace period permitted under State law will constitute a substantial violation of the rental agreement. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under state law will constitute a minor violation.

(b) *Termination Notice.*

(1) *Requirements of Termination Notice.* The owner's determination to terminate the tenancy must be in writing and:

(i) State that the tenancy is terminated on a specified date;

(ii) State the reasons for the owner's action with enough specificity so as to enable the tenant to prepare a defense; and

(iii) Advise the family that if a judicial proceeding for eviction is instituted the family may present a defense; and

(iv) Be served on the family in the manner prescribed by paragraph (c)(2) of this section.

(2) *Manner of Service.* The notice provided for in paragraph (c)(1) of this section must be accomplished by:

(i) Sending a letter by first class mail properly stamped and addressed to the family at its address at the project with a proper return address, and

(ii) Serving a copy of the notice on any adult person answering the door at the leased dwelling unit or if no adult responds, by placing the notice under or through the door.

Service will not be deemed effective until both notices provided for in this paragraph have been acomplished. The date on which the notice will be deemed to be received by the family will be the date on which the first class letter provided for in this paragraph is mailed or the date on which the notice provided for in this paragraph is properly served, whichever is later.

(3) *Time of Service.* When a termination notice is issued according to this section for other good cause, the notice will be effective, and it will so state, at the end of a term and in accordance with the termination provisions of the lease, but in no case earlier than 30 days after receipt by the family of the notice. Where the termination notice is based on material noncompliance with the lease or material failure to carry out obligations under a state landlord and tenant act pursuant to paragraph (b)(1)(i) or (ii), the time of service shall be in accord with the lease and state law.

(4) *Specificity of Notice in Rent Non-payment Cases.* In any case in which a tenancy is terminated because of the family's failure to pay rent, a notice stating the dollar amount of the balance due on the rent account and the date of the computation will satisfy the requirement of specificity set forth in paragraph (c)(1)(ii) of this section.

(5) *Failure of Family to Object.* The failure of the family to object to the termination notice will not constitute a waiver of rights to contest the owner's action in any judicial proceeding.

(6) *Limitations on Allegations of New Grounds.* In any judicial action instituted to evict the family, the owner may not rely on any grounds which are different from the reasons set forth in the termination notice served on the family according to this section.

(c) *Modification of Lease.* Notwithstanding any provision of this subpart, the owner may, with the prior approval of HUD, modify the terms and conditions of the lease effective at the end of the initial term or a successive term, by serving an appropriate notice on the family, together with the offer of a revised lease or an addendum revising the existing lease. This notice and offer must be served on the family in the same manner as provided for in paragraph (c)(2) and must be received by the family at least 30 days prior to the last date on which the family has the right to terminate the tenancy without being bound by the modified terms and conditions. The family may accept the modified terms and conditions by executing the offered revised lease or addendum, or may reject the modified terms and conditions by giving the owner written notice in accordance with the lease that he intends to terminate the tenancy. Any increase in rent will in all cases be governed by § 880.609 and other applicable HUD regulations.

(d) *State and Local Law.* This section will apply in conjunction with any State and local landlord tenant law.

§ 880.608 Security deposits.

(a) At the time of the initial execution of the lease, the owner will require each family to pay a security deposit in an amount equal to one month's total family contribution or $50, whichever is greater. The family is expected to pay the security deposit from its own resources and/or other public sources. The owner may collect the security deposit on an installment basis.

(b) The owner must place the security deposits in a segregated, interest-bearing account. The balance of this account must at all times be equal to the total amount collected from the families then in occupancy, plus any accrued interest. The owner must comply with any applicable State and local laws concerning interest payments on security deposits.

(c) In order to be considered for the return of the security deposit, a family which vacates its unit will provide the owner with its forwarding address or arrange to pick up the refund.

(d) The owner, subject to State and local law and the requirements of this paragraph, may use the security deposit, plus any accrued interest, as reimbursement for any unpaid family contribution or other amount which the family owes under the lease. Within 30 days after receiving notification of the family's forwarding address, the owner must:

(1) Refund to a family owing no rent or other amount under the lease the full amount of the security deposit, plus accrued interest;

(2) Provide to a family owing rent or other amount under the lease a list itemizing any unpaid rent, damages to the unit, and estimated costs for repair, along with a statement of the family's rights under State and local law. If the amount which the owner claims is owed by the family is less than the amount of the security deposit, plus accrued interest, the owner must refund the unused balance to the family. If the owner fails to provide the list, the family will be entitled to the refund of the full amount of the security deposit plus accrued interest.

(e) In the event a disagreement arises concerning reimbursement of the security deposit, the family will have the right to present objections to the owner in an informal meeting. The owner must keep a record of any disagreements and meetings in a tenant file for inspection by the contract administrator. The procedures of this paragraph do not preclude the family from exercising its rights under State and local law.

(f) If the security deposit, including any accrued interest, is insufficient to

reimburse the owner for any unpaid tenant rent or other amount which the family owes under the lease, and the owner has provided the family with the list required by paragraph (d)(2), the owner may claim reimbursement from HUD or the PHA, as appropriate, for an amount not to exceed the lesser of:

(1) The amount owed the owner, or

(2) One month's contract rent, minus the amount of the security deposit plus accrued interest.

Any reimbursement under this section will be applied first toward any unpaid tenant rent due under the lease. No reimbursement may be claimed for unpaid rent for the period after termination of the tenancy.

§ 880.609 Adjustment of contract rents.

(a) *Annual Adjustment of Contract Rents.* Contract rents will be adjusted on the anniversary date of the Contract in accordance with 24 CFR, Part 888.

(b) *Special Additional Adjustments.* For all projects, special additional adjustments will be granted, to the extent determined necessary by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the assisted units which have resulted from substantial general increases in real property taxes, assessments, utility rates, and utilities not covered by regulated rates, and which are not adequately compensated for by annual adjustments under paragraph (a). The owner must submit to the contract administrator required supporting data, financial statements and certifications.

(c) *Overall Limitation.* Any adjustments of contract rents and utility allowances for a unit after cost certification must not result in material differences between the rents charged for assisted units and comparable unassisted units except to the extent that the differences existed with respect to the contract rents set at cost certification.

§ 880.610 Adjustment of utility allowances.

The owner must recommend to the contract administrator, in connection with annual and special adjustments of contract rents, and at other times if appropriate, whether and to what extent the utility allowance for any assisted unit should be adjusted. Whenever a utility allowance for a unit is adjusted, the contract administrator will promptly notify the families occupying assisted units and make a corresponding adjustment of the tenant rent and the amount of the housing assistance payment for the unit.

§ 880.611 Conditions for receipt of vacancy payments.

(a) *General.* Vacancy payments under the Contract will not be made unless the conditions for receipt of these housing assistance payments set forth in this section are fulfilled.

(b) *Vacancies During Rent-up.* For each assisted unit that is not leased as of the effective date of the Contract, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the owner:

(1) Conducted marketing in accordance with § 880.601(a) and otherwise complied with § 880.601;

(2) Has taken and continues to take all feasible actions to fill the vacancy; and

(3) Has not rejected any eligible applicant except for good cause acceptable to the contract administrator.

(c) *Vacancies after Rent-Up.* If an eligible family vacates a unit, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the owner:

(1) Certifies that he did not cause the vacancy by violating the lease, the Contract or any applicable law;

(2) Notified the contract administrator of the vacancy or prospective vacancy and the reasons for the vacancy immediately upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in § 880.601(a)(2) and (3) and § 880.611(b)(2) and (3); and

(4) For any vacancy resulting from the owner's eviction of an eligible family, certifies that he gave the family written notice of the proposed eviction, stating the grounds and advising the family that it had 10 days to present objections to the owner.

(d) *Vacancies for Longer than 60 Days.* If an assisted unit continues to be vacant after the 60-day period specified in paragraph (b) or (c), the owner may apply to receive additional vacancy payments in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit for up to 12 additional months for the unit if:

(1) The unit was in decent, safe and sanitary condition during the vacancy period for which payments are claimed;

(2) The owner has fulfilled and continues to fulfill the requirements specified in paragraphs (b) or (c), as appropriate; and

(3) The owner has demonstrated to the satisfaction of HUD that:

(i) For the period of vacancy, the project is not providing the owner with revenues at least equal to project expenses (exclusive of depreciation), and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit, and

(ii) The project can achieve financial soundness within a reasonable time.

(e) *Prohibition of Double Compensation for Vacancies.* The owner is not entitled to vacancy payments for vacant units to the extent he can collect for the vacancy from other sources (such as security deposits, payments under § 880.608(f), and governmental payments under other programs).

§ 880.612 Reviews during management period.

(a) After the effective date of the Contract, the contract administrator will inspect the project and review its operation at least annually to determine whether the owner is in compliance with the Contract and the assisted units are in decent, safe and sanitary condition.

(b) In addition, for private-owner/PHA projects, HUD:

(1) Will review the PHA's administration of the Contract at least annually to determine whether the PHA is in compliance with the Contract, and

(2) May independently inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); Section 5(b), U.S. Housing Act of 1937 (42 U.S.C. 1437c(b)). (Section 7(o) of the Department of HUD Act 42 U.S.C. 3535(o), Section 324 of the Housing and Community Development Amendments of 1978)

Issued at Washington, D.C., May 4, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 79-18222 Filed 6-11-79; 8:45 am]

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Reader Aids

Federal Register

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INFORMATION AND ASSISTANCE

Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing 202-523-5240.

Federal Register, Daily Issue:

202-783-3238	Subscription orders (GPO)
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523-5235	Public Papers of the Presidents, and Weekly Compilation of Presidential Documents

Public Laws:

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523-5282	Statutes at Large, and Index
275-3030	Slip Law Orders (GPO)

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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

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.

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
	LABOR			LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

***NOTE: As of January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)**

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

Rules Going Into Effect Today

TREASURY DEPARTMENT

Currency Comptroller—

22388 4-13-79 / Leasing of personal property by national banks; interpretive ruling

List of Public Laws

Last Listing June 7, 1979

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-375-3030).

H.R. 3404 / Pub. L. 96-18 To amend the Federal Reserve Act to authorize Federal Reserve banks to lend certain obligations to the Secretary of the Treasury to meet the short-term cash requirements of the Treasury, and for other purposes. (June 8, 1979; 93 Stat. 35) Price $.60.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2½ hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between Federal Register and the Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

WASHINGTON, D.C.

WHEN: July 6 at 9 a.m. (identical sessions).

WHERE: Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.

RESERVATIONS: Call Mike Smith, Workshop Coordinator, 202-523-5235.

BOSTON, MASSACHUSETTS

WHEN: June 14, at 9:30 a.m. (identical sessions).

WHERE: John F. McCormack Federal Building, Conference Room 208, Boston.

RESERVATIONS: Call James Mullen, 617-223-2868.

LOS ANGELES, CALIFORNIA

WHEN: June 28 and 29 at 9:00 a.m. (identical sessions).

WHERE: Federal Building, Army Corps of Engineers Conference Room 7412, 300 N. Los Angeles Street

RESERVATIONS: Federal Information Center, 213-688-3800.

SAN FRANCISCO, CALIFORNIA

WHEN: June 28 and 29 at 9:00 a.m. (identical sessions).

WHERE: Federal Building, Room 2007, 450 Golden Gate Avenue

RESERVATIONS: Call Mike Modena or Judy Barbee, Federal Executive Board, 415-556-0250.