AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

8-17-79
Vol. 44—No. 161
BOOK 1:
PAGES
48141-48486
BOOK 2:
PAGES
48487-48642

federal register

Book 1 of 2 Books
Friday, August 17, 1979

Highlights

48141 **President's Commission on the Holocaust** Executive Order

48147 **Fire Prevention Week** Presidential proclamation

48145 **Firefighters' Memorial Sunday** Presidential proclamation

48143 **Office of Management and Budget** Executive Order

48149 **National School Lunches** USDA/FNS alters program requirements; effective 8–17–79

48157 **Child Nutrition** USDA/FNS amends the School Breakfast Program regulations; effective 7–1–79

48185 **Comprehensive Employment and Training** Labor/ETA specifies when funds under the Act may be used with respect to religiously affiliated elementary and secondary schools and other religious activities; effective 9–17–79

48638 **Federal Employee Parking** OMB establishes policy regarding fees to be charged for certain facilities (Part VII of this issue)

48191 **Income Tax** Treasury/IRS promulgates rule relating to mergers and consolidations of retirement plans and transfers of plan assets or liabilities

CONTINUED INSIDE

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

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Area Code 202–523–5240

Highlights

48269 **Income Tax** Treasury/IRS proposes rules relating to investment credit employee stock ownership plans (TRASOP's) that provide for an extra one-half percent credit

48169 **Banks** Treasury/Comptroller adopts course for the establishment of domestic branches and seasonal agencies, and customer-bank communication terminal branches; effective 8–17–79

48160 **Financial Status** USDA/FmHA amends its rules to protect applicants from unauthorized use or disclosure of information; effective 8–17–79

48632 **Wages and Prices** CWPS proposes to simplify and streamline procedural rules; comments by 9–17–79 (Part VI of this issue)

48274 **Educational/Scientific Diving** Labor/OSHA request comments on present requirements for safety and health protection of involved employees; comments by 10–15–79

48618 **Consumer Products** CPSC reorganizes and amends a portion of its rules on developing proposed safety standards; effective 8–17–79 (Part V of this issue)

48163 **Contract Disputes** DOE provides procedures for appeals filed pursuant to the Act of 1978; effective 3–1–79; comments by 9–17–79

48598 **Low-Acid Pet Foods** HEW/FDA revises current good manufacturing practices; effective 9–17–79 (Part IV of this issue)

48264 **Nuclear Medicine** HEW/FDA issues notice of intent to develop recommendations for quality assurance programs; comments by 12–17–79

48186 **Antibiotic Drugs** HEW/FDA rules on testing method for tetracycline hydrochloride for human and animal use

48171 **Natural Gas Policy** DOE/FERC prescribes guidelines for seeking interpretations under the Act; effective 8–7–79; comments by 9–12–79; hearing on 9–12–79

48429 **Sunshine Act Meetings**

Separate Parts of This Issue

48490 **Part II, Labor/MSHA**
48548 **Part III, Labor/ESA**
48598 **Part IV, HEW/FDA**
48618 **Part V, CPSC**
48632 **Part VI, CWPS**
48638 **Part VII, OMB**

Contents

Federal Register
Vol. 44, No. 161
Friday, August 17, 1979

The President
EXECUTIVE ORDERS
48141 Holocaust, President's Commission on the (EO 12151)
48143 Management and Budget, Office of, Director (EO 12152)
PROCLAMATIONS:
48145 Firefighters' Memorial Sunday (Proc. 4671)
48147 Fire Prevention Week (Proc. 4672)

Executive Agencies

Administrative Conference of the United States
NOTICES
Meetings:
48307 Compliance and Enforcement Proceedings Committee

Aging, Federal Council
NOTICES
48342 Meetings (2 documents)

Agricultural Marketing Service
RULES
48160 Lemons grown in Ariz. and Calif.

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

Air Force Department
NOTICES
Meetings:
48315 Scientific Advisory Board

Air Quality National Commission
NOTICES
Committees; establishment, renewals, terminations, etc.:
48398 Atmospheric Dispersion Modeling Review Panel
48397 Formation, Transport and Control of Photochemical Oxidants Review Panel

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Meetings:
48346 Advisory committees; September (2 documents)

Animal and Plant Health Inspection Service
RULES
Livestock and poultry quarantine:
48162 Scabies in cattle
Plant quarantine, domestic:
48160 Japanese beetle; correction
Plant quarantine, Hawaiian and territorial:
48230 Fruits and vegetables; hearing

Army Department
See also Engineers Corps.
NOTICES
Environmental statements; availability, etc.:
48316 Fort Ord, Calif.
Meetings:
48316 Science Board

Blind and Other Severely Handicapped Committee for Purchase From
NOTICES
48315 Procurement list, 1979, additions and deletions

Civil Aeronautics Board
NOTICES
48308 Certificates of public convenience and necessity; applications
Hearings, etc.:
48308 Love Field; interstate service

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
48309 New Mexico
48309 Texas

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

Comptroller of Currency
RULES
48169 Branches, customer-bank communication terminal branches (CBCT), relocations, and title changes

Consumer Product Safety Commission
RULES
48618 Safety standards development, proposed
NOTICES
Meetings:
48315 Toxicological Advisory Board

Customs Service
NOTICES
48411 Tuna and tuna products from Costa Rica; import prohibition, removal; correction

Defense Department
See Air Force Department; Army Department; Engineers Corps.

Economic Regulatory Administration
NOTICES
Consent orders:
48320 Enserch Exploration, Inc.
Motor gasoline marketing and distribution:
48320 Texaco, Inc.; application to terminate in Montana, Idaho, Washington and North Dakota
Natural gas exportation and importation; petitions:
48322 Great Lakes Gas Transmission Co.

48323, 48324 Midwestern Gas Transmission Co. et al. (2 documents)
48321 Montana Power Co.

Employment and Training Administration
RULES
Comprehensive Employment and Training Act programs:
48185 Sectarian activities
Senior community service employment program:
48201 Income criteria for eligibility; correction

Employment Standards Administration
NOTICES
48548 Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions (Ark., Fla., Hawaii, Idaho, Iowa, La., N.J., N.Y., Okla., Tex.)

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission; Intergovernmental and Institutional Relations Office (DOE).
RULES
48163 Contract appeals; rules and procedures
NOTICES
Meetings:
48317, 48318 National Petroleum Council (3 documents)
48319 Uranium mill tailings sites for remedial action, designation

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
48317 Lake Washington, Wash.; channel improvements
48316 San Antonio Channel Improvement Project, Bexar County, Tex.
48316 Seacrest Marina, Elliott Bay, Wash.

Environmental Protection Agency
RULES
Air pollution control, new motor vehicles and engines:
48204 Motorcycle engine families certification criteria; technical amendment
Air quality implementation plans; delayed compliance orders:
48202 Kansas
48202, 48203 Ohio (2 documents)
PROPOSED RULES
Air quality control regions; criteria and control techniques:
48285 Attainment status designations (Colo.)
NOTICES
Environmental statements; availability, etc.:
48337 Agency statements, weekly receipts

Farmers Home Administration
RULES
48160 Financial privacy rights; records disclosure

Federal Communications Commission
RULES
48225 Commercial radio operators; restricted radiotelephone operator permits; temporary authorizations system; effective date
Radio broadcasting:
48225 Educational FM broadcast stations, noncommercial; agreement with Canada on movement to commercial band
Radio services, special:
48178 Induction cooking ranges; certification
PROPOSED RULES
Communications equipment:
48299 Wireless inflight entertainment system operation
Practice and procedure:
48287 Fee refunds and future fees
Television broadcasting:
48303 Cable television; program log maintenance; proceeding terminated

Federal Election Commission
NOTICES
48429 Meetings; Sunshine Act

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
48222 Connecticut et al.
48221 Washington et al.
Flood insurance; special hazard areas:
48224 New Jersey et al.
PROPOSED RULES
Flood elevation determinations:
48285 Illinois
48286 Indiana
48287 Ohio
NOTICES
Disaster and emergency areas:
48342 Alabama
48342 California
48343 Indiana (4 documents)
48344 Louisiana
48344, 48345 Texas (3 documents)
48345 Virginia

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act of 1978:
48180 Ceiling prices for new natural gas and certain natural gas produced from Outer Continental Shelf
48171 Interpretations and declatory orders; procedures
48174 Pipeline evidentiary submissions and protests; requirements
48184 Transcontinental Gas Pipe Line Corporation; exemption from curtailment tariff filing requirement
PROPOSED RULES
Natural Gas Policy Act of 1978:
48262 Jurisdictional agency determinations; Commission review and determinations
48257 Rulemaking proceedings, superseded; termination
NOTICES
Hearings, etc.:
48325 Colorado Interstate Gas Co.
48326 Connecticut Light & Power Co.

48327 Consolidated Gas Supply Corp.
48327 Crown Zellerbach Corp.
48328 East Tennessee Natural Gas Co.
48328 Entex, Inc., et al.
48329 Florida Power & Light Co.
48330 Georgia Power Co.
48330 Husky Oil Co.
48330 Indiana & Michigan Electric Co.
48330 Kansas City Power & Light Co.
48331 Long Island Lighting Co.
48331 National Fuel Gas Supply Corp.
48331 National Gas Storage Corp.
48324 Natural Gas Pipeline Co. of America
48331 Northern States Power Co.
48332, 48333 Northwest Pipeline Corp. (3 documents)
48333 Nucor Steel-Nebraska
48333 Power Authority of State of New York
48334 Public Service Co. of Indiana, Inc.
48334 South Texas Natural Gas Gathering Co.
48335 Southern Indiana Gas & Electric Co.
48336 Southern Natural Gas Co.
48336 Texas Eastern Transmission Corp.
48336 Texas Sea Rim Pipeline, Inc.
Natural Gas Policy Act of 1978:
48326, 48327 Jurisdictional agency determinations; preliminary findings (2 documents)
48325 Transwestern Pipeline Co.

Federal Home Loan Bank Board
NOTICES
48429 Meetings; Sunshine Act

Federal Maritime Commission
NOTICES
48429 Meetings; Sunshine Act

Federal Prevailing Rate Advisory Committee
NOTICES
48345 Meetings

Federal Register Office
NOTICES
48398 U.S. Senate procurement regulations; availability

Federal Trade Commission
RULES
Prohibited trade practices:
48170 Mobile Homes-Multiplex Corp., et al.

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
48598 Good manufacturing practices; canning low acid pet foods
48186 Tetracycline hydrochloride and oxytetracycline hydrochloride; dissolution test
48186 Pineapple, canned; identity standard; correction
Radiological health:
48190 Electronic products; performance standards; variance approval procedures
PROPOSED RULES
Food additives:
48269 Carragreenan, etc.; withdrawal; correction
48265 Ice cream, frozen custard, ice milk and sherbet; identity standards
Radiological health:
48264 Nuclear medicine facilities; quality assurance programs
NOTICES
48348 Advisory committees, panels, etc.
Food additives; petitions filed or withdrawn:
48351 American Cyanamid Co.
Human drugs:
48351 Balcort solution and vaginal suppositories; approval withdrawn; correction
48353 Chola-K tablets, etc.; approval withdrawn; correction
48351 Estomul liquid and tablets; approval withdrawn; correction
48353 Hexamethonium chloride with reserpine or alseroxylon and meprobamate with pentolinium; approval withdrawn; correction
48351 Mephenoxalone tablets and emylcamate tablets; approval withdrawn; correction
48351 Organic nitrates combination drugs; approval withdrawn; hearing
48353 Sulthigel Gel; approval withdrawn; correction
48353 Tablets raupesine, etc.; approval withdrawn; correction
Labeling:
48347 Potassium iodide as a thyroid-blocking agent in a radiation emergency
Meetings:
48350 Advisory committees, panels, etc.
48347 Consumer participation; information Exchange
48355 Radiofrequency sealers, heaters, and gluers hazards; workshop
Radiological health:
48354 Diagnostic X-ray examinations; exposure recommendations

Food and Nutrition Service
RULES
School breakfast program, National:
48157 "School with severe need"; minimum national eligibility criteria, etc.
School lunch program:
48149 Nutritional requirements
NOTICES
Meetings:
48307 Maternal, Infant and Fetal Nutrition National Advisory Council

General Services Administration
See Federal Register Office.

Health, Education, and Welfare Department
See also Alcohol, Drug Abuse, and Mental Health Administration; Food and Drug Administration.
NOTICES
Committees; establishment, renewals, terminations, etc.:
48356 Vital and Health Statistics National Committee

Heritage Conservation and Recreation Service
NOTICES
Wild and scenic rivers system; additions:
48382 Lower Little Miami National Wild and Scenic River, Ohio

Industry and Trade Commission
Organization and functions:
48309 Export Development Bureau, Deputy Assistant Secretary

Intergovernmental and Institutional Relations Office (DOE)
NOTICES
Powerplant and Industrial Fuel Use Act:
48319 Areas impacted by energy development; approval; listing

Interior Department
See also Heritage Conservation and Recreation Service; Land Management Bureau; National Park Service; Reclamation Bureau.
PROPOSED RULES
48305 Fish and Wildlife Coordination Act; uniform procedures for federal agency compliance; environmental assessment

Internal Revenue Service
RULES
Income taxes:
48191 Mergers and consolidations of retirement plans and transfers of plan assets or liabilities
PROPOSED RULES
Income taxes:
48269 TRASOPs; one-half percent credit

International Trade Commission
NOTICES
48429 Meetings; Sunshine Act

Interstate Commerce Commission
PROPOSED RULES
Motor carriers:
48304 Return hauls applications for movements of exempt agricultural commodities; special procedures; petition for rulemaking
NOTICES
48411 Hearing assignments
Motor carriers:
48412, 48426 Operating authority application (2 documents)
48413 Temporary authority applications
48428 Railroad car service rules; mandatory exemptions; correction
Railroad freight rates and charges; various States, etc.:
48412 Mississippi

Labor Department
See also Employment and Training Administration; Employment Standards Administration; Mine Safety and Health Administration; Occupational Safety and Health Administration
NOTICES
Adjustment assistance:
48385 Allied Chemical Corp.
48385 American Air Filter Co., Inc. et al.
48386 Bay-Bee Shoe Co. et al.
48387 Big Four Trucking Co., Inc.
48387 Bryant Trucking Co.
48387 Casuals of Maine, Inc.
48388 Cities Service Co.
48388 Craftsman Coat Co., Inc.
48389 East West Leathers, Inc.
48389 Ekco Housewares
48389 Ford Aerospace and Communications Corp.
48390 H & P Garment Co., Inc.
48390 International Embroidery Works
48390 Island Creek Coal Co.
48391 Lesande Shoe Co., Inc.
48391 M. P. Goodkin Co.
48391 Madam Coat, Inc.
48392 Master Corp. of Texas
48392 Neumier Co.
48393 Sharon Fabrics
48396 Synthetics Finishing Corp.
48396 Universal Carloading Distributing Co., Inc.
48397 Venable & Billups Corp.
48393 New Hampshire Department of Employment Security, hearing

Land Management Bureau
NOTICES
Alaska native selections; applications:
48379 Goldbelt, Inc.
Applications, etc.:
48378 New Mexico (2 documents)
48379 Wyoming (2 documents)
Environmental statements; availability, etc.:
48378 Nellis USAF Bombing and Gunnery Range, Nev.
Meetings:
48378 Boise District Grazing Advisory Board
Outer Continental Shelf:
48356 Oil and gas lease sales; Gulf of Mexico
Survey plat filings:
48378 Michigan
Wilderness areas; characteristics, inventories, etc.:
48378 Nevada

Management and Budget Office
NOTICES
48638 Federal employee parking facilities (A-118)

Maritime Administration
PROPOSED RULES
Practice and procedure:
48287 Operating-differential subsidy applications; hearing procedures; extension of time
NOTICES
Trustees; applicants disapproved:
48313 National Bank of North America

Merit Systems Protection Board
NOTICES
48430 Meetings; Sunshine Act

Mine Safety and Health Administration
RULES
Metal and nonmetallic mine safety:
48535 Explosives; safety and health standards and definition
48490 Ground control, air quality and ventilation, explosives, etc.; health and safety standards
NOTICES
Petitions for mandatory safety standard modification:
48383 Island Creek Coal Co. et al.

National Aeronautics and Space Administration
RULES
48205, 48208, 48211 Procurement (3 documents)

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
48226 Atlantic herring; emergency regulations; extension of effectivenss
PROPOSED RULES
48305 Fish and Wildlife Coordination Act; uniform procedures for federal agency compliance; environmental assessment
NOTICES
Meetings:
48313 Caribbean Fishery Management Council (2 documents)

National Park Service
NOTICES
Concession permits, etc.:
48382 Muir Woods National Monument

National Transportation Safety Board
NOTICES
48429 Meetings; Sunshine Act

Nuclear Regulatory Commission
PROPOSED RULES
Radioactive material packaging:
48234 Environmental statement on transportation

Occupational Safety and Health Administration
PROPOSED RULES
Health and safety standards:
48274 Education/scientific diving operations; advance notice
48275 Guarding of low-pitched-roof perimeters; standards
NOTICES
Meetings:
48385 Radiofrequency sealers, heaters, and gluers hazards; workshop

Oceans and Atmospheres, National Advisory Committee
NOTICES
48428 Meeting

Personnel Management Office
RULES
48149 Equal employment opportunity and affirmative employment programs; transfer of functions; correction
PROPOSED RULES
48228 Incentive awards

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
48381 Chikaskia project, Kans.-Oklahoma

Rural Electrification Administration
NOTICES
Environmental statements; availability, etc.:
48308 Deseret Generation & Transmission Cooperative
48307 Seminole Electric Cooperative, Inc.
48308 United Power Association

Securities and Exchange Commission
NOTICES
Hearings, etc.:
48402 Midwest Stock Exchange, Inc.
48403 Ohio Power Co. et al.
48403 Union Bank of Finland, Ltd.
Self-regulatory organizations; proposed rule changes:
48399 Cincinnati Stock Exchange

Small Business Administration
NOTICES
Applications, etc.:
48406 Global Investments, Inc.
48407 Japanese American Capital Corp.
48409 Sun-Delta Capital Access Center, Inc.
Authority delegations:
48408 Field offices; program activities
Disaster areas:
48405 California
48407 Kentucky
48406 Indiana (2 documents)
48407 Kansas (2 documents)
48407 Michigan
48408 New York (2 documents)
48409, 48410 Texas (3 documents)
48410 Virginia
48410 Washington
48410 Wyoming
Meetings; advisory councils:
48409 Richmond

Textile Agreements Implementation Committee
NOTICES
Cotton textiles:
48314 Pakistan

Treasury Department
See also Comptroller of Currency; Customs Service; Internal Revenue Service.
NOTICES
48411 Privacy Act; systems of records

Veterans Administration
PROPOSED RULES
48281 National Environmental Policy Act; implementation

Wage and Price Stability Council
PROPOSED RULES
Procedural rules:
48632 Revision

MEETINGS ANNOUNCED IN THIS ISSUE

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES
48307 Compliance and Enforcement Proceedings Committee, 9–17–79

AGRICULTURE DEPARTMENT
Food and Nutrition Service—
48307 National Advisory Council on Maternal, Infant and Fetal Nutrition, 9–17 through 9–19–79

CIVIL RIGHTS COMMISSION
48309 New Mexico Advisory Committee, 9–14–79
48309 Texas Advisory Committee, 9–27 and 9–28–79

COMMERCE DEPARTMENT
48428 National Advisory Committee on Oceans and Atmospheres, 9–10 and 9–11–79
National Oceanic and Atmospheric Administration—
48313 Caribbean Fishery Management Council, Deep Water Reef Fishes Steering Committee, 9–5 and 9–6–79
48313 Caribbean Fishery Management Council, Mollusk Steering Committee, 9–5 and 9–6–79

CONSUMER PRODUCT SAFETY COMMISSION
48315 Toxicological Advisory Board, 9–5 and 9–6–79

DEFENSE DEPARTMENT
Air Force Department—
48315 USAF Scientific Advisory Board Ad Hoc Committee on Turbine Engine Monitoring Systems, 9–5 through 9–7–79
Office of the Secretary—
48316 Army Science Board, 9–10 and 9–11–79

ENERGY DEPARTMENT
48318 National Petroleum Council, Government Subcommittee of the Committee on Materials and Manpower Requirements, 8–16–79
48318 National Petroleum Council, Tight Gas Reservoirs Task Group, 8–22 and 8–23–79
48317 National Petroleum Council, Tight Gas Reservoirs Task Group of the Committee on Unconventional Gas Sources, 9–27 and 9–28–79

FEDERAL PREVAILING RATE ADVISORY COMMITTEE
48345 Meetings, 9–6, 9–20 and 9–27–79

HEALTH, EDUCATION AND WELFARE DEPARTMENT
48342 Council on the Aging, 9–12 through 9–14–79
48342 Federal Council on the Aging, Long Term Care Committee, 9–5–79
Alcohol, Drug Abuse, and Mental Health Administration—
48346 Alcohol Abuse and Alcoholism National Advisory Council, 9–17 and 9–18–79
48346 Drug Abuse National Advisory Council, 9–27 and 9–28–79
48346 Mental Health National Advisory Council, 9–18 through 9–20–79
48346 Mental Health Small Grant Review Committee, 9–20 through 9–22–79
Food and Drug Administration—
48347 Consumer Participation, 8–31–79

HEALTH, EDUCATION AND WELFARE DEPARTMENT
Food and Drug Administration—
and
LABOR DEPARTMENT
Occupational Safety and Health Administration—
48355 Potential Hazards in Use of Radiofrequency Sealers, Heaters, and Gluers, 9–12 and 9–13–79

INTERIOR DEPARTMENT
Land Management Bureau—
48378 Grazing Advisory Board, 9–26 and 9–27–79

RURAL ELECTRIFICATION ADMINISTRATION
48308 Financing from Deseret Generation and Transmission Cooperative, 9–10 and 9–11–79

SMALL BUSINESS ADMINISTRATION
48409 Region III Advisory Council, 9–13 and 9–14–79

HEARINGS

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service—
48230 Hawaiian Fruit and Vegetables Rules, 9–25–79

ENERGY DEPARTMENT
Federal Energy Regulatory Commission—
48171 Interim Rule Establishing Procedures for Seeking Interpretations Under the Natural Gas Policy Act, 9–12–79

HEALTH, EDUCATION, AND WELFARE DEPARTMENT
Food and Drug Administration—
48350 Fertility and Maternal Health Drugs Advisory Committee, 9–27 and 9–28–79
48348 Gastrointestinal Drugs Advisory Committee, Hepatotoxicity Subcommittee, 9–24–79
48348 Miscellaneous External Drug Products Panel, 9–28 and 9–29–79
48348 Miscellaneous Internal Drug Products Panel, 9–29 and 9–30–79
48348 Science Advisory Board, Microbiology/Immunology/Cell Biology Subcommittee, 9–24 and 9–25–79
48348 Science Advisory Board, Mutagenesis Subcommittee, 9–26–79

LABOR DEPARTMENT
Office of the Secretary—
48393 State of New Hampshire Department of Employment Security, 9–4–79

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Executive Orders

12093 (Amended by EO 12151)..... 48141
12151..... 48141
12152..... 48143

Proclamations:

4671..... 48145
4672..... 48147

5 CFR

720..... 48149

Proposed Rules:

451..... 48228

6 CFR

Proposed Rules:

706..... 48632

7 CFR

210..... 48149
220..... 48157
301..... 48160
910..... 48160
1910..... 48160
1980..... 48160

Proposed Rules:

318..... 48230

9 CFR

73..... 48162

10 CFR

1023..... 48163

Proposed Rules:

71..... 48234

12 CFR

4..... 48169

16 CFR

13..... 48170
1105..... 48618

18 CFR

1..... 48171
154..... 48174
157..... 48174
271..... 48180
281..... 48184

Proposed Rules:

Ch. I..... 48257
275..... 48262

20 CFR

676..... 48185

21 CFR

145..... 48186
431..... 48186
436..... 48186
446..... 48186
507..... 48598
546..... 48186
1010..... 48190

Proposed Rules:

Ch. I..... 48264
135..... 48265
172..... 48269
182..... 48269

26 CFR

1..... 48191

Proposed Rules:

1..... 48269

29 CFR

89..... 48201

Proposed Rules:

1910..... 48274
1926..... 48275

30 CFR

55 (2 documents)..... 48490, 48535
56 (2 documents)..... 48490, 48535
57 (2 documents)..... 48490, 48535

38 CFR

Proposed Rules:

26..... 48281

40 CFR

65 (3 documents)..... 48202, 48203, 48211
86..... 48204

Proposed Rules:

81..... 48285

41 CFR

Ch. 18 (3 documents)..... 48205, 48209

44 CFR

64 (2 documents)..... 48221, 48222
65..... 48224

Proposed Rules:

67 (3 documents)..... 48285–48287

46 CFR

Proposed Rules:

201..... 48287
208..... 48287
251..... 48287

47 CFR

13..... 48225
18..... 48178
73..... 48225

Proposed Rules:

1..... 48287
2..... 48299
15..... 48299
74..... 48303

49 CFR

Proposed Rules:

Ch. X..... 48304

50 CFR

653..... 48226

Proposed Rules:

410..... 48305

Federal Register
Vol. 44, No. 161
Friday, August 17, 1979

Presidential Documents

Title 3—

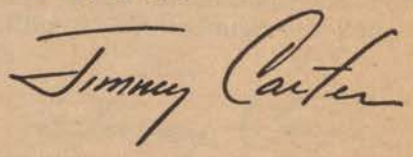
The President

Executive Order 12151 of August 14, 1979

President's Commission on the Holocaust

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to provide additional time for the President's Commission on the Holocaust to complete its work, Section 1–401 of Executive Order No. 12093 of November 1, 1978, is amended to read as follows:

"1–401. The Commission shall submit its final report to the President and the Secretary of the Interior not later than September 28, 1979.".



THE WHITE HOUSE,
August 14, 1979.

[FR Doc. 79–25722
Filed 8–15–79; 2:52 pm]
Billing code 3195–01–M

Presidential Documents

Executive Order 12152 of August 14, 1979

Director of the Office of Management and Budget

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 301 of Title 3 of the United States Code, and in order to ensure the continued delegation of certain functions which had been previously assigned but which are now vested directly in the President by virtue of H.R. 4616 that I have signed into law today, it is hereby ordered that the functions vested in the President by Sections 305(b), 4111(b), and 4112(a) of Title 5 of the United States Code are hereby delegated to the Director of the Office of Management and Budget.

Jimmy Carter

THE WHITE HOUSE,
August 14, 1979.

[FR Doc. 79-25806
Filed 8-16-79; 11:19 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 4671 of August 15, 1979

Firefighters' Memorial Sunday, 1979

By the President of the United States of America

A Proclamation

Courageous firefighters have protected the lives of their neighbors from the ravages of fire since the beginning of civilization.

Volunteer and professional firefighters are members of America's most hazardous profession. More than half of the injuries in fires each year are sustained by firefighters, over 55,000 each year.

Numerous churches and many denominations have indicated a desire to participate in a designated Memorial Sunday honoring these consecrated firefighters for their ultimate sacrifices for their fellowmen.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby designate Sunday, October 7, 1979, as Firefighters' Memorial Sunday.

Because of my grave concern for the firefighters of this country, I have urged the Federal government to undertake numerous programs aimed at reducing the dangers faced by this country's firefighters. We must do more to reverse the trend toward more injuries and deaths of firefighters.

This year the 50-year dream of a National Fire Academy became a reality. At that site, firefighters from across the Nation can receive advanced training and education in health and safety. I invite the firefighters of the country to take full advantage of this long-awaited facility.

I also call upon the members of the Joint Council of National Fire Service Organizations, members of the International Association of Fire Fighters, members of the International Association of Fire Chiefs, the National Fire Protection Association, all other organizations concerned with fire safety, and the United States Fire Administration to provide leadership and innovation to protect the lives of America's volunteer and professional firefighters.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of August, in the year of our Lord nineteen hundred seventy-nine, and of the Independence of the United States of America the two hundred and fourth.

Jimmy Carter

[FR Doc. 79-25807
Filed 8-16-79; 11:20 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 4672 of August 15, 1979

Fire Prevention Week, 1979

By the President of the United States of America

A Proclamation

Fire causes more loss of life and property in the United States than all other natural disasters combined. Fire is the second most frequent cause of accidental death in the home. Volunteer and professional firefighters bear a disproportionate burden of the human costs of fire; firefighting is still America's most hazardous profession.

Last year 8,700 Americans died, 280,000 were injured in fires and $5 billion in property was lost. America's loss to fire is among the very highest in the industrialized world.

As evidence of my strong personal concern about our fire problem, I have implemented a Reorganization Plan that puts the Federal government's principal fire programs in the new Federal Emergency Management Agency. This agency now coordinates America's disaster preparedness and response efforts. But the Federal government alone cannot reduce America's fire losses. The public and private sector must do their part. Together we can lessen this unnecessary, life-threatening destruction.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby designate October 8–14, 1979, as Fire Prevention Week.

Because fire deaths most often occur in homes, I call upon American families and other property owners to install smoke detectors, to practice exit drills, and to be especially vigilant in guarding against fires.

I encourage the fire service, police, prosecutors, the insurance industry, and government to work together to improve arson detection and prosecution so that we can begin to eliminate this costly, often murderous crime.

I call upon every fire department in the country to teach citizens the fundamentals of basic life support, cardio-pulmonary resuscitation, and to improve the delivery of emergency medical services.

I urge the fire service to fully open their profession to women, and I offer my support to the growing number of professional and volunteer women firefighters.

I encourage the fire service to take full advantage of the National Fire Academy that became a reality this year. The Academy will be an effective tool in providing training and education for the Nation's firefighters.

I support and encourage the cooperative efforts of private enterprise and government in developing low cost residential sprinkler systems that may revolutionize fire safety in the home.

Finally, I call upon members of the Joint Council of National Fire Service Organizations, members of the International Association of Fire Fighters, members of the International Association of Fire Chiefs, the National Fire Protection Association, all other organizations concerned with fire safety, and the United States Fire Administration to provide the leadership, planning and innovation necessary for an effective national fire prevention and control effort.

Finally, I call upon members of the Joint Council of National Fire Service Organizations, members of the International Association of Fire Fighters, members of the International Association of Fire Chiefs, the National Fire Protection Association, all other organizations concerned with fire safety, and the United States Fire Administration to provide the leadership, planning and innovation necessary for an effective national fire prevention and control effort.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of August, in the year of our Lord nineteen hundred seventy-nine, and of the Independence of the United States of America the two hundred and fourth.

Jimmy Carter

[FR Doc. 79-25808
Filed 8-16-79; 11:21 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 44, No. 161
Friday, August 17, 1979

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 720

Affirmative Employment Programs

AGENCY: Office of Personnel Management.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule relating to Affirmative Employment Programs, appearing at 44 FR 37888, published June 29, 1979.

EFFECTIVE DATE: June 29, 1979.

FOR FURTHER INFORMATION CONTACT: Nathaniel Deutsch, Office of Affirmative Employment Programs, U.S. Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415, (202) 632–6256.

SUPPLEMENTARY INFORMATION: The purpose of the June 29, 1979 document was to transfer and redesignate, without change, Subpart D of Part 713, consisting of § 713.401, to Subpart J of Part 720, consisting of § 720.901. However, the text which appeared in the June 29, 1979 issue did not reflect a change published on March 24, 1978 (43 FR 12293). That document had transferred physical and mental handicap discrimination prohibitions to Subpart G of Part 713. Subsequently, the Equal Employment Opportunity Commission adopted Subpart G and transferred it to 29 CFR Part 1613 (see 43 FR 60901, December 29, 1978), pursuant to Reorganization Plan No. 1 of 1978.

This document corrects the heading of Subpart J of Part 720 and the heading and text of § 720.901 to reflect the March 24, 1978 amendments.

Accordingly, § 720.901 is set forth as follows:

Subpart J—Equal Opportunity Without Regard to Politics or Marital Status.

§ 720.901 Equal opportunity without regard to politics or marital status.

(a) *In appointments and position changes.* In determining the merit and fitness of a person for competitive appointment or appointment by noncompetitive action to a position in the competitive service, an appointing officer shall not discriminate on the basis of the person's political affiliations, except when required by statute, or on the basis of marital status.

(b) *In adverse actions and termination of probationers.* An agency may not take an adverse action against an employee covered by Part 752 of this chapter, nor effect the termination of a probationer under Part 315 of this chapter (1) for political reasons, except when required by statute, or (2) because of marital status.

(5 U.S.C. 2301, 2302, 7202, 7203, 7204.)

Office of Personnel Management,
Beverly M. Jones,
Issuance System Manager.

[FR Doc. 79-25459 Filed 8-16-79; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 210

[Amdt. 33]

National School Lunch Program; Nutritional Requirements

AGENCY: Food and Nutrition Service, USDA

ACTION: Final regulation.

SUMMARY: This final regulation amends Part 210 to effect five changes: (1) expand the list of bread alternates to include enriched or wholegrain rice, macaroni, noodles, other enriched or whole-grain pasta products, and other cereal grains such as bulgur and corn grits; (2) require schools to serve lowfat milk, skim milk, or buttermilk; (3) require School Food Authorities to devise a program of student involvement; (4) require School Food Authorities to devise a program of parent involvement; and (5) recommend that schools which do not offer a choice of foods serve no one form of meat or meat alternate more than three times a week. In addition, the preamble discusses menu planning recommendations to appear in program guidance and clarifies the Department's position on meat alternates and "red meat". The Department plans to publish final regulations covering the remaining provisions of the interim regulation (43 FR 37165) late in 1979 after it has analyzed the results of its field tests.

EFFECTIVE DATE: August 17, 1979, unless otherwise specified in the preamble.

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

SUPPLEMENTARY INFORMATION:

Background

The National School Lunch Act of 1946 empowered the Secretary of Agriculture to set nutritional standards for the National School Lunch Program. Section 9 of the Act states: "Lunches served by schools participating in the school lunch program under this Act shall meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research." In the 33 years since the passage of that Act, this power has not been significantly altered.

To insure that lunches served across the nation would meet nutritional requirements, whether these meals were prepared by a registered dietitian or a relatively inexperienced volunteer, the Department devised meal "patterns,"—checklists of food types (e.g., vegetables, meat) which studies showed would supply children with the necessary nutrients for good health. The "Type A" pattern, once the predominant lunch pattern, became the sole allowable lunch pattern as the program grew and developed. It is designed to provide a flexible framework for food service managers to use in planning nutritious lunches from a wide variety of foods and within a diversity of regional, cultural, ethnic, and idiosyncratic food preferences.

Current regulations specify four components that schools must include in their lunches to obtain Federal reimbursement. These four components are: (1) meat or meat alternate, (2) fruit and/or vegetable, (3) bread or bread alternate, and (4) milk. In addition to

specifying food components, current program regulations specify amounts of foods to be served. These amounts are based on the 1968 edition of the Recommended Dietary Allowances (RDAs) published by the Food and Nutrition Board of the National Research Council, National Academy of Sciences (NRC–NAS), for 10 to 12 year old children. To meet the nutritional needs of children of different ages, current regulations encourage School Food Authorities, if consistent with State policy, to serve younger children less and older children more than the specified quantities of foods.

From time to time, the Department has revised the meal pattern to reflect new knowledge about the nutritional needs, food consumption habits, and food preferences of children and to improve the pattern's effectiveness. To effectuate these ends, the Department issued proposed regulations on September 9, 1977 (42 FR 45328).

The primary change which the proposed regulations introduced for public comment was to specify for the first time quantities of the four lunch components for five different age groups. Although program regulations and guidance have recommended and encouraged portion size variations to accommodate the food needs of children of various ages, many program administrators at the State and local levels have not implemented variations. The Department suspected that this failure contributed to plate waste among younger students and to dissatisfaction among older students who have often complained that school lunches do not provide enough food for their increased appetites and needs. In an effort to meet more accurately the nutritional needs of children of all ages while at the same time maintaining the original flexibility of the meal pattern and to bring the lunch requirements into conformance with the 1974 revisions of the RDAs, the Department proposed lunch patterns which defined portion sizes for children of various age groups. In addition, the Department introduced for comment eight other principal changes in the lunch requirements:

(1) require the service of lunch to preschool children ages one through five years at two service periods which, in combination, will provide appropriate quantities of the required components;

(2) expand the bread alternates to include enriched or whole-grain rice, macaroni, noodles, and other enriched or whole-grain pasta products;

(3) specify the number of servings of bread or bread alternates to be served for a school week to provide added flexibility in menu planning;

(4) specify that a serving of dry beans and peas or peanut butter can be used to meet no more than one-half of the meat/meat alternate requirement for all children;

(5) specify that eggs may be used to meet only one-half of the meat/meat alternate requirement for children ages three and above, and that eggs may be used to meet the full meat/meat alternate requirement for children ages one and two years;

(6) specify that eggs, cooked dry beans or peas, or peanut butter may be combined with meat, poultry, fish, or cheese to meet the total meat/meat alternate requirement; or eggs, cooked dry beans or peas, or peanut butter may be used with one another in equal quantities to meet the total meat/meat alternate requirement;

(7) provide that, to meet individual food needs and to reduce plate waste, children 12 years and over may request smaller portion sizes of the required lunch components than are specified;

(8) specify that unflavored fluid lowfat milk, skim milk, or buttermilk must be available to children.

In addition, the Department increased the equivalency for the meat alternates, eggs and dry beans and peas, so that one large egg or ½ cup of dry beans or peas replaced only one, not two, ounces of meat.

The Department provided a 47-day comment period for the proposed regulations. It received a total of 2,042 comments from all sectors of the public. Of this number, 1,474 comments were received within the comment period. In addition, during October and November 1977, the Department held public hearings in eight major cities across the nation (Chicago, New York, Denver, Boston, Atlanta, San Francisco, Seattle, and Dallas). The purpose of these hearings was to consider public comments and concerns about the operations, procedures, and effectiveness of the Child Nutrition Programs, including the proposed lunch patterns.

On August 22, 1978 (43 FR 37165) the Department published interim regulations based on an analysis of the comments received on the proposed regulations. In the interim regulations the Department changed the proposed regulations in the following ways:

(1) moved five year old children from Group II to Group III;

(2) increased the minimum milk portion for Group I children from ½ cup to ¾ cup, and for Group III children from ¾ cup to ½ pint;

(3) dropped the proposed restriction on the use of eggs, cooked dry beans and peas, and peanut butter as meat alternates;

(4) changed the requirement that schools serve unflavored fluid lowfat milk, skim milk, or buttermilk to a requirement that schools serve two types of milks, one of which must be lowfat, skim, or buttermilk;

(5) dropped the recommendation that schools use no more than three eggs per five school lunches served per week per child as a meat/meat alternate or in food preparation and replaced it with a recommendation that, in schools unable to or deciding not to offer a choice of meat/meat alternates each day, no one form of meat (ground, sliced, pieces, etc.) or meat alternate be served more than three times per week.

The Department also authorized two types of field testing: 1) a voluntary testing by School Food Authorities, with the approval of their administering agency (State agency or FNS Regional Office) and 2) a more controlled testing by the Department using standardized methodology within sample schools. Administering agencies granting approval to School Food Authorities to participate in the voluntary field test were responsible for overseeing and providing guidance to schools and for insuring that all provisions of the interim regulations were being implemented.

The Department's controlled test was designed to be a comprehensive evaluation which included four studies as follows:

(1) Determination of the effects of changes in the school lunch meal pattern requirements;

(2) Demonstration projects for involving students, faculty, and parents in the school lunch program;

(3) Demonstration projects for controlling sugar, fat, and salt in school lunches; and

(4) Demonstration projects for providing one-third of the RDA for energy in school lunches.

The field test period was scheduled to extend from August 22, 1978 through February 2, 1979, but due to inclement weather the testing period did not end until February 16, 1979. After the conclusion of the testing period, State agencies and School Food Authorities participating in the voluntary testing and School Food Authorities participating in the Department's more controlled testing were free to choose either to continue with the interim lunch patterns or to revert to the current meal pattern until regulations are made final.

While School Food Authorities were field testing the interim regulations, the

Department accepted public comments. The Department provided a 178-day comment period extending from August 22, 1978 to February 15, 1979. A total of 351 comments were received. Of this number, 317 comments were received within the comment period. In addition, 719 comments were received from people who did not fully understand the Department's position on meat alternates.

The Decision To Publish Final Regulations in Two Parts

Originally, the Department had planned to publish as a unit final regulations covering all the provisions of the interim regulations. However, several events have made this original plan inappropriate.

First, the preliminary results from the field tests were not available for drafting regulations, due to contracting delays.

Second, the Department learned that significant changes will be made in the 1979 revision of the Recommended Dietary Allowances (RDAs) which may affect these regulations. The Department believes that FNS and the Science and Education Administration, USDA, should have an opportunity to assess the impact of revised (1979) RDAs on meal requirements before issuing final regulations.

Third, thorough training at all levels of operation is necessary to guarantee responsible, full implementation. The need to insure total understanding of the new meal patterns by all participating school food service personnel becomes especially important in view of the Department's commitment to strengthen the monitoring of compliance with meal requirements.

Fourth, the comments on the interim regulations raise major concerns which need to be investigated thoroughly, especially in the areas of administration and cost impacts. Further validation of these possible impacts will be available from the field test data results.

Finally, members of the Child Nutrition Advisory Council recommended that the Department not write final regulations until the results of the field tests are available and have been reviewed by interested parties.

Therefore, the Department decided that full publication and implementation of the meal pattern regulations must be delayed in order to allow decisions to be based on the best available data and with full consideration of local level implementation problems. However, five provisions are not affected by the above events. These portions of the interim regulations are:

1. the expansion of bread alternates to include rice and pasta;

2. the milk requirement;

3. the requirement that schools devised a program of student involvement;

4. parent involvement; and

5. the recommendations for menu planning.

These five provisions are contained in this present rulemaking action. The Department plans to draft final regulations on the remaining provisions based on the field test results and to publish them by the end of this calendar year.

Implementation

Schools are required to implement the provisions contained in this document at the beginning of the 1979–80 school year. This includes the provision which requires schools to serve unflavored lowfat milk, skim milk, or buttermilk. The Department realizes that many School Food Authorities have already entered into milk contracts. Some School Food Authorities anticipated this change in the regulations and drew up their specifications accordingly. However, other School Food Authorities solicited bids on whole milk only. To avoid disruption and penalization of School Food Authorities who have taken contracts in compliance with program regulations prior to this amendment, the Department will allow those School Food Authorities to request from their State agency, or FNSRO where applicable, an exception from this provision for the duration of their contracts for the 1979–80 school year. The Department encourages State agencies and FNSROs to be very liberal in granting such exceptions.

Schools may implement the remaining provisions not included in this rulemaking upon finalization of those provisions and will be required to implement them by the effective date to be specified in that rulemaking document. Schools which were field testing the interim regulations and which chose to continue with the interim regulations may still continue with those regulations. Such schools should note, however, that this rulemaking action amends § 210.19b, the section governing field test schools, to change the milk requirement. The action that schools on the interim regulations should take to implement this change is addressed in the discussion of the milk requirement, below.

Discussion of the Five Provisions Included in this Rulemaking

1. *Expansion of Bread Alternates to Include Enriched or Whole-grain Rice, Macaroni, Noodles, and Other Pasta Products.* Currently, program guidance classifies rice and pasta as "Other Foods." This means that schools may serve these foods as "extras" to provide additional energy and to supplement the nutrients in the lunch, but not as components of the meal to meet requirements for federal reimbursement. (As exceptions, American Samoa, Puerto Rico, the Virgin Islands, and Hawaii are authorized for cultural reasons to serve rice and enriched or whole-grain pasta products as reimbursable bread alternates.) However, recent re-evaluations of the nutritional contribution of Type A lunches have shown that the substitution of enriched or whole-grain rice, macaroni, noodles, or other pasta products for bread would have no significant effect on the level of the nutrients in shortest supply in school lunches—iron, thiamin, and magnesium. Therefore, in both the proposed and the interim regulations the Department proposed to expand the list of reimbursable bread alternates to include enriched or whole-grain rice, macaroni, noodles, and other enriched or whole-grain pasta products. The inclusion of these alternates will increase menu flexibility, particularly in areas of the nation where rice or pasta is culturally or ethnically a staple component of the diet.

Individuals commenting on this provision in the proposed regulations and the interim regulations greeted this expansion with enthusiasm. Of the commenters on the proposed regulations, 408 favored the expansion and 72 opposed it; on the interim regulations, 29 favored the expansion and none opposed it. Commenters on the interim regulations felt that these bread alternates were nutritionally equvivalent to bread and would be well accepted by children. In addition, commenters felt that the alternates would:

1. increase flexibility in menu planning;

2. increase variety in the menu and thereby possibly decrease plate waste;

3. assist diabetic children;

4. teach children better eating habits;

5. allow School Food Authorities to make more efficient use of USDA donated commodities; and

6. possibly reduce excess calories in lunches which have been providing both bread and a bread alternate in the same

menu. To provide even greater menu planning flexibility, this provision is further expanded to include other cereal grains which may not be widely used but which are of comparable nutritional value. Examples of other cereal grains in this category are bulgur and corn grits. The Department considers that this change is consistent with the essence of the comments received in that it would provide even greater flexibility in menu planning and greater variety.

It should be noted that this provision establishes the serving equivalency, but does not increase the number of servings per week required to meet the minimum requirement for the bread component for various age/grade groups. That provision of the interim regulations is not included in this rulemaking. If a decision is made to increase the number of servings, it will be included in the later rulemaking in conjunction with the provision to vary portion size by age and the provision to specify the number of servings of bread or bread alternate by week.

2. *The Milk Requirement.* In the 1974 RDAs the National Academy of Sciences identified the over consumption of fat as a dietary concern. The Department believes that the level of fat in the lunch should be decreased. By serving unflavored fluid lowfat milk, skim milk, or buttermilk instead of whole milk, it is estimated that schools would reduce the percentage of calories derived from fat in the lunch by 4 to 10 percent. Therefore, in the proposed regulations, the Department suggested that schools be required to make unflavored fluid lowfat milk, skim milk, or buttermilk available to their children. Schools could comply with this proposed requirement by serving only unflavored fluid lowfat milk, skim milk, or buttermilk or by serving these milks in addition to another type of milk—for instance, flavored or unflavored whole milk.

Over two-thirds of the commenters on the proposed regulations favored this provision. However, a significant number of commenters thought that whole milk should also be made available to children. In response to these concerns and to allow children the option of choosing the type of milk they prefer, the Department changed this provision in the interim regulations to require schools to offer two types of milk. The Department required that at least one of these types of milk be unflavored fluid lowfat milk, skim milk, or buttermilk.

One hundred and three respondents commented on this provision in the interim regulations: 21 favored it while 82 opposed it. Most of those commenters who favored the provision favored it because it supports the service of a form of lowfat milk. A few commenters mentioned that children in their schools had enjoyed having a choice of milks. Two commenters felt that the implementation of a choice of milks would decrease plate waste.

Most of the commenters show opposed the provision did so because they felt that requiring a choice of milks was unnecessary, administratively difficult, and potentially detrimental to the nutritional goals of the Program. They mentioned the following concerns:

1. The difficulty that students, particularly elementary students, would have in making a choice and the slowing effect this would have on the lunch line;

2. Problems sorting, purchasing, storing, and keeping inventory and other records on two types of milk;

3. Increase in costs;

4. The adverse nutritional effect on children in schools that already serve a form of lowfat milk;

5. Increase in waste by spoilage;

6. Problems with delivery from dairies, particularly in rural areas;

7. Confusion caused by regulations on pricing milk that would require schools to vary prices by type of milk.

Most of the comments, including those opposing this provision, supported a requirement of some form of milk which was lower than whole milk in fat content. A few commenters suggested that the Department should allow a choice of milks at local option or require a choice if a school chooses to serve whole milk.

Approximately 14 commenters disagreed with a requirement that schools must serve unflavored fluid lowfat milk, skim milk, or buttermilk. These respondents felt that children do not like and would not drink any of these milks. One commenter felt that a sufficient level of fat was necessary in the diet to provide energy and aid digestion and therefore opposed a requirement that schools serve these milks.

After considering the comments and the original nutritional goals of the provision—to reduce the fat level of lunches—The Department decided to change the provision as it appeared in the interim regulations. These final regulations now require, as suggested in the proposed regulations, that schools serve unflavored fluid lowfat milk, skim milk, or buttermilk. If schools choose to serve another form of milk, then they must serve one of these forms of milk as a choice. The Department continues to recommend that schools serve choices, both of foods and of types of milk, whenever possible.

Schools remaining under the interim regulations until final regulations are published should note that this particular rulemaking action also amends § 210.19b, the section governing field testing, to incorporate this final rule. Therefore, schools still operating under the interim regulations may serve only fluid unflavored lowfat milk, skim milk, or buttermilk, rather than a choice of milks, if they so desire.

3. *The Requirement that School Food Authorities Devise a Program of Student Involvement.* Program guidance has long encouraged student involvement in program activities. Program experinece has shown that student involvement leads to better student acceptance of foods, higher overall participation levels, and increased nutrition awareness—all of which benefit the student's health and well-being. Therefore, in the proposed regulations, the Department suggested a requirement for student involvement to meet two situations: (1) the general situation of all School Food Authorities and (2) the particular situation of School Food Authorities with food service management problems.

First, the Department proposed to require all School Food Authorities to involve students in the Program through activities such as menu planning, enhancement of the eating environment, program promotion, and related student-community support activities.

Second, the Department proposed to require State agencies, or FNSROs where applicable, to develop, implement, and monitor a system to correct management deficiencies in any School Food Authority where the State agency, or FNSRO where applicable, has found poor food service management practices leading to either (1) decreasing or low student participation or (2) poor student acceptance of the program or of foods served. Poor student acceptance is indicated by a substantial number of students who routinely and over a period of time: (1) do not favorably accept a particular menu item; (2) return foods; or (3) under "offer versus serve," choose less than all five food items. (When the remaining provisions of the interim regulations are finalized, a fourth indication—a substantial number of Group V children who request lesser portions than the minimum specified—may be added.) This corrective effort on the part of the administering agency is to be undertaken in cooperation with the School Food Authority involved. The Department proposed to require that this

corrective action include the promotion of student involvement in support activities. The Department suggested that such actvities may include the activities suggested for all School Food Authorities, i.e., menu planning, enhancement of the eating environment, program promotion, and related student-community program support activities.

Five hundred and ninety-two commenters commented on this proposal: 454 favored it while 138 opposed it. Of the 138 commenters in opposition, the majority opposed the *requirement* of student involvement and preferred that the requirement be a recommendation. Since the majority of the commenters favored this provision and since the provision gives School Food Authorities flexibility in determining their method of involving students in program activities, the Department did not change this provision in the interim regulations. Only 13 commenters addressed this provision during the comment period for the interim regulations. Ten commenters favored it; 3 opposed it.

Those who favored the provision felt that student involvement in program activities improved the program, increased student participation, and educated the students in nutritional concerns. One State agency commented that "without such a requirement, many School Food Authorities would not make a serious effort in this direction."

As with the proposed regulations, those respondents who opposed the provision felt that it should be a recommendation, not a requirement. One commenter stated that school food service personnel receive feedback from students on food service operations in a number of formal and informal ways and that the requirement of specific activities might impair an existing activity that is working well. This commenter also stated that student involvement would yield better results if it were voluntary rather than required. Another commenter felt that there was significant student involvement simply in students' roles as customers with comments about, and participation in, the food and service. He suggested that formal student involvement would be advisable when a program has low participation, but when a program has high participation, student involvement probably exists in an unstructured form. Therefore, he recommended that a requirement of student involvement be limited to schools or School Food Authorities with below average participation.

In addition to accepting pubic comments, the Department sponsored a demonstration project for involving students, faculty, and parents in the lunch program. However, the objective of this project was to compare and develop methods of training food service managers to implement involvement activities, not to determine whether the Department should require student participation.

Since the Department believes student involvement to be of proven benefit to the program and the majority of public comments supported this belief, it is not changing the requirement for student involvement in this final regulation. In not requiring any specific form of student involvement, the Department leaves the decision of format to the discretion of the individual School Food Authority, or, in the case of a School Food Authority with food service management problems, to the administering agency working with the School Food Authority. It should be noted that School Food Authorities which contract with food service management companies meet at least the minimum level of this requirement through the student/parent advisory boards required by amendment 28, § 210.8a(c).

In the determination of whether a School Food Authority has poor student acceptance, the Department leaves the evaluation of what constitutes "substantial," "routinely," and "over a period of time" to the discretion of the administering agency. In exercising its discretion, the administering agency might consider the level of sophistication of program operations at a particular School Food Authority, the age levels of its students, and its past pattern of participation as well as the administering agency's priorities (i.e., the number of School Food Authorities under the administering agency's guidance which have more severe food service management problems).

The Department realizes that student involvement may be very limited or completely unfeasible in some residential child care institutions. In such cases, the Department encourages institutions to involve students to the extent possible.

4. *The Recommendation on Parent Involvement.* Present program regulations only require parent involvement for School Food Authorities which contract with a food service management company. However, program experience shows that parent involvement, like student involvement, leads to similar benefits (i.e., better student acceptance of foods, higher overall participation levels, and increased nutrition awareness). Therefore, in the proposed regulations, the Department suggested a recommendation of parent involvement in all School Food Authorities.

In the preamble to the proposed regulations, the Department linked this provision to the provision requiring student involvement. Therefore, the Department has no separate tally of commenters on this provision. However, there was no substantial objection and so in the interim regulations, the Department did not change the provision.

Commenters on the interim regulations focused their remarks on the requirement for student involvement and did not treat the recommendation for parent involvement as a separate issue. One commenter did say that inviting parents to visit the lunchroom and to eat with the children was a success at her school and contributed to the children's self-esteem while at the same time building community support.

Since the Department feels so strongly that parent involvement benefits the Program, the Department is requiring rather than simply recommending that School Food Authorities promote activities to involve parents as well as students in the Program.

The Department realizes that parent involvement may be very limited or completely unfeasible in some residential child care institutions. The Department encourages institutions to involve parents in an appropriate manner.

5. *The Recommendations for Menu Planning.* The preamble to the proposed regulations presented five menu planning recommendations. They are:

(1) Include several foods containing iron each day;

(2) Include a vitamin A vegetable or fruit at least twice a week;

(3) Use no more than three eggs per five school lunches per week per child as a meat/meat alternate or in food preparation;

(4) Include a vitamin C vegetable or fruit several times a week; and

(5) Keep fat, sugar, and salt at a moderate level.

In addition, the Department recommended in paragraph (h) of the regulations that schools offer a selection of foods.

Only one of these recommendations—the recommendation that schools offer a selection of foods—actually appeared in the body of the proposed regulations. The other recommendations were proposed by the Department in the preamble for comment, but were intended ultimately to be included in program guidance, not regulations.

A substantial number of the public commented on recommendation (3), above, during the comment period on the proposed regulations. A large majority of those commenters opposed this particular recommendation because they felt that it was based on questionable scientific data and would have an adverse economic impact on the egg industry.

The Department's intention in proposing this recommendation had been to increase menu variety. Therefore, in the interim regulations the Department changed recommendation (3) to a recommendation that in schools unable to or deciding not to offer a choice of meat/meat alternates each day, no one form of meat (ground, sliced, pieces, etc.) or meat alternate be served more than three times per week. This recommendation was inserted into the interim regulations as part of footnote 1 to the table of school lunch pattern requirements. The other recommendations appeared in the interim regulations unchanged.

Approximately 33 commenters on the interim regulations addressed one or more of these recommendations. For clarity here, the Department will examine the recommendations in three groupings: 1) the inclusion of foods with iron and vitamins A and C; 2) the offering of choices and limitation on the frequency of forms of meat/meat alternates; and 3) the moderation of fat, sugar, and salt.

a. Include several foods containing iron each day; include a vitamin A food at least twice a week; include a vitamin C food several times a week.

The Department's goal in setting requirements for the lunch is to provide approximately one-third of the Recommended Dietary Allowances (RDAs) for 10 to 12 year old children. Since it is more difficult to meet this goal for iron, vitamin A, and vitamin C, the menu planner must exert a special effort.

In the past, the Department has included these menu planning recommendations in program guidance with a list of foods which are good sources of these nutrients.

Only six comments on the interim regulations addressed these menu planning recommendations and all favored them.

To more adequately insure that the lunch will meet the nutritional goal for these nutrients on the average over a week's time, the Department has decided not to change these recommendations. As in the past, these recommendations will appear in program guidance and not in program regulations.

b. Offer a selection of foods, including types of milk, from which children may choose a lunch. In schools unable to or deciding not to offer a choice of meat/meat alternates each day, serve no one form of meat (ground, slices, pieces, etc.) or meat alternate more than three times per week.

In the interim regulations, the Department presented this recommendation in two parts, and proposed to include both parts in program regulations and not in guidance materials where other menu planning recommendations appear.

Eight commenters commented on the first part of this recommendation—offering a selection of foods: 2 favored it; 6 opposed it. Those who favored it felt that offering a choice of foods decreased plate waste. One commenter said that when schools offered a choice within the pattern to secondary students, these students consistently chose all five food items and wasted very little.

Some of those who opposed the provision felt that choices would slow down the lunch line; increase preparation and serving time; increase labor, food, storage, and waste costs; and complicate menu planning and ordering. One commenter suggested that schools should concentrate on improving the quality of their present products rather than on serving a choice of mediocre products. Another commenter felt that children were not capable of making food choices and that adults should make these decisions for them.

Ten commenters on the interim regulations addressed the second part of this recommendation—in schools unable to or deciding not to offer a choice of meat/meat alternates each day, serve no one form of meat (ground, slices, pieces, etc.) or meat alternate more than three times per week. All opposed it. However, it appears that at least half of the commenters did not consider the proviso—when no choice—in their comments. Half of the commenters opposed the recommendation because of the impact they foresaw on their "hamburger lines" in secondary schools. Yet, these comments suggested that the schools did offer other foods, perhaps on a separate line. Therefore, these comments do not actually address the issue since the commenters were not aware that these schools would not be affected by this recommendation.

Other comments suggested that this recommendation would increase costs, primarily by restricting the use of ground beef, and would cause problems for menu planners. The American Dietetic Association commented that this recommendation may not be practical to implement since chopped or ground beef is a favorite meat for most children and can be presented in a variety of acceptable entrees. The Association suggested that ground beef's popularity, relative low cost, and comparable nutritional value to higher priced meats might outweigh the advantages of variety. However, it should be noted that this provision was only a recommendation, not a requirement.

At least half of the commenters who opposed the recommendation to limit the frequency of forms of meat/meat alternates did not note that it applies only when schools do not offer choices. In addition, in the time elapsing from the close of the comment period, the price of ground beef has risen significantly. Therefore, the Department believes that the American Dietetic Association's argument based on the relative cost of ground beef is no longer persuasive. Since the Department believes that a recommendation for variety would have no adverse effect on present food service operations and that any cost considerations are outweighed by the nutritional and educative benefits of variety, it is keeping this recommendation in the regulations. For the same reasons, the Department is maintaining in regulations its recommendation that schools offer choices whenever possible.

c. Keep fat, sugar, and salt at a moderate level.

This recommendation reflects current dietary concerns. For some time, research has indicated that the amount of fat, sugar, and salt in the diet may have health implications. Overconsumption of fat has been associated with heart disease. Sugar has shown to be a causative factor in the formation of dental caries. Excess sodium in the diet is believed to be a factor that contributes to high blood pressure, particularly among individuals who are susceptible for genetic reasons. The major source of sodium in the diet is salt or salty foods. Accordingly, the Department believes it is prudent to recommend that school lunches contain fat, sugar, and salt in moderation. Eighteen commenters on the interim regulations addressed this recommendation: 8 favored it while 10 opposed it.

Those who favored the provision did not explicitly state their reasons. One commenter suggested that the Department should require food service

workers to record the amount of salt added during cooking to control salt usage even more carefully. Another commenter who field tested the provision said that "children accepted the change graciously, while the adults complained."

Many of those who opposed the provision felt that it would keep local cooks from seasoning foods to please children's tastes, and therefore contribute to plate waste. They felt that this provision did not allow for cultural, ethnic, regional and idiosyncratic diversity. A few commenters mentioned a need to serve sweets to draw students into the lunch line, especially when the school lunch competes with sales of other foods.

One commenter said that this recommendation could increase costs, since she found fresh and canned fruits to be more expensive than other desserts. Another commenter felt that the level of fats, sugar, and salt in her lunches was already low and that cutting back further would result in a therapeutic diet.

In addition to accepting public comments, the Department sponsored a demonstration project for controlling the amount of fat, sugar, and salt in school lunches. The objective of this project was to control these three ingredients and to observe the effects of that control on student acceptance. The preliminary results of that study show that the project was successful in reducing the levels of salt, fat, and sugar in phase II lunches compared to phase I lunches from the same schools. Average reduction ranged from 15 to 20%. The results of the plate waste data have not yet been analyzed to determine the effects of the reduction on meal acceptability.

Since these recommendations address current dietary concerns and should increase school food service personnel's awareness of the need to use these food items in moderation, the Department has decided not to change them. They will appear with the other menu planning recommendations in program guidance.

Other Changes

In an effort to make its regulations clearer, the Department has reorganized portions of the regulations governing meal patterns. It has placed the general requirement for student and parent involvement in a new section of the regulations, §210.9a, "Student, parent, and community involvement." The Department has placed in §210.14, "Special responsibilities of State agencies," the requirement that State agencies develop a system to improve the Program in School Food Authorities with food service management problems so that this duty appears in the same section as other of the State agencies' duties.

The Department has also amended §210.10 (c), (d), and (e), the provisions which address situations where schools have difficulty obtaining milk, to reflect the new requirement of lowfat milk, skim milk, and buttermilk.

The Department is removing the term "Type A" from Part 210. The term originated in the early days of the Program when there was more than one "type" of meal pattern. Recently, with each regulatory amendment, the Department has been phasing out the term. This amendment makes that process complete.

Finally, because this regulation will allow all schools to serve enriched or whole-grain rice and pasta products, the Department is removing the provision which allows American Samoa, Puerto Rico, and the Virgin Islands to serve these products as exceptions. In addition, the Department is updating the provision concerning the Trust Territory of the Pacific Islands.

Public Misunderstanding Concerning Certain Meat Alternates

The Department received 719 comment letters from people who appeared to misunderstand the Department's efforts to control the size of certain meat alternate portions in the proposed regulations. In those regulations, the Department had suggested that schools control portion sizes of eggs, cooked dry beans or peas, and peanut butter by using these alternates to meet no more than 50% of the meat/meat alternate requirement. Then, in the interim regulations, the Department returned to its original position of allowing 100% substitution and relied on the local school's food service judgement to keep portion sizes from becoming unmanageable. Of the 719 comment letters, approximately 689 came from individuals who thought the Department wanted to remove red meat from the lunch program or to curtail its use. About 30 letters came from individuals, mostly vegetarians, who thought the Department was experimenting in the interim regulations by allowing 100% substitution of meat alternates for meat. The Department never discouraged the use of red meat, nor was it "experimenting" by allowing 100% substitution. From the Program's inception in 1946, the Department has allowed meat alternates to fulfill the entire meat/meat alternate requirement. Since there was such a great misunderstanding, the Department is taking this opportunity to clarify its position, even though this rulemaking action does not include the provision on meat alternates.

To meet the current meat/meat alternate requirement, schools need serve only one egg to children of all ages or ¼ cup cooked dry beans or peas to 1–3 year old children, ⅜ cup to 3–6 year old children, and ½ cup to all other children. These quantities of egg and dry beans or peas do not provide children with the same level of protein as other meats and meat alternates. In order to provide the same level of protein, the Department proposed new equivalencies for these meat alternates. The new equivalencies were to be: one large egg = one ounce cooked lean meat and ½ cup cooked dry beans or peas = one ounce cooked lean meat.

By increasing the equivalencies for these meat alternates, the Department would be requiring schools to serve twice the current amount. To combat excessive portion sizes, the Department originally proposed to limit the use of these alternates and peanut butter, whose portion size would become excessive for the older children. In the proposed regulations, the Department suggested that any of these three meat alternates (eggs, peanut butter, and dry beans and peas), served alone, could only be counted as meeting one-half of the meat/meat alternate requirement. Therefore, to meet the minimum meat alternate requirement, schools had five alternatives. They could serve: 1) meat alone; 2) cheese along; 3) a combination of meat and meat alternate; 4) a combination of cheese and another meat alternate; or 5) a combination of any two of a) dry beans and peas, b) eggs, or c) peanut butter.

In response to public comment, the Department removed from the interim regulations the one-half restriction on these alternates meeting the meat requirement and returned to its original position of allowing a single meat alternate to meet the full meat/meat alternate requirement, but at the new equivalency level. To control portion sizes, the Department stipulated that a single meat alternate may be used only when such use does not result in excessive or unrealistic portion sizes. The Department left the determination of what constitutes and "excessive" or "unrealistic" portion size to the local School Food Authority and required that when the meat alternate portion size was unrealistic or excessive, the School Food Authority must reduce the portion size of that particular meat alternate and supplement it with an additional

meat/meat alternate to meet the full requirement.

Many of the individuals who did not fully understand the Department's position were concerned that most meat alternates are "incomplete" protein sources, in other words, that they lack sufficient amounts of one or more essential amino acids to promote growth and development. While it is true that animal sources provide high quality protein and that the meat alternates authorized, with the exception of cheese and eggs, are from plant sources which individually provide protein of lesser biological value, it is not true that the lunch containing authorized meat alternates fails to supply the amino acids needed for growth and development. Milk, a required component in all lunches, is a source of complete protein.

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

Accordingly, Part 210 is amended as follows:

1. The term "Type A" is stricken from the regulations wherever it appears.

2. A new section, § 210.9a, Student, parent, and community involvement, is added to the table of sections and reads as follows:

§ 210.9a Student, parent, and community involvement.

(a) School Food Authorities shall promote activities to involve children and parents in the Program. Such activities may include menu planning, enhancement of the eating environment, program promotion, and related student-community support activities.

(b) School Food Authorities are encouraged to use the school food service program to teach children about good nutrition practices and to involve the school faculty and the general community in activities to enhance the Program.

(c) School Food Authorities experiencing food service management problems shall comply with the provisions of § 210.14(f) with regard to the required design of activities to involve parents and children in the school food service program.

(d) School Food Authorities contracting with a food service management company shall comply with the provision of § 210.8a(c) with regard to the establishment of an advisory board of parents, teachers, and children.

(e) Residential child care institutions shall comply with the provisions of paragraphs (a), (b), (c), and (d), above, to the extent possible.

3. The third and fourth sentences of paragraph (a)(1) of § 210.10 are amended to read as follows:

§ 210.10 Requirements for lunches.

(a)(1) * * * To provide variety and to encourage consumption and participation, School Food Authorities should, whenever possible, provide a selection of foods and types of milk from which children may make choices. When a School Food Authority offers more than one lunch, or when it offers a variety of foods and types of milk for choice within the required lunch pattern, the School Food Authority shall offer all children the same selections regardless of whether the children are eligible for free or reduced price lunches or pay the full price.

* * * * *

4. Paragraphs (a)(2)(i) and (iv) of § 210.10 are amended and a new sentence is added to (a)(2)(ii) as follows:

§ 210.10 Requirements for lunches.

(a) * * *

(2) * * *

(i) One-half pint of unflavored fluid lowfat milk, skim milk, or buttermilk as a beverage. If a school serves another form of milk (whole or flavored), it must offer its children unflavored fluid lowfat milk, skim milk, or buttermilk as a beverage choice.

(ii) * * * The Department recommends that if schools do not offer children a choice of meat/meat alternates each day, they serve no one form of meat (ground, sliced, pieces, etc.) or of meat alternate more than three times in a single week.

* * * * *

(iv) A serving (1 slice) of whole-grain or enriched bread; or a serving (to be determined by FNS/USDA guidance materials) of biscuits, rolls, muffins, etc. made with whole-grain or enriched meal or flour; or a serving (½ cup) of cooked whole-grain or enriched rice, macaroni, noodles, other whole-grain or enriched pasta products, or other cereal grains such as bulgur or corn grits. Enriched macaroni products with fortified protein as defined in appendix A may be used as a meat alternate or as a bread alternate, but not as both food components in the same meal.

* * * * *

5. Paragraph (b)(3) of § 210.10 is amended to read as follows:

§ 210.10 Requirements for lunches.

* * * * *

(b) * * *

(3) When children aged 1 to 6 years participate in the Program, schools shall serve these children a preschool lunch pattern which shall contain as a minimum each of the following food components in the amounts indicated:

(i) 1 to 3 years—(1) one-half cup of unflavored fluid lowfat milk, skim milk, or buttermilk; * * * and (4) one-half slice of whole-grain or enriched bread; or a serving (to be determined in FNS/USDA guidance materials) of biscuits, rolls, muffins, etc. made with whole-grain or enriched meal or flour; or a serving (¼ cup) of cooked whole-grain or enriched rice, macaroni, noodles, other whole-grain or enriched pasta products, or other cereal grains such as bulgur or corn grits.

(ii) 3 to 6 years—(1) three-fourths cup of unflavored fluid lowfat milk, skim milk, or buttermilk; * * * and (4) one-half slice of whole-grain or enriched bread; or a serving (to be determined in FNS/USDA guidance materials) of biscuits, rolls, muffins, etc. made with whole-grain or enriched meal or flour; or a serving (¼ cup) of cooked whole-grain or enriched rice, macaroni, noodles, other whole-grain or enriched pasta products, or other cereal grains such as bulgur or corn grits. Enriched macaroni products with fortified protein as defined in appendix A may be used as part of a meat alternate or as a bread alternate, but not as both food components in the same meal.

* * * * *

6. Paragraphs (c) and (d) of § 210.10 are amended and a new paragraph (e) is added to read as follows:

§ 210.10 Requirements for lunches.

* * * * *

(c) If emergency conditions temporarily prevent a school which normally has a supply of unflavored fluid lowfat milk, skim milk, or buttermilk from obtaining delivery of such milk, the State agency, or FNSRO where applicable, may approve the service of lunches during the emergency period with an available alternate form of milk or without milk.

(d) The inability of a school to obtain a supply of unflavored fluid lowfat milk, skim milk, or buttermilk on a continuing basis shall not bar it from participation in the Program. In such cases, the State agency, or FNSRO where applicable, may approve the service of another type of fluid milk. The Department recommends that the State agency, or FNSRO where applicable, approve for service the available fluid milk with the lowest fat and sugar content.

(e) The inability of a school to obtain a supply of any type of fluid milk on a continuing basis shall not bar it from participating in the Program. In such cases the State agency, or FNSRO where

applicable, may approve the service of lunches without milk if the school uses an equivalent amount of canned, whole dry, or nonfat milk in the preparation of the lunch.

* * * * *

7. Paragraph (f) of § 210.10 is amended to read as follows:

§ 210.10 Requirements for lunches.

* * * * *

(f) In American Samoa, Puerto Rico, and the Virgin Islands, schools may serve a starchy vegetable, such as yams, plantains, or sweet potatoes, to meet the bread/bread alternate requirement.

* * * * *

8. Paragraph (i) of § 210.10 is amended to read as follows:

§ 210.10 Requirements for lunches.

* * * * *

(i) The Secretary, with the concurrence of officials of the Trust Territory of the Pacific Islands, has established a meal pattern which is consonant with local food consumption patterns and which, given available food supplies and food service equipment and facilities, provides optimum nutrition consistent with sound dietary habits for participating children. The requirements for that pattern are attached to and made a part of the written agreement required under § 210.3.

9. A new paragraph (f) is added to § 210.14 to read as follows:

§ 210.14 Special responsibilities of State agencies.

* * * * *

(f) *School Food Authorities with poor management practices.* In a School Food Authority where the State agency, or FNSRO where applicable, has found poor food service management practices leading to (1) decreasing or low student participation and/or (2) poor student acceptance of the Program or of foods served, the State agency, or FNSRO where applicable, in cooperation with the School Food Authority, shall develop, implement, and monitor a system to improve the School Food Authority's management practices. Poor student acceptance is indicated by a substantial number of students who routinely and over a period of time: (1) Do not favorably accept a particular menu item; (2) return foods; or (3) under paragraph (4) of § 210.10, choose less than all five food items. The system to improve the School Food Authority's food service management practices shall include the promotion of student and parent involvement in program activities. This student and parent involvement shall be designed to assist in the correction of the School Food Authority's particular management problems and shall be in addition to the general requirement of student and parent involvement for all School Food Authority set forth in § 210.9a(a).

* * * * *

10. The language under "Milk, Fluid" in the table, "School Lunch Pattern Requirements" in § 210.19b is amended to read as follows:

§ 210.19b Field testing and interim lunch patterns.

* * * * *

Unflavored fluid lowfat milk, skim milk, or buttermilk must be offered as a beverage. If a school serves another form of milk (whole or flavored), it must offer unflavored fluid lowfat milk, skim milk, or buttermilk as a beverage choice.

(Catalog of Federal Domestic Assistance No. 10.555)

Authority.—Sec. 9, Pub. L. 79–396, 60 Stat. 233, (42 U.S.C. 1758(a)).

Note.—This final rule has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria. A Final Impact Statement has been prepared and is available from the person identified in the "address" section above.

Dated: August 10, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79–25220 Filed 8–16–79; 8:45 am]

BILLING CODE 3410–30–M

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7 CFR Part 220

[Amdt. 29]

School Breakfast Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the School Breakfast Program regulations to accomplish the following: (1) changes the designation "especially needy school" to "school in severe need" pursuant to section 12 of Pub. L. 95–166; (2) establishes minimum eligibility criteria for States to use in determining schools in severe need pursuant to section 6(c) of Pub. L. 95–627; (3) allows program costs for severe need schools to be determined at the School Food Authority level; and (4) clarifies the reimbursement formula for School Food Authorities which include schools with and without severe need. The first and second changes are required by Public Law 95–166 and the Child Nutrition Amendments of 1978 (Pub. L. 95–627), and the third and fourth changes clarify the regulations to reflect current cost accounting methods.

EFFECTIVE DATE: This rule shall be effective as of July 1, 1979.

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

SUPPLEMENTARY INFORMATION: On January 26, 1979 there was published in the **Federal Register** (44 FR 5449) a proposed amendment to the regulations to implement the severe need provisions of Pub. L. 95–166 and Pub. L. 95–627.

These changes are designed to provide greater national consistency of severe need determination, more efficient program operation, and inducement for increased participation by schools in the School Breakfast Program.

Interested persons and groups were given 60 days in which to submit comments, suggestions or objections regarding the proposed amendment. A total of 14 comments were received by the close of the official comment period, March 27, 1979. Two of these comments fully supported the proposal, while the remaining comments objected to one or more components of the proposal and most offered alternative suggestions.

Changes in Terminology

Two commentors objected to the term "schools in severe need" as having a negative connotation. This term is included in the authorizing legislation and is retained in the final rule as a technical amendment.

Rate Assigment

Two commentors expressed concern that State agencies and local officials do not fully understand that State options for reimbursement rate assignment differ from the National School Lunch Program (NSLP) to the School Breakfast Program (SBP). Under the NSLP, schools may be assigned rates of reimbursement in excess of the National Average Payment (NAP) factors in effect at the time as long as the statewide average payment for all lunches served does not exceed the NAP factors. Thus, if a school is assigned a reimbursement in excess of the NAP factors, it becomes necessary for another school within the State to earn at a rate less than the NAP factors. This is not the case with the School Breakfast Program. Under the SBP, a school not determined to be in severe need may not be assigned rates

of reimbursement in excess of the NAP factors for breakfast. Only those schools determined to be in severe need may be assigned rates of reimbursement in excess of the NAP factors. However, only those breakfasts served in, and payments received by, schools not determined to be in severe need are included in the computation of the State's NAP earnings. Thus, the assignment of reimbursement rates in excess of NAP factors to a school determined to be in severe need *does not* necessitate that reimbursement rates assigned to schools not determined to be in severe need be less than the NAP factors. While FNS does not dispute that misunderstanding may exist in some cases, a detailed technical discussion of this point is not appropriate to this rule change and has not been included in the final rule.

Implementation Date

One commentor requested that the implementation date be delayed sufficiently to accommodate any change necessary in the State computer system. The legislative mandate for this change was enacted in November 1978 and these criteria were included in the guidance for the State Plan for fiscal year 1980; therefore, the effective date of this rule will remain July 1, 1979.

State Plan

One commentor suggested that this section refer to Part 210.4a regarding State Plans. Such a reference was included in the proposed rule and is retained in the final rule.

Eligible Schools

The proposed amendment would have made two categories of schools eligible for additional reimbursement when regular per meal reimbursement did not cover costs: (1) schools required by State law to serve breakfast and (2) schools which have a high number of needy children as defined by State criteria. The minimum State criteria is set by Pub. L. 95–627 at 40 percent of a school's lunches served free or at a reduced price in the second preceding year.

In addition to the above explicit requirements of the law, the Department proposed to extend severe need reimbursement to schools which serve a high number of needy children but which did not have a lunch program in previous years upon which a forecast of participation by needy children could be made. Congressional intent is clearly to offer incentives for the expansion of the breakfast program, particularly in areas of economic need. Although the percentage of free and reduced price lunches served is a good indication that needy children will be reached in a breakfast program, administrators must rely on alternate guidelines when lunch statistics are not available. The regulations as proposed allowed alternative bases upon which a determination of need might be made in the absence of such data.

Two commentors wanted the inclusion of all schools with a State mandated breakfast program as being eligible for severe need rates. Two other commentors wanted the inclusion of all schools which served 40 percent of lunches free or at a reduced price in the second preceding year. Three commentors objected to the use of two year old participation data as a basis for eligibility and suggested that more recent data be used, if available. Public Law 95–627 provides that States are to use data including data from the second preceding school year in determining a school's eligibility for severe need funds. Therefore schools determined to be eligible on the basis of that data cannot be denied severe need status. However, if a school is not eligible based on data for the second preceding school year, but is eligible based on data for the first preceding school year or the present school year it will be eligible for participation. The Department considers this to be in accordance with the statute and the Congressional intent.

Two commentors objected to the mandated minimum of 40 percent of lunches served free or at a reduced price, suggesting that a minimum of 25 percent be required. One commentor suggested that such a minimum was required by the order issued in *Charette* vs. *Bergland* (Civil Action No. CA 76–0145). In fact, this order required that each State, as part of its State Plan of Child Nutrition Operations, report its definition of "schools in *need* of a breakfast program". These criteria by regulation (§ 210.4a), must include, as a minimum, all schools in which 25 percent of the enrollment is eligible for free or reduced price meal service. This order (and the ensuing regulations) was intended to mandate priority groups of schools to be included in a State's breakfast expansion plan. Amendment 30 to 7 CFR Part 210, which was published in the **Federal Register** on January 26, 1979 (44 FR 5387), amends 7 CFR 210.4a to comply with this order. However, this rule change regarding severe need eligibility is intended to implement legislative mandates concerning the eligibility of certain schools for severe need reimbursement rates. These rates are available to assist schools in meeting the State's criteria and in need of *extra revenue* to support the program. Thus, the two criteria address entirely different aspects of the breakfast program. The 40 percent minimum criterion for severe need reimbursement rates is mandated by the legislation and is retained in the final rule.

Three commentors suggested that the 40 percent criterion apply to breakfast, rather than lunch, service. This is in conflict with the language of the law and is not included in the final rule.

One commentor suggested that the proposed rule was not sufficiently clear as to the State's option to adopt a minimum eligibility factor lower than 40 percent. The final rule clarifies this option.

One commentor suggested that the guidelines mandate that a minimum percentage of schools in each State be certified as being in severe need. This is contrary to the legislative intent of establishing national minimum eligibility standards and is therefore not included in the final rule.

One commentor suggested Congress intended that each of the three criteria (State mandated program, high incidence of needy children, and excessive breakfast costs) stand alone in determining eligibility for severe need rates. However, Pub. L. 95–627 clearly provides that each of the first two be considered only in conjunction with breakfast program costs. In any event, program reimbursement may not exceed program costs, thus requiring that costs be considered in conjunction with any other criteria. Therefore, the provision of the proposed rule which requires that the two basic criteria be considered in conjunction with cost remains unchanged in the final rule.

One commentor suggested that current regulatory language allowing especially needy rates of reimbursement for schools determined by the State agency to have excessive program costs in spite of good management practices be retained. The language was developed in the absence of specific legislative guidelines as to eligibility criteria. Pub. L. 95–627 provided these specific guidelines. For this reason, this language was not included in the proposed rule and does not appear in the final rule.

Cost Determination

The Department proposed to continue to require the determination of eligibility for severe need funds to be made on a school by school basis. The language of the Child Nutrition Act, as amended, as well as the intent of Congress revealed

in Congressional debate, dictate that severe need funds be targeted to schools serving a substantial number of needy children. However, the Department proposed to allow costs to be determined on a School Food Authority basis, in keeping with the cost accounting requirements of FNS(CN) Instruction 796–1 (Rev. 2). School Food Authorities maintaining costs on an individual basis may continue to do so. The proposal did not change the existing requirement that reimbursement not exceed cost. The Department also proposed to amend that part of the regulations governing the reimbursement formula for School Food Authorities which include both schools with and without severe need by clarifying the regulations.

Several commentors felt that in rewording the regulation in the proposal to include "revenues from other sources" in the reimbursement formula, the Department changed the substance of the formula. The Department did not intend to change the formula. Therefore, the final regulation is redrafted to maintain the status quo of existing regulations; that is, to include only "children's payments" in the formula.

PART 220—SCHOOL BREAKFAST PROGRAM

Accordingly, Part 220, School Breakfast Program is amended as follows:

1. In § 220.2, a new definition (v–1) is added to read as follows:

§ 220.2 Definitions

* * * * *

(v–1) "School in severe need" means a school determined to be eligible for rates of reimbursement in excess of the prescribed National Average Payment Factors, based upon the criteria set forth in § 220.9(d) and in a State's Plan of Child Nutrition Operations.

* * * * *

2. In § 220.9, paragraphs (b) and (c) are revised and new paragraphs (d) and (e) are added to read as follows:

§ 220.9 Reimbursement payments.

* * * * *

(b) The maximum rates of reimbursement for breakfasts served to eligible children in schools not in severe need are the applicable national average payment factors for breakfasts. The maximum rates of reimbursement for breakfasts served to eligible children in schools determined to be in severe need are those prescribed by the Secretary. National average payment factors and maximum rates of reimbursement for the School Breakfast Program shall be prescribed semi-annually by the Secretary in the **Federal Register.**

(c) The total reimbursement for breakfasts served to eligible children during the school year in any School Food Authority shall be the lesser of the following amounts:

(1) The total cost of such breakfasts minus the sum of the products obtained by multiplying (i) the total number of paid breakfasts served to eligible children, during the school year by the full charge to children, and multiplying (ii) the total number of reduced price breakfasts served in schools during the school year by the highest reduced price charge to children. If the School Food Authority reduces the highest charge to children as a result of a change in breakfast reimbursement, the lower reduced price charge may be used in the above calculation in lieu of the highest reduced price charge. However, the reduction must remain in effect for the remainder of the school year; or

(2) The sum of the product obtained by multiplying (i) the total number of paid breakfasts by the applicable rate of reimbursement for paid breakfasts, (ii) the total number of reduced price breakfasts served to eligible children in schools not determined to be in severe need by the applicable rate of reimbursement for reduced price breakfasts, (iii) the total number of free breakfasts served to eligible children in schools not determined to be in severe need by the applicable rate of reimbursement for free breakfasts and, if the School Food Authority includes schools determined to be in severe need, (iv) the total number of reduced price breakfasts served to eligible children in schools determined to be in severe need by the applicable severe need rate of reimbursement for reduced price breakfasts, and (v) the total number of free breakfasts served to eligible children in schools determined to be in severe need by the applicable severe need rate of reimbursement for free breakfasts.

(d) The State agency, or FNSRO where applicable, shall determine to its satisfaction that Federal reimbursement earned for the service of free and reduced price breakfasts in schools determined to be in severe need is not utilized to support the service of full priced breakfasts.

(e) The State agency, or FNSRO where applicable, shall determine whether a school is in severe need based on eligibility criteria established by the State educational agency, in the annual State Plan as required under § 210.4a. At a minimum, a school shall be determined to be a school in severe need if the rate per meal established by the Secretary is insufficient to cover the costs of its breakfast program and (1) it is required by State law to serve breakfasts, or (2) if under the National School Lunch Program, it served 40 percent or more if its lunches free or at a reduced price in the second preceding school year, or (3) if it does not have a lunch program but does have or did have a breakfast program in the second preceding school year, it served 40 percent or more of its breakfasts free or at a reduced price, or (4) if it has neither a lunch nor a breakfast program, it would estimate it would serve 40 percent of its breakfasts free or at a reduced price. A school which did not serve 40 percent or more if its lunches free or at a reduced price in the second preceding school year may be determined to be a school in severe need if the rate per meal established by the Secretary is insufficient to cover the costs of its breakfast program and it did or does serve 40 percent or more of its lunches free or at a reduced price in the first preceding school year or in the present school year. Provided, however, that no school shall be eligible to receive severe need rates of reimbursement if it does not meet the eligibility criteria established by the State. A State educational agency may establish eligibility criteria which include schools serving less than 40 percent of lunches free or at a reduced price to eligible children. State agencies shall submit for approval their eligibility criteria for the determination of severe need of a school and the source of their data to be used in making the determinations in their annual State Plan.

Authority: Sec. 6, Pub. L. 95–627, 92 Stat. 3620, (42 U.S.C. 1776).

Note.—This final rule has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations," and has been classified significant. An approved final impact statement is available at the Office of the Director, School Programs Division, USDA–FNS, Washington, D.C. 20250 during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday).

Dated: August 10, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79–25221 Filed 8–16–79; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 212]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period August 19–25, 1979. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: August 19, 1979.

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

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee, and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The committee met on August 14, 1979, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is easier.

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

Further, in accordance with procedures in Executive Order 12044, the emergency nature of this regulation warrants publication without opportunity for further public comment. The regulation has not been classified significant under USDA criteria for implementing the Executive Order. An Impact Analysis is available from Malvin E. McGaha, 202–447–5975.

§ 910.512 Lemon Regulation 212.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period August 19, 1979 through August 25, 1979, is established at 254,233 cartons.

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

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

Dated: August 15, 1979.

William J. Doyle,

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

[FR Doc. 79-25752 Filed 8-16-79; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

7 CFR Part 301

Domestic Quarantine Notices, Japanese Beetle; Final Rule To Amend Program Manual: Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This notice corrects a previous **Federal Register** document (FR Doc. 79–20410), published July 3, 1979, beginning at 44 FR 38828. On page 38829, in the fourth paragraph, "Accordingly, 7 CFR Part 330 * * *" should be corrected to read "Accordingly, 7 CFR 301.48–1 * * *." The original cite to Part 330 was an editorial error and the cite should be § 301.48–1.

EFFECTIVE DATE: July 3, 1979.

FOR FURTHER INFORMATION CONTACT: H. V. Autry, 301–436–8247.

Thomas G. Darling,

Acting Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

[FR Doc. 79-25396 Filed 8-16-79; 8:45 a.m.]

BILLING CODE 3410-34-M

Farmers Home Administration

7 CFR Parts 1910 and 1980

Financial Disclosure

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration amends its regulations concerning financial disclosure. This action is taken to comply with a public law. The intended effect is to protect applicants from unauthorized use or disclosure of information regarding their financial status obtained by FmHA from financial institutions such as banks or savings and loan associations. This Act prohibits financial institutions from releasing financial records to a Government authority without first obtaining written notice that the government agency has complied with the applicable provisions of the Act.

EFFECTIVE DATE: August 17, 1979.

FOR FURTHER INFORMATION CONTACT: Nancy Monesson, Rural Housing Specialist, Single Family Housing, Home Ownership Loan Division (202–447–4295) or Ronald Thelen, Production Loan Officer, Production Loan Division 202–447–2288.

SUPPLEMENTARY INFORMATION: The Farmers Home Administration amends various sections of Parts 1910 and 1980, Chapter XVIII, Title 7 in the Code of Federal Regulations. These revisions are made to comply with the requirements of the "The Right to Financial Privacy Act of 1978" (Pub. L. 95–630, Title XI) which became effective March 11, 1979, and to make minor editorial changes.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This amendment, however, is not published as a proposed rule since the change is made to comply with a public law. Failure to comply with this law may result in penalties to the Government and the employee involved. Publication for comment is unnecessary. This determination was made by James E. Lee, Assistant Administrator for Farmer Programs.

Therefore Subchapter H of Chapter XVIII is amended as follows:

PART 1910—GENERAL

Subpart A—Receiving and Processing Applications

1. § 1910.3(a) is amended and revised by amending the last sentence of paragraph (2), inserting new paragraphs (3) (i) and (ii), and renumbering current paragraphs (3) and (4) to (4) and (5), respectively, without change, as follows:

§ 1910.3 Receiving applications.

(a) * * *

(1) * * *

(2) * * * For EM loans, it is necessary for the applicant to complete Form FmHA 1945–22, "Certification of Disaster Losses."

(3) The Right to Financial Privacy Act of 1978, Title XI of Pub. L. 95–630, requires that:

(i) Except as specified in paragraph (a)(3)(ii) of this section, within 3 days of the receipt of an application for a loan or grant from an individual or a partnership of five or fewer members, the FmHA office will forward Form FmHA 410–7, "Notification to Applicant on Use of Financial Information" to those applicants.

(ii) For a rental housing or labor housing application filed by an individual or a partnership of five or fewer members, the FmHA office will comply with paragraph (a)(3)(i) of this section only if it is determined that financial information will be requested from any financial institution.

* * * * *

2. § 1910.3(b)(1) is revised to include FO applicants and (b)(2) is revised to insert a form number as follows:

§ 1910.3 Receiving applications.

* * * * *

(b) * * *

(1) Applicants for FO, OL, EM, RH, individual SW, or individual LH loans who have a current Form FmHA 431–2, "Farm and Home Plan", Form FmHA 431–3, "Family Budget", or Form FmHA 410–4, and who are presently indebted to FmHA, will be required to complete only the following items of Form FmHA 410–1 or Form FmHA 410–4:

* * * * *

(2) If information about their current status is not available, applicants should fully complete Form FmHA 410–1 or Form FmHA 410–4, as appropriate. Applicants for EM loans with new losses from an authorized disaster must also complete Form FmHA 1945–22.

* * * * *

3. § 1910.4(a)(3) is revised and paragraphs (6) (i) and (ii) and (7) are added, as follows:

§ 1910.4 Processing applications.

(a) * * *

* * * * *

(3) Credit reports as provided in Subparts B and C of Part 1910 (Subpart C available in any FmHA office).

* * * * *

(6) * * *

(i) Form FmHA 410–8 includes printed notification to financial institutions that FmHA is in compliance with the Right to Financial Privacy Act of 1978, Title XI of Pub. L. 95–630. This notification must be given to any financial institution to which FmHA makes a direct request for financial records regarding an applicant who is an individual or a partnership of 5 or fewer members. When not using Form FmHA 410–8, the notifications will read as follows:

"I certify that the United States Department of Agriculture, acting through the Farmers Home Administration, has complied with the applicable provisions of Title XI, Public Law 95–630 in seeking financial information regarding ————————. (applicant)."

————————Date

————————County Supervisor

(ii) Under no circumstances may financial information obtained under this regulation be disseminated to any other department or agency of the Federal Government (other than the Office of the Inspector General (OIG) or the Office of Equal Opportunity (OEO)) without express approval of OGC.

(7) Form FmHA 410–5, "Request for Verification of Employment." This form may be used to verify employment and income.

* * * * *

PART 1980—GUARANTEED LOAN PROGRAMS

Subpart A—General

The Table of Sections is amended by adding a new § 1980.46 and renumbering the reserved Sections to §§ 1980.47–1980.59 as follows:

4. Table of Sections

Table of Contents

* * * * *

§ 1980.46 Right to Financial Privacy Act of 1978.

§§ 1980.47–1980.59 [Reserved]

* * * * *

5. A new § 1980.46 is added and §§ 1980.47–1980.59 are reserved as follows:

§ 1980.46 Right to Financial Privacy Act of 1978.

(a) When the applicant is either an individual or partnership of five or fewer members, and applies for financial assistance from a lender which applies to FmHA for a guarantee, the following actions must be taken:

(1) Within 3 days of the receipt of a pre-application or complete application from a lender for a guarantee for a loan, FmHA will forward Form FmHA 410–7, "Notification to Applicant on Use of Financial Information", to those applicants desiring loan assistance. If notification is made upon receipt of a pre-application, notification will not be made upon receipt of an application for the same applicant.

(2) Notification must also be given to the lender and other financial institutions to which FmHA makes a direct request for financial records. The notification to the lender and other financial institutions will read as follows:

I certify that the United States Department of Agriculture, acting through the Farmers Home Administration, has complied with the applicable provisions of Title XI, Public Law 95–630 in seeking financial information regarding (applicant) ————————." (Date)————————.

(County Supervisor)

(b) Under no circumstances may financial information obtained under this regulation be disseminated to any other department or agency of the Federal Government (other than the Office of the Inspector General (OIG), or the Office of Equal Opportunity (OEO)) without express approval of OGC.

§§ 1980.47–1980.59 [Reserved]

* * * * *

Subpart B—Farmer Program Loans

6. § 1980.113, the introductory paragraph is revised and the form number in paragraph § 1980.113(a)(4) is changed, as follows:

§ 1980.113 Receiving and processing applications.

An applicant and/or lender may file either a preliminary or complete application. In either case, the requirements of § 1980.46 of Subpart A of this Part must be met. A preliminary application may be used when an applicant or lender wants FmHA to determine eligibility, feasibility, or the availability of guarantee authority before filing a complete application. The County Supervisor will cooperate with the lender and applicant and will provide appropriate assistance in connection with loan application processes. The degree of this assistance will be determined by the lender's experience with FmHA guaranteed loan processing, the lender's farm lending

experience, and the complexity of the proposal. The lender and applicant should contact the local FmHA office serving the area where the farming operation is conducted for guidance and assistance in preparing the request and for obtaining the guarantee. The County Supervisor will provide copies of all applicable FmHA forms and regulations.

(a) *Preliminary application.*

* * * * *

(4) For an EM loan, Form FmHA 1945–22, "Certification of Disaster Losses." (Revised)

* * * * *

Subpart C—Emergency Livestock Loans

7. § 1980.246, the introductory paragraph is revised to read as follows:

§ 1980.246 Receiving and processing applications.

An applicant and/or lender(s) may file either a preliminary application or complete application. In either case, the requirements of § 1980.46 of Subpart A of this Part must be met. A preliminary application may be used when an applicant or lender wants a determination from FmHA on eligibility or feasibility, before proceeding with a complete application. The County Supervisor will cooperate with the lender and applicant and provide appropriate assistance in connection with loan application processes. The degree of this assistance will be guided by the lender's experience with FmHA guaranteed loan processing, the lender's farm lending experience, and the complexity of the proposal. The lender and applicant should contact the local FmHA office serving the area where the livestock operation is conducted for guidance and assistance in preparing the request and for obtaining the guarantee. An applicant conducting livestock operation as an individual, corporation, or partnership in different counties or locations will be considered for only one application and will file the application in the county in which the livestock operation headquarters is located unless determined otherwise by the State Director. In cases where the operation is located in more than one State, the State Directors involved will determine which State will process the application and service the loan(s). The County Supervisor will provide the lender with copies of all applicable FmHA forms and regulations. See Appendix A of this Subpart for a list of these FmHA forms.

* * * * *

Subpart D—Rural Housing Program Loans

8. § 1980.331(d) is revised to read as follows:

§ 1980.331 Filing and processing applications.

* * * * *

(d) *Filing preapplications and applications.* Lenders may file preapplications as described in paragraph (e) of this section if they desire an expression of FmHA interest before assembling the complete application and Request for Loan Note Guarantee, or they may present the complete application, in one package, including the material required in paragraphs (e) and (g) of this section. In either case, the requirements of § 1980.46 of Subpart A of this Part must be met.

* * * * *

Subpart E—Business and Industrial Loan Programs

9. § 1980.451(a) is revised to read as follows:

§ 1980.451 Filing and processing applications.

(a) *Applicants' and lenders' contact.* Applicants and Lenders desiring FmHA assistance as provided in this Subpart may file preapplications or applications with the County Supervisor servicing the area in which the project is to be located. In either case, the requirements of § 1980.46 of Subpart A of this Part must be met. The FmHA County Supervisor will promptly arrange an early meeting with the applicant and Lender representatives to discuss assembly, preparation, and processing of preapplications and applications.

* * * * *

Subpart F—Economic Emergency Loans

10. § 1980.511, the introductory paragraph is revised to read as follows:

§ 1980.511 Receiving and processing applications.

An applicant and/or lender may file either a preliminary or complete application. In either case, the requirements of § 1980.46 of Subpart A of this Part must be met. A preliminary application may be used when an applicant or lender wants a determination from FmHA on eligibility, feasibility, or availability of guarantee authority before proceeding with a completed application. The County Supervisor will cooperate with the lender and applicant and provide appropriate assistance in connection with the loan application processes. The degree of this assistance will be guided by the lender's experience with FmHA guaranteed loan processing, the lender's farm lending experience, and the complexity of the proposal. The lender and applicant should contact the local FmHA office serving the area where the farming operation is conducted for guidance and assistance in preparing the request and for obtaining the guarantee. The County Supervisor will provide copies of all applicable FmHA forms and regulations. See Appendix A of this Subpart for list of these FmHA forms.

* * * * *

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

A copy of the Final Impact Analysis prepared by FmHA is available in the Office of the Chief, Directives Management Branch, Room 6346, South Building, Washington, D.C. 20250.

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

Authorities: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480; Sec. 10 Pub. L. 93–357, 88 Stat. 392; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70.

Dated: July 20, 1979.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

[FR Doc. 79-25504 8-16-79; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 73

Scabies in Cattle; Area Released From Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to release a portion of San Joaquin County in California from the areas quarantined because of cattle

scabies. Surveillance activity indicates that cattle scabies no longer exists in the area quarantined. No areas remain under quarantine in the State of California because of psoroptic cattle scabies.

EFFECTIVE DATE: August 10, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. Glen O. Schubert, Chief Staff Veterinarian, Sheep, Goat, Equine, and Ectoparasites Staff, USDA, APHIS, VS, Federal Building, Room 737, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8322.

SUPPLEMENTARY INFORMATION: This amendment releases a portion of San Joaquin County in California from the areas quarantined because of cattle scabies. Therefore, the restrictions pertaining to the interstate movement of cattle from quarantined areas contained in 9 CFR Part 73, as amended, will not apply to the released area, but the restrictions pertaining to the interstate movement of cattle from nonquarantined areas contained in said Part 73 will apply to the released area.

Accordingly, Part 73, Title 9, Code of Federal Regulations, as amended, restricting the interstate movement of cattle because of scabies, is hereby amended in the following respect:

§ 73.1a [Deleted]

In § 73.1a, paragraph (a), relating to the State of California is deleted.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134b, 134f; 37 FR 28464, 28477; 38 FR 19141)

The amendment relieves restrictions no longer deemed necessary to prevent the spread of cattle scabies from certain areas which have been determined to be free of cattle scabies. This amendment should be made effective immediately in order to permit affected persons to move cattle interstate from such area without unnecessary restrictions.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

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

This final rule implements the regulations in Part 73. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 10th day of August 1979.

Pierre A. Chaloux, VMD,

Deputy Administrator, Veterinary Services.

[FR Doc. 79–25116 Filed 8–16–79; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF ENERGY

10 CFR Part 1023

Contract Appeals

AGENCY: Department of Energy, Board of Contract Appeals.

ACTION: Supplemental Interim Rules of Practice; and request for comments.

SUMMARY: These rules of practice are intended to revise the procedures of the Department of Energy Board of Contract Appeals so as to implement the Contract Disputes Act of 1978, (Public Law 95–563 effective March 1, 1979), and to reflect the guidelines issued pursuant to that Act by the Office of Federal Procurement Policy on February 26, 1979, and June 14, 1979. In addition, these rules are drafted to simplify as much as possible both the procedure and the language of the Board's rules.

DATES: Effective date: March 1, 1979; comments will be accepted on or before September 17, 1979.

ADDRESS: Send comments to the Department of Energy, Chairman, Board of Contract Appeals, Room 1006, Webb Building, 4040 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: John B. Farmakides, (703) 235–2700.

SUPPLEMENTARY INFORMATION: This revision provides rules and procedures for contract appeals filed pursuant to the Contract Disputes Act of 1978. That Act mandated several major revisions to the existing rules of practice for the Board, including the establishment of procedures for the new and special optional *Expedited Small Claims* of $10,000 or less, and the optional *Accelerated* procedures for claims of $50,000 or less. The revision likewise reflects the guidelines issued by the Office of Federal Procurement Policy on February 26, 1979 and finalized on June 14, 1979.

The Board's rules substantially incorporate the Office of Federal Procurement Policy guidelines, except that the Board has continued some of its earlier rules where, based on favorable experience, they are easier to understand and consistent with the intent for impartial and timely resolution of appeals under the Contract Disputes Act. For example, the Board places clear emphasis on the settlement of cases between the parties, and requires that every prehearing conference include a discussion on the possibility of settlement. Again, the requirement in the Office of Federal Procurement Policy guidelines calling for the contracting officers "appeal file" to be placed automatically into evidence, is not followed. Under the Board's Rule 4, the preparation of the "appeal file" is treated in the same manner as provided by the Office of Federal Procurement Policy, except that it does not become part of the evidentiary record until offered and admitted into evidence. This procedure reflects the practice of the earlier Atomic Energy Commission and Energy Research and Development Administration Boards which practice this Board has also found to be successful. In another instance, for cost efficiency, under the Board's rules, the parties in an appeal must serve documents on each other rather than each filing such documents with the Board and then having the Board serve the other party.

Accordingly, these Supplemental Interim Rules of Practice are published with a request for comments. Our preliminary view is that these rules do not involve substantial issues of fact or law and that the regulations are unlikely to have a substantial or major impact on the nations economy or large numbers of individuals or businesses. Therefore, at this time we do not propose to hold public hearings. This preliminary conclusion is based on the fact that the rules are closely patterned after the guidelines, noted above, issued by the Office of Federal Procurement Policy, following the provisions of the Contract Disputes Act of 1978. In addition, they continue the current rules of the Board which have been in existence since March 24, 1976, except for those modifications stemming from the Contract Disputes Act or the Office of Federal Procurement Policy guidelines. However, a final determination of

whether there should be an opportunity for a public hearing will be made after an evaluation of the comments on the proposed regulations and consideration of the views of those requesting such a hearing.

Note.—The Department of Energy has determined that this proposed regulation does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821, as amended, and OMB Circular A–107. The Department has also determined that the proposed regulation will not affect the quality of the environment and that the requirements of Section 7(c)(2) of the Federal Energy Administration Act of 1974, Public Law 93–275, do not apply.

Issued in Washington, D.C. on August 10, 1979.

John B. Farmakides,

Chairman, Board of Contract Appeals.

In 10 CFR a new part 1023 is added to read as follows:

PART 1023—CONTRACT APPEALS

Subpart A—Rules of the Board of Contract Appeals

Preface

Sec.

1023.1 Scope and purpose.
1023.2 Effective date.
1023.3 Jurisdiction for considering appeals.
1023.4 Organization and location of the Board.
1023.5 Ex-parte conduct.
1023.6 General guidelines.

Rules of Practice

1023.100 Preliminary Procedures
1023.101 Appeals, how taken
1023.102 Notice of appeal, contents.
1023.103 Docketing of appeals.
1023.104 Contracting officer appeal file.
1023.105 Motions.
1023.106 Appellants election of procedures.
1023.107 Pleadings.
1023.108 Amendments of pleadings or record.
1023.109 Hearing election.
1023.110 Submission of appeal without a hearing.
1023.111 Prehearing briefs.
1023.112 Prehearing conference.
1023.113 Optional small claims (Expedited) procedure.
1023.114 Optional accelerated procedures.
1023.115 Settling the record.
1023.116 Discovery—depositions.
1023.117 Interrogatories, admissions, production and inspections.
1023.118 Subpoenas.
1023.119 Time and service of papers.

Hearings

1023.120 Hearings: time and place.
1023.121 Hearings: notice.
1023.122 Hearings: unexcused absence of a party.
1023.123 Hearings: nature, examination of witnesses.

Representation

1023.124 Appellant.
1023.125 Respondent.

Board Decisions

1023.126 Decisions.
1023.127 Motion for reconsideration.
1023.128 Remand from court.

Dismissals

1023.129 Dismissals Without prejudice.
1023.130 Dismissal for failure to prosecute.

Sanctions

1023.131 Failure to obey board order.

Authority: Pub. L. 95–91, sec. 301, 91 Stat. 577; Pub. L. 95–563; EO 10789.

Subpart A—Rules of the Board of Contract Appeals

Preface

§ 1023.1 Scope and purpose.

These rules are intended to govern all appeals procedures before the Department of Energy Board of Contract Appeals (Board) which are within the coverage of the Contract Disputes Act of 1978 (Pub. L. 95–563, Nov. 1, 1978) until such time as the Board formally promulgates and publishes in the **Federal Register** its final Rules implementing the Act.

§ 1023.2 Effective date.

These rules shall apply to all appeals relating to contracts entered into on or after March 1, 1979, and at the contractor's election, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on March 1, 1979, or initiated thereafter.

§ 1023.3 Jurisdiction for considering appeals.

(a) The Department of Energy Board of Contract Appeals (referred to herein as the "Board" or "EBCA" shall consider and determine appeals from decisions of contracting officers pursuant to the Contract Disputes Act of 1979 (Pub. L. 95–563, 41 U.S.C. 601–613, also hereinafter referred to as the "Act") relating to contracts made by (1) the Department of Energy or (2) any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal. In addition, the Board shall consider and determine appeals from decisions of contracting officers arising from other contracts which include an appropriate disputes clause.

(b) The Board may consider and determine other matters, not inconsistent with its statutory duties, as assigned by the Secretary.

(c) In each proceeding the Board shall make a final decision which is impartial, fair and just to the parties based on the record of the case.

§ 1023.4 Organization and location of the Board.

(a) The Board is located in the Washington, D.C., metropolitan area and its address is: Webb Building, Room 1006, 4040 N. Fairfax Drive, Arlington, Virginia 22203.

(b) The Board consists of a Chair, a Vice Chair, and other members, all of whom are attorneys-at-law duly licensed by any state, commonwealth, territory, or the District of Columbia. Members of the Board are selected and appointed to serve in the same manner as hearing examiners pursuant to Section 3105 of title V, United States Code. Members are designated Administrative Judges.

(c) The Administrative Judge assigned to hear and develop the record on an appeal has authority to act for the Board in all matters with respect to such appeal that are not dispositive of the appeal.

(d) Except for appeals considered under the expedited small claims or accelerated procedures, appeals are assigned to a panel of three Administrative Judges of the Board who decide the case by a majority vote.

§ 1023.5 Ex-parte conduct.

Written or oral communications with the Board by or for one party without participation or notice to the other, is not permitted. No member of the Board or of the Board's staff shall consider nor shall any person, directly or indirectly involved in an appeal, submit to the Board or to the Board's staff, off-the-record, any evidence, explanation, analysis, or advice (whether written or oral) regarding any matter at issue in an appeal. This provision does not apply to consultation between Board members nor to communications concerning the Board's administrative functions or procedures.

§ 1023.6 General guidelines.

(a) It is impractical to articulate a rule to fit every circumstance which may be encountered. Accordingly, these rules will be interpreted and applied consistent with the Board's policy to provide for the just, speedy, and inexpensive determination of appeals.

(b) It is the Board's objective to encourage full disclosure of all relevant facts and to discourage surprise.

(c) Each specified time limitation is a maximum, and should not be fully used if the action described can be accomplished in a shorter period. Informal communication between the parties is encouraged to reduce time periods as much as possible.

(d) The Board shall conduct proceedings so as to assure compliance with the security regulations and requirements of the Department or agency involved.

(e) These interim rules shall apply to all appeals from a contract entered into on or after March 1, 1979. A contractor may elect to proceed under the Act if the appeal involves a contract entered into before March 1, 1979, and the contracting officer's decision from which the appeal is taken is dated March 1, 1979, or thereafter.

Rules of Practice

§ 1023.100 Preliminary procedures.

§ 1023.101 Appeals, how taken.

(a) Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. A copy of the notice shall be furnished at the same time to the contracting officer from whose decision the appeal is taken.

(b) Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and where the contracting officer has not done so, the contractor may file a notice of appeal as provided in subparagraph (a) above, citing the failure of the contracting officer to issue a decision.

(c) Where the contractor has submitted a claim in excess of $50,000 to the contracting officer and the contracting officer has failed to issue a decision within a reasonable time, the contractor may file a notice of appeal as provided in subparagraph (a) above, citing the failure to issue a decision.

(d) Upon docketing of appeals filed pursuant to (b) or (c) of this Rule, the Board, at its option, may stay further proceedings pending issuance of a final decision by the contracting officer within the time fixed by the Board, or order the appeal to proceed without the contracting officer's decision.

§ 1023.102 Notice of appeal, contents.

A notice of appeal must indicate that an appeal is being taken and must identify the contract (by number), and the department, administration, agency or bureau involved in the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal should be signed by the appellant (the contractor making the appeal), or by the appellant's duly authorized representative or attorney. The complaint referred to in Rule 7 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

§ 1023.103 Docketing of appeals.

When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice of docketing shall be mailed promptly to all parties (with a copy of these rules to appellant).

§ 1023.104 Contracting Officer Appeal File.

(a) *Composition:* With 30 days after receipt of notice that an appeal has been docketed, the contracting officer shall assemble and transmit to the Board, with a copy to the appellant and to Respondent, an appeal file consisting of all documents pertinent to the appeal, including:

(1) The contracting officer's decision and findings of fact from which the appeal is taken;

(2) The contract, including pertinent specifications, modifications, plans, and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits of statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

(b) *Organization:* Documents in the appeal file may be originals, legible facsimiles, or authenticated copies. They shall be arranged in chronological order, where practicable, and indexed to identify the contents of the file. The contracting officer's final decision and the contract shall be conveniently placed in the file for ready reference.

(c) *Supplements:* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant may supplement the file by transmitting to the Board any additional documents which it considers pertinent to the appeal and shall furnish two copies of such documents to Respondent.

(d) *Burdensome documents.* The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when a party has shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, the other party shall be notified that the document or a copy is available for inspection at the offices of the Board or of the party filing the document.

(e) *Status of documents:* Documents in the appeal file or supplements thereto shall become part of the historical record but shall not be included in the record upon which the Board's decision will be rendered unless each individual document has been offered and admitted into evidence.

§ 1023.105 Motions.

(a) Any timely motion may be considered by the Board. Motions shall be in writing (unless made during a conference or a hearing), shall indicate the relief or order sought, and shall state with particularity the grounds therefore. Those motions which would dispose of a case shall be filed promptly and shall be supported by a brief. The Board may, on its own motion initiate any motion by notice to the parties.

(b) Parties may respond to a dispositive motion within 20 days of receipt, or as otherwise ordered by the Board. Answering material to all other motions may be filed within 10 days after receipt. Replys to responses ordinarily will not be allowed.

(c) Board rules relating to pleadings, service and number of copies shall apply to all motions. In its discretion, the Board may permit a hearing on a motion, and may require presentation of briefs, or it may defer a decision pending hearing on both the motion and the merits.

§ 1023.106 Appellants election of procedures.

(a) The election to use Small Claims (expedited) procedures (Rule 13) or Accelerated Procedures (Rule 14) is available only to appellant. It shall be filed with the Board in writing no later than within 20 days after receipt of the appeal file (see Rule 4) unless otherwise allowed by the Board.

(b) Where the amount in dispute is $50,000 or less, appellant may elect to use the accelerated procedures. Where the amount is $10,000 or less, appellant may elect to use the Small Claims (Expedited) procedures or the Accelerated Procedures. Any question regarding the amount in dispute shall be determined by the Board.

§ 1023.107 Pleadings.

(a) *Complaint.* Within 20 days after receipt of the appeal file (Rule 4), the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise and direct statements of each of its claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. A copy of the complaint shall be served upon the respondent or, if the identity of the latter is not known, upon the General Counsel, Department of Energy, Forrestal Bldg., Washington, D.C. 20585. If the complaint is not filed within 20 days and in the opinion of the Board the issues before the Board are sufficiently defined, appellant's claim and Notice of Appeal may be deemed to set forth its complaint and the Respondent shall be so notified.

(b) *Answer.* Within 30 days after receipt of complaint, or a Rule 7(a) notice from the Board, the Respondent shall file with the Board an original and two copies of an Answer, setting forth simple, concise and direct statements of Respondent's defense to each claim asserted by Appellant. This pleading shall fulfill the generally recognized requirements of an Answer, and shall set forth any affirmative defenses as appropriate. Should the answer not be filed within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Respondent and the parties shall be so notified.

§ 1023.108 Amendments of pleadings or record.

(a) The Board upon its own initiative or upon application by a party may order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The application for such an order suspends the time for responsive pleadings. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleadings upon conditions fair to both parties.

(b) When issues not raised by the pleadings are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised in the pleadings. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. Similarly, if evidence is objected to at a hearing on the ground that it is not relevant to an issue raised by the pleadings, it may be admitted but the objecting party may be granted a continuance if necessary to enable it to meet such evidence.

§ 1023.109 Hearing election.

Except as may be required under Rules 13 or 14, each party shall advise, not later than 15 days after service upon appellant of respondent's Answer, or a Rule 7(b) Notice from the Board, whether it desires a hearing as prescribed in Rules 20 through 23. Failure to advise as required by this Rule will be deemed a waiver and an election to submit its case on the record as prescribed in Rule 10.

§ 1023.110 Submission of appeal without a hearing.

Either party may elect to waive a hearing and to submit its case upon the record as settled pursuant to Rule 15. Waiver by one party shall not deprive the other party of an opportunity for a hearing. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument and by briefs.

§ 1023.111 Prehearing briefs.

The Board may, in its discretion, require the parties to submit prehearing briefs in any case or motion. If the Board does not require briefs either party may, upon notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party.

§ 1023.112 Prehearing conference.

(a) Whether the case is to be submitted under Rule 10, or heard pursuant to Rules 20 through 23, the Board may, upon its own initiative or upon the application of either party, arrange a telephone conference or call upon the parties to appear before an administrative judge for a conference to consider:

(1) Simplification, clarification, or severing of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements and rulings on documents, understandings on matters already of record, or similar agreement that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate discovery;

(4) Limitation of the number of expert witnesses, or avoidance with similar cumulative evidence;

(5) The possibility for settlement of any or all of the issues in dispute; and

(6) Such other matters as may aid in the disposition of the appeal.

(b) Any conference results not reflected in a transcript shall be reduced to writing by the Administrative Judge and the writing shall thereafter constitute part of the evidentiary record.

§ 1023.113 Optional small claims (expedited) procedure.

(a) The Small Claims (Expedited) procedure provides for simplified rules of procedure to facilitate the decision of an appeal, whenever possible, within 120 days after the Board receives written notice of the election.

(b) Promptly upon receipt of an appellant's election of the Small Claims (Expedited) procedure, the assigned Administrative Judge will arrange informal meeting or a telephone conference with both parties to:

(1) Identify and simplify the issues in dispute;

(2) Establish a simplified procedure appropriate to the particular appeal;

(3) Determine whether a hearing is desired, and, if so, fix a time and place;

(4) Establish a schedule for the expedited resolution of the appeal; and

(5) Assure that procedures have been instituted for informal discussions on the possibility of settlement of any or all of the disputes in question.

(c) Failure to request an oral hearing within 15 days of receipt of notice of the Small Claims election shall be deemed a waiver and an election to submit the case on the record under Rule 10.

(d) The subpoena power set forth in Rule 18 is available for use under the Small Claims (Expedited) procedure.

(e) The filing of pleadings, motions, discovery proceedings or prehearing procedures will be permitted only to the extent consistent with the requirement of conducting the hearing at the scheduled time and place or, if no hearing is scheduled, of closing the record at an early time so as to permit a decision of the appeal within the target limit of 120 days. The Board, in its discretion, may impose shortened time periods for any actions required or permitted under these rules, necessary to enable the Board to decide the appeal within the target date allowing whatever time, up to 30 days, that it considers necessary for the preparation of the

decision after closing the record and the filing of briefs, if any.

(f) Decisions in appeals considered under the Small Claims (Expedited) procedure will be rendered by a single Administrative Judge. If there is a hearing, the presiding Administrative Judge may, in his discretion, hear closing oral arguments of the parties and then render an oral decision on the record. Whenever such an oral decision is rendered, the Board subsequently will furnish the parties with a written transcript of the decision for record and payment purposes and to establish the date for commencement of the time period for filing a motion for reconsideration under Rule 27.

(g) Decisions of the Board under the Small Claims (Expedited) procedure shall have no value as precedent for future cases and, in the absence of fraud, cannot be appealed.

§ 1023.114 Optional accelerated procedures.

(a) This option makes available a procedure whereby the appeal is resolved, whenever possible, within 180 days from board notice of the election.

(b) Promptly upon receipt of appellant's election of the Accelerated procedure, the assigned Administrative Judge will arrange an informal meeting or a telephone conference with both parties to:

(1) Identify and simplify the issues in dispute;

(2) Establish a simplified procedure appropriate to the particular appeal;

(3) Determine whether a hearing is desired and, if so, fix a time and place;

(4) Establish a schedule for the accelerated resolution of the appeal; and

(5) Assure that procedures have been instituted for informal discussions on the possibility of settlement of any or all of the disputes in question.

(c) Failure by either party to request an oral hearing within 15 days of receipt of notice of the election under Rule 6 shall be deemed a waiver and an election to submit on the record under Rule 10.

(d) The subpoena power set forth in Rule 18 is available for use under the accelerated procedure.

(e) The filing of pleadings, motions, discovery proceedings or prehearing procedures will be permitted only to the extent consistent with the requirement for conducting the hearing at the scheduled time and place or, if no hearing is scheduled, the closing of the record at an early time so as to permit decision of the appeal within the target limit of 180 days. the Board, in its discretion, may impose shortened time period for any actions required or permitted under these rules, necessary to enable the Board to decide the appeal within the target date, allowing whatever time, up to 30 days, that it considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(f) Decisions in appeals considered under the accelerated procedure will be rendered by a single Administrative Judge with the concurrence of another assigned Administrative Judge or an additional member in the event of disagreement. Such decisions are subject to appeal.

§ 1023.115 Settling the record.

(a) The record upon which the Board's decision will be rendered consists of the documents admitted in evidence, and, if filed, the pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or answers to interrogatories admitted as evidence, admissions, stipulations, transcripts of conferences and hearing, hearing exhibits and posthearing briefs. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(b) Except as the Board, in its discretion, may otherwise order, no proof shall be received in evidence after completion of the evidentiary hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

§ 1023.116 Discovery—Depositions.

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting trade secrets or other confidential information or documents.

(b) *When depositions permitted.* If the parties are unable to agree upon the taking of a deposition, the Board may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination.

(c) *Orders on depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, as governed by order of the Board.

(d) *Use as evidence.* No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received as evidence at such hearing. It will not ordinarily be received as evidence if the deponent is present and can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(e) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition unless for hardship or other reasons in the discretion of the Board, the expenses should be apportioned otherwise.

(f) *Subpoenas.* Where appropriate, a party may request the issuance of a subpoena under the provisions of Rule 18.

§ 1023.117 Interrogatories, admissions, production and inspections.

(a) After an appeal has been filed with the Board, a party may serve on the other party: (1) Written interrogatories to be addressed separately in writing, signed under oath and answered within 30 days unless objections are filed within 10 days of receipts; (2) A request for the admission of specified facts or the authenticity of any documents, to be answered or objected to within 30 days after service. The factual statements and the authenticity of the documents shall be deemed admitted upon failure of a party, to timely respond; and (3) A request for the production, inspection and copying of any documents or objects not privileged, which are relevant to the appeal.

(b) Any discovery engaged in under this Rule shall be subject to the provisions of Rule 16(a) with respect to general policy and protective orders.

§ 1023.118 Subpoenas.

(a) *Voluntary cooperation.* Each party is expected to cooperate and make available witnesses and evidence under its control without issuance of a subpoena. Additionally, parties will secure voluntary attendance of desired third-party witnesses and production of

desired third-party books, papers, documents, or tangible things whenever possible.

(b) *Procedure.* (1) Upon request of a party and after a showing of relevance a subpoena may be issued requiring the attendance of a witness for the purpose of taking testimony at a deposition or hearing and, if appropriate, the production by the witness, at the deposition or hearing, of documentary evidence, including inspection and copying, as designated in the subpoena.

(2) The request shall identify the name, title, and address of the person to whom the subpoena is addressed, the specific documentary evidence sought, the time and place proposed and a showing of relevancy to the appeal.

(3) Every subpoena shall state the name of the Board, the title of the appeal, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified documentary evidence at a time and place therein specified. The presiding Administrative Judge shall sign the subpoena and may, in his discretion, enter the name of the witness, or the documentary evidence sought, or may leave it blank. The party requesting the subpoena shall complete the subpoena before service.

(4) Where the witness is located in a foreign country, a letter rogatory of subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(c) *Requests to quash or modify.* Upon motion made promptly but in any event not later than the time specified in the subpoena for compliance, the Board may: (1) Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown; (2) Condition denial of the motion upon payment by the person in whose behalf the subpoena was issued of the reasonable cost of producing the subpoenaed documentary evidence; or (3) Apply protective provisions under Rule 16(a).

(d) *Service.* (1) The party requesting the subpoena shall arrange for service.

(2) A subpoena may be served at any place by a United States Marshal or Deputy Marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena shall be made by personally delivering a copy to the person named therein and tendering the fees for one day's attendance and the mileage that would be allowed in the courts of the United States. When the subpoena is issued on behalf of the United States or an officer or agency of the United States, money payments need not be tendered in advance of attendance.

(3) The party requesting a subpoena shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and any documentary evidence the witness has produced.

(e) *Contumacy or refusal to obey a subpoena.* In case of a contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

§ 1023.119 Time and service of papers.

(a) A copy of all pleadings, briefs or other papers submitted to the Board shall be sent to every party to the dispute. Such communications shall be sent by delivering in person or by mailing, properly addressed with postage prepaid, to the opposing party or, where the party is represented by counsel, to its counsel. Pleadings, briefs or other papers filed with the Board shall be accompanied by a statement, signed by the originating party, saying when, how, and to whom a copy was sent.

(b) The Board may extend any time limitation for good cause and in accordance with legal precedent. All requests for time extensions shall be in writing except when raised during a recorded hearing.

(c) In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

Hearings

§ 1023.120 Hearings: time and place.

Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, the requirements for expedited or accelerated procedures and other pertinent factors. On request by either party and for good cause, the Board may, in its discretion, change the time and place of a hearing.

§ 1023.121 Hearings: notice.

The parties shall be given at least 15 days notice of time and place set for hearings. In scheduling hearings, the Board will consider the desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearing shall be promptly acknowledged by the parties. Failure to promptly acknowledge shall be deemed consent to the time and place.

§ 1023.122 Hearings: unexcused absence of a party.

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the presiding Administrative Judge may order the hearing to proceed and the case will be regarded as submitted by the absent party as under Rule 10.

§ 1023.123 Hearings: nature, examination of witnesses.

(a) *Nature of hearings.* Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and the Government may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(b) *Examination of witnesses.* Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding Administrative Judge shall otherwise order.

Representation

§ 1023.124 Appellant.

An individual appellant may appear before the Board in person, a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney-at-law duly licensed in any State, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

§ 1023.125 Respondent.

Counsel may, in accordance with their authority, represent the interest of the Government or other client before the

Board. They shall file notices of appearance with the Board, and serve notice on appellant or appellant's attorney.

Board Decisions

§ 1023.126 Decisions.

Except as allowed under Rule 13, decisions of the Board shall be in writing upon the record as described in Rule 15 and will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions shall be available for public inspection at the offices of the Board.

§ 1023.127 Motion for reconsideration.

(a) Motion for reconsideration shall set forth specifically the grounds relied upon to sustain the motion and shall be filed within 30 days after receipt of a copy of the Board's decision.

(b) Motions for reconsideration of cases decided under either the Small Claims (Expedited) procedure or the Accelerated procedure need not be decided within the original 120-day or 180-day limit, but shall be processed and decided rapidly.

§ 1023.128 Remand from court.

Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders.

Dismissals

§ 1023.129 Dismissal without prejudice.

In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

§ 1023.130 Dismissal for failure to prosecute.

Whenever a record discloses the failure of any party to file documents required by these rules, respond to notices or correspondence from the Board or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause why the appeal should not be dismissed or granted, as appropriate. If no cause, the Board may take such action as it deems reasonable and proper.

Sanctions

§ 1023.131 Failure to obey Board order.

If any party fails or refuses to obey an order issued by the Board, the Board may issue such orders as it considers necessary to the just and expeditious conduct of the appeal, including dismissal with prejudice.

[FR Doc. 79-25423 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 4

Procedures for the Establishment of Branches and CBCT Branches, Relocations, and Title Changes

AGENCY: Comptroller of the Currency.

ACTION: Final rule.

SUMMARY: This amendment revised 12 CFR 4.5, 4.5a, 4.6, and 4.7, regulations which describe procedures for the establishment of domestic branches and seasonal agencies, the establishment of customer-bank communication terminal (CBCT) branches, the change of location of head offices or domestic branches, and the change of corporate titles. The purpose of the amendment is to incorporate into the regulations procedural changes which will reduce processing time within the Office.

EFFECTIVE DATE: August 17, 1979.

FOR FURTHER INFORMATION CONTACT: Barbara M. Yadley, Staff Attorney, Comptroller of the Currency, Washington, D.C. 20219, (202-447-1880).

SUPPLEMENTARY INFORMATION: This amendment is issued under authority of 12 U.S.C. 1 *et seq.*, pursuant to the requirement of 5 U.S.C. 552 that each agency publish in the **Federal Register** rules of procedure, statements of the general course and method by which its functions are channeled and determined, and the established places at which, the employees from whom, and the methods whereby, the public may obtain decisions. The amendment revises 12 CFR 4.5(c), 4.5a(c), 4.6(c), and 4.7(c), paragraphs that describe the approval granted by the Comptroller to applications for the establishment of domestic branches and seasonal agencies, the establishment of CBCT branches, the change of location of head offices or domestic branches, and the change of corporate titles.

In order to eliminate delays in the processing of applications for these corporate changes, the Comptroller has established criteria to determine whether an application will receive expedited processing. If the application meets the criteria that the Comptroller has specified, the Regional Administrator for the region in which the bank is located is directed to affix the signature of the Comptroller or an authorized deputy evidencing approval (but not disapproval) of the application. If the application does not meet the specified criteria, application materials will be forwarded to the Washington Office for further processing. This procedure is intended to improve the efficiency of operations of the Office. It is estimated that these procedures will apply to 750 applications, or approximately 75 percent of all applications received each year, and will reduce processing time nearly 20 percent, or an average of 15 days for each application.

The Administrative Procedure Act does not require public rulemaking procedures or delayed effectiveness for rules of agency organization, procedure, or practice. Therefore, the amendments will become effective upon publication in the **Federal Register.** This regulation does not constitute a significant regulation under Treasury Department criteria because it relates to internal agency procedures and because it does not create additional burdens for national banks.

Drafting Information

The principal drafter of this document was Ms. Barbara M. Yadley, Staff Attorney, Office of the Comptroller of the Currency, Washington, D.C. 20219.

Adoption of Amendment

Accordingly, 12 CFR Part 4 is amended as follows:

1. Section 4.5 is amended by revising paragraph (c) to read as follows:

§ 4.5 Establishment of domestic branches and seasonal agencies.

* * * * *

(c) *Approval.* The Comptroller of the Currency determines whether or not approval of the application should be granted. The Regional Administrator is directed to affix the signature of the Comptroller or an authorized deputy evidencing approval (but not disapproval) in those cases where the following criteria are met:

(1) Applicant bank is rated group "1" or "2" under the uniform interagency bank rating system and has not been identified by the Special Projects Division as requiring review and comment.

(2) A rating of no lower than fair is given for the individual areas of management, asset quality, liquidity, earnings, and capital.

(3) Applicant has received a Community Reinvestment Act examination performance rating of no lower than satisfactory and has not been identified by the Regional Director for Customer and Community Programs as having substantive unresolved Community Reinvestment Act issues.

(4) There have been no substantive protests of the application.

(5) There is no known question concerning the legality of the proposal.

(6) The Regional Director for Corporate Activities, the Regional Administrator, and, in the case of a bank under the supervision of the Multinational Division, the Deputy Comptroller for Multinational Banking have considered all factors specified in applicable published policy statements and have recommended unconditional approval.

(7) The Regional Administrator has not noted any significant matters that would make a review by the Washington Office desirable.

An approval will ordinarily be rescinded if the branch has not commenced business within 18 months from the date of approval.

* * * * *

2. Section 4.5a is amended by revising paragraph (c) to read as follows:

§ 4.5a Establishment of customer-bank communication terminal (CBCT) branches.

* * * * *

(c) *Approval.* The Comptroller of the Currency determines whether or not approval of the application should be granted. The Regional Administrator is directed to affix the signature of the Comptroller or an authorized deputy evidencing approval (but not disapproval) in those cases where the criteria listed at § 4.5(c) for branch applications are met.

* * * * *

3. Section 4.6 is amended by revising paragraph (c) to read as follows:

§ 4.6 Change of location of head office or domestic branch.

* * * * *

(c) *Approval.* The Comptroller of the Currency determines whether or not approval of the application should be granted. The Regional Administrator is directed to affix the signature of the Comptroller or an authorized deputy evidencing approval (but not disapproval) in those cases where the following criteria are met:

(1) The application meets the criteria listed at § 4.5(c) for branch applications.

(2) The proposed relocation of a head office or branch is within the local community designated for that office in the applicant's CRA statement.

(3) The relocating office or branch is not abandoning a significant portion of the local community designated for that office in the applicant's CRA statement.

An approval will ordinarily be rescinded if the new office has not commenced business within 18 months from the date of approval.

* * * * *

4. Section 4.7 is amended by revising paragraph (c) to read as follows:

§ 4.7 Change of corporate title.

* * * * *

(c) *Approval.* The Comptroller of the Currency determines whether or not approval of the application should be granted. The Regional Administrator is directed to affix the signature of the Comptroller or an authorized deputy evidencing approval (but not disapproval) in those cases where the following criteria are met:

(1) The application meets the criteria listed at § 4.5(c) for branch applications, with the exception of the third criterion (§ 4.5(c)(3)).

(2) There are no substantive questions concerning whether the public would be confused or misled by the proposed corporate title.

* * * * *

Dated: August 13, 1979.

John G. Heimann,

Comptroller of the Currency.

[FR Doc. 79-25516 Filed 8-16-79; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9069]

Mobile Homes-Multiplex Corp., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, among other things, requires a Mt. Holly, N.J. mobile home dealer and its subsidiaries to cease entering into, or enforcing any arrangement or rule which restricts the availability of mobile home sites to only those parties who purchase, lease or rent mobile homes, accessories and services from Mobile Homes-Multiplex Corp. or other designated sources.

DATES: Complaint issued Dec. 19, 1975. Decision issued July 25, 1979.[1]

FOR FURTHER INFORMATION CONTACT: Leroy Richie, Director, 8R, New York Regional Office, Federal Trade Commission, 2243-EB Federal Bldg., 26 Federal Plaza, New York, N.Y. 10007. (212) 264-1207

SUPPLEMENTARY INFORMATION: On Wednesday, March 8, 1978, there was published in the **Federal Register,** 43 FR 9497, a proposed consent agreement with analysis In the Matter of Mobile Homes-Multiplex Corp., a corporation, and Mobile Estates, Inc., a corporation, and Mobile Estates of Southampton, Inc., a corporation, and Tower Trailer Park, Inc., a corporation, and George R. Searle, individually and as an officer of said corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR 13, are as follows: Subpart-Coercing and Intimidating: § 13.350 Customers or prospective customers; § 13.355 Customers or prospective customers of competitors. Subpart-Combining or Conspiring: § 13.395 To control marketing practices and conditions; § 13.410 To eliminate competition in conspirators' goods; § 13.470 To restrain or monopolize trade; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart-Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533-45 Maintain records. Subpart-Cutting Off Access To Customers or Market: § 13.540 Forcing goods; § 13.605 Withholding supplies or goods from competitors' customers. Subpart-Cutting

[1] Copies of the Complaint and Decision and Order are filed with the original document.

Off Supplies or Service: § 13.610 Cutting off supplies or service; § 13.655 Threatening disciplinary action or otherwise.

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

James A. Tobin,

Acting Secretary.

[FR Doc. 79-25510 Filed 8-16-79; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 1

[Docket No. RM79-65]

Interim Regulation Establishing Procedures for Seeking Interpretations and Declaratory Orders Under the Natural Gas Policy Act of 1978

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interim Regulations; and request for comments.

SUMMARY: Section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) requires the Federal Energy Regulatory Commission (Commission) to prescribe procedures for seeking interpretation under the NGPA. The Commission promulgates interim regulations setting forth procedures whereby any person may seek interpretations of the NGPA as well as rules and orders issued thereunder. The interim rules provide that such an interpretation is issued by the General Counsel and may be relied upon only by the person to whom it is issued. The interim rules also provide procedures for seeking Declaratory Orders and interpretative rules from the Commission concerning the NGPA. The effect of these rules is to make clear both the procedures for applying for interpretations and the effect of an interpretation.

DATES: *Effective date:* August 7, 1979; deadline for comments September 12, 1979; hearing September 12, 1979.

ADDRESS: Send comments to Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Mary Jane Reynolds, (202) 275-4283.

August 7, 1979.

A. Background

In order to implement its responsibility under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), the Federal Energy Regulatory Commission (Commission), is promulgating Interim Regulations providing procedures so that persons may seek an interpretation pertaining to the NGPA or any rule or order issued thereunder. The Commission is also promulgating procedures whereby persons may seek interpretative rules pertaining to the NGPA or any rule or order issued thereunder by the Commission. Section 502(c) of the NGPA requires the Commission to establish by rule "* * * procedures which are available to any person for the purpose of seeking an interpretation." As will be discussed below, the rules are issued on an interim basis so that persons interested in seeking an interpretation from the General Counsel of the Commission may do so immediately.

B. Summary of the Commission's Interim Regulations

The interim rule establishes a new § 1.42 in the Commission's rules of practice and procedure (18 C.F.R. 1.42) in order to provide procedures whereby persons may seek written interpretations from the General Counsel construing the NGPA, or rules or orders issued thereunder by the Commission. Procedures also are established for publication of interpretative rules that will have general applicability and effect.

Interpretations will be issued based on certain facts relating to either completed or prospective acts or transactions. If an interpretation is sought based on prospective acts or transactions, the planned act or transaction must be sufficiently developed so that the likelihood of its occurrence can be demonstrated. Interpretations will not be made in cases where the facts, acts or transactions are hypothetical. The Commission believes that Staff time and effort is more efficiently utilized by dealing with facts, acts, or transactions that will in all likelihood occur or have occurred.

Section 1.42(d) establishes the necessary contents of a request for an interpretation. A full and complete statement of the facts pertaining to the act or transaction is required. If the request for an interpretation describes an act or transaction which is part of a larger integrated act or transaction, information pertaining to the entire transaction must be submitted.

A request for an interpretation must also indicate for which statutory section, rule or order an interpretation is sought, and must state the precise question which the applicant wishes answered. The regulations provide that the applicant may set forth a proposed answer, in which case the request must also set forth the legal basis for the proposed answer and the legal and business consequences which will flow from the transaction.

A request made to the General Counsel for an interpretation must be accompanied by a statement that to the best of the applicant's information, knowledge and belief, there is no untrue statement of a material or relevant fact, and that there was no omission of a material or relevant fact. Section 1001 of Title 18 of the United States Code is applicable to the factual statements presented in request for interpretations.

The regulations also provide that a person requesting an interpretation specify in the request each person who is a direct participant in the act, transaction or circumstance. Likewise each direct participant must be notified of the request and be provided a copy of it. If the direct participant disagrees as to the accuracy of a relevant or material fact, he may so inform the Office of the General Counsel.

Paragraph (e) provides that the General Counsel may request additional information in connection with any interpretation request. Paragraph (f) indicates that information submitted in a request for an interpretation may be used by the Commission or Commission Staff in their official capacities. Accordingly, information provided can be used in an investigation.

Paragraph (g)(1) states that any interpretation made by the General Counsel shall be in writing. The General Counsel may determine not to issue an interpretation, in which case the person who requested the interpretation and direct participants to the act or transaction shall be notified in writing of such decision and the reason for it. (§ 1.42(g)(2))

Paragraph (g)(3) provides that only persons to whom an interpretation is specifically addressed, and other persons who are named in the request, who are direct participants in the transaction and who are aware of the pendency of the request, may rely upon the interpretation. The purpose of the provision is to insure that requests for interpretations be limited to specific acts or transactions. Interpretations, generally, have no precedential value,

and should not be cited as such in Commission proceedings or in other applications for interpretations. No reliance by anyone on an interpretation is permitted if the request for interpretation omitted or misrepresented a material fact, or if a material fact has changed after an interpretation is issued. If the action taken by persons directly involved in the acts or transactions differs from the facts presented, likewise, no reliance on an interpretation is permitted.

The Commission also wishes to note that it had established a procedure whereby persons could telephonically contact the Commission staff regarding questions about certain NGPA provisions and the regulations issued thereunder. Callers were informed at the time the telephonic contact occurred that an oral answer could be relied upon only if the interpretation was confirmed in writing.[1] Indeed the Commission so stated in a press release issued on November 1, 1978, by the Commission's Office of Public Information. We wish to make clear again that no caller may rely on oral advice provided either in the past or in the future unless confirmed in writing. If persons need advice upon which they can rely with certain limitations, the procedures in this rule should be utilized.

Section 1.42(g)(4) states that an interpretation may be rescinded or modified prospectively at any time. A rescission or modification may be effected by notifying persons who are entitled to rely on the interpretation of the rescission or modification at the address(es) contained in the original request. Section 1.42(g)(5) provides that an interpretation can only be relief upon to the extent that the applicable NGPA section, or rule or order remains in effect. The Commission is thus placing persons requesting interpretations on notice that if the law, rule or order for which an interpretation has been given changes, the interpretation may no longer be applicable. Moreover, if the rule or the NGPA is amended retroactively, the interpretation may be modified retroactively to the date of the effective amendment or statutory change. The Commission recognizes that in certain limited situations a retroactive application of a regulation may work a special hardship, inequity, or unfair distribution of burdens. In such circumstances, the Commission's procedures for adjustments, 18 CFR 1.41 are applicable enabling persons thus disadvantaged by their reliance on an interpretation to obtain relief.

An interpretation of the General Counsel is binding on Staff; Staff will not recommend to the Commission that it take enforcement action against a person who has acted in reliance upon an interpretation he has received from the General Counsel. However, since the interpretation is not binding upon the Commission, the Commission is of the view that an interpretation does not constitute final agency action within the meaning of the Administrative Procedure Act. 5 U.S.C. 704, and hence is not subject to judicial review. Although not legally binding upon the Commission, which can revoke, modify or rescind the opinion of the General Counsel, it is unlikely that the Commission would seek civil or criminal penalties against a person for past activities undertaken in reliance upon the written interpretation of the General Counsel.

Section 1.43 allows any person to seek a declaratory order from the Commission. However, the Commission in its discretion may place a low priority on the issuing of Declaratory Orders in light of its work load and because of the availability of interpretations from the General Counsel.

There is no appeal from an interpretation of the General Counsel. The reason there is no administrative review of the interpretation lies in the nature of an interpretation and in the statutory basis for the rule. Section 502(c) requires the Commission to promulgate rules for the making of adjustments to rules or orders issued by the Commission under the NGPA as may be necessary to prevent special hardship, inequity or unfair distribution of burdens. Such rule shall include procedures for obtaining interpretations, modifications, rescissions of, exceptions to, or exemptions from such rules or orders. Section 502(c) also requires that appeals from denials of adjustments be provided. The Commission has promulgated such procedures contained in 18 CFR 1.41 wherein requests for adjustments can be made and review from denials of adjustments can be obtained. Those procedures contemplate the grant of specific relief in order to prevent special hardship, inequity or unfair distribution of burdens. Interpretations do not fit within the nature of such proceedings because an interpretation does not grant or deny relief; rather it is an explanation of how the law or Commission rules or orders affect an actual or contemplated business transaction. An interpretation is thus a legal opinion of the General Counsel clarifying the meaning of the NGPA or a rule or order of the Commission issued thereunder as they may relate to a specific transaction.

The concept in Section 502(c) of a denial of adjustment relief requiring administrative review is thus inappropriate when applied to interpretations, and accordingly, the interim rule provides that no appeal of an interpretation of the General Counsel may be taken to the Commission. As stated above, if a person believes the regulations work a special hardship, inequity, or unfair distribution of burdens, a clarification of the meaning of the regulations should not be requested. An application pursuant to the Commission's adjustment procedures in § 1.41 is the proper course of action wherein the method the regulation works the hardship, inequity or unfair distribution of burdens can be addressed. Likewise, since an interpretation is a legal opinion of the General Counsel and not an order of the Commission it is not a final agency action and therefore judicial review of an interpretation is inappropriate.

As discussed above, the Commission generally will not pass upon an interpretation issued by the General Counsel. However, the Commission upon its own motion or upon the request of any person, may cause to be published in the **Federal Register** an interpretative rule. Interpretative rules have general applicability, and any person is entitled to rely upon them and cite them as precedent. Since an interpretative rule is issued by the Commission and not subject to further Commission review, we realize that the issuance of an interpretative rule may in some circumstances be final agency action from which judicial review may be obtained.

We note that any person may request the Commission to issue an interpretative rule. While applicants may request such treatment, the Commission will not automatically grant it. The Commission intends that interpretative rules will deal with recurring questions, questions which would have a major precedential effect, or other questions which the Commission believes it should address publicly. The request for an interpretative rule should not be made in an attempt to exhaust administrative remedies for ultimate judicial review. If an applicant wishes a Commission interpretation under the NGPA, he may seek a Declaratory Order.

The Commission has decided to make these regulations effective immediately

[1] Callers were specifically instructed that any answer provided was in informal staff interpretation and could not be relied upon as an official interpretation. Callers were notified that an official interpretation could be obtained by filing a request with the General Counsel.

on an interim basis. Since the NGPA is recently enacted legislation which substantially changes the method and manner by which natural gas prices will be established, important questions regarding the NGPA have been raised. In addition, the Commission has promulgated regulations implementing certain parts of the NGPA, and shall continue to promulgate regulations pursuant to the NGPA, which may need clarification. As a result, the Commission believes it necessary to implement these regulations immediately, so that persons in need of an interpretation can obtain one as quickly as possible.

C. Written Comment Procedures

Interested persons are invited to submit written comments, data, views or arguments with respect to this proposal. An original and 14 copies should be filed with the Secretary of the Commission. All comments received prior to September 12, 1979 will be considered by the Commission prior to promulgation of final regulations. All written submissions will be placed in the Commission's public files and will be available for public inspection in the Commission's Office of Public Information, 825 North Capitol Street, N.E., Washington, D.C., during regular business hours. Comments should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and should reference Docket No. RM79–65.

Public Hearing Procedures

A public hearing concerning this proposal will be held in Washington, D.C. on September 12, 1979 beginning at 9:30 a.m. and will continue if necessary on the following day. Any person interested in this proceeding or representing a group or class of persons interested in this proceeding may make a presentation at the hearing provided a written request to participate is received by the Secretary of the Commission prior to 4:30 p.m., on September 4, 1979.

Requests to participate in the hearing should include a reference to Docket No. RM79–65, as well as a concise summary of the proposed oral presentation and a number where the person making the request may be reached by telephone. Prior to the hearing, each person filing a request to participate will be contacted by the presiding officer or his designee for scheduling purposes. At least five copies of the statement shall be submitted to the Secretary of the Commission prior to 4:00 p.m., September 11, 1979. The presiding officer is authorized to limit oral presentation at the public hearing both as to length and as to substance. Persons participating in the public hearing should if possible, bring 10 copies of their testimony to the hearing.

The hearing will not be a judicial or evidentiary-type hearing. There will be no cross-examination of persons presenting statement. However, the panel may question such persons and any interested person may submit questions to the presiding officer to be asked of persons making statements. The presiding officer will determine whether the time limitations permit it to be presented. If time permits, at the conclusion of the initial oral statements, persons who have made oral statements will be given the opportunity to make a rebuttal statement. Any further procedural rules will be announced by the presiding officer at the hearing. A transcript of the hearing will be made available at the Commission's Office of Public Information.

(Natural Gas Policy Act of 1978, Pub. L. No. 95–621; Department of Energy Organization Act, Pub. L. No. 95–91; E.O. 12009, 42 F.R. 46267)

In consideration of the foregoing, Part I, Subchapter A, Chapter I of Title 18, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

1. Part 1, Subchapter A, Chapter I of Title 18, Code of Federal Regulations, is amended in the Table of Contents by adding in the appropriate numerical order two new sections and headings to read as follows:

PART 1—RULES OF PRACTICE AND PROCEDURE

* * * * *

Sec.

1.42 Interpretations and Interpretative Rules under the NGPA.

1.43 Declaratory Orders under the Natural Gas Policy Act of 1978.

* * * * *

2. Part 1, Subchapter A, chapter I of Title 18, Code of Federal Regulations, is amended by adding a new § 1.42 to read as follows:

§ 1.42 Interpretations and interpretative rules under the NGPA.

(a) *Purpose and applicability.—(1) Purpose.* The purpose of this section is to provide procedures by which: (i) A person may seek a written interpretation from the General Counsel construing a provision of the NGPA, or clarifying a rule issued by the Commission under the NGPA; and (ii) the Commission may publish an interpretative rule that will have general applicability and effect.

(2) *Applicability.* (i) This section applies to requests under section 502(c) of the NGPA for interpretations of the NGPA or of rules or of orders, having the applicability and effect of a rule as defined in 5 U.S.C. 551(4), issued under the NGPA. It does not apply to orders issued under sections 301, 302, and 303 of the NGPA.

(ii) This section applies to requests for interpretations to prospective, existing or completed facts, acts, or transactions. Interpretations based on hypothetical facts, acts, or transactions will not be considered.

(b) *Definitions.* For the purpose of this section, the following definitions apply.

(1) "Direct participant" means any person or legal entity which is, or plans to be an actual party in the act, transaction or circumstance presented, and who has an immediate or direct financial interest in the act, transaction or circumstance.

(2) "General Counsel" means the General Counsel of the Commission or his designate.

(3) "Interpretation" means a written statement of the General Counsel which applies a particular rule to a particular set of facts, acts, circumstances or transactions. In the discretion of the General Counsel, the interpretation may contain a detailed factual and legal analysis, a summary of the facts or the law, or both, or it may be a conclusionary statement.

(4) "Interpretative rule" means an official interpretative statement of general applicability issued by the Commission and published in the **Federal Register** that applies the NGPA or rules issued thereunder to a specific set of facts, acts, circumstances and transactions.

(5) "NGPA" means the Natural Gas Policy Act of 1978.

(6) "Request" means a request for an interpretation.

(7) "Rule" means a rule or an order having the effect of a rule as defined in 5 U.S.C. 551(4).

(c) *Persons who may request an interpretation.* (1) Any person who is or will be a direct participant in an act, transaction or circumstance affected by the NGPA or a rule issued by the Commission under the NGPA may file with the Office of the General Counsel a request for an interpretation.

(2) Requests for Interpretations shall be addressed to the Office of the General Counsel as follows:

Federal Energy Regulatory Commission, Interpretations Section, Office of the General Counsel, Suite 8000, 825 North Capitol Street, NE, Washington, D.C. 20426.

(d) *Content of request.*—(1) *Facts.* A request for interpretation shall contain a full and complete statement of all relevant and material facts pertaining to the act, transaction, or circumstance that is the subject of the request for interpretation. When the request pertains to only one step of a larger integrated transaction, the facts, circumstances and other relevant information pertaining to the entire transaction shall be included in the request.

(2) *Statement of the question.* The request shall clearly designate the section of the statute, regulation or rule or part thereof which the person making the request seeks to have interpreted and shall set forth clearly and concisely the question for which an interpretation is sought. The request may also set forth a proposed answer to the question.

(3) *Analysis.* If the request proposes a particular answer:

(i) The request shall set forth a legal analysis in support of the proposed answer and shall cite relevant authorities in support thereof.

(ii) The request shall set forth the legal and business consequences which will flow from the proposed answer.

(4) *Factual statements.* (i) The request shall be accompanied by a statement that to the best of the applicant's personal information, knowledge, and belief there is no untrue statement of a material or relevant fact and there is no omission of a material or relevant fact made in the request.

(ii) Any untrue statement or omission of a material or relevant fact upon which the Office of the General Counsel relied in a request for an interpretation shall be deemed to be a statement or entry under section 1001 of Title 18, United States Code.

(5) *Notification of other parties.* (i) Each applicant submitting a request shall specify each person who is a direct participant in the circumstance, act or transaction, shall notify them in writing of the request for an interpretation and shall send them a copy of such request. Such notification and the addresses of the persons notified must be included in a request to the General Counsel.

(ii) Each person notified pursuant to subdivision (i) of this subparagraph may submit information regarding any fact provided in the request of which it has personal knowledge, if such fact is different from the facts presented by the applicant. Such fact shall be presented to the Office of the General Counsel as set forth in subparagraph (4) of this paragraph.

(e) *Additional information.* The General Counsel may request additional information, documentation or legal analysis in connection with any request for any interpretation.

(f) *Referral of information.* Information submitted in a request for interpretation may be used by the Commission or its Staff in their official capacity. Any information received shall be placed in a public file in the Commission's Office of Public Information.

(g) *The interpretation.* (1) Except as provided in paragraph (g)(2) of this section, the General Counsel shall provide a copy of his or her written interpretation of the NGPA or rule as applied to the act, transaction or circumstance presented upon the person who made the request for the interpretation and upon persons named in the request as direct participants in the act transaction or circumstance.

(2) The General Counsel may determine not to issue an interpretation, in which case the person who made the request and direct participants as specified in the request shall be notified in writing of the decision not to issue an interpretation, and the reason for the decision.

(3) Only those persons to whom an interpretation is specifically addressed and other persons who are named in the request, who have been informed by the applicant for an interpretation of the pendency of the request and who are direct participants in the act, transaction or circumstance presented, may rely upon it. The effectiveness of an interpretation depends entirely on the accuracy of the facts presented to the General Counsel. If a material or relevant fact has been misrepresented or omitted or if any material or relevant fact changes after an interpretation is issued or if the action taken differs from the facts presented in the request, the interpretation may not be relied upon by any person.

(4) An interpretation may be rescinded or modified prospectively at any time. A rescission or modification is effected by notifying persons entitled to rely on the interpretation at the address contained in the original request.

(5) Any interpretation based on the NGPA or a rule issued thereunder in effect at the time of issuance may be relied upon only to the extent such law or rule remains in effect.

(6) Except as provided in subparagraphs (3), (4) and (5) of this paragraph, the Staff will not recommend any action to the Commission which is inconsistent with the position espoused in the interpretation. The interpretation of the General Counsel is not the interpretation of the Commission. Any interpretation provided by the General Counsel is given without prejudice to the Commission's authority to consider the same or like question and to issue a declaratory order to take other action which has the effect of rescinding, revoking or modifying the interpretation of the General Counsel.

(h) *Appeal and judicial review.* There is no appeal to the Commission of an interpretation.

(i) *Interpretative rules.* (1) Upon the petition of any person or upon its own motion the Commission may publish in the **Federal Register** an interpretative rule regarding any question arising under the NGPA or a rule promulgated thereunder. Any person is entitled to rely upon an interpretative rule.

§ 1.43 Declaratory Orders under the Natural Gas Policy Act of 1978.

The Commission may issue a declaratory order concerning the Natural Gas Policy Act of 1978, in accordance with the Rules of Practice and Procedure in this Part 1.

[FR Doc. 79-25457 Filed 8-16-79; 8:45 am]
BILLING CODE 6450-01-M

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18 CFR Parts 154 and 157

[Docket No. RM79-22]

Amendment and Clarification of the Commission's Interim Regulations Implementing the Natural Gas Policy Act of 1978 and Regulations Under the Natural Gas Act; Order on Rehearing of Order No. 23-B

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on Rehearing of Order No. 23-B.

SUMMARY: The Federal Energy Regulatory Commission, in Order No. 23-B, set forth the requirements for pipeline evidenciary submissions and protests involving the interpretation of price escalation provisions in natural gas purchase contracts. The procedure is necessary for the Commission to exercise its statutory review function of rate-increase filings under the Natural Gas Act. The Order on Rehearing of Order No. 23-B amends those procedures in the following ways: (1) Pipelines must submit, by September 5, 1979, data concerning small producer contracts; (2) producers are required to be joined as parties to any protest; (3)

producers may request a copy of the pipeline evidenciary submissions, and may file supplemental information.

DATES: Amendments effective on August 15, 1979.

ADDRESSES: All filings should reference Docket No. RM79–22 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Philip Yates, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 275–4845.

August 6, 1979.

On June 21, 1979, the Federal Energy Regulatory Commission (Commission) issued Order No. 23–B [1] in Docket No. RM79–22. That order established "a general protest procedure in which parties in interest can petition the Commission for a specific determination as to whether a particular contract clause constitutes the requisite authority to charge and collect Natural Gas Policy Act rates." [2]

Fifteen applications for rehearing of Order No. 23–B were timely filed.[3] Several made helpful suggestions which have been adopted.

I. Burden of Proof

Order No. 23–B addressed the proper distribution of the burden of proof in cases involving a third party protest to an assertion of contractual authority by the parties to the contract. That order allocated the initial burden of going forward (also known as the burden of production) upon the third party protestor, to establish that the contract did not constitute such authority. If that burden is satisfied, a hearing will be held; if not, the third party protest will be summarily dismissed. At the hearing, Order No. 23–B set the burden of persuasion upon the parties to the contract; to prevail in their position, the parties must prove by a preponderance of the evidence that the contract does constitute the requisite contractual authority.

Almost every application for rehearing objected to this allocation of the burden of proof. Potential third party protestors, as well as the potential opponents of such protests took similar, mirror-image positions: the full burden should be on the other side. Basic evidence law and the Administrative Procedure Act were cited by both sides in support of their contrary positions. The Commission will not change this allocation of burdens, but we will further amplify the respective burdens, and attempt to give additional guidance to the Administrative Law Judges in determining whether the third party protestor's burden of production has been met.

As stated in Order No. 23–B, and earlier in Order No. 23, "considerable weight" will be given to the interpretation ascribed to a contract by the parties to the contract. In essence, this statement reflects a presumption that (1) the parties to a natural gas purchase contract should know what their intent was when they executed the contract, and (2) those parties are truthful in an assertion regarding that intent. Thus, when a pipeline and a producer assert in a filing to the Commission that a particular contract authorizes the collection of an NGPA maximum lawful price, the Commission will presume that assertion is accurate.[4] If nothing more is shown, that presumption will stand.

However, the presumption may be rebutted by a third party protestor, by coming forward with enough evidence to show that there is not contractual authority to charge and collect the NGPA rate. That showing must involve more than a "scintilla" of evidence; it must be such that a reasonable man could infer that contractual authority does not exist.[5]

If the third party protestor's burden of production is satisfied, a hearing will be held. However, as stated previously, the burden of persuasion will be upon the parties to the contract to establish their position by a preponderance of the evidence.[6] The burden of persuasion is properly placed on the parties to the contract because they have much easier access to the information which is relevant to the issue of contractual intent.

The Commission also should address the burden of proof involving a protest by a party to a natural gas contract. In such a case, the protestor will have no burden of going forward, because there is no presumption to overcome. Further, the burden of proof in such a case will be entirely on the party seeking the rate increase.

One application for rehearing requested that Order No. 23–B should provide for the summary grant of a protest. The Commission believes there cannot be a summary granting of a third party protest in the face of the parties' assertion of the existence of contractual authority to charge and collect NGPA rates. In such a case, even if the contract on its face apparently will not support an assertion of contractual authority, that contract must be interpreted in light of the commercial context of the contract; the parties must have an opportunity to establish that context.

II. Evidentiary Submissions

Several comments addressed the evidentiary filings required to be made by interstate pipelines. The most obvious defect in the requirement was noted by Transcontinental Gas Pipeline Corporation: Order 23–B limited the required evidentiary submissions by interstate pipelines to those contracts for which a blanket affidavit was filed or for which an interim or retroactive collection filing was made. *See* § 154.94(h) and Part 273 of the Commission's regulations. This limitation left out small producer contracts, because small producers do not necessarily make such filings.

There is no basis for treating small producer contracts differently than other contracts for purposes of determining whether there is contractual authority to charge and collect a maximum lawful price set by the NGPA. Accordingly, the Commission has amended the small producer regulations in § 157.40 to allow a protest to be made to an assertion by a small producer that the requisite contractual authority exists. Conforming amendments have been made in § 154.94(j) to include reference to these protests. However, the pipelines will not be required to submit the information regarding small producers until September 5, 1979. *See* § 154.94(j)(2)(i).

Several other defects were pointed out by other parties. The rules will be amended to include the following changes:

(1) Producers will be allowed, in § 154.94(j)(2)(i), to request a copy of an evidentiary submission that relates to that producer, and to request from the pipeline a list of the parties served with a copy of the evidentiary filing.

(2) Producers will be allowed, in § 154.94(j)(2)(ii), to file additions to the evidentiary filings submitted by the pipeline.

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[1] 44 FR 38834 (July 3, 1979).

[2] Order No. 23 at 52 (44 FR 16895, March 20, 1979). For purposes of this order "assertions of contractual authority" refers to the assertion of the contractual authority to charge and collect a maximum lawful price under the Natural Gas Policy Act of 1978 (NGPA).

[3] See appendix for list of those who submitted applications for rehearing.

[4] Associated Gas Distributors requested that the pipeline evidentiary filings be made under oath. This will not be required. The penalties for false filings contained in 18 U.S.C. 1001 apply to such filings whether or not the filing is made under oath.

[5] *See* McCormick on Evidence, 2nd Ed. at page 789.

[6] The Commission's view of presumptions is consistent with Section 301 of the Federal Rules of Evidence.

(3) Pipelines will not be required to resubmit information that has previously been filed in a prior evidentiary submission. If, for example, a new well is the subject of an interim collection filing, and the information is contained in a prior evidentiary submission, the pipeline will satisfy the requirements of § 154.94(j)(1) by simply refering to the prior filing. *See* § 154.94(j)(1)(vi).

No other changes will be made in the required evidentiary filings. If additional information is required by a third party protestor, access to the entire contract is available both in the Commission's files and in the public files of each natural gas company. *See* § 154.1 of the Commission's regulations. The present filing requirements will supply potential protestors the opportunity to identify and protest those contracts in which they may have an interest.

III. Protests

Several producer comments focused on the issue of adequate notice of a protest to the parties to the contract. As correctly pointed out by the Indicated Producers, Order No. 23–B is defective because it does not provide specific notice to the parties to the natural gas purchase contract. Accordingly, § 154.94 (h)(8) and (i)(3) have been amended to include a requirement that a protest be served with the producer, in the case of a protest by the purchaser, and on both the producer and purchaser, in the case of a third party protest.

Several applications for rehearing indicated a strong belief that producers should be *required* to be joined as parties in a case resulting from a third party protest, rather than be *allowed* to intervene. The Commission agrees, since the issues raised by a protest always will involve the rights of the producer, and any order by the Commission as a result of a protest would effect those rights. Consequently, § 154.94(j)(4)(ii) has been amended to reflect this view.

The Commission disagrees with the suggestion that the regulations should limit who can file a protest. The Commission believes that the public interest is not served by attempting to limit the class of persons who may protest an assertion of contractual authorization. If a "standing" requirement were imposed, substantial resources of the protestor, producer, purchaser and the Commission would have to be expended in determining that issue, rather than the more fundamental question of the existence contractual authority. For these reasons, the Commission will not impose limitations upon who may file a protest.[7]

However, the Commission wishes to make it clear that protests must specifically identify the contract which it addresses. Further, the protestor must state the reasons why he believes that any particular contract is inconsistent with the conclusion that it constitutes contractual authority to charge and collect the NGPA rate. Thus, "blanket protests" which apply to all natural gas purchase contracts will be summarily dismissed as not having met the burden of production. *See* § 154.94(j)(3).

The Commission also wishes to clarify, pursuant to the request of the New York Public Service Commission, the meaning of the words "supplemental filing" on page 16 of Order 23–B. The Commission intends that a protest may be supplemented by additional information, if the additional information is submitted before the protest is resolved by summary dismissal or before the hearing.

IV. Jurisdiction under the Natural Gas Act

Several of the parties filing applications for rehearing objected to the Commission's position, taken in the Order on Rehearing of Order No. 23, issued May 11, 1979, that the Commission would interpret only contracts involving natural gas which was subject to the jurisdiction of the Commission under the Natural Gas Act ("NGA gas"). Shell Oil Company, on the other hand, objected to allowing protests to be filed to interim collections involving "NGA gas" which will become "non-NGA gas" as soon as a final determination is made that the gas falls within one of the categories governed by NGPA section 601(a)(1)(B), (as soon as such a determination becomes final, the "NGA gas" becomes "non-NGA gas").

The Commission will adhere to its previously stated position: "NGA gas" contracts are within the scope of the Commission's duty to ascertain whether contractual authority exists for a rate increase. There is no such duty for "non-NGA gas." And specifically addressing Shell Oil's concern, even if "NGA gas" will soon become "non-NGA gas," the duty continues *until* the gas becomes "non-NGA gas." Thus, protests concerning the gas covered by NGPA section 601(a)(1)(B) will be considered but the Commission's interpretation will govern only those deliveries made before the determination becomes final.

The Commission orders: Except to the extent previously discussed, the applications for rehearing of Order 23–B are denied.

This order on rehearing amends the rules set forth in Order 23–B which will become effective as final rules on August 15, 1979. In Order 23–B the Commission found that further notice and public procedures on the rules promulgated in Order 23–B was unnecessary and impracticable, and that good cause existed to dispense with additional notice and opportunity for comment. For the same reasons as were articulated in Order No. 23–B, the Commission makes the same finding with respect to this order on rehearing.

(Natural Gas Act, as amended, 15 U.S.C. 717 *et seq.*; Department of Energy Organization Act, 42 U.S.C. 7107, *et seq.*; E.O. 12009, 42 FR 46267; Natural Gas Policy Act of 1978, Pub. L. 95–621)

In consideration of the foregoing, Parts 154 and 157 of Subchapter E, Chapter I, Title 18, Code of Federal Regulations, are amended as set forth below. The changes in the rules contained herein are procedural, and thus the thirty-day requirement of 5 U.S.C. 553(d) does not apply. In addition, it is necessary, in view of the need to coordinate these changes with the rules promulgated in Order No. 23–B, to make these amendments effective on August 15, 1979.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 154—RATE SCHEDULES AND TARIFFS

1. In § 154.94 paragraphs (h)(6) is amended; (i)(3) is revised and (j)(1)(i), (v), (vi), (2), (3), (4) and (5)(i) are amended to read as follows:

§ 154.94 Changes in rate schedules.

* * * * *

(h) *Blanket filing.* * * *

(8) *Protests.* Any protest to a blanket affidavit shall be submitted to the Commission and the producer

(i) In the case of a protest by the purchaser in the first sale, within 60 days from the filing of the blanket affidavit or August 15, 1979, whichever is later, or

(ii) In any other case, within 120 days from the date of the filing of such blanket affidavit, or October 15, 1979, whichever is later. A protest filed under this clause (ii) shall also be served upon the purchaser in the first sale.

(i) *Interim and retroactive collections.* * * *

(3) *Protests.* (i) Any protest shall be submitted to the Commission and to the producer

[7] Staff also may file protests; staff protests will be treated the same as other third party protests.

(A) In the case of a protest by the purchaser in the first sale, within 60 days from the date of such filing or August 15, 1979, whichever is later; or

(B) In other other case, within 120 days from the date of such filing, or October 15, 1979, whichever is later. A protest filed under this clause (B) shall also be served upon the purchaser in the first sale.

(ii) If a protest is made with respect to a filing under paragraph (i)(1) of this section, on the grounds of lack of contractual authorization, then notwithstanding § 273.302(f) of this chapter, any refund obligation under § 273.302 of this chapter shall continue until contractual authorization is established or until refund is made in accordance with the direction of the Commission.

(j) *Evidentiary submission by pipeline, protest procedure*—(1) *Evidentiary submission.* * * *

(i)(A) The rate schedule number assigned by the Commission for each contract for each first sale of natural gas for which the seller has made a rate increase filing under paragraph (h) or (i) of this section;

(B) The date of the contract for each first sale of natural gas by a small producer for which the small producer has asserted the right to collect the maximum lawful price under the NGPA.

* * * * *

(v) The rate schedule number (or if none has been assigned, the date of the contract) for each natural gas contract listed in subparagraph (1)(i) of this paragraph with respect to which the pipeline has filed a protest on grounds of lack of contractual authorization under paragraph (h)(8) or (i)(3) of this section or under § 157.40(1)(c)(v)(B).

(vi) Any requirement of this section for data which has previously been submitted in an evidentiary submission under this section may be satisfied by a specific reference sufficient to locate the data in the prior evidentiary submission.

(2) *Filing.* (i) The evidentiary submission required by subparagraph (1) of this paragraph shall be filed with the Commission and, on request, with the seller in the first sale, and any State Commission, interstate pipeline or local distribution company. In the case of all contracts except small producer contracts, the evidentiary submission shall be filed not later than August 15, 1979, or 60 days after the pipeline received notice of a filing pursuant to § 273.202(d)(iii) of this chapter or paragraph (h)(6) of this section, whichever is later. In the case of small producer contracts, as defined in § 157.40(a), the evidentiary submission shall be filed no later than September 5, 1979, or, not later than 60 days after the date on which the pipeline knew or should have known of the seller's assertion of contractual authority to charge and collect a maximum lawful price under the Natural Gas Policy Act of 1978, whichever is later. In either case, the seller in the first sale may request a service list of the parties served with the evidentiary filing.

(ii) The seller in the first sale may submit, to the Commission and any other party served with the evidentiary submission, any supplemental information deemed relevant to the evidentiary submission.

(3) *Contents of protests.* Each protest filed under paragraph (h)(8) or (i)(3) of this section or § 157.40(c)(1)(v)(B) shall

(i) Specifically identify the contract which is protested,

(ii) Set forth the text of the contractual provisions which the protestor believes is inconsistent with the conclusion that the contract authorizes the seller to collect the filed-for NGPA rate, and the specific reasons why the protestor believes such inconsistency exists, and

(iii) May include any other evidence which the protestor believes is relevant to the issue of the existence of contractual authorization to collect the NGPA rate.

(4) *Protest procedure.* (i) Each protest filed under paragraph (h)(8) or (i)(3) of this section or § 157.40(1)(c)(v)(B) of this subchapter shall be noticed in the **Federal Register** and transmitted to the Chief Administrative Law Judge for assignment to an Administrative Law Judge. A protest will be set for hearing unless summary disposition is made of the protest.

(ii) Upon receipt by the Commission of any protest referred to in subdivision (i) of the subparagraph, the seller in the first sale shall be joined as a party.

(5) *Authority of Chief Administrative Law Judge.* (i) In the case of any proceeding relating to a protest filed under paragraph (h)(8) or (i)(3) of this section or under § 157.40(1)(c)(v)(B), the Chief Administrative Law Judge is authorized to issue such procedural orders, including orders setting matters for heating, severing and consolidating proceedings and certifying questions to the Commission, as he determines necessary or appropriate for the expeditious consideration of such protests. The Chief Administrative Law Judge may, by such order, authorize the Administrative Law Judge to whom a protest is assigned to issue similar procedural orders relating to that protest.

(ii) * * *

(6) *Definitions.* * * *

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

2. Section 157.40(c)(1) is amended in clause (v) by inserting "(A)" at the beginning thereof and by adding subclause (B) to read as follows:

§ 157.40 Exemption of small producers from certain filing requirements.

* * * * *

(c)(1) * * *

(v)(A) * * *

(B) Any protest to an assertion of contractual authority to charge and collect a maximum lawful price under the NGPA shall be submitted to the Commission, and to the small producer.

(1) In the case of protest by the purchaser in the first sale, within 60 days from the date on which the purchaser knew, or should have known, of the assertion, or September 1, 1979, whichever is later; or

(2) In any other case, within 60 days after the date on which the evidentiary submission referencing such contract was filed, or November 5, 1979, whichever is later. A protest filed under this clause *(2)* shall also be served upon the purchaser in the first sale.

Appendix

Applications for rehearing of Order No. 23–B were filed by:

(1) Amoco Production Company

(2) Associated Gas Distributors

(3) The State of California and the Public Utilities Commission of the State of California

(4) Gas Consumers Group

(5) Gulf Oil Company

(6) Indicated Producers

(7) Interstate Natural Gas Association of America

(8) The State of Michigan and the Michigan Public Service Commission

(9) Natural Gas Pipeline Company of America

(10) The Public Service Commission of the State of New York

(11) Tenneco Oil Company, *et al.*

(12) Shell Oil Company

(13) Transco Exploration Company

(14) Transcontinental Gas Pipeline Corporation

(15) Memphis Light, Gas and Water Division, City of Memphis, Tennessee

[FR Doc. 79-25456 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 18

[Docket No. 20718; FCC 79-471]

Induction Cooking Ranges

AGENCY: Federal Communications Commission.

ACTION: First Report and Order in Docket 20718.

SUMMARY: The FCC adopts regulations for induction cooking ranges, including provision for mandatory certification without recertification. These regulations establish technical standards to provide reasonable assurance that the induction cooking range will not become a source of harmful interference to other devices using carrier current transmissions on domestic power lines.

Further reports and orders dealing with other aspects of Part 18—Industrial, Scientific, and Medical Equipment will be issued at a later date.

EFFECTIVE DATE: February 1, 1980.

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

FOR FURTHER INFORMATION CONTACT: Herman Garlan, Office of Science and Technology, (202) 632-7095.

SUPPLEMENTARY INFORMATION:

First Report and Order Adopting Regulations for Induction Cooking Ranges [44 FR 32419]

Adopted: August 1, 1979.

Released: August 9, 1979.

By the Commission: Commissioner Lee Absent.

In the matter of overall revision of Part 18 governing Industrial, Scientific, and Medical equipment.

1. This is an initial order in the instant proceeding[1] to update and reregulate our rules governing industrial, scientific, and medical (ISM) equipment.

2. The Commission has received a number of inquiries from manufacturers proposing to market an induction cooking range—a relatively new technological development in home cooking. In order not to delay the marketing of these ranges, we are adopting regulations herein and not waiting for final resolution of the many problems involved in developing a complete revision of Part 18 contemplated by this proceeding.

3. The induction cooking range operates on the induction principle. Alternating current at a frequency between 20–40 kHz[2] is circulated in a coil under a smooth ceramic cooking top. When an iron pot is placed over this coil, i.e. in the induction field of the coil, eddy currents are induced in the pot causing it to become hot and cook the food within the pot. Induction cooking can only be carried out with pots in which significant eddy currents are induced—basically, pots of ferrous material. This type of cooking has a number of desirable features. The cooking top remains cold. The induction range is considerably more economical than a conventional counter top cooking unit since the heat is developed directly in the pot. Moreover, there is no danger of fire from spilled cooking oil since the cooking surface is essentially cold. Finally, the cooking top presents a smooth ceramic surface and is easy to clean. A potential problem is that the fundamental and harmonics of the RF energy that is used may, by conduction or radiation, or both, cause interference problems to other equipment in the vicinity.

4. Since the induction range uses RF energy to generate heat for cooking and not for telecommunications, it is classified as a piece of ISM equipment and is regulated by Part 18 of our Rules. More specifically, it is classified as miscellaneous equipment subject to § 18.161 and by reference §§ 18.141–18.142. Insofar as the induction cooking range is concerned, these rules impose a limit on the RF energy that may be radiated and a user certification requirement. In addition, § 18.142(c) imposes a requirement that the certification be renewed every three years. Among the changes proposed in the proceeding in Docket No. 20718 is the deletion of the three-year recertification requirement, the addition of a line conducted interference requirement particularly for a consumer ISM product such as the induction cooking range, and the addition of a mandatory requirement for certification of the equipment by this Commission as a prerequisite for marketing.

5. The induction cooking range first came to our attention in 1974, when Westinghouse Electric Corp. applied for and received a waiver of the § 18.142(c) requirement for recertification.[3] The Westinghouse induction cooking range received limited distribution and never gained wide spread use. In 1977, other manufacturers inquired about the regulatory status of the induction range. They were advised of the need to comply with Part 18 and of the waiver that had been granted to Westinghouse. It would appear that recent developments make the induction cooking range a practical consumer product as evidenced by the requests received in 1978–1979 for a waiver of § 18.142(c) from four separate manufacturers of home cooking equipment.

6. The Commission recognizes that its rules—particularly those of an administrative nature such as certification—should not stand in the way of marketing technologically advanced devices. Under our present regulations, recertification every three years is an administrative requirement that is obviously not suitable for a consumer product such as the induction cooking range. Recertification would require that each range be individually measured every three years. The expense of such measurements is an obvious obstacle to the marketing of an induction range. Moreover, the requirement for remeasurement adds little, if any, additional safeguard against interference over and above that provided by mandatory FCC certification before the range is marketed. But rather than waiving the requirement for recertification either individually for each manufacturer seeking to market such a range or by issuing a general waiver, we have concluded that it would be more appropriate to adopt a set of regulations tailored specifically to the induction cooking range. These regulations are based on our proposal in this proceeding modified to take into account the comments received thereto. We anticipate that these regulations will be incorporated into the revised Part 18 unless future developments dictate otherwise.

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[1] Docket No. 20718: In the matter of overall revision of Part 18 governing industrial, scientific, and medical equipment. Notice of Inquiry adopted 3-9-76, released 3-15-76; 41 FR 11626. Notice of Proposed Rule Making adopted 9-19-78, released 9-29-78; 43 FR 46326. Second Notice of Proposed Rule Making adopted 1-18-79, released 1-29-79; 44 FR 9771. Period for comments closed May 1, 1979; for reply comments July 2, 1979.

[2] Part 18 defines RF energy as electromagnetic energy at any frequency from 10 kHz to 3000 GHz. Accordingly, the induction cooking range is considered to be using RF energy and to be subject to FCC regulations.

[3] Along with the waiver, the Commission issued a grant of certification which authorized Westinghouse to market up to 750 induction ranges. This waiver was conditioned that if additional ranges were to be marketed, the additional ranges were to be separately certificated to meet [in addition to the radiation limit in Part 18] a conducted limit. The following language was used to specify the conducted limit: "If more than 750 units are to be produced, it will be necessary to modify the unit (and assign a new model number) to reduce the level of conducted RF energy so as not to exceed the following limits: '1000 μV at 100 kHz increasing linearly at the rate of 6 dB per octave as the frequency decreases' or such other limits as may be promulgated for such equipment in a formal rule making proceeding."

7. The rules will apply to any induction range using a frequency of 10 kHz or higher. They provide for mandatory certification by the Commission without any requirement for recertification. They provide a radiation and a conducted limit. As a radiation limit we are adopting a modification of the limit that had been proposed in the Docket 20718 proceeding. Our experience has been that for a device operating at a frequency below 100 kHz, the difficulty is meeting the conduction limit, not the radiation limit. We do not anticipate, therefore, that the revised radiation limit adopted herein for induction cooking ranges will present any problems.

8. The rules establish a limit for conducting RF voltage as follows:

Frequency of emissions (kHz)	Level of conducted RF voltage (millivolts)
10–100	10–1 linear variation
100–500	1
500–30,000	0.25

This level of conducted RF energy is deemed to be necessary to protect the operation of AM receivers in the home and to ensure that the induction cooking range is not likely to become a source of interference that will prevent putting into service other new developments using the domestic power lines as a transmission medium.[4] In setting this limit we reviewed limits for conducted RF voltage in the present Part 18, the conducted limit that had been imposed as a condition on the Westinghouse waiver, our proposal for a conducted limit in Docket No. 20718, and the comments received on that proposal.

9. The conducted limit currently in Part 18 applies to ultrasonic equipment and provides that on frequencies up to 490 kHz, the RF voltage fed back into the power lines (the conducted limit) shall not exceed 1000 μV and on frequencies above 490 kHz, it shall not exceed 200 μV. The ultrasonic equipment subject to this limit are the ultrasonic cleaners used in industry and the medical ultrasonics used in health care. There is no record that any of these ultrasonic equipments operating within this limit has been a source of interference. It would thus appear that this limit has been successful in controlling interference from these ultrasonic equipments.

10. The second conducted limit considered in this study is the limit that was attached as a condition to the Westinghouse waiver mentioned in Paragraph 5 above. (See footnote 3 above). Unfortunately, not enough of the Westinghouse induction ranges were distributed to provide a reliable appraisal of the effectiveness of this limit to protect against interference in a home environment. In view of the anticipated greater use of low frequency carrier current operation on domestic power lines,[5] we believe that the probability of interference in the home environment due to adopting the "Westinghouse conducted limit" is too high to be risked.

11. Our proposal in this proceeding called for the same stepped limit set out in Paragraph 8 above except that the limit above 500 kHz was proposed as 100 μV. Relatively few of the comments in Docket 20718 addressed this proposal. Of those that did, most were concerned with the effect of this limit on domestic microwave ovens. These comments all alleged that a 100 μV limit above 500 kHz was too strict and would impose a significant cost penalty on the microwave oven. One comment went so far as to propose that no conducted limit be imposed, another that a conducted limit be deferred for four or five years. In contrast, one comment suggested that the dividing line be set as 490 kHz instead of 500 kHz and that the proposed limit below 490 kHz was too restrictive but concurred in our proposed limit of 100 μV on frequencies above 490 kHz.

12. Of the few comments speaking specifically about the induction cooking range, Roper Appliance points out that the 100 μV limit above 500 kHz proposed in Docket 20718 is considerably stricter than that heretofore applied to ultrasonic equipment and that attached to the Westinghouse waiver. Roper alleges that the basis for this reduction has not been established and that the 100 μV requirement is unnecessarily restrictive. Moreover, meeting this requirement will add $80–$100 to the cost of the induction cooking range to the consumer.

13. Rangaire Corp. also addressed the question of a conduction limit for induction cooking ranges. Rangaire claims that a 4-burner induction cooking range requires a maximum power rating of 5.5 kW. It proposes that the conducted limit be set at 85 dBμV (approximately 20,000 μV) on frequencies up to 100 kHz, decreasing linearly to 40 dBμV (equal to 100 μV) at 30 MHz.[5,6] Rangaire claims that reducing the conducted energy below this level is not technically and economically feasible. However, measurements made on induction cooking ranges at the Commission's laboratory refute this allegation. Four different preproduction models were measured with the following results:

[4] One such use currently, under consideration is for load management in the home. Another is the use of carrier current techniques for control of household appliances.

[5] See footnote 4 above.

[6] The symbol dBμV is read dB above 1μV.

Range #1		Range #2		Range #3		Range #4	
kHz	μV	kHz	μV	kHz	μV	kHz	μV
23.5	2950	19	4100	25	450,000	24	9800
46	620	40	1880	47	900,000	51	11400
1085	460	225	195	2200	7,400	75	11500
1520	450	242	208	3740	8,200	152	3800
						300	3600
						546	1500
						632	1600
						758	1350
						1270	700
						2100	400
						3020	190
						6800	98

14. All the comments point out that a filter to meet the Commission's 100 μV limit would not only be relatively expensive but would present a problem because of the UL limit of 0.5 mA for chassis leakage. This essentially requires a basic redesign of the range. In this connection, Tappan points out that to meet the English and German requirements, they merely add a one dollar capacitive filter and an electrostatic shield to their export units. Tappan estimates that the FCC limit is about 20 dB more restrictive than the VDE limit.[7]

15. The Commission has considered the several arguments urging relaxation of the conducted limit as proposed in Docket 20718 for consumer ISM products. We are persuaded and have relaxed the proposed limit above 500 kHz by 8 dB and are adopting the conducting limit set out in Paragraph 8 above. In this connection, we note that the limit adopted herein is the same as the VDE limit used in Germany.

16. We conclude for the reasons given above, that the adoption of regulations for the induction cooking range will serve the public interest. Authority for these amendments is contained in §§ 4(i), 302, 303(r) of the Communications Act of 1934, as amended.

17. In view of the foregoing, it is ordered, effective February 1, 1980, that FCC Rules Part 18 ARE amended as set forth in the Appendix hereto.

18. For further information on this order, contact Herman Garlan, Office of Science and Technology, FCC Washington, D.C. 20554, phone 202–632–7095.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082, Sec. 302, 82 Stat., 290; 47 U.S.C. 154, 302, 303.)

Federal Communications Commission,

William J. Tricarico,

Secretary.

Part 18 of the FCC Rules is amended by adding a new Subpart I to read as follows:

[6] This proposal would set the conduction limit at 72 dBμV (equal to 4000 μV) at 500 kHz decreasing linearly to 60 dBμV (equal to 1000 μV) at 2300 kHz.

[7] VDE are the initials of Verein Deutscher Elektrotechniker. VDE 0871/6.78 is the current German specification for suppression of radio frequency interference from ISM equipment. This specification sets out three classes of limits for conducted interference: A, B, and C. The class B limit is 150–500 khz—500μV; 500–30,000 khz—250μV. Equipment meeting the Class B limit may be operated without an individual permit. The Class A and Class C limits are about 12 dB less stringent but require and individual permit and/or special testing.

Subpart I—Induction Cooking Ranges

Sec.

18.271 Purpose of regulations for an induction cooking range.
18.272 Induction cooking range subject to these rules.
18.273 Radiation limit.
18.274 Conducted RF limit.
18.275 Certification of an induction cooking range.

Subpart I—Induction Cooking Ranges

§ 18.271 Purpose of regulations for an induction cooking range.

These regulations are promulgated in order to permit the immediate marketing of an induction cooking range—a new technological development. They are subject to change in a rule making proceeding now pending in Docket No. 20718. Technical standards are established to provide reasonable assurance that the induction cooking range will not become a source of harmful interference to other devices using carrier current transmissions on domestic power lines.

§ 18.272 Induction cooking range subject to these rules.

These regulations shall apply to any induction cooking range using a frequency of 10 kHz or higher to develop the induction field used for cooking.

§ 18.273 Radiation limit.

(a) The induction cooking range shall comply with the following radiated field strength limit:

Frequency:	Limit
Below 90 kHz	1500μV/m at 30m
On or above 90 kHz	300μV/m at 30m

(b) Measurements of radiated field strength shall be made in accordance with the provisions of § 18.143.

Note.—The limits and the measurement procedure in this section are subject to change in the rule making proceeding in Docket No. 20718. Particular attention is invited to the proposed OCE 48 appended to the Second Notice in that proceeding.

§ 18.274 Conducted RF limit.

(a) The induction cooking range shall limit the RF voltage conducted back into the power lines to which it is connected, as set out below:

Frequency of Emissions (kHz)	Conducted RF Voltage limit (millivolts)	
10–100	10–1	linear interpolation
100–500	1	
500–30,000	0.25	

(b) Measurements of conducted RF voltage shall be made using a 5 microhenry 50 ohm LISN.

Note.—The limits and measurement procedure are subject to change in the rule making proceeding in Docket No. 20718. Particular attention is invited to the proposed OCE 47 appended to the Second Notice in that proceeding.

§ 18.275 Certification of an induction cooking range.

(a) An induction cooking range subject to this subpart shall be certificated pursuant to the procedure in Part 2 Subpart J of this chapter. Recertification is not required during the lifetime of the range.

(b) Application for certification shall be filed on FCC Form 731 accompanied by

(1) A report of measurements to show compliance with §§ 18.273 and 18.274

(2) Photographs pursuant to § 2.1033

(3) Installation instructions to be furnished to the purchaser

(4) A narrative statement explaining how the induction cooking range operates specifying the frequency and operating power

(5) Circuit diagrams

(6) A statement of the safeguards built into the range by the manufacturer to protect the user of the range. This statement should include the warning issued to the user about precautions to be observed.

[FR Doc. 79-25500 Filed 8-16-79; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY

18 CFR Part 271

[Docket No. RM79-68; Order No. 42]

Ceiling Prices; Final Rule Amending Regulations on New Natural Gas and Certain Natural Gas Produced From the Outer Continental Shelf

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Regulations.

SUMMARY: The Commission is issuing as final regulations Subpart B of Part 271 which implements section 102 of the Natural Gas Policy Act of 1978 (NGPA). The regulations contain several revisions to the interim regulations. Section 102 of the NGPA pertains to new natural gas and certain natural gas produced from the Outer Continental Shelf.

EFFECTIVE DATE: August 14, 1979.

FOR INFORMATION CONTACT:

Elisabeth Pendley, Office of the General Counsel, Federal Energy Regulatory Commission, Room 4016–H, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 275–0515.

Howard Kilchrist, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, Room 6112, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 275–0435.

Issued: August 14, 1979.

I. Background

On December 1, 1978, the Federal Energy Regulatory Commission (Commission) issued interim regulations

(43 FR 56448, Dec. 1, 1978) implementing the Natural Gas Policy Act of 1978 (NGPA), Pub. L. No. 95–621. Part 271, Subpart B of the interim regulations implements section 102 of the NGPA which applies to the first sale of new natural gas or natural gas produced from a new Outer Continental Shelf (OCS) reservoir under an old OCS lease. The final regulations issued today define terms used in section 102 and establish special rules to implement section 102.

II. Summary of Comments

Sections 271.201 and 271.203 of Subpart B define for what natural gas the price specified in § 271.202 (referencing the price table in § 271.101) may be charged.

Section 102 of the NGPA covers natural gas produced from a new onshore well or new onshore reservoir and from the OCS either under a new OCS lease or under an old OCS lease if produced from a newly discovered OCS reservoir.

A new onshore well must be spudded or increased in depth at least 1,000 feet on or after February 19, 1977, and must be either 2.5 miles from the nearest marker well or have a completion location 1,000 feet deeper than the deepest completion location for any marker well within 2.5 miles. Section 2(5) of the NGPA defines a marker well as any well from which gas was produced in commercial quantities after January 1, 1970, and before April 20, 1977, except a well spudded on or after February 19, 1977.

A new onshore reservoir is one which did not produce gas in commercial quantities before April 20, 1977, and which is not subject to the behind-the-pipe and the withheld gas exclusions.

Natural gas produced from the OCS qualifies for the section 102 price if it is either produced under an OCS lease entered into by the Secretary of the Interior on or after April 20, 1977, or is produced under an old OCS lease from a reservoir which was not discovered before July 27, 1976.

One comment suggested that the definition of "reservoir" in section 2(6) of the NGPA be added to the definitions in § 271.203. Because § 270.102 provides that terms used in Subchapter H shall have the same meaning as they have in the NGPA (absent further definition in the regulations) the suggested modification is unnecessary and will not be adopted.

Another comment suggested that new recompletions, either by plug back or re-entry, should qualify for the section 102 price. Although it is more economical in some instances to recomplete a well than to drill a new well, the statutory language limits the section 102 price, inter alia, to wells spudded on or after February 19, 1977 or wells drilled to an increased depth of at least 1000 feet on or after February 19, 1977. Therefore, new recompletions would qualify for the section 102 price only if re-entry involves drilling to an increased depth of at least 1000 feet and the completion location is located either at a depth of at least 1000 feet below the deepest completion location of each marker well within 2.5 miles of the subject well or 2.5 miles or more from the nearest marker well.

Section 271.204 of the regulations establishes special rules implementing section 102. The majority of the comments received on Subpart B of Part 271 addressed this section.

Section 102(c)(1)(B)(ii) of the NGPA defines as "new natural gas" onshore gas produced from a new well the completion location for which is at least 1,000 feet below the deepest completion location of each marker well within 2.5 miles of the new well. Paragraph (a) of § 271.204 establishes a special rule prescribing the method for measuring this 1,000 foot distance. Several comments complained that requiring this distance to be measured

> from the highest perforation point of such marker well completion location to the highest perforation point in the new well completion location

permitted "the producer greater leeway in charging consumers higher prices without justification." The comments suggested that the distance be measured from the highest perforation point in the new well to the "lowest perforation point of such marker well" in order to adhere to the statutory language in section 102(c)(1)(B)(ii) which refers to "any completion location . . . at a depth of at least 1,000 feet *below* the *deepest* completion location of each marker well." [Emphasis added.] The Commission considered such a suggestion prior to issuing its interim regulations and decided to adopt the current rule "for reasons of ease of measurement and consistency." This remains the Commission's point of view. The line of measurement for the 1000 foot distance between completion locations begins with the statutorily designated deepest completion location in the marker well and is drawn to the completion location in the new well. To add consistency to this measurement, the Commission designated the highest perforation point in each completion location as the point of measurement; i.e., the highest perforation point in the deepest marker well completion location and the highest perforation point in the new well completion location. Section 271.204(a) not only upholds the statutory standard but specifically pinpoints the exact measurement point within each completion location. Section 271.204(a) is being revised slightly to clarify the regulations in this regard.

The special rule in paragraph (b) of § 271.204 implements section 102(d) of the NGPA. Section 102(d) states that gas produced under an old OCS lease from a reservoir discovered on or after July 27, 1976, qualifies for the section 102 price. Section 102(d)(2) excludes from the category of qualifying reservoirs those reservoirs which were penetrated before July 27, 1976, and which were either demonstrated by OCS Order No. 4 test results or evidence to be "capable of producing in paying quantities" or demonstrated by certain other analytic methods to be "commercially producible."

The special rule in paragraph (b) of § 271.204 states that a reservoir is "capable of producing in paying quantities" if a well completed on it could reasonably be expected to produce sufficient natural gas to yield revenues in excess of operating costs. One comment suggested that the term "operating costs" be defined as "out of pocket costs." The Commission agrees that the term "operating costs" needs definition. Therefore, a sentence will be added to § 271.204(b) to indicate that: "For purposes of this section, operating costs include those out-of-pocket cash expenses necessary to operate and maintain a well."

The special rule in paragraph (c) of § 271.204 prescribes what OCS reservoirs may qualify under section 102(d) because, although penetrated before July 27, 1976, such reservoirs were shown by certain analytical tests not to be "commercially producible." The definition of "commercially producible" references the definition in § 270.102(b)(4) for "production in commercial quantities." That term appears in several places in the NGPA and is used in section 102(c) to prescribe what natural gas will qualify under section 102 because produced from an *onshore* reservoir which did not produce in commercial quantities prior to April 20, 1977.

Numerous comments objected to linking the terms "commercially producible" (for OCS reservoirs) and "production in commercial quantities" (for onshore reservoirs). The latter term is defined in § 270.102(b)(4) as production which is either sold and delivered to one other than the operator

or which is retained for beneficial economic use. The comments argued for a definition of "commercially producible" similar to the definition for "capable of producing in paying quantities." One comment explained that:

> Any well bore in which gas is found probably could have one Mcf of gas sold from it if appropriated facilities were installed. However, that by no means is determinative of whether a reservoir is "commercially producible."

The Commission dismissed this issue in the preamble to the interim regulations, stating:

> The Commission has found no basis for concluding that the term "commercially producible" has a meaning different from "production in commercial quantities."

The Commission continues to believe that the production test for new onshore and new OCS reservoirs should be the same unless factors such as the applicability of OCS Order No. 4 require a different standard. Use of an economic test employing standards other than those of § 270.102(b)(4) (sale and delivery of the gas or its retention for beneficial economic use) would involve difficult subjective decisions. If a reasonable return standard were considered, it would be applied to costs incurred in 1977. While the available 1977 costs and market prices for natural gas or crude oil produced might be used as a guideline, the subjective analysis of model costs, and model market prices which could have been incurred would place unreasonable administrative burdens on the jurisdictional agencies and on Staff. Because such an in-depth economic test would create such an administrative burden and the test of sale and delivery or retention for beneficial economic use is a reasonable interpretation of the statute, the Commission believes that the current definition of "commercially producible" should be retained.

Several comments addressed the definition of "production in commercial quantities" in § 270.102(b)(4) and the special rule in paragraph (e) of § 271.204 assigning the burden of proof for establishing this factor. Section 270.102(b)(4) states that, except for use in testing and for other field uses, "production in commercial quantities" means production from a reservoir which is either sold and delivered to one other than the operator or retained for beneficial economic use by the operator or any owner of the production at severance. Section 271.204(e)(1) of the regulations tracks the language of section 102(c)(3)(A) of the NGPA which provides that, for purposes of determining whether a reservoir has produced in commercial quantities prior to April 20, 1977, a rebuttable presumption exists that such production did not take place if gas has not been sold and delivered from the reservoir before that date.

One comment suggested that an additional rebuttable presumption be created where the producer could show that the volumes sold do not constitute "commercial quantities." If gas has been sold and delivered in commerce the Commission can reach no other conclusion than that there has been "production in commercial quantities." Therefore, the suggestion is rejected.

Several comments stated that use of the "beneficial economic use" test distorts Congressional intent because evidence of *any* beneficial economic use will result in a finding that gas has been produced in commercial quantities. However, the comment is erroneous because not every use qualifies as a "beneficial economic use." The definition in § 270.102(b)(4) specifically excludes such beneficial uses as testing wells or other production related field use from the definition of "production in commercial quantities." Such uses would include but would not be limited to reinjection, fuel for compressors, camp quarters, and processing.

Another comment suggested that the jurisdictional agency should determine what constitutes "beneficial economic use" after considering all the available evidence. The Commission agrees with this comment but disagrees that the regulations bar such a determination. In fact, the Commission believes that the regulations require that a jurisdictional agency make such a determination, based on substantial evidence, in order to classify gas as produced from a new reservoir or a new onshore well and to determine that such gas is subject to the section 102 price.

The Commission received several comments on issues related to the behind-the-pipe exclusion in section 102(c)(1)(C)(ii) of the NGPA. Under section 102(c)(1)(C)(ii), if a reservoir could have produced in commercial quantities had a completion location been established from the old well which penetrated it and which produced oil or natural gas in commercial quantities, the reservoir does not qualify as a new onshore reservoir under section 102. One comment suggested that:

> Production in commercial quantities needs to reflect the volumes that could have been produced at the time the reservoir was first discovered at the then current prices and then current costs.

The Commission disagrees with this suggestion. The Statement of Managers states:

> The behind-the-pipe exclusion prohibits natural gas produced from any reservoir from qualifying as new natural gas under this definition if natural gas could have been produced in commercial quantities from such reservoir through such old well before April 20, 1977. The phrase "could have been produced" is intended by the conferees to refer to the *capability of the reservoir to produce* without regard to whether actual production capability existed. [Emphasis added]

The language of the Statement of Managers, the existence in the statute of a rebuttable presumption that production in commercial quantities has occurred if there has been a sale and delivery, and the absence of the requirement for suitable facilities in the behind-the-pipe exclusion lead the Commission to conclude that the Congress did not wish to define "could have been produced in commercial quantities" in section 102(c)(1)(C)(ii)(II) in a manner similar to the sale and delivery test for "production in commercial quantities." In fact, the Commission believes that the text of the statute, the legislative history, and policy considerations allow use of a capability test for the term "could have been produced" in the behind-the-pipe exclusion. The capability test does not take into consideration the necessity for or cost of pipeline facilities, gathering or processing plants. It does not depend on the actual marketability of the gas prior to April 20, 1977. The capability test is restricted in its scope to the capability of the reservoir to produce prior to April 20, 1977. Thus costs and prices, regardless of their time reference, are irrelevant, and the comment must be rejected.

Another comment on the behind-the-pipe exclusion noted that small producers who would ordinarily drill reservoirs passed over by large producers as insignificant, would frequently be subject to the behind-the-pipe exclusion because the reservoir could have produced in commercial quantities. The comment suggested that the small producer be permitted to collect the section 102 price for such natural gas. While the Commission recognizes the possible hardship which the exclusion imposes upon the small producer, the statutory language is explicit and does not provide for an exemption from the behind-the-pipe exclusion for small producers.

Therefore, the suggestion must be rejected.

The special rule in paragraph (d) of § 271.204 implements section 102(c)(1)(C)(iii) and (iv) of the NGPA which excludes from the category "new natural gas" any gas produced from an old well for which suitable production and delivery facilities (other than emergency facilities) were in existence on April 20, 1977. Several comments disagreed with the special rule in § 271.204(d) defining "suitable facilities for the production and delivery to a pipeline" as those facilities which were "installed" or "substantially installed and [for which] additional facilities necessary for such production and delivery were readily available and could have been installed by April 20, 1977." The comments emphasized that the statutory language refers to facilities "in existence on April 20, 1977," and argued that expansion of the definition to include facilities which were "substantially installed" is erroneous. The comments urged that § 271.204(d)(2) be deleted. The Commission addressed this issue in the preamble to the interim regulations and maintains its position that the term "suitable facilities . . . in existence on April 20, 1977," may include additional facilities and equipment which were readily available and could have been installed by April 20, 1977.

Several comments suggested that the exclusion for emergency sales facilities be mentioned in § 271.204(d). The Commission has already dealt with the issue of emergency sales facilities by including the parenthetical phrase "(but subject to section 102(c)(1)(C)(iv) thereof)" in § 271.204(d) of the interim regulations. This phrase was added to reflect the statutory provision that facilities installed solely for purposes of making sales under section 6 of the Emergency Natural Gas Act of 1977 or for the purposes of making 60-day emergency sales not be considered "suitable facilities" within the meaning of section 102 of the NGPA. The final regulations retain this provision.

III. Public Procedures and Effective Date

The regulations in Subpart B of Part 271 were originally proposed for comment in November of 1978 and issued as interim regulations on December 1, 1978 (43 FR 56448, Dec. 1, 1978). For 60 days thereafter comments were received and during that period, public hearings were held on these regulations. By this process, the Commission complied with the provision of section 502(b) of the NGPA which requires that "[t]o the maximum extent practicable," an opportunity for the oral presentation of data, views, and arguments be afforded for certain regulations under the NGPA. The amendments to Subpart B of Part 271 contained in this order have been issued after a thorough review of these comments.

Accordingly, the Commission finds that further notice and public procedure on these regulations are unnecessary and impractical and that good cause exists to dispense with additional notice and public procedure. Because the amendments made in Subpart B of Part 271 are clarifying and interpretative in nature, Subpart B, as amended, is effective as final regulations immediately with regard to jurisdictional agency determinations which have not become final under § 275.202 as of the day before the date of issuance of this order.

(Natural Gas Act, as amended, 15 U.S.C. 717 *et seq.*; Natural Gas Policy Act of 1978, Pub. L. 95–621, 92 Stat. 3350; Department of Energy Organization Act, 42 USC 7107 *et seq.*; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Subpart B of Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, is issued as final regulations as set forth below, effective immediately as set forth above.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—CEILING PRICES

1. Subpart B of Part 271 is amended to read as follows:

Subpart B—New Natural Gas and Certain Natural Gas Produced From the Outer Continental Shelf

§ 271.201 Applicability.

This subpart implements section 102 of the NGPA and applies to the first sale of:

(a) new natural gas; or

(b) natural gas produced from a new OCS reservoir on an old OCS lease.

§ 271.202 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the price specified for Subpart B of Part 271 in Table I of § 271.101(a).

§ 271.203 Definitions.

For purposes of this subpart:

(a) "New natural gas" means natural gas which a jurisdictional agency has determined, in accordance with Parts 274 and 275 and section 102(c) of the NGPA, to be new natural gas.

(b) "Natural gas from a new OCS reservoir on an old OCS lease" means natural gas which the jurisdictional agency determines, in accordance with Parts 274 and 275 and under section 102(d)(1), (2), (3), (4), and (5) of the NGPA, to be natural gas produced from a reservoir which is on an old OCS lease and which was not discovered before July 27, 1976.

(c) "OCS lease" means a lease of submerged acreage which is entered into with the Secretary of the Interior under the Outer Continental Shelf Lands Act, as amended, (43 U.S.C. 1331, *et seq.*)

(d) "New OCS lease" means an OCS lease entered into by the Secretary of the Interior on or after April 20, 1977.

(e) "Old OCS lease" means an OCS lease other than a new OCS lease.

§ 271.204 Special rules.

(a) *Vertical measurement of 1,000 feet between completion locations.* For the purpose of determining under section 102(c)(1)(B)(ii) of the NGPA the vertical distance between the deepest marker well completion location and the completion location for the new well for which the determination is sought, measurement shall be the true vertical depth measured from the highest perforation point of the deepest marker well completion location to the highest perforation point of the new well completion location. In the case of any well which is an open-hole completion, measurement shall be from the highest elevation point within the well bore of the reservoir being produced.

(b) *Capable of producing in paying quantities.* For purposes of section 102(d)(2)(B)(i) and (ii) of the NGPA, a reservoir is capable of producing in paying quantities if a well completed therein can reasonably be expected to produce natural gas in quantities sufficient to yield revenues in excess of operating costs. For the purposes of this paragraph, operating costs include those out-of-pocket cash expenses necessary to operate and maintain a well.

(c) *Commercially producible.* For purposes of section 102(d)(2)(B)(iii) of the NGPA, a reservoir is commercially producible if a well completed therein can reasonably be expected to produce natural gas in commercial quantities as defined in § 270.102(b)(4).

(d) *Suitable facilities.* For purposes of section 102(c)(1)(C)(iii)(II) of the NGPA (but subject to section 102(c)(1)(C)(iv) thereof), suitable facilities for the production and delivery of natural gas described in section 102(c)(1)(C)(iii)(I) of the NGPA were in existence on April 20, 1977, if on that date facilities for the

production and delivery of natural gas to a pipeline were:

(1) installed; or

(2) substantially installed and additional facilities necessary for such production and delivery were readily available and could have been installed by April 20, 1977.

(e) *Production in commercial quantities.* For purposes of determining whether production of natural gas in commercial quantities has occurred under section 102(c)(1)(C) of the NGPA:

(1) A rebuttable presumption exists that production from a reservoir in commercial quantities has not occurred if natural gas has not been sold and delivered from such reservoir before April 20, 1977. Such presumption may be rebutted by evidence of retention of the natural gas by the operator, or owner of the production at severance, for beneficial economic use; and

(2) Quantities of natural gas sold in interstate commerce (within the meaning of the Natural Gas Act) before November 9, 1978, shall not be taken into account if such sales were made:

(i) Under section 6 of the Emergency Natural Gas Act of 1977; or

(ii) Under the emergency sale authority pursuant to Opinion No. 699–B, issued by the Commission under section 7(c) of the Natural Gas Act.

[FR Doc. 79–25589 Filed 8–16–79; 8:45 am]

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18 CFR Part 281

[Docket No. RM79–15]

Order Granting Transcontinental Gas Pipe Line Corporation's Applications For Rehearing

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) hereby gives notice that 18 CFR 281.202 is amended by deleting "Transcontinental Gas Pipe Line Corporation." This amendment clarifies the status of the settlement governing curtailment on Transco's system.

EFFECTIVE DATE: August 2, 1979.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426 (202) 275–4166.

Before Commissioners: Georgiana Sheldon, Acting Chairman; Matthew Holden, Jr., and George R. Hall.

Issued: August 2, 1979.

Order No. 29—our Final Rule implementing Section 401(a) of the Natural Gas Policy Act of 1978 (the "NGPA")—listed Transcontinental Gas Pipe Line Corporation (Transco) as being subject to it.[1] Transco has sought rehearing,[2] arguing that it should not be made subject to Order No. 29 and its requirement for filing a revised curtailment tariff in the form therein specified for the reason that the Commission had just shortly prior to issuance of Order No. 29 approved a settlement [3] which by its terms, as interpreted and enforced by our orders [4] thereon, provides a satisfactory means of implementing Section 401(a) on Transco's system for the duration of the settlement.[5] We agree. Our concurrence is, however, conditioned upon Transco filing an amendment to its existing tariff as it suggests in its application for rehearing.[6] That filing shall be made by October 1 with an effective date of November 1, 1979.

At the time of promulgating Order No. 29, we said:

> [N]othing in the rule precludes any interstate pipeline and its customers from proposing, as a settlement, a curtailment plan that differs from that set out in our rule. Such a settlement will be evaluated by the Commission in light of its responsibility to meet the statutory goal of protecting, to the maximum extent practicable, high priority users and essential agricultural uses.[7]

The settlement we approved in Docket No. RP72–99 on January 19, 1979 is a comprehensive one, resolving many controversies of long-standing. Accordingly, we evaluated it not only in accordance with the NGPA but also the Natural Gas Act. Nothing further (other than the above mentioned tariff amendment) will be required at this time.

The Commission finds and orders: Subject to filing an amendment to its tariff as discussed in the text, Transco's request for rehearing of Order No. 29 is granted. In order to implement the substance of this grant, Title 18 of the Code of Federal Regulations is amended in section 281.202 by deleting "Transcontinental Gas Pipe Line Corporation." This amendment is being made at this time in order to clarify the status of the settlement governing curtailment on Transco's system pursuant to our orders entered in Docket No. RP72–99. We are today also issuing an Order Denying Rehearing in Docket No. RP72–99 of our January 19, 1979 Order Approving and Adopting Settlement. Section 553(d) of Title 5, United States Code, requires that an amendment to a rule not become effective less than thirty days after its publication unless the agency promulgating the amendment finds good cause to waive this requirement and publishes this finding together with the amendment. The requirement for coordinating our action herein with those taken in Docket No. RP72–99 establishes good cause to waive the section 553(d) requirement in this case. Therefore, the amendment is issued effective immediately.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–25590 Filed 8–16–79; 8:45 am]

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[1] The Final Regulation for the Implementation of Section 401 of the Natural Gas Policy Act, Order No. 29, Final Rule, Docket No. RM79–15, 18 CFR Part 281 (issued May 2, 1979). Order No. 29–A (June 15, 1979) and Order 29–B (July 20, 1979) extended certain dates specified in the base order.

[2] Application for Rehearing or Clarification and Request for Immediate Partial Stay of Order No. 29, June 1, 1979. Numerous other petitions for rehearing of Order No. 29 have also been filed. We take no present action with respect to those requests. They will be addressed later. We act at this time on Transco's application in order to clarify the status of the settlement governing curtailment on that system. In this regard, see the companion order to this one issued today in Docket No. RP72–99 which denies rehearing of our January 19 order approving the settlement. Our action here moots Transco's request for partial stay as well as the filings made in response thereto. It will therefore be unnecessary for the Commission to act on those filings.

[3] See Order Approving and Adopting Settlement, *Transcontinental Gas Pipe Line Corporation*, Docket No. RP72–99 (January 19, 1979). This order was preceded on January 4, 1979 by one entitled "Order Interpreting Proposed Settlement Requesting Comments and Setting Oral Argument." Also, we are today issuing an Order Denying Rehearing of the January 19 order.

[4] See orders listed in immediately preceeding note.

[5] Pursuant to our January 19 order, Transco filed tariff sheets on January 29, 1979 implementing the settlement plan. In accordance with the settlement and our orders, the plan becomes effective November 1, 1978. The settlement plan will continue in effect so long as Transco's supplies stay above the benchmark of 636 MMdt service to Transco's so-called large volume customers. See January 4 order (p. 5) quoting Article II of the settlement agreement.

[6] P. 13, note 13. Transco's proposal is to extend beyond October 31, 1979 the tariff sheets filed March 16, 1979 in implementation of the Interim Curtailment Rule. See Interim Regulation for the Implementation of Section 401 of the Natural Gas Policy Act of 1978, Interim Curtailment Rule, Docket No. RM79–13 (issued March 6, 1979) and Order Accepting Tariff Sheets, *Florida Gas Transmission Company, et al.* Docket No. TC79–5, *et al.*, issued March 30, 1979 accepting Transco's tariff filing effective April 1, 1979. In its instant petition for rehearing, Transco asserts that this procedure "may in actuality provide superior protection [to Order No. 29] to essential agricultural users."

[7] Order No. 29, Preamble (*mimeo*, pp. 10–11).

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 676

Comprehensive Employment and Training Act; Regulations Concerning Sectarian Activities

AGENCY: Employment and Training Administration, Labor.

ACTION: Final Rule.

SUMMARY: This document revises the regulations at 20 CFR 676.71, published on April 3, 1979, at 44 FR 20028, concerning sectarian activities under the Comprehensive Employment and Training Act (CETA). The purpose of this document is to specify when funds under the Act may be used with respect to religiously affiliated elementary and secondary schools and other religious activities.

EFFECTIVE DATE: September 17, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Anderson, Administrator, Office of Comprehensive Employment Development, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213, Telephone (202) 376-6254.

SUPPLEMENTARY INFORMATION: The proposed revisions to the regulations at 20 CFR 676.71 concerning sectarian activities under CETA were published on June 20, 1979, at 44 FR 36087. This proposal sought to clarify the use of CETA funds in situations involving sectarian organizations and activities, particularly with respect to the employment of CETA participants in religiously affiliated elementary and secondary schools.

A number of comments were received in response to the proposed regulations. Some commenters suggested that the regulations address in greater detail the use of CETA funds by religiously affiliated organizations other than elementary and secondary schools. However, the major difficulties that have arisen in connection with religious activities under CETA concern placements of participants in religiously affiliated elementary and secondary schools. Accordingly, the regulations focus primarily upon such placements. Of course, the general prohibition against the use of CETA funds to support religious or anti-religious activities would be applicable to other religiously affiliated organizations.

Some commenters suggested that paragraph (d) be broadened to allow subrecipients that are religious organizations, as well as non-religious organizations, to outstation participants to religiously affiliated elementary or secondary schools in order to provide remedial education services. A few commenters maintained that the safeguards at the end of paragraph (d) would be adequate to prevent the use of CETA funds for sectarian purposes if religious organizations were permitted to outstation participants. The Department believes that legal problems could arise if both the employing agency and the outstationed worksite were religious organizations or institutions and that control over the provision of remedial education services should be exercised by a non-religious entity. Therefore, the provision in the proposed regulations that such outstationing may be performed only by prime sponsors or subrecipients other than religious organizations is being maintained.

Paragraph (c) has been clarified to indicate that programs in which participants may be employed may not be offered during regular school hours.

Paragraph (d) has been modified to indicate that in outstationing participants to provide remedial education services a prime sponsor or subrecipient must comply with the Elementary and Secondary Education Act and regulations thereunder.

Accordingly, § 676.71 of Chapter V of Title 20, Code of Federal Regulations, is revised to read as follows:

§ 676.71 Sectarian activities.

(a) No funds under the Act may be used to support any religious or antireligious activity. However, this does not preclude religious organizations from administering or operating CETA programs or from the use of the facilities of religious organizations for the operation of such programs within the limits set forth in the Act or other applicable law.

(b) Section 121(a)(2) of the Act (29 U.S.C. 823(a)(2)) provides that:

> Participants shall not be employed on the construction, operation, or maintenance of so much of any facility as is used or will be used for sectarian instruction or as a place of religious worship.

Section 123(g) of the Act (29 U.S.C. 825(g)) provides that the Secretary, by regulation, shall establish such standards and procedures for recipients of funds under the Act as are necessary to assure against program abuses including, but not limited to, the use of funds for religious or antireligious activities. Pursuant to these statutory provisions, a participant may not be employed by a religiously affiliated elementary or secondary school to perform the functions of a teacher, librarian, guidance counselor, janitor or maintenance worker, clerical worker, or teacher aide, unless the participant is performing functions or working in programs such as those described in paragraphs (c) and (e) of this section. In applying this prohibition, it is the function actually to be performed by the participant that is to be regarded as controlling, rather than the technical job title given the participant. For example, it would be permissible for a participant (whatever the participant's title) to be employed as an escort to bring students safely to and from school.

(c) Religiously affiliated elementary or secondary schools, may, subject to supervision by the prime sponsor, employ participants in programs such as adult education, recreation, summer programs or other similar activities including remedial tutorial activities, provided that such programs are not offered during regular school hours, are not a part of the regular school curriculum (including summer school), are open to the community at large, and in which the community is encouraged to participate, and provided further that such programs do not involve religious activities.

(d) Nothing in this section shall preclude a prime sponsor or a subrecipient other than a religious organization from outstationing a participant to a religiously affiliated elementary or secondary school for the purpose of providing remedial education services, provided that such services do not involve religious activities and provided further that the prime sponsor or subrecipient complies with the Elementary and Secondary Education Act, 20 U.S.C. 241(e), and the regulations thereunder at 20 CFR 1801 *et seq.*

(e) Participants may be employed by a religiously affiliated elementary or secondary school in the following capacities, or performing functions characteristic of these capacities:

(1) Cafeteria work or other work directly related to the provision of food services to students including clerical, custodial or maintenance work related to such services.

(2) Diagnostic or therapeutic speech and hearing services including clerical work related to such services.

(3) Nursing or health services or any other activities relating to the health or safety of students (*e.g.* assisting on school buses or in escorting children to and from school, acting as attendance clerks or school crossing guards, removing asbestos hazards or performing other similar emergency service relating to the health or safety of

students), including clerical work related to such services.

(4) Any functions (including secretarial or clerical activities) where such activities are limited to providing support services for the administration of federally funded or regulated programs made applicable to religious institutions.

(5) Functions performed with respect to the administration and grading of State-prepared examinations.

(6) Custodial child care after school hours provided the participant is not providing educational services.

(f) The Secretary may consider, on a case-by-case basis, applications for participation in programs other than those set forth in paragraphs (c), (d), and (e) of this section and may approve those applications for programs that are not inconsistent with the requirements of this section.

(Sec. 126 of the Comprehensive Employment and Training Act [29 U.S.C. 801 et seq.])

Signed this 13th day of August 1979.

Ray Marshall,

Secretary of Labor.

[FR Doc. 79-25619 Filed 8-16-79; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Part 145

[Docket No. 76P-0026]

Canned Pineapple; Standard of Identity

Correction

In FR Doc. 79-20962, published at page 40276, on Tuesday, July 10, 1979, in the first column on page 40278, in the 32nd line of the column "special" should be corrected to read "spiral".

BILLING CODE 1505-01-M

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21 CFR Parts 431, 436, 446, 546

[Docket No. 78N-0220]

Tetracycline Hydrochloride and Oxytetracycline Hydrochloride; Dissolution Test for Human and Animal Drugs

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the antibiotic drug regulations to (1) require dissolution testing for tetracycline hydrochloride tablets and capsules for human and animal use and dissolution testing for oxytetracycline hydrochloride capsules for human use, and (2) delete the requirement for disintegration testing for tetracycline hydrochloride tablets. The agency is taking this action to provide a method by which the bioequivalence of these products can be ensured.

DATES: Effective for all lots submitted for certification after September 17, 1979. Comments on fee for dissolution testing by September 17, 1979.

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

FOR FURTHER INFORMATION CONTACT: Jerome P. Skelly, Bureau of Drugs (HFD-525), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4750.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 26, 1978 (43 FR 43468), FDA proposed to amend the antibiotic drug regulations to require dissolution testing for tetracycline hydrochloride (HCl) tablets and capsules for human and animal use and to require dissolution testing for oxytetracycline HCl capsules for human use. The action was taken to provide a method by which the bioequivlence of these products could be ensured and was in response to data showing that the current batch certification requirements for these products do not ensure that they would be bioequivalent to a reference product.

Interested persons were given 60 days in which to submit written comments on the proposed amendment. In response to the proposal, the agency received six comments, all from pharmaceutical manufacturers. The substantive comments received and the agency's response to each follow:

1. Several comments addressed the differences between the proposed FDA dissolution test and the Apparatus 2 dissolution test method described in the 5th Interim Revision of the United States Pharmacopeia (USP), which became official on August 1, 1978. Some comments argued that these differences in methodology and dimensions of the equipment will only promote confusion, the possible inappropriate application of one test over another, and inconsistent test results. Further, one comment stated that the existence of two methodologies will require manufactures to purchase additional equipment and use additional laboratory space. Four comments objected specifically to FDA's proposed distance of the paddle from the bottom of the test vessel. It was argued that because the established compendial distance is 2.5±0.2 centimeters (cm), there was no rationale to change it to 4.5±0.5 cm.

The agency has considered these comments and agrees that for regulatory and quality control purposes there should be consistency in the methodologies required by USP and by FDA. Therefore, with the exception discussed below, the methodology and dimensions of the equipment used in testing tetracycline HCl and oxytetracycline HCl in the final version of § 436.541(a) (21 CFR 436.541(a)) are consistent with those set forth in Apparatus 2 dissolution methodology of the USP.

The exception concerns the distance of the paddle from the bottom of the test vessel. The distance of 4.5 cm, as proposed, is a rational one and should not be changed to the established compendial distance. The 2.5-cm height specification of the USP is a general one based on data other than that of tetracycline HCl. For tetracycline HCl and oxytetracycline HCl, however, dissolution data obtained by the agency using the 4.5-cm height at a speed of 75 revolutions per minute (rpm) was found to correlate better with in vivo data than did the data obtained by using a 2.5-cm height. This data was placed on display in the office of the FDA Hearing Clerk when the proposal was published and is available for inspection. In addition, the dissolution test results have been demonstrated by FDA to be reproducible using the 4.5-cm distance. These facts, which were not rebutted by the comments, confirm the agency's original position that the distance of the paddle from the bottom of the test vessel should remain at 4.5±0.5 cm for tetracycline HCl and oxytetracycline HCl.

2. One comment stated that the description of the apparatus in the FDA proposal is redundant and potentially confusing. The comment suggested that the regulation would be more useful if it referenced USP Apparatus 2 and listed any exceptions that exist in the FDA method.

The agency agrees with this comment. Therefore, where the methodology and dimensions of the equipment used in testing tetracycline HCl and oxytetracycline HCl are consistent with those set forth under Apparatus 2 of the official USP dissolution test, as discussed in the response to comment 1, the USP dissolution methodology is incorporated into the final rule by reference.

3. One comment objected to the use of the paddle method, instead of the basket method, in the testing of tetracycline HCl and oxytetracycline HCl. The comment argued that the paddle method would yield more variable results than the basket method. Specifically, the comment was concerned about the difficulty in wrapping the capsules in a stainless steel wire helix, which, if not done properly, may result in variance from test to test. The comment argued that this problem would not exist with the use of the basket method because the capsule or its fragments would be confined to a more limited position within the test equipment. Thus, the comment recommended that the basket method be adopted and that experimental conditions such as rotation rate be redefined accordingly.

In the agency's effort to establish in vivo-in vitro dissolution correlation, dissolution tests were conducted in several laboratories, using both the rotating basket and the paddle methods. The data generated from the paddle method at a paddle height of 4.5 cm from the bottom of the test vessel, however, were found to give the best in vivo-in vitro correlation. The results of these tests were put on display in the office of the FDA Hearing Clerk at the time of the proposal and are available for inspection. Because of this data, and because no contradictory test data were submitted, the agency believes that the paddle method with the prescribed parameters will provide the most discriminating dissolution test for tetracycline HCl tablets and capsules and oxytetracycline HCl capsules. The agency has not observed a problem of the capsules' escaping the steel wire helix in the FDA dissolution testing, nor have three independent laboratories reported any such problem. Recognizing, however, that the specification of a 22-gauge stainless steel wire wrapped 3 to 5 times around a capsule is unnecessarily restrictive, and in keeping with the agency's desire for uniform methodology, as discussed in the responses to comments 1 and 2, the specification as to the procedure in wrapping the capsule has been changed in § 436.541(b) to conform to the language used in the official USP dissolution test in the Apparatus 2 procedure.

4. One comment recommended that simulated gastric juice (or 0.1*N* hydrochloric acid), instead of de-aerated water, be allowed as a dissolution medium for the testing of the capsules and tablets.

The dissolution data on the subject products were obtained by using both the rotating basket and paddle methods at different speeds of rotation and in various media. The use of simulated gastric juice and 0.1*N* hydrochloric acid as dissolution media, however, was abandoned when it became apparent that they added nothing to the testing except additional work and analytical problems. Of all the media used in the agency's dissolution testing, the data obtained using de-aerated water gave the best in vivo-in vitro correlation. These data were placed on display in the office of the Hearing Clerk at the time the proposal was published and are available for inspection. Based on these data, therefore, and the fact that no contradictory data were submitted by the comment, the agency rejects the recommendation that simulated gastric juice or 0.1*N* hydrochloric acid be used as a dissolution medium.

As a result of reviewing the issue of the appropriate dissolution media, however, the agency has reconsidered the need for requiring de-aerated distilled water as opposed to distilled water. In the agency's testing of tetracycline and oxytetracycline in the past 10 years, no significant air bubble problem has been discerned with the use of distilled water as the dissolution medium. The near or total absence of air bubbles in the dissolution vessels is, in fact, visually confirmed daily in the agency's recently acquired transparent bath apparatus. The agency, therefore, concludes that no significant advantage would be gained by requiring the de-aeration of the water before its use as a dissolution medium, particularly in view of the time and money involved in the process of de-aeration. The USP has recognized this by providing for the removal of gases in distilled water only when their presence can affect the results of the testing. For these reasons, therefore, the dissolution medium to be used in testing tetracycline HCl and oxytetracycline HCl in § 436.541(b) of the final rule is changed to distilled water.

5. One comment was concerned about the working standard solution of oxytetracycline HCl. As proposed, the diluent to be used in preparing the oxytetracycline working standard is water. The comment recommended that the preparation of this working standard be modified because oxytetracycline base is only very slightly soluble in water. In place of this water diluent, the comment recommended that 30 milligrams (mg) of the standard first be dissolved with 50 milliliters (mL) of 0.1*N* hydrochloric acid. The comment also suggested that 0.1*N* hydrochloric acid be employed as the final dilution medium, as well.

The agency agrees that oxytetracycline base is more soluble in 0.1*N* hydrochloric acid than in water. Therefore, the preparation of the working standard for oxytetracycline in § 436.541(c)(2) of the final rule is changed. Fifty mL of 0.1*N* hydrochloric acid, as suggested by the comment, however, are not necessary to dissolve the 30 mg of standard. Further, oxytetracycline is unstable in 0.1*N* hydrochloric acid. The agency has found, through testing, that dissolving 30 mg in approximately 5 mL of 0.1*N* hydrochloric acid, and then immediately diluting with water, provides a solution that is spectrophotometrically stable for several hours. Therefore, the final regulation requires that 30 mg of oxytetracycline base working standard solution be accurately weighed into a suitable-sized volumetric flask, dissolving the base into 5 mL of 0.1*N* hydrochloric acid, and then diluting with water.

6. One comment suggested there was a discrepancy between the preamble to the proposal and the text of the proposal regarding the exact dosage of tetracycline HCl capsules covered under the proposed dissolution test. The comment stated that, although the preamble cited data only for the 250-mg tetracycline HCl capsules, the proposed rule also includes the 500-mg capsules.

The dissolution test, as proposed, clearly applied to all strengths of capsules or tablets set forth in the sections amended, i.e., §§ 446.167(a)(1), 446.181d(a)(1), and 446.181e(a)(1), (21 CFR 446.167(a)(1), 446.181d(a)(1), and 446.181e(a)(1)), by the inclusion of the dissolution specifications. Therefore, it applied to capsules containing 50 mg, 100 mg, 125 mg, and 250 mg of oxytetracycline HCl, tablets containing 250 mg and 500 mg of tetracycline HCl, and capsules containing 50 mg, 100 mg, 125 mg, 250 mg, and 500 mg of tetracycline HCl. This intent is evident in the preamble to the proposal, especially in the "Summary" and "Dissolution Requirement" sections of the preamble. Both of these sections stated that FDA was proposing to amend the antibiotic drug regulations to require dissolution testing for tetracycline HCl tablets and capsules and for oxytetracycline HCl capsules. Specific strengths were not set forth, the intent being that the dissolution test would apply to each strength of tablet or capsule included in the monograph. Although the data cited in the preamble to justify this dissolution test were based on the 250-mg capsule or tablet,

the problems encountered with the 250-mg tablet and capsule would be expected to occur with the other strengths as well.

As a result of reviewing the issue of the inclusion of the 500-mg tetracycline HCl capsule, however, the agency recognizes that because the 500-mg capsule does contain twice the amount of the drug as the 250-mg capsule, the physical phenomenon of rate of dissolution warrants a longer dissolution time for the 500-mg capsules. In this regard, the comment submitted information to FDA demonstrating that it has achieved a rate of 70 percent dissolution for its 500-mg capsules. In view of these considerations, therefore, the dissolution specifications for 500-mg tetracycline HCl capsules only are changed in the final rule to provide that these capsules meet the dissolution test specifications if: (a) Not less than 50 percent of the labeled amount of the antibiotic drug in the capsule is dissolved in 30 minutes for the average of all capsules tested; (b) not less than 70 percent is dissolved in 60 minutes for the average of all capsules tested; (c) not less than 60 percent of the labeled amount is dissolved in 60 minutes for each capsule; and (d) not less than 85 percent of the labeled amount is dissolved in 90 minutes for the average of all capsules tested. Thus, the final regulation requires the 500-mg tetracycline HCl capsule to meet the dissolution specifications at sampling speeds of 30, 60, and 90 minutes.

7. One comment requested additional time in which to evaluate data contained in two of the references cited in the preamble to the proposal. It was argued that References 9 and 10 were the only ones that indicated any possible correlation between a dissolution test and the assurance of bioavailability, and that these references were not received in time to review their contents adequately.

This request for additional time to evaluate data was not submitted in accordance with § 10.40(b)(3) (21 CFR 10.40(b)(3)) of the procedural regulations and, therefore, cannot be granted. Section 10.40(b)(3) provides that any request for an extension of a comment period must be identified as a request for extension in its heading. Because this comment was not identified as such a request, the agency was not aware of it until after the official end of the comment period when all substantive comments were processed. The agency has, however, received and considered a subsequent submission by the same firm concerning the data contained in References 9 and 10. This subsequent comment is discussed in comment 8 below.

8. The comment stated that the information contained in References 9 and 10 was not complete enough for a thorough evaluation of the conclusions reached therein. Thus, in addition to raising specific questions about the data contained in References 9 and 10, the comment requested background data for the two references.

The background data requested and replies to the specific questions about the data contained in the references have been supplied to the firm making the comment. If, following its evaluation of the data, the commentor believes the rule should be modified, it may submit a petition to that effect under the Citizen Petition section of FDA's procedural regulations in § 10.30 (21 CFR 10.30).

9. On the agency's own initiative, it is eliminating the requirement in § 436.541(b) for maintaining a constant volume of dissolution medium throughout the test and is providing for the removal of up to 15 mL of medium without having to correct for the volume removed when calculating the amount of dissolved drug in the medium. The agency concludes that maintenance of volume is desirable only when the particular drug involved has minimal solubility or when the size of the aliquot is so large in relation to the initial volume that the integrity of the test would be adversely affected. Because of the solubility of these drugs and because the initial volume of dissolution medium required by the test is 900 mL, these factors are not present in the dissolution testing of tetracycline HCl and oxytetracycline HCl. Further, the USP dissolution test requires the maintenance of a constant volume only when specifically required in an individual monograph. The agency also concludes that in instances in which more than 15 mL of medium is removed from the vessel, the actual volume removed from the vessel must be corrected for when determining the quantity of dissolved drug.

10. As stated in the preamble to the proposal, a fee for the dissolution testing of each batch of an antibiotic drug subject to this requirement is necessary. Therefore, § 431.53(b)(1) (21 CFR 431.53(b)(1)) is amended to include dissolution testing, with a chargeable fee of $100.00 per test. The amount of the fee is based on the fact that each test will take approximately 2½ hours. Because this fee has been determined by FDA to be necessary to provide dissolution testing, and because the setting of fees is a matter peculiarly within the province of the agency, the agency concludes that notice and public comment about this fee are impracticable and unnecessary. Interested persons may, however, on or before September 17, 1979, file with the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, four copies of written comments on the dissolution test fee, identified with the Hearing Clerk docket number found in brackets in the heading of this document. Comments received may be seen in the office of the Hearing Clerk between 9 a.m. and 4 p.m., Monday through Friday. Any changes in this regulation justified by the comments will be the subject of a further amendment.

The agency has made certain nonsubstantive editorial changes to conform the format of the regulations set forth in this document with those already published in the antibiotic regulations.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 512(n), 59 Stat. 463 as amended, 82 Stat. 350–351 (21 U.S.C. 357, 360b(n))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Parts 431, 436, and 546 are amended as follows:

SUBCHAPTER D—DRUGS FOR HUMAN USE

PART 431—CERTIFICATION OF ANTIBIOTIC DRUGS

1. Part 431 is amended in the table in § 431.53(b)(1) by inserting alphabetically a new entry to read as follows:

§ 431.53 Fees.

* * * * *

(b) * * *

(1) * * *

	Chargeable fee per test
Test:	
Dissolution test	$100

* * * * *

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

1. Part 436 is amended by adding new § 436.541 to read as follows:

§ 436.541 Tetracycline hydrochloride tablets and capsules; oxytetracycline hydrochloride capsules; dissolution test.

(a) *Equipment.* Use Apparatus 2 as described in the United States Pharmacopeia XIX dissolution test with the following exception: A distance of 4.5±0.5 centimeters should be maintained between the lower edge of the stirring blade and the lowest inner surface of the vessel during the test.

(b) *Procedure.* For each dosage form listed in the table in this paragraph select the appropriate dissolution medium, stirring blade rotation rate, and sampling time and proceed as set forth in Apparatus 2 methodology of the United States Pharmacopeia XIX dissolution test. Determine the amount of drug substance dissolved by performing the assay described in paragraph (c) of this section. The amount of dissolution medium removed for sampling purposes may be disregarded if the amount removed is not more than 15 milliliters. If more than 15 milliliters is removed, then correct for the volume removed.

Dosage form	Dissolution medium	Stirring blade [1]	Sampling time(s)
Oxytetracycline hydrochloride capsules	900 mL distilled water	75	30 min and 60 min.
Tetracycline hydrochloride capsules (except 500-mg).	900 mL distilled water	75	30 min and 60 min.
Tetracycline hydrochloride capsules (500-mg)	900 mL distilled water	75	30 min, 60 min, and 90 min.
Tetracycline hydrochloride tablets	900 mL distilled water	75	30 min and 60 min.

[1] Stirring blade rotation rate (revolutions per minute).

(c) *Antibiotic drug content*—(1) *Tetracycline hydrochloride*—(i) *Preparation of working standard solution.* Accurately weigh 20 to 30 milligrams of tetracycline hydrochloride working standard into a suitable-sized volumetric flask. Dissolve and dilute to volume with water. Further dilute an accurately measured portion with distilled water to obtain a known concentration of 0.01 to 0.02 milligram of tetracycline hydrochloride per milliliter.

(ii) *Preparation of sample solutions.* Dilute an accurately measured portion of the sample with sufficient distilled water to obtain a concentration of 0.01 to 0.02 milligram of tetracycline hydrochloride per milliliter (estimated).

(iii) *Procedure.* Using a suitable spectrophotometer and water as the blank, determine the absorbance of each standard and sample solution at the absorbance peak at approximately 276 nanometers. Determine the exact position of the absorption peak for the particular instrument used.

(iv) *Calculation.* Determine the total amount of tetracycline hydrochloride dissolved as follows:

$$T = (A_u)(c)(d)(900^*) / A_s.$$

Where:

T = total milligrams of drug dissolved;
A_u = Absorbance of sample;
c = Concentration of standard in milligrams;
d = Dilution factor of sample filtrate;
A_s = Absorbance of standard.

*If more than 15 mL of dissolution medium is removed, correct for the volume removed.

(2) *Oxytetracycline hydrochloride; preparation of working standard-solution.* (i) Accurately weigh 30 milligrams of oxytetracycline-base working standard into a suitable-sized volumetric flask. Add 5 milliliters of 0.1*N* hydrochloric acid and swirl the flask to dissolve oxytetracycline base. Dilute an accurately measured portion with distilled water to obtain a known concentration of 0.01 to 0.02 milligram of oxytetracycline per milliliter.

(ii) Proceed as directed in paragraph (c)(1)(ii), (iii), and (iv) of this section except measure the absorbance at the absorption peak at approximately 273 nanometers.

(d) *Evaluation.* The tablets or capsules pass the dissolution test if six tablets or capsules dissolve to the extent specified in the section for the antibiotic product to be tested. The tablets or capsules do not pass the dissolution test if the requirement specified for the individual dosage unit is not met. If the requirements specified for the average of all tablets or capsules are not met, but the requirement specified for the individual dosage unit is met, repeat the test on six additional dosage units. The tablets or capsules pass the repeat dissolution test if the average of all 12 tablets or capsules tested dissolve to the extent specified in the section for the antibiotic product to be tested.

PART 446—TETRACYCLINE ANTIBIOTIC DRUGS

2. Part 446 is amended:

a. In § 446.167 by revising the last two sentences of paragraph (a)(1), revising paragraph (a)(3)(i)(*b*), and adding new paragraph (b)(3) to read as follows:

§ 446.167 Oxytetracycline hydrochloride capsules.

(a) * * *

(1) * * * The loss on drying is not more than 5.0 percent. The capsules shall dissolve not less than 60 percent of the labeled amount of oxytetracycline in 30 minutes and not less than 85 percent in 60 minutes for an average of all capsules tested and not less than 70 percent of the labeled amount of oxytetracycline in 60 minutes for each capsule. The oxytetracycline hydrochloride used conforms to the standards prescribed by § 446.67(a)(1).

* * * * *

(3) * * *

(i) * * *

(*b*) The batch for potency, loss on drying, and dissolution.

* * * * *

(b) * * *

(3) *Dissolution.* Proceed as directed in § 436.541 of this chapter.

b. In § 446.181d by revising the fourth and fifth sentences of paragraph (a)(1) and revising paragraphs (a)(3)(i)(*b*) and (b)(3) to read as follows:

§ 446.181d Tetracycline hydrochloride tablets.

(a) * * *

(1) * * * Its loss on drying is not more than 3.0 percent. The tablets shall dissolve not less than 60 percent of the labeled amount of tetracycline hydrochloride in 30 minutes and not less than 85 percent in 60 minutes for an average of all tablets tested and not less than 70 percent of the labeled amount of tetracycline hydrochloride in 60 minutes for each tablet. * * *

* * * * *

(3) * * *

(i) * * *

(*b*) The batch for potency, loss on drying, dissolution, and 4-epianhydrotetracycline content.

* * * * *

(b) * * *

(3) *Dissolution.* Proceed as directed in § 436.541 of this chapter.

* * * * *

c. In § 446.181e by revising the last two sentences in paragraph (a)(1), revising paragraph (a)(3)(i)(*b*), and adding new paragraph (b)(4) to read as follows:

§ 446.181e Tetracycline hydrochloride capsules.

(a) * * *

(1) * * * Its 4-epianhydrotetracycline content is not more than 3.0 percent. The capsules, except for the 500-milligram capsules, shall dissolve not less than 60 percent of the labeled amount of tetracycline hydrochloride in 30 minutes and not less than 85 percent in 60 minutes for an average of all capsules

tested and not less than 70 percent of the labeled amount of tetracycline hydrochloride in 60 minutes for each capsule. The 500-milligram capsules shall dissolve: (i) Not less than 50 percent of the labeled amount of tetracycline hydrochloride in 30 minutes for the average of all capsules tested; (ii) not less than 70 percent in 60 minutes for the average of all capsules tested; (iii) not less than 60 percent of the labeled amount of tetracycline hydrochloride in 60 minutes for each capsule; and (iv) not less than 85 percent of the labeled amount of tetracycline hydrochloride in 90 minutes for the average of all capsules tested. The tetracycline hydrochloride used conforms to the standards prescribed by § 446.81(a)(1).

* * * * *

(3) * * *

(i) * * *

(*b*) The batch for potency, loss on drying, 4-epianhydrotetracycline content, and dissolution.

(b) * * *

(4) *Dissolution.* Proceed as directed in § 436.541 of this chapter.

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

3. Part 546 is amended in § 546.110d by revising the fourth sentence in paragraph (a)(1), revising paragraph (a)(5)(ii)(*a*), and adding new paragraph (b)(4) to read as follows:

§ 546.110d Chlortetracycline hydrochloride tablets.

(a) * * *

(1) * * * Chlortetracycline hydrochloride or tetracycline tablets not exceeding 15 millimeters in diameter or not intended solely for use in preparing solutions shall disintegrate in 1 hour. Tetracycline hydrochloride tablets not exceeding 15 millimeters in diameter or not intended solely for use in preparing solutions shall dissolve not less than 60 percent of the labeled amount of tetracycline hydrochloride in 30 minutes and not less than 85 percent in 60 minutes for an average of all tablets tested and not less than 70 percent of the labeled amount of tetracycline hydrochloride in 60 minutes for each tablet. * * *

* * * * *

(5) * * *

(ii) * * *

(*a*) The batch: average potency per tablet, average moisture, disintegration time if it is chlortetracycline hydrochloride or tetracycline tablets, and dissolution if it is tetracycline hydrochloride tablets.

* * * * *

(b) * * *

(4) *Dissolution.* Proceed as directed in § 436.541 of this chapter.

Effective date. This regulation is effective for all lots submitted for certification after September 17, 1979.

(Secs. 507, 512(n), 59 Stat. 463 as amended, 82 Stat. 350–351 (21 U.S.C. 357, 360b(n)))

Dated: August 8, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-25282 Filed 8-16-79; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 1010

[Docket 78N-0375]

Performance Standards for Electronic Products: General; Variances From Performance Standards

AGENCY: Food and Drug Administration

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the administrative procedures for ruling on applications for variances from performance standards for electronic products. As a result of this amendment, the procedures no longer include formal publication of variance approvals in the **Federal Register** because experience has shown that such notices are not necessary for adequate protection of the public health. The agency will, however, publish notices of availability of approved variances in the **Federal Register**.

EFFECTIVE DATE: September 17, 1979.

FOR FURTHER INFORMATION CONTACT: Melvyn R. Altman, Bureau of Radiological Health (HFX-460), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 6, 1979 (44 FR 7149), FDA proposed to amend the administrative procedures in § 1010.4 (21 CFR 1010.4) for ruling on variance applications. The agency proposed to delete the requirement that variance approvals be published in the **Federal Register** with a 30-day objection period before the variance could become effective.

The agency received five comments on the proposal—four from manufacturers of electronic products and one from a manufacturer's consultant. The following is a summary of the comments received and FDA's responses to them:

1. Two comments stated that the current regulation caused unnecessary delays and costs. Both comments fully endorsed the proposed amendment to the regulation. Two other comments supported the proposal but urged that concerned parties be informed of approved variances. One of the comments suggested announcement in the newsletter published by the Bureau of Radiological Health (as was discussed in the proposal). Another comment asked that the Bureau adopt a policy of informing interested manufacturers of approved variances.

The agency accepts the suggestion that manufacturers and other interested parties be informed but has decided to inform them routinely by issuing notices of availability of approved variances in the **Federal Register**. The notice will include only basic information on the variance and will indicate availability of the complete variance from the office of the Hearing Clerk. The notice of availability differs from the present notice of variance approval in that the latter notice contains all the details of the variance and provides a 30-day objection period. The new procedure provides for a brief notice of availability and the effective date of the variance would not depend on it. The new pfocedure would therefore inform concerned parties of approved variances while expediting the variance approval process and eliminating what experience has shown to be the needless expenditure of agency resources on the publication of the details of all variances. Accordingly, the final regulation has been changed to provide for the routine issuance of a notice of availability.

2. One comment opposed the proposal on the ground that informing interested parties of approved variances by means other than the **Federal Register** would not be as prompt and reliable as the current procedures.

The agency believes that this comment has merit and, as discussed in paragraph 1, the final regulation has been modified to provide for publication of a notice of availability of approved variances. The effective date of a variance will not depend on this **Federal Register** notice, and variances will not be delayed unnecessarily.

Minor editorial changes are being made in § 1010.4(c)(3) and (4) for purposes of clarification.

Therefore, under the Public Health Service Act, as amended by the

Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 1010 is amended by revising § 1010.4(c) to read as follows:

§ 1010.4 Variances.

* * * * *

(c) *Ruling on applications.* (1) The director, Bureau of Radiological Health, may approve or deny, in whole or in part, a requested variance or any amendment or extension thereof, and the director shall inform the applicant in writing of this action on a requested variance or amendment or extension. The written notice will state the manner in which the variance differs from the standard, the effective date and the termination date of the variance, a summary of the requirements and conditions attached to the variance, any other information that may be relevant to the application or variance, and, if appropriate, the number of units or other similar limitations for which the variance is approved. Each variance will be assigned an identifying number.

(2) A notice of availability of an approved variance or any amendment or extension thereof will be published in the **Federal Register.** The notice will state the name of the applicant, the identifying number, the effective date and the termination date of the variance, the product for which the variance is approved, and the specific requirements of the applicable standard from which the variance is approved.

(3) The director, Bureau of Radiological Health, shall amend or withdraw a variance whenever the Director determines that this action is necessary to protect the public health or otherwise is justified by this subchapter. Such action will become effective on the date specified in the written notice of the action sent to the applicant, except that it will become effective immediately upon notification to the applicant when the Director determines that such action is necessary to prevent an imminent health hazard.

(4) All applications for variances and for amendments and extensions thereof and all correspondence (including written notices of approval) on these applications will be available for public disclosure in the office of the Hearing Clerk, except for information regarded as confidential under section 360A(e) of the act.

* * * * *

Effective date. This regulation is effective September 17, 1979.

(Sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f).)

Dated: August 10, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-25448 Filed 8-16-79; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7638; EE-9-78]

Income Tax; Mergers and Consolidations of Plans and Transfers of Plan Assets or Liabilities

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to mergers and consolidations of retirement plans and transfers of plan assets or liabilities. Changes in the applicable tax law were made by the Employee Retirement Income Security Act of 1974. The regulations will provide the public with the guidance needed to comply with that Act and will apply to all participants involved in a merger, consolidation or transfer of plan assets or liabilities.

DATE: The regulations are effective for mergers, consolidations and transfers of assets or liabilities which occur after September 2, 1974.

FOR FURTHER INFORMATION CONTACT: Norman J. Misher of the Employees Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.E., 20224, (Attention: CC:LR:T) 202–566–3433, not a toll-free call.

SUPPLEMENTAL INFORMATION:

Background

On July 1, 1977, proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 401(a) (12) and 414(l) of the Internal Revenue Code of 1954 were published in the **Federal Register** (42 FR 33770). The amendments were proposed to conform the regulations to section 1021(b) of the Employee Retirement Income Security Act of 1974 ("ERISA") (88 Stat. 937) and to section 1015 of that Act (88 Stat. 925). A public hearing was held on September 30, 1977. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

General Rule

Section 414(l) of the Internal Revenue Code of 1954 provides a rule for a merger or consolidation of a plan with another plan after September 2, 1974. This rule also applies to a transfer of assets or liabilities after that date. Under this section, if one of these events occurs, a trust which forms a part of a pension, profit-sharing or stock bonus plan will not be qualified under section 401, unless each participant in the plan would receive a minimum benefit if the plan terminated immediately after the merger, consolidation or transfer. This benefit must be equal to or greater than the benefit the participant would have been entitled to receive immediately before the merger, consolidation or transfer if the plan in which he was a participant had then terminated. The same rules apply to an annuity or bond purchase plan described in section 403 (a) or 405. Under the regulations, the benefits which the participants would receive if the plan terminated are those provided exclusively by the plan assets pursuant to section 4044 of the Employee Retirement Income Security Act of 1974. Those benefits do not include benefits that might be provided by plan termination insurance under ERISA.

The regulations make it clear that, except to the extent provided by regulations of the Pension Benefit Guaranty Corporation ("PBGC"), section 414(l) does not apply to any transaction to the extent that participants either before or after that transaction are covered under a multiemployer plan within the meaning of section 414(f). Two commentators suggested that the regulations should be expanded to provide that the exception from section 414(l) for multiemployer plans is also applicable to so-called "multiple employer plans," which have some but not all the characteristics of a multiemployer plan as defined in section 414(f).

As section 414 (l) excepts only multiemployer plans, and as "multiemployer plan" is a term defined in the statute, it has been concluded that there is no legal authority for adopting this suggestion. Therefore, the final regulations do not expand this exception so as to include multiple employer plans.

The final regulations also make it clear that sections 401 (a) (12) and 414 (l) do not apply to a governmental plan, a church plan for which there has not been made the election to have the participation, vesting, funding, etc.,

requirements apply, or a plan which at no time after September 2, 1974, provided for employer contributions.

Single Plan

Under the proposed regulations, a plan was considered a "single plan" if and only if all of the plan assets were available to pay benefits to employees who were covered by the plan. In accordance with the view expressed by several commentators, the final regulations have expanded this definition to make it clear that a single plan may also pay benefits to beneficiaries of employees who were covered by the plan.

The final regulations also make it clear that the determination of whether all of the plan assets are available to pay benefits to employees who are covered by the plan and their beneficiaries is to be made on an ongoing basis. However, in determining whether a plan is a single plan, all of the facts and circumstances of the particular situation may be taken into account.

Furthermore, it is intended that the concept of a single plan contained in these regulations will be applied for other purposes where it is necessary to determine whether an arrangement involves one plan or more than one plan. Thus, for example, if a plan is a single plan within the meaning of the regulations, it will also be considered a single plan for purposes of section 404 (relating to deductions for employer contributions), section 411 (d) (3) (relating to complete and partial terminations) and section 412 (relating to minimum funding standards).

Benefits on a Termination Basis

As discussed above, the regulations provide that "benefits on a termination basis" means the benefits that would be provided exclusively by plan assets pursuant to section 4044 of ERISA. The regulations further provide that, for purposes of determining these benefits, the allocation of assets to the various section 4044 categories must be made on the basis of reasonable actuarial assumptions and that the assumptions used by the PBGC are considered reasonable for this purpose.

Several commentators pointed out that because the PBGC assumptions are generally published retroactively rather than prospectively, it is difficult for parties to a transaction to compute the amount of assets and liabilities to be transferred at the time of the transaction. Accordingly, the final regulations provide that the assumptions used by the PBGC as of the date of the merger or spinoff are considered reasonable for purposes of allocating assets to the various priority categories under section 4044.

Date of Merger of Spinoff

Several commentators suggested that the regulations clarify which date will be the controlling date of a merger or spinoff for purposes of applying the regulations. Because each case has its own unique set of facts, the final regulations provide that the actual date of a merger or spinoff will be determined on the basis of all the facts and circumstances. The final regulations set forth several factors which are considered relevant for purposes of this determination. In applying a facts and circumstances analysis, the date on which the actual transfer of assets and liabilities occurs will not necessarily be controlling.

Other Clarifying Definitions

For clarification, the final regulations provide that the present value of an accrued benefit must be determined on the basis of reasonable actuarial assumptions and that the assumptions used by the PBGC are considered reasonable.

In another clarifying change, the final regulations provide that the standards set forth in regulations prescribed by the PBGC for the valuation of a plan's assets will be applied for this purpose.

Merger or Spinoff of Defined Contribution Plan

In connection with a merger or two or more defined contribution plans, the regulations provide that if several conditions are satisfied, the merger will satisfy the requirements of section 414(l). One of these conditions is that the sum of the account balances in each plan equals the fair market value of the entire plan assets. A similar condition is stated in the context of a spinoff of a defined contribution plan.

Several commentators recommended that because this condition cannot be satisfied when a "leveraged" Employee Stock Ownership Plan ("ESOP") is involved, the regulations should be modified so as to make it possible for a "leveraged" ESOP to merge with another defined contribution plan or to engage in a spinoff. Such a modification has not been made. The conditions set forth in the regulations provide a "safe harbor" rule with respect to mergers and spinoffs of defined contribution plans. Therefore, the fact that certain types of defined contribution plans do not literally satisfy the "safe harbor" rule of the regulations will not necessarily preclude the issuance of a favorable determination letter in connection with a merger or spinoff of one or more of these plans.

Merger of Defined Benefit Plans

Several commentators stated that in the case of a merger which normally would require the creation of a special schedule of benefits, although the data maintenance alternative already provided in the regulations is quite helpful, the regulations should be modified to provide an additional rule which could be used as an alternative to the establishment of the special schedule. The alternative rule suggested by the commentators would require the maintenance of special records for a five-year period following the merger date from which the merger could be "undone" if the plan terminated within that period.

The final regulations have not adopted this suggested alternative. It was felt that it did not adequately protect the benefits of those participants involved in the merger. Furthermore, the rule was not adopted because it is not workable in the context of successive mergers within a five-year period.

Actuarial Certification in Connection With Data Maintenance Alternative

In connection with the data maintenance alternative to the establishment of a special schedule, the proposed regulations provided that care should be taken to insure that all data necessary to determine the schedule be maintained and an enrolled actuary must so certify to the plan administrator.

Many commentators suggested that the regulations make it clear what the enrolled actuary must certify to the plan administrator. Accordingly, the final regulations provide that the enrolled actuary must certify to the plan administrator that each element of data necessary to determine the schedule as of the date of the merger is maintained. The final regulations further provide that this certification must be based either upon the enrolled actuary's independent examination of the data, or upon the actuary's reliance upon a written statement of the plan administrator concerning what data is actually being maintained. If the actuary bases his certification upon his reliance on the plan administrator's written statement, the reliance must be reasonable under the circumstances of the particular situation.

Spinoff of Defined Benefit Plan

In the case of a spinoff of a defined benefit plan, the regulations require that in order for the spinoff to satisfy section

414 (l), a computation under section 4044 of ERISA must be made. One commentator suggested that because of the expense of a section 4044 computation in this context, a special rule along the lines of the data maintenance alternative available in connection with a merger of a defined benefit plan should be adopted. Under this special rule, a section 4044 computation would not be required if records available for such computation are retained for at least five years after the spinoff. Additionally, to take advantage of this rule, the commentator stated that the parties involved in the spinoff should be required to agree to obligate themselves to make a contribution to either the spun off or remaining plan to the extent that there is a deficiency of assets in connection with the termination of either plan within five years from the spinoff.

The final regulations have not adopted the suggested rule. It was felt that the rule might not adequately protect the benefits of those participants involved in the spinoff, especially in view of the fact that a contribution is required only after it is determined that an insufficient amount of assets exist. Furthermore, in cases which only involve a transfer of a small amount of assets in connection with a spinoff, a section 4044 calculation can be avoided entirely by the use of the *de minimis* rule contained in the regulations. Accordingly, it has been decided that where the *de minimis* rule is not applicable to a spinoff, the only way to assure that a sufficient amount of assets are actually allocated to the spun off plans is to require a section 4044 computation at the time the spinoff occurs.

Special Temporary Rule

The regulations provide a special temporary rule which applies to a spinoff taking place on or before July 1, 1978, if the participants are covered under a defined benefit plan which is a single plan maintained for different groups of employees under which there has been separate accounting of assets for each group. Under these circumstances, section 414 (l) is considered satisfied if all the liabilities with respect to each group of employees are transferred to another plan, together with the assets separately accounted for with respect to that group.

Several commentators suggested that the regulations clarify the extent to which assets for each group of employees have to be separately accounted for in order for the special temporary rule to be available. Accordingly, the final regulations specify that the separate accounting of assets requirement will not be satisfied if the assets allocated to each single plan are determined by an historical re-creation of benefits, contributions, investment gains, etc.

A few commentators suggested that the July 1, 1978, deadline for using the special temporary rule be extended. This suggestion has not been adopted. The purpose of the special temporary rule was to provide a one-year transitional period for plans whose sponsors or administrators were not aware of the "single plan" concept before the publication of the proposed regulations. One year is considered an adequate transitional rule for this purpose, and there does not appear to be a justification for making the rule permanent, as recommended by one commentator or for extending the July 1, 1978, deadline

Transfer of Assets or Liabilities

Several commentators suggested that the regulations should be modified so as to provide an exemption for the transfer of funds in connection with the transfer of individual employees in the normal course of their service with an employer (for example pursuant to a reciprocity agreement), even though the transferred employees may be covered by a different plan as the result of the transfer.

The final regulations do not reflect this suggested modification. It was decided that a failure to subject a transfer of individual employees pursuant to a reciprocity agreement to the regulations might adversely affect the benefits that the transferred employee would otherwise be entitled to if the transfer had not occurred. Furthermore, in many instances, the *de minimis* rule for spinoffs is available in connection with the transfer of individual employees, thereby providing a simplified rule for satisfying the requirements of section 414(l).

One commentator stated that under certain reciprocity arrangements, all that occurs is a transfer of a participant and his accrued benefit from one plan to another plan. This constitutes a transfer of a liability, thereby subjecting the transfer to the regulations. However, the *de minimis* rule for spinoffs is not applicable to this type of transfer, because the *de minimis* rule only applies if there is a transfer of assets between plans so as to assure that the benefits of particiants are adequately safeguarded.

In view of the fact that this type of reciprocity arrangement only involves a transfer of a liability, the Internal Revenue Service was concerned that abusive situations might develop if these transfers were not subject to the general requirements of the regulations. The Service explored the development of another *de minimis* rule to preserve abuse-free reciprocity agreements while preventing potential abuse. It was concluded however, that a rule along this line would be inherently complex and, in many cases, unworkable. Furthermore, it is believed that, with relatively minor changes, reciprocity agreements in existence could be revised to achieve the desired result without involving section 414(l) and the regulations. Therefore, the final regulations do not contain a special rule for transfers of liabilities, unaccompanied by transfers of assets, pursuant to reciprocity agreements.

Drafting Information

The principal author of this regulation is Norman J. Misher of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Adoption of amendments to the regulations

Accordingly, the proposed amendments to 26 CFR Part 1 are hereby adopted subject to the changes set forth below:

Paragraph 1. Paragraph (a) of § 1.414(l)–1, as set forth in the notice of proposed rulemaking, is changed to read as follows:

§ 1.414(l)–1 Mergers and consolidations of plans or transfers of plan assets.

(a) *In general*—(1) *Scope of the regulations.* Sections 401(a)(12) and 414(l) apply only to plans to which section 411 applies without regard to section 411(e)(2). Thus, for example, these sections do not apply to a governmental plan within the meaning of section 414(d); a church plan, within the meaning of section 414(e), for which there has not been made the election under section 410(d) to have the participation, vesting, funding, etc. requirements apply; or a plan which at no time after September 2, 1974, provided for employer contributions.

(2) *General rule.* Under section 414(l),

(i) A trust which forms a part of a plan will not constitute a qualified trust under section 401, and

(ii) A plan will not be treated as being qualified under section 403(a) and 405(a), unless, in the case of a merger or consolidation (as defined in paragraph (b)(2) of this section), or a transfer of assets or liabilities (as defined in paragraph (b)(3) of this section), the following condition is

satisfied. This condition requires that each participant receive benefits on a termination basis (as defined in paragraph (b)(5) of this section) from the plan immediately after the merger, consolidation or transfer which are equal to or greater than the benefits the participant would receive on a termination basis immediately before the merger, consolidation, or transfer.

Par. 2. Paragraph (b) of § 1.414 (l)–(1), as set forth in the notice of proposed rulemaking, is changed by (1) revising the first sentence of subparagraph (1), (2) revising the last sentence of subparagraph (2), (3) revising subparagraph (5)(ii) and (4) adding new subparagraphs (9), (10), and (11) immediately following subparagraph (8). The revised and added provisions read as follows:

§ 1.414(l)–(1) Mergers and consolidations of plans or transfers of plan assets.

* * * * *

(b) *Definitions.* * * *

(1) *Single plan.* A plan is a "single plan" if and only if, on an ongoing basis, all of the plan assets are available to pay benefits to employees who are covered by the plan and their beneficiaries. * * *

(2) *Merger or consolidation.* * * * Furthermore, a merger or consolidation will not occur if two plans are not combined into a single plan, such as by using one trust which limits the availability of assets of one plan to provide benefits to participants and beneficiaries of only that plan.

* * * * *

(5) *Benefits on a termination basis.* * * *

(ii) For purposes of determining the benefits on a termination basis, the allocation of assets to various priority categories under section 4044 of ERISA must be made on the basis of reasonable actuarial assumptions. The assumptions used by the Pension Benefit Guaranty Corporation as of the date of the merger or spinoff are deemed reasonable for this purpose.

* * * * *

(9) *Present value of accrued benefit.* For purposes of this section, the present value of an accrued benefit must be determined on the basis of reasonable actuarial assumptions. For this purpose, the assumptions used by the Pension Benefit Guaranty Corporation as of the date of the merger or spinoff are deemed reasonable.

(10) *Valuation of plan assets.* In determining the value of a plan's assets, the standards set forth in regulations prescribed by the Pension Benefit Guaranty Corporation (29 CFR Part 2611) shall be applied.

(11) *Date of merger or spinoff.* The actual date of a merger or spinoff shall be determined on the basis of the facts and circumstances of the particular situation. For purposes of this determination, the following factors, none of which is necessarily controlling, are relevant:

(i) The date on which the affected employees stop accruing benefits under one plan and begin coverage and benefit accruals under another plan.

(ii) The date as of which the amount of assets to be eventually transferred is calculated.

(iii) If the merger or spinoff agreement provides that interest is to accrue from a certain date to the date of actual transfer, the date from which such interest will accrue.

Par. 3. Paragraph (c) of § 1.414(l)–1, as set forth in the notice of proposed rulemaking, is changed by (1) substituting the words "a single" for "one" in the first and second sentences of subparagraph (1) and (2) revising subparagraph (2)(i) to read as follows:

§ 1.414 (l)–1 Mergers and consolidations of plans or transfers of plan assets.

* * * * *

(c) *Application of section 414(l).* * * *

(2) *Multiemployer plans.* * * *

(i) A multiemployer plan is split into two or more plans, one or more of which are not multiemployer plans, or

* * * * *

Par. 4. Paragraph (h) of § 1.414(l)–1, as set forth in the notice of proposed rulemaking is changed by (1) revising the first sentence of subparagraph (1) and (2) revising subparagraph (4). The revised provisions read as follows:

§ 1.414 (l)–1 Mergers and consolidations of plans or transfers of plan assets.

* * * * *

(h) *De minimis rule for merger of defined benefit plan*—(1) *In general.* In the case of a merger of a defined benefit plan ("smaller plan") whose liabilities (*i.e.*, the present value of accrued benefits, whether or not vested) are less than 3 percent of the assets of another defined benefit plan ("larger plan") as of at least one day in the larger plan's plan year in which the merger of the two plans occurs, section 414 (l) will be deemed satisfied if the following condition is met.

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(4) *Liabilities of the smaller plan.* For purposes of subparagraphs (2) and (3) of this paragraph, mergers satisfying paragraphs (e), (f) or (g) of this section will be ignored in determining the sum of the liabilities assumed by the larger plan.

Par. 5. Paragraph (i)(2) of § 1.414(l)–1, as set forth in the notice of proposed rulemaking, is changed to read as follows:

§ 1.414 (l)–1 Mergers and consolidations of plans or transfers of plan assets.

* * * * *

(i) *Data maintenance.* * * *

(2) *Required data.* The data that must be maintained depends on the plan, and care should be taken to ensure that all necessary data is maintained. Furthermore, in order to take advantage of the data maintenance alternative provided in this paragraph, an enrolled actuary must certify to the plan administrator that each element of data necessary to determine the schedule as of the date of the merger is maintained. This certification must be based either upon the enrolled actuary's independent examination of the data, or upon his reliance, which under the circumstances of the particular situation must be reasonable, upon a written statement of the plan administrator concerning what data is actually being maintained.

Par. 6. Paragraph (n) of § 1.414 (l)–1, as set forth in the notice of proposed rulemaking, is changed by (1) revising subparagraph (2) and (2) adding a sentence at the end of subparagraph (3). The revised and added provisions read as follows:

§ 1.414 (l)–1 Mergers and consolidations of plans or transfers of plan assets.

* * * * *

(n) *Spinoff of a defined benefit plan.* * * *

(2) *De minimis rule.* In the case of a spinoff, the requirements of section 414 (l) will be deemed to be satisfied if the value of the assets spun off—

(i) Equals the present value of the accrued benefits spun off (whether or not vested), and

(ii) In conjunction with other assets spun off during the plan year in which the spinoff occurs in accordance with this subparagraph, is less than 3 percent of the assets as of at least one day in that year.

Spinoffs occurring in previous or subsequent plan years are ignored if they are not part of a single spinoff designed to occur in steps over more than one plan year.

(3) *Special temporary rule.* * * * For purposes of this subparagraph, a separate accounting of assets will not be considered to have occurred to the extent that the assets allocated to each single plan are determined by an historical re-creation of benefits, contributions, investment gains, etc.

Par. 7. The second sentence of paragraph (o) of § 1.414 (l)–1, as set forth in the notice of proposed rulemaking, is changed to read as follows:

§ 1.414 (l)–1 Mergers and consolidations of plans or transfers of plan assets.

* * * * *

(o) *Transfers of assets or liabilities.* * * * Thus, for example, if in accordance with the transfer of one or more employees, a block of assets and liabilities are transferred from Plan A to Plan B, each of which is a defined benefit plan, the transaction will be considered as a spinoff from Plan A and a merger of one of the spinoff plans with Plan B. * * *

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: August 7, 1979.

Donald C. Lubick,

Assistant Secretary of the Treasury.

Paragraph 1. The following new section is added immediately after § 1.401(a)–11:

§ 1.401(a)-12 Mergers and consolidations of plans and transfers of plan assets.

A trust will not be qualified under section 401 unless the plan of which the trust is a part provides that in the case of any merger or consolidation with, or transfer of assets or liabilities to, another plan after September 2, 1974, each participant in the plan would receive a minimum benefit if the plan terminated immediately after the merger, consolidation, or transfer. This benefit must be equal to or greater than the benefit the participant would have been entitled to receive immediately before the merger, consolidation, or transfer if the plan in which he was a participant had then terminated. This section applies to a multiemployer plan only to the extent determined by the Pension Benefit Guaranty Corporation. For additional rules concerning mergers or consolidations of plans and transfers of plan assets, see section 414(l) and § 1.414(l)-1.

Par. 2. The following new section is inserted immediately after § 1.414(g)-1:

§ 1.414(l)-1 Mergers and consolidations of plans or transfers of plan assets.

(a) *In general*—(1) *Scope of the regulations.* Sections 401(a)(12) and 414(l) apply only to plans to which section 411 applies without regard to section 411(e)(2). Thus, for example, these sections do not apply to a governmental plan within the meaning of section 414(d); a church plan, within the meaning of section 414(e), for which there has not been made the election under section 410(d) to have the participation, vesting, funding, etc. requirements apply; or a plan which at no time after September 2, 1974, provided for employer contributions.

(2) *General rule.* Under section 414(l),

(i) A trust which forms a part of a plan will not constitute a qualified trust under section 401, and

(ii) A plan will not be treated as being qualified under section 403 (a) and 405 (a), unless, in the case of a merger or consolidation (as defined in paragraph (b)(2) of this section), or a transfer of assets or liabilities (as defined in paragraph (b)(3) of this section), the following condition is satisfied. This condition requires that each participant receive benefits on a termination basis (as defined in paragraph (b)(5) of this section) from the plan immediately after the merger, consolidation or transfer which are equal to or greater than the benefits the participant would receive on a termination basis immediately before the merger, consolidation, or transfer.

(b) *Definitions.* For purposes of this section:

(1) *Single plan.* A plan is a "single plan" if and only if, on an ongoing basis, all of the plan assets are available to pay benefits to employees who are covered by the plan and their beneficiaries. * * * For purposes of the preceding sentence, all the assets of a plan will not fail to be available to provide all the benefits of a plan merely because the plan is funded in part or in whole with allocated insurance instruments. A plan will not fail to be a single plan merely because of the following:

(i) The plan has several distinct benefit structures which apply either to the same or different participants,

(ii) The plan has several plan documents,

(iii) Several employers, whether or not affiliated, contribute to the plan,

(iv) The assets of the plan are invested in several trusts or annuity contracts, or

(v) Separate accounting is maintained for purposes of cost allocation but not for purposes of providing benefits under the plan.

However, more than one plan will exist if a portion of the plan assets is not available to pay some of the benefits. This will be so even if each plan has the same benefit structure or plan document, or if all or part of the assets are invested in one trust with separate accounting with respect to each plan.

(2) *Merger or consolidation.* The terms "merger" or "consolidation" means the combining of two or more plans into a single plan. A merger or consolidation will not occur merely because one or more corporations undergo a reorganization (whether or not taxable). Furthermore, a merger or consolidation will not occur if two plans are not combined into a single plan, such as by using one trust which limits the availability of assets of one plan to provide benefits to participants and beneficiaries of only that plan.

(3) *Transfer of assets or liabilities.* A "transfer of assets or liabilities" occurs when there is a diminution of assets or liabilities with respect to one plan and the acquisition of these assets or the assumption of these liabilities by another plan. For example, the shifting of assets or liabilities pursuant to a reciprocity agreement between two plans in which one plan assumes liabilities of another plan is a transfer of assets or liabilities. However, the shifting of assets between several funding media used for a single plan (such as between trusts, between annuity contracts, or between trusts and annuity contracts) is not a transfer of assets or liabilities.

(4) *Spinoff.* The term "spinoff" means the splitting of a single plan into two or more plans.

(5) *Benefits on a termination basis.* (i) The term "benefits on a termination basis" means the benefits that would be provided exclusively by the plan assets pursuant to section 4044 of the Employee Retirement Income Security Act of 1974 ("ERISA") and the regulations thereunder if the plan terminated. Thus, the term does not include benefits that are guaranteed by the Pension Benefit Guaranty Corporation, but not provided by the plan assets.

(ii) For purposes of determining the benefits on a termination basis, the allocation of assets to various priority categories under section 4044 of ERISA must be made on the basis of reasonable actuarial assumptions. The assumptions used by the Pension Benefit Guaranty Corporation as of the date of the merger or spinoff are deemed reasonable for this purpose.

(iii) If a change in the benefit structure of a plan in conjunction with a merger, consolidation, or transfer of assets or liabilities alters the benefits on a termination basis, the change should be designated, at the time the merger, consolidation, or transfer occurs, to be effective either immediately before or immediately after that occurrence. In the event that no designation is made, the change in the benefit structure will be deemed to occur immediately after the merger, consolidation, or transfer of assets or liabilities.

(6) *Lower funded plan.* (i) The term "lower funded plan" generally means the plan which, immediately prior to the merger, would have its assets exhausted in a higher priority category than the other plan.

(ii) Where two plans, immediately prior to the merger, would have their assets exhausted in the same priority category of section 4044 of ERISA in the event of termination, the lower funded plan is the one in which the assets would satisfy a lesser proportion of the liability allocated to that priority category.

(7) *Priority category.* The term "priority category" means the category of benefits described in each paragraph of section 4044(a) of ERISA. References to higher or highest priority categories refer to those priority categories which receive the first allocation of asserts, i.e. the lowest paragraph numbers in section 4044(a).

(8) *Separate accounting of assets.* The term separate accounting of assets"

means the maintenance of an asset account with respect to a given group of participants which is:

(i) Credited with contributions made to the plan on behalf of the participants and with its allocable share of investment income, if any, and

(ii) Charged with benefits paid to the participants, and with its allocable share of investment losses or expenses.

(9) *Present value of accrued benefit.* For purposes of this section, the present value of an accrued benefit must be determined on the basis of reasonable actuarial assumptions. For this purpose, the assumptions used by the Pension Benefit Guaranty Corporation as of the date of the merger or spinoff are deemed reasonable.

(10) *Valuation of plan assets.* In determining the value of a plan's assets, the standards set forth in regulations prescribed by the Pension Benefit Guaranty Corporation (29 CFR Part 2611) shall be applied.

(11) *Date of merger or spinoff.* The actual date of a merger or spinoff shall be determined on the basis of the facts and circumstances of the particular situation. For purposes of this determination, the following factors, none of which is necessarily controlling, are relevant:

(i) The date on which the affected employees stop accruing benefits under one plan and begin coverage and benefit accruals under another plan.

(ii) The date as of which the amount of assets to be eventually transferred is calculated.

(iii) If the merger or spinoff agreement provides that interest is to accrue from a certain date to the date of actual transfer, the date from which such interest will accrue.

(c) *Application of section 414(l)*—(1) *Two or more plans.* (i) Section 414(l) does not apply unless more than a single plan is involved. It also does not apply unless at least a single plan assumes liabilities from another plan or obtains assets from another plan (as in a merger or spinoff). For purposes of section 414(l), a transfer of assets or liabilities will not be deemed to occur merely because a defined contribution plan is amended to become a defined benefit plan. This rule will apply even if, under the facts and circumstances of a particular case, a termination of the defined contribution plan will be considered to have occurred for purposes of other provisions of the Code.

(ii) The requirements of this subparagraph may be illustrated as follows:

Example. After acquiring Corporation B, Corporation A amends Corporation B's defined benefit plan (Plan B) to provide the same benefits as Corporation A's defined benefit plan (Plan A). The assets of Plan B are transferred to the trust containing the assets of Plan A in such a manner that the assets of each plan: (1) are separately accounted for, and (2) are not available to pay benefits of the other plan. Because of condition (2) there are still two plans and, therefore, a merger did not occur. As a result, section 414(l) does not apply. If at some later date Corporation A were to sell Corporation B and transfer the assets of Plan B that were separately accounted for to another trust or to an annuity contract solely for the purpose of providing Plan B's benefits, this transfer would also not involve section 414(l). This is so because Plan B was a separate plan before the entire transaction and because no plan assumed liabilities or obtained assets from another plan. If, on the other hand, Corporation A merged Plan A and Plan B at the time of the acquisition of Corporation B by deleting condition (2) above, then section 414(l) would apply both to the merger of Plan A and Plan B and to the spinoff of Plan B from the merged plan. The spinoff would have to satisfy the requirements of paragraph (n) of this section, even if the assets attributable to Plan A and Plan B were separately accounted for in order to allocate funding costs.

(2) *Multiemployer plans.* Except to the extent provided by regulations of the Pension Benefit Guaranty Corporation, section 114(l) does not apply to any transaction to the extent that participants either before or after that transaction are covered under a multiemployer plan within the meaning of section 414(f). Until these regulations are issued, section 414(l) does not apply to any of the following situations:

(i) A multiemployer plan is split into two or more plans, one or more of which are not multiemployer plans, or (ii) A single employer plan is merged into a multiemployer plan.

Therefore, if some (but not all) of the participants in a single employer plan become participants in a multiemployer plan under an agreement in which the multiemployer plan assumes all the liabilities of the single employer plan with respect to these participants and in which some or all of the assets of the single employer plan are transferred to the multiemployer plan, section 414(l) applies, but only with respect to the participants in the single employer plan who did not transfer to the multiemployer plan.

(d) *Merger of defined contribution plans.* In the case of a merger of two or more defined contribution plans, the requirements of section 414(l) will be satisfied if all of the following conditions are met:

(1) The sum of the account balances in each plan equals the fair market value (determined as of the date of the merger) of the entire plan assets.

(2) The assets of each plan are combined to form the assets of the plan as merged.

(3) Immediately after the merger, each participant in the plan as merged has an account balance equal to the sum of the account balances the participant had in the plans immediately prior to merger.

(e) *Merger of defined benefit plans*—(1) *General rule.* Section 414(l) compares the benefits on a termination basis before and after the merger. If the sum of the assets of all plans is not less than the sum of the present values of the accrued benefit (whether or not vested) of all plans, the requirements of section 414(l) will be satisfied merely by combining the assets and preserving each participant's accrued benefits. This is so because all the accrued benefits of the plan as merged are provided on a termination basis by the plan as merged. However, if the sum of the assets of all plans is less than the sum of the present values of the accrued benefits (whether or not vested) in all plans, the accrued benefits in the plan as merged are not provided on a termination basis.

(2) *Special schedule of benefits.* Generally, for some participants, the benefits provided on a termination basis for the plan as merged would be different from the benefits provided on a termination basis in the plans prior to merger if the assets were merely combined and if each participant retained his accrued benefit. Some participants would, therefore, receive greater benefits on a termination basis as a result of the merger and some other participants would receive smaller benefits. Accordingly, the requirements of section 414(l) would not be satisfied unless the distribution on termination were modified in some manner to prevent any participant from receiving smaller benefits on a termination basis as a result of the merger. This is accomplished through modifying the application of section 4044 of ERISA by inserting a special schedule of benefits.

(f) *Operational rules for the special schedule.* The application of section 4044 of ERISA as modified by the schedule of benefits is accomplished by the following steps:

(1) Section 4044 is applied in the plan as merged through the priority categories fully satisfied by the assets of the lower funded plan immediately prior to the merger.

(2) The assets in the plan as merged are then allocated to the next priority category as a percentage of the value of

the benefits that would otherwise be allocated to that priority category. That percentage is the ratio of (i) the assets allocated to the first priority category not fully satisfied by the lower funded plan immediately prior to the merger to (ii) the assets that would have been allocated had that priority category been fully satisfied.

(3) A schedule of benefits is formed listing participants and scheduled accrued benefits. The scheduled accrued benefit is the excess of the benefits provided on a termination basis with respect to any participant from the plans immediately prior to the merger, over the benefits provided on a termination basis in subparagraphs (1) and (2) of this paragraph immediately after the merger. After allocating the assets in accordance with subparagraph (2) of this paragraph, the assets are allocated to the schedule of benefits as follows:

(i) First the assets are allocated to the scheduled benefits to the extent that the participant would have benefits provided in subparagraph (4) of this paragraph if there were no scheduled benefits.

(ii) Then the assets are allocated to the scheduled benefits to the extent that the participant would have benefits provided pursuant to subparagraph (5) of this paragraph if there were no scheduled benefits.

These assets should be allocated first to those scheduled benefits that are in the highest priority category under section 4044.

(4) The assets are then allocated to those benefits in the priority category described in subparagraph (2) of this paragraph with respect to which assets were not allocated. This allocation is made to the extent that these benefits are not associated with benefits in the schedule.

(5) Finally, the assets are allocated in accordance with section 4044 with respect to priority categories lower than the priority category described in subparagraph (4) of this paragraph. This allocation is made to the extent that these benefits are not associated with benefits in the schedule.

(g) *Successive mergers*—(1) *In general.* In the case of a current merger of a defined benefit plan with another defined benefit plan which as a result of a previous merger has a special schedule, the rules of paragraphs (e) and (f) of this section apply as if the schedule were considered a category described in section 4044 of ERISA. Thus, a second schedule may be formed as a result of the current merger. The second schedule will be inserted in the priority category of section 4044 described in paragraph (f)(2) of this section as of the date of the current merger. This priority category may be higher, lower, or within the schedule of benefits existing on account of a previous merger. If this priority schedule is inserted within a schedule of benefits, a new single schedule of benefits replacing the old schedule of benefits would in effect be created.

(2) *Allocation of assets.* Assets in the new schedule of benefits are allocated as follows:

(i) First to the benefits remaining in the old schedule to the extent that there are assets immediately prior to the second merger to satisfy the original benefits,

(ii) Then to the benefits provided on a termination basis from the plans immediately prior to the second merger to the extent that they are not provided before the schedule after the second merger or in subdivision (i) of this subparagraph,

(iii) Then to benefits remaining in the original schedule not included in subdivision (i) of this subparagraph.

(h) *De minimis rule for merger of defined benefit plan*—(1) *In general.* In the case of a merger of a defined benefit plan ("smaller plan") whose liabilities (*i.e.*, the present value of accrued benefits, whether or not vested) are less than 3 percent of the assets of another defined benefit plan ("larger plan") as of at least one day in the larger plan's plan year in which the merger of the two plans occurs, section 414(l) will be deemed to be satisfied if the following condition is met. The condition requires that a special schedule of benefits (consisting of all the benefits that would be provided by the smaller plan on a termination basis just prior to the merger) be payable in a priority category higher than the highest priority category in section 4044 of ERISA. Assets will be allocated to that schedule in accordance with the allocation of assets to scheduled benefits in paragraph (f)(3) of this section.

(2) *Application to a series of mergers.* In the case of a series of such mergers in a given plan year of the larger plan, the rule described in subparagraph (1) of this paragraph will apply only if the sum of the liabilities (whether or not vested) assumed by the larger plan are less than 3 percent of the assets of the larger plan as of at least one day in the plan year of the larger plan in which the mergers occurred.

(3) *Application to a merger occurring over more than one plan year.* In the case of a merger of a smaller plan or a portion thereof with a larger plan designed to occur in steps over more than one plan year of the larger plan, the entire transaction will be deemed to occur in the plan year of the larger plan which contains the first of these steps.

(4) *Liabilities of the smaller plan.* For purposes of subparagraphs (2) and (3) of this paragraph, mergers satisfying paragraphs (e), (f) or (g) of this section will be ignored in determining the sum of the liabilities assumed by the larger plan.

(i) *Data maintenance*—(1) *Alternative to the special schedule.* In the case of a merger which would require the creation of a special schedule in order to satisfy section 414(l), the schedule need not be created at the time of the merger if data sufficient to create the schedule is maintained. The schedule would only have to be created in the event of a subsequent plan termination or a subsequent spinoff. In that case the schedule must be determined as of the date of the merger.

(2) *Required data.* The data that must be maintained depends on the plan, and care should be taken to ensure that all necessary data is maintained. Furthermore, in order to take advantage of the data maintenance alternative provided in this paragraph, an enrolled actuary must certify to the plan administrator that each element of data necessary to determine the schedule as of the date of the merger is maintained. This certification must be based either upon the enrolled actuary's independent examination of the data, or upon his reliance, which under the circumstances of the particular situation must be reasonable, upon a written statement of the plan administrator concerning what data is actually being maintained.

(j) *Five year rule*—(1) *Limitation on the required use of the special schedule.* A plan will not fail to satisfy the requirements of section 414(l) merely because the effects of the special schedule created pursuant to paragraphs (e)(2) or (h) of this section are ignored 5 years after the date of a merger. Furthermore, the date maintained pursuant to paragraph (i) of this section need not be maintained for more than 5 years after the merger, if the plan does not have a spinoff or a termination within 5 years.

(2) *Illustration.* If Plans A and B merge to form Plan AB and if Plan AB merges with Plan C 3 years later to form Plan ABC and if Plan ABC terminates 4 years later, the data relating to the merger of Plans A and B need not be maintained for more than 5 years after the merger of Plans A and B. In addition, after 5 years have elapsed after the merger of Plans A and B, the effect of any special schedule

created by the merger of Plans A and B on the schedule created by the merger of Plans AB and C may be ignored in determining the later schedule.

(k) *Examples.* The provisions of paragraphs (e) through (j) of this section may be illustrated by the following examples:

Example (1). Plan A, whose assets are $220,000, is to be merged with Plan B, whose assets are $200,000. Plan A has three employees. Plan B has two employees. If Plans A and B were to terminate just prior to the merger, the benefits provided on a termination basis would be as follows:

BILLING CODE 4830-01-M

Plan A

Priority Category of Section 4044 of ERISA	(1) Annual Accrued Benefits			(2) Present Value of Accrued Benefits			(3) Fair Market Value of Assets Allocated to Priority Category	(4) Benefits on a Termination Basis		
	EE_1	EE_2	EE_3	EE_1	EE_2	EE_3		EE_1	EE_2	EE_3
3	$10,000			$120,000			$120,000	$10,000		
4	2,000	$4,000		24,000	$44,000		68,000	2,000	$4,000	
5		3,000	$4,000		33,000	$40,000	32,000		1,315*	$1,753**
6			1,000			10,000				
							$220,000	$12,000	$5,315	$1,753

* $3,000 x $\frac{\$32,000}{\$73,000}$ i.e. Accrued Benefit x $\frac{\text{Assets available for priority category 5}}{\text{Total present value of accrued benefits in category 5}}$

** $4,000 x $\frac{\$32,000}{\$73,000}$

Plan B

	EE_4	EE_5	EE_4	EE_5		EE_4	EE_5
3	$15,000		$195,000		$195,000	$15,000	
4		$5,000		$50,000	5,000		$500*
5		8,000		80,000			
					$200,000	$15,000	$500

* $5,000 x $\frac{\$ 5,000}{\$50,000}$

BILLING CODE 4830-01-C

Because Plan B's assets are exhausted in a higher priority category than Plan A's assets, Plan B is the lower funded plan. A schedule will, therefore, be inserted in Priority Category 4 of the plan as merged after providing 10% of the benefits provided in category 4, i.e. the ratio of $5,000 assets in Plan B allocated to category 4 to the $50,000 liability in category 4. The schedule would be constructed as follows:

EE	(1) Benefits on a Termination Basis Before Merger	(2) Benefits Provided from Priority Categories Higher Than Category 4	(3) 10% of Benefits Provided in Priority Category 4	(4) Benefits Provided Before Schedule (2) + (3)	(5) Schedule of Benefits (1) - (4)
1	$12,000	$10,000	$200	$10,200	$1,800
2	5,315		400	400	4,915
3	1,753				1,753
4	15,000	15,000		15,000	
5	500		500	500	

Example (2). The facts are the same as in Example (1). The plan, however, terminates one year later. Furthermore, no employee has accrued additional benefits during the year except that the $2,000 benefit of EE_1 that was originally in category 4 is now in category 3. The assets would be allocated to the priority categories to the extent that there are assets to cover the following benefits.

Priority Termination Category	EE_1	EE_2	EE_3	EE_4	EE_5
3	$12,000			$15,000	
10% of 4		$ 400			$ 500
Schedule of Benefits Included in balance of Category 4		3,600			
Schedule of Benefits Included in Category 5		1,315	$1,753		
Schedule of Benefits Included in Category 6					
Balance of Category 4 Not included in schedule					4,500
Balance of Category 5 Not included in schedule		1,685	2,247		8,000
Balance of Category 6 Not included in schedule			1,000		

(l) *Merger of defined benefit and defined contribution plan.* In the case of a merger of a defined benefit plan with a defined contribution plan, one of the plans before the merger should be converted into the other type of plan (*i.e.*, the defined benefit converted into a defined contribution or the defined contribution converted into a defined benefit) and either paragraph (d) or paragraphs (e) through (j) of this section, whichever is appropriate, should be applied.

(m) *Spinoff of a defined contribution plan.* In the case of a spinoff of a defined contribution plan, the requirements of section 414(l) will be satisfied if after the spinoff—

(1) The sum of the account balances for each of the participants in the resulting plans equals the account balance of the participant in the plan before the spinoff, and

(2) The assets in each of the plans immediately after the spinoff equals the sum of the account balances for all participants in that plan.

(n) *Spinoff of a defined benefit plan*—(1) *General rule.* In the case of a spinoff of a defined benefit plan, the requirements of section 414(l) will be satisfied if—

(i) All of the accrued benefits of each participant are allocated to only one of the spun off plans, and

(ii) The value of the assets allocated to each of the spun off plans is not less than the sum of the present value of the benefits on a termination basis in the plan before the spin off for all participants in that spun off plan.

(2) *De minimis rule.* In the case of a spin off the requirements of section 414(l) will be deemed to be satisfied if the value of the assets spun off—

(i) Equals the present value of the accrued benefits spun off (whether or not vested), and

(ii) In conjunction with other assets spun off during the plan year in which the spinoff occurs in accordance with this subparagraph, is less than 3 percent of the assets as of at least one day in that year.

Spinoffs occurring in previous or subsequent plan years are ignored if they are not part of a single spinoff designed to occur in steps over more than one plan year.

(3) *Special temporary rule.* In the case of a defined benefit plan maintained for different groups of employees, which is a single plan (as defined in paragraph (b)(l) of this section) and under which there has been separate accounting of assets for each group, a spinoff of the plan on or before July 1, 1978, into a separate plan for each group will be deemed to satisfy section 414 (l) if—

(i) All the liabilities with respect to each group of employees are allocated to a separate plan for that group of employees, and

(ii) The assets that are separately accounted for with respect to each group of employees are allocated to the separate plan for that group of employees.

For purposes of this subparagraph, a separate accounting of assets will not be considered to have occurred to the extent that the assets allocated to each single plan are determined by an historical re-creation of benefits, contributions, investment gains, etc.

(o) *Transfers of assets or liabilities.* Any transfer of assets or liabilities will for purposes of section 414 (l) be considered as a combination of separate mergers and spinoffs using the rules of paragraphs (d), (e) through (j), (l), (m), or (n) of this section, whichever is appropriate. Thus, for example, if in accordance with the transfer of one or more employees, a block of assets and liabilities are transferred from Plan A to Plan B, each of which is a defined benefit plan, the transaction will be considered as a spinoff from Plan A and a merger of one of the spinoff plans with Plan B. The spinoff and merger described in the previous sentence would be subject to the requirements of paragraphs (n) and (e) through (j) of this section respectively.

(p) *Effective date.* The provisions of this section apply to mergers, consolidations and transfers of assets or liabilities which occur after September 2, 1974.

[FR Doc. 79-25582 Filed 8-16-79; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

29 CFR Part 89

Senior Community Service Employment Program Regulations; Correction

AGENCY: Employment and Training Administration, Labor.

ACTION: Final Rule: Correction.

SUMMARY: This document corrects a final rule relating to the eligibility requirements for the Senior Community Service Employment Program in accordance with Section 507 of Title V of the Older Americans Act of 1965 (42 U.S.C. 3056e), as amended by the Comprehensive Older American Act Amendments of 1978 (Pub. L. 95-478).

EFFECTIVE DATE: May 18, 1979.

ADDRESSES: Comments may be addressed to: Chief, Older Worker Work Group, Employment and Training Administration, U.S. Department of Labor, Room 6122, 601 D Street, NW., Washington, D.C. 20213.

FOR FURTHER INFORMATION CONTACT: Paul A. Mayrand, telephone (202) 376-6232.

SUPPLEMENTARY INFORMATION: The Department of Labor published at 44 FR 29048 (May 18, 1979) final rules amending § 89.19 of the Senior Community Service Employment Program (SCSEP) regulations at 29 CFR Part 89. The intent of the amendments to § 89.19 was to incorporate 125 per centum of the poverty level determined in accordance with criteria established by the U.S. Office of Management and Budget into the eligibility requirements for SCSEP. Although this intent was clear in the amendments, because of prior amendments to § 89.19, the amendatory language in the final rules appearing at 44 FR 29048 did not properly mesh with the most recent wording of § 89.19 as of May 18, 1979. Thus, this document is meant to provide the proper wording of § 89.19 and to clarify any possible confusion as to the eligibility requirements for SCSEP.

In FR Doc. 79-15618, appearing at 44 FR 29048 (May 18, 1979) make the following correction: On page 29049 at § 89.19 [Amended] Number 1 is changed to read:

§ 89.19 [Amended]

1. Paragraph (b)(3)(i) is amended to read:

* * * * *

(b) * * *

(3) * * *

(i) *Regular economic status criterion.* Applicants for enrollment in a project who have not previously been enrolled in a project and applicants for re-enrollment in a project whose last previous enrollment was terminated for reasons other than extended illness or placement into unsubsidized employment must be members of a family which receives regular cash welfare payments or whose annual income in relation to family size does not exceed 125 per centum of the poverty level determined in accordance with criteria established and updated by the U.S. Office of Management and Budget.

Signed at Washington, D.C., the 10th day of August 1979.

Lamond Godwin,

Administrator of Office of National Programs.

[FR Doc. 79-25252 Filed 8-16-79; 8:45 am]

BILLING CODE 4510-30-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[FRL 1296-8]

Approval of a Delayed Compliance Order Issued by Kansas Department of Health and Environment to Kansas City Power & Light Co., LaCygne, Kans.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the Kansas Department of Health and Environment (KDHE) to Kansas City Power and Light Company (KCPL). The Order requires the company to bring air emissions from its dry ash collection top hatch and baghouse filters on Unit No. 2 at LaCygne, Kansas into compliance with certain regulations contained in the federally-approved Kansas State Implementation Plan (SIP). Because of the Administrator's approval, KCPL's 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 August 17, 1979.

FOR FURTHER INFORMATION CONTACT: Peter J. Culver or Henry F. Rompage, Environmental Protection Agency, Region VII, Enforcement Division, 324 East 11th Street, Kansas City, Missouri 64106—telephone 816/374-2576.

ADDRESSES: A copy of the Delayed Compliance Order, and any supporting material, are available for public inspection and copying during normal business hours at: Environmental Protection Agency, Region VII, Enforcement Division, 17th Floor, 324 East 11th Street, Kansas City, Missouri 64106.

SUPPLEMENTARY INFORMATION: On May 29, 1979, the Regional Administrator of EPA's Region VII Office published in the **Federal Register,** 44 FR 30703, a notice proposing approval of a delayed compliance order issued by KDHE to the KCPL. The notice asked for public comments by June 28, 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 KCPL is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places KCPL on a schedule to bring its dry ash collection top hatch and baghouse filters on Unit No. 2 at LaCygne, Kansas into compliance as expeditioulsy as practicable with Kansas Air Pollution Emission Control Regulation 28-19-50B Opacity Requirements, a part of the federally-approved Kansas State Implementation Plan. The Order does not impose interim or monitoring requirements because KDHE has determined their inclusion in the Order would be unreasonable. The Order does impose reporting requirements. If the conditions of the Order are met, it will permit KCPL to delay compliance with the SIP regulations covered by the Order until July 1, 1979. The company is unable to immediately comply with these regulations.

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

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

Dated: August 13, 1979.

Douglas M. Costle,

Administrator.

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

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding the following entry to the table in Section 65.211 to read as follows:

§ 65.211 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
KCPL	LaCygne, Kansas	VII-79-DCO-3	28-19-50B	5-29-79	7-1-79

[FR Doc. 79-25587 Filed 8-16-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 65

[FRL 1295-4]

Delayed Compliance Order for Ford Motor Co., Canton Forge Plant

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: By this rule, the Administrator of U.S. EPA approves a Delayed Compliance Order to Ford Motor Company, Canton Forge Plant (Ford). The Order requires the Company to bring air emissions from its ten forge presses at Canton, Ohio, into compliance with certain regulations contained in the federally approved Ohio State Implementation Plan (SIP). Ford'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 on August 17, 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 May 25, 1979, the Regional Administrator of U.S. EPA's Region V Office published in the **Federal Register** (44 FR 30379) a notice setting out the provisions of a proposed State Delayed Compliance Order for Ford. 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 Ford 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 Ford on a schedule to bring its ten forge presses at Canton, 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. Ford is unable to immediately comply with these regulations. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Ford to delay compliance with the SIP regulations covered by the Order until July 1, 1979.

Compliance with the Order by Ford 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 Ford 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 Ford on a schedule for compliance with the Ohio State Implementation Plan.

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

Dated: August 13, 1979.

Douglas M. 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 Order 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
*	*	*	*	*	*
Ford Motor Company Canton Forge Plant.	Canton, Ohio	None	5–25–79	OAC 3745–17–07, OAC 3745–17–11.	7–1–79
*	*	*	*	*	*

[FR Doc. 79–25585 Filed 8–16–79; 8:45 am]

BILLING CODE 6560–01–M

40 CFR Part 65

[FRL 1295–3]

Delayed Compliance Order for Lincoln Electric 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 Lincoln Electric Company. The Order requires the Company to bring air emissions from its three varnish dip tank and bake oven systems at Cleveland, Ohio into compliance with certain regulations contained in the federally approved Ohio State Implementation Plan (SIP). Lincoln Electric 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 on August 17, 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 May 8, 1979 the Regional Administrator of U.S. EPA's Region V Office published in the **Federal Register** (44 FR 26940) a notice setting out the provisions of a proposed State Delayed Compliance Order for Lincoln Electric 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 Lincoln Electric 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 Lincoln Electric Company on a schedule to bring its three varnish dip tanks and bake oven systems at Cleveland, Ohio into compliance as expeditiously as practicable with Regulation OAC 3745–17–07(G) a part of the federally approved Ohio State Implementation Plan. Lincoln Electric Company 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 emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Lincoln Electric Company to delay compliance with the SIP regulation covered by the Order until April 15, 1979.

Compliance with the Order by Lincoln Electric Company 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 U.S. EPA or after the Order is terminated. If the Administrator determines that Lincoln Electric 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 Lincoln Electric Company on a schedule for compliance with the Ohio State Implementation Plan.

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

Dated: August 13, 1979.

Douglas M. Costle,

Administrator.

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

PART 65—DELAYED COMPLIANCE ORDERS

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
•	•	•	•	•	•
Lincoln Electric Company	Cleveland, Ohio	None	5/8/79	OAC 3745-21-07(G).	7/1/79
•	•	•	•	•	•

[FR Doc. 79-25586 Filed 8-16-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 86

[FRL-1265-6]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Certification and Test Procedures

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action is a publication of a technical amendment affecting the criteria used to determine motorcycle engine families for purposes of certification under 40 CFR Part 86.

DATE: This amendment is effective August 17, 1979.

FOR FURTHER INFORMATION CONTACT: Clifford Tyree, Certification Division, Office of Mobile Source Air Pollution Control (ANR-455), Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Telephone: (313) 668-4310.

SUPPLEMENTARY INFORMATION: The criteria used to determine motorcycle engine families for the purposes of certification under 40 CFR Part 86 are being changed to delete the criterion concerning the number of tuneups that are performed during service accumulation. This criterion has not been used to date and EPA does not plan to make use of this criterion in the future. Because of this and also because the Agency no longer considers it necessary to distinguish motorcycle families on the basis of tuneups, this criterion is being deleted.

The Agency finds that good cause exists for omitting as unnecessary and impracticable a notice of proposed rulemaking, public comment and postponement of the effective date in the issuance of these amendments, in that (1) the amendments eliminate a criterion that has never been used and would have no utility in the future, (2) the change does not adversely affect a manufacturer's ability to certify its product, nor does it have any adverse impact on air quality and (3) considerations of lead time for the 1980 model year dictate immediate promulgation.

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 as "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044. The change to the regulation and the reasons for that change are given in the table that follows:

Dated: August 13, 1979.

Douglas M. Costle,

Administrator.

Section	Change	Reason
86.420–78	Delete the criterion that the number of tune ups performed during service accumulation be a family determiner.	This criterion has not been used and the Agency no longer considers it necessary to distinguish motorcycles on the basis of maintenance.

2. Section 86.420–78 is amended by deleting paragraphs (b)(11) and (d)(12) as follows:

§ 86.420–78 Engine families.

* * * * *

(b) * * *

(11) [Reserved]

* * * * *

(d) * * *

(12) [Reserved]

* * * * *

[FR Doc. 79–25583 Filed 8–16–79; 8:45 am]

BILLING CODE 6560–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

41 CFR Ch. 18

[Procurement Regulation Directive 79–2]

Contract Requirements for Anti-Inflation Measures in Federal Contracting

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This document is NASA's implementation of the Office of Federal Procurement Policy (OFPP) Policy Letter No. 78–6, providing for wage and price standards for Federal contractors; and OFPP memorandum, dated October 31, 1978, which provided policies and procedures for the use of economic price adjustment provisions in Government contracts.

EFFECTIVE DATE: August 17, 1979.

FOR FURTHER INFORMATION CONTACT: James H. Wilson, Procurement Policy Division (Code HP–1), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: 755–2237.

AUTHORITY: The provisions of this doucment are issued under 42 U.S.C. 2473 (b)(1).

Leroy E. Hopkins,

Acting Director of Procurement.

This PRD 79–2 is added to the unincorporated PRD's applicable to the NASA Procurement Regulation located in 41 CFR, Ch. 18, Volume III, Revised July 31, 1978, following PRD 78–10.

Item I.—Wage and Price Standards for Federal Contractors

1. *Purpose.* This Item implements the Office of Federal Procurement Policy (OFPP) Policy Letter No. 78–6.

2. *Background.* In presenting his anti-inflation program on October 24, 1978, the President announced standards for noninflationary wage and price behavior. He directed that firms which supply goods and services to the Federal Government will be required to certify their compliance with the voluntary wage and price standards. Those firms that fail to comply with such standards will be ineligible to receive Federal contracts.

On November 1, 1978, the President signed Executive Order No. 12092 providing for application of the anti-inflation program to Federal contracting. The Administrator, Office of Federal Procurement Policy is charged with the responsibility for overall direction of the implementation of the order, including the issuance of regulations and procedures for determining exceptions and granting exemptions. The Order specifically gives the Chairman of the Council on Wage and Price Stability (CWPS) the authority to monitor the wage and price practices of firms to determine compliance with the standards as announced by the President.

The Order was followed closely by the initial Wage and Price Standards released by the CWPS on October 31, 1978, to implement the anti-inflation program. These standards were superseded by the CWPS revised Wage and Price Standards released on December 13, 1978.

OFPP Policy Letter No. 78–6 was issued on December 27, 1978, providing regulations and procedures for administering the anti-inflation measures affecting Federal contracts and first tier subcontracts valued at over $5 million. The Policy Letter prescribed

provisions for incorporation in the Defense Acquisition Regulation and the Federal Procurement Regulations. These uniform provisions were specifically designed "to avoid placing administrative burdens on the acquisition process."

3. *Implementation.* The following new provisions are added to Part 1, Subpart 3, of the NASA Procurement Regulation:

1.340 Prohibition Against Inflationary Procurement Practices.

(a) *Authority.* Executive Order 12092, November 1, 1978, (43 FR 51375, November 3, 1978) requires that procurement of personal property and services by executive agencies and military departments be accomplished at prices and wage rates which are noninflationary.

(b) *Acquisition Policy.* The Government will, to the extent provided in paragraph (d) below, purchase goods and services only from companies, as companies are defined by the published standards of the Council on Wage and Price Stability (CWPS), in compliance with wage and price standards reflected in Executive Order 12092 of November 1, 1978, and the Wage and Price Standards issued by CWPS (6 CFR Part 705, Appendix, and Part 706). The company which signs the contract or solicitation is considered to be certifying compliance for all units contained within the business structure of that company. Companies determined by CWPS, after notice and opportunity to be heard, to be in noncompliance with the standards will be considered noncompliant companies.

(c) *Compliance Monitoring by CWPS.* The CWPS will monitor overall compliance with the wage and price standards (6 CFR Part 705, Appendix, and Part 706). The CWPS will publish in accordance with procedures designed to ensure fairness and due process the names of companies which are not in compliance with the standards. The names of those companies which are not in compliance with the standards will be disseminated to NASA Procurement Officers by the Office of Procurement. Contracting officers, auditors and other acquisition officials are cautioned that it is not their responsibility to determine if an offeror or contractor is or is not in compliance with the wage and price standards.

(d) *Noncompliant Companies.*

1. Companies determined by CWPS to be in noncompliance shall be ineligible for contract awards anticipated to exceed $5 million resulting from solicitations or other actions issued on or after February 15, 1979, unless the certification provision(s) is waived as provided for in paragraph (i). This dollar threshold may be lowered at a later date.

2. Companies listed by CWPS as not being in compliance shall not be considered to be in compliance until CWPS removes them from the list of noncompliant companies or otherwise determines that they are in compliance.

(e) *Sales Contracts and Foreign Contracts and Subcontracts.* This paragaraph does not apply to sales contracts awarded by the Government, or to contracts or subcontracts that are to be performed wholly outside the United States, as that term is defined in 10 U.S.C. Sec. 101 (1970), with labor recruited and material purchased outside the United States.

(f) *Certification Provisions.*

1. *Solicitation Provision.* All bids and proposals received as a result of solicitations issued on or after February 15, 1979, where it is expected that the award will exceed $5 million or where cumulative orders expected to be placed under an indefinite delivery type contract award will exceed $5 million, shall include the following certification. The certification shall be accepted by the contracting agency unless the company has been determined by CWPS to be noncompliant. Any CWPS determination is not subject to protest to the General Accounting Office.

Certification.—Wage and Price Standards (February 1979)

(Applicable to awards in excess of $5 million, and awards of indefinite delivery type contracts under which cumulative orders are expected to exceed $5 million.)

(a) By submission of this bid or offer, the bidder or offeror certifies that he is in compliance with the Wage and Price Standards issued by the Council on Wage and Price Stability (6 CFR Part 705, Appendix, and Part 706).

(b) The clause entitled, "Certification—Wage and Price Standards" set forth elsewhere in this solicitation, shall be incorporated in any resulting contract except where waived by agency head involved.

2. *Contract Provision.* All contracts, including indefinite delivery type contracts, resulting from solicitations issued on or after February 15, 1979 expected to exceed $5 million, and all orders or new work added by supplemental agreements to existing contracts in excess of $5 million executed on or after February 15, 1979, will contain the following clause. The certification shall be accepted by the contracting agency unless the company has been determined by CWPS to be noncompliant.

Certification.—Wage and Price Standards (February 1979)

(This clause is applicable if the award, an order under an existing contract or a supplemental agreement for new work is in excess of $5 million, or the expected cumulative value of orders (when the contract is of the indefinite delivery type) is in excess of $5 million.)

(a) The Contractor hereby certifies that, as of the date of this action, he is in compliance with the Wage and Price Standards issued by the Council on Wage and Price Stability (6 CFR 705, Appendix, and Part 706).

(b) If it is later determined after notice and opportunity to be heard, that the Contractor was willfully not in compliance with such standards as of the date of this certification, then this contract may be terminated in accordance with the provisions of the termination for default clause.

(c) Should the Government determine that termination for default would not be in the public interest, the Contractor agrees that he

will accept an equitable reduction of the contract price or cost allowance and profit or fee, as appropriate under the circumstances.

(d) The Contractor shall require a Certification—Wage and Price Standards limiited to (a) above, as a condition of award of any first tier subcontract which exceeds $5 million. The Contractor further agrees that should any price adjustment in subcontract prices result from the operation of this provision as to subcontracts, he will advise the Contracting Officer and an equitable adjustment of the contract price will be made. The operation of this provision in any subcontract shall not excuse the Contractor from performance of this contract in accordance with its terms and conditions. Any waiver or relaxation of the certification requirements with respect to such first-tier subcontractors can only be made by the agency head involved.

(g) *Enforcement.*

1. A contractor who has certified as provided in paragraph (f) above and who has been determined, after notice and opportunity to be heard, to have been willfully not in compliance with the wage and price standards as of the date of the certification, may be terminated for default in accordance with the contract provision in paragraph (f) 2 above.

2. Any such contractor will be ineligible for any further Federal contracts and subcontracts in excess of $5 million unless such ineligibility is waived by the agency head in accordance with paragraph (h) below.

3. If the contractor has been determined to be in breach of contract under (f) above, he shall be notified of such determination and given the opportunity within 10 days, to apply for waiver of default termination and the application of some lesser penalty. The contracting officer shall furnish his decision and the reasons therefor, within 10 days after receipt of the application (i.e., whether the contract will be terminated for default, or the application will be referred to the NASA Administrator with recommendation for waiver of default termination).

(h) *Waiver of Termination for Default and of Ineligibility for Federal Contracts and Subcontracts.* Termination for default or a determination of ineligibility for Federal contracts and subcontracts may be waived by the agency head if he determines in writing that:

(i) the agency's need for the product or service is essential to National security or public safety, and there are no alternative sources of supply, or that seeking alternative sources is not feasible because of urgency of requirements, or disruption of essential program functions; or

(ii) such action would result in severe financial hardship and threaten the contractor's or subcontractor's ability to survive; or

(iii) the contractor or subcontractor agrees to come into compliance with the wage and price standards and to make any reduction of the contract price that is equitable in the circumstances. Any proposed waiver of termination for default or waiver of ineligibility for Federal contracts and subcontracts shall be prepared for the signature of the NASA Administrator and forwarded to the Director of Procurement, NASA Headquarters, Attention: Code HS–1.

(i) *Waiver of Certification*

1. Waiver of the contract certification should be considered only in situations where the Government cannot forego or postpone a procurement because of an urgent National security or public safety requirement and where there are no alternative sources or that seeking alternative sources is not feasible because of urgency of requirements, or disruption of essential program functions.

2. Such waivers will be granted only by the agency head involved, and only after thoroughly exhausting all reasonable alternatives.

3. Waivers shall be in writing, and a copy of such waiver shall be forwarded within 10 days to the Administrator for Federal Procurement Policy by the Director of Procurement.

4. Prime contractors will submit requests for subcontract award waivers to the Contracting Officer.

Any proposed waiver of contract certification, or proposed waiver of subcontract award certification shall be made for the signature of the NASA Administrator and forwarded to the Director of Procurement, NASA Headquarters, Attention: Code HS–1.

Item II.—Use of Economic Price Adjustment Provisions in NASA Contracts

1. *Policy.* The memoranda from the President dated May 18, 1978, and from the Administrator, Office of Federal Procurement Policy, dated October 31, 1978, require that Economic Price Adjustment (EPA) clauses reflect the principle of deceleration. The stated objective is to "slow the built-in spiral of inflation in several billion dollars worth of purchases." To the maximum extent practicable, EPA clauses in all contracts covering performance during Calendar Year 1979, will limit the Government's payment to 80 percent, instead of the 100 percent, of the adjustment amount that occurs during Calendar Year 1979. This limitation in contract adjustment will extend also to existing contracts that are modified to add significant new work to be performed in Calendar Year 1979.

2. *Implementation.* The following policies and procedures are designed to promote uniform application of the principle of deceleration to NASA contracts.

a. Contracts should normally be priced on a basis that considers all costs reasonably expected to be incurred during the period of performance. Projections of performance costs which are based on economic trends that can be predicted with a reasonable degree of confidence should be considered in the initial negotiation of a contract price. NASA policy requires careful consideration of the need for EPA clauses and that they be included in contracts only when contingency (inflation) factors are clearly beyond the control of the contractor. Furthermore, EPA clauses should not routinely be offered to contractors in solicitations, or routinely

included in contracts. When inclusion of an EPA provision is deemed necessary, the clause should provide for an adjustment threshold which would activate the operation of the clause (e.g., a band such that a price adjustment will be made only when the adjustment amount exceeds the limit of the band). In any event, cost reimbursement type contracts will not be used solely to avoid applying the principle of deceleration.

b. Effective February 15, 1979, a deceleration clause shall be included, (i) in all solicitations containing EPA provisions, and (ii) in all modifications to existing contracts with EPA provisions, when such contracts are modified to add significant new or additional work to be performed in whole or in part in Calendar Year 1979. The clause shall limit the Government's payment for any upward price adjustment to 80 percent of any economic price adjustment resulting from performance during Calendar Year 1979.

c. Except as provided in paragraphs d and f below, all contracts with economic price adjustment provisions shall include the following deceleration clause:

Deceleration.—Payment Limitation (February 1979)

Notwithstanding the provisions of the clause in this contract entitled ———— providing for economic price adjustment, the Government's liability for payment of an upward price adjustment with respect to work performed in Calendar Year 1979 shall be limited to 80 percent of the amount that would otherwise be paid by the Government.

d. The above deceleration clause may not be appropriate for use in contracts where an EPA clause or any other similar method of price adjustment is used in combination with other repricing or incentive provisions. In such instances, the contracting officer may develop an alternate deceleration clause that will provide for substantially the same result as the clause in paragraph c above. For example a clause similar to the one set forth below may be included in fixed-price incentive contracts.

Deceleration.—Payment Limitation-Incentive (February 1979)

Notwithstanding the provisions of the clause in this contract entitled ———— providing for economic price adjustment where the Contractor's incentive share is 20 percent or less, the target cost of items subject to the incentive price revision clause of this contract shall not be increased for any amounts attributable to economic escalation occurring during Calendar Year 1979. When the Contractor's incentive share is greater than 20 percent, the target cost of items subject to the incentive price revision clause will be increased by an amount determined by multiplying the amount by which the contract target cost would otherwise be increased, by the ratio of the amount by which the Contractor's incentive share exceeds 20 percent of the Contractor's incentive share

$$\text{EPA} \times \frac{\text{Contractor Share} - .20}{\text{Contractor Share}}$$

The contract ceiling price shall be increased by the full amount of any upward adjustment determined by the economic price adjustment provision.

Alternative deceleration clauses other than that prescribed above shall be submitted for approval by the Director of Procurement, NASA Headquarters, Attention: Code HS–1.

e. The following example illustrates the operation of the clause set forth in paragraph d above:

A FPI contract with target cost of $100, ceiling price of $125 and a 70/30 incentive sharing arrangement experiences an EPA of $9 attributable to work performed in Calendar Year 1979. The target cost would be increased by $3

$$\$9 \times \frac{30\% - 20\%}{30\%}$$

to $103 and the ceiling price would be increased by $9 to $134. If the target profit was $10 and actual allowable costs were $109, the final price would be $117.20. The amount of deceleration would be $1.80 (20 percent of $9).

f. A determination that the application of a deceleration limitation clause is not practicable shall be submitted for approval by the Director of Procurement, NASA Headquarters, Attention: Code HS–1. A copy of each determination shall be provided by the Director of Procurement to the Administrator, Office of Federal Procurement Policy.

[FR Doc. 79–25434 Filed 8–16–79; 8:45 am]

BILLING CODE 7510–01–M

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41 CFR Ch. 18, Parts 1, 4, 5, 6, and 20

[Procurement Regulation Directive 79–3]

Procurement Regulations; Miscellaneous Amendments

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This document amends the NASA Procurement Regulation (41 CFR Ch. 18). It reflects amendments contained in Procurement Regulation Directive 79–3 concerning the following areas:

1. Solicitations for Informational or Planning Purposes.
2. Consulting Services.
3. Interdepartmental Procurement.
4. Buy American Act—Construction Contracts.
5. Administrative Matters.

EFFECTIVE DATE: August 17, 1979.

FOR FURTHER INFORMATION CONTACT: James H. Wilson, Procurement Policy Division (Code HP–1), Office of Procurement, NASA Headquarters,

Washington, DC 20546, Telephone: 755–2237.

SUPPLEMENTARY INFORMATION:

1. The installation procurement office is no longer required to follow the procedures that are specified in Part 1.309–3(c). Therefore, Part 1.309–3(c) is deleted.

2. Part 4.52 is revised to implement OMB Bulletin 78–11, "Guidelines for the Use of Consulting Services" and to reflect NASA reorganization.

3. Part 5 is revised as follows:

a. In Part 5, 5.501(b) the title of referenced material is revised to read ". . . Chapter 51—Committee for Purchases from the Blind and Other Severely Handicapped." in place of ". . . Chapter 51—Committee on Purchases of Products and Services of the Blind and Other Severely Handicapped."

b. In Part 5, 5.902–1(b)(ii) is revised to authorized to the contractor to make direct payments to DLA when the contractor is authorized to use DLA supply sources.

c. In Part 5, 5.1002–1 and 5.1002–2 are revised to eliminate present financial and administrative reporting requirements for property acquired with NASA funds for such property is accountable for under another agency's accounting procedures.

4. In Part 6, 6.206 is revised to delete "Alaskan yellow cedar" from the "list of Excepted Articles, Materials, and Supplies."

5. In Part 20, 20.203–4 is revised to add directions for assigning document numbers to Cooperative Agreements which are subject to Public Law 95–224.

6. In Part 20, 20.401–1(b) is revised to update the Code designation of the Scientific and Technical Information Office at NASA Headquarters.

Authority: 42 U.S.C. 2473(b)(1).

Leroy E. Hopkins,

Acting Director of Procurement.

PART 1—GENERAL PROVISIONS

1.309–3 [Amended]

1. In Part 1, 1.309–3(c) is deleted.

PART 4—SPECIAL TYPES AND METHODS OF PROCUREMENT

2. In Part 4, the "Table of Contents" and the text of 4.5200 are revised as follows:

Subpart 52—Consulting Services

4.5200 Scope of Subpart 4–52:1
4.5201 Applicability 4–52:1
4.5202 Definitions 4–52:1
4.5203 Basic Policy 4–52:1
4.5204 Guidelines for use of Consulting Services 4–52:1
4.5205 Procedure 4–52:2
4.5205–1 Request for Approval 4–52:2
4.5205–2 Negotiation of Contracts 4–52:2
4.5205–3 Contract Award and Approval 4–52:3
4.5205–4 Copies of Reports and Recommendations 4–52:4
4.5206 Format for Requesting Approval for Use of Consulting Services 4–52:4

Subpart 52—Consulting Services

4.5200 Scope of Subpart. This Subpart sets forth the policies and procedures to be followed in contracting for consulting services. The policies and procedures for obtaining the services of individual experts and consultants are set forth in "NASA-CSC Agreement—Experts and Consultants" dated June 6, 1977, and NASA Federal Personnel Manual (FPM), Supp. 32.

4.5201 Applicability. The provisions of this Subpart are applicable to NASA Headquarters offices and field installations. In addition, the office charged with administration of the NASA contract for the operation of the Jet Propulsion Laboratory shall ensure that proposed JPL subcontracts for consulting services are processed in accordance with the procedures set forth herein.

4.5202 Definitions. The term "consulting services" means those services of a purely advisory nature relating to the governmental functions of agency administration and management and agency program management. These services are normally provided by persons and/or organizations who are generally considered to have knowledge and special abilities that are not generally available within the agency.

4.5203 Basic Policy.

(a) Consulting services will not be used in performing work of a policy/decision making or managerial nature which is the direct responsibility of agency officials.

(b) Consulting services will normally be obtained only on an intermittent or temporary basis: repeated or extended arrangements are not to be entered into except under extraordinary circumstances.

(c) Consulting services will not be used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures.

(d) Former Government employees, per se, will not be given preference in consulting service arrangements.

(e) Consulting services will not be used under any circumstances to specifically aid in influencing or enacting legislation.

4.5204 Guidelines for use of Consulting Services. Consulting service

arrangements may be used, when essential to the NASA mission, to:

(a) Obtain specialized opinions or professional or technical advice which does not exist or is not available within NASA or another Government agency.

(b) Obtain outside points of view to avoid too limited judgment on critical issues.

(c) Obtain advice regarding developments in industry, university, or foundation research.

(d) Obtain the opinion of noted experts whose national or international prestige can contribute to the success of important projects.

(e) Secure citizen advisory participation in developing or implementing Government programs that by their nature or by statutory provision call for such participation.

4.5205 Procedure.

4.5205–1 *Request for Approval.*

(a) When a NASA field installation or NASA Headquarters Office considers that consulting services are necessary and desirable, in accordance with the policy stated in 4.5203, the installation or Headquarters Office shall, prior to solicitation, secure the approval of the Associate Administrator for Management Operation (Code N). Requests for approval to secure such services will be prepared in quintuplicate in the format set forth in 4.5206. The approval cycle within Headquarters will normally require less than two calendar weeks.

(b) The Information Systems Division, NASA Headquarters (Code NSM) will analyze and evaluate the request as to:

(i) the necessity for the task (taking into account, for example, whether the task is required to be initiated immediately or should be deferred, or modified; and whether the problem involved is likely to be affected by other current NASA plans);

(ii) the proposed method of accomplishment as compared to alternative feasible methods (whether, for example, instead of contracting for management consulting or advisory services, it would be more expeditious and less costly for NASA to hire experts temporarily on a per diem basis);

(iii) the significance of the problem and the extent to which it relates to NASA functions generally and to different NASA organizational elements; and

(iv) other pertinent considerations, for example, accomplishing the task through the use of in-house personnel or personnel from other agencies.

4.5205–2 *Negotiation of Contracts.*

(a) Unless noncompetitive negotiation is authorized (see 3.802–3), negotiation of contracts shall be conducted with a sufficient number of firms or organizations to permit NASA to evaluate, prior to making award, the comparative merits of qualified sources and of different approaches to the task.

(b) Contracting officers shall include in the request for proposals a requirement that each offeror furnish the following information with the price quotation, notwithstanding the type of contract anticipated:

(i) the name(s) and qualifications of principal members of the contractor organization who will be responsible for the project;

(ii) the title of each official and the number of employees who will participate;

(iii) the estimated number of person-hours that each official and employee will contribute to the proposed project; and

(iv) the standard billing rate per hour for each official and employee.

The contract shall establish requirements to ensure that the proposal of the successful offeror will be adhered to (as negotiated and agreed to) in each of the above respects.

(c) In addition, the request for proposals and the resulting contract shall contain the following provisions:

(i) that the contractor warrants the rates quoted are not in excess of those charged nongovernmental clients for the same services performed by the same individuals;

(ii) that the Government has the right to the working papers used by the participating officials and employees of the firm or organization in connection with the project;

(iii) that publication or distribution of the study, data, or other related material is prohibited, except to the extent authorized by the contracting officer; and

(iv) that the contractor agrees that any reports regarding organizational matters (as required by the contract) shall include, when feasible, in addition to the recommendations, alternative methods to be considered and the pros and cons of each alternative.

(d) A contract for consulting services cannot be negotiated without the approval required by 4.5205–1(a).

4.5205–3 *Contract Award and Approval.* Unless otherwise required by Part 20, Subpart 50 of this Regulation, or by direction of the Associate Administrator for Management Operations, awards may be made without further reference to Headquarters after the approval required by 4.5205–1 has been obtained.

4.5205–4 *Copies of Reports and Recommendations.* Upon completion of the services required, the initiating office shall forward two copies of all reports or recommendations made by the consulting firm or organization to the Information Systems Division, NASA Headquarters (Code NSM).

4.5206 Format for Requesting Approval for Use of Consulting Services.

REQUEST FOR APPROVAL TO ACQUIRE CONSULTING SERVICES

Date:

1. It is requested that approval be granted to solicit proposals and contracts for: (Give *detailed* description of statement of work to be performed.)

2. The desired goals or results of this work are:

3. It is believed that this work will be beneficial to NASA and the Government for the following reasons (list in concise language):

4. Statement of those organizational groups within NASA or other Government agencies known to have any degree of capability in the field this work encompasses.

5. Give reasons or opinions why this work could not or should not be conducted by NASA or other Government personnel.

6. State type and extent of agency participation necessary; that is, if agency personnel will be required to work with those providing service; describe how many, types, tasks, etc. Also give description of type of support required, if any, such as office or other space, supplies, materials, etc.

7. Describe any travel anticipated or required in connection with the service.

8. Give estimate of time and number of personnel (all types) and any additional items or facilities required to produce desired results.

9. Give estimated costs and source of funds.

10. If the request is for one designated firm or organization to undertake the work, identify the firm or organization in detail, give special qualifications, and reasons justifying the selection.

11. If the request is not limited to one firm or organization, list the sources proposed for solicitation.

12. Give an opinion as to the effect on NASA if the request is not approved.

PART 5—INTERDEPARTMENTAL PROCUREMENT

3. In Part 5, in the "Table of Contents" 5.1002–2 through 5.1005 are revised as follows:

5.1002–1 * * *
5.1002–2 Property 5–10:4
5.1002–3 Acceptance By Military Department 5–10:4
5.1003 Changes in Estimated Total Prices 5–10:5
5.1004 [Reserved] 5–10:5
5.1005 Payments 5–10:5

4. In Part 5, 501(b) is revised as follows:

5.501 General.

(a) * * *

(b) The Committee is responsible under the Act for determining those supplies and services which shall be procured by all entities of the U.S. Government from agencies for the blind and other severely handicapped, and the prices which shall be paid for the supplies and services, and for establishing such rules and regulations as are necessary to administer the Act. The rules and regulations of the Committee are published in the Code of Federal Regulations, Title 41, Chapter 51—Committee for Purchases from the Blind and Other Severely Handicapped.

5. In Part 5, 5.503(b)(i) and 5.503(b)(ii) are revised as follows:

5.503 Mandatory Procurement of Supplies and Services of the Blind and Other Severely Handicapped.

(b) * * *

(i) supplies require overseas packaging or packing;

(ii) supplies are required in carload lots, as described in the Consolidated Freight Classification for the commodity concerned;

6. In Part 5, 5.902–1(b) (ii) and (iii) are revised as follows:

5.902–1 *Format and Contents of Authorization.*

* * * * *

(b) Additional Required Authorization Data.

(i) * * *

(ii) When the contractor is authorized to use the supply sources of the Defense Logistics Agency, the contracting officer's written authorization must contain all data required by (a) above and must cite the contracting NASA installation Department of Defense Activity Address Code (DODAAC) for billing. Such authorization may provide for direct payment by the contractor to the Defense Logistics Agency.

(iii) When the contractor requires a DODAAC so he may use Government supply sources, the contracting officer shall follow the procedures outlined in NMI 4050.2.

7. In Part 5, 5.1002–1(d) the "PROPERTY" paragraph in Block 8 is revised as follows:

5.1002–1 *Preparation and Use of Form.*

* * * * *

(d) *Instructions for Completing NASA Form 523.*

Block 8: * * *

PROPERTY: Include the clause in 5.1002–2 whenever property will be furnished or acquired.

8. In Part 5, 5.1002–2 is revised as follows:

5.1002–2 *Property.* In preparing a NASA-Defense Purchase Request, consideration shall be given to NASA's subsequent need for any property furnished or acquired. When it is determined that property will be involved, the following clause shall be incorporated in the purchase request:

All property acquired for, and reimbursed by, NASA or transferred by NASA for use under this NASA-Defense Purchase Request will be controlled and accounted for in accordance with the Military Department's normal procedures. All excess items, however, costing $500 or more and in condition R–2 or better (GSA Condition Codes) will be reported to the NASA originating office for possible reutilization prior to disposition. (March 1979)

PART 6—FOREIGN PURCHASES

9. In Part 6, 6.206 is revised as follows:

6.206 *List of Excepted Articles, Materials, and Supplies.* The articles, materials, and supplies listed below may be used in construction without regard to country of origin, except as provided in Part 6, Subpart 4, of this Regulation, on the basis of the nonavailability provision of the Buy American Act (See 6.203–1).

Antimony, as metal or oxide
Asbestos, amosite
Bismuth
Cadmium, ores and flue dust
Chalk, English
Chrome ore or chromite
Cobalt, in cathodes, rondelles, or other primary forms
Cork, wood or bark and waste
Damar gum
Graphite, natural, crystalline, crucible grade
Jute and jute burlap
Kaurigum
Lac
Logs, veneer, and lumber from angelique balsa, ekki, greenheart, lignum vitae, mahogany, and teak
Mica
Nickel, primary, in ingots, pigs, shot, cathodes, or similar forms; nickel oxide and nickel salts
Rubber, crude and latex
Shellac
Tin, in bars, blocks, and pigs

PART 20—ADMINISTRATIVE MATTERS

10. In Part 20, 20.203–4 is revised as follows:

20.203–4 *Assigned Contract or Agreement Prefixes.* Approved prefixes for NASA contract or agreement numbers are as follows:

HEADQUARTERS	PREFIX
Headquarters Administration Office	NASW
Procurement Office (Basic Agreements and Institutional Cost Sharing Agreements)	NAS 11
FIELD INSTALLATIONS AND OFFICES	**PREFIX**
Langley Research Center	NAS 1
Ames Research Center	NAS 2
Lewis Research Center	NAS 3
Dryden Flight Research Center	NAS 4
Goddard Space Flight Center	NAS 5
Wallops Flight Center	NAS 6
NASA Resident Procurement Office–JPL	NAS 7
George C. Marshall Space Flight Center	NAS 8
Lyndon B. Johnson Space Center	NAS 9
John F. Kennedy Space Center	NAS 10
National Space Technology Laboratories	NAS 13

All contracts that are totally funded under reimbursable arrangements with the Department of Energy shall be assigned the following prefix: DEN–No. ———.

This contract prefix designation represents Department of Energy (DE), and NASA (N), and the Center identification number (No.); e.g. DEN–8 would be the MSFC prefix designation. The DEN–8 prefix would be followed by five blank spaces and the numeral one, i.e. DEN–8———1. Contracts will be sequentially numbered beginning with "1." No contract number shall exceed eleven (11) total digits.

All Cooperative Agreements subject to Public Law 95–224 shall be assigned the following prefix: NCC–No. ———.

This prefix designation represents Cooperative Agreement and the Center Identification Number (No.); e.g. NCC–2 would be the Ames prefix designation. The NCC–2 prefix would be followed by five blank spaces and the numeral one, i.e., NCC–2———1. Cooperative Agreements will be sequentially numbered beginning with "1". No cooperative agreement number shall exceed eleven (11) digits.

20.401–1 [Amended]

11. In Part 20, 20.401–1(b) the code for the Technical Information Office is amended to read "Code NST–40," in place of "Code KSS".

[FR Doc. 79–25435 Filed 8–16–79; 8:45 am]

BILLING CODE 7510–01–M

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41 CFR Ch. 18, Parts 3, 7, 15 and 20

[Procurement Regulation Directive 79–1]

Procurement Regulations; Miscellaneous Amendments

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This document amends the NASA Procurement Regulation (41 CFR Ch. 18). It reflects amendments contained in Procurement Regulation

Directive 79–1 concerning the following areas:

1. Cost of Money for Facilities Capital Employed.
2. Limitation of Liability—Major Items Clause.
3. Notice of Intent to Disallow or Not Recognize Costs.
4. Funding of Pension Contributions.
5. Contract Cost Principles and Procedures.
6. Price Revision Clauses.
7. Corporate Administrative Contracting Officer (CACO).
8. Monitoring Contractors' Costs.

EFFECTIVE DATE: August 17, 1979.

FOR FURTHER INFORMATION CONTACT: James H. Wilson, Procurement Policy Division (Code HP–1), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: 755–2237.

SUPPLEMENTARY INFORMATION:

(1) Changes have been made to Part 3.1300–1(b) to clarify and correct coverage previously printed in NASA PRD 78–2, January 30, 1978.

(2) Paragraph (e) of the "Limitation of Liability—Major Items" clauses in Parts 7.104–45(b) and 7.204–33 are revised to update the list of clauses referenced therein and a preamble is inserted for the clause in Part 7.204–33. The "Limitation of Liability—Major Items" clause is also required to be inserted in fixed-price and cost-type R&D contracts when applicable.

(3) A new clause "Notice of Intent to Disallow or Not Recognize Costs" and related coverage are added in Parts 7 and 15 to provide for the settlement of disputes in a more timely fashion.

(4) The clauses in Part 7.203–4 (a) and (b) are revised to clarify that deferred profit sharing and employee stock ownership plans are considered to be pension plans and the accruals under these plans must therefore be funded within 30 days after the end of the quarter year in order to obtain reimbursement under the clauses.

(5) Part 15.2 is revised to change the cost principles and procedures applicable to contracts with commercial organizations as follows:

a. Parts 15.203(e), 15.205–6(g), and 15.205–9(b) are revised to eliminate conflicts with Cost Accounting Standards (CAS) 406 on Cost Accounting Period, CAS 408 on Accounting for the Cost of Compensated Personal Absence, and CAS 409 on Depreciation of Tangible Capital Assets, as they apply to CAS covered contracts.

b. Part 15.205–6(f) is revised so that interest on certain types of deferred compensation plans would not be allowable as contract costs, and the costs of options to purchase stock of the contractor or of an affiliate would also be unallowable.

c. Part 15.205–6(k) is added to clarify the treatment to be accorded to backpay that must be paid to employees by contractors as a result of Federal labor law violations.

d. Parts 15.205–9, 15.205–32, 15.205–34, and 15.205–48 are revised to eliminate conflicts with Cost Accounting Standard (CAS) 404 on Capitalization of Tangible Assets. This was accomplished by incorporating the requirement that contractors follow Financial Accounting Standard No. 13, a current standard for financial accounting purposes.

e. Part 15.205–16 is revised to establish a policy for the allowability of the cost of insurance premiums on replacement values of insured property. The costs will be allowed if the contractor has a formal written policy to value the new asset at book value of the replaced asset plus or minus adjustments for differences between insurance proceeds and actual replacement costs.

f. Part 15.205–41 is revised to clarify the Government's position regarding the allowability of tax costs from which Government contracts are immune or partially immune.

(6) Part 20.604(d) and the "Price Revision" clauses in Parts 7.108–1, 7.108–2, 7.109–2(b) and 7.109–3(b) are revised to improve administrative procedures for receipt and review of quarterly statements and the submission of data when the contractor has delivered the last unit and completed the services called for in the contract.

(7) Parts 20.903 and 20.904 are revised in order to clarify the duties and responsibilities of the DoD Corporate Administrative Contracting Officer (CACO).

(8) Part 20.10 is added for the familiarization of NASA personnel with the DoD monitory concept.

Authority: The provisions of this document are issued under 42 U.S.C. 2473(b)(1).

Leroy E. Hopkins,

Acting Director of Procurement.

PART 3—PROCUREMENT BY NEGOTIATION

1. In Part 3, 3.1300–1 is revised as follows:

3.1300–1 *Policy.*

* * * * *

(b) *Applicability.* This policy shall apply to contracts awarded on or after October 1, 1976. This policy shall apply to modifications to contracts awarded prior to October 1, 1976, *provided* the contractor will estimate, accumulate and report the cost of the modification without incurring unreasonable administrative expense, and contract terms and conditions are amended to make 15.205–50 applicable to the modification. This policy and the above requirement shall apply to any tier subcontract or modifications thereto, upon the subcontractor's request, *provided* the price contract or modification thereto was eligible as of the date of award for facilities capital cost of money in accordance with 15.205–50.

PART 7—CONTRACT CLAUSES

2. Paragraph (e) of the "Limitation of Liability—Major Items" clause in Part 7.104–45(b) is revised as follows and clause date is amended to read January 1979:

7.104–45 *Limitation of Liability.*

* * * * *

(e) The provisions of this clause shall not limit or otherwise affect the Government's rights pursuant to the following listed clauses, if included in this contract:
GROUND AND FLIGHT RISK, and
GOVERNMENT PROPERTY.

3. In Part 7, 7.104–60 is revised as follows:

7.104–60 *Report on NASA Subcontracts.* In accordance with the requirements of 21.500, insert the clause set forth therein.

4. In Part 7, 7.104–96 is added as follows:

7.104–96 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7.203–30 in all fixed-price incentive contracts and contracts providing for price redetermination.

5. The clause date in Part 7.108–1 is amended to read January 1979. Paragraphs (d)(4), (g)(1), (g)(2), (g)(4) and (g)(5) of the clause are revised as follows:

7.108–1 *Firm Targets.*

* * * * *

(4) When the Contractor fails to submit the data required by paragraph (c) above within the time required therein and it is later determined that the Government has overpaid the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within thirty (30) days after the end of the data submittal period, the amount of such excess shall bear interest at the rate established in accordance with the Interest clause in NASA Procurement Regulation 7.103–53. Interest shall be computed for the period from the date the data was due to the date of repayment.

* * * * *

(g) *Quarterly Limitation on Payments Statement.*

(1) This paragraph (g) shall not apply after final price revision.

(2) Within forty-five (45) days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the contract administration office, with a copy thereof to the NASA purchasing activity and the cognizant contract auditor, a cumulative statement setting forth:

* * * * *

(4) When the Contractor fails to submit the quarterly statement within forty-five (45) days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within thirty (30) days after the end of the statement submittal period, the amount of such excess shall bear interest at the rate established in accordance with the Interest clause in NASA Procurement Regulation 7.103–53. Interest shall be computed for the period from the date the quarterly statement was due to the date of repayment.

(5) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this paragraph (g), including this subparagraph (5), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this paragraph (g), including this subparagraph (5) modified as outlined in (i) above.

* * * * *

6. The clause date in Part 7.108–2 is amended to read January 1979. Paragraphs (d)(5), (i)(1), (i)(2), (i)(4) and (i)(5) of the clause are revised as follows:

7.108–2 *Successive Targets.*

* * * * *

(5) When the Contractor fails to submit the data required by paragraph (c) above within the time required therein and it is later determined that the Government has overpaid the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within thirty (30) days after the end of the data submittal period, the amount of such excess shall bear interest at the rate established in accordance with the Interest clause in NASA Procurement Regulation 7.103–53. Interest shall be computed for the period from the date the data was due to the date of repayment.

* * * * *

(i) *Quarterly Limitation on Payments Statement.*

(1) This paragraph (i) shall not apply after a firm fixed price or a total final price is established pursuant to subparagraph (d)(3) or (f)(2).

(2) Within forty-five (45) days after the end of each quarter of the Contractor's fiscal year beginning for the quarter in which a delivery is first made or services are first performed and accepted by the Government under this contract and as of the end of each quarter, the Contractor shall submit to the contract administration office with a copy thereof to the NASA purchasing activity and the cognizant contract auditor a cumulative statement setting forth:

* * * * *

(4) When the Contractor fails to submit the quarterly statement within forty-five (45) days after the end of each quarter, and it is later determined that the Government has overpaid the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within thirty (30) days after the end of the statement submittal period, the amount of such excess shall bear interest at the rate established in accordance with the interest clause in NASA Procurement Regulation 7.103–53. Interest shall be computed for the period from the date the data was due to the date of repayment.

(5) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this paragraph (i), including this subparagraph (5), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this paragraph (i), including this subparagraph (5) modified as outlined in (i) above.

* * * * *

7. The date of the clause in Part 7.109–2(b), "Price Redetermination (Type A)", is amended to read January 1979. Paragraphs (c)(iv), (g)(1), (g)(2)(iii), (g)(4) and (g)(5) of the clause are revised as follows:

7.109–2 *Prospective Periodic Price Redetermination at Stated Intervals.*

* * * * *

(iv) any other relevant data which may reasonably be required by the Contracting Officer. For the purpose of the foregoing submission, "costs" means allowable costs in accordance with Part 15 of the NASA Procurement Regulation as in effect on the date of this contract. Upon receipt of the data required by this subparagraph (c), the Contractor and the Contracting Officer shall promptly negotiate to redetermine fair and reasonable contract prices for supplies which may be delivered and services which may be performed in the period following the effective date of price redetermination. Where the Contractor fails to submit the data as required above within the time specified, payments under this contract may be suspended by the Contracting Officer until the data are furnished, and if it is later determined that the Government has overpaid the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within thirty (30) days after the end of the data submittal period, the amount of such excess shall bear interest at the rate established in accordance with the Interest clause in NASA Procurement Regulation 7.103–53. Interest shall be computed for the period from the date the data was due to the date of repayment.

* * * * *

(g) *Quarterly Limitation on Payments Statement.*

(1) This paragraph (g) shall apply only during a period for which firm prices have not been established.

(2) Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the contract administration office, with a copy thereof to the NASA purchasing activity and the cognizant contract auditor, a statement cumulative from the inception of the contract, setting forth:

* * * * *

(iii) that portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (g), Quarterly Limitation on Payments Statement), which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established; and

* * * * *

(4) When the Contractor fails to submit the quarterly statement within forty-five (45) days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within thirty (30) days after the end of the statement submittal period, the amount of such excess shall bear interest at the rate established in accordance with the Interest clause in NASA Procurement Regulation 7.103–53. Interest shall be computed for the period from the date the quarterly statement was due to the date of repayment.

(5) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder, the substance of this "Quarterly Limitation on Payments Statement" provision, including this subparagraph (5), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this "Quarterly Limitation on Payments Statement" provision, including this subparagraph (5), modified as outlined in (i) above.

* * * * *

8. The date of the clause in Part 7.109–3(b), "Price Redetermination (Type E)",

is amended to read January 1979. Paragraphs (b), (f)(1), (f)(2), (f)(2)(iii), (f)(4) and (f)(5) of the clause are revised as follows:

7.109–3 *Retroactive Price Redetermination After Completion.*

* * * * *

(b) *Price Redetermination.* Within ——— (———) days after delivery of all supplies to be delivered and completion of all services to be performed under this contract, the Contractor shall submit (i) proposed prices, (ii) a statement of all costs incurred in the performance of this contract, allowable in accordance with Part 15 of the NASA Procurement Regulation as in effect on the date of this contract, on DD Form 633–6 or any other form on which the parties may agree, and (iii) any other relevant data which may reasonably be required by the Contracting Officer. Upon receipt of the required data, the Contractor and the Contracting Officer shall promptly negotiate to redetermine fair and reasonable contract prices for supplies delivered and services performed by the Contractor under this contract. Where the Contractor fails to submit the required data within the time specified, payment of all invoices may be suspended by the Contracting Officer until the data are furnished and if it is later determined that the Government has overpaid the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within thirty (30) days after the end of the data submittal period, the amount of such excess shall bear interest at the rate established in accordance with the Interest clause in NASA Procurement Regulation 7.103–53. Interest shall be computed for the period from the date the data was due to the date of repayment.

* * * * *

(f) *Quarterly Limitation on Payments Statement.*

(1) This paragraph (f) shall apply until final price redetermination to the full extent permitted by this contract.

(2) Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the contract administration office, with a copy thereof to the NASA purchasing activity and the cognizant contract auditor, a statement cumulative from the inception of the contract, setting forth:

* * * * *

(iii) that portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (f), Quarterly Limitation on Payments Statement), which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established; and

* * * * *

(4) When the Contractor fails to submit the quarterly statement within forty-five (45) days after the end of each quarter, and it is later determined that the Government has overpaid the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within thirty (30) days after the end of the statement submittal period, the amount of such excess shall bear interest at the rate established in accordance with the Interest clause in NASA Procurement Regulation 7.103–53. Interest shall be computed for the period from the date the quarterly statement was due to the date of repayment.

(5) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this "Quarterly Limitation on Payments Statement" provisions, including this subparagraph (5), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this "Quarterly Limitation on Payments Statement" provision, including this subparagraph (5), modified as outlined in (i) above.

* * * * *

9. The date of the clause in Part 7.203–4(a), "Allowable Cost, Fixed Fee and Payment," is amended to read January 1979. Paragraphs (b)(1) and (b)(2) of the clause are revised as follows:

7.203–4 *Allowable Cost, Fee and Payment.*

* * * * *

(b)(1) Once each month (or at more frequent intervals, if approved by the Contracting Officer), the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor (except as provided herein with respect to pension, deferred profit sharing, and employee stock ownership plan contributions) in the performance of this contract and claimed to constitute allowable cost.

(2) When contributions are paid by the Contractor to pension, profit sharing, or employee stock ownership plan funds less frequently than quarterly, accrued costs therefor shall be excluded from indirect costs for payment purposes until such costs are paid. If such contributions are paid on a quarterly or more frequent basis, accruals therefor may be included in indirect costs for payment purposes provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, these contribution costs shall be excluded from indirect cost for payment purposes until payment has been made. (See NASA Procurement Regulation 15.205–6(f)).

* * * * *

10. The date of the clause in Part 7.203–4(b), "Allowable Cost, Incentive Fee, and Payment," is amended to read January 1979. Paragraphs (b)(1) and (b)(2) are revised as follows:

7.203–4 *Allowable Cost, Fee and Payment.*

* * * * *

(b)(1) Once each month (or at more frequent intervals, if approved by the Contracting Officer), the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor (except as provided herein with respect to pension, profit sharing, and employee stock ownership plan contributions) in the performance of this contract and claimed to constitute allowable cost.

(2) When contributions are paid by the Contractor to pension, profit sharing, or employee stock ownership plan funds less frequently than quarterly, accrued costs therefor shall be excluded from indirect costs for payment purposes until such costs are paid. If such contributions are paid on a quarterly or more frequent basis, accruals therefor may be included in indirect costs for payment purposes provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, these contribution costs shall be excluded from indirect cost for payment purposes until payment has been made. (See NASA Procurement Regulation 15.205–6(f)).

11. In Part 7, 7.203–30 is added as follows:

7.203–30 *Notice of Intent to Disallow or Not Recognize Costs.* In accordance with 15.206, insert the following clause in all cost-reimbursement type and flexibly priced contracts.

Notice of Intent To Disallow or Not Recognize Costs (January 1979)

(a) Notwithstanding any other provision of this contract, the Contracting Officer may, at any time, issue to the Contractor a written notice of intent to disallow or not recognize costs. This notice will indicate the Contracting Officer's intent to take exception to specified costs being incurred, or planned for incurrence, which he has determined not to be allowable in accordance with the terms of this contract.

(b) The Contractor may, within sixty (60) days of receipt of such notification, submit a written response to the Contracting Officer, together with justification therefor, against the proposed cost exception.

(c) In the event the Contractor does not file any such written response within the sixty (60) day period in (b) above, the notice shall serve as the Contracting Officer's final decision under the provisions of the clause herein entitled "Disputes."

(d) The Contracting Officer shall, within sixty (60) days of receipt of any written response, either withdraw in writing the

notification or issue a final decision thereon under the provisions of the clause herein entitled "Disputes."

(e) Failure to issue a notice pursuant to this clause shall not alter the Government's rights with respect to exception to incurred costs.

12. The date of the clause in Part 7.204–33(a) is amended to read January 1979. Paragraphs (d), (e) and (g) of the clause are revised as follows:

* * * * *

(d) This clause does not diminish the Contractor's obligation, to the extent otherwise arising under this contract, relating to correction, repair, replacement or other relief for any defect or deficiency in supplies delivered under this contract.

(e) The provisions of this clause shall not limit or otherwise affect the Government's rights pursuant to the following listed clauses, if included in this contract:

GROUND AND FLIGHT RISK, FLIGHT RISKS, and
GOVERNMENT PROPERTY.

* * * * *

(g) In subcontracts for both major items for which this clause is appropriate, and other end items for which the clause in 7.104–45(a) is appropriate, the substance of both clauses shall be included, with the advance written consent of the Contracting Officer, with the following preamble to this clause:

Limitation of Liability-Major Items (January 1979)

(The provisions of this clause shall apply only to those items identified in this contract as being subject to this clause.)

The Contracting Officer shall identify high unit cost items by line item.

13. In Part 7, 7.303–31 is added as follows:

7.303–35 *Limitation of Liability.* In accordance with 1.330 (b), insert the appropriate clause in 7.104–45.

14. In part 7, 7.303–60 is revised as follows:

7.303–60 *Report of NASA Subcontracts.* In accordance with the requirements of 21.500, insert the clause set forth therein.

15. In Part 7, 7.303–91 is added as follows:

7.303–91 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7.203–30 in all fixed-price incentive contracts and contracts providing for price redetermination.

16. In Part 7, 7.350–22 is added as follows:

7.350–22 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7.203–30 in all fixed-price incentive contracts and contracts providing for price redetermination.

17. In Part 7, 7.402–31 is added as follows:

7.402–31 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7.203–30.

7.403–25 through 7.403–44 [Amended]

18. 7.403–25 through 7.403–44 is amended to read 7.403–25 through 7.403–43.

19. In Part 7, 7.403–44 is added as follows:

7.403–44 *Limitation of Liability.* In accordance with 1.330, insert the appropriate clause in 7.104–45(a) or 7.204–33.

20. In Part 7, 7.451–31 is added as follows:

7.451–31 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7.203–30.

21. In Part 7, 7.460–23 is added as follows:

7.460–23 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7.203–30.

22. In Part 7, 7.702–60 is added as follows:

7.702–60 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7.203–30.

23. In Part 7, 7.703–51 is added as follows:

7.703–51 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7.203–30.

24. In Part 7, 7.704–39 is added as follows:

7.704–39 *Notice of Intent to Disallow or not Recognize Costs.* Insert the clause in 7.203–30.

25. In Part 7, 7.706–26 is added as follows:

7.706–27 *Notice of Intent to Disallow or not Recognize Costs.* Insert the clause in 7.203–30.

PART 15—CONTRACT COST PRINCIPLES AND PROCEDURES

25. In Part 15, 15.203(e) is revised as follows:

15.203 Indirect Costs.

* * * * *

(e) A base period for allocation of indirect costs is the cost accounting period during which such costs are incurred and accumulated for distribution to work performed in that period. The criteria and guidance set forth in Part 406 (Cost Accounting Standard 406, Cost Accounting Period) of Appendix O, for selection of the cost accounting periods to be used for allocation of indirect costs, are incorporated in their entirety for application to CAS covered contracts. For contractors not having contracts subject to the Cost Accounting Standards, however, use of a period shorter than the contractor's fiscal year may be appropriate (i) for contracts for which performance involves only a minor portion of the fiscal year, or (ii) where it is general practice in the industry to use a shorter period. In any event, the base period or periods used shall avoid creating inequities in the allocation of indirect costs. When a contract is performed over an extended period, as many base periods will be used as are required to represent the period of contract performance.

* * * * *

26. In Part 15, 15.205–6(f) through 15.205–6(k) are revised as follows:

15.205–6 *Compensation for Personal Services.*

* * * * *

(f) *Deferred Compensation.*

(1) As used herein, deferred compensation includes all remuneration, in whatever form, for which the employee is not paid until after the lapse of a stated period of years or the occurrence of other events as provided in the plans, except that it does not include normal end of accounting period accruals. It includes (i) contributions to pension (including early retirement), annuity, stock bonus, and profit-sharing plans; (ii) contributions to disability, withdrawal, insurance, survivorship, and similar benefit plans; and (iii) other deferred compensation, whether paid in cash or in stock.

(2) Deferred compensation is allowable only to the extent that:

(i) It is, together with all other compensation paid to the employee, reasonable in amount; and

(ii) It is paid pursuant to an agreement entered into in good faith between the contractor and employees before the services are rendered, or pursuant to a plan established and consistently applied thereafter by the contractor. Pension plans and other types of deferred compensation not covered by Part 415, Appendix O, are also subject to the provisions of (A), (B), and (C) below. Deferred compensation covered by Part 415, Appendix O, is not subject to the limitations of the Internal Revenue Code and regulations thereunder, but is subject to the provisions of (D) and (E) below. Any pension and retirement costs allowed pursuant to (A) above, do not exceed the amount that would be allowable under (A) above if the contractor were providing for equivalent benefits on an actuarial basis in the current period. Amounts paid to employees under pay-as-you-go plans as an inducement for early retirement should be treated as supplemental pension plans under this provision. To be allowable, these costs must be incurred under a well defined plan which the contractor consistently

follows thereafter. The scale of payments to the retired employees should be reasonable, the costs should be computed in accordance with this provision, and the costs should be allocated according to the contractor's system of accounting for pension costs.

(C) It complies with the provisions of Part 412, Appendix O, which are incorporated herein in their entirety; and when any of the contractor's contracts are subject to Cost Accounting Standards Board (CASB) standards, these provisions will be applicable commencing with the contractor's fiscal year as prescribed by the terms of Part 412.80, Appendix O. The amount of deferred compensation costs which may be allowed shall not, however, exceed the amount determined under the provisions of the standard, subject to the cost limitations and exclusions set forth in subparagraphs (A) and (B) above.

(D) It complies with the provisions of Part 415, Appendix O, which are incorporated herein in their entirety; and when any of the contractor's contracts are subject to Cost Accounting Standards Board standards, these provisions will be applicable commencing with the contractor's fiscal year as prescribed by the terms of Part 415.80, Appendix O. The amount of deferred compensation cost which may be allowed shall not, however, exceed the amount determined under the provisions of Part 415, Appendix O, except that the cost of options to employees to purchase stock of the contractor or of an affiliate is unallowable.

(E) Deferred compensation payments to employees under awards made prior to the effective date of Part 415, Appendix O, are allowable to the extent they would have been allowable under 15.205–6, dated May 31, 1977.

(g) *Fringe Benefits.* Fringe benefits are allowances and services provided by the contractor to its employees as compensation in addition to regular wages and salaries. The cost of fringe benefits, including, but not limited to, the cost of vacations, sick leave, holidays, military leave, employee insurance, and supplemental unemployment benefit plans: is allowable, if reasonable and consistent with the following.

(1) On contracts subject to CAS, the costs of compensated personal absence must be measured and allocated in accordance with Part 408 of Appendix O (CAS 408, Accounting for the Cost of Compensated Personal Absence). For all fringe benefits not addressed by the provisions of CAS 408, the criteria in (2) below apply.

(2) On contracts not subject to CAS, the cost of all fringe benefits are allowable to the extent that they are required by law, employer-employee agreement, or an established policy of the contractor.

(h) *Severance Pay.* See 15.205–39.

(i) *Training and Education Expenses.* See 15.205–44.

(j) Costs which are unallowable under other paragraphs of this Subpart 2 of Part 15, shall not be allowable under 15.205–6, solely on the basis that they constitute personal compensation.

(k) *Backpay Resulting From Violations of Federal Labor Laws.* Backpay may result from a negotiated settlement, order or court decree which resolves a violation of Federal labor laws. Such backpay falls into two categories; one requiring the contractor to pay employees additional compensation for work performed for which they were underpaid, and the other resulting from other violations such as when the employee was improperly discharged, discriminated against or other circumstances for which the backpay was not additional compensation for work performed. Backpay resulting from underpaid work is compensation for the work performed and is allowable. All other backpay is unallowable.

27. In Part 15, 15.205–9, paragraphs (b), (c), (d), (e), (f), (g) and (h) are renumbered to read (c), (d), (e), (f), (g), (h) and (i). As set forth below a new 15.205–9(b) and 15.205–9(j) are added.

15.205–9 *Depreciation.*

* * * * *

(b) Contractors having contracts subject to Cost Accounting Standard 409 of Appendix O (CAS 409, Depreciation of Tangible Capital Assets) must adhere to the provisions of that Standard for all CAS covered contracts, any may elect to adopt the Standard for all uncovered contracts. All provisions of CAS 409 are applicable if the election is made. When CAS 409 is applicable, its provisions supersede any conflicting provisions of this cost principle. Once electing to adopt CAS 409 for uncovered contracts, contractors must continue to follow its provisions until notification is received of final acceptance of all deliverable items on all open NASA negotiated contracts. The principles which follow are applicable to those contracts to which CAS 409 is not applied.

* * * * *

(j) Cost Accounting Standard (CAS) 404 *Capitalization of Tangible Assets* is applicable to those assets which are acquired by means of a "capital lease" as defined in Statement of Financial Accounting Standard No. 13 (FAS–13), Accounting for Leases, promulgated by the Financial Accounting Standards Board (FASB). Compliance with CAS 404 and FAS–13 requires that such leased assets (capital lease) be treated as purchased assets; *i.e.* be capitalized and the capitalized value of such assets be distributed over their useful lives as depreciation charges, both for financial and cost accounting purposes. Therefore, any leased assets whether leased prior to, on, or after January 1, 1977, which are capitalized prior to, on, or after January 1, 1977, under the provisions of FAS–13, are subject to the provisions on depreciation for tangible capital assets enuciated in this cost principle (15.205–9)—they are not subject to the provisions or rental costs set forth in 15.205–34. Existing leases entered into prior to January 1, 1977, which the contractor elects not to capitalize until January 1, 1980, as provided in FAS–13 will be subject to the provisions of rental cost set forth in 15.205–34 until such date as they are capitalized. The provisions of this paragraph (15.205–9(j)) apply whether or not the contractor is subject to CAS 404. The standards of Financial Accounting and Reporting set forth in FAS–13 are incorporated into this cost principle and shall govern in the application of this principle except when the provisions of the paragraph set forth below conflict with the standards in FAS–13. In this event the provisions in the paragraph set forth below shall govern.

(1) *Sales and Leaseback.* Rental costs under a sale and leaseback arrangement shall be allowable only up to the amount the contractor would be allowed had he retained title to the property.

(2) *Leases Between Related Parties.* Capital leases for all real and personal property which is leased from any division, subsidiary, or affiliate of the contractor under common control shall be subject to the provisions of this paragraph 15.205–9(j). If it is determined that the terms of the lease have been significantly affected by the fact that the lessee and lessor are related, the depreciation charges shall not be allowed in excess of those which would have occured if the lease contained terms consistent with those found in a lease between unrelated parties.

28. In Part 15, 15.205–16(a)(2), paragraphs (iii), (iv), and (v) are renumbered to read (iv), (v), and (vi). A new 15.205–16(a)(2)(iii) is added as follows:

15.205–16 *Insurance and Indemnification.*

* * * * *

(iii) the cost of casualty insurance premiums for insurance coverage in excess of acquisition cost of the insured assets is allowable *provided* the contractor has a formal written policy assuring that in the event the insured property is involuntarily converted, the new asset shall be valued at the book value of the replaced asset plus or minus adjustments for differences between insurance proceeds and actual replacement cost. If the contractor does not have such a formal written policy, the cost of premiums for insurance coverage in excess of the acquisition cost of the insured asset is unallowable.

* * * * *

29. In Part 15, 15.205–32 is revised as follows:

15.205–32 *Gains and Losses on Disposition of Depreciable Property or Other Capital Assets.*

(a) Gains and losses from the sale, retirement or other disposition (but see 15.205–16) of depreciable property, for purposes of computing contract costs, shall be included in the year in which they occur as credits or charges to the cost grouping(s) in which the depreciation or amortization applicable to such assets was included (but see (d) below).

(b) Gains and losses on disposition of tangible capital assets including those acquired under capital leases (see 15.205–9(j)) shall be considered as adjustments of depreciation costs previously recognized. The gain or loss for each asset disposed of is the difference between the net amount realized, including insurance proceeds from involuntary conversions, and its undepreciated balance. The gain to be recognized for contract costing purposes shall be limited to the difference between the acquisition cost (value at which capitalized for assets acquired under capital lease) of the asset and its undepreciated balance, except see (c)(ii)(A) or (B) below.

(c) Special considerations apply to involuntary conversions. An involuntary conversion of property occurs when a contractor's property is destroyed in whole or in part by events, over which the owner has no control, such as fire, windstorm, flood, accident, theft, etc., and an insurance award is recovered. The following shall govern regarding involuntary conversions:

(i) where there is a cash award and the converted asset is not replaced, gain or loss will be recognized in the period of disposition but the gain recognized for contract costing purposes will be limited to the difference between the original acquisition cost of the asset and its undepreciated balance;

(ii) where the converted asset is replaced, contractor will either—

(A) adjust the depreciable basis of the new asset by the amount of the total realized gain or loss; or

(B) recognize the gain or loss in the period of disposition, in which case the Government will participate to the same extent as outlined in (c)(i) above.

(d) Gains and losses on the disposition of depreciable property shall not be recognized as a separate charge or credit where:

(i) such gains and losses are processed through the depreciation reserve account and reflected in the depreciation allowable under 15.205–9, or

(ii) the property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into consideration in the depreciation cost basis of the new item.

(e) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions shall be considered on a case-by-case basis.

(f) Gains and losses of any nature arising from the sale or exchange of capital assets other than depreciable property, shall be excluded in computing contract costs.

30. In Part 15, 15.205–34 is revised as follows:

15.205–34 *Rental Costs (Including Sale and Leaseback of Property).*

(a) This paragraph 15.205–34 is applicable to the cost of renting or leasing property, real and personal, acquired under "operating leases" as defined in Statement of Financial Accounting Standards No. 13 (FAS–13). Accounting for Leases, promulgated by the Financial Accounting Standards Board (FASB), except automatic data processing equipment (ADPE)—(See 15.205–48.) Compliance with 15.205–9(j) requires that assets acquired by means of "capital leases" as defined in the aforementioned (FAS–13) shall be treated as purchased assets; *i.e.*, be capitalized and the capitalized value of such assets be distributed over their useful lives as depreciation charges.

(b) Rental costs under operating leases are allowable to the extent that the rates are reasonable at the time of the decision to lease in light of such factors as rental costs of comparable property, if any, and market conditions in the area, the type, life expectancy, condition, and value of property leased, alternatives available, and other provisions of the agreement.

(c) Rental costs under a sale and leaseback arrangement shall be allowable only up to that amount the contractor would be allowed had he retained title to the property.

(d) Charges in the nature of rent between any divisions, subsidiaries, or organization under common control are allowable to the extent such charges do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, facilities capital cost of money, and maintenance (excluding interest or other unallowable costs pursuant to Part 15); *provided* that no part of such costs shall duplicate any other allowed costs. However, rental cost of personal property, which is leased from any division, subsidiary, or affiliate of the contractor under common control, which has an established practice of leasing the same or similar property to unaffiliated lessees shall be allowed in accordance with (b) above.

(e) The allowability of rental costs under unexpired leases in connection with terminations is treated in 15.205–42(e).

31. In Part 15, 15.205–41(a), paragraphs (iii), (iv) and (v) are revised as follows:

15.205–41 *Taxes.*

* * * * *

(iii) taxes from which an exemption is available to the contractor directly or available to the contractor based on an exemption afforded the Government except when the contracting officer determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefits accruing to the Government. When partial exemption from a tax is attributable to Government contract activity, taxes charged to such work in excess of that amount resulting from the preferential treatment applicable thereto shall be unallowable. The objective of these provisions is to assure that any tax preference attributable to Government contract activity is realized by the Government. The term *"exemption,"* as used herein, means freedom from taxation in whole or in part and includes a tax abatement or reduction resulting from mode of assessment, method of calculation, or otherwise;

(iv) special assessments on land which represent capital improvements;

(v) taxes (including excises) on property, real or personal, or on the value, use, possession or sale thereof, which is used solely in connection with work other than on Government contracts. (Taxes on property used solely in connection with either non-Government or Government work

should be considered directly applicable to the respective category of work unless the amounts involved are insignificant or comparable results would otherwise be obtained; *e.g.*, taxes on contractor-owned work in process which is used solely in connection with non-Government work should be allocated to such work; taxes on contractor-owned work-in-process inventory (and Government-owned work-in-process inventory when taxed) used solely in connection with Government work, should be charged to such work.) The cost of taxes incurred by reason of the use of property on both Government and non-Government work shall be apportioned to all such work on the basis of the use of such property on the respective final cost objective; and

32. In Part 15, 15.205–48(a) is revised as follows:

15.205–48 *Automatic Data Processing Equipment (ADPE) Leasing Costs.*

(a) This paragraph 15.205–48 is applicable to all leased ADPE, as defined in 1.235 (except as components of an end item to be delivered to the Government) acquired under "operating leases" as defined in Statement of Financial Accounting Standard No. 13 (FAS–13), Accounting for Leases, promulgated by the Financial Accounting Standards Board (FASB)—Compliance with 15.205–9(j) requires that ADPE acquired by means of "capital leases" as defined in the aforementioned (FAS–13) shall be treated as purchased assets; *i.e.*, be capitalized and the capitalized value of such assets be distributed over their useful lives as depreciation charges. (Allowability of costs related to contractor-owned ADPE are governed by other provisions of this Subpart 2.)

15.205–48 [Amended]

33. In Part 15, 15.205–48(b)(3) is amended by deleting the text following "* * * retained title to the ADPE." to the end of the paragraph.

34. In Part 15, 15.205–48(b)(4) and 15.205–48(c)(2) are revised as follows:

15.205–48 *Automatic Data Processing Equipment (ADPE) Leasing Costs.*

(b) * * *

(4) Rental costs of ADPE which is leased from any division, subsidiary, or organization under a common control shall be limited to the cost of ownership (including facilities capital cost of money, but excluding interest or other unallowable costs pursuant to Part 15, Subpart 2) except as provided in (b)(5) below.

* * * * *

(c) * * *

(2) In estimating the least cost to the Government for such useful life, the cumulative costs that would be allowed if the contractor owned the property should be compared with cumulative costs that would be allowed under any of the various types of leasing arrangements available. For the purposes of this comparison, the costs of ADPE exclude interest or other unallowable costs, pursuant to Part 15, Subpart 2; they include but are not limited to the costs of operation, maintenance, insurance, depreciation, facilities capital cost of money and rental, and the cost of machine services, as applicable.

* * * * *

35. In Part 15, 15.206 is revised as follows:

15.206 Notice of Intent to Disallow or Not Recognize Costs.

(a) *Purpose.* The clause entitled "Notice of Intent to Disallow or Not Recognize Costs" is a required clause for all cost-type contracts and fixed-price incentive contracts and contracts providing for price redetermination (see 7.203–30). A Notice of Intent to Disallow or Not Recognize Costs provides the basis under a contract for the contractor to appeal, prior to final settlement of costs of the contract, a determination of exception to costs either incurred or to be incurred. It thereby provides a vehicle for disputes to be settled in a more timely fashion.

(b) At any time during the performance of the contract, the cognizant contracting officer may issue a Notice of Intent to Disallow or Not Recognize Costs stating his intent to take exception to specific costs or portions thereof, under the contract. Usually, the decision to issue a Notice of Intent to Disallow or Not Recognize Costs results from activities performed through monitorship of contractors' cost or on advice of auditors or technical personnel. Also, the decision to issue a Notice of Intent to Disallow or Not Recognize Costs shall only be made after discussion between the contracting officer and the contractor. The notice should be specific as to the type of cost to which exception is taken, the amount of such exception, (if applicable), reasons for exception, applicable time period of the exception, and should reference the Notice of Intent to Disallow or Not Recognize Costs clause of the contract. When such notification involves elements of indirect costs, the NASA contracting officer shall insure that appropriate coordination is obtained from the cognizant administrative contracting officer prior to issuance of the notice. When the Notice of Intent to Disallow or Not Recognize Costs is issued, the originating contracting officer will distribute information copies to all administrative contracting officers cognizant of that corporation. The notice will allow the contractor sixty days in which to contest the exception in writing and provide justification why the proposed expenditure is justifiable and reasonable. The contracting officer will then consider the contractor's position and shall within sixty days either modify his original position or issue a decision in writing under the Disputes clause of the contract.

(c) As a minimum the Notice of Intent to Disallow or Not Recognize Costs should contain the following information:

(i) contractor identification;

(ii) contract(s) affected;

(iii) description of cost exception(s);

(iv) estimated dollar value by item;

(v) reason(s) for the exception;

(vi) applicable time period(s) involved;

(vii) potential impact on billing rates and FPRA's;

(viii) effective date of notice;

(ix) provision for acknowledgment of receipt;

(x) date when formal reply must be received; and

(xi) recipients of copies of notice.

PART 20—ADMINISTRATIVE MATTERS

36. In Part 20, Table of Contents, 20.1000 is added as follows:

Subpart 10—Monitoring Contractors' Costs

20.1000 Applicability 20–10:1
20.1001 Scope 20–10:1
20.1002 Purpose 20–10:1
20.1003 Application 20–10:1
20.1004 Designation of a Cost Monitoring Coordinator 20–10:1
20.1005 Responsibilities of the Cost Monitoring Coordinator 20–10:2
20.1006 DCAA Auditor Responsibility 20–10:3
20.1007 Procedure 20–10:4

37. In Part 20, 20.604(d) (xxxv) and 20.604(d) (xxxvi) are added as follows:

20.604 Implementation.

(d) * * *

(xxxv) analyze quarterly limitation on payments statements and recover overpayments from the Contractor; and

(xxxvi) Negotiate changes to interim billing prices when authorized by the NASA contracting officer.

38. In Part 20, 20.903 and 20.904 are revised as follows:

20.903 Assignment. A CACO should be established for only those contractors with at least two locations where resident ACO's are assigned, for the purpose of this paragraph, a non-resident ACO will be considered the equivalent of a resident ACO if at least 75% of the ACC's effort is devoted to a single contractor. CACO functions will be performed by either a designated resident ACO or a fulltime CACO who should be in residence at either the corporate headquarters office or at one of the major plant locations. Other important considerations for determining the location of the CACO should include the geographic locations of the corporate office and the Contract Audit Coordinator (CAC). If a particular corporate complex does not meet the criteria for the establishment of a CACO, but a Department or Agency believes a CACO assignment is required, such determination requires approval of the Secretary of the Department (see DAR 1–201.15) or his designee. Decisions to initiate or discontinue a CACO should consider such factors as (i) the benefit to be derived by the Government from coordination and liaison at the corporate level; (ii) the volume of Government sales; (iii) the degree of control exercised by the contractor's corporate office over Government-oriented lower tier operating elements; and (iv) the impact of corporate policies and procedures on these elements. CACO's shall be assigned as follows.

(a) When all divisions of a corporate entity are under the contract administration cognizance of a single Department, that Department shall be responsible for assigning the CACO.

(b) When a corporate entity has divisions under the contract administration cognizance of more than one Department, CACO assignments shall be determined by the Departments concerned. When agreement cannot be reached, the matter shall be referred to the Director, Contracts and System Acquisition, Office of Under Secretary of Defense, Research and Engineering, for resolution. The primary criterion determining the Department responsible for assignment of a CACO will be the unliquidated dollar balance of contracts being administered. When a CACO has been assigned, reassigned, or discontinued, that Department shall notify the Director of the Defense Logistics Agency, Attention: DLA–AO, in order that current information concerning CACO assignments may be included in the DoD Directory of Contract Administration Services Components (DoD 4105.59–H).

20.904 Duties and Responsibilities of the CACO.

(a) Duties and responsibilities of the CACO shall be performed on a corporate-wide basis. The specific contract administration functions in DAR 1–406 to be performed by the CACO shall be determined by the Departments concerned. When agreement cannot be reached, the matter shall be referred to the Director (C&SA) OUSD (R&E), for resolution.

(b) The CACO shall be responsible for the procurement determination of final overhead rates for cost reimbursement type contracts (DAR 3–700): the establishment of advance agreements or recommendations on corporate/home office expense allocations; and for the negotiation of advance agreements for independent research and development costs and bid and proposal costs (DAR 15–107, 15–205.3, and 15–205.35) except when this responsibility is assigned in the master list published annually in a Defense Acquisition Circular for Tri-Service Departmental negotiation. Departmental Tri-Service contracting activities may delegate such negotiations to established CACO's. The CACO shall make full use of the Defense Contract Audit Agency financial and advisory accounting services including (i) maintaining close liaison with his audit counterpart, the CAC, especially when the acceptability of corporate-wide policies are concerned; and (ii) utilizing advisory audit reports as contemplated by DAR 3–705.

(c) The CACO shall (i) advise divisional ACO's and DCAA of important matters under consideration, and determinations made, and (ii) solicit their advice and participation when appropriate. In addition, the CACO shall solicit advice and consultation from the Indirect Cost Monitoring Office to assure consistent treatment of individual cost issues.

39. In Part 20, 20.1000 is added as follows:

Subpart 10—Monitoring Contractors' Costs

20.1000 Applicability. This Subpart is applicable only to the Department of Defense, and is included herein for the familiarization of NASA procurement personnel with the DoD monitoring concept.

20.1001 Scope. This Subpart sets forth guidelines for monitoring the policies, procedures, and practices used by contractors to control direct and indirect costs related to Government business. These procedures are intended to eliminate duplication in monitoring contractors' costs.

20.1002 Purpose. To ensure the most efficient and economical performance of DoD contracts, it is essential that contract costs be managed effectively. Contractors are responsible for managing and controlling their direct and indirect costs. However, DoD components need to systematically monitor the management of such costs to assure that contractors are fulfilling their responsibilities.

20.1003 Application. A formal program of Government monitoring of contractor policies, procedures, and practices to control costs should be conducted at:

(i) all major contractor locations where—

(A) sales to the Government are expected to exceed $50 million during the contractor's next fiscal year on other than firm-fixed-price and fixed-price-with-escalation contracts;

(B) the Government's share of indirect costs for such sales is at least 50% of the total of such indirect costs;

(C) a Contract Administration office has been established at the location, and

(D) the location is not CWAS qualified (see DAR 3–1000), and at

(ii) other critical locations with significant Government business where specifically directed by the HPA. Decisions to implement or terminate cost monitoring should be based upon sound estimates of Government business for the coming year and not upon minor interim volumes fluctuations. This does not preclude action to start or stop the program during a given year where there is a significant change in volume and the anticipated new level of business is expected to remain stable for a reasonable period of time.

20.1004 Designation of a Cost Monitoring Coordinator. A member of the Contract Administration Office (CAO) cognizant of a contractor location shall be designated as the Cost Monitoring Coordinator (CMC) after the location has been identified as qualified under DAR 20–1003 for application of this program. Depending upon the circumstances, the designee may be the ACO or any other staff member whose normal function relates to evaluation of contractor performance.

20.1005 Responsibilities of the Cost Monitoring Coordinator.

(a) In performing his assigned contract administration duties, the Plant Rep/ACO acts as a high-level manager calling upon the various specialists established within DoD to review and

report on those areas that fall within their respective areas of expertise. It is not intended that the Plant Rep/ACO duplicate the functional capabilities or work of such specialists. Likewise, the CMC in the contract administration organization will fully utilize the work of these specialists in monitoring contractor costs through coordination with their various organizations.

(b) The CMC shall be responsible for:

(i) preparing and maintaining an annual consolidated written plan and schedule for reviewing contractor operations from coordinated long-range plans established by each team member including the DCAA auditor. This composite plan and schedule will assure cost monitoring responsibilities are being fully implemented and that the technical and professional expertise of various organizational units of the CAO are used without duplication of effort or skills;

(ii) coordinating the performance of the cost monitoring effort of the organizational units of the CAO;

(iii) coordinating the cost monitoring efforts of the CAO with those of the DCAA auditor;

(iv) advising the head of the CAO of situations where the contractor should correct conditions, policies, or practices which are not considered the most economical and efficient for the performance of Government contracts, and recommending corrective action, including issuance of formal written notices to the contractor advising of specific costs which may not be allowed if incurred;

(v) coordinating CAO actions to assure that the procuring contracting officer, project manager, the head of the procuring activity, DCAA, and other responsible officials are informed of relevant matters significantly affecting the most economical and effective performance of Government contracts;

(vi) coordinating actions to assist the CAO, DCAA, and other Government personnel in obtaining access to pertinent contractor policies, procedures, and related data, and obtaining the assistance of the head of the CAO when such access is being denied or impaired;

(vii) maintaining an inventory of CAO, DCAA, and other Government reports on significant issues relating to monitoring costs;

(viii) continuously monitoring the status of recommendations made to the contractor concerning cost performance stemming from all Government reports. While contractors are responsible for managing their direct and indirect costs, the CMC monitors the contractors' effort through this task. In the event agreement is not reached on a recommendation and the cost or principle involved is sufficiently important, the CMC should prepare for the ACO's consideration, a Notice of Intent to Disallow or Not Recognize Costs (see DAR 15–206);

(ix) maintaining current organizational charts of the operations identifiable to the contractor's functional centers of his cost control systems.

(c) The plan required by (i) above must be tailored to the contractor, taking into account the extent of competition in awarded contracts, the contractor's operating methods, the nature of work being done, procurement cycle stage, business and industry practices, types of contracts involved, degree of technical and financial risk, ratio of Government/commercial work, and extent that performance efficiencies have been previously demonstrated. The plan should stress the importance of anticipating potential problems and provide a means of calling them to the attention of the contractor at an early stage so that preventive action can be taken. Reviews required by DAR and the contracting officer must be included in the plan.

20.1006 DCAA Auditor Responsibility. DCAA audit offices are responsible for performing all necessary contract audit for DoD and providing accounting and financial advisory service regarding contracts and subcontracts to all DoD components responsible for procurement and contract administration. The auditor is responsible for submitting information and advice based on his analysis of the contractor's financial and accounting records or other related data as to the acceptability of the contractor's incurred and estimated costs, as well as for reviewing the financial and accounting aspects of the contractor's cost control systems. The auditor is also responsible for performing that part of reviews and such analysis which requires access to the contractor's financial and accounting records supporting proposed costs or pricing data. This does not preclude the Program Manager, PCO, Plant Rep/ACO, or their technical representatives from requesting any data from, or reviewing records of, the contractor (such as CSCS/C data, lists of labor operations, process sheets, etc.) necessary to the discharge of their responsibilities. The CAO will utilize the auditor's services whenever such expertise is needed, particularly regarding the contractor's financial management reports, books, and records.

20.1007 Procedure.

(a) *Selecting Operations for Review.* It is not possible to review all elements of a contractor's entire operation each year. Therefore, the CMC, together with the auditor, is to select for review those operations that have the greatest potential for charging Government contracts with significant amounts of unacceptable costs. To select these cost-risk areas on a sound and orderly basis, an overview must first be obtained of the contractor's entire operation. Before the beginning of each Government fiscal year, the CMC should arrange for a joint meeting between CAO, DCAA, and other directly interested Government representatives to coordinate selection of the areas to be reviewed during the coming year. The following data will be used in the selection process:

(i) the contractor's forecasts for the coming year supporting direct and indirect costs by functional centers of his cost control system and the results of the latest survey performed of such systems (DCAA responsibility);

(ii) detailed organizational charts for the contractor's entire operation (CAO responsibility);

(iii) an outline of the contractor's accounting system to understand the flow of costs by function (DCAA responsibility);

(iv) the determination of Government participation in the dollars attributable to the operations and cost accounts under consideration (DCAA responsibility);

(v) a complete list of recent reviews and audits performed by CAO, the DCAA, and other Government representatives that would effect the selection of areas to be reviewed in the current year. This listing should show outstanding weaknesses and deficiencies in the contractor's operations (CAO responsibility);

(vi) evidence of under and overstaffing (CAO–DCAA responsibility);

(vii) significant departures from established contractor productivity standards (CAO responsibility);

(viii) major financial variances from forecasts in prior years (DCAA responsibility);

(ix) evidences of idle or under used capacity (CAO–DCAA responsibility).

(b) *Planning for Reviews.* The primary purpose of the joint meeting described above is to develop a mutually acceptable annual plan for reviewing the contractor's operation. The plan should provide coverage for each significant operational area of the contractor over a period of two to three years and should be modified to reflect

any changed conditions during subsequent meetings. The schedule and resource limitations of participating organizations will be considered in preparing the annual plan. The plan will identify the organizations having the primary responsibility for performing the reviews:

(i) the CAO will review the technical aspects of contractor operations requiring minimal or no access to contractor's financial and accounting records and will sign reports on these reviews;

(ii) DCAA will review the financial and accounting aspects of contractor operations requiring minimal or no technical considerations and will sign reports on these reviews;

(iii) the CAO and DCAA will jointly perform reviews requiring significant CAO and DCAA expertise. Reports resulting from these reviews will be signed by the heads of the respective local organizations. Some operations reviews such as the purchasing (CAO) and estimating system reviews (DCAA) are assigned to the responsible reviewing organization by DAR. These assignments will continue to be recognized. All others will be performed according to the above criteria. The annual plan will be formally approved by heads of the local CAO and the DCAA resident offices.

(c) *Joint Review.*

(1) *Objective.* The objectives of joint CAO–DCAA reviews of contractor operations are:

(i) to optimize the utilization of DCAA–CAO personnel in performing selected operations reviews; and

(ii) to generate joint reports of the reviews that contain findings, conclusions, and recommendations mutually agreed upon by the DCAA auditor and the CAO to improve the effectiveness and economy of contractor operations.

(2) *Exit Conference with Contractor.* During the course of the review, there may be several informal briefings with contractor management personnel to exchange information. Every opportunity should be afforded each party, to either update the information provided or to conduct additional reviews to preclude misconceptions that could develop as a result of obtaining incomplete or inaccurate data. An exit conference with contractor management personnel provides the opportunity to explain CAO/DCAA findings, conclusions and recommendations. On joint reviews, the ACO or his representative shall arrange the exit conference with the contractor. Both CAO and DCAA will be represented at the exit conference.

(d) *Reports.* All reports prepared separately or jointly by DCAA or CAS personnel will be forwarded through the ACO to the contractor. While these review reports are advisory to the ACO, the ACO has responsibility to assure that (i) appropriate recognition is given to the results of such reviews in any contract negotiations and (ii) that the contractor implements appropriate corrective actions. In event of any dispute with the contractor, the ACO has the ultimate responsibility and authority to effect final settlement.

[FR Doc. 79-25433 Filed 8-16-79; 8:45 am]

BILLING CODE 7510-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-5680]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fourth column of the table.

ADDRESSEES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620.

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

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
Washington	Grays Harbor	Westport, city of	530067-B	July 16, 1979, suspension withdrawn.	June 21, 1974, and Jan. 16, 1976.
California	Yolo	Davis, city of	060424-A	July 31, 1979, emergency.	Nov. 8, 1977.
New York	Steuben	Dansville, town of	361209	do	Jan. 24, 1975.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
Pennsylvania	Berks	Strausstown, borough of	420152	do	Do.
Do	Mercer	Worth, township of	422492	do	Do.
Iowa	Johnson	Unincorporated areas	190882-A	Aug. 1, 1979, emergency	Nov. 29, 1977.
Missouri	Clark	Wyaconda, city of	290085-A	do	Oct. 18, 1974, and Nov. 14, 1975.
Pennsylvania	Franklin	Montgomery, township of	422426	do	Dec. 13, 1974.
Do	Lawrence	Plain Grove, township of	421797-A	do	Apr. 15, 1977.
Do	York	Wellsville, borough of	420940-A	July 31, 1979, emergency.	Apr. 1, 1977.
Do	Schuylkill	West Brunswick, township of	422028	Aug. 1, 1979, emergency	Jan. 10, 1975.
Texas	Chamber	Mont Belvieu, city of	480122	do	Dec. 24, 1976.
Do	Tyler	Woodville, city of	481035	do	July 2, 1976.
North Carolina	Anson	Unincorporated areas	370284	Aug. 2, 1979, emergency	July 15, 1979.
Utah	Carbon	Helper, city of	490034-B	June 10, 1975, emergency, Mar. 1, 1979, regular, Mar. 1, 1979, suspended, Aug. 2, 1979, reinstated.	Jan. 9, 1974.
Indiana	White	Unincorporated areas	180447-A	Aug. 3, 1979, emergency	Aug. 18, 1978.
Kansas	Sedgwick	Kechi, city of	200429	do	Apr. 23, 1976.
Missouri	Cass	Creighton, city of	290063-A	do	May 13, 1977.
North Carolina	Hertford	Winton, town of	370424-A	do	Dec. 29, 1978.
Ohio	Huron	Unincorporated areas	390770	do	July 14, 1978.
Georgia	Henry	do	130468	Aug. 6, 1979, emergency	Aug. 4, 1978.
Do	Wilkinson	Ivey, town of	130420	do	Dec. 16, 1977.
Montana	Custer	Unincorporated areas	300147-A	Aug. 7, 1979, emergency	June 26, 1979.

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

Issued: August 3, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-25352 Filed 8-16-79; 8:45 am]

BILLING CODE 4210-23-M

44 CFR Part 64

[Docket No. FEMA-5681]

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance, as authorized under the National Flood Insurance Program (NFIP), will be suspended because of noncompliance with the flood plain management requirements of the program.

EFFECTIVE DATES: The third date ("Susp.") listed in the fifth column.

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

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date subsidized flood insurance is no longer available in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended, provides that no direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP, with respect to which a year has elapsed since identification of the community as having flood prone areas, as shown on the Office of Federal Insurance and Hazard Mitigation's initial flood insurance map of the community. This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of suspended communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of Flood Insurance in community	Special flood hazard area identified	Date
Connecticut	New Haven	Naugutuck, borough of	090137-B	June 26, 1975, emergency, Aug. 15, 1979, regular, August 15, 1979, suspended.	June 28, 1974 Feb. 18, 1977	August 15, 1979.
Do	Hartford	Suffield, town of	090038-C	June 28, 1978, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	Oct. 18, 1977 Mar. 16, 1978	Do.
Idaho	Bingham	Aberdeen, town of	160158-A	June 25, 1976, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	June 27, 1975	Do.
Illinois	Kane	Montgomery, village of	170328-B	Apr. 19, 1973, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	Oct. 26, 1973 May 28, 1976	Do.
Iowa	Audubon	Audubon, city of	190011-B	Sept. 4, 1974, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	May 3, 1974 May 21, 1976	Do.
Maryland	Garrett	Loch Lynn Heights, town of	240037-B	May 23, 1975, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	June 28, 1974	Do.
Do	Allegany	Midland, town of	240006-B	June 2, 1975, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	Aug. 9, 1974 Feb. 20, 1976	Do.
Massachusetts	Hampden	Holyoke, city of	250142-B	May 20, 1974, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	Apr. 12, 1974 July 12, 1977	Do.
Do	Franklin	Montague, town of	250122-B	June 13, 1975, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	Mar. 22, 1974 Nov. 5, 1976	Do.
Do	Hampshire	South Hadley, town of	250170-A	Nov. 27, 1973, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	Mar. 22, 1974	Do.
Michigan	Oakland	Pontiac, city of	260177-B	Aug. 7, 1973, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	Feb. 1, 1974 Aug. 20, 1976	Do.
Minnesota	Mower	Adams, city of	270308-A	Feb. 12, 1974, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	July 30, 1976	Do.
Missouri	Howell	Willow Springs, city of	290167-B	July 2, 1974, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	May 24, 1974 Dec. 5, 1975	Do.
Nebraska	Merrick	Central City, city of	310148-B	May 20, 1975, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	May 10, 1974 Feb. 27, 1976	Do.
Do	Douglas	Elkhorn, city of	310075-B	Mar. 31, 1975 emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	Mar. 22, 1974 Apr. 16, 1976	Do.
Do	Dakota	South Sioux City, city of	310054-B	Dec. 24, 1974, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	Dec. 7, 1973 Jan. 23, 1976	Do.
New York	Erie	Wales, town of	360261-B	July 23, 1975, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	May 10, 1974 July 23, 1976	Do.
Oregon	Marion	Unincorporated area	410154-B	Dec. 10, 1971, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	Jan. 24, 1975 Jan. 24, 1978	Do.
Pennsylvania	Potter	Coudersport, borough of	420761-B	July 13, 1973, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, sus-	July 19, 1974 May 21, 1976	Do.
Do	Lebanon	East Hanover, township of	421012-B	Apr. 10, 1973, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	Aug. 31, 1973 Nov. 19, 1976	Do.
Do	Perry	Liverpool, borough of	420750-B	Mar. 20, 1974, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	May 10, 1974 May 7, 1975	Do.
Do	Lancaster	Manheim, township of	420556-B	July 5, 1973, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	Dec. 28, 1973 Jan. 28, 1977	Do.
Do	Dauphin	Middle Paxton, township of	420387-B	Mar. 2, 1973, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	Nov. 28, 1973 June 3, 1977	Do.
Do	Columbia	Mifflin, township of	421167-B	Apr. 26, 1974, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	Nov. 1, 1974 June 11, 1976	Do.
Do	Allegheny	Moon, township of	421082-B	Dec. 10, 1974, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	Sept. 6, 1974 June 4, 1976	Do.
Do	Perry	Newport, borough of	420754-B	Mar. 2, 1973, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	June 1, 1973 June 4, 1976	Do.
Do	Perry	Oliver, township of	421022-B	Nov. 12, 1973, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	Feb. 22, 1974 Apr. 1, 1977	Do.
Do	Perry	Rye, township of	421028-B	Oct. 5, 1973, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	June 28, 1974 June 25, 1976	Do.
Do	Northumberland	Turbot, township of	420744-B	Mar. 16, 1973, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	June 15, 1973 June 4, 1976	Do.
Do	Perry	Watts, township of	420756-B	May 24, 1973, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	Oct. 26, 1973 Dec. 24, 1976	Do.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of Flood Insurance in community	Special flood hazard area identified	Date [1]
Rhode Island	Providence	Glocester, town of	440034-B	Dec. 29, 1975, emergency, Aug. 15, 1979, regular, Aug. 15, 1979.	Oct. 18, 1974 Apr. 8, 1977	Do.
Washington	Kitsap	Bremerton, city of	530093-A	May 27, 1975, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	Nov. 8, 1974	Do.
Do	Benton	Kennewick, city of	530011-C	Aug. 2, 1974, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	June 7, 1974 Oct. 29, 1976 Aug. 23, 1977	Do.
Do	Whitman	Tekoa, city of	530215-B	Aug. 7, 1975, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	Aug. 30, 1974 Mar. 12, 1976	Do.
West Virginia	Tucker	Parsons, town of	540194-B	Apr. 17, 1975, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	Feb. 8, 1974 Apr. 9, 1976	Do.
Wisconsin	Lafayette	Argyle, village of	550224-B	June 24, 1975, emergency, Aug. 15, 1979, regular, Aug. 15, 1979, suspended.	Nov. 30, 1973 June 4, 1976	Do.

[1] Date certain Federal assistance no longer available in special flood hazard area.

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

Issued: August 2, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-25345 Filed 8-16-79; 8:45 am]

BILLING CODE 4210-23-M

44 CFR Part 65

[Docket No. 5677]

Communities With Minimal Flood Hazard Areas for the National Flood Insurance Program

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

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator, after consultation with local officials of the communities listed below, has determined, based upon analysis of existing conditions in the communities, that these communities' Special Flood Hazard Areas are small in size, with minimal flooding problems. Because existing conditions indicate that the area is unlikely to be developed in the foreseeable future, there is no immediate need to use the existing detailed study methodology to determine the base flood elevations for the Special Flood Hazard Areas.

Therefore, the Administrator is converting the communities listed below to the Regular Program of the National Flood Insurance Program (NFIP) without determining base flood elevations.

EFFECTIVE DATE: Date listed in fourth column of List of Communities with Minimal Flood Hazard Areas.

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

SUPPLEMENTARY INFORMATION: In these communities, the full limits of flood insurance coverage are available at actuarial, non-subsidized rates. The rates will vary according to the zone designation of the particular area of the community.

Flood Insurance for contents, as well as structures, is available. The maximum coverage available under the Regular Program is significantly greater than that available under the Emergency Program.

Flood insurance coverage for property located in the communities listed can be purchased from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program. The effective date of conversion to the Regular Program will not appear in the Code of Federal Regulations except for the page number of this entry in the **Federal Register.**

The entry reads as follows:

§ 65.9 List of communities with minimal flood hazard areas.

State	County	Community name	Date of conversion to regular program
New Jersey	Burlington	Township of North Hanover	August 3, 1979.
New York	Cayguga	Town of Throop	August 3, 1979.
Illinois	Cook	Village of Barrington Hills	August 10, 1979.
Illinois	LaSalle	Village of Sheridan	August 10, 1979.
Illinois	St. Clair	Village of Summerfield	August 10, 1979.
Maryland	Montgomery	Town of Barnesville	August 10, 1979.
Michigan	Alger	Village of Chatham	August 10, 1979.
Michigan	Newaygo	City of Fremont	August 10, 1979.
Michigan	Ingham	City of Leslie	August 10, 1979.
Michigan	Ingham	Township of Locke	August 10, 1979.
Michigan	Ingham	Village of Webberville	August 10, 1979.
Minnesota	Clay	City of Felton	August 10, 1979.
Ohio	Licking	Village of Hartford	August 10, 1979.
Pennsylvania	Armstrong	Borough of Apollo	August 10, 1979.
Pennsylvania	Delaware	Township of Bethel	August 10, 1979.
Pennsylvania	Westmoreland	Borough of Bolivar	August 10, 1979.
Pennsylvania	Allegheny	Borough of Braddock Hills	August 10, 1979.
Pennsylvania	Butler	Borough of Chicora	August 10, 1979.
Pennsylvania	Crawford	Borough of Conneaut Lake	August 10, 1979.
Pennsylvania	Lackawanna	Township of North Abington	August 10, 1979.
Pennsylvania	Centre	Borough of Snow Shoe	August 10, 1979.
Pennsylvania	Lackawanna	Township of Springbrook	August 10, 1979.
Pennsylvania	Montour	Borough of Washingtonville	August 10, 1979.
West Virginia	Grant	Town of Bayard	August 10, 1979.
West Virginia	Fayette	City of Mount Hope	August 10, 1979.
West Virginia	Fayette	Town of Pax	August 10, 1979.
Wisconsin	Taylor	Village of Stetsonville	August 10, 1979.
New Jersey	Atlantic	Township of Weymouth	August 10, 1979.
New York	Dutchess	Town of Milan	August 10, 1979.
Utah	Sevier	Town of Elsinore	August 14, 1979.
New York	Dutchess	Town of Washington	August 17, 1979.
New York	Rensselaer	Town of Berlin	August 17, 1979.
New York	Washington	Town of Argyle	August 24, 1979.
New York	Erie	Town of Eden	August 24, 1979.
Utah	Garfield	Town of Escalante	August 28, 1979.
Utah	Sevier	Town of Joseph	August 28, 1979.

State	County	Community name	Date of conversion to regular program
Utah	Garfield	City of Panguitch	August 28, 1979.
New York	Seneca	Town of Tyre	August 31, 1979.

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

Issued: August 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79–25353 Filed 8–16–79; 8:45 am]

BILLING CODE 4210–23–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 13

[FCC 79–252]

Commercial Radio Operators; Implementing a System of Temporary Authorizations for Restricted Radiotelephone Operator Permits; Notice of Effective Date

AGENCY: Federal Communications Commission.

ACTION: Final rule; notice of effective date.

SUMMARY: On May 2, 1979 the Commission approved the establishment of an instant radio operator licensing system, and said it would announce when it was ready to be implemented. The purpose of this notice is to announce the effective date of § 13.11(b)(1) as amended at 44 FR 29076.

EFFECTIVE DATE: § 13.11(b)(1) as amended at 44 FR 29076 (May 18, 1979) is effective August 20, 1979.

FOR FURTHER INFORMATION CONTACT: Roy E. Kolly or Vernon P. Wilson, Field Operations Bureau, (202) 632–7240.

Instant Radio Operator Licensing System Established

On May 1979 the Commission approved the establishment of an instant radio operator licensing system, and said it would announce when it was ready to be implemented (44 FR29076). The purpose of this notice is to advise that the licensing system will be implemented effective August 20, 1979.

Under this system those applying for a Restricted Radiotelephone Operator Permit may obtain instant temporary operating authority while their applications are being processed. To obtain this temporary authority a person must

—Complete the regular license application, FCC Form 753, and mail it to the FCC, and

—Complete FCC Form 753–T, which serves as the temporary permit.

The temporary authority is valid for 60 days. FCC Form 753 and FCC Form 753–T are available from any FCC field office or from the FCC, Washington, D.C. 20554.

The FCC estimates that this system will benefit more than 200,000 applicants each year who need this permit to operate radios on most boats or aircraft, or to perform operator duties at AM and FM broadcast stations.

Accordingly, the amendment to § 13.11(b)(1) appearing at 44 FR 29076, May 18, 1979 becomes effective August 20, 1979.

Federal Communications Commission,

William J. Tricarico,

Secretary.

[FR Doc. 79–25519 Filed 8–16–79; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

Editorial Amendments for Noncommercial Educational FM Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: The rule for Class D noncommercial educational FM broadcast stations is amended to incorporate an agreement with the Government of Canada for assignment of such stations to operate on channels above 92 MHz.

By Public Notice, dated July 25, 1979, shown in the Appendix, the Commission announced an agreement had been concluded with Canada to permit Class D stations to operate on frequencies above 92 MHz under specified licensing procedures. Therefore, editorial revision is required in § 73.512 of the rules to delete references to the pending negotiations with Canada, to implement the terms of the arrangements with that country, and to terminate the temporary exemption as now stated in that rule.

EFFECTIVE DATE: August 21, 1979.

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

FOR FURTHER INFORMATION CONTACT: Jonathan David, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Order

Adopted: August 3, 1979.

Released: August 9, 1979.

In the matter of editorial amendments of § 73.512 of the rules for Noncommercial Educational FM Broadcast Stations.

1. Under the provisions of rules adopted June 7, 1978, published in the **Federal Register** September 6, 1978 (43 FR 39704), Class D noncommercial educational FM stations are required to comply with certain channel change procedures. (Class D stations are those authorized to operate with transmitter output power of 10 watts or less.) If possible, these stations are required to change channel (frequency) to one in the commercial band. These channels, numbers 221 through 300, are those above 92 MHz. Alternatively, these Class D stations can file an application by January 1, 1980, to increase power to at least 100 watts effective radiated power to continue operating on a reserved noncommercial FM frequency.

2. Class D stations within 199 miles of the border with Mexico are exempted from the requirements described above because the FM broadcast agreement with that country precludes 10-watt operation on commercial FM frequencies. Further, such stations within 200 miles of the Canadian border were temporarily exempted pending negotiations with the government of that country to permit Class D station operation above 92 MHz.

3. By Public Notice, dated July 25, 1979, shown in the Appendix, the Commission announced an agreement had been concluded with Canada to permit Class D stations to operate on frequencies above 92 MHz under specified licensing procedures. Therefore, editorial revision is required in § 73.512 of the rules to delete references to the pending negotiations with Canada, to implement the terms of the arrangements with that country, and to terminate the temporary exemption as now stated in that rule.

4. Therefore, it is ordered, that pursuant to Sections 4(i), 303(r), and 5(a)(1) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules, Part 73, § 73.512(a)(1), is amended, effective August 21, 1979, to read as follows:

§ 73.512 Special procedures applicable to Class D noncommercial educational stations.

(a) * * *

(1) To the extent possible, each applicant shall select a commercial FM channel on which it proposes to operate in lieu of the station's present channel. The station may select any commercial channel provided no objectionable interference, as set forth in § 73.509(b), would be caused. The application shall include the same engineering information as is required to change the frequency of an existing station and any other information necessary to establish the fact that objectionable interference would not result. If no commercial channel is available where the station could operate without causing such interference, the application shall set forth the basis upon which this conclusion was reached. This procedure applies throughout the continental United States except that stations in the area within 320 kilometers (199 miles) of Mexico do not have to comply with this requirement, in which case such parties shall follow the procedures in paragraph (a)(3) of this section.

* * * * *

3. For further information concerning this *Order*, contact Jonathan David, Broadcast Bureau, (202) 632–7792.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082 (47 U.S.C. 154, 155, 303))

Federal Communications Commission.

Richard J. Shiben,

Chief, Broadcast Bureau.

Appendix

July 25, 1979.

Commission Reaches Agreement With Canada on Moving Class D Educational FM Stations to Commercial Band

Recently, the Commission took a number of actions affecting noncommercial educational FM stations.[1] In one of these actions the Commission adopted several rules concerning Class D noncommercial educational FM broadcast stations (these are the stations with a transmitter power output of 10 watts or less). Under Section 73.512 of the new rules, all Class D stations are required to comply with certain channel change procedures. If possible, all Class D stations are required to change frequency to the commercial band (92 through 108 megahertz). If no channel in the commercial band is available, they must move to newly created Channel 200 (87.9 megahertz). And, if Channel 200 is not available, they must move to the least preclusive channel in the reserved band (88 through 92 megahertz). Alternatively, these stations can file an application by January 1, 1980, to increase power on an educational channel to at least 100 watts ERP.

Because our Working Arrangement with Canada did not permit Class D stations in the commercial band within 250 miles of Canada, the channel change procedure was suspended for Class D stations in the Canadian border area pending completion of negotiations with Canada. Treaty provisions bar the use of the newly created FM Channel 200.

The Commission has recently reached an agreement with Canada to permit Class D stations to move to the commercial band. Therefore, all Class D stations in the Canadian border area are now subject to the channel change requirements in § 73.512(a)(1). That Section will be amended shortly to so state. In addition to complying with the interference requirements in § 73.509(b) concerning U.S. commercial stations, Class D stations in the Canadian border area must also provide protection to Canadian commercial stations. All proposals by Class D stations within 20 miles of the Canadian border will be referred to Canada on a case-by-case basis during the processing of the application. We would also refer to Canada other applications beyond 20 miles from the border which would cause interference to the reception of Canadian stations inside Canada. This situation is expected to be unusual and in any event would not occur if the Class D station had an ERP of 50 watts or less and an antenna height above average terrain which does not exceed 200 feet.

Since we do not have an agreement with Mexico which permits Class D stations in the commercial band, the exemption to § 73.512(a)(1) for Class D stations within 199 miles of Mexico remains in effect.

A copy of this Public Notice is being sent to all noncommercial educational FM licensees.

Questions about the Commission's decisions in this area should be directed to Jonathan David, Policy and Rules Division, Broadcast Bureau, 1919 M Street, NW., Washington, D.C. 20554; telephone (202) 632–7792. Engineering questions related to the filing of these applications should be directed to John Boursy, Broadcast Facilities Division, Broadcast Bureau, 1919 M Street, NW., Washington, D.C. 20554, telephone (202) 632–6908.

[FR Doc. 79–25520 Filed 8–16–79; 8:45 am]

BILLING CODE 6712–01–M

[1] These actions were taken in the following documents in Docket No. 20735: *First Report and Order*, adopted June 7, 1978, published in the **Federal Register** on June 15, 1978, 43 FR 25821. *Second Report and Order*, adopted June 7, 1978, published in the **Federal Register** on September 6, 1978, 43 FR 39704. *Memorandum Opinion and Order*, adopted December 23, 1978, published in the **Federal Register** on January 16, 1979, 44 FR 3412.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 653

Atlantic Herring; Extension of Emergency Regulations

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

ACTION: Extension of emergency regulations for Atlantic herring.

SUMMARY: On July 2, 1979, approval of an amendment to the Atlantic herring fishery management plan (FMP), emergency regulations, and a request for commnents were published in the **Federal Register** (44 FR 38529). The amendment, extending the 1978/1979 fishery management system for Atlantic herring through fishing year 1979/1980, was implemented by emergency regulations. Those emergency regulations were necessary to protect the Gulf of Maine herring stock and encourage fishermen, who would begin the new fishing year on July 1, to concentrate on the Georges Bank herring stock. The emergency regulations are extended for an additional 45-day period.

EFFECTIVE DATE: These emergency regulations become effective at 0001 hours on August 15, 1979, and will remain in effect through September 27, 1979, or until they are superseded by final regulations, whichever is sooner.

FOR FURTHER INFORMATION CONTACT: Mr. Allen E. Petersen, Jr., Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930; telephone (617) 281–3600.

SUPPLEMENTARY INFORMATION: The FMP for the Atlantic herring fishery was prepared by the New England Fishery Management Council and approved in December, 1978, by the Assistant Administrator for Fisheries (Assistant Adminstrator), NOAA. Subsequently, the FMP was amended to encourage fishermen to concentrate their efforts on the Georges Bank herring stock.

The emergency regulations published on July 2, 1979, are extended for an additional 45-day period, because fishing for Atlantic herring is still being conducted and the Gulf of Maine stock is still in need of protection. The National Marine Fisheries Service is currently evaluating comments received on the proposed rulemaking, and will consider those comments in

promulgating the final regulations. Those final regulations, when drafted, will supersede these emergency regulations.

The Assistant Administrator has determined that this action, extending current emergency regulations, is non-significant under Executive Order 12044. An environmental impact statement covering this fishery is on file with the Environmental Protection Agency.

Signed in Washington, D.C., this 13th day of August 1979.

(16 U.S.C. 1801 *et seq.*)

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-25521 Filed 8-16-79; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 44, No. 161
Friday, August 17, 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 Part 451]

Incentive Awards

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management is proposing to revise existing regulations which implement the Government Employees' Incentive Awards Program, as required by 5 U.S.C. 4506. The revised regulation provides a broad framework within which agencies shall make maximum use of the authority delegated to them to establish and operate an incentive awards program that best supports the agency's mission and objectives and motivates the agency's personnel.

DATE: Comments must be received on or before September 17, 1979.

ADDRESS: Send written comments to: Chief, Incentive Awards Branch, WED, Room 350–H, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20515.

FOR FURTHER INFORMATION CONTACT: Richard P. Brengel, 202–632–5568.

SUPPLEMENTARY INFORMATION: The purpose of the Government Employees' Incentive Awards Program is to improve productivity in Government by rewarding employees whose contributions, above normal job requirements and performance standards, benefit the Federal Government. This revision incorporates recommendations for program improvement made by the General Accounting Office following their evaluation of the effectiveness of the Government Employees' Incentive Awards Program. (Reports Nos. FPCD 78–73 and FGMSD 79–9 dated November 8, 1978, and March 15, 1979, respectively.) These regulations will be supplemented by further guidance developed by the Office of Personnel Management and issued through the Federal Personnel Manual system.

The Office of Personnel Management finds that good cause exists for providing less than 60 days to comment on the proposed rules to facilitate Federal agencies' implementation of incentives provided under the Civil Service Reform Act of 1978, and the revision of awards programs to strengthen and more directly support Federal goals and objectives as recommended in the above cited reports of the General Accounting Office. The official who made this determination is Jule M. Sugarman, Deputy Director, Office of Personnel Management.

Office of Personnel Management,

Beverly M. Jones,

Issuance System Manager.

Accordingly, the Office of Personnel Management proposes to revise Part 451 of Title 5, as follows:

PART 451—INCENTIVE AWARDS

Subpart A—Statutory Requirements

Sec.
451.101 Principal statutory requirements.

Subpart B—Regulatory Requirements of the Office of Personnel Management

451.201 Purpose.
451.202 Policy.
451.203 Definitions.
451.204 Responsibilities of the Office of Personnel Management.
451.205 Agency responsibilities.
451.206 Agency plans.
451.207 Eligibility.
451.208 Additional awards.
451.209 Payment.

Authority: 5 U.S.C. 4506.

Subpart A—Statutory Requirements

§ 451.101 Principal Statutory Requirements

This subpart contains the statutory requirements and the Office of Personnel Management's regulatory requirements for establishment and conduct of the Government Employees' Incentive Awards Program provided for in Title 5, United States Code, Chapter 45. The text reads as follows:

Sec. 4501. Definitions. For the purpose of this chapter—(1) *"agency"* means—(A) an Executive Agency; (B) the Administrative Office of the United States Courts; (C) the Library of Congress; (D) the Office of the Architect of the Capitol; (E) the Botanic Garden; (F) the Government Printing Office; and (G) the government of the District of Columbia; but does not include—(i) the Tennessee Valley Authority; or (ii) the Central Bank for Cooperatives; (2) *"employee"* means—(A) an employee as defined by section 2105 of this title, but does not include an employee covered by the merit pay system established under section 5402 of this title and (B) an individual employed by the government of the District of Columbia; and (3) *"Government"* means the Government of the United States and the government of the District of Columbia.

Sec. 4502. General Provisions. (a) Except as provided by subsection (b) of this section, a cash award under this chapter may not exceed $10,000. (b) When the head of an agency certifies to the Office of Personnel Management that the suggestion, invention, superior accomplishment, or other meritorious effort for which the award is proposed is highly exceptional and unusually outstanding, a cash award in excess of $10,000 but not in excess of $25,000 may be granted with the approval of the Office. (c) A cash award under this chapter is in addition to the regular pay of the recipient. Acceptance of a cash award under this chapter constitutes an agreement that the use by the Government of an idea, method, or device for which the award is made does not form the basis of a further claim of any nature against the Government by the employee, his or her heirs, or assigns. (d) A cash award to, and expense for the honorary recognition of, an employee may be paid from the fund or appropriation available to the activity primarily benefiting or the various acitivities benefiting. The head of the agency concerned determines the amount to be paid by each activity for an agency award under section 4503 of this title. The President determines the amount to be paid by each activity for a Presidential award under section 4504 of this title.

Sec. 4503. Agency Awards. The head of an agency may pay a cash award to, and incur necessary expense for the honorary recognition of, an employee who—(1) by his or her suggestion, invention, superior accomplishment, or other personal effort contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or (2) performs a special act or service in the public interest in connection with or related to his or her official employment.

Sec. 4504. Presidential Awards. The President may pay a cash award to, and incur necessary expense for the honorary recognition of, an employee who—(1) by his or her suggestion, invention, superior accomplishment, or other personal effort contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in

paperwork; or (2) performs an exceptionally meritorious special act or service in the public interest in connection with or related to his or her official employment. A Presidential award may be in addition to an agency award under section 4503 of this title.

Sec. 4505. Awards to Former Employees. An agency may pay or grant an award under this chapter notwithstanding the death or separation from the service of the employee concerned, if the suggestion, invention, superior accomplishment, other personal effort, or special act or service in the public interest for which the award is proposed was made or performed while the employee was in the employ of the Government.

Sec. 4506. Regulations. The Office of Personnel Management shall prescribe regulations and instructions under which the agency awards program set forth by this chapter shall be carried out.

Sec. 4507. Awarding of Ranks in the Senior Executive Service. (a) For the purpose of this section, 'agency', 'senior executive', and 'career appointee' have the meanings set forth in section 3132(a) of this title. (b) Each agency shall submit annually to the Office, recommendations of career appointees in the agency to be awarded the rank of Meritorious Executive or Distinguised Executive. The recommendations may take into account the individual's performance over a period of years. The Office shall review such recommendations and provide to the President recommendations as to which of the agency recommended appointees should receive such rank. (c) During any fiscal year, the President may, subject to subsection (d) of this section, award to any career appointee recommended by the Office the rank of (1) Meritorious Executive, for sustained accomplishment, or (2) Distinguished Executive, for sustained extraordinary accomplishment.

A career appointee awarded a rank under paragraph (1) or (2) of this subsection shall not be entitled to be awarded that rank during the following 4 fiscal years.

(d) During any fiscal year (1) the number of career appointees awarded the rank of Meritorious Executive may not exceed 5 percent of the Senior Executive Service; and (2) the number of career appointees awarded the rank of Distinguished Executive may not exceed 1 percent of the Senior Executive Service.

(e)(1) Receipt by a career appointee of the rank of Meritorious Executive entitles such individual to a lump-sum payment of $10,000, which shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 5384 of this title. (2) Receipt by a career appointee of the rank of Distinguished Executive entitles the individual to a lump-sum payment of $20,000, which shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 5384 of this title.

Subpart B—Regulatory Requirements of the Office of Personnel Mangement

§ 451.201 Purpose.

The Government Employees' Incentive Awards Program is designed to improve Government operations and services. Its purpose is to motivate employees to increase productivity and creativity by rewarding those whose job performance and adopted ideas benefit the Government and are substantially above normal job requirements and performance standards.

§ 451.202 Policy.

The Office of Personnel Management encourages agencies to make maximum use of their authorities under Chapter 45 of Title 5, United States Code to establish and administer awards programs that best support and enhance agency and national goals, and meet employee recognition needs.

§ 451.203 Definitions.

In this Part: "Agency," "employee," and "Government" have the meanings given to these terms by section 4501 of title 5, United States Code;

"Incentive award" or "award" means either a cash award, an honorary award, or both;

"Office" means the United States Office of Personnel Managment;

"Plan" means a written statement approved by the head of the issuing agency, implementing law and regulation on the Government Employees' Incentive Awards Program; and

"Presidential award" means an award granted by the President under sections 4504 and 4507 of title 5, United States Code.

§ 451.204 Responsibilities of the Office of Personal Management.

(a) The Office shall review agency plans, plan changes, and operation of plans to determine compliance with OPM requirements. When review indicates non-compliance by an agency or organization, or when requested by an agency to do so, the Office will provide technical assistance to agencies and take whatever other actions are considered appropriate to bring about compliance.

(b) The Office shall report annually on the results of the awards program to the President, the Congress, and to agencies.

(c) The Director, Office of Personnel Management, shall advise the President on Presidential awards for Government employees, and issue instructions to agencies on how to nominate employees for Presidential awards.

§ 451.205 Agency responsibilities.

(a) The head of each agency shall give personal leadership to the agency's incentive awards program and seek to gain maximum benefits for the Government through improved employee motivation and productivity by providing for:

(1) *Equal opportunity for all employees to earn awards* by training employees on how they may earn awards, and further training for supervisors and managers on the effective use of incentive awards to improve individual and organizational performance;

(2) *Integrity of the program* by assuring that awards are granted on the basis of merit and that, when merited, action is taken to grant awards; and that information is readily available concerning persons who have received awards and the reason(s) why each award is granted; and

(3) *Greatest motivational impact* by allocating an adequate budget and staffing and support services to assure prompt action on all employee suggestions and performance award recommendations and effective promotion and publicity activities.

(b) Agency heads may delegate the responsibilities in § 451.205(a) as deemed appropriate for his or her organization.

(c) The head of each agency shall transmit to the Office:

(1) Award recommendations over $10,000

(2) Recommendations for Presidential Awards including those for monetary recognition beyond $25,000;

(3) Any new plan, or change in plan, no later than 30 days prior to the proposed effective date; and

(4) By November 15, annually, a report on program activities for the past fiscal year and a statement of major program goals, objectives and resources for the next year.

§ 451.206 Agency plans.

Each agency shall establish and operate an up-to-date plan which shall provide for:

(a) Delegation of authority and responsibility for approval of awards to the lowest level consistent with sound managment practices;

(b) Award recommendations to involve the minimum amount of paperwork and processing which shows that criteria are met, expenditure of appropriate funds for the award is justified, and that a record is made in the official personnel file;

(c) Central administration and review of the agency-wide program, including systematic evaluation, planning, and feedback reports to employees;

(d) Time limits for completion of evaluation of suggestions and action on performance award recommendations;

(e) Linkage between the awards program and achievements of national and agency goals and objectives;

(f) Use of management reviews and productivity measurement processes to identify and recommend awards for employees who meet the cirteria;

(g) Immediate awards for performance of one-time special acts or services, timely evaluation and processing of other performance awards and suggestions, and prompt presentation of approved awards;

(h) Use of the agency's performance appraisal system(s) as the basis for granting awards based on sustained superior performance of assigned duties;

(i) Consideration of the effective use of incentive awards to motivate employees to be included in criteria for individual sustained superior performance awards for supervisors;

(j) Consideration of suggestions and special achievements for wider application both within the agency and Government-wide, and prompt referral when appropriate; and

(k) Consideration to be given to recognition granted under this regulation in qualifying and selecting employees who otherwise meet requirements for promotion.

§ 451.207 Eligibility.

An award may be granted when the suggestion, invention, superior accomplishment or other personal effort:

(a) Benefits the Government as described in 5 USC 4503 and 4504;

(b) Was made while the contributor was a Government employee;

(c) Has been described in writing; and

(d) Has been approved by the benefiting organization at a managment level higher than the individual who recommended the award.

§ 451.208 Additional Awards.

In addition to any award granted initially upon local application of suggestion, invention, superior accomplishment, or other personal effort, a further award may be granted if:

(a) There is wider application, or

(b) There are greater benefits than originally determined.

§ 451.209 Payment.

(a) Awards paid under this Part are subject to the withholding of income tax.

(b) When an award is approved for an employee of another agency, arrangements shall be made to transfer funds to the employing agency. If the administrative costs of transferring funds would exceed the amount of the award, the employing agency shall absorb the award costs.

[FR Doc. 79-25460 Filed 8-16-79; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[7 CFR Part 318]

Hawaiian and Territorial Quarantine Notices; Hawaiian Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule and public hearing.

SUMMARY: This gives notice of a public hearing to consider a proposal by the Plant Protection and Quarantine Programs (PPQ) to amend the Hawaiian fruits and vegetables rules and regulations in the following respects:

1. To amend the list of fruits and vegetables which may move from Hawaii to other parts of the United States after inspection and certification to include broccoli, brussels sprouts, cauliflower, Jerusalem artichokes, and pineapple hybrids 53–116, 59–433, D10 and D20.

2. To amend the regulations by adding a section to allow approved thick-skinned varieties of avocados to move from Hawaii to other parts of the United States subject to approved handling procedures in accordance with the stipulations of a compliance agreement and certification.

3. To amend the regulations by adding a section to allow mangoes to move from Hawaii to other parts of the United States after specified treatment for three destructive fruit flies.

4. To prohibit the entry of swamp cabbage (unchoy) from Hawaii into other parts of the United States because of the discovery of larvae of the sweetpotato stem borer (*Omphisa anastomosalis*) and the West Indian sweetpotato weevil (*Euscepes postfasciatus*) on shipments of swamp cabbage grown in Hawaii.

5. To amend the list of definitions by adding a definition for United States for purposes of clarity and to include the Northern Mariana Islands in the definition. The definition of "moved" would also be amended to include the Northern Mariana Islands.

6. To allow the entry of fruits, vegetables, and other products when certified based on approved handling procedures.

Such actions would relieve restrictions presently imposed, but which no longer appear necessary to prevent the introduction and dissemination of plant pests and diseases from Hawaii into other parts of the United States and to impose restrictions which appear necessary to prevent the introduction and dissemination of the sweetpotato stem borer and West Indian sweetpotato weevil from Hawaii to other parts of the United States.

Various other minor or editorial changes would be made.

DATES: The hearing will be held on September 25, 1979, at 10 a.m. Comments are due on or before October 1, 1979.

ADDRESSES: The hearing will be held in Board Room, Long Beach Harbor Department, 925 Harbor Plaza, Long Beach, California 90801. Telephone Area Code (213) 437–0041. Submit written data, views, and arguments to: H. V. Autry, Regulatory Support Staff, Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs, U.S. Department of Agriculture, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: H. V. Autry, (301) 436–8247.

SUPPLEMENTARY INFORMATION: All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 633, Hyattsville, MD 20782, during regular working hours of business, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays, unless the person makes the submission to the Regulatory Support Staff, Plant Protection and Quarantine Programs, and requests that it be held confidential. A determination will be made whether a proper showing in support of the request has been made on grounds that its disclosure could adversely affect any person by disclosing information in the nature of trade secrets or commercial or financial information obtained from any person and privileged or confidential. If it is determined that a proper showing has been made in support of the request, the material will be held confidential; otherwise, notice will be given of denial of such request and an opportunity for withdrawal of the submission. Requests for confidential treatment will be held confidential (7 CFR 1.27 (c)).

A 45-day comment period is being provided instead of the usual 60-day comment period in order that information for a decision can be obtained in sufficient time for the proposed regulation, if adopted, to be

effective when the approved thick-skinned avocados are ready for harvest and shipment in November 1979.

The public hearing to consider this proposal will be held before a representative of the Animal and Plant Health Inspection Service. At the hearing, a representative of the Animal and Plant Health Inspection Service will present a statement explaining the purpose and basis of this proposal. Any interested person may appear and be heard either in person or by attorney. Also, any interested person or his attorney will be afforded an opportunity to ask relevant questions concerning the proposal.

Certain dangerous plant pests and diseases exist in Hawaii which do not occur or are not widely prevalent or distributed within and throughout the continental United States, Guam, Puerto Rico, the U.S. Virgin Islands, or the Northern Mariana Islands. Hawaii is presently quarantined under the Hawaiian Fruits and Vegetables Quarantine and regulations (7 CFR 318.13) to prevent the spread of such plant pests and diseases. Unless specified in these regulations, no raw or unprocessed fruits or vegetables may be moved from Hawaii into other parts of the United States. It has previously been determined that there are conditions, however, under which it is safe to move certain Hawaiian fruits and vegetables known to be possible hosts of dangerous pests and diseases. These regulations list the fruits and vegetables (§§ 318.13–2(b) and 318.13–4 thru 318.13–4f) which are allowed to move from Hawaii into other parts of the United States and the conditions governing such movement.

It is the policy of the Plant Protection and Quarantine Programs to allow the movement of fruits and vegetables from Hawaii into other parts of the United States whenever it is possible to do so without risk of the introduction and dissemination of plant pests and diseases into and within the United States. Upon request for approval to ship commercial quantities of fruits or vegetables from Hawaii to other parts of the United States, a review of scientific literature is made to determine if such shipment would present a risk of transporting dangerous plant pests and diseases. If there is no evidence that the commodity is a host of plant pests or diseases not widely prevalent or distributed within and throughout the United States, or if a plant pest or disease that may infest the host can be destroyed by treatment or approved handling as prescribed by the regulations, the commodity is approved for shipment subject to the conditions of the regulations and is added to the list of fruits and vegetables in § 318.13–2(b) or is listed in § 318.13–4.

In response to requests by commercial growers in Hawaii, and after a review of scientific literature which shows no evidence of pest risk with movement of these articles, it is proposed to approve artichoke, Jerusalem (*Helianthus tuberosus*); broccoli (*Brassica oleracea* var. *botrytis*); brussel sprouts (*Brassica oleracea* var. *gemmifera*); cauliflower (*Brassica oleracea* var. *botrytis*); and pineapple (*Ananas sativa*), hybrids 53–116, 59–433, D10, and D20 for movement from Hawaii to other parts of the United States upon the basis of inspection and certification under section 318.13–4 of the regulations.

Currently, untreated avocados are prohibited movement from Hawaii to other parts of the United States because of the oriental fruit fly (*Dacus dorsalis* Hendel), the melon fly ((*Dacus cucurbitae* Coq.), and the Mediterranean fruit fly (*Ceratitis capitata* (Wiedemann)). These fruit flies are three of the world's most destructive pests of fruits and vegetables. These pests could cause serious economic losses to U.S. agriculture if they became established in noninfested areas. Therefore, avocados are regulated under the Hawaiian fruits and vegetables quarantine and regulations and may be shipped from Hawaii to other parts of the United States only if they are treated with methyl bromide. However, avocados are susceptible to injury if treated with methyl bromide and, therefore, are not presently shipped from Hawaii to other parts of the United States. The possibility of allowing untreated avocados to move from Hawaii to other parts of the United States has been under review. As a result of that review, it appears safe to allow some varieties of untreated avocados to move from Hawaii to other parts of the United States but only under stringent approved handling procedures. Under the proposal, only approved thick-skinned varieties of avocados would be eligible for movement. It appears that thick-skinned varieties of avocados are not susceptible to infestation by fruit flies under certain conditions because their thick skin, if intact, is impenetrable by the fruit flies. However, it is proposed that certain standards be followed by shippers of such avocados from Hawaii to insure that such avocados are not infested with fruit flies. Such approved thickskinned varieties would be Fujikawa, Itamzna, Linda, Murashige, Nisihawa, Sharwil, and Yamagata.

The avocado shipper in Hawaii would be required to be under a compliance agreement and meet certain standards. Such standards would include picking only mature green fruit with a portion of the stem remaining; protecting the harvested fruit in the field from exposure to ovipositing fruit flies by double screening the filled containers with 16 mesh or finer screening (under rough field conditions, single screen may be punctured and may expose the fruit to fruit flies); having the open areas of the packing facility enclosed with screen 16 mesh or finer; and keeping the area surrounding the packing facility for a minimum of 100 feet free of any oriental, melon, or Mediterranean fruit fly host material, including, but not limited to grapefruits, guavas, sweet and sour oranges, coffee, Surinam cherries, papayas, mangoes, lemons, and limes. Maintaining the area surrounding the packing facility free of fruit fly host material for a minimum of 100 feet would reduce buildup of fruit fly populations in the vicinity of the facility and help prevent flies from getting inside the facility and possibly infesting the harvested fruit. During the avocado shipping season, the packing facility could be used only for packing and shipping fruit that could meet regulation requirements. Also, avocado culls and debris would have to be stored and disposed of in an approved manner, e.g., incineration or landfill, so as not to attract fruit flies. At the packing house in Hawaii, each box of fruit would be required to be sealed and stamped with a certificate which would allow its movement to any destination.

The approved handling procedures would be monitored in Hawaii and shipments of avocados from Hawaii would be monitored in other parts of the United States. If it appears that any shipment poses a hazard to any mainland crops susceptible to such fruit fly infestation, remedial measures would be taken to prevent its reoccurrence. Approved handling procedures would be added to the regulations in the proposed § 318.13–4g in accordance with a proposed new § 318.13–4(c).

Mangoes from Hawaii are known to be host of the oriental fruit fly, the melon fruit fly, and the Mediterranean fruit fly, and the mango seed weevil, *Cryptorhychus mangiferae* (Fabricius). Currently, mangoes from Hawaii are prohibited entry into other parts of the United States because the treatment effective for the oriental, melon, and Mediterranean fruit flies is not effective for the mango seed weevil. The mango seed weevil occurs only in mangoes. There has been one isolated report from South Africa of damage to the flesh of mangoes from the seed weevil.

However, there is no information to indicate that the seed weevil does cause damage to the flesh of mangoes in Hawaii or would cause damage to the flesh of mangoes grown in other parts of the United States. Unless there is information presented to show that the mango seed weevil does infest other fruits and/or causes damage to the flesh of mangoes, it is proposed to allow mangoes from Hawaii to move into other parts of the United States after treatment for fruit flies. The treatment would consist of a hot water dip and fumigation with ethylene dibromide. This treatment has been approved by USDA scientists as lethal to the oriental, melon, and Mediterranean fruit flies. The treatment would be specified in the proposed § 318.13–4h in accordance with § 318.13–4(b).

In proposed §§ 318.13–4g and 318.13–4h subparagraphs (c) pertaining to responsibility for costs would be added. Costs of approved handling for avocados and treatment for mangoes would be the responsibility of the fruit owner or his representative. Services of the inspector during regularly assigned hours of duty, normally 8:00 a.m. to 4:30 p.m., Monday through Friday, would be furnished without cost. Services of the inspector outside regularly assigned hours of duty would be furnished in accordance with 7 CFR Part 354, Overtime Services Relating to Imports and Exports.

On February 23, 1979, emergency action was taken to prohibit the entry of swamp cabbage (unchoy) from Hawaii into the continental United States, Guam, Puerto Rico, the U.S. Virgin Islands, and the Northern Mariana Islands to prevent the introduction and dissemination of plant pests and diseases (44 FR 10700). This emergency action was taken following the discovery of larvae of the sweetpotato stem borer (*Omphisa anastomosalis*) and the West Indian sweetpotato weevil (*Euscepes postfasciatus*) on shipments of swamp cabbage grown in Hawaii. Accordingly, 7 CFR 318.13 was amended by deleting "Cabbage, swamp (*Ipomoea reptans*)" from the list of fruits and vegetables in § 318.13–2(b) until such time as a public hearing could be held and written comments considered. There are no treatments known to be effective in destroying the sweetpotato stem borer and the West Indian sweetpotato weevil in swamp cabbage without damage to the cabbage. In the United States, the sweetpotato stem borer occurs only in Hawaii. However, the West Indian sweetpotato weevil occurs in all parts of the United States, except the continental United States. Since these two pests could be moved in shipments of swamp cabbage (unchoy), the regulations would prohibit movement of swamp cabbage (unchoy) from Hawaii to prevent spread of the sweetpotato stem borer to all other parts of the United States and to prevent the spread of the West Indian sweetpotato weevil to the continental United States. Therefore, it is proposed to continue to prohibit the movement of swamp cabbage from Hawaii to all other parts of the United States in accordance with the emergency action of February 23, 1979.

The listing of the rules and regulations at the beginning of the Quarantine would be amended to include the titles of the new proposed §§ 318.13–4g and 318.13–4h.

The current regulations prohibt or restrict the importation of articles into the continental United States, Guam, Hawaii, Puerto Rico, and Virgin Islands of the United States, because the provisions of the Plant Quarantine Act have been made applicable by law to Guam, Puerto Rico, and the Virgin Islands of the United States, in addition to the States and the District of Columbia. However, pursuant to Public Law 94–241 (90 Stat. 263 *et seq.)* and Presidential Proclamation 4534, the provision of these Acts are also made applicable to the Northern Mariana Islands. It appears that the proposed regulations should be made applicable to the Northern Mariana Islands for the same reasons they would be applicable to the continental United States (§ 318.13(b)). Under the provisions of this proposal, a definition for United States would be added and would include the Northern Mariana Islands and consequently the regulations would also apply to the Northern Mariana Islands.

The definition of *"Moved (move and movement)"* in § 318.13–1(i) does not include reference to the Northern Mariana Islands. In accordance with the proposed change in the definition of the United States, the proposal would amend the definition of *"Moved (move and movement)"* to add the words "the Northern Mariana Islands" immediately after the word "Guam."

A proposed new paragraph (c) would be added to § 318.13–4 and the current paragraphs (c) and (d) would be redesignated as paragraphs (d) and (e). A phrase "or (c)" would be added to the newly designated paragraph (e) in § 318.13–4 to refer to the proposed new § 318.13–4(c) as well as the present reference to paragraph (b).

When considering to allow the movement of the above listed fruits and vegetables from Hawaii to other parts of the United States, various alternatives were considered.

With respect to the movement of broccoli, brussel sprouts, cauliflower, Jerusalem artichokes, and pineapple hybrids 53–116, 59–433, D10, and D20 from Hawaii to other parts of the United States, the following alternative actions were considered:

1. Continue to prohibit such movement.

2. Authorize such movement subject to inspection and certification under the regulations.

Alternative "2" was chosen because a review of scientific literature shows no evidence of pest risk with movement of these articles.

With respect to the movement of avocados from Hawaii to other parts of the United States, the following alternative actions were considered:

1. Prohibit such movement.

2. Continue to permit movement after specified treatment.

3. Continue to permit movement after specified treatment and authorize movement of certain varieties of avocados subject to special handling procedures.

4. Authorize movement of all varieties subject to inspection and certification under the regulations.

Alternative "3" was chosen because avocados are susceptible to injury under current treatment procedures. The proposed special handling procedures for thick-skinned varieties of avocados should not result in increased pest risk to crops in other parts of the United States. Relaxing the restrictions further would result in an unacceptable pest risk.

With respect to the movement of mangoes from Hawaii to other parts of the United States, the following alternative actions were considered:

1. Continue to prohibit such movement.

2. Authorize such movement after specified treatment.

3. Authorize such movement subject to inspection and certification under the regulations.

Alternative "2" was chosen because the specified treatment is effective to control those pests of economic importance to crops in other parts of the United States. Relaxing the restrictions further would result in unacceptable pest risk.

With respect to the movement of swamp cabbage (unchoy) from Hawaii to other parts of the United States, the following alternative actions were considered:

1. Continue to prohibit such movement.

2. Authorize such movement subject to inspection and certification under the regulations.

Alternative "1" was chosen because of the pest hazard to crops in other parts of the United States posed by the movement of swamp cabbage.

Accordingly, it is proposed to amend 7 CFR § 318.13 in the following respect:

1. In the index of "Rules and Regulations" at the beginning of the quarantine and immediately following the listing of § 318.13–4f, the titles of proposed § 318.13–4g, and § 318.13–4h would be added to read as follows:

Sec.

§ 318.13–4g Approved handling procedures for the movement of approved thick-skinned avocados from Hawaii.

318.13–4h Approved treatment of ethylene dibromide fumigation plus hot water dip for certification of mangoes for movement from Hawaii.

2. In § 318.13–1, a new paragraph (o) would be added to read as follows:

§ 318.13–1 Definitions.

* * * * *

(o) *United States.* The States, District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

§ 318.13–1 [Amended]

3. In § 318.13–1(i), the definition of *"Moved (move and movement)"* would be amended to read as follows:

"Moved (move and movement). Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved, directly or indirectly, from Hawaii into or through the continental United States, Guam, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands of the United States. Local, intrastate movement is in no way affected by the regulations in this subpart. ("Move" and "movement" shall be construed accordingly.)"

§ 318.13–2 [Amended]

4. In § 318.13–2(b), artichokes, Jerusalem; broccoli; brussel sprouts; cauliflower; and pineapple hybrids 53–116, 59–433, D10, and D20 would be added in alphabetical order.

§ 318.13–4 [Amended]

5. In § 318.13–4, the current paragraphs (c) and (d) would be redesignated (d) and (e) respectively, and a new paragraph (c) would be added to read as follows:

"(c) *Certification on basis of approved handling procedures.* Fruits, vegetables, and other products designated in § 318.13, which are not listed in § 318.13–2(b) and for which procedures for handling have been approved by the Deputy Administrator and promulgated in the regulations in this subpart may be certified if such handling procedures are followed under the direction of an inspector and the person handling such fruits and vegetables has entered into a compliance agreement.

6. In § 318.13–4, the new paragraph (e) (former paragraph (d)) would be amended to refer to the proposed new paragraph (c) by adding the words "or (c)" following the words "under paragraph (b)" in the first sentence of the paragraph.

7. A new section § 318.13–4g would be added to read as follows:

§ 318.13–4g Approved handling procedures for the movement of approved thick-skinned avocados from Hawaii.

Approved thick-skinned varieties of avocados for the purposes of this section are: Fujikawa, Itamzna, Linda, Murashige, Nisihawa, Sharwil, and Yamagata. The following procedures are approved for the movement of approved thick-skinned varieties of avocados from Hawaii to other parts of the United States for Mediterranean fruit fly, the melon fly, and the oriental fruit fly, and the procedures shall be stipulated in a compliance agreement. Approved thick-skinned varieties of avocados are authorized to be moved in accordance with these procedures and without treatment when a compliance agreement is executed between the shipper of the fruit and the inspector.

(a) *Approved Handling Procedures.* (1) The avocados shall be picked mature green, with a portion of the stem remaining.

(2) Harvested avocados shall be protected from fruit flies by placing them immediately in field boxes or other type containers the openings of which are covered with double screen, 16 mesh or finer. Fruit shall be retained in such containers until it enters the packing facility.

(3) The open areas of the packing facility shall be enclosed with screen 16 mesh or finer to protect the harvested fruit from fruit flies.

(4) No other fruit fly host material shall be allowed in the packing facility. No fruit fly host fruit or vegetable shall be allowed within 100 feet of the packing facility. Fruit fly host material includes, but is not limited to, grapefruits, guavas, sweet and sour oranges, coffee, Surinam cherries, papayas, mangoes, lemons, and limes.

(5) When approved varieties are being shipped, the packing facility shall be used only for packing and shipping avocado fruit that meets the requirements of this section.

(6) Avocado culls and debris shall be stored in covered containers so as not to attract fruit flies, and shall be disposed of in a manner approved by the inspector, e.g., incineration or land fill.

(7) Each box of avocados shall be sealed and stamped with a certificate at the packing facility prior to shipment.

(b) *Supervision.* Handling procedures for the avocados shall be under the direction of an inspector.

(c) *Costs.* Costs of approved handling are the responsibility of the fruit owner or his representative. The services of the inspector during regularly assigned hours of duty shall be furnished without cost.

8. A new section § 318.13–4h would be added to read as follows:

§ 318.13–4h Approved treatment of ethylene dibromide fumigation plus hot water dip for certification of mangoes for movement from Hawaii.

The following treatment is approved for the movement of mangoes from Hawaii to other parts of the United States for the Mediterranean fruit fly, the melon fly, and the oriental fruit fly. Mangoes so treated and handled as provided in this section may be certified for movement from Hawaii to other parts of the United States.

(a) *Approved treatment.* The treatment shall consist of a hot water dip and ethylene dibromide fumigation.

(1) Hot water dip—Prior to fumigation, dip the mangoes in water heated to and maintained at 46°C (115°F.) for 20 minutes. Then cool the mangoes with tap water at about 23°C (74°F) until the fruit pulp temperature reaches about 24°C(76°F). Heavily infested fruit becomes discolored after hot water dip and the fruit can be culled before fumigation.

(2) Fumigation and Aeration—Fumigate with ethylene dibromide at normal atmospheric pressure. Dosage is 16 g/m^3 (16 oz./1000 ft^3) for 2 hours at 21°C (70°F) or above. Fruit load shall not exceed 75 percent of chamber volume. Fumigate fruit in field boxes or slatted crates. Aerate for minimum of 2 hours immediately after fumigation.

(b) *Supervision and subsequent handling.* Treatment shall be applied under the direction of an inspector. Treated mangoes shall be safeguarded against reinfestation, e.g., stored in a screened or enclosed warehouse, prior to movement from Hawaii.

(c) *Costs.* Costs of treatment and post treatment safeguards are the responsibility of the owner of the mangoes or his representative. The services of the inspector during regularly assigned hours of duty shall be furnished without cost. Services of the inspector outside regularly assigned hours of duty would be furnished in accordance with 7 CFR Part 354, Overtime Services Relating to Imports and Exports.

(d) *Department Not Responsible for Damage.* This treatment has been applied to ripe mangoes. *Mangifera indica* (Pirie and Haden) only and no injury was observed. Tests should be conducted if other varieties are shipped. The Department assumes no reponsibility for damage that may occur because of this treatment.

This proposal is being published under emergency procedures, as authorized by Executive Order 12044 and Secretary's Memorandum No. 1955, without a full 60-day comment period. It has been determined by James O. Lee, Jr., Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, that an emergency situation exists which warrants less than a full 60-day comment period on this proposal because information for a decision must be obtained in sufficient time for the proposed amendment, if adopted, to be effective when the approved thick-skinned avocados are ready for harvest and shipment in November 1979. This proposal has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations," and has not been classified "significant." An Approved Draft Impact Analysis has been prepared and is available from Plant Protection and Quarantine Programs, APHIS, Room 633, Federal Building, Hyattsville, MD 20782.

Done at Washington, D.C., this 14th day of August 1979.

Thomas G. Darling,

Acting Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspections Service.

[FR Doc. 79-25892 Filed 8-16-79; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

[10 CFR Part 71]

Packaging of Radioactive Material for Transportation and Transportation of Radioactive Material Under Certain Conditions; Compatibility With IAEA Regulations

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is considering revising its regulations for the transportation of radioactive material to make them compatible with those of the International Atomic Energy Agency (IAEA) and thus with those of most major nuclear nations of the world. Although several substantive changes are proposed in order to provide a more uniform degree of safety for various types of shipments, the Commission's basic standards for radioactive material packaging would remain unchanged. The Department of Transportation is also proposing a corresponding rule change to its Hazardous Materials Transport Regulations.

DATES: Comments must be received on or before October 16, 1979.

ADDRESSES: Interested persons are invited to submit written comments and suggestions on the proposal and/or the supporting value/impact analysis to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Single copies of the value/impact analysis may be obtained on request from the contact identified below. Copies of the value/impact analysis and of comments received by the Commission may be examined in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Donald R. Hopkins, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: 301-433-5946.

SUPPLEMENTARY INFORMATION: In 1968 the Atomic Energy Commission (AEC) amended its regulations in 10 CFR Part 71, then entitled "Packaging of Radioactive Material for Transport" (33 FR 17621), to be compatible with the Department of Transportation's revision (33 FR 14918) of its regulations pertaining to safety in the transport of radioactive material. The AEC regulations at that time applied to the packaging and transportation of radioactive materials in greater than "Type B" quantities and of fissile materials.[1]

Subsequently, AEC regulations were extended to include Type B (greater than Type A) quantities. Among the requirements adopted was one that packages for greater than Type A quantities of radioactive materials and packages for fissile materials had to satisfy certain specified performance criteria when subjected to severe conditions known as "hypothetical accident conditions."

A Type A quantity of non-fissile material is considered not a serious hazard if packaging failure occurs in an accident; however, Type A packages must be able to withstand a wide range of specified conditions which may be experienced in normal transport. The regulations of the Department of Transportation in 49 CFR Parts 170-179 specify the requirements for these packages.

The regulations in the AEC's 10 CFR Part 71, as revised in 1968, were substantially in accord with the recommendations of the International Atomic Energy Agency (IAEA) as published in IAEA Safety Series No. 6, "Regulations for the Safe Transport of Radioactive Materials" (1967 edition). Only minor changes have been made to 10 CFR Part 71 since that time except for the change in the administration of Type B packaging requirements and the addition of § 71.42 placing restrictions on shipment of plutonium.

No special restriction on air transport of plutonium is imposed by the present or proposed 10 CFR Part 71, because the congressional legislation restricting such shipment and resulting in the NRC development of a Plutonium Air Transport (PAT) package is a separate and overriding requirement. A separate rulemaking is being undertaken by the Commission to address restrictions on the air transport of plutonium.

Several years of experience in the United States and other countries indicated that the IAEA regulations were generally sound and practical and that they provided a reasonable degree of safety. Although several Type B packages (i.e., packages containing more than a Type A quantity) have been involved in severe accidents in the United States, no known escape of

[1] Present regulations distinguish among Type A quantity (the maximum amount of a particular radionuclide that may be transported in a package designed to withstand specified conditions of normal transportation but not the simulated accident conditions), Type B quantity (a specified amount greater than a Type A quantity but ordinarily requiring no special provision for heat removal), and a large quantity (greater than a Type B quantity).

radioactive material has resulted. It did appear, however, that a more uniform degree of safety for various designs and for different package contents was desirable and could be achieved without undue restriction by some modification of the design requirements and performance criteria of the IAEA regulations.

The IAEA convened panels in 1971 and 1972 to review their transportation regulations and to recommend appropriate amendments. All member countries with a well developed nuclear industry and many international organizations were represented on the panels. the United States participated in the program and in fact initiated many of the amendments. The IAEA subsequently issued the 1973 edition of Safety Series No. 6, "Regulations for the Safe Transport of Radioactive Materials." Reasons for significant changes from the 1967 edition are documented in proposals submitted in advance to the IAEA by member countries, in working papers prepared by study groups during the course of the meetings, and in the taped record. Much of this background information is summarized in IAEA Safety Series No. 37, "Advisory Material for the Application of the IAEA Transport Regulations."

Based on figures compiled for the calendar year 1975, more than 10,000 packages of radioactive material are exported annually from the United States. In order to minimize complication and delay and encourage uniform safety of these export shipments and those which are imported, revision of United States domestic regulations in 10 CFR Part 71 is proposed. This revision, in combination with a corresponding amendment by DOT of Title 49 of the Code of Federal Regulations, will bring the U.S. regulations into accord with relevant portions of the IAEA design and performance requirements to the extent considered feasible, thereby making them compatible with the domestic regulations of most of the international community; remaining differences are discussed below. Although procedures for implementing and enforcing the regulations necessarily vary somewhat among countries, the IAEA administrative requirements are also being adopted where appropriate.

Packages of design having a valid certificate of compliance as of the effective date of this amendment will be treated as complying with the amended regulations provided fabrication is in accordance with design and has been completed within two years after the effective date or before expiration of the certificate of compliance, whichever is later.

It is essential that NRC and Department of Transportation regulations be consistent and that related changes to the regulations of the two agencies be made simultaneously. The proposed changes to DOT's 49 CFR Parts 170–179 and DOT's proposed new Part 127 to Title 49 to make them consistent with the relevant portions of the 1973 IAEA requirements have already been published in the January 8, 1979 issue of the **Federal Register.**

Major Changes

The major changes to 10 CFR Part 71 being proposed deal with assignment of individualized Type A quantities for each radionuclide, and the addition of new Type B(U) and Type B(M) packaging standards. These major changes are discussed in the following paragraphs.

Individualized Type A Quantities

One important change that would be made by the proposed regulations is the elimination of the system used to specify the quantity of radioactive material permitted in Type A packages. Under the present system, radionuclides are divided into seven transport groups which take account of toxicity and specific activity, plus a "special form" category for materials which are not dispersible because of their inherent physical form or because of suitable encapsulation. Under this system, the allowable number of curies for each radionuclide in a group is in most cases the same as the allowable number of curies for the most toxic member of the group. This method is unnecessarily restrictive when applied to the less toxic group members, which in some cases have a maximum permissible body burden more than ten times that of the more toxic members.

The proposed regulation eliminates transport groups. Instead, it assigns to each radionuclide two values, A_1 and A_2, which are the maximum number of curies permitted in Type A packages in special form and normal form, respectively. The A_1 and A_2 values for various radionuclides are listed in the proposed regulation.

The value of A_1 for special form material is intended to limit the possible external radiation dose rate to 1 rem/hour at 3 meters from the source if the contents of the package are released, except that an upper limit of 100 curies is imposed. Special form material must also be nondispersible as determined by certain stringent criteria (which differ somewhat from present criteria for special form) which are set forth in Appendix D of Part 71.

The bases for the A_2 value for normal material (that is, material not in special form) are: (1) and accident of moderate severity might release 0.1% of the contents, and 0.1% of the amount released might then be taken into the body of a human being in the vicinity; this intake should not exceed half the maximum permissible annual intake for workers as given in IAEA Safety Series No. 9, "Basic Safety Standards for Radiation Protection" (1967 Edition); and (2) A_2 shall not exceed A_1. Intake values are based on the International Commission on Radiological Protection (ICRP) 1966 recommended limits for radiation exposure.

The following table compares the present special form and normal form limits with the limits that would be applicable under the proposed rule, for several of the more commonly shipped radionuclides.

The adoption of A_1 and A_2 values will sometimes permit a single Type A package to replace two or more present Type A packages. Also, some of the small number of Type B packages with contents near the lower limit for Type B could be reclassified as Type A. However, the number of Type A packages and the total amount of material in Type A packages is not expected to be significantly affected.

		Limit in type A packages, in curies			
	Present group	Present		Proposed	
		Special form	Normal form	Special form	Normal form
^{241}Am	I	20	0.001	8	0.008
^{14}C	IV	20	20	1000	100
^{252}Cf	I	2	0.001	2	0.009
^{60}Co	III	20	3	7	7
^{137}Cs	III	20	3	30	20
^{131}I	III	20	3	40	10
^{192}Ir	III	20	3	20	20
^{99}Mo	IV	20	20	100	100
^{24}Na	IV	20	20	5	5
^{239}Pu	I	20	0.001	2	0.002
^{90}Sr	II	20	0.05	10	0.4
^{235}U	III	20	3	100	0.2

For some radioactive materials in special form the Type A limit will be increased and for some the Type A limit will be decreased. The change in the number of such packages is also expected to be small.

Type B(U)—Type B(M) Packaging Standards

Type B packages regulated by the NRC currently fall into two categories: those containing Type B quantities and those containing "large quantities" of radioactive material. The present upper limit for Type B quantities and the designation of amounts greater than that limit as "large quantity" were established at a time when large quantities of radioactive material, particularly in the form of irradiated fuel, were thought to require special provision for heat removal and special consideration of the possible escape of coolant under accident conditions. However, experience has shown that, while some present Type B quantities do require special consideration of heat removal, some large quantities do not require such consideration. Also, the hazard associated with escape of radioactive material is not appreciably dependent upon whether the accompanying non-radioactive material is classified as a coolant. Therefore, the proposed rule would combine the existing Type B and large quantities.

Two classifications of Type B packaging, designated as Type B(M) and Type B(U) have been established by the IAEA and are included in the proposed regulations. For international shipment, the Type B(M) package requires approval by the competent authority of each country into or through (but not over) which the package is transported, i.e., multilateral approval. Any special design features or operational controls of the Type B(M) package will thus be subject to review for consistency with the practices and procedures of more than one country. The Type B(U) package is intended to require approval only by the country of origin (i.e., unilateral approval) and for this reason has numerous special features of design and performance as described in proposed § 71.34. Proposed Part 71, however, makes no distinction between Type B(M) and Type B(U) package designs with respect to required approvals. Both types will fall within the general license provisions of § 71.12 for import and export, and will require specific NRC approval for shipments wholly within the United States. In some circumstances, the NRC must also approve the conditions of transport for a Type B(M) package.

Comparison With Current Regulations

Set forth below in a cross-index of paragraphs contained in the proposed revision of Part 71, the present Part 71, and IAEA Safety Series No. 6, "Regulations for the Safe Transport of Radioactive Materials" (1973 Revised Edition). Omissions from proposed Part 71 of requirements in IAEA Safety Series No. 6 are not shown; however, such omissions of a technical and substantive nature are discussed later. Where no entry is shown, there is no closely corresponding paragraph or section.

The administrative requirements in the United States for application to the Nuclear Regulatory Commission for approval of a package design, for review by the Commission staff, and for documentation of design and approvals necessarily differ from those described in IAEA Safety Series No. 6. For most of these items, no cross-index with IAEA Safety Series No. 6 is shown.

Cross Index

	Proposed regulation	Present regulation[1]	IAEA safety series No. 6
SUBPART A-GENERAL PROVISIONS			
Purpose	71.1	71.1	
Scope	71.2	71.2	
Requirement for license	71.3	71.3	
Definitions	71.4	71.4	
Transportation of licensed material	71.5	71.5	
Specific exemptions	17.6	71.6	
Exemption of physicians	71.7	71.8	
Exemption for low level materials	71.8	71.7	
Exemption for fissile material	71.9	71.9	
15 gm	71.9(a)	71.9(a)	601(a)
Nat or depl U	71.9(b)	71.9(b)	601(b)
Homogeneous hyd. mixt	71.9(c)	71.9(d)	601(c)
U up to 1% enr	71.9(d)	71.9(c)	601(d)
Fissile matl. < 5 gm/10l	71.9(e)	71.9(e)	601(e)
1 Kg Pu	71.9(f)		601(f)
Uranyl nitrate sol	71.9(g)		601(g)
Limited exemption for type B		71.10	
General license, fissile matl	71.11	71.11	
Fissile class II, Case 1	71.11(a)	71.11(b)	
Fissile class II, Case 2	71.11(b)		620
Fissile class III, Case 1	71.11(c)	71.11(a)	
Fissile class III, Case 2	71.11(d)		623
Fissile class III, Case 3	71.11(e)		624
General license, approved packages	71.12	71.12	
Communications	71.13	71.13	
Interpretations	71.14	71.14	
Additional requirements	71.15	71.15	
Amendment of existing licenses		71.16	
SUBPART B—APPLICATION FOR PACKAGE APPROVAL			
Contents of application	71.21	71.21	
Package description	71.22	71.22	
Package evaluation	71.23	71.23	
Quality assurance	71.24	71.24	
Additional information	71.25	71.25	
SUBPART G—PACKAGE STANDARDS			
Demonstration of compliance	71.31	71.34(a)	701-702 707-708
Standards for all type B packages	71.32	71.31	
Lifting attachments	71.32(a)	71.31(c)	204
Minimum dimension	71.32(b)	173.393(c)	210
Seal	71.32(c)	173.393(b)	211
Fastening device	71.32(d)	71.31(b)	216
Tie-down device	71.32(e)	71.31(d)	224
Materials of construction	71.32(f)	71.31(a)	219
Valves	71.32(g)		222
Performance in normal transport	71.32(h)	71.35(a)	225
Additional requirements for B(M) pkgs: Performance in accidents	71.33(a)	71.36(a)	229, 243
Additional requirements for B(U) pkgs	71.34		
Performance in accidents	71.34(a)	71.36(a)	229, 230
Filters, cooling system	71.34(b)		234
Venting system	71.34(c)		235
Pressure relief system	71.34(d)		235
Operating pressure limit	71.34(e)		239
Operating pressure, structural	71.34(f), (g)		237, 238
Standards For fissile material pkgs	71.35		
General requirements	71.35(a)(1)		601
Liquid leakage assumption	71.35(a)(2)	71.33	602
Performance in normal transport	71.35(a)(3)	71.35(b)	605
Performance in accidents	71.35(a)(4)	71.36(b)	607, 617
Special anti-leak design	71.35(a)(5)	71.33(c)	607, 617
Fissile class I	71.35(b)	71.38	606
Fissile class II	71.35(c)	71.39	616
Fissile class III	71.35(d)	71.40	621
Package array	71.35(e)	71.37	

Cross Index—Continued

	Proposed regulation	Present regulation[1]	IAEA safety series No. 6
Special plutonium requirements	71.36	71.42	
Previously approved packages	71.37		
SUBPART D—OPERATING CONTROLS AND PROCEDURES			
Requirement for QA program	71.51	71.51	
Assumptions as to unknow properties	71.52	71.52	603
Preliminary determinations	71.53	71.53	738
Routine determinations	71.54(a)	71.54	739
Allowable external radiation levels	71.54(b)	173.393(j)	508, 534, 537
Allowable surface temperatures	71.54(c)	173.393(e)(z)	
Allowable external contamination	71.54(d)	173.393(h)	502
		173.397	
Opening instructions	71.55	71.55	
Reports	71.61	71.61	
Records	71.62	71.62	
Inspection and tests	71.63	71.63	
Violations	71.64	71.64	
APPENDIXES			
Normal conditions of transport	App. A	App. A	232
		71.32(b)	709-714
Hyp. accident conditions	App. B	App. B	718-724
Determination of A_1 and A_2	App. C		403-411
Transport groups		App. C	
Tests for special form	App. D	App. D	726-737
QA requirements	App. E	App. E	

[1]All references to sections or paragraphs which begin "173" are to the provisions of 49 CFR Part 173 of the regulations of the Department of Transportation.

Detailed Changes

In addition to the major substantive changes to Part 71 previously discussed and numerous editorial changes for the purpose of clarity or conciseness, there are several other minor modifications. These changes are described below and are accompanied by a reference to the section or paragraph of the proposed rule where the change appears.

1. *Section 71.4—Definitions.* Many definitions needed to reflect the proposed changes to Part 71 have been added, and some existing definitions have been appropriately modified. These changes reflect the meanings of terms as used in the proposed revision to the regulations.

The term "containment system," defined in proposed § 71.4(c), replaces the existing term "containment vessel." The containment system may include a vessel as well as other components intended to retain the radioactive material during transport.

A new classification of radioactive material, "low level solid" (LLS) radioactive material, is being added to the regulations. It is defined in proposed § 71.4(g) and is similar to "low specific activity" (LSA) material, except that the LLS concept permits a greater concentration of radioactive material in the contents of a package and a higher surface contamination, while imposing greater restrictions on the dispersibility and on the permissible method of shipment.

Some changes have also been made for LSA material, defined in proposed § 71.4(h). The specific activity limits will be related to A_2 values rather than to transport group. Articles, such as contaminated equipment, with non-fixed surface contamination have been included within the LSA definition. Methods of concentrating the activity in transport, such as leaching and evaporation, must now be considered. Finally, the limit for tritium oxide in aqueous solution, after consideration of the hazards due to wetting of the skin and to possible inhalation of vapors, has been increased from 5 curies/liter to 10 curies/liter.

The IAEA regulations define "maximum normal operating pressure" (MNOP) as the maximum pressure that would develop in one year without venting or special cooling, under expected but unspecified ambient conditions for that period of time. The concept is applied in those regulations only to Type B(U) packages, for which upper limits of allowable pressure and allowable stresses are imposed.

In the regulatory changes proposed herein, the MNOP concept is applied to Type B(M) packages, and the MNOP is then assumed to be a normal condition of transport at the time of the tests described in Appendices A and B. At the same time the regulations recognizes, in § 71.31(c), that in some cases operational controls, as with a sole-use shipment, may justify assuming a period of time shorter than a year for pressure buildup.

A definition of "stress intensity" has been added in proposed § 71.4(q). This term is used in proposed § 71.34 (f) and (g).

2. *Section 71.8—Exemption for low level materials.* Low-level solid materials and low specific activity materials, even if they should escape from the packaging, present little hazard to individuals in the public because the concentration of radioactivity is small and individuals have a limited capability for inhalation and ingestion of the material. The risk to an individual does not depend to a significant extent on the curie quantity. These materials have therefore been exempted from the requirements of the proposed Part 71, but must satisfy the requirements of the applicable regulations of the Department of Transportation. This exemption was requested in three petitions currently pending before NRC. Type A quantities continue to be exempt from the requirements of Part 71.

3. *Section 71.9—exemption for fissile material.* Proposed § 71.9(a) will require that for up to 15 grams of fissile material to be exempt from the requirements of § 71.35 (standards for fissile material packages), the smallest external dimension of the package shall be not less than 10 cm. Since 15 grams of some fissile materials could physically be contained in a smaller package, the requirement is consistent with proposed § 71.35 (a)(3)(iv) relating to size of aperture in outer surface of packaging. Paragraphs (c) through (g) of § 71.9 contain several changes and additions to the exemptions for fissile material. These changes and additions to the exemption standards for fissile material include:

a. Reduction from 7600 to 5200 of the minimum value of the atomic ratio of hydrogen to fissile material (H/X) that must be exceeded for 500 grams of any fissile radionuclide to be exempt from the packaging requirements of proposed § 71.35. A concentration limit of 5 grams per liter will be imposed on this material. These changes eliminate the need for the H/X requirements presently imposed by § 71.7(b)(4)(iii) and § 71.9(d)(3).

b. Application of quantity limits for bulk shipment to the vehicle rather than to the package.

c. Extension to uranium metal of the present limitations for exemption of uranium compounds.

d. Removal of the restriction on the total amount of fissile radio-nuclides per package, provided the concentration does not exceed 5 grams per 10 liters.

e. Exemption from fissile material packaging requirements of plutonium up to 1 kilogram, but with imposition of certain restrictions on its isotopic composition.

f. Exemption of uranyl nitrate solutions, subject to certain restrictions on fissile content.

4. *Section 71.11—General license for shipment of licensed material.* Paragraphs 71.11(b), (d), and (e) of the proposed regulations for certain fissile Class II and Class III packages correspond to paragraphs 620, 623, and 624 of IAEA Safety Series No. 6 and are added specifications within the scope of a general license.

5. *Section 71.23—Package evaluation.* In accordance with the basis for establishing Type B(M) and B(U) packages, the proposed package evaluation must include a description of any special controls or precautions during the shipping and handling of Type B(M) packages.

6. *Section 71.32—Standards for all Type B packages.* Proposed § 71.32(a), which relates to the strength of lifting attachments, is more general than the existing § 71.31(c). The proposed rule will require the package to withstand abrupt lifting without developing unsafe stresses. At present, packages must withstand three times the weight of the package (or lid) without exceeding yield strength. This change will permit adjustment of the strength requirement in situations where a factor other than three may be appropriate or where the design is intended to safely accommodate a stress exceeding yield strength in some component. In addition, the proposed rule requires the package to satisfy the performance standards even if the lifting attachments should fail under excessive load, as is required for tiedown devices in present and proposed regulations. This new requirement for lifting attachments takes account of the possibility of some obstruction or wedging while handling the package during transshipment.

Proposed paragraphs (b), (c) and (d) of § 71.32, imposing package design features, correspond respectively to present 49 CFR 173.393 (c) and (b) and 10 CFR 71.31(b).

Proposed § 71.32(e), relating to tie-down, is a modification of the existing § 71.31(d). The present specification of strength corresponding to 2, 10, and 5 times the weight of the package in the vertical, longitudinal, and lateral directions, respectively, has been eliminated because for normal transport the required strength depends on the shipping mode and is addressed in DOT regulations, and for accident conditions the tiedown attachments are assumed to fail.

Proposed § 71.32(f), dealing with reactions among package components, corresponds to the present § 71.32(a), but with the added requirement that the consequences of any credible water inleakage must be taken into account. This requirement is included because packages sometimes contain substances that are highly reactive with water.

Proposed § 71.32(g), corresponding to paragraph 222 of IAEA Safety Series No. 6, requires protection of valves. Although this requirement is not in the present regulations, such protection is needed for safety and has been provided in practice.

Proposed § 71.32(h) sets forth general acceptance criteria for normal conditions of transport. This corresponds to paragraphs 225 and 231(a) of IAEA Safety Series No. 6. However, the proposed regulations will require design to be based on an unattended time period of one year for all Type B packages except when, in accordance with § 71.31(c), a shorter time is justified by operational controls. During this time, which allows for possible delays in shipping, pressure may continue to develop as a result of chemical reaction (e.g., corrosion) and radiolytic decomposition. By way of comparison, the IAEA regulations in paragraphs 231(a) and 242 require considering for all Type B packages only the effects of heat and only for one week; the one year period is specified only for Type B(U) packages (by requiring them to be designed to withstand "maximum normal operating pressure.")

Paragrphs 233A and 243 of Safety Series No. 6 permit escape of radioactive material at the rate of $A_2 \times 10^{-6}$ per hour in normal transport. This amount is considered to be an insignificant hazard, and was introduced in the 1973 edition of Safety Series No. 6 in recognition of the fact that zero leakage is neither necessary nor attainable for some types of shipments. The reqirements of "no loss or dispersal" in normal transport is being retained in proposed Part 71, but with an acceptance test sensitivity of 10_{-6} A_2 per hour or better. The acceptance criteria and methods of demonstration, which take account of the relative toxicities of the various radionuclides, are addressed in Regulatory Guide 7.4, "Leakage Tests on Packages for Shipment of Radioactive Materials."

The IAEA option of designing Type B(M) packages for continuous venting, with specified limits for escape of radioactive material, hs been omitted from proposed Part 71. There is no apparent need for such design in the United States at present; if the need should arise and if the adequacy of controls is demonstrated, exemptions might be granted on an individual basis.

The present requirement of § 71.32(a) that the strength of a package be analyzed as a simple beam has been eliminated because greater strength is required in order to satisfy the impact tests of the hypothetical accident.

The following IAEA package requirements have been omitted from revised Part 71; several of them are subjects for discussion in existing and contemplated regulatory guides:

a. Paragraphs 201–203 relating to means for handling.

b. Paragraphs 206–207 relating to external crevices or pockets and to decontaminability.

c. Paragraph 208 requiring that any features added at the time of transport shall not reduce safety. Currently in the United States, any such features are considered in the safety analysis.

d. Paragraph 212 requiring that external protrusions be avoided as far as practicable.

e. Paragraph 213 requiring consideration of the ambient temperature range and calling attention to the phenomenon of brittle fracture.

f. Paragraph 214 requiring fusion joints to be in accordance with recognized standards.

g. Paragraph 217 permitting credit to be taken for "special form" as a means of containment. Special form is advantageous because it permits a larger amount of radioactive material per Type A package than does normal form. However, the indispersible nature of special form material in Type B quantities is necessarily taken into account in the evaluation of containment.

h. Paragraph 218 requiring a separate fastening device for a containment system that is a separate unit of the packaging.

i. Paragraph 223 requiring a separate fastening device for a radiation shield that encloses a part of the containment system.

j. Paragraph 233 requiring thermal protection (e.g., insulation) to remain effective under normal and accident conditions and under other conditions, such as cutting or skidding, not simulated in the specified tests. Effectiveness under specified normal and accident conditions is necessarily considered in the safety analysis. The nature of other conditions such as cutting or skidding would require further definition before inclusion in Part 71.

7. *Section 71.33—Additional requirements for Type B(M) packages.* Proposed § 71.33(a)(2) specifies the allowable radiation level after the hypothetical accident as 1000 mrem/hour at 1 meter rather than at 3 ft from the package surface. This change will not significantly affect package design or performance.

The requirements of paragraph 244 of IAEA Safety Series No. 6 that limit stress in the containment system to the yield strength under normal and accident test conditions have not been included in proposed Part 71 because, as specified in the American Society of Mechanical Engineers, Boiler and Pressure Vessel Code, acceptable stresses may be higher or lower depending on details of design. In particular, stresses above yield strength are acceptable at points of stress concentration where local deformation provides stress relief. This subject is treated in Regulatory Guide 7.6, "Stress Allowables for the Design of Shipping Cask Containment Vessels."

The proposed allowable escape of radioactive material from Type B(M) packages under accident conditions is not greatly different from existing limits except to the extent A_2 values differ from present transport group values. Present regulations restrict the loss to gases or contaminated coolant. This restriction is deleted in the proposed revised regulations because the concept of an identifiable coolant is no longer included in the regulations. The following tabulation shows the changes in the allowable release for some radionuclides of particular concern in the shipment of irradiated fuel. The proposed revised regulations specify that the allowable release must not be exceeded in a period of one week.

Allowable Release in Hypothetical Accident (Curies)

	Present [1] (total)	Proposed (in one week)
^{137}Cs	10	20
^{131}I	10	10
^{239}Pu	0.01	0.002
^{133}Xe	1,000	1,000
^{85}Kr	1,000	10,000

[1] Or 0.1% of contents, whichever is less.

In most cases the release rate would decrease shortly after the accident, and the recovery of the damaged package would be expected within less than a week. However, a time limit is necessary for demonstration of compliance, and the NRC considers that the one week specified in IAEA regulations is adequate for corrective action.

Because of its relatively innocuous nature and rapid dispersion in air, special consideration was given to Kr-85, and its limit was increased from 1,000 to 10,000 curies. On the other hand, the allowable release of many present Group I radionuclides will be reduced because the present limit of 0.01 curie exceeds the A_2 value. This is illustrated by the values for ^{239}Pu in the table.

8. *Section 71.34—Additional requirements for Type B(U) packages.* Only a few of the requirements for Type B(U) packages have counterparts in the present regulations. These are identified in the cross-index.

Analysis taking into account the atmospheric dispersal and possible inhalation has shown that any serious radiological injury due to release of an amount A_2 from a package is quite unlikely. The proposed allowable release of this amount from a Type B(M) package under hypothetical accident conditions is thus considered adequately safe. As an added factor of safety for Type B(U) packages, which are intended to be universally acceptable without review by countries other than the country of origin, the specified maximum release under hypothetical accident conditions is smaller than the Type B(M) limit by a factor of 1000. This factor takes into account the possible differences in methods of evaluation in different countries and the freedom from any restrictions on handling or shipment.

Proposed § 71.34 (f) and (g), imposing internal pressure limitations, correspond to paragraphs 237 and 238 of Safety Series No. 6, but use the term "stress intensity" rather than simply "stress," and state which stresses to consider. This change should help to clarify this requirement. Although these requirements, in amplified form, might seem more appropriate for a regulatory guide, they are included in proposed Part 71 because of the need for consistency with IAEA regulations, particularly for Type B(U) packages.

9. *Section 71.35—Standards for fissle material packages.* The editorial arrangement of proposed § 71.35, which contains the revised requirements for fissle material packaging, differs significantly from that of IAEA Safety Series No. 6. However, there is no essential difference in technical requirements and assumptions for evaluation of criticality or in controls required during shipment, except that the requirement for no more than 5% reduction of volume or spacing and no aperture greater than 10 cm in normal transport applies to all fissile material packages in the existing and proposed Part 71, but only to Fissle Class II packages in IAEA Safety Series No. 6. Retention in Part 71 of these requirements for all fissile material packages is considered justified by the added margin of safety for package integrity.

10. *Section 71.54—Rountine determinations.* Proposed § 71.54(b) corresponds to the present 49 CFR 173.393(j) and to paragraphs 534 and 537 of IAEA Safety Series No. 6. A change from the present regulations is that the allowable maximum radiation level for a package transported as a full load in a closed vehicle will be 1000 mrem/h on the surface of the package, rather than at 3 ft from the surface as presently measured. In practice, only small packages are affected since the controlling radiation level for large packages remains the allowable radiation level at the edge of the vehicle or at 2 m from the vehicle. The change reduces allowable surface radiation levels and thus for small packages increases the margin of safety in handling.

Proposed § 71.54(c), specifying allowable surface temperatures, corresponds to the present 49 CFR 173.393(e)(2) and to paragraphs 231(b) and 240 of IAEA Safety Series No. 6. Present NRC and DOT regulations, however, do not specify the ambient air temperature. In accordance with IAEA regulations, ambient air temperature will be assumed to be 38° C (100° F).

The IAEA regulations, however, impose only on Type B(U) packages the limit of 82° C (180° F) for the temperature of readily accessible surfaces with full load shipment; Part 71 will impose this limit on both Type B(U) and Type B(M) packages.

Proposed § 71.54(d), limiting external radioactive contamination, corresponds to present 49 CFR 173.397.

11. *Section 71.62—Records.* Proposed § 71.62(a) defines the records that must be kept for shipment of fissile material and Type B quantities of radioactive material.

12. *Appendix A—Normal conditions of transport.* Proposed Appendix A

describes environmental conditions considered to represent normal transport. Paragraph 232 of IAEA Safety Series No. 6 Specifies 38° C (100° F) as ambient temperature. However, the matter of diurnal variation is not addressed. There are only a few spots in the United States (e.g., Death Valley) where a few days in the year the daily average temperature exceeds 38° C, and then it exceeds that temperature by only a small amount. However, to avoid the need for more complex analysis to consider diurnal variation, and because of other considerations which may increase ambient temperature above that of outside air (e.g., closed vehicles, assembly of multiple heat producing packages, insulating effects of other cargo), the present ambient temperature of 54° C (130° F) has been retained.

The present Part 71 does not specify ambient temperature or internal pressure preceding the normal transport and accident tests. The IAEA regulations specify an ambient temperature of 38° C (100° F) but do not specify a time period during which pressure could develop. Proposed Part 71 will require selecting the most unfavorable ambient temperature between −29° C (−20° F) and 38° C (100° F), and internal pressure equal to the MNOP adjusted for ambient temperature. Although the high temperature is unfavorable with respect to the effects of fire, a low temperature is unfavorable with respect to possible brittle fracture and perhaps other effects. Thus some intermediate temperature may be most unfavorable for a prescribed sequence of tests.

The present § 71.32(b) and Part 71, Appendix A, paragraph 3, require the package to withstand ambient pressures of 25 psig and 0.5 atmosphere, respectively. The requirement to withstand an ambient pressure of 25 psig without damage is not contained in the IAEA regulations, although there is an accident test of immersion in 15 m of water, which results in a pressure of about 21 psig. The resistance to external pressure is considered desirable as a way of providing ruggedness for unspecified rough handling conditions and is in most cases easily satisfied. The low ambient pressure in the proposed Appendix A, as in IAEA Safety Series No. 6, is about 0.25 atmosphere rather than the presently specified 0.5 atmosphere. This change recognizes the possibility of transporting packages in unpressurized compartments of aircraft at altitudes of 10 km or about 33,000 ft.

Although proposed Part 71 requires a water spray test, details of this test as given in IAEA Safety Series No. 6 will be omitted because they are more suitable for a regulatory guide. The specifications for the compression test in proposed paragraph (d), which contemplates packages being stacked, have been converted to the metric system by applying the test to packages up to 5000 kg rather than 10,000 lb and by adopting the IAEA load value of 1300 kg/m² (1.85 lb/in²) rather than the previous 2 lb/in². The IAEA regulations do not specify an upper limit for weight. However, such stacking is not contemplated for packages such as spent fuel casks, and thus the test will not be applied to packages greater than 5000 kg.

13. *Appendix B—Hypothetical accident conditions.* As in Appendix A for normal transport conditions, the ambient temperature and internal pressure are specified for the package entering the test sequence. Paragraph (c), describing the thermal test, will be revised for clarity and will require consideration of convective heat input when significant. When the main body of a package is surrounded by and directly exposed to fire, the convective heat input is small compared to radiant heat input. However, some packages are protected partially or wholly by a radiation shield through which air and combustion gases may circulate. In such cases, convective heat input may be significant and must be included since the test is intended to simulate realistic fire conditions with respect to expected total heat input.

A requirement will be added that artificial cooling shall not be applied and that any combustion of materials of construction shall be allowed to proceed until natural termination. The IAEA regulations permit artificial cooling after 3 hours. However, 3 hours may be inadequate for control of fire even in populated areas. Also, unrecognized smoldering may continue for a much longer time.

Proposed paragraph (e) adds an accident test condition of immersion in 15 m of water, since some harbors have such depth and a package might be dropped overboard during handling. Immersion to a greater depth within the United States could occur in one of the Great Lakes, but such occurrence is very improbable.

14. *Appendix C—Determination of A_1 and A_2.* A few of the radioisotopes listed in Appendix C of the present Part 71 have been omitted from the table of A_1 and A_2 values in proposed Part 71, because these radioisotopes have seldom if ever been shipped in recent years. However, the proposed Appendix C provides procedures for determining the A_1 and A_2 values for any radioisotope. A new entry has been included for the radionuclide lead-201 a medical isotope, in response to a petition currently pending before NRC.

15. *Appendix D—Requirements for special form radioactive material.* The qualification tests for special-form radioactive material in proposed Appendix D have been modified, primarily by adding a bending test, providing more detailed instructions for the immersion or leaching procedure, and changing the maximum loss by leaching to 0.05 microcurie in each of two determinations rather than the present 0.005% for a single determination. Long, slender objects are more likely to suffer bending under rough handling or accident conditions than are short or spherical objects; hence, a minimum length of 10 cm and a minimum length-to-width ratio of 10 have been selected for application of the bending test. The proposed leaching test specified by the IAEA regulations has been selected as suitable and should yield uniform results. An absolute amount leached is better related to the hazard than is a fixed percentage. Although 0.05 microcurie is much smaller than any of the A_2 quantities, in this case it is specified as a measure of the indispersibility and is equivalent to the maximum permissible non-fixed surface contamination on an area of 50 cm² of a package surface.

Existing regulations require that "special form radioactive material" have either (1) no dimension less than 0.5 mm or (2) at least one dimension greater than 5 mm. It is now proposed that special form radioactive material must have at least one dimension not less than 5 mm. The first option has been removed because of the possible difficulty of identifying, for safe handling, an object as small as 0.5 mm in every dimension.

16. *Miscellaneous.* Several changes and additions that experience indicates will be useful are proposed in the requirements for exemption of fissile material from the provisions of Part 71 and in the specifications for packages of fissile material that are generally licensed. Criticality studies showed that these proposed modifications satisfy the requirements for avoidance of criticality. The IAEA regulations also include some examples of specific packages that the IAEA considers to satisfy criticality requirements but nevertheless to require approval by the competent authority before use. These examples are not included in the proposed revision of 10 CFR Part 71.

The metric system, as represented by the International System of Units (SI), has been incorporated in the proposed regulation. Rounded-off values of equivalents for the English system are given in parentheses, except in a few cases where the conversion seems unnecessary or inappropriate.

The Commission has determined that neither the Council of Environmental Quality guidelines, 40 CFR Part 1500, nor the NRC regulations in 10 CFR Part 51, "Licensing and Regulatory Policy and Procedures for Environmental Quality," require the NRC to prepare an environmental impact statement for the proposed revision of 10 CFR Part 71. Concurrently with the publication of this notice of proposed rule making the Commission is making available in its Public Document Room at 1717 H Street, NW., Washington, D.C., an "Environmental Impact Assessment of Changes to Radioactive Material Transport Regulations," to support the negative declaration required by 10 CFR Part 51.

The Commission has determined that no significant changes are being made in the reporting requirements of 10 CFR Part 71, so no GAO clearance is required.

Interested persons are invited to submit written comments and suggestions on the proposal and/or the supporting value/impact analysis to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of the value/impact analysis supporting the rule are available for public inspection at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. Single copies of the value/impact analysis may be obtained on request from: Mr. Donald R. Hopkins, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: 301–443–5946.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of title 5 of the United States Code, notice is hereby given that adoption of the following revision to 10 CFR Part 71 in its entirety is contemplated.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

Subpart A—General Provisions

Sec.

71.1 Purpose.
71.2 Scope.
71.3 Requirements for license.
71.4 Definitions.
71.5 Transportation of licensed material.

Exemptions

71.6 Specific exemptions.
71.7 Exemption of physicians.
71.8 Exemption for low level materials.
71.9 Exemption for fissile material.

General Licenses

71.11 General license for shipment of fissile material.
71.12 General license for shipment in approved packages.
71.13 Communications.
71.14 Interpretations.
71.15 Additional requirements.

Subpart B—Application For Package Approval

71.21 Contents of application.
71.22 Package description.
71.23 Package evaluation.
71.24 Quality assurance.
71.25 Additional information.

Subpart C—Package Standards

71.31 Demonstration of compliance.
71.32 Standards for all Type B packages.
71.33 Additional requirements for Type B(M) packages.
71.34 Additional requirements for Type B(U) packages.
71.35 Standards for fissile material packages.
71.36 Special requirements for plutonium shipments.
71.37 Previously constructed packages.

Subpart D—Operating Controls and Procedures

71.51 Establishment and maintenance of a quality assurance program.
71.52 Assumptions as to unknown properties.
71.53 Preliminary determinations.
71.54 Routine determinations.
71.55 Opening instructions.
71.61 Reports.
71.62 Records.
71.63 Inspection and tests.
71.64 Violations.

Appendixes

Appendix A—Normal conditions of transport.
Appendix B—Hypothetical accident conditions.
Appendix C—Determination of A_1 and A_2.
Appendix D—Requirements for special form material.
Appendix E—Quality assurance requirements.

Authority: The provisions of this Part 71 issued under secs. 53, 63, 81, 161, 182, 183, 68 Stat. 930, 933, 935, 948, 953, 954, as amended; 42 U.S.C. 2073, 2093, 2111, 2201, 2232, 2233, unless otherwise noted. For the purposes of sec. 223, 68 Stat. 958, as amended; 42 U.S.C. 2273, sections 71.61–71.63 issued under sec. 161o, 68 Stat. 950, as amended; 42 U.S.C. 2201(o). Secs. 202, 206, Pub. L. 93–438, 88 Stat. 1244, 1246; 42 U.S.C. 5842, 5846.

Subpart A—General Provisions

§ 71.1 Purpose.

(a) This part establishes: (1) Requirements for packaging, preparation for shipment, and transportation of licensed material; and (2) procedures and standards for approval by the Nuclear Regulatory Commission of packaging and shipping procedures for fissile material (uranium-233, uranium-235, plutonium-238, plutonium-239, or plutonium-241) and for quantities of other licensed material in excess of type A quantities, as defined in § 71.4(s).

(b) The packaging and transport of these materials are also subject to other parts of this chapter and to the regulations of other agencies having jurisdiction over means of transport. The requirements of this part are in addition to, and not in substitution for, other requirements.

§ 71.2 Scope.

The regulations in this part apply to any licensee authorized by specific license issued by the Commission to receive, possess, use, or transfer licensed materials, if the licensee delivers such materials to a carrier for transport or transports such material outside the confines of his facility, plant or other authorized place of use. No provision of this part shall be construed to authorize possession of licensed material.

§ 71.3 Requirement for license.

No licensee subject to the regulations in this part shall (a) deliver any licensed materials to a carrier for transport or (b) transport licensed material except as authorized in a general license or a specific license issued by the Commission, or as exempted in this part.

§ 71.4 Definitions.

As used in this part:

(a) "A_1 or A_2" means the maximum activity of special form or normal form radioactive material, respectively, permitted in Type A package. These values are listed in Appendix C, Table C–1, for many radionuclides. Rules given in Appendix C may be used to derive A_1 and A_2 values for individual radionuclides and for mixtures.

(b) "Close reflection by water" means immediate contact by water of sufficient thickness for maximum reflection of neutrons.

(c) "Containment system" means the components of the packaging intended to retain the radioactive material during transport.

(d) "Fissile classification" means classification of a package or shipment

of fissile materials according to the controls needed to provide nuclear criticality safety during transportation as follows:

(1) *Fissile Class I:* Packages which may be transported in unlimited numbers and in any arrangement, and which require no nuclear criticality safety controls during transportation. A transport index is not assigned for purposes of nuclear criticality safety but may be required because of external radiation levels.

(2) *Fissile Class II:* Packages which may be transported together in any arrangement but, for criticality control, in numbers which do not exceed an aggregate transport index of 50. Such shipments require no other nuclear criticality safety control by the shipper during transportation. Individual packages may have a transport index not less than 0.1 and not more than 10.

(3) *Fissile Class III:* Shipments of packages which do not meet the requirements of Fissile Classes I or II and which are controlled in transportation by special arrangements between the shipper and the carrier to provide nuclear criticality safety.

(e) "Fissile material" and "fissile radionuclides": "Fissile material" means any material consisting of or containing one or more of the fissile radionuclides, which shall be taken as uranium-233, uranium-235, plutonium-238, plutonium-239, and plutonium-241. Unirradiated natural and depleted uranium are not considered to be fissile materials.

(f) "Full load" (also referred to as "sole use" and "exclusive use" in IAEA and DOT regulations) means any shipment:

(1) From a single consignor having the exclusive use of a transport vehicle or of an aircraft, or of a hold or compartment of an inland watercraft, or of a hold, compartment, or defined deck area of a seagoing vessel; and

(2) For which all initial, intermediate, and final loading and unloading is carried out by or under the supervision of the consignor, consignee, or the designated agent of either party.

(g) "Low-level solid radioactive material (LLS)"[1] means any of the following:

(1) Solids (e.g., consolidated wastes, activated materials) in which:

(i) The activity under normal transport conditions is, and remains, distributed throughout a solid or a collection of solid objects, or is, and remains, uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic);

(ii) The activity is, and remains, insoluble so that, even under loss of packaging, the loss of radioactive material per package resulting from the effects of wind, rain, etc., and from total immersion in water is limited to less than 0.1 A_2 in a period of one week; and

(iii) The estimated activity averaged throughout the material does not exceed 2×10^{-3} A_2/g.

(2) Objects of non-radioactive material contaminated with radioactive material, provided that the radioactive contamination is in a non-readily dispersible form and the level of contamination averaged over 1 m^2 (or the area of the surface if it is less than 1 m^2) does not exceed 20 $\mu Ci/cm^2$, of which no more than 2 $\mu Ci/cm^2$ may be alpha emitters other than natural or depleted uranium or natural thorium.

(h) "Low specific activity material (LSA)"[2] means any of the following:

(1) Uranium or thorium ores and physical or chemical concentrates of those ores.

(2) Natural or depleted uranium or natural thorium.

(3) Tritium oxide in aqueous solutions, provided the concentration does not exceed 10 Ci/liter.

(4) Materials in which the activity, under normal transport conditions, is, and remains, uniformly distributed and in which the average estimated specific activity does not exceed 10^{-4} A_2/g.

(5) Materials in which the activity is uniformly distributed and which, if reduced to the minimum volume under conditions likely to be encountered in transport, such as dissolution in water with subsequent recrystallization, precipitation, evaporation, combustion, abrasion, etc., would have an average estimated specific activity of no more than 10^{-4} A_2/g.

(6) Objects of non-radioactive material contaminated with radioactive material, provided the non-fixed surface contamination does not exceed ten times the values given in § 71.54(b), Table VI, and the contaminated object or the contamination on the object, if reduced to the miminum volume under conditions likely to be encountered in transport, such as dissolution in water with subsequent recrystallization, precipitation, evaporation, combustion, abrasion, etc., would have an average estimated specific activity of no more than 10^{-4} A_2/g.

(7) Objects of non-radioactive material contaminated with radioactive material, provided that the radioactive contamination is in a non-readily dispersible form and the level of contamination averaged over 1 m^2 (or the area of the surface if it is less than 1 m^2) does not exceed 1 $\mu Ci/cm^2$, of which no more than 0.1 $\mu Ci/cm^2$ may be alpha emitters other than natural or depleted uranium or natural thorium.

(i) "Maximum normal operating pressure" means the maximum gauge pressure that would develop in the containment system in a period of one year under the normal condition of transport specified in paragraph (1) of Appendix A, in the absence of venting, external cooling by an ancillary system, or operational controls during transport.

(j) "Normal form radioactive material" means radioactive material which has not been demonstrated to satisfy the requirements for "special form" radioactive material.

(k) "Optimum interspersed hydrogenous moderation" means the presence of hydrogenous material between components of the packaging to such an extent that the maximum nuclear reactivity results.

(l) "Package" means the packaging together with its radioactive contents as presented for transport.

(1) "Fissile material package" means a fissile material packaging together with its fissile contents.

(2) "Type A package" means a Type A packaging together with its radioactive contents.

(3) "Type B package" means a Type B packaging together with its radioactive contents. The two classifications of Type B package are as follows:

(i) "Type B(M) package," which may be subject to special conditions of shipment or storage; or

(ii) "Type B(U) package" which has the special design and performance features described in § 71.34 and which requires no special conditions of shipment or storage.

(m) "Packaging" means the assembly of components necessary to ensure compliance with the packaging requirements of this part. It may, in particular, consist of one or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or for absorbing mechanical shocks. The vehicle, tie-down system, and auxiliary equipment may form an integral part of the packaging.

(n) "Radioactive material" means any material, or combination of materials, having a specific activity greater than 0.002 microcuries per gram ($\mu Ci/g$).

(o) "Special form radioactive material" means radioactive material which meets the requirements of Appendix D.

[1] Packaging requirements for LLS are set forth in 49 CFR Part 127.

[2] Packaging requirements for LSA are set forth in 49 CFR Part 127.

(p) "Specific activity" of a radionuclide means the activity of the radionuclides per unit mass of that nuclide. The specific activity of a material in which the radionuclides are essentially uniformly distributed is the activity per unit mass of the material.

(q) "Stress intensity" means twice the maximum shear stress and is equal to the largest algebraic difference between any two of the three principal stresses at a point.

(r) "Transport index" means the dimensionless number (rounded up to the first decimal place) placed on the label of a package to designate the degree of control to be exercised by the carrier during transportation, and determined as follows:

(1) The number expressing the maximum radiation level in millirem per hour at 1 meter from the external surface of the package; or

(2) For Fissile Class II packages, the number expressing the maximum radiation level in millirem per hour at 1 meter from the external surface of the package, or the number obtained by dividing 50 by the number of such packages which may be transported together per shipment as determined under § 71.35(c), whichever number is larger.

(s) "Type A quantity" means a quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material or A_2 for normal form radioactive material, where A_1 and A_2 are given in Appendix C to this part or may be determined by procedures described therein.

(t) "Type B quantity" means a quantity of radioactive material greater than a Type A quantity.

(u) "Uranium—natural, depleted, enriched"

(1) "Natural uranium" means uranium with the naturally occurring distribution of uranium isotopes (approximately 99.28% uranium-238, 0.72% uranium-235).

(2) "Depleted uranium" means uranium containing less than 0.72% uranium-235.

(3) "Enriched uranium" means uranium containing more than 0.72% uranium-235, with the remainder being uranium-238.

§ 71.5 Transportation of licensed material.

(a) No licensee shall transport any licensed material outside of the confines of his plant or other place of use, or deliver any licensed material to a carrier for transport, unless the licensee complies with the applicable requirements of the regulations of the Department of Transportation in 49 CFR Parts 127 and 170–189, and the U.S. Postal Service in 39 CFR Parts 14 and 15, and in addition complies with the requirements of this Part, insofar as such regulations relate to the packaging of byproduct, source, or special nuclear material, marking and labeling of the packages, loading and storage of packages, placarding of the transportation vehicle, monitoring requirements and accident reporting.

(b) When Department of Transportation regulations are not applicable to shipments of licensed material by rail, highway, or water because the shipment or the transportation of the shipment is not in interstate or foreign commerce, or to shipments of licensed material by air because the shipment is not transported in civil aircraft, the licensee shall conform to the standards and requirements of the Department of Transportation, specified in paragraph (a) of this section, to the same extent as if the shipment or transportation were in interstate or foreign commerce or in civil aircraft. Any requests for modifications, waivers, or exemptions from those requirements, and any notifications referred to in those requirements shall be filed with or made to the Nuclear Regulatory Commission.

(c) Paragraph (a) of this section shall not apply to the transportation of licensed material or to the delivery of licensed material to a carrier for transport, where such transportation is subject to the regulations of the Department of Transportation or the U.S. Postal Service.

Exemptions

§ 71.6 Specific exemptions.

On application of any interested person or on its own initiative, the Commission may grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security.

§ 71.7 Exemption of physicians.

Physicians, as defined in § 35.3(b) of this chapter, are exempt from § 71.5 with respect to the transport of licensed material for use in the practice of medicine.

§ 71.8 Exemption for low level materials.

A licensee is exempt from all the requirements of this part other than § 71.5 for the following shipments:

(a) Shipments of licensed material having a specific activity not greater than 0.002 microcurie/gram; and

(b) Packages or shipments of low specific activity or low level solid radioactive material as defined in § 71.4, provided the fissile material exemption standards of § 71.9 are satisfied; and

(c) Packages each of which contains no more than a Type A quantity of radioactive material as defined in § 71.4, provided the fissile material exemption standards of § 71.9 are satisfied.

§ 71.9 Exemption for fissile material.

A licensee is exempt from the requirements of § 71.35 to the extent that he transports or delivers to a carrier for transport:

(a) Packages containing individually not more than 15 grams of fissile radionuclides. When material is transported in bulk, the quantity limitations apply to the vehicle, inland waterway craft or part of a seagoing vessel; or

(b) Packages containing homogeneous hydrogenous solutions or mixtures satisfying the conditions listed in Table I of this part. When material is transported in bulk, the quantity limitations apply to the vehicle, inland waterway craft, or part of a seagoing vessel; or

Table I.—*Limitations on Homogeneous Hydrogenous Solutions or Mixtures for Exemptions From § 71.35 in Accordance with § 71.9(c)*

Parameters	Uranium-235 only	Any other fissile radionuclide (including mixtures)
Minimun H/X [3]	5200	5200
Maximum concentration of fissile radionuclides in solution or mixture, g/1	5	5
Maximum mass of fissile radionuclides in package, g	800 [4]	500

[3] Where H/X is the ratio of the number of hydrogen atoms to the number of atoms of fissile nuclide.
[4] Total mass of plutonium and uranium-233 shall not exceed 1% of the mass of uranium-235.

(c) Packages containing uranium enriched in uranium-235 to a maximum of 1% by weight, and with a total plutonium and uranium-233 content of up to 1% of the mass of uranium-235, provided that the fissile radionuclides are distributed homogeneously throughout the material. In addition, if uranium-235 is present in metallic or

oxide form, it shall not form a lattice arrangement within the package; or

(d) Packages containing any fissile material, provided they do not contain more than 5 grams of fissile radionuclides in any 10-liter volume, and provided the material is in packages which will maintain the limitations of fissile radionuclide distribution during normal transport; or

(e) Packages containing individually not more than one kilogram of plutonium, of which not more than 20% by mass may consist of plutonium-239, plutonium-241, or any combination of those radionuclides; or

(f) Packages containing liquid solutions of uranyl nitrate enriched in uranium-235 to a maximum of 2% by weight, and with total plutonium and uranium-233 not more than 0.1% of the mass of uranium-235.

General Licenses

§ 71.11 General license for shipment of fissile material.

A general license is hereby issued, to persons holding specific licenses issued pursuant to this chapter, to deliver fissile material to a carrier for transport, without complying with the package standards of Subpart C of this part, provided that:

(a) The material is shipped as Fissile Class II packages with the following limitations:

(1) Each package shall contain no more than a Type A quantity of radioactive material, as defined in § 71.4; and

(2) No package contains more than:

(i) 40 grams of uranium-235; or

(ii) 30 grams of uranium-233; or

(iii) 25 grams of plutonium, except that for encapsulated plutonium-beryllium neutron sources the maximum amount of plutonium may be 400 grams or A_1 (curies) whichever is the smaller mass; or

(iv) A combination of uranium-235, uranium-233 and plutonium in which the sum of the ratios of the amount of each radionuclide to the corresponding maximum amounts in paragraphs (i), (ii) and (iii) does not exceed unity; and

(3) Each package containing more than 15 grams of fissile radionuclides is labeled with a transport index (T.I.) not less than the number given by the following equation, where the package contains x grams of uranium-235, y grams of uranium-233 and z grams of plutonium:

$$\text{Minimum T.I.} = (0.40x + 0.67y + z)\left(1 - \frac{15}{x + y + z}\right)$$

except that for a package in which the only fissible material is an encapsulated plutonium-beryllium source, the transport index based on criticality considerations may be taken as 0.026 times the number of grams of plutonium in excess of 15 grams. In all cases the transport index shall be rounded up to one decimal place, and shall not exceed 10.0; or

(b) The material is shipped as Fissile Class II packages with the following limitations:

(1) Each package shall contain no more than a Type A quantity of radioactive material as defined in § 71.4; and

(2) Beryllium and hydrogenous material enriched in deuterium shall not be present; and

(3) The total mass of graphite present shall not exceed 150 times the total mass of uranium-235 plus plutonium; and

(4) Substances having a higher hydrogen density than water, e.g. some hydrocarbon oils, shall not be present, except that polyethylene may be used for packing or wrapping; and

(5) Uranium-233 shall not be present, and the amount of plutonium shall not exceed 1% of the amount of uranium-235; and

(6) The amount of uranium-235 shall be limited as follows:

(i) If the fissile radionuclides are not uniformly distributed, the maximum amount of uranium-235 per package shall not exceed the value given in Table II of this part; or

(ii) If the fissile radionuclides are distributed uniformly and cannot form a lattice arrangement within the packaging, the maximum amount of uranium-235 per package shall not exceed the value given in Table III of this part; and

(7) The transport index of each package based on criticality considerations shall be taken as 10 times the number of grams of uranium-235 in the package divided by the maximum allowable number of grams per package in accordance with Table II or Table III of this section as applicable; or

(c) The material is shipped as Fissile Class III packages with the following limitations:

(1) Each single package shall contain no more than a Type A quantity of radioactive material, as defined in § 71.4, nor more than 400 grams total of plutonium-238, plutonium-239, and plutonium-241 encapsulated as plutonium-beryllium neutron sources, and

(2) The fissile radionuclide content of the shipment shall not exceed:

(i) 500 grams of uranium-235; or

(ii) 300 grams total of uranium-233, plutonium-238, plutonium-239 and plutonium-241; or

(iii) A total quantity of uranium-233, uranium-235, and plutonium such that the sum of the ratios of the quanity of each radionuclide to the quanity specified in paragraphs (2)(i) and (2)(ii) of this paragraph exceeds unity; or

(iv) 2500 grams of plutonium-238, plutonium-239, and plutonium-241 encapsulated as plutonium-beryllium neutron sources; and

(3) Shipment of these packages shall be made only under procedures specifically authorized by the Department of Transportation pursuant to 49 CFR 127.507 of its regulations, so as to prevent loading, transport or storage of these packages with other fissile Class II or Fissile Class III packages;

(d) The material is shipped as Fissile Class III packages under the following conditions:

(1) Each package shall contain no more than a Type A quantity of radioactive material, as defined in § 71.4(s); and

(2) The packages are currently approved as Fissile Class II packages and the number of packages in any one consignment does not exceed twice the number which may be transported together as specified in the Fissile Class II approval; and

Table II.—*Permissible Mass of Uranium-235 per Fissile Class II Package Applicable to § 71.11(b)(6)(i) (Nonuniform Distribution)*

Uranium enrichment in weight per cent of uranium-235 not exceeding—	Permissible maximum grams of uranium-235 per package
20	42
15	45
11	48
10	51
9.5	52
9	54
8.5	55
8	57
7.5	59
7	60
6.5	62
6	65
5.5	68
5	72
4.5	76
4	80
3.5	88
3	100
2.5	120
2	164
1.5	272
1.35	320
1	680
0.92	1200

Table III.—*Permissible Mass of Uranium-235 per Fissile Class II Package Applicable to § 71.11(b)(6)(ii) (Uniform Distribution)*

Uranium enrichment in weight percent of uranium-235 not exceeding—	Permissible maximum grams of uranium-235 per package
4	84
3.5	92
3	112
2.5	148
2	240
1.5	560
1.35	800

Table IV.—*Permissible Mass of Uranium-235 per Fissile Class III Consignment Applicable to § 71.11(e)(6)(i) (Nonuniform Distribution)*

Uranium enrichment in weight percent of uranium-235 not exceeding—	Permissible maximum grams of uranium-235 per consignment
20	520
15	560
11	600
10	640
9.5	655
9	675
8.5	690
8	710
7.5	730
7	750
6.5	780
6	810
5.5	850
5	900
4.5	950
4	1000
3.5	1100
3	1250
2.5	1500
2	2050
1.5	3400
1.35	4000
1	8500
0.92	15000

Table V.—*Permissible Mass of Uranium-235 per Fissile Class III Consignment Applicable to § 71.11(e)(6)(ii) (Uniform Distribution)*

Uranium enrichment in weight percent of uranium-235 not exceeding—	Permissible maximum grams of uranium-235 per consignment
4	1050
3.5	1150
3	1400
2.5	1800
2	3000
1.5	7000
1.35	10000

(3) Shipment of these packages shall be made only under procedures specifically authorized by the Department of Transportation pursuant to 49 CFR 127.507 of its regulations, so as to prevent loading, transport or storage of these packages with other Fissile Class II or Fissile Class III packages; or

(e) The material is shipped as Fissile Class III packages with the following limitations:

(1) Each package shall contain no more than a Type A quantity of radioactive material, as defined in § 71.4(s); and

(2) The packaging shall not incorporate lead shielding exceeding 5cm in thickness, nor tungsten nor uranium shielding; and

(3) Beryllium and hydrogenous material enriched in deuterium shall not be present; and

(4) The total mass of graphite present must not exceed 150 times the total mass of uranium-235 and plutonium; and

(5) Substances having a higher hydrogen density than water, e.g. some hydrocarbon oils, shall not be present, except that polyethylene may be used for packing or wrapping; and

(6) For fissile contents containing no uranium-233 and less than 1% total plutonium:

(i) If the fissile radionuclides are not uniformly distributed, the maximum amount of uranium-235 per consignment shall not exceed the value given in Table IV of this part; or

(ii) If the fissile radionuclides are distributed uniformly and cannot form a lattice arrangement within the packaging, the maximum amount of uranium-235 per consignment shall not exceed the value given in Table V of this part; and

(7) For fissile contents containing uranium-233 or more than 1% plutonium, the total mass of fissile material per consignment shall be such that the sum of the number of grams of uranium-235 divided by 400, the number of grams of plutonium divided by 225, and the number of grams of uranium-233 divided by 250, does not exceed unity [5], and

(8) The transport shall be direct to the consignee without any intermediate transit storage.

(9) Shipment of these packages shall be made only under procedures specifically authorized by the Department of Transportation pursuant to 49 CFR 127.507 of its regulations, so as to prevent loading, transport or storage of these packages with other Fissile Class II or Fissile Class III packages.

§ 71.12 General license for shipment in approved packages.

A general license is hereby issued, to persons holding a general or specific license issued pursuant to this chapter, to transport or to deliver to a carrier for transport licensed material as follows, provided the licensee has a quality assurance program approved by the Commission as satisfying the provisions of § 71.51:

(a) In a specification container for fissile material as specified in 49 CFR 127.117, or for a Type B quantity of radioactive material as specified in 49 CFR 127.115 of the regulations of the Department of Transportation, 49 CFR part 127; or

(b) In a package for which a license, certificate of compliance or other approval has been issued by the Office of Nuclear Material Safety and Safeguards of the Commission, provided that:

(1) The person using a package pursuant to the general license provided by this paragraph:

(i) Has a copy of the specific license, certificate of compliance, or other approval of the package and all documents referred to in the license, certificate, or other approval, as applicable;

(ii) Complies with the terms and conditions of the license, certificate, or other approval, as applicable, and the applicable requirements of this part; and

(iii) Prior to the licensee's first use of the package submits in writing to the Director of the Commission's Office of Nuclear Material Safety and Safeguards, his name and license number, the name and license or certificate number of the person to whom the package approval has been issued, and the package identification number specified in the package approval.

(2) The package approval authorizes use of the package under general license provided in this paragraph.

(c) In a package which meets the pertinent requirements in the 1973 regulations of the International Atomic Energy Agency and the use of which has been approved in a foreign national competent authority certificate which has been revalidated by the Department of Transportation, but only for import or export of radioactive material and only provided that the person using a package pursuant to the general license provided by this paragraph:

(1) Has and complies with the applicable certificate, the revalidation, and the documents referenced in the certificate; and

(2) Complies with the applicable requirements of Subpart D of this part, and with the Department of Transportation regulations in 49 CFR Parts 127, 175, and 176.

§ 71.13 Communications.

All communications concerning the regulations in this part should be addressed to the Director, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, D.C. 20555, or may be

[5] grams uranium–235 ÷ 400 grams + grams plutonium ÷ 225 grams + grams uranium-233 ÷ 250 grams < 1.

delivered in person at the Commission offices at 1717 H Street, NW., Washington, D.C., or its offices at 7915 Eastern Avenue, Silver Spring, Maryland.

§ 71.14 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by an officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding on the Commission.

§ 71.15 Additional requirements.

The Commission may by rule, regulation, or order impose upon any licensee such requirements, in addition to those established in this part, as it deems necessary or appropriate to protect health or to minimize danger to life or property.

Subpart B.—Application for Package Approval

§ 71.21 Contents of application.

An application for an approval under this part shall include, for each proposed packaging design and method of transport, the following information in addition to any other information required:

(a) A package description as required by § 71.22;

(b) A package evaluation as required by § 71.23;

(c) A quality assurance program description as required by § 71.24;

(d) In case of fissile material, an identification of the proposed fissile class.

§ 71.22 Package description.

The application shall include a description of the proposed package in sufficient detail to identify the package accurately and to provide a sufficient basis for evaluation of the packaging. The description should include:

(a) With respect to the packaging:

(1) Classification as Type B(U), Type B(M) or fissile material packaging.

(2) Gross weight;

(3) Model number;

(4) Specific materials of construction, weights, dimensions, and fabrication methods of:

(i) Receptacles, identifying the containment system;

(ii) Materials specifically as nonfissile neutron absorbers or moderators;

(iii) Internal and external structures supporting or protecting receptacles;

(iv) Valves, sampling ports, lifting devices, and tiedown devices;

(v) Structural and mechanical means for the transfer and dissipation of heat; and

(5) Indentification and volumes of any coolants and of receptacles containing coolant.

(b) With respect to the contents of the package:

(1) Identification and maximum radioactivity of radioactive constituents;

(2) Identification and maximum quantities of fissile constituents;

(3) Chemical and physical form;

(4) Extent of reflection, the amount and identity of nonfissile materials used as neutron absorbers or moderators and the atomic ratio of moderator to fissile constituents;

(5) Maximum weight; and

(6) Maximum amount of decay heat.

§ 71.23 Package evaluation.

The applicant shall:

(a) Demonstrate that the package satisfies the standards specified in Subpart C;

(b) For a Fissile Class II package, ascertain and specify the number of similar packages which may be transported together in accordance with § 71.35(c); and

(c) For a Fissile Class III shipment, and for a Type B(M) package, describe any proposed special controls and precautions to be exercised during transport, loading, unloading, and handling, and in the event of accident or delay.

§ 71.24 Quality assurance.

(a) The applicant shall describe his quality assurance program to be applied to the design, fabrication, assembly, testing, maintenance, repair, modification and use of the proposed packaging.

(b) The applicant shall identify any established codes and standards proposed for use in package design, fabrication, assembly, testing, maintenance and use. In the absence of such codes and standards, the applicant shall describe the basis and rationale used to formulate the package quality assurance program.

(c) The applicant shall identify any specific provisions to be contained in his quality assurance program which are applicable to the particular package design under consideration, including a description of his leak testing procedures.

§ 71.25 Additional information.

The Commission may at any time require further information in order to enable it to determine whether a license, certificate of compliance, or other approval should be granted, denied, modified, suspended, or revoked.

Subpart C.—Package Standards

§ 71.31 Demonstration of compliance.

(a) The effect of the transport environment on the integrity of a package of radioactive material shall be evaluated as follows:

(1) The ability of a package to withstand conditions likely to occur in normal transport shall be assessed by subjecting a sample package or scale model, by test or other assessment, to the normal conditions of transport as specified in Appendix A; and

(2) The effect on a package of conditions likely to occur in an accident shall be assessed by subjecting a sample package or scale model, by test or other assessment, to the hypothetical accident conditions as specified in Appendix B.

(b) Taking into account the type of vehicle, method of securing or attaching the package, and controls to be exercised by the shipper, the Commission may permit the shipment to be evaluated together with the transporting vehicle for the purpose of one or more tests.

(c) Except with respect to Type B(U) packages, normal conditions of transport and hypothetical accident conditions different from those specified in Appendix A and Appendix B may be approved by the Commission of the controls proposed to be exercised by the shipper are demonstrated to be adequate to assure the safety of the shipment.

§ 71.32 Standards for all packages.

(a) Any lifting attachments on the package, when used in the intended manner, with an appropriate safety factor to cover abrupt lifting, shall not impose unsafe stresses on the structure of the package, and shall be so designed that failure under excessive load would not impair the ability of the package to meet other requirements of this Subpart. Attachments or other features on the outer surface of the packaging which could be used to lift the package shall be removable or otherwise rendered inoperable for transport, or shall be designed with strength equivalent to that required for lifting attachments.

(b) The smallest overall dimension of the pacakge shall not be less than 10 cm (4 in.).

(c) The outside of the package shall incorporate a feature, such as a seal, which is not readily breakable, and which, while intact, will be evidence that the package has not been illicitly opened.

(d) Each package shall include a containment system securely closed by a positive fastening device which cannot be opened unintentionally.

(e) Each tie-down device which is a structural part of the package shall be so designed that failure of the device under excessive load would not impair the ability of the package to meet other requirements of this subpart.

(f) Packages shall be of such materials and construction that there will be no significant chemical, galvanic or other reaction among the packaging components, or between the packaging components and the package contents, including possible reaction resulting from inleakage of water to the maximum credible extent.

(g) All package valves through which the radioactive contents could otherwise escape shall be protected against unauthorized operation and, except for pressure relief valves, shall be provided with an enclosure to retain any leakage.

(h) Packages shall be so designed, constructed and prepared for shipment that under normal conditions of transport specified in Appendix A there will be no loss or dispersal of radioactive contents, as demonstrated to a sensitivity of 10^{-6} A_2 per hour by NRC approved test procedures, no significant increase in the maximum radiation level at the external surface of the package, and no substantial reduction in the effectiveness of the packaging.

§ 71.33 Additional requirements for Type B(M) packages

A Type B(M) package, in addition to satisfying the requirements of § 71.32, shall be so designed and constructed that under the hypothetical accident conditions of Appendix B:

(a) The escape of radioactive material other than krypton-85 would not exceed a total amount A_2 in one week, and for krypton-85 the escape would not exceed 10,000 curies in one week.

(b) The external radiation dose rate would not exceed one rem per hour at one meter from the external surface of the package.

§ 71.34 Additional requirements for Type B(U) packages

A Type B(U) package, in addition to satisfying the requirements of § 71.32, shall satisfy the following requirements:

(a) The package shall be so designed and constructed that under the hupothetical accident conditions of Appendix B:

(1) The escape of radioactive material would not exceed an amount 10^{-3} A_2 in one week.

(2) The external radiation dose rate would not exceed one rem per hour at one meter from the external surface of the package.

(b) Compliance with the permitted activity release limits shall depend neither upon filters nor upon a mechanical cooling system.

(c) The package shall not incorporate a feature which is intended to allow continuous venting during transport.

(d) The package shall not include a pressure relief system which would allow the release of radioactive material to the environment under the conditions of the test specified in Appendix A and Appendix B.

(e) The package shall have a maximum normal operating pressure not exceeding 690 kilopascal (100 psi) gauge.

(f) The containment system shall be capable of withstanding the thermal test in Appendix B without experiencing a stress intensity greater than the minimum yield strength at the maximum temperature it would be expected to reach. For the purpose of this determination, the stress intensity shall be considered to result from the sum of membrane stresses and bending stresses caused by pressure, thermal gradients, and differential thermal expansions.

(g) The containment system shall be capable of withstanding at least 1.5 times the maximum normal operating pressure without experiencing a stress intensity greater than either 75 percent of the minimum yield strength or 40 percent of the ultimate strength at the maximum expected operating temparature. For the purpose of this determination, the stress intensity shall be considered to result from the sum of membrane stresses and bending stresses caused by pressure.

§ 71.35 Standards for fissile material packages.

(a) *General requirements.* Fissile material packages which are not exempt by § 71.9 or § 71.11 shall satisfy the following requirements:

(1) A package used for the shipment of fissile material shall be designed and constructed in accordance with § 71.32, and when so required by the total amount of radioactive material, also in accordance with § 71.33 or § 71.34;

(2) Except as otherwise provided by § 71.35(a)(5) with respect to leakage, a package used for the shipment of fissil material shall be so designed and constructed and its contents so limited that it would be subcritical if water were to leak into the containment system or liquid contents were to leak out of the containment system such that under the following conditions, maximum reactivity of the fissile material would be attained:

(i) In the most reactive credible configuration consistent with the chemical and physical form of the material;

(ii) Moderated by water to the most reactive credible extent; and

(iii) Fully reflected on all sides by water.

(3) A package used for the shipment of fissile material shall be so designed and constructed and its contents so limited that under the normal conditions of transport specified in Appendix A:

(i) The contents would be subcritical;

(ii) The geometric form of the package contents would not be substantially altered;

(iii) There would be no leakage of water into the containment system unless, in the evaluation of undamaged package under §§ 71.35(b), (c)(1)(i), and (d)(1), it has been assumed that moderation is present to such an extent as to cause maximum reactivity consistent with the chemical and physical form of the material; and

(iv) There will be no substantial reduction in the effectiveness of the packaging, including no more than 5 percent reduction in the total effective volume of the packaging on which nuclear safety is assessed, no more than 5 percent reduction in the effective spacing between the fissile contents and the outer surface of the packaging, and no occurrence of an aperture in the outer surface of the packaging large enough to permit the entry of a 10 cm (4 in.) cube.

(4) A package used for the shipment of fissile material shall be so designed and constructed and its contents so limited that under the hypothetical accident conditions specified in Appendix B the package would be subcritical. For this determination it shall be assumed that:

(i) The fissile material is in the most reactive credible configuration consistent with the damaged condition of the package and the chemical and physical form of the contents;

(ii) Water moderation occurs to the most reactive credible extent consistent with the damaged condition of the package and the chemical and physical form of the contents; and

(iii) There is reflection by water on all sides and as close as is consistent with the damaged condition of the package.

(5) The Commission may approve exceptions to the requirements of this section with regard to assumed inleakage or outleakage provided the package incorporates special design features such that no single packaging error would permit leakage and provided appropriate measures are

taken before each shipment to verify the leaktightness of the containment system.

(b) *Specific standards for a Fissile Class I package.* A Fissile Class I package shall be so designed and constructed and its contents so limited that:

(1) Any number of such undamaged packages would be subcritical in any arrangement, and with optimum interspersed hydrogenous moderation in packaging, in which case the greater amount may be assumed for this determination; and

(2) Two hundred fifty (250) such packages would be subcritical in any arrangement, if each package were subjected to the hypothetical accident conditions specified in Appendix B and if the geometry, moderation and water reflection were then as described in paragraphs (a)(4) and (e) of this section.

(c) *Specific standards for a Fissile Class II package.* (1) A Fissile Class II package shall be designed and constructed and its contents so limited, and the number of such packages which may be transported together so limited, that:

(i) Five times that number of such undamaged packages would be subcritical in any arrangement if closely reflected by water; and

(ii) Twice that number of such packages would be subcritical in any arrangement if each package were subjected to the hypothetical accident conditions specified in Appendix B and if the geometry, moderation and water reflection were then as described in paragraphs (a)(4) and (e) of this section.

(2) The transport index with respect to criticality control for each Fissile Class II package shall be calculated by dividing the number 50 by the number of such Fissile Class II packages which may be transported together as determined under the limitations of paragraph (c)(1) of this section. The transport index so determined shall not exceed 10 and shall be rounded up to the first decimal place.

(d) *Specific standards for a Fissile Class III package.* A package for Fissile Class III shipment shall be so designed and constructed and its contents so limited, and the number of packages in a Fissile Class III shipment shall be so limited, that:

(1) The undamaged shipment would be subcritical with an identical shipment in contact with it and with the two shipments closely reflected on all sides by water; and

(2) The shipment would be subcritical if each package were subjected to the hypothetical accident conditions specified in Appendix B and if the geometry, moderation and water reflection were then as described in paragraphs (a)(3) and (e) of this section.

(e) *Evaluation of an array of packages of fissile material.* The effect of the transport environment on the nuclear safety of an array of packages of fissile material under hypothetical accident conditions shall be evaluated on the basis that each package in the array is subjected to the hypothetical accident conditions specified in Appendix B and that the geometry, moderation and water reflection of the damaged packages correspond to the maximum credible reactivity consistent with the design of the packaging, the nature of the contents, and the conditions of shipment. In the case of a Fissile Class III shipment, the Commission may, taking into account controls to be exercised by the shipper, permit the shipment to be evaluated as a whole rather than as individual packages, either with or without the transporting vehicles, for the purpose of one or more tests.

§ 71.36 Special requirements for plutonium shipments.

(a) Notwithstanding the exemption in § 71.9, plutonium in excess of twenty (20) curies per package shall be shipped as a solid.

(b) Plutonium in excess of twenty (20) curies per package shall be packaged in a separate inner container placed within outer packaging that meets the requirements of Subpart C for packaging of material in normal form. The separate inner container shall not release plutonium, as demonstrated to a sensitivity of $10^{-6}A_2$ per hour by NRC approved test procedures, when the entire package is subjected to the normal test conditions specified in Appendix A. When the entire package is subjected to the hypothetical accident conditions specified in Appendix B, the separate inner container shall restrict the loss of plutonium to not more than A_2 in one week for B(M) packages, and to not more than $10^{-3}A_2$ in one week for B(U) packages. Solid plutonium in the following forms is exempt from the requirements of this paragraph:

(i) Reactor fuel elements;

(ii) Metal or metal alloy; and

(iii) Other plutonium bearing solids that the Commission determines should be exempt from the requirements of this section.

§ 71.37 Previously approved packages.

Notwithstanding any other provisions of this subpart, a package, the design of which has been approved by the Commission by the issuance of a certificate of compliance on or before (the effective date of these amendments), shall be deemed to comply with the package standards of §§ 71.31, 71.32, 71.33, and 71.35, provided that fabrication of the package is satisfactorily completed, as demonstrated by the application of its model number in accordance with § 71.53(c), by (date two years after effective date of these amendments) or by the expiration date of the package design approval, whichever is later.

Subpart D.—Operating Controls and Procedures

§ 71.51 Establishment and maintenance of a quality assurance program.

(a) The licensee shall establish, maintain and execute a quality assurance program satisfying each of the applicable criteria specified in Appendix E, "Quality Assurance Requirements," and satisfying any specific provisions which are applicable to the licensee's activities including procurement of packaging. The description of the quality assurance program shall include a discussion of which requirements of Appendix E are applicable and how they will be satisfied.[7] A description of that program shall be filed with the Director, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, D.C. 20555. If a licensee has filed such a description by January 1, 1979, the continued use of his existing quality assurance program is authorized until the acceptability of the program has been finally determined by the Commission.

(b) The provisions of this paragraph deal with packages which have been approved for use in accordance with this part prior to January 1, 1979, and which have been designed in accordance with the provisions of this part in effect at the time of application for package approval. Notwithstanding the provisions of paragraph (a) of this section, such packages shall be deemed to have been designed in accordance with a quality assurance program which satisfies the provisions of paragraph (a) of this section.

(c) The provisions of this paragraph deal with packages which have been approved for use in accordance with this part prior to January 1, 1979, have been at least partially fabricated prior to that date, and for which the fabrication is in accordance with the provisions of this part in effect at the time of

[7] The pertinent requirements of Appendix E should be applied in a graded approach, i.e., applied to an extent consistent with their importance to safety as described in Section 2 of Appendix E.

application for approval of package design. Notwithstanding the provisions of paragraph (a) of this section, such packages shall be deemed to have been fabricated and assembled in accordance with a quality assurance program which satisfies the provisions of paragraph (a) of this section.

(d) A Commission-approved quality assurance program which satisfies the applicable criteria of Appendix B of Part 50 of this chapter and which is established, maintained, and executed with regard to transport packages shall be deemed to satisfy the requirements of paragraph (a) of this section.

§ 71.52 Assumptions as to unknown properties.

When the isotopic abundance, mass, concentration, degree of irradiation, degree of moderation, or other pertinent property of fissile material in any package is not known, the licensee shall package the fissile material as if the unknown properties have such credible values as will cause the maximum nuclear reactivity.

§ 71.53 Preliminary determinations.

Prior to the first use of any packaging for the shipment of licensed material:

(a) The licensee shall ascertain that there are no cracks, pinholes, uncontrolled voids or other defects which could significantly reduce the effectiveness of the packaging;

(b) Where the maximum normal operating pressure will exceed 34.3 kilopascal (5 psi) gauge, the licensee shall test the containment system at an internal pressure at least 50% higher than the maximum normal operating pressure to ensure compliance with design requirements for integrity and leaktightness; and

(c) The packaging shall be conspicuously and durably marked with its model number, gross weight, and a package identification number assigned by the Nuclear Regulatory Commission. Prior to applying the model number, the licensee shall determine that the packaging has been fabricated in accordance with the design approved by the Commission.

§ 71.54 Routine determinations.

(a) Prior to each shipment of licensed material, the licensee shall ascertain that the package with its contents satisfies the applicable requirements of this part and of the license, including determinations that:

(1) The package is proper for the contents to be shipped,

(2) The package is in unimpaired physical condition except for superficial marks, dents, etc;

(3) Each closure device of the packaging, including any required gasket, is properly installed and secured and free of defects;

(4) Any system for containing liquid is adequately leaktight and has adequate space or other specified provision for expansion of such liquid;

(5) Any pressure relief device is operable and set in accordance with written procedures;

(6) The package has been loaded and closed in accordance with written procedures;

(7) For fissile material, any moderator or neutron absorber, if required, is present and in proper condition;

(b) *External radiation level.*—Prior to each shipment of licensed material, the licensee shall ascertain that, when the package is subjected to the normal conditions of transport specified in Appendix A:

(1) Except as provided in (2), no radiation level will exceed 200 millirem per hour on the accessible external surface of the package and the transport index will not exceed 10, and

(2) For packages shipped as full load by rail, highway or water, no radiation level will exceed either:

(i) 1000 millirem per hour on the accessible external surface of the package;

(ii) 200 millirem per hour on the external surface of the vehicle, including the upper and lower surfaces, or, in the case of an open vehicle, on the vertical planes projected from the outer edges of the vehicle, on the upper surface of the load, and on the lower external surface of the vehicle;

(iii) 10 millirem per hour at 2 m (6.6 feet) from the external surface of the vehicle, including the upper and lower surfaces, or in the case of an open vehicle, 2 m (6.6 feet) from the vertical planes projected from the outer edges of the vehicle and the upper surface of the load; or

(iv) Two millirem per hour in any normally occupied position of the vehicle, unless persons occupying such positions are provided with special health supervision and personnel monitoring devices and training in accordance with 10 CFR 19.12.

(c) *Surface temperatures.*—Prior to each shipment of licensed material, the licensee shall ascertain that, if the package were in still air at 38°C (100° F) and in the shade, the temperature of any readily accessible surface of the package would not exceed the following applicable limit:

(1) 50°C (122°F) for a package in a consignment less than full load, or

(2) 82°C (180°F) for a package in a full load consignment.

(d) *External radioactive contamination.*—Prior to each shipment of licensed material, the licensee shall ascertain that the level of nonfixed (removable) radioactive contamination on all external surfaces of each package is as low as practicable, and, when the package is subjected to the normal conditions of transport specified in Appendix A:

(1) Except as provided in (2), no level will exceed the levels in Table VI of this part when averaged over any 300 cm^2 area of the package surface; and

Table VI.—*Maximum Permissible Levels of Non-fixed Radioactive Contamination*

Contaminant	Maximum permissible level	
	$\mu Ci/cm^2$	dpm/cm^2
Beta-gamma emitting radionuclides; all radionuclides with half-lives less than ten days; nautural uranium; natural thorium; uranium-235; uranium-238; thorium-232; thorium-228 and thorium-230 when contained in ores or physical concentrates	10^{-4}	220
All other alpha emitting radionuclides	10^{-5}	22

(2) For packages shipped as full load by rail or highway, no level will exceed either the levels in Table VI of this part at the time of shipment or ten times those levels at any time during transport, when averaged over any 300 cm^2 area of the package surface.

§ 71.55 Opening instructions.

Prior to delivery of a package to a carrier for transport, the licensee shall ensure that any special instructions needed to safely open the package have been sent to or otherwise made available to the consignee.

§ 71.61 Reports.

The licensee shall report to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, within 30 days any instance in which there is significant reduction in the effectiveness of any authorized packaging during use.

§ 71.62 Records.

(a) Each licensee shall maintain for a period of 2 years after shipment a record of each shipment of fissile material or of a Type B quantity of radioactive material, showing, where applicable:

(1) Identification of the packaging by model number;

(2) Details of any significant defects in the packaging, with the means employed to repair the defects and prevent their recurrence;

(3) Volume and identification of coolant;

(4) Type and quantity of licensed material in each package, and the total quantity of each shipment;

(5) For each item of irradiated fissile material:

(i) Identification by model number and/or serial number;

(ii) Irradiation and decay history to the extent appropriate to demonstrate that its nuclear and thermal characteristics comply with license conditions; and

(iii) Any abnormal or unusual condition relevant to radiation safety.

(6) Date of the shipment;

(7) For Fissile Class III and for Type B(M) packages, any special controls exercised;

(8) Name and address of the transferee;

(9) Address to which the shipment was made; and

(10) Results of the determinations required by § 71.54.

(b) The licensee shall make available to the Commission for inspection, upon reasonable notice, all records required by this part.

(c) The licensee shall maintain, during the life of the packaging to which they pertain, sufficient quality assurance records to furnish documentary evidence of the quality of packaging components which have safety significance and of services affecting such quality, including records of the results of the determinations required by § 71.53, and of monitoring, inspection and auditing of work performance during the design, fabrication, assembly, testing, modification, maintenance and repair of the packaging.

§ 71.63 Inspection and tests.

(a) The licensee shall permit the Commission at all reasonable times to inspect the licensed material, packaging, and premises and facilities in which the licensed material or packaging are used, produced, tested, stored or shipped.

(b) The licensee shall perform, and permit the Commission to perform, such tests as the Commission deems necessary or appropriate for the administration of the regulations in this chapter.

(c) The licensee shall notify the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, at least 45 days prior to fabrication of a package to be used for the shipment, in that package, of radioactive material having a decay heat load in excess of 5 kW or with a maximum normal operating pressure in excess of 103 kilopascal (15 psig).

§ 71.64 Violations.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Atomic Energy Act of 1954, as amended, (the Act) or Title II of the Energy Reorganization Act of 1974, as amended, or any regulation or order issued thereunder. A court order may be obtained for the payment of a civil penalty imposed pursuant to section 234 of the Act for violation of sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Act, or section 206 of the Energy Reorganization Act of 1974, as amended, or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license issued thereunder, or for any violation for which a license may be revoked under section 186 of the Act. Any person who willfully violates any provision of the Act or any regulation or order issued thereunder may be guilty of a crime, and, upon conviction, may be punished by fine or imprisonment or both, as provided by law.

Appendix A—Normal Conditions of Transport

Evaluation of each package design under normal conditions of transport shall include a determination of the effect on that design of the conditions and tests listed in this appendix. Separate specimens may be used for the free drop test, the compression test and the penetration test provided that each specimen is subjected to the water spray test before being subjected to any of the other tests.

With respect to the initial conditions for the tests in this appendix, except for the water immersion tests, the demonstration of compliance shall be based on the assumption that the ambient temperature preceding and following the tests remains constant at that value between −29° C (−29° F) and +38° C (100° F) which is most unfavorable for the feature under consideration. The initial internal pressure within the containment system shall be considered to be the maximum normal operating pressure, unless a lower internal pressure consistent with the ambient temperature considered to precede and follow the tests is more unfavorable.

Normal Conditions of Transport

(1) Heat—An ambient temperature of 54° C (130° F) in still air, and daily average solar radiation of 450 watts/m² with a daily maximum of 900 watts/m².

(2) Cold—An ambient temperature of −40° C (−40° F) in still air and shade.

(3) Reduced external pressure—An external pressure of 24.5 kilopascal (3.5 psia).

(4) Increased external pressure—An external pressure of 172 kilopascal (25 psi) gauge.

(5) Vibration—Vibration normally incident to transport.

(6) Water spray—A water spray that simulates exposure to rainfall of approximately 5 cm (2 in.) per hour for at least one hour.

(7) Free drop—Between 1½ and 2½ hours after the conclusion of the water spray test, a free drop through the distance specified below, onto a flat essentially unyielding horizontal surface, striking the surface in a position for which maximum damage is expected. For Fissile Class II packages, the free drop shall be preceded by a free drop from a height of 0.3 m (1 ft.) on each corner or, in the case of a cylindrical Fissile Class II package, onto each of the quarters of each rim.

Package Mass (kg)	Package Mass (pounds)	Free Drop Distance (m)	Free Drop Distance (ft)
5,000 or less...	11,000	1.2	4
5,000 to 10,000.	11,000 to 22,000.	0.9	3
10,000 to 15,000.	22,000 to 33,000.	0.6	2
more than 15,000.	33,000	0.3	1

(8) Corner drop—A free drop onto each corner of the package in succession, or in the case of a cylindrical package onto each quarter of each rim, from a height of 0.3 m (1 ft.) onto a flat essentially unyielding horizontal surface. This test applies only to fiberboard or wood rectangular packages not exceeding 50 kg (110 pounds) and fiberboard or wood cylindrical packages not exceeding 100 kg (220 pounds).

(9) Compression—The package shall be subjected, for a period of 24 hours, to a compressive load applied uniformly to the top and bottom of the package in the position in which the package would normally be transported. The load shall be the greater of the following:

(i) The equivalent of 5 times the weight of the package;

(ii) The equivalent of 12.75 kilopascal (1.85 lb/in²) multiplied by the vertically projected area of the package.

(10) Penetration—Impact of the hemispherical end of a vertical steel cylinder of 3.2 cm (1¼ in) diameter and 6 kg (13 lb) mass, dropped from a height of 1 m (40 in) onto the exposed surface of the package which is expected to be most vulnerable to puncture. The long axis of the cylinder shall be perpendicular to the package surface.

Appendix B—Hypothetical Accident Conditions

The hypothetical accident conditions in paragraphs (a) through (d) are to be applied sequentially, in the order indicated, to determine their cumulative effect on a package or array of packages. A separate specimen may be used for the water immersion conditions specified in paragraph (e).

With respect to the initial conditions for the tests of this appendix, except for the

water immersion tests, the demonstration of compliance shall be based on the assumption that the ambient temperature preceding and following the tests remains constant at that value between −29°C (−20°F) and +38°C (100°F) which is most unfavorable for the feature under consideration. The initial internal pressure within the containment system shall be considered to be the maximum normal operating pressure, unless a lower internal pressure consistent with the ambient temperature assumed to precede and follow the tests is more unfavorable.

(a) *Free Drop*—A free drop of the specimen through a distance of 9 m (30 ft) onto a flat essentially unyielding horizontal surface, striking the surface in a position for which maximum damage is expected.

(b) *Puncture*—A free drop of the specimen through a distance of 1 m (40 in) in a position for which maximum damage is expected, onto the upper end of a solid, vertical, cylindrical, mild steel bar mounted on an essentially unyielding horizontal surface. The bar shall be 15 cm (6 in) in diameter, with the top horizontal and its edge rounded to a radius of not more than 6 mm (¼ in) and of such a length as to cause maximum damage to the package, but not less than 20 cm (8 in) long. The long axis of the bar shall be vertical.

(c) *Thermal*—Exposure of the whole specimen for not less than 30 minutes to a heat flux not less than that of a radiation environment of 800°C (1472°F) with an emissivity coefficient of at least 0.9. For purposes of calculation, the surface absorptivity shall be either that value which the package may be expected to possess if exposed to a fire or 0.8, whichever is greater. In addition, when significant, convective heat input shall be included on the basis of still ambient air at 800°C (1472°F). Artificial cooling shall not be applied after cessation of external heat input, and any combustion of materials of construction shall be allowed to proceed until it terminates naturally. The effects of solar radiation can be neglected prior to and during the test but insolation as specified in paragraph (a)(1) of Appendix A shall be assumed for the period following the 30 minute exposure to fire conditions.

(d) *Immersion—fissile material*—For fissile material in those cases where water inleakage has not been assumed for criticality analysis, the specimen shall be immersed under a head of water of at least 0.9 m (3 ft) for a period of not less than eight hours and in the attitude for which maximum leakage is expected. For this test an ambient temperature of 38°C (100°F) is not required.

(e) *Immersion—all packages*—Either the damaged specimen or a separate undamaged specimen shall be immersed under a head of water of at least 15 m (49 ft) for a period of not less than eight hours. For test purposes, an external pressure of water of 147 kilopascal (21 psi) gauge will be considered to meet these conditions.

APPENDIX C—DETERMINATION OF A_1 AND A_2

I. *Single radionuclides.*—(1) For single radionuclides of known identity, the value of A_1 and A_2 are given in Table C–1. The values of A_1 and A_2 are also applicable for radionuclides contained in (α, n) or (γ, n) neutron sources.

(2) For any single radionuclide whose identity is known, but which is not listed in Table C–1, the values of A_1 and A_2 shall be determined according to the following procedure:

(a) If the radionuclide emits only one type of radiation, A_1 shall be determined according to the rules in paragraphs (i), (ii), (iii) and (iv) of this paragraph. For radionuclides emitting different kinds of radiation, A_1 shall be the most restrictive value of those determined for each individual radiation. However, in both cases A_1 shall be restricted to a maximum of 1000 Ci. If a parent nuclide decays into a shorter lived daughter, of a half-life not greater than 10 days, A_1 shall be calculated for both the parent and the daughter, and the more limiting of the two values shall be assigned to the parent nuclide.

(i) For gamma emitters, A_1 is determined by the expression:

$A_1 = 9/$ curies

where is the gamma-ray constant, corresponding to the dose in R/h at 1 m per Ci; the number 9 results from the choice of 1 rem/h at a distance of 3 m as the reference dose-equivalent rate.

(ii) For X-ray emitters, A_1 is determined by the atomic number of the nuclide:

for $Z < 55$—$A_1 = 1000$ Ci
for $Z > 55$—$A_1 = 200$ Ci

where Z is the atomic number of the nuclide.

(iii) For beta emitters, A_1 is determined by the maximum beta energy (E_{max}) according to Table C–2;

(iv) For alpha emitters A_1 is determined by the expression:

$A_1 = 1000\ A_3$

Where A_3 is the value listed in Table C–3;

(b) A_2 shall be the more restrictive of the following two values:

(i) The corresponding A_1; and

(ii) The value A_3 obtained from Table C–3.

(3) For any single radionuclide whose identity is unknown, the value of A_1 shall be taken to be 2 Ci and the value of A_2 shall be taken to be 0.002 Ci. However, if the atomic number of the radionuclide is known to be less than 82, the value of A_1 shall be taken to be 10 Ci and the value of A_2 shall be taken to be 0.4 Ci.

II. *Mixtures of radionuclides, including radioactive decay chains.*—(1) For mixed fission products the following activity limits may be assumed, if a detailed analysis of the mixture is not carried out:

$A_1 = 10$ Ci
$A_2 = 0.4$ Ci

(2) A single radioactive decay chain in which the radionuclides are present in their naturally occurring proportions and in which no daughter nuclide has a half-life either longer than 10 days or longer than that of the parent nuclide shall be considered a single radionuclide. The activity to be taken into account and the A_1 or A_2 value to be applied shall be those corresponding to the parent nuclide of that chain. However, in the case of radioactive decay chains in which any daughter nuclide has a half-life either longer than 10 days or greater than that of the parent nuclide, the parent and such daughter nuclides shall be considered as mixtures of different nuclides.

(3) In the case of a mixture of different radionuclides, where the identity and activity of each radionuclide are known, the permissible activity of each radionuclide R_1, $R_2 \ldots R_n$ shall be such that $F_1 + F_2 + \ldots F_n$ is not greater than unity, where

$$F_1 = \frac{\text{Total activity of } R_1}{A_i(R_1)}$$

$$F_2 = \frac{\text{Total activity of } R_2}{A_i(R_2)}$$

$$F_n = \frac{\text{Total activity of } R_n}{A_i(R_n)}$$

$A_i(R_1, R_2 \ldots R_n)$ is the value of A_1 or A_2 as appropriate for the nuclide $R_1, R_2 \ldots R_n$.

(4) When the identity of each radionuclide is known but the individual activities of some of the radionuclides are not known, the formula given in paragraph (3) shall be applied to establish the values of A_1 or A_2 as appropriate. All the radionuclides whose individual activities are not known (their total activity will, however, be known) shall be classed in a single group and the most restrictive value of A_1 and A_2 applicable to any one of them shall be used as the value of A_1 or A_2 in the denominator of the fraction.

(5) Where the identity of each radionuclide is known but the individual activity of none of the radionuclides is known, the most restrictive value of A_1 or A_2 applicable to any one of the radionuclides present shall be adopted as the applicable value.

(6) When the identity of none of the nuclides is known, the value of A_1 shall be taken to be 2 Ci and the value of A_2 shall be taken to be 0.002 Ci. However, if alpha emitters are known to be absent, the value of A_2 shall be taken to be 0.4 Ci.

Table C–1.—*A_1 and A_2 Values for Radionuclides* [1]

Symbol of radionuclide	Element and atomic number	A1(Ci)	A2(Ci)
^{227}Ac	Actinium (89)	1000	0.003
^{228}Ac		10	4
^{105}Ag	Silver (47)	40	40
^{110m}Ag		7	7
^{111}Ag		100	100
^{241}Am	Americium (95)	8	0.008
^{243}Am		8	0.008
^{37}Ar (compressed or uncompressed)	Argon (18)	1000	1000
^{41}Ar (uncompressed)		20	20
^{41}Ar (compressed)		1	1
^{73}As	Arsenic (33)	1000	400
^{74}		20	20
^{76}As		10	10
^{77}As		300	300
^{211}At	Astatine (85)	200	7
^{193}Au	Gold (79)	200	200
^{196}Au		30	30
^{198}Au		40	40
^{199}Au		200	200
^{131}Ba	Barium (56)	40	40
^{133}Ba		40	10
^{7}Be	Beryllium (4)	300	300
^{206}Bi	Bismuth (83)	5	5
^{207}Bi		10	10
^{210}Bi (RaE)		100	4
^{212}Bi		6	6
^{249}Bk	Berkelium (97)	1000	1
^{82}Br	Bromine (35)	6	6
^{14}C	Carbon (6)	1000	100
^{45}Ca	Calcium (20)	1000	40
^{47}Ca		20	20
^{109}Cd	Cadmium (48)	1000	70
^{113m}CD		30	30
^{115}Cd		80	80
^{139}Ce	Cerium (58)	100	100
^{141}Ce		300	200
^{143}Ce		60	60
^{144}Ce		10	7
^{248}Cf	California (98)	2	0.002
^{250}Cf		7	0.007
^{252}Cf		2	0.009
^{36}Cl	Chlorine (17)	300	30
^{38}Cl		10	10
^{242}Cm	Curium (96)	200	0.2
^{243}Cm		9	0.009
^{244}Cm		10	0.01
^{245}Cm		6	0.006
^{246}Cm		6	0.006
^{56}Co	Cobalt (27)	5	5
^{57}Co		90	90
^{58m}Co		1000	1000
^{58}Co		20	20
^{60}Co		7	7
^{51}Cr	Chromium (24)	600	600
^{131}Cs	Cesium (55)	1000	1000
^{134m}Cs		1000	1000
^{134}Cs		10	10
^{135}Cs		1000	1000
^{136}Cs		7	7
^{137}Cs		30	20
^{64}Cu	Copper (29)	80	80
^{165}Cy	Dysprosium (66)	100	100
^{166}Dy		1000	200
^{169}Er	Erbium (68)	1000	300
^{171}Er		50	50
^{152m}Eu	Eurpium (63)	30	30
^{152}Eu		20	20
^{154}Eu		10	5
^{155}Eu		400	90
^{18}F	Fluorine (9)	20	20
^{52}Fe	Iron (26)	6	6
^{55}Fe		1000	1000
^{59}Fe		10	10
^{72}Ga	Gallium (31)	7	7
^{153}Gd	Gadolinium (64)	200	100
^{159}Gd		300	300
^{71}Ge	Germanium (32)	1000	1000
^{3}H	Hydrogen (1) see T-Tritium		
^{181}Hf	Hafnium (72)	30	30
^{197m}Hg	Mercury (80)	200	200
^{197}Hg		200	200
^{203}Hg		80	80
^{166}Ho	Holmium (67)	30	30
^{120}I	Iodine (53)	1000	70
^{126}I		40	10
^{129}I		1000	2
^{131}I		40	10
^{132}I		7	7
^{133}I		30	30

Table C-1.—*A_1 and A_2 Values for Radionuclides* [1]—Continued

Symbol of radionuclide	Element and atomic number	A1(Ci)	A2(Ci)
^{134}I		8	8
^{135}I		10	10
^{113m}In	Indium (49)	60	60
^{114m}In		30	20
^{115m}In		100	100
^{190}Ir	Iridium (77)	10	10
^{192}Ir		20	20
^{194}Ir		10	10
^{42}K	Potassium (19)	10	10
^{85m}Kr (uncompressed)	Krypton (36)	100	100
^{85m}Kr (compressed)		3	3
^{85}Kr (uncompressed)		1000	1000
^{85}Kr (compressed)		5	5
^{87}Kr (uncompressed)		20	20
^{85}Kr (compressed)		0.6	0.6
^{140}La	Lanthanum (57)	30	30
LLS	Low level solid radioactive material—see § 71.4(g).		
LSA	Low specific activity material—see § 71.4(h)		
^{177}Lu	Lutetium (71)	300	300
MFP	Mixed fission products	10	0.4
^{28}Mg	Magnesium (12)	6	6
^{52}Mn	Manganese (25)	5	5
^{54}Mn		20	20
^{56}Mn		5	5
^{99}Mo	Molybdenum (42)	100	100
^{22}Na	Sodium (11)	8	8
^{24}Na		5	5
^{93m}Nb	Niobium (41)	1000	200
^{95}Nb		20	20
^{97}Nb		20	20
^{147}Nd	Neodymium (60)	100	100
^{149}Nd		30	30
^{59}Ni	Nickel (28)	1000	900
^{63}Ni		1000	100
^{65}Ni		10	10
^{237}Np	Neptunium (93)	5	0.005
^{239}Np		200	200
^{185}Os	Osmium (76)	20	20
^{191}Os		600	400
^{191m}Os		200	200
^{193}Os		100	100
^{33}P	Phosphorus (15)	30	30
^{230}Pa	Protoactinium (91)	20	0.8
^{231}Pa		2	0.002
^{233}Pa		100	100
^{201}Pb	Lead (82)	20	20
^{210}Pb		100	0.2
^{212}Pb		6	5
^{103}Pd	Palladium (46)	1000	700
^{109}Pd		100	100
^{147}Pm	Promethium (61)	1000	80
^{149}Pm		100	100
^{210}Po	Polonium (84)	200	0.2
^{142}Pr	Praseodymium (59)	10	10
^{143}Pr		300	200
^{191}Pt	Platinum (78)	100	100
^{192}Pt		200	200
^{193m}Pt		300	300
^{197}Pt		300	300
^{238}Pu	Plutonium (94)	3	0.003
^{239}Pu		2	0.002
^{240}Pu		2	0.002
^{241}Pu		1000	0.1
^{242}Pu		3	0.003
^{223}Ra	Radium (88)	50	0.2
^{224}Ra		6	0.5
^{226}Ra		10	0.05
^{228}Ra		10	0.05
^{86}Rb	Rubidium (37)	30	30
^{87}Rb		Unlimited	Unlimited
Rb (natural)		Unlimited	Unlimited
^{186}Re	Rhenium (75)	100	100
^{187}Re		Unlimited	Unlimited
^{188}Re		10	10
Re (natural)		Unlimited	Unlimited
^{103m}Rh	Rhodium (45)	1000	1000
^{105}Rh		200	200
^{222}Rn	Radon (86)	10	2
^{97}Ru	Ruthenium (44)	80	80
^{103}Ru		30	30
^{105}Ru		20	20
^{106}Ru		10	7
^{35}S	Sulphur (16)	1000	300
^{122}Sb	Antimony (51)	30	30
^{124}Sb		5	5
^{125}Sb		40	30
^{46}Sc	Scandium (21)	8	8
^{47}Sc		200	200

Table C-1.—*A*$_1$ *and* $_2$*Values for Radionuclides* [1]—Continued

Symbol of radionuclide	Element and atomic number	A1(Ci)	A2(Ci)
^{46}Sc		5	5
^{75}Se	Selenium (34)	40	40
^{31}Si	Silicon (14)	100	100
^{147}Am	Samarium (62)	Unlimited	Unlimited
^{151}Sm		1000	90
^{153}Sm		300	300
^{113}Sn	Tin (50)	60	60
^{125}Sn		10	10
^{89m}Sr	Strontium (38)	80	80
^{85}Sr		30	30
^{83m}Sr		50	50
^{89}Sr		100	40
^{90}Sr		10	0.4
^{91}Sr		10	10
^{92}Sr		10	10
T (Uncompressed)	Tritium (1)	1000	1000
T (compressed)		1000	1000
T (activated luminous paint		1000	1000
T (adsorbed on solid carrier)		1000	1000
T (tritiated water)		1000	1000
T (other forms)		20	20
^{182}Ta	Tantalum (73)	20	20
^{160}Tb	Terbium (65)	20	20
^{99m}Tc	Technetium (43)	1000	1000
^{96}Tc		6	6
^{97m}Tc		1000	200
^{97}Tc		1000	100
^{99m}Tc		100	100
^{99}Tc		1000	80
^{123m}Te	Tellurium (52)	1000	100
^{125m}Te		300	40
^{127}Te		300	300
^{129m}Te		30	30
^{129}Te		100	100
^{131m}Te		10	10
^{132}Te		7	7
^{227}Th	Thorium (90)	200	0.2
^{228}Th		6	0.008
^{230}Th		3	0.003
^{231}Th		1000	1000
^{232}Th		Unlimited	Unlimited
^{234}Th		10	10
Th (natural)		Unlimited	Unlimited
Th (irradiated) [2]			
^{200}Tl	Thallium (81)	20	20
^{201}Tl		200	200
^{202}Tl		40	40
^{204}Tl		300	30
^{170}Tm	Thulium (69)	300	40
^{171}Tm		1000	100
^{230}U	Uranium (92)	100	0.1
^{232}U		30	0.03
^{233}U		100	0.1
^{234}U		100	0.1
^{235}U		100	0.2
^{236}U		200	0.2
^{238}U		Unlimited	Unlimited
U (natural)		Unlimited	Unlimited
U (enriched) < 20%		Unlimited	Unlimited
U (enriched) 20% or greater		100	0.1
U (depleted)		Unlimited	Unlimited
U (irradiated) [3]			
^{48}V	Vanadium (23)	6	6
^{181}W	Tungsten (74)	200	100
^{185}W		1000	100
^{187}W		40	40
^{133m}Xe (compressed)	Xenon (54)	10	10
^{133m}Xe (uncompressed)		100	100
^{133}Xe (uncompressed)		1000	1000
^{133}Xe (compressed)		5	5
^{135}Xe (uncpmpressed)		70	70
^{135}Xe (compressed)		2	2
^{90}Y	Yttrium (39)	10	10
^{91M}Y		30	30
^{91}Y		30	30
^{92}Y		10	10
^{93}Y		10	10
^{175}Yb	Ytterbium (70)	400	400
^{65}Zn	Zinc (30)	30	30
^{69m}Zn		40	40
^{69}Zn		300	300
^{93}Zr	Zirconium (40)	1000	200
^{95}Zr		20	20
^{97}Zr		20	20

[1] In Table C-1, "uncompressed gas" means at a pressure not exceeding ambient atmospheric pressure at the time the containment system is closed. A gas which has escaped from a package is considered to be uncompressed.

[2] The values for A1 and A2 must be calculated in accordance with the procedure specified in Appendix C, paragraph II(3), taking into account the activity of the fission products and of the uranium-233 in addition to that of the thorium.

Table C-1.—*A1 and A2 Values for Radionuclides* [1]—Continued

Symbol of radionuclide	Element and atomic number	A1(Ci)	A2(Ci)

[1] The values for A1 and A2 must be calculated in accordance with the procedure specified in Appendix C, paragraph II(3), taking into account the activity of the fission products and plutonium isotopes in addition to that of the uranium.

Table C-2.—*Relationship Between A [1] and E^{max} for Beta Emitters*

E^{max} (MeV)	A [1] (Ci)
<0.5	1000
0.5-<1.0	300
1.0-<1.5	100
1.5-<2.0	30
<>2.0	10

Table C-3—*Relationship Between A [3] and the Atomic Number of the Radionuclide*

Atomic No.	A [3]		
	Half-life less than 1,000 days	Half-life 1000 days to 10^8 years	Half-life greater than 10^8 years
1 to 81	3 Ci	.05 Ci	3 Ci
82 and above	002 Ci	.002 Ci	3 Ci

Appendix D—Requirements for Special Form Radioactive Material

(a) *General.* (1) Special form radioactive material must either be an indispersible solid or be contained in a sealed capsule which can be opened only by destructive means.

(2) The solid material or capsule shall have at least one dimension not less than 5mm.

(3) The qualification tests for special form are the impact test, the percussion test, the bending test, and the heat test.

(4) Specimens (solid radioactive material or capsules) to be tested shall be prepared as normally presented for transport. The radioactive material shall be duplicated as closely as practicable.

(5) A different specimen may be used for each of the tests.

(6) The specimen shall not break or shatter when subjected to the impact, percussion or bending tests.

(7) The specimen shall not melt or disperse when subjected to the heat test.

(8) After each test, a leaching assessment shall be performed on the specimen by a method no less sensitive than the methods given in paragraph (c) of this appendix.

(b) *Test methods.* (1) Impact test: the specimen shall fall onto a flat, horizontal, essentially unyielding surface from a height of 9 m (30 ft).

(2) *Percussion test:* the specimen shall be placed on a sheet of lead which is supported by a smooth solid surface and struck by the flat face of a steel billet so as to produce an impact equivalent to that resulting from a free fall of 1.4 kg (3 lb.) through 1 m (40 in.). The flat face of the billet shall be 25 mm (1 in.) in diameter with the edges rounded to a radius of 3 mm (0.12 in.) ±0.3 mm (0.012 in.). The lead, of hardness number 3.5 to 4.5 on the Vickers scale and not more than 25 mm (1 in.) thick, shall cover an area greater than that covered by the specimen. A fresh surface of lead shall be used for each impact. The billet shall strike the specimen so as to cause maximum damage.

(3) *Bending test:* the test is applicable only to long, slender sources with both a minimum length of 10 cm (4 in.) and a length to minimum with ratio not less than 10. The specimen shall be rigidly clamped in a horizontal position so that one half of its length protrudes from the face of the clamp. The orientation of the specimen shall be such that the specimen will suffer maximum damage when its free end is struck by the flat face of a steel billet. The billet shall strike the specimen so as to produce an impact equivalent to that resulting from a free verticle fall of 1.4 kg (3 lb.) through 1 m. The flat face of the billet shall be 25 mm (1 in.) in diameter with the edges rounded off to a radius of 3 mm (0.12 in.) ±0.3 mm (0.012 in.).

(4) *Heat test:* the specimen shall be heated in air to a temperature of not less than 800° C (1472° F) and held at that temperature for a period of 10 minutes and shall then be alowed to cool.

(c) Leaching assessment procedures.

(1) For indispersible solid material:

(i) The specimen shall be immersed for 7 days in water at ambient temperature. The water shall have a pH of 6–8 and a maximum conductivity of 10 μmho/cm at 20° C (68° F).

(ii) The water with specimen shall then be heated to a temperature of 50°±5° C (122°±9° F) and maintained at this temperature for 4 hours.

(iii) The activity of the water shall then be determined.

(iv) The specimen shall then be stored for at least 7 days in still air of humidity not less than 90% at 30° C (86° F).

(v) The specimen shall then be immersed in water of the same specification as in (i) above the water with specimen heated to 50°±5° C (122°±9° F) and maintained at this temperature for 4 hours.

(vi) The activity of the water shall then be determined.

(vii) The activity determined in paragraphs (c)(1)(iii) and (vi) shall not exceed 0.05 μCi.

(2) For encapsulated material:

(i) The specimen shall be immersed in water at ambient temperature. The water shall have a pH of 6–8 with a maximum conductivity of 10 μmho/cm. The water and specimen shall be heated to a temperature of 50°±5° C (122°±9° F) and maintained at this temperature for 4 hours.

(ii) The activity of the water shall then be determined.

(iii) The specimen shall then be stored for at least 7 days in still air at a temperature not less than 30° C (86° F).

(iv) Repeat paragraph (c)(2)(i) of this appendix.

(v) The activity of the water shall then be determined.

(vi) The activities determined in paragraphs (c)(2)(ii) and (v) shall not exceed 0.05 μCi.

Appendix E—Quality Assurance Requirements

This appendix describes quality assurance requirements applying to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, and modification of components of packaging which are significant to safety. As used in this appendix, "quality assurance" comprises all those planned and systematic actions necessary to provide adequate confidence that a system or component will perform satisfactorily in service. Quality assurance includes quality control, which comprises those quality assurance actions related to control of the physical characteristics and quality of the material or component to predetermined requirements.

1. *Organization.*—The licensee [11] shall be responsible for the establishment and execution of the quality assurance program. The licensee may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part thereof, but shall retain responsibility therefor. The authority and duties of persons and organizations performing activities affecting the safety-related functions of structures, systems, and components shall be clearly

[11] While the term "licensee" is used in these criteria, the requirements are applicable to whatever design, fabrication, assembly and testing of the package is accomplished with respect to a package prior to the time a package approval is issued.

established and delineated in writing. These activities include both the performing functions of attaining quality objectives and the quality assurance functions. The quality assurance functions are those of (a) assuring that an appropriate quality assurance program is established and effectively executed and (b) verifying, such as by checking, auditing, and inspection, that activities affecting the safety-related functions have been correctly performed. The persons and organizations performing quality assurance functions shall have sufficient authority and organizational freedom to identify quality problems; to initiate, recommend or provide solutions; and to verify implementation of solutions. Such persons and organizations performing quality assurance functions shall report to a management level such that this required authority and organizational freedom, including sufficient independence from cost and schedule when opposed to safety considerations, are provided. Because of the many variables involved, such as the number of personnel, the type of activity being performed, and the location or locations where activities are performed, the organizational structure for executing the quality assurance program may take various forms provided that the persons and organizations assigned the quality assurance functions have this required authority and organizationa freedom. Irrespective of the organizational structure, the individual(s) assigned the responsibility for assuring effective execution of any portion of the quality assurance program at any location where activities subject to this Appendix are being performed shall have direct access to such levels of management as may be necessary to perform this function.

2. *Quality Assurance Program.* The licensee shall establish at the earliest practicable time, consistent with the schedule for accomplishing the activities, a quality assurance program which complies with the requirements of this appendix. The quality assurance program shall be documented by written procedures or instructions, and shall be carried out in accordance with those procedures throughout the period during which packaging is used. The licensee shall identify the material and components to be covered by the quality assurance program and the major organizations participating in the program, together with the designed functions of these organizations. The quality assurance program shall provide control over activities affecting the quality of the identified materials and components to an extent consistent with their importance to safety, and as necessary to assure conformance to the approved design of each individual package used for the shipment of radioactive material. Activities affecting quality shall be accomplished under suitably controlled conditions. Controlled conditions include the use of appropriate equipment; suitable environmental conditions for accomplishing the activity, such as adequate cleanness; and assurance that all prerequisites for the given activity have been satisfied. The program shall take into account the need for special controls, processes, test equipment, tools and skills to attain the required quality, and the need for verification of quality by inspection and test.

The licensee shall base the requirements and procedures of his quality assurance program on the following considerations concerning the complexity and proposed use of the package and its components:

(1) The importance of malfunction or failure of the item to safety;

(2) The design and fabrication complexity or uniqueness of the item;

(3) The need for special controls and surveillance over processes and equipment;

(4) The degree to which functional compliance can be demonstrated by inspection or test; and

(5) The quality history and degree of standardization of the item.

The program shall provide for indoctrination and training of personnel performing activities affecting quality as necessary to assure that suitable proficiency is achieved and maintained. The licensee shall review the status and adequacy of the quality assurance program at established intervals. Management of other organizations participating in the quality assurance program shall regularly review the status and adequacy of that part of the quality assurance program which they are executing.

3. *Design Control.*—Measures shall be established to assure that applicable regulatory requirements and the package design, as specified in the license, for those materials and components to which this appendix applies, are correctly translated into specifications, drawings, procedures and instructions. These measures shall include provisions to assure that appropriate quality standards are specified and included in design documents and that deviations from such standards are controlled. Measures shall be established for the selection and review for suitability of application of materials, parts, equipment, and processes that are essential to the safety-related functions of the materials, parts, and components of the packaging.

Measures shall be established for the identification and control of design interfaces and for coordination among participating design organizations. These measures shall include the establishment of written procedures among participating design organizations for the review, approval, release, distribution, and revision of documents involving design interfaces. The design control measures shall provide for verifying or checking the adequacy of design, such as by the performance of design reviews, by the use of alternate or simplified calculational methods, or by the performance of a suitable testing program. The verifying or checking process shall be performed by individuals or groups other than those who performed the original design, but who may be from the same organization. Where a test program is used to verify the adequacy of a specific design feature in lieu of other verifying or checking processes, it shall include suitable qualification testing of a prototype or sample unit under the most adverse design conditions. Design control measures shall be applied to items such as the following: criticality physics, radiation shielding, stress, thermal, hydraulic, and accident analyses; compatibility of materials; accessibility for inservice inspection, maintenance and repair; features to facilitate decontamination; and delineation of acceptance criteria for inspections and tests.

Design changes, including field changes, shall be subject to design control measures commensurate with those applied to the original design. Changes in the conditions specified in the package approval require Commission approval.

4. *Procurement Document Control.*—Measures shall be established to assure that applicable requirements of this part which are necessary to assure adequate quality are suitably included or referenced in the documents for procurement of material, equipment, and services, whether purchased by the licensee or by his contractors or subcontractors. To the extent necessary, the licensee shall require contractors or subcontractors to provide a quality assurance program consistent with the pertinent provisions of this part.

5. *Instructions, Procedures and Drawings.*—Activities affecting quality shall be prescribed by documented instructions, procedures, or drawings of a type appropriate to the circumstances and shall be accomplished in accordance with these instructions, procedures, or drawings. These shall include appropriate quantitative or qualitative acceptance criteria for determining that important activities have been satisfactorily accomplished.

6. *Document Control.*—Measures shall be established to control the issuance of documents, such as instructions, procedures, and drawings, including changes thereto, which prescribe all activities affecting quality. These measures shall assure that documents, including changes, are reviewed for adequacy and approved for release by authorized personnel and are distributed and used at the location where the prescribed activity is performed. Changes to documents shall be reviewed and approved by the same organizations that performed the original review and approval unless the applicant designates another organization.

7. *Control of Purchased Material, Equipment, and Services.*—Measures shall be established to assure that purchased material, equipment, and services, whether purchased directly or through contractors and subcontractors, conform to the procurement documents. These measures shall include provisions, as appropriate, for source evaluation and selection, objective evidence of quality furnished by the contractor or subcontractor, inspection at the contractor or subcontractor source, and examination of products upon delivery. Documentary evidence that material and equipment conform to the procurement specifications shall be available prior to installation or use of such material and equipment. This documentary evidence shall be retained by or be available to the licensee and shall be sufficient to identify the specific requirements met by the purchased material and equipment. The effectiveness of the control of quality by contractors and subcontractors

shall be assessed by the licensee or designee at intervals consistent with the importance, complexity and quantity of the product or services.

8. *Identification and Control of Materials, Parts and Components.*—Measures shall be established for the identification and control of materials, parts, and components. These measures shall assure that identification of the item is maintained by heat number, part number, or other appropriate means, either on the item or on records traceable to the item, as required throughout fabrication, installation, and use of the item. These identification and control measures shall be designed to prevent the use of incorrect or defective materials, parts and components.

9. *Control of Special Processes.*—Measures shall be established to assure that special processes, including welding, heat treating, and nondestructive testing, are controlled and accomplished by qualified personnel using qualified procedures in accordance with applicable codes, standards, specifications, criteria, and other special requirements.

10. *Inspection.*—A program for inspection of activities affecting quality shall be established and executed by or for the organization performing the activity to verify conformance with the documented instructions, procedures, and drawings for accomplishing the activity. Such inspection shall be performed by individuals other than those who performed the activity being inspected. Examination, measurements, or tests of material or products processed shall be performed for each work operation where necessary to assure quality. If inspection of processed material or products is impossible or disadvantageous, indirect control by monitoring processing methods, equipment, and personnel shall be provided. Both inspection and process monitoring shall be provided when quality control is inadequate without both. If mandatory inspection hold points, which require witnessing or inspecting by the licensee's designated representative and beyond which work shall not proceed without the consent of its designated representative, are required, the specific hold points shall be indicated in appropriate documents.

11. *Test Control.*—A test program shall be established to assure that all testing required to demonstrate that the packaging components will perform satisfactorily in service is identified and performed in accordance with written test procedures which incorporate the requirements of this part and the requirements and acceptance limits contained in the package approval. The procedures shall include provisions for assuring that all prerequisites for the given test have been met, that adequate test instrumentation is available and used, and that the test is performed under suitable environmental conditions. Test results shall be documented and evaluated to assure that test requirements have been satisfied.

12. *Control of Measuring and Test Equipment.*—Measures shall be established to assure that tools, gages, instruments, and other measuring and testing devices used in activities affecting quality are properly controlled, calibrated, and adjusted at specified times to maintain accuracy within necessary limits.

13. *Handling, Storage and Shipping.*—Measures shall be established to control the handling, storage, shipping, cleaning and preservation of materials and equipment to be used in packaging in accordance with instructions to prevent damage or deterioration. When necessary for particular products, special protective environments, such as inert gas atmosphere, specific moisture content levels and temperature levels shall be specified and provided.

14. *Inspection, Test and Operating Status.*—Measures shall be established to indicate, by the use of markings such as stamps, tags, labels, routing cards, or other suitable means the status of inspections and tests performed upon individual items of the packaging. These measures shall provide for the identification of items which have satisfactorily passed required inspections and tests, where necessary to preclude inadvertent by-passing of such inspections and tests.

Measures shall also be established for indicating the operating status of components of the packaging, such as tagging valves and switches, to prevent inadvertent operation.

15. *Nonconforming Materials, Parts, or Components.*—Measures shall be established to control materials, parts, or components which do not conform to requirements in order to prevent their inadvertent use or installation. These measures shall include, as appropriate, procedures for identification, documentation, segregation, disposition, and notification to affected organizations. Nonconforming items shall be reviewed and accepted, rejected, repaired or reworked in accordance with documented procedures.

16. *Corrective Action.*—Measures shall be established to assure that conditions adverse to quality, such as deficiencies, deviations, defective material and equipment, and nonconformances, are promptly identified and corrected. In the case of a significant condition adverse to quality, the measures shall assure that the cause of the condition is determined and corrective action taken to preclude repetition. The identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken shall be documented and reported to appropriate levels of management.

17. *Quality Assurance Records.*—Sufficient written records shall be maintained to furnish evidence of ativities affecting quality. The records shall include the following: design records, records of use and the results of reviews, inspections, tests audits, monitoring of work performance, and materials analyses. The records shall also include closely-related data such as qualifications of personnel, procedures, and equipment. Inspection and test records shall, as a minimum, identify the inspector or data recorder, the type of observation, the results, the acceptability, and the action taken in connection with any deficiencies noted. Records shall be identifiable and retrievable. Consistent with applicable regulatory requirements, the licensee shall establish requirements concerning record retention, such as duration, location, and assigned responsibility.

18. *Audits.*—A comprehensive system of planned and periodic audits shall be carried out to verify compliance with all aspects of the quality assurance program and to determine the effectiveness of the program. The audits shall be performed in accordance with the written procedures or check lists by appropriately trained personnel not having direct responsibilities in the areas being audited. Audited results shall be documented and reviewed by management having responsibility in the area audited. Followup action, including re-audit of deficient areas, shall be taken where indicated.

Dated at Washington, D.C. this 7th day of August, 1979.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 79-25098 Filed 8-16-79; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Ch. I]

[Docket Nos. RM78-7, RM78-8, RM78-14, RM77-12, RM77-13, RM77-16, RM77-23, RM75-7, RM75-12, RM75-19, RM75-20, RM74-17, and R-417]

Termination of Various Proposed Rulemaking Proceedings

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Order terminating proposed rulemaking proceedings.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has issued the order herein to terminate all proceedings relating to Docket Nos. RM78-7, RM78-8, RM78-14, RM77-12, RM77-13, RM77-16, RM77-23, RM75-7, RM75-12, RM75-19, RM75-20, RM74-17, and R-417. The majority of these proposals have been obviated by various sections of the Natural Gas Policy Act of 1978. The others have been superseded by delegations or other various sections of the Department of Energy Organization Act or the Public Utility Regulatory Policies Act of 1978.

EFFECTIVE DATE: July 19, 1979.

FOR FURTHER INFORMATION CONTACT: Clarence Burris, Office of the General Counsel, Federal Energy Regulatory Commission, Room 8106, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 275-0422.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission

(Commission) [1] hereby gives notice that for the reasons stated below, the above-captioned proposed rulemakings should not be promulgated. Therefore, all proceedings relating to their implementation are terminated.

Summary of Terminated Rulemaking Proceedings

(1) *Proposed Exemptions for Temporary Sale, Delivery or Transportation Arrangements of Natural Gas From Certificate Requirements—(RM78–7).*

RM78–7 was initiated in order to consolidate and modify the previously existing regulations regarding 60-day emergency natural gas purchases. As originally contemplated, RM78–7 would have redefined the transportation and sale in interstate commerce of exempted emergency natural gas sales.

The procedural history of Docket No. RM78–7 is as follows:

(1) A Request for Comments was issued April 14, 1978 (43 FR 15730). A number of issues were raised by the Commission so that the Notice of Proposed Rulemaking in this proceeding could reflect, to the maximum extent possible, the views of interested members of the public. Comments were received and evaluated.

(2) A Notice of Proposed Rulemaking was issued on August 14, 1978 (43 FR 36471, August 17, 1978). Further comments were requested, received, and evaluated as a result of the notice.

Interim Regulations Implementing the Natural Gas Policy Act of 1978 (Pub. L. No. 95–621) (NGPA) (RM79–3) were issued by the Commission on November 29, 1978 (effective December 1, 1978) (43 FR 56448, December 1, 1978). Because of the NGPA, the Commission utilized a different approach for emergency sales of natural gas. Specifically, 18 CFR 157.45 to 157.53 were included in the interim regulations which addressed emergency purchases of natural gas.

Since RM79–3 addressed questions and implemented a rule that RM78–7 was designed to implement, there is no need to continue proceedings relating to RM78–7.

(2) *Disposal of Interests in Lands Within Licensed Projects—(R–417).*

R–417 was originally proposed in order to simplify Commission procedures for the conveyance of lands within the boundaries of licensed hydroelectric power projects. A key element of the proposal was the Commission's intention that such transactions be conducted in accord with sound environmental management principles.

Accordingly, it was proposed that authority to pass upon applications of transfer that were characterized as routine should be delegated to the Secretary of the Commission. All other applications, including those transfers having a possible significant environmental impact, were to be decided by the Commission.

The expected benefits of this approach were twofold: the transfer process in most cases would be expedited, and the Commission would be free to spend its time considering more important matters.

The procedural history of R–417 is as follows:

(1) A Notice of Proposed Rulemaking was issued on April 7, 1971. (36 FR 7020, April 13, 1971) Comments were received and evaluated.

(2) A Renotice of Proposed Rulemaking and Request for Comments was issued on August 3, 1973 (38 FR 21652, August 10, 1973). In response to issues raised by the preliminary comments, the Commission issued a revised version of the proposal. This second version proposed to eliminate any delegations of authority regarding transfer of project lands to the Secretary. It also set down specific guidelines regarding filing schedules. Further comments were received and evaluated. No rulemaking was issued.

On November 7, 1974, a letter from the Chief, Bureau of Power (since October 1977, the Director of the Office of Electric Power Regulation) was sent to all licensees explaining the policy of the Commission regarding transfer of project lands.

On August 14, 1978, the Commission issued RM78–19, Delegation of the Commission's Authority to Various Staff Office Directors. The authority to pass upon applications to convey project lands was delegated to the Director of the Office of Electric Power Regulation under 18 CFR 3.5(g)(4).

The delegation contemplated in R–417 has been dealt with by RM78–19. There is no longer any rationale for further consideration of Docket No. R–417 by the Commission. Therefore, all proceedings relating to R–417 are terminated.

(3) *Revision of §§ 2.56(a), 154.94 and 260.6 of Title 18, Code of Federal Regulatios, to Eliminate Certain Rate Change Filing Requirements —(RM78–14).*

RM78–14 was initiated in order to substitute a single filing for what had previously been a series of filings. Specifically, §§ 2.56(a) and 154.94 were to be amended in order to provide alternative rate change filing requirements with respect to periodic rate escalations and certain tax adjustments.

Rather than require producers to file each time a rate was to escalate, RM78–14 would have allowed a one-time filing in affidavit form to collect rate and tax escalations, provided that they were within the terms of the applicable contracts for the sale of the natural gas.

The proposal also included changes in the annual reporting requirements of Form No. 108, to bring the entire reporting and filing scheme into harmony.

The purpose of these amendment was to eliminate a flood of filings which were no longer considered necessary to the Commission's purpose of setting just and reasonable rates for the sale of natural gas.

The procedural history of RM78–14 is as follows:

(1) A Notice of Proposed Rulemaking was issued on June 9, 1978. (43 FR 26026, June 26, 1978)

The Commission issued a Notice of Proposed Rulemaking, requesting comments on the proposal. Comments were received and reviewed.

Taking into account the comments received, a final regulation was drafted for Commission consideration on September 19, 1978.

(2) The Passage of NGPA and the Interim Regulation promulgated thereunder by the Commission on December 1, 1978, established a pricing scheme for natural gas that in many respects superseded the system under the Natural Gas Act. Sections 104(b)(1)(A), and 106(a) of the NGPA were among the primary pricing sections for the producers of natural gas committed or dedicated to interstate commerce. Because the Commission believed that monthly filings for such procedures were no longer necessary, the Interim Regulations provided a blanket affidavit filing procedure to alleviate the reporting burden placed on such producers, so that quarterly and monthly filings for routine price escalators were no longer required.

Since RM79–3 addresses the questions contemplated in RM78–14, RM78–14 should be terminated.

(4) *Exemption From Certificate Regulations of Certain Sales of Natural Gas Flared Prior to Coal Mining Operations—(RM77–23).*

RM77–23 was originally prepared to stimulate the sale of natural gas produced as a by-product of coal mining operations. By exempting such gas from

[1] The term "Commission" when used in the context of action taken prior to October 1, 1977, refers to the Federal Power Commission; when used otherwise, the reference is to the Federal Energy Regulatory Commission.

Commission certification procedures, the producer would have had an incentive to sell, rather than flare gas. The proposal would have explicitly exempted methane produced as a by-product of a coal mining operation from any rate requirements established by the Commission for the sale of natural gas in interstate commerce.

The procedural history of Docket No. RM77–23 is as follows:

(1) A Notice of Proposed Rulemaking was issued on July 7, 1977. (42 FR 37005, July 19, 1977)

(2) Comments were received by September 7, 1977, and were evaluated.

(3) Section 107 of the NGPA now prescribed the rates to be charged for natural gas of this type. Section 601(a)(1)(A) of the NGPA exempts such gas from any certificate requirements imposed by the Natural Gas Act.

Since the rulemaking has been superceded by the NGPA the need for RM77–23 has been obviated.

(5) *Optional Procedures for Certifying Producer Sales—(RM78–8).*

This proceeding was initiated by a petition from the New York Public Service Commission on April 20, 1978, requesting that the Commission terminate 18 CFR 2.75 relating to optional certificate procedures for gas producers.

Although characterized and docketed as a rulemaking, the petition has never given rise to a Notice of Proposed Rulemaking or any similar Commission proceeding. Section 2.75 provides gas producers the opportunity to obtain a higher rate than the national rate for new gas reserves not already dedicated to the interstate market or from a well commenced on or after April 6, 1972.

The provisions of § 2.75 have been effectively superseded by section 104(b)(2) and 106(c) of the NGPA.

Therefore, all proceedings relating to RM78–8 should be terminated.

(6) *Natural Gas Rates for the State of Alaska—(RM77–16).*

RM77–16 was initiated as a result of a petition filed by the Atlantic Richfield Company (ARCO) requesting clarification of Commission policy regarding rates to be charged for natural gas produced in the State of Alaska.

Arguing that a need for economic and regulatory certainty is necessary for natural gas companies to maintain a coherent production policy, ARCO and supporting petitioners, including the State of Alaska, requested that the Commission set the rate for Alaskan gas at the highest national rate for jurisdictional sales applicable to "new" natural gas under the Natural Gas Act.

The procedural history of RM77–16 is as follows:

(1) ARCO filed a petition requesting a proceeding to set a price for Alaskan Gas. ARCO's request for a definitive exposition of Commission policy regarding the price of Alaskan gas was only the first among many such requests. Major producers, pipelines and the State of Alaska supported ARCO in its request. During the weeks immediately following March 31, 1977, the Commission received the remainder of the supporting petitions.

(2) Section 109(a)(4) of the NGPA provides for the computation of a maximum lawful price for natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

The issue raised by ARCO has been resolved by the provisions of the NGPA and the implementing regulations promulgated by the Commission. Specifically, 18 CFR 271.902 sets the maximum lawful price for natural gas produced in the Prudhoe Bay Unit of Alaska.

Therefore, proceedings relating to RM77–16 should be terminated.

(7) *National Rates for Natural Gas—(RM77–13).*

RM77–13 was initiated in order to establish prospective national rates for gas produced from wells which were commenced on or after January 1, 1977, for the two year period from January 1, 1977, to December 30, 1978. The proceeding was commenced so that interested persons could provide the Commission with relevant information regarding the proper basis for the setting of such rates. No specific rate structure was proposed by the Commission at that time.

The procedural history of RM77–13 is as follows:

(1) An Order Instituting the Proceeding was issued on March 1, 1977. (42 FR 13048, March 8, 1977.) The deadline for submissions of proposed rate structures was set for August 1, 1977. Comments on all filed proposed rate structures were due on October 1, 1977.

(2) A Notice of Extension of Time was issued on July 12, 1977. (42 FR 37045, July 19, 1977.) The Commission received a variety of requests from interested parties to extend the original deadlines for submissions in the rate proceeding. As a result of such requests, the time for filing proposed rate structures was extended to October 3, 1977. December 5, 1977 was set as the date by which all comments on such filings were due.

(3) A Notice of further Extension of Time was issued on September 30, 1977. (42 FR 55919, October 20, 1977.) As a result of the then pending National Energy Act, and the concomitant reorganization of the FPC as the FERC, the Commission "extended and postponed for an idefinite period of time" [2] all proceedings relating to RM77–13.

(4) The NGPA provides for the rate structures that were under consideration in RM77–13. A detailed pricing mechanism for natural gas is an integral component of the legislation. Therefore, it is in the public interest that all proceedings relating to RM77–13 be terminated.

(8) *End-Use Rate Schedules—(RM75–19).*

RM75–19 was initiated in order to establish "end-use" rate design methods for determining rates for wholesale sales for resale of natural gas in interstate commerce. Pipeline rate schedules and contracts would be required to be filed based on the use of the gas (*i.e.*, industrial, or nonindustrial). An amendment of 18 CFR 154.38 would be necessary to accomplish this goal.

The procedural history of RM75–19 is as follows:

(1) A Notice of Proposed Rulemaking with request for comments was issued on February 20, 1975. (40 FR 8571, February, 28, 1975.) Comments were requested to be filed no later than April 30, 1975.

(2) A Notice was issued on April 18, 1975 establishing the time to respond to comments. (40 FR 18467, April 28, 1975.) May 21, 1975 was set as the deadline for filing reply comments to the initial filings. The Commission received several motions for extensions of time in which to file replies.

(3) A Notice was issued extending the time for filing initial comments until June 2, 1975. (40 FR 19661, May 6, 1979) The deadline for reply comments was extended to June 23, 1975. More than 200 filings were received.

(4) A Notice of Further Extension of Time was issued on May 30, 1975. (40 FR 24031, June 4, 1975.) The time for filing initial comments was further extended until June 19, 1975. Reply comments were due by July 2, 1975.

A series of filings were received as a result of the May 30 Notice. Requests for waivers of certain rules of participation, initial comments, reply comments, motions for further extensions of time and impact statements were received by the Commission. The docket has been inactive since August of 1975.

[2] Commission Notice of Further Extension of Time, September 30, 1977.

RM75–19 predates the enactment of the NGPA. The rate structure proposed in RM75–19 is superceded by a the pricing provisions of the NGPA.

Title II of the NGPA mandates an incremental pricing scheme that in many respects obviates the need for further consideration of RM75–19. Any information that might have been gathered under RM75–19 to effectuate the substantive purpose of the rule is now permitted to be gathered by section 603 of the NGPA. A fresh approach to such a task is considered the most efficient method of fulfilling the statutory mandate of the National Energy Act.

Therefore, RM75–19 should be terminated.

(9) *Amendments to Schedule Pages 104 and 105 of Annual Report Forms No. 1 and No. 2 to Extend Reporting of Business Interests and Securities Held by Company Officers and Directors—(RM75–7).*

RM75–7 was initiated as a result of a Congressional intention that a more extensive and comprehensive reporting requirement be imposed on officers and directors of electric utilities and natural gas companies. The rulemaking would require that annual reports of jurisdictional companies contain a statement disclosing any such "outside" officership or directorships of officers or directors of a public utility. The primary business of any "outside" company must be disclosed. If an officer or director maintains a 10 percent controlling interest in the common stock of another company, that fact would be required to be disclosed. The means of control of such stock, the primary business of such "outside" company, and the nature and extent of transactions between the reporting company and the "outside" company would also be required to be filed. In short, no hidden interlocking officerships or directorships would be tolerated.

The procedural history of RM75–7 is as follows:

(1) A Request was received from Senator Metcalf dated April 29, 1974, to Chairman Nassikas to undertake a Rulemaking to Effectuate Corporate Disclosure.

(2) A Notice of Proposed Rulemaking was issued by the Commission on August 29, 1974. (39 FR 32153, September 5, 1974.)

(3) Comments were received by October 15, 1974. A final rule was drafted for Commission approval on November 6, 1975. There has been no action on RM75–7 since that time.

The proposal predates the Department of Energy Organization Act (DOE Act)[3] and its provisions for Commission access to "existing information in the possession of "[a] * * * Federal agency," (section 407(a)), and for the establishment of the Energy Information Administration (EIA).

The EIA was established to "collect, evaluate, assemble, analyze, and disseminate data and information which is relevant to energy resource reserves, energy production, demand, and technology, and related economic and statistical information, or which is relevant to the adequacy of energy resources * * * ." (DOE Act, section 205(a)(2)). While this mandate is somewhat limited, it nonetheless may provide for some of the information requested under proposed RM75–5. EIA information is available to the Commission under section 407(a) of the DOE Act.

The proposal also predates the specific provisions of section 211 of the Public Utility Regulatory Policies Act of 1978 (PURPA).[4]

Section 211 of PURPA ("Interlocking Directorates") requires the filing of a written statement with the Commission by an officer or director of an electric utility of positions held in certain specified entities. Included in these entities are investment companies, underwriters, producers and suppliers of electric equipment and major purchasers of electric power. These filings are to commence no earlier than April 30, 1980. Under the terms of PURPA, the Commission must promulgate rules as to the form and manner of such filings. Given the express mandate of PURPA, RM75–7 would have to be revised and reissued.

The Commission has decided that a majority of the information it requires is available through those sources indicated and that the burden on reporting entities of providing additional information would outweigh the benefit of the Commission in compiling it.

Therefore, proceedings relating to RM75–7 should be terminated.

(10) *Amendments to Schedule Pages 106, 219, and 221 of FPC Annual Report Forms No. 1 and No. 2 to Extend Reporting of Security Holders and Voting Power Disclosure and Debt-holder Disclosure—(RM74–17).*

RM74–17 was initiated to augment certain reporting requirements imposed on companies subject to Commission jurisdiction. Specifically, Forms No. 1 and No. 2 were to be amended so that jurisdictional natural gas and electric companies would be required to:

(a) List their top 30 security holders, rather than the top 10, as is currently required;

(b) Report stockholders by institutional or individual name rather than "street" name;

(c) Disclose the identity of any holders of more than 5 percent of debt, or $500,000, whichever is less; and

(d) Report the name and address of any holder of a note payable to associated companies.

The procedural history of RM74–17 is as follows:

(1) A Notice of Proposed Rulemaking was issued on April 19, 1974. (39 FR 14729, April 26, 1974.) Substitute attachments were issued by the Commission to correct errors, omissions and illegible sections in the previous notice.

(2) A Notice of Extension of Time was issued on May 29, 1975. (39 FR 19283, May 31, 1974.) The filing deadline for comments was set for July 2, 1974.

(3) A final rulemaking was placed on the Commission Agenda on October 29, 1975.

(4) The rulemaking was postponed indefinitely by the Commission on December 3, 1975. Under the provision of the Public Utility Holding Company Act of 1935 (the Act), the SEC has authority to require public utility holding company statements, reports, and records relating to security interests of offices and directors, (15 U.S.C. 79g); intercompany transactions, (15 U.S.C. 79(1)); and the acquisition of assets and securities, (15 U.S.C. 79i). Under this Act, a public utility holding company is defined as a "company which directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of a public utility company * * *." (15 U.S.C. 79b(a)(7)(A)) or "any person" which the Commission determines as holding a "controlling influence over the management or policies of any public utility or holding company" (15 U.S.C. 79b(a) (7)(B)). "Public Utility" as used in the Act encompasses electric utility companies and those gas utility companies which own or operate facilities used for retail distribution of natural or manufactured gas (15 U.S.C. 79b(a) (3), (4)). It would appear then that the Commission could obtain much of the information sought under RM74–17 through recourse to section 407(a) of the DOE Act.

The EIA was established to "collect, evaluate, assemble, analyze, and disseminate data and information which is relevant to energy resource reserves,

[3] 42 U.S.C. 7107 *et seq.*

[4] Pub. L. No. 95–617.

energy production, demand, and technology, and related economic and statistical information, or which is relevant to the adequacy of energy resources * * *." DOE Act, section 205(a)(2). While this mandate is somewhat limited, it nonetheless may provide for some of the information needed under RM74–17. As with information gathered by the SEC, EIA information would be available to the Commission under section 407(a) of the DOE Act.

On balance, the burden placed on reporting entities outweighs the benefit to the Commission in compiling this information. Therefore, it is in the public interest that all proceedings relating to RM74–17 be terminated.

(11) *Revisions to FPC Annual Report Forms No. 1 and No. 2 to Obtain Future Financing Requirements—(RM75–12).*

RM75–12 was initiated to increase the period of time for which reports must be made by jurisdictional electric utilities and natural gas companies. Specifically, they would be required to report estimated future financing requirements for a five year period. As a result, the Commission would have a somewhat more comprehensive overview of the prospective financial needs of such companies, and would be more able to "give proper consideration to regulatory action which may be required to facilitate the acquisition of capital needed by utilities to maintain adequate and reliable services to their customers and to the Nation." [5]

The procedural history of RM75–12 is as follows:

(1) A Notice of Proposed Rulemaking was issued on November 6, 1974. (39 FR 40174, November 14, 1974) Comments were requested to be filed no later than December 23, 1974.

(2) A Notice of Extension of Time was issued on December 19, 1974. (39 FR 44779, December 27, 1974) The due date for comments was extended until February 21, 1975.

(3) A Final Rulemaking was drafted on July 3, 1975. The Commission took no action on the rulemaking. The docket has been inactive since July, 1975.

The proposal surfaced at a time when there was concern about the ability of utilities to raise necessary capital.[6] The proposal predates the DOE Act and its provisions for Commission access to "existing information in the possession of "[a] * * * Federal agency," (section 407(a)) and for the establishment of the EIA. The proposal also predates the information-gathering powers of the Commission under section 508(b) of the NGPA.

The EIA was established to "collect, evaluate, assemble, analyze, and disseminate data and information which is relevant to energy resource reserves, energy production, demand, and technology, and related economic and statistical information, or which is relevant to the adequacy of energy resources * * *." (DOE Act, section 205(a)(2) While this mandate is somewhat limited, it nonetheless may provide for some of the information requested under RM75–12. As with information gathered by the SEC, EIA information would be available to the Commission under section 407(a) of the DOE Act.

With respect to the natural gas industry, there is some question as to the availability of the information sought. A five year financial forecasting horizon for this industry may be difficult, if not impossible, given current accepted industry practice.

If, in the future, the Commission deems it necessary to collect the type of data sought under RM75–12, a new rulemaking proceeding based upon more current statutory authority would be advisable.

Therefore, it is in the public interest that all proceedings relating to RM75–12 be terminated.

(12) *Revisions of Certain Schedule Pages of FPC Annual Report Forms No. 1 and No. 2 to Obtain Additional Information on Non-Utility Affiliates—(RM75–12).*

RM75–20 was initiated so that reporting schedules required to be filed by jurisdictional natural gas and electric utility companies would be amended to require:

(1) Disclosure of certain information relating to any direct or indirect control of a regulated company over a subsidiary; and

(2) Disclosure of intercompany transactions within a corporate group when a regulated company is itself a subsidiary of a larger entity.

The procedural history of RM75–20 is as follows:

(1) A Notice of Proposed Rulemaking was issued on February 25, 1975. (40 FR 10196, March 5, 1975) Comments were required to be filed by April 11, 1975.

(2) Notice of Extension of Time to file comments was issued on April 7, 1975. (40 FR 16684, April 14, 1975) Responding to a petition of the American Gas Association, the Commission extended the due date for comments until June 9, 1975.

(3) A final rulemaking was drafted for Commission consideration on September 15, 1975. The Commission took no action on the final rule. On February 25, 1976, action was postponed indefinitely.

The proposal surfaced at a time when there was concern as to who controlled public utilities and the availability of information respecting that control. As drafted, it rested upon the presumption that the then existing information gathering authority of the Commission reached the information described and that this information was available to those reporting to the Commission. The proposal also predates the DOE Act and its provisions for Commission access to "existing information in the possession of [a] * * * Federal agency," (section 407(a)) and for the establishment of the EIA. The proposal also predates the Commission's power to gather information under section 508(b) of the NGPA. Moreover, the proposal does not consider the availability of data from the SEC.

Under the provisions of the Public Utility Holding Company Act of 1935, the SEC has broad authority to require public utility holding company statements, reports, and records relating to intercompany transactions, (15 U.S.C. 79(1)); and the acquisition of assets and securities, (15 U.S.C. 79i). Under this Act, a public utility holding company is defined as a "company which directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of a public utility company * * * ." 15 U.S.C. 79b(a)(7)(A); or "any person" which the Commission determines as holding a "controlling influence over the management or policies of any public utility or holding company." (15 U.S.C. 79b(a)(7)(B). "Public utility" as used in the Act encompasses electric utility companies and those gas utility companies which own or operate facilities used for retail distribution of natural or manufactured gas. (15 U.S.C. 79b(a)(3), (4)) It would appear then that the Commission could obtain much of the information sought under RM75–20 through recourse to section 407(a) of the DOE Act.

The EIA was established to "collect, evaluate, assemble, analyze, and disseminate data and information which is relevant to energy resource reserves, energy production, demand, and technology, and related economic and statistical information, or which is relevant to the adequacy of energy resources * * *." (DOE Act section 205(a)(2)) While this mandate is somewhat limited, it nonetheless may provide for some of the information requested under RM75–20. As with

[5] Notice of Proposed Rulemaking, page 2.

[6] FPC Office of Accounting and Finance, Study of the Electric Utility Industry, September 11, 1974.

information gathered by the SEC, EIA information would be available to the Commission under section 407(a) of the DOE Act.

With respect to the natural gas industry in particular, the proposed rulemaking may be redundant. Only very few companies in that industry would be involved and current filing requirements capture necessary information as to affiliations. Therefore, it is in the public interest that all proceedings relating to RM75–20 be terminated.

(13) *Request by Shell Oil Company For a Notice of Proposed Rulemaking to Establish an Interim Rate for Sales of Natural Gas During the 1977–78 Biennium*—(*RM77–12*).

RM77–12 was initiated as a result of a petition filed by the Shell Oil Company for a Notice of Proposed Rulemaking to set an interim rate for the 1977–78 Biennium. The petition requested that a prospective rate be set by the Commission based on the 1977–78 intrastate contract prices. Economic certainty and competitive pressures were both cited as reasons for Commission action.

The Commission opened RM77–12, and received several supporting petitions of other natural gas producers. No other action has been taken.

Provisions of the NGPA have superseded any need for the Commission to act on this matter.

Natural gas pricing provisions of the NGPA, and the implementing regulations promulgated by the Commission (RM79–3) have effectively rendered the Shell petition moot. Therefore, all proceedings relating to RM77–12 should be terminated.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–25503 Filed 8–16–79; 8:45 am]

BILLING CODE 6450–01–M

[18 CFR Part 275]

[Docket No. RM79–66]

Commission Determinations and Commission Review of Jurisdictional Agency Determinations; Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is proposing two changes in its regulations concerning Commission review of jurisdictional agency determinations. The proposed regulations would (1) establish a procedure under which a jurisdictional agency would be able to withdraw a notice of determination, and (2) require that when the Commission determines that a notice of determination is incomplete, it must notify the parties to the proceeding before the jurisdictional agency and any purchaser.

DATES: Comments are due on or before September 15, 1979.

ADDRESS: Comments referencing Docket No. RM79–66 should be filed with: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Carol Lane, Office of the General Counsel, Federal Energy Regulatory Commission, Room 8100–H, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 275–0422.

August 13, 1979.

Background

On June 5, 1979, the Commission issued Part 275 of its regulations implementing the Natural Gas Policy Act of 1978 (NGPA) in final form.[1] Part 275 establishes the procedure by which the Commission will review jurisdictional agency determinations of the appropriate NGPA price category applicable to a particular natural gas well.

Section 275.202 provides that a notice of determination shall become final 45 days after the date on which the Commission receives the notice from the jurisdictional agency unless the Commission reverses or remands the determination or notifies the agency that the notice is incomplete during that period.

This procedure does not currently provide for a situation in which the jurisdictional agency seeks to withdraw a notice. The Commission has received four such requests to date. In one case the agency mistakenly submitted a notice of determination on an application which had not been finally resolved. In another case the agency requested withdrawal after it became aware that its determination had been based on an erroneous interpretation of our regulations. It is anticipated that such situations will continue to arise as jurisdictional agencies issue hundreds of determinations, and that the regulations proposed herein will be needed to accommodate this problem.

Nature of Proposed Regulations

Pursuant to the authority granted to the Commission in section 501(a) of the NGPA, we are proposing to provide a mechanism by which a jurisdictional agency may withdraw a notice of determination so long as the Commission receives actual notice of such withdrawal within 40 days after the date on which the notice was filed. Withdrawal shall render the notice of determination a nullity. Within 5 days after being notified of a withdrawal the Commission must notify the parties to the proceeding before the jurisdictional agency and the purchaser. This provision will insure that a seller receives timely notice that the notice of determination issued on his well has been withdrawn and that the 45-day review period no longer applies to this determination.

During the period following promulgation of the interim regulations, the Commission has adopted an informal practice of informing the affected seller and purchaser whenever a notice of determination has been found to be incomplete. At this time we believe it is appropriate to reflect this informal procedure in our regulations. Accordingly, we are proposing an amendment to § 275.202(b)(2) which will require that when the Commission determines that a notice of determination is incomplete, it shall notify not only the jurisdictional agency (as the current regulation requires) but also the parties to the proceeding before the jurisdictional agency and the purchaser, within 45 days after the date on which the notice is received.

Under the regulations we propose today, both seller and purchaser will receive timely notice that the 45-day review period, which began on the date the Commission received the notice of determination, has either been tolled (in the case of an incomplete notice) or nullified (in the case of a withdrawal).

Effect of Withdrawal on Interim Collections

Pursuant to § 273.202 of the Commission's regulations, a seller may begin interim collections of the price for which he has applied when he has satisfied the filing requirements of § 273.202(d). Interim collections pursuant to this section terminate on the earlier of (1) the date on which the Commission receives a notice of the determination, or (2) 12 months after the first delivery for which interim collection is made.

Accordingly, once the Commission has received a notice of determination from the jurisdictional agency, interim collection authority under § 273.202 terminates and any further collection authority depends on the nature of the

[1] 44 FR 34475 (June 15, 1979)

jurisdictional agency determination. If the determination is negative, the seller may collect only the otherwise applicable maximum lawful price. If the determination is affirmative, the seller may continue to make interim collections of the determined price under § 273.203. Any such interim collections under § 273.203 shall cease, however, if a jurisdictional agency withdraws a notice of determination under the withdrawal rule proposed today. The effect of a withdrawal under this rule shall be as follows:

(1) *Affirmative Determinations:* When a jurisdictional agency withdraws for its own reconsideration a notice of an affirmative determination, such determination is rendered a nullity as of the date the Commission notifies the parties to the proceeding before the jurisdictional agency and the purchaser, and is treated by the Commission as if it had never occurred. Accordingly, upon withdrawal of an affirmative determination, the seller of natural gas from the well in question is subject to the above-described interim collection provisions of § 273.202 (collection pending jurisdictional agency determination of eligibility). The Commission emphasizes that withdrawal of an initial jurisdictional agency notice by that agency does not terminate the interim collection authority under § 273.202. Accordingly, a seller who is awaiting jurisdictional agency reconsideration of a withdrawn affirmative determination may make interim collections under § 273.202.

(2) *Negative Determinations.* The provisions for affirmative determinations described in (1) above also apply to negative determinations. Accordingly, a seller who is awaiting jurisdictional agency reconsideration of a withdrawn negative determination may make interim collections under § 273.202. In addition, it should be noted that if the jurisdictional agency subsequently makes an affirmative determination on the withdrawn application, and such determination is given final approval by the Commission, § 273.204 will apply. That section provides that the price finally determined to be the maximum lawful price may be collected retroactively for any period after the date of application during which the seller had collected a price less than the finally determined price.

To summarize what we have explained in detail above, a seller's statutory right to make interim collections remains intact when a jurisdictional agency withdraws a notice of determinations.[2]

Jurisdictional Agency Procedures Regarding Withdrawn Determinations

With respect to the rights of the seller or other parties during a jurisdictional agency's reconsideration of a withdrawn application, the Commission notes that section 503(c)(3) of the NGPA provides that determinations of a Federal or State agency shall be made in accordance with that agency's own procedures. The Statement of Managers of the NGPA states that any party aggrieved by procedural aspects of State or Federal agency determinations may pursue whatever appeal rights are otherwise available under State or Federal law. S. Rep. No. 95–1126, 95th Cong., 2d Sess. 119 (1978). Accordingly, comments concerning determination proceedings for withdrawn applications should be directed to the appropriate jurisdictional agency.

Comment Procedure

Any interested person may submit data, views and comments concerning this proposed rulemaking. Such comments should be addressed to the Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426, and should not be submitted later than September 15 1979. An original and 14 conformed copies should be filed with the Commission, and should reference Docket No. RM79–66. Comments should indicate the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. Written comments shall be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 N. Capitol Street, N.E., Washington, D.C., during regular business hours.

Public Hearings

The Commission intends to hold consolidated public hearings on these and other proposed NGPA rulemakings, as required by section 502(b) of the Act. The dates and locations of such hearings will be announced shortly. The regulations proposed in this Notice shall not become final until the Commission has had an opportunity to receive oral presentation of relevant data, views and arguments.

(Department of Energy Organization Act, 42 U.S.C. 7107 *et seq.* E.O. 12009, 42 FR 46267; Natural Gas Policy Act of 1978, P.L. 95–621, 92 Stat. 3350)

In consideration of the foregoing, Part 275 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, is proposed to be amended as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

§ 275.202 [Amended]

1. Section 275.202 is amended in paragraph (a) by deleting the phrase, "Except as provided in paragraph (b) of this section," and by substituting in lieu thereof the phrase, "Except as provided in paragraphs (b) and (c) of this section".

2. Section 275.202(b) is amended in subparagraph (2) to read as follows:

* * * * *

(b) *Incomplete notice.* Notwithstanding the provisions of paragraph (a) of this section, the 45-day period for Commission review of a determination shall not begin if:

* * * * *

(2) the Commission notifies the jurisdictional agency, the purchaser and the parties to the proceeding before the jurisdictional agency, within 45 days after the date on which the Commission receives notice of the determination, that the notice is incomplete.

* * * * *

3. Section 275.202 is amended by redesignating paragragh (c) as paragraph (d) and by inserting a new paragraph (c), to read as follows:

* * * * *

(c) *Withdrawal of Notice.* (1) The jurisdictional agency may withdraw a notice of determination by notifying the Commission, by letter or telegram, that the notice is withdrawn, and by stating the reasons for the withdrawal. The Commission must receive actual notice of the withdrawal within 40 days of the date on which it received the notice of determination.

(2) Within 5 days of receiving notification of a withdrawal, the Commission shall notify the parties to the proceeding before the jurisdictional agency and the purchaser of the withdrawal.

[2] The proposed regulation is not intended to apply to a case in which a seller withdraws an application for a determination from a jurisdictional agency. Treatment of such withdrawal would be a matter within the procedural discretion of the agency. We note, however, that if a jurisdictional agency permits a seller to withdraw an application, interim collection authority under § 273.202 terminates, and any subsequent application for the same well is subject to § 273.202(e), which provides that once interim collection authority under § 273.202 terminates, further filings under that section cannot be made for the same well.

(3) The Commission shall also publish notice of the withdrawal and the reasons therefor in the Federal Register.

(4) Withdrawal of a notice of determination shall nullify such notice of determination.

* * * * *

FR Doc. 79-25458 Filed 8-16-79; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Chapter I, Subchapter J]

[Docket No. 79N-0147]

Quality Assurance in Nuclear Medicine; Intent To Propose Voluntary Recommendations

AGENCY: Food and Drug Administration.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is considering the development of voluntary recommendations for health professionals concerning quality assurance programs for nuclear medicine facilities. So that the recommendations will represent a consensus of expert opinion, they will be developed in cooperation with representatives of professional, public, and private groups and manufacturers that have interest and knowledge in the field. The agency intends to implement the recommendations through educational programs in cooperation with activities of professional organizations and State health agencies. FDA invites public comment on the adoption of such voluntary recommendations and extends to interested individuals and organizations the opportunity to be placed on a distribution list to receive additional relevant material.

DATES: Comments by December 17, 1979.

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

FOR FURTHER INFORMATION CONTACT: Alex Martin, Bureau of Radiological Health (HFX-460), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: Current FDA involvement in nuclear medicine quality assurance began in the Bureau of Radiological Health (the Bureau) with the establishment of the Quality Control Section in the Bureau's Nuclear Medicine Laboratory in December 1972. In collaboration with the University of Colorado, the Bureau initiated quality assurance workshop programs for the preparation of radiopharmaceutical tests and use of nuclear medicine instrumentation. These activities were pursued in consultation with the Bureau's Medical Radiation Advisory Committee (MRAC), an advisory committee to FDA established under section 222 of the Public Health Service Act (42 U.S.C. 217a). Sponsorship of the workshop series included professional groups such as the Society of Nuclear Medicine and the American Association of Physicists in Medicine. The general workshop topics have included scintillation cameras, radiopharmaceuticals, rectilinear scanners, and in vitro procedures. Workshop manuals and associated technical materials have been published by the Bureau. Copies are on file with the FDA Hearing Clerk and may be requested free of charge from the Bureau at the address above.

As used in this notice and by FDA's Bureau of Radiological Health, the term "quality assurance" includes the planned systematic actions that provide adequate confidence that a diagnostic facility will produce consistently high quality images with minimum patient exposure and at minimum cost. Quality assurance actions include quality control techniques used in the routine physical testing of instruments such as imaging units or counting systems. Active quality assurance programs already exist in a number of nuclear medicine facilities. The Bureau's activities have been designed to make the nuclear medicine community aware of such quality assurance programs, to collect information on current quality assurance efforts, and to test additional techniques for identifying and correcting quality assurance actions in nuclear medicine facilities. The Bureau's experience in quality assurance activities and its consultations with other professional organizations indicate that voluntary, facility-based programs may be appropriate to promote nationwide quality assurance programs.

Accordingly, FDA is considering the development of recommendations for health professionals concerning the utilization of quality assurance procedures in nuclear medicine. These voluntary recommendations, to be based on reports of FDA's Bureau of Radiological Health, will be developed in cooperation with representatives of professional, public, and private groups and manufacturers that have an interest and a knowledge in the field. The recommendations should therefore represent expert opinion upon which individual practitioners and allied health personnel can rely in establishing acceptable quality assurance programs in nuclear medicine. They would be implemented through cooperative educational programs with professional organizations and State health agencies. FDA intends to codify the final recommendations under Title 21 Chapter I, Subchapter J of the Code of Federal Regulations, in a special section established for voluntary recommendations, to make the recommendations readily accessible while ensuring their use and impact. After publication of the final recommendations, the Bureau will continue to publish technical reports giving information and advice on quality control for specific types of instrumentation and procedures. This advance notice is being issued under FDA's policy of early public participation in guideline development activities.

Interested persons are invited to participate in this effort to develop national guidance for quality assurance programs to monitor the performance of equipment and procedures in nuclear medicine by submitting their written data, views, or arguments. Individuals may also request that their names be placed on a distribution list to receive further relevant information. Comments and supporting data would be of particular importance concerning the following:

(1) In what areas of nuclear medicine might quality assurance programs be needed? Please explain the basis for your suggestions.

(2) What benefits (such as improved diagnostic images, maintenance of high image quality, lower cost, fewer instrument failures, reduced patient dose, etc.) should a nuclear medicine facility expect to derive from instrument quality assurance programs? Please document if possible.

(3) What level of effort by the facility (in terms of cost and human effort) is appropriate for maintaining a quality assurance program?

(4) In terms of justifying a quality assurance program for a given nuclear medicine facility, what is the relative importance of direct financial savings compared to maintenance of high image quality and reduction of patient radiation dose?

(5) What types of programs should be undertaken to promote national adoption of recommended quality assurance procedures in nuclear medicine?

(6) To what extent should manufacturers of nuclear medicine instruments be expected to provide assistance with quality assurance procedures (e.g., by furnishing appropriate phantoms, supplying calibration data, and recommending suitable quality assurance procedures)?

Interested persons may, on or before December 17, 1979, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written comments or data on this advance notice of proposed rulemaking. Four copies of all comments should be submitted, except that individuals may submit single copies of comments. The comments should be identified with the Hearing Clerk docket number found in brackets in the heading of this document. All comments received will be considered to the fullest possible extent in formulating any proposed recommendations. Information submitted will be available for public inspection in the office of the Hearing Clerk between 9 a.m. and 4 p.m. Monday through Friday.

This notice is issued under the Public Health Service Act (secs. 301, 310, 311 (42 U.S.C. 241, 242o, and 243)) and authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1).

Dated: August 10, 1979.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-25281 Filed 8-16-79; 8:45 am]

BILLING CODE 4110-03-M

[21 CFR Part 135]

[Docket 78P-0374]

Ice Cream, Frozen Custard, Ice Milk, and Sherbet; Proposed Amendment to the Standards of Identity

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) proposes, in response to a citizen petition, to amend the standards of identity for ice cream and for certain other frozen desserts that now allow only sweet-type whey to be used as a source of whey solids. The amendment would permit the use of acid-type whey and modified wheys made from sweet and/or acid-type wheys as a source of whey solids as long as the total amount of whey solids used does not exceed the current limits in the frozen dessert standards.

DATE: Comments by October 16, 1979. Proposed effective date for affected products initially introduced into interstate commerce: July 1, 1981.

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: Eugene T. McGarrahan, Bureau of Foods (HFF-415), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-245-1155.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 12, 1977 (42 FR 19127), FDA amended the standard of identity for frozen desserts to, among other things, provide for the use of safe and suitable milk-derived ingredients. Written objections and requests for a hearing were received. Subsequently, those portions of the standard objected to, including those that would provide for the use of safe and suitable milk-derived ingredients, were stayed in the **Federal Register** of July 8, 1977 (42 FR 35152), pending a determination of the need for a hearing. The July 8, 1977 document also confirmed the effective date of other provisions of the regulations to which no objections were received.

In the **Federal Register** of February 3, 1978 (43 FR 4596), the agency confirmed the new provision for reduction in milkfat and nonfat milk solids when bulky flavors are added to ice milk and revoked those provisions stayed in the July 8, 1977 document. Objections and requests for a hearing were received on the revocation. The revocation was stayed in the **Federal Register** of May 5, 1978 (43 FR 19384), pending a determination of the need for a hearing. This stay had the effect of reinstating the July 8, 1977 stay of those provisions concerning the use of safe and suitable milk-derived ingredients. Thus, the use of safe and suitable milk-derived ingredients in frozen desserts specified in the April 12, 1977 regulation is still not permitted. The frozen dessert regulations published in the February 3, 1978 document, including the requirement for full ingredient labeling, became effective on July 1, 1979.

The International Association of Ice Cream Manufacturers (IAICM), Whey Products Institute (WPI), and Foremost Foods Company have filed a citizen petition requesting an amendment to the standards of identity for ice cream and frozen custard (§ 135.110 (21 CFR 135.110)), sherbet (§ 135.140 (21 CFR 135.140)), and, by cross-reference to § 135.110, ice milk (§ 135.120 (21 CFR 135.120)) to provide for the use of acid-type whey in liquid, condensed, and dry form, and various types of modified whey made from acid-type or sweet-type whey in the manufacture of frozen desserts in a quantity not to exceed the current levels for sweet whey provided for in the frozen dessert standards of identity. For the purpose of reference, the petition stated that the following terms have the indicated generally accepted meanings:

"Whey" is the food obtained as a fluid by separating the coagulum from milk, cream, or skim milk. A portion of the milkfat may have been removed. Prior to use as a food for human consumption, whey must be pasteurized at a minimum of 161° F for a minimum of 15 seconds, or its demonstrated equivalence in bacterial destruction.

"Condensed whey" is the liquid food obtained by removing a portion of the moisture from whey, but which contains all other constituents in the same relative proportions as in whey.

"Dry whey" is the food obtained by removing moisture from whey, but which contains all other constituents in the same relative proportions as in whey.

"Modified whey" is a class of foods obtained from whey by various processes and procedures; such foods shall be manufactured from pasteurized whey, or during their manufacture, they shall be subjected to pasteurization or its equivalence in bacterial destruction. Specific modified whey products are:

(1) "Modified whey—partially delactosed" is whey modified by limiting the lactose content to 60 percent or less on a solids basis.

(2) "Modified whey—partially demineralized" is whey modified so as to contain no more than 7 percent ash on a solids basis.

(3) "Modified whey—demineralized" is whey modified to limit the mineral content to less than 1.5 percent ash on a solids basis.

(4) "Modified whey—whey protein concentrate" is whey which contains not less than 25 percent protein on a solids basis.

A statement of the grounds given by the petitioners in support of the petition included the following:

1. In FDA's letter of June 12, 1978, denying IAICM's petition for reconsideration of the revocation of the provisions for safe and suitable milk-derived ingredients in frozen desserts, it

was suggested that IAICM submit a new petition to permit the use of acid-type and modified wheys within the existing quantity limits and supported by data to demonstrate that such use would not result in any measurable decrease in nutrients in frozen desserts.

2. Nutrient levels in frozen dessert would be comparable or improved. Independent studies submitted in support of this petition and FDA's own nutrient comparison investigations demonstrate that use of these whey ingredients would not result in a significant reduction in the nutrient value of frozen desserts.

Note.—The following table, provided by the petitioners, shows their comparison of the nutrients levels in ice cream made with various whey ingredients.

BILLING CODE 4110-03-M

COMPARISON OF NUTRIENT LEVELS IN UNFLAVORED ICE CREAM (10% MILKFAT) CONTAINING WHEY OR WHEY PRODUCTS AT MAXIMUM AMOUNTS OF 25 PERCENT OF NONFAT MILK SOLIDS CONTENT

	ALLOWABLE UNDER PRESENT STANDARD	ALLOWABLE UNDER PROPOSED AMENDMENT				
	Ice Cream With Sweet-Type Whey	Ice Cream With Acid-Type Whey	Ice Cream With Partially De-lactosed Whey	Ice Cream With Partially De-mineralized Whey	Ice Cream With Demineralized Whey	Ice Cream With Whey Protein Concentrate
Serving Size (a)	4 fl. oz.	4 fl. oz.	4 fl. oz.	4 fl. oz.	4 fl. oz.	4 fl. oz.
Protein, gr.	1.93	1.93	2.10	1.93	1.95	2.29
Carbohydrate, gr.	3.69	3.66	3.42	3.84	3.95	3.50
Fat, gr.	6.38	6.38	6.38	6.38	6.38	6.38
	Nutrient Level (and % U.S. RDA) For 4 Fl. Oz. Serving					
Protein (gr)	1.93 (4%)	1.93 (4%)				
Vitamin A (I.U.)	255.00 (6%)	255.00 (6%)	255.00 (6%)	255.00 (6%)	255.00 (6%)	255.00 (6%)
Vitamin C (mg) (b)						
Thiamine (mg)	.03 (2%)	.03 (2%)	.03 (2%)	.026 (1.7%)(c)	.026 (1.7%)(c)	.03 (2%)
Riboflavin (mg)	.14 (8%)	.14 (8%)	.14 (8%)	.14 (8%)	.12 (8%)	.15 (8%)
Niacin (mg) (b)						
Calcium (mg)	82.09 (8%)	104.42 (10%)	85.75 (8%)	80.49 (8%)	71.56 (8%)	76.22 (8%)
Iron (mg) (b)						
Vitamin B_6 (mg)	.033 (c)	.033 (c)	.024 (c)	.028 (c)	.024 (c)	.028 (c)
Vitamin B_{12} (mcg)	.24 (4%)	.24 (4%)	.21 (4%)	.24 (4%)	.21 (4%)	.28 (4%)
Phosphorus (mg)	67.5 (6%)	74.73 (8%)	73.14 (8%)	61.18 (6%)	55.44 (6%)	58.20 (6%)
Magnesium (mg)	10.55 (2%)	10.92 (2%)	10.94 (2%)	9.19 (2%)	7.79 (1.9%)(c)	8.86 (2%)
Zinc (mg)	.236 (1.5%)(c)	.305 (2%)	.207 (1.3%)(c)	.208 (1.3%)(c)	.208 (1.3%)(c)	.211 (1.4%)(c)
Pantothenic Acid (mg)	.237 (2%)	.237 (2%)	.296 (2%)	.167 (1.6%)(c)	.152 (1.5%)(c)	.229 (2%)
Potassium (mg)	119.01 (d)	125.33 (d)	140.07 (d)	101.79 (d)	89.82 (d)	95.80 (d)(e)

(a) To facilitate comparisons, a 4 fl. oz. serving (63.8 grams - equivalent to 4.5 pounds per gallon) is utilized

(b) These nutrients are present at insignificant levels in frozen desserts.

(c) Present at less than 2% of the U.S. RDA.

(d) No U.S. RDA prescribed for potassium

(e) Potassium - neutralized W.P.C.

BILLING CODE 4110-03-C

3. Organoleptic properties of frozen desserts would be unaffected. Taste panel evaluations demonstrate no significant taste differences noted with respect to frozen desserts containing whey in excess of the existing milk solids not fat (MSNF) limit and no significant flavor differences between frozen desserts composed of acid-type whey, within the current MSNF limit, as compared to control samples.

4. Physical properties of frozen desserts would be enhanced. Results of recent studies have demonstrated that frozen desserts composed of acid-type or modified wheys, within the current MSNF limit, have comparable or superior properties both as compared to those made with nonfat milk solids and as compared to those containing sweet-type whey. One study concluded that there was no significant change in freezing time and that the products had increased melting resistance, as a result of the replacement of nonfat milk solids with acid-type whey. Another study confirmed that replacement of MSNF by either acid-type or sweet-type whey within current MSNF limits had no significant effect on the texture of ice cream stored up to 4 weeks. Considerable evidence exists to show that "sandiness" is substantially diminished by the use of modified wheys.

5. A positive environmental impact would result. Recent referenced reports show that substantial waste and environmental degradation result from the absence of a market for vast quantities of whey products. Latest Whey Products Institute (WPI) figures show that approximately 2.3 billion pounds of whey solids were produced in 1977. Of this total, only 1.2 billion pounds were further processed for human food and animal feed uses. Thus, more than 1 billion pounds of whey solids, a substantial portion of which is acid-type, were discarded.

The petitioner states that the current standards for ice cream and frozen custard, ice milk, and sherbet provide for the use of only sweet-type cheese whey that may be in liquid, condensed, or dry form. Their petition would amend these standards to provide for greater flexibility in the types of whey that may be used as an ingredient without any increase in the total amount of whey solids that may be used or any measurable reduction in the nutritional value (more than 2 percent of the U.S. Recommended Daily Allowance (USRDA)) of a serving of frozen desserts or change in organoleptic properties of frozen desserts.

FDA has confirmed the data submitted by the petitioner in the following manner. Using data (Ref. 1) from the analysis of ingredients commercially available in January 1978, the total amount of calcium contributed by the allowable 25 percent of sweet-type whey (1.6 grams (g)) in a 64 g (4 fluid ounce (fl oz)) serving of ice cream is calculated to be 13.6 milligrams (mg), i.e., less than 2 percent of the USRDA (20 mg). Further, replacing sweet-type whey with demineralized whey reduces the calcium contribution of the 25 percent whey solids contribution to 5.9 mg. Thus, calcium is not reduced by a measurable amount in a serving of ice cream as a result of interchanging any type of whey solids at a level of 25 percent of the nonfat milk solids requirement.

The FDA nutrient considerations shown above compare sweet-type whey with demineralized whey because demineralized whey would contain the lowest level of those minerals for which USRDA's have been determined. Of the nutrients in sweet-type whey for which there are USRDA's, calcium is the most significant. All other nutrients in sweet-type whey were also compared with demineralized whey and were not found to cause a measurable decease in the nutrient value of a serving of frozen dessert when sweet-type whey was replaced with demineralized whey or any other type of whey.

Further, the agency believes that current organoleptic and physical properties of frozen desserts would be maintained and that the proposed regulation would provide a market for new types of whey and modified whey products, and that such a market may help eliminate the problems of water pollution described by the petitioners.

FDA concludes that reasonable grounds have been provided in support of the proposal and that the proposed amendments would promote honesty and fair dealing in the interest of consumers. Therefore, the agency is proposing that the identity standards for frozen desserts be amended to allow the use of acid-type whey in liquid, condensed, and dry form and various types of modified whey made from sweet-type and acid-type whey, in the manner specified in the petition. In a separate proceeding (see the Federal Register of June 22, 1979 (Docket No. 78N-0369)), FDA has proposed to affirm the generally recognized as safe (GRAS) status of whey and modified wheys under appropriate common or usual names for specific types of whey and modified wheys. Rather than including the names of specific types of whey and modified wheys in the proposed amendments to the frozen dessert standards, the agency proposes to insert the phrase "whey and modified wheys determined to be generally recognized as safe (GRAS)." into §§ 135.110(b) and 135.140(b), as set forth in this document.

FDA proposes that all affected products initially introduced into interstate commerce on or after July 1, 1981, be required to comply with any regulation adopted on the basis of the proposal, except as to any provisons that may be stayed by the filing of proper objections.

Reference

1. Memorandum dated January 6, 1978, from Acting Director, Division of Nutrition (HFF-260) to Acting Director, Bureau of Foods (HFF-1).

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Part 135 be amended as follows:

1. In § 135.110 by revising paragraph (b) to read as follows:

§ 135.110 Ice Cream and frozen custard.

* * * * *

(b) *Optional dairy ingredients.* The optional dairy ingredients referred to in paragraph (a) of this section are: Cream, dried cream, plastic cream (sometimes known as concentrated milkfat), butter, butter oil, milk, concentrated milk, evaporated milk, sweetened condensed milk, superheated condensed milk, dried milk, skim milk, concentrated skim milk, evaporated skim milk, condensed skim milk, superheated condensed skim milk, sweetened condensed skim milk, sweetened condensed part-skim milk, nonfat dry milk, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweet cream buttermilk, skim milk that has been concentrated and from which part of the lactose has been removed by crystallization, skim milk in concentrated or dried form that has been modified by treating the concentrated skim milk with calcium hydroxide and disodium phosphate, and whey and modified wheys determined to be generally recognized as safe (GRAS). Water may be added, or water may be evaporated from the mix. The sweet cream buttermilk and the concentrated sweet cream buttermilk or dried sweet cream buttermilk, when adjusted with water to a total solids content of 8.5 percent, has a titratable acidity of not more than 0.17 percent, calculated as lactic acid. The term

"milk" as used in this section means cow's milk. Any whey and modified wheys used contribute, singly or in combination, not more than 25 percent by weight of the total nonfat milk solids content of the finished food. The modified skim milk, when adjusted with water to a total solids content of 9 percent, is substantially free of lactic acid as determined by titration with 0.1*N* NaOH, and it has a pH value in the range of 8.0 to 8.3.

* * * * *

2. In § 135.140 by revising paragraph (b) to read as follows:

§ 135.140 Sherbet.

* * * * *

(b) *Optional dairy ingredients.* The optional dairy ingredients referred to in paragraph (a) of this section are: Cream, dried cream, plastic cream (sometimes known as concentrated milkfat), butter, butter oil, milk, concentrated milk, evaporated milk, superheated condensed milk, sweetened condensed milk, dried milk, skim milk, concentrated skim milk, evaporated skim milk, condensed skim milk, sweetened condensed skim milk, sweetened condensed part-skim milk, nonfat dry milk, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweet cream buttermilk, skim milk that has been concentrated and from which part of the lactose has been removed by crystallization, and whey and modified wheys determined to be generally recognized as safe (GRAS). Water may be added, or water may be evaporated from the mix. The sweet cream buttermilk and the concentrated sweet cream buttermilk or dried sweet cream buttermilk, when adjusted with water to a total solids content of 8.5 percent, has a titratable acidity of not more than 0.17 percent calculated as lactic acid. The term "milk" as used in this section means cow's milk.

* * * * *

Interested persons may, on or before October 16, 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 any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Executive Order 12044 does not apply to regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557). Food standards promulgated under 21 U.S.C. 341 and 371(e) fall under this exemption.

Dated: August 8, 1979.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-25112 Filed 8-16-79; 8:45 am]

BILLING CODE 4110-03-M

[21 CFR Parts 172 and 182]

[Docket No. 78N-0218]

Carrageenan, Salts of Carrageenan, and Chondrus Extract (Carrageenin); Withdrawal of Proposal and Termination of Rulemaking Proceeding

Correction

In FR Doc. 79–20964, published at page 40343, on Tuesday, July 10, 1979, the following corrections should be made:

1. On page 40344, in the first column, in the second full paragraph, in the fourth line "foot-grade" should be corrected to read "food-grade";

2. On page 40344, in the first column, in the third full paragraph "The respondent . . ." should be corrected to read "1. The respondent . . . ";

3. On page 40345, in the second column under "References", in the first lines in References #6 and #8 "L. Goldberg" should be corrected to read "L. Golberg".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

[EE–1–78]

Income Tax; One-Half Percent TRASOP Credit

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to investment credit employee stock ownership plans ("TRASOPs") that provide for an extra one-half percent credit. Changes in the applicable tax law were made by the Tax Reform Act of 1976 and are reflected in these proposals; the proposed regulations do not reflect changes made by the Revenue Act of 1978 or the Energy Tax Act of 1978. These proposals would provide guidance for the public in complying with the law. They affect employees who participate in, and employers who establish, TRASOPs that provide for an extra one-half percent credit.

DATES: Written comments and requests for a public hearing must be delivered or mailed by October 15, 1979. The amendments are proposed to be effective for taxable years beginning after December 31, 1976.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE–1–78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Joel Horowitz of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–6212) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 46 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 301(e) of the Tax Reduction Act of 1975 as added by section 803(d) of the Tax Reform Act of 1976 (90 Stat. 1587) and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Discussion of Issues

1. Reliance on Proposals

Pending the adoption of final regulations, taxpayers may rely on these proposed rules in making computations affected by these rules. If any provisions of the final regulations are less favorable to taxpayers than these proposed rules, those provisions will be effective only for periods after the date of adoption.

2. Effective Date; References to Internal Revenue Code

These proposals concern changes made by the Tax Reform Act of 1976. They apply only to taxable years beginning after December 31, 1976.

The proposals do not reflect changes made by the Revenue Act of 1978. Therefore, references to the Internal Revenue Code are to provisions as they were in effect prior to the Revenue Act of 1978 and the Energy Tax Act of 1978.

3. Applicability of One-Percent TRASOP Provisions

A plan which elects to have the one-half percent credit apply must comply with the regulations governing both the one-percent and one-half percent credits. All TRASOP operations are controlled by the one-percent provisions; the one-half percent regulations would supplement the one-percent regulations and modify them only to the extent necessary to address matching credit situations.

4. Separate Election

As in the case of the one percent credit, a timely separate election would have to be made for each taxable year's qualified investment in order to obtain the extra one-half percent credit for that year. The proposals would allow a plan to state that the election applies both to the one-percent and extra one-half percent credit for that year.

5. No Partial Elections

A corporation may not elect to obtain less than the entire extra one-half percent credit for any year's qualified investment. However, under the proposed regulations, a plan which limits employee contributions to a basic amount would not be treated as having elected to obtain part of the extra credit, even if the limit effectively prevents the corporation from obtaining the full one-half percent credit. The regulations would permit such a limitation so that a plan's administration may be simplified and its costs thereby minimized.

6. Funding: Employee Contributions

The proposed one-half percent credit regulations contain specific requirements concerning matching employee contributions. However, the one-percent credit funding provisions would still apply in the areas of cash reserves, conditional funding and benefit offset mechanisms.

As in the case of the one-percent additional credit, the one-half percent proposals provide that a cash reserve may be maintained for two items. The first is an amount necessary for immediate distributions; the second is an amount reserved for plan start-up and administrative expenses. These proposals include specific provisions relating to start-up and administrative expenses in the matching credit situation.

7. Nonforfeitability

A plan must state that each participant must have a nonforfeitable right to allocated TRASOP securities. In addition to withdrawals permitted under the one-percent credit provisions, the proposals provide that allocations will not be considered forfeitable merely because a plan provides for the return of employer contributions to the extent that they exceed matching employee contributions. Also, a plan may provide that contributions may be returned for a year in which the pattern of employee participation would otherwise cause the plan to operate in a discriminatory manner.

8. Limitation on Voluntary Contributions

Published rulings of the Internal Revenue Service have stated that an employee's total voluntary contributions to all plans of the employer must be within reasonable bounds. Voluntary contributions have been deemed reasonable when they have not exceeded ten percent of the employee's compensation. See, for example, Rev. Rul. 59–185, 1959–1 C.B. 86; Rev. Rul 69–627, 1969–2 C.B. 92; Rev. Rul. 70–658, 1970–2 C.B. 86; Rev. Rul. 72–349, 1972–2 C.B. 219. Matching employee TRASOP contributions will not be considered "voluntary" within the meaning of those revenue rulings.

9. Start-up and Administrative Expenses

The proposals provide alternative rules for withdrawing or withholding securities or cash for payment of plan start-up and administrative expenses. The plan may either limit amounts withdrawn or withheld to one-percent credit securities or apportion the amounts between the one-percent and one-half percent credit securities. The first option would allow employee contributions to be fully matched by allocations of employer contributions as one-half percent employer contributions would not be used for start-up or administrative expenses. The second option would allow the plan to provide a more accurate assessment of costs attributable to each credit.

10. Pledges

Under the proposals, a plan may permit pledges; there is no requirement that they be allowed. If the plan does provide for pledges, they will be treated as contributions of cash. An employee's contribution of the designated cash amount will be required within the period provided by the plan. This period will end no later than 24 months after the end of the year in which the credit is allowed.

11. Compensation Considered for Employee Contributions

Under the proposals, a plan must disregard compensation in excess of $100,000, or some lesser amount as the plan may provide, in determining the amount that may be contributed by an employee.

12. Effect of Section 415

The one-half percent TRASOP regulations would provide that, for purposes of section 415 limitations on annual additions to a participant's account, additions are to be considered in the following order: First, allocations attributable to the one-percent TRASOP credit; second, allocations attributable to the one-half percent TRASOP credit; third, other allocations. This rule would apply to limitation years beginning after January 19, 1979. Because these proposals would prohibit the use of suspense and escrow accounts, the provisions of section 415 could limit the availability of the full matching credit. However, the plan may provide that the "unusued" available credit will be treated as an investment credit carryover.

13. Discrimination

The proposals require that employee contributions be based on a formula which does not discriminate in favor of officers, shareholders or highly compensated employees. All participants must have a reasonable opportunity to make matching contributions. Further, the actual pattern of employee contributions must not result in prohibited discrimination. However, a plan may contain special provisions which restrict contribution options of former employees who are still participants at the end of a plan year. Also, a plan may restrict contributions by the estate of a deceased employee.

14. Reductions of Matching Employee Contributions

Under the proposed regulations, matching employee contributions must be reduced in three cases: (1) When employer contributions are withdrawn because of a recapture; (2) when pledges are not paid within the time required; and (3) when the employees have contributed more than the employer. The reduction will be shared proportionally by each contributor unless it is directly attributable to one participant.

15. Disposing of Reductions

The proposed regulations provide that the amount by which a participant's

matching employee contribution is reduced must be either returned to the participant by the later of two dates provided or treated as a voluntary contribution. The plan may not retain the amount unless the participant authorized its treatment as a voluntary contribution when the matching contribution was made.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferrably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of this proposed regulation is Joel Horowitz of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Proposed Amendments to the Regulations

Accordingly, it is proposed to amend the Income Tax Regulations, 26 CFR Part 1, by adding the following new section in the appropriate place:

§ 1.46-9 Requirements for taxpayers electing an extra one-half percent additional investment credit.

(a) *Introduction*—(1) *In general.* A corporation that qualifies for an additional credit under § 1.46–8 may elect under section 46(a)(2)(B)(ii) of the Code to obtain an extra one-half percent additional investment credit for property described in section 46(a)(2)(D). Paragraph (c) of this section provides additional procedures for electing this extra credit. This section also provides rules for implementing an employee stock ownership plan that meets the requirements of sections 301 (d) and (e) of the Tax Reduction Act of 1975 ("1975 TRA"). The plan must meet the additional formal requirements of paragraph (d), and the additional operational requirements of paragraph (e) of this section. Unless otherwise indicated, statutory references in this section are to the Internal Revenue Code of 1954, as applicable for the year in which a qualified investment is made.

(2) *Applicability of one-percent TRASOP provisions.* Subject to the exceptions and additional rules of this section, the provisions of § 1.46–8 apply to an election made, and to a plan implemented, under this section. However, this section does not change the requirements of § 1.46–8 for purposes of obtaining an additional one-percent credit.

(3) *Effective date.* This section applies only to taxable years beginning after December 31, 1976. See section 603(j)(2)(A) of the Tax Reform Act of 1976.

(b) *Definitions*—(1) *One-percent terms.* When used in this section, the terms listed below have the same meanings as in § 1.46–8(b):

(i) TRASOP. See § 1.46–8(b)(1).

(ii) Employer. See § 1.46–8(b)(3).

(iii) Employer securities. See § 1.46–8(b)(4).

(iv) TRASOP securities. See § 1.46–8(b)(5).

(v) Publicly traded. See § 1.46–8(b)(6).

(vi) Value. See § 1.46–8(b)(7).

(vii) Compensation. See § 1.46–8(b)(8).

(2) *Additional credit.* An "additional credit" or "extra additional credit" is the extra one-half percent additional investment credit under section 46(a)(2)(B)(ii)—

(i) For purposes of applying this section, and

(ii) When the context requires, for purposes of applying § 1.46–8 to this extra credit.

(3) *Matching employee contribution.* A "matching employee contribution" is a contribution that meets the requirements of paragraph (f) of this section.

(4) *Basic amount.* A "basic amount" is a matching employee contribution which is no greater than the maximum credit multiplied by a fraction. The numerator of this fraction is a participant's compensation for the plan year. (See § 1.46–9(f)(3)(ii), concerning disregarded compensation.) The denominator is the aggregate of all participants' compensation for the plan year. The "maximum credit" is the estimated value of all employer contributions under paragraph (c)(4)(i) of this section for the applicable year, determined as if the maximum possible matching employee contributions were made.

(5) *Supplemental contribution.* A "supplemental contribution" is a matching employee contribution made in addition to a basic amount.

(c) *Special procedures for extra additional credit*—(1) *Statement of election.* A corporation's statement of election described in § 1.46–8(c)(3) must contain the name and taxpayer identification number of the corporation. Also, it must declare in the following words, or in words having substantially the same meaning, that:

(i) The corporation elects to have section 46(a)(2)(B) (i) and (ii) of the Internal Revenue Code of 1954 apply; and

(ii) The corporation agrees to implement (or continue to implement, as appropriate) a TRASOP and to claim the additional credit as required by § 1.46–8 and § 1.46–9 of the Income Tax Regulations.

(2) *Separate election.* A separate election must be made for each year's qualified investment to obtain the extra additional credit for that qualified investment. If a corporation does not make a timely election to obtain an extra additional credit for a taxable year, it may not subsequently make the election on an amended return or otherwise.

(3) *No partial election.* To reduce administrative costs, a plan may establish a ceiling on matching employee contributions. Thus, for example, it may provide for the contribution of only a basic amount without supplemental contributions under paragraph (f)(2)(iii) of this section. Such a ceiling that in effect limits the additional credit to less than one-half percent of the qualified investment is not a partial election prohibited by § 1.46–8(c)(5).

(4) *Funding a TRASOP*—(i) *Employer contributions.* The carryover option under § 1.46–8(c)(1)(ii) is available for both the one-percent and one-half percent additional credits or for the one-half percent additional credit alone. In applying § 1.46–8(c)(8)(iii), the value of TRASOP securities, other than those acquired with matching employee contributions, for an applicable year must equal one-half percent of the corporation's qualified investment for that year or, if less, the amount of matching employee contributions received (including pledges, where permitted by the plan) by the time the election for that year is made. However, if a corporation exercises the carryover option in § 1.46–8(c)(1)(ii), the value of these TRASOP securities for an applicable year must equal the amount of additional credit claimed for that year determined after being reduced, if necessary, to equal contributions received (including pledges, if permitted) by the time the credit is claimed for that year. The value of these TRASOP securities, but not the amount of credit

claimed, is further reduced to the extent that the employer withholds TRASOP securities to take into account start-up and administrative expenses under paragraph (e)(1) of this section or an investment tax credit reduction under paragraph (e)(2) of this section.

(ii) *Employee contributions.* Paragraph (f)(4) of this section, but not § 1.46–8(c)(8) (i)–(iii), applies to TRASOP securities acquired with matching employee contributions.

(5) *Claiming additional credit.* In applying § 1.46–8(c)(9)(ii), if less than all of a corporation's credit earned for a taxable year is allowed, the extra additional credit under this section for that year is allowed last.

(d) *Additional formal plan requirements*—(1) *Contributions by employees*—(i) *In general.* The plan must contain statements relating to matching employee contributions as required under paragraph (f) of this section.

(ii) *Aggregate floor.* A plan may provide for the return of all matching employee contributions for a year if the aggregate amount of such contributions is not at least equal to an amount stated in the plan. See also § 1.46–9(f)(3)(iv).

(2) *Separate accounting.* The plan must state that employer contributions and matching employee contributions respectively described in paragraph (c)(4)(i) and (ii) of this section are accounted for separately from each other as well as from other contributions, including those described in § 1.46–8(c)(8).

(3) *Allocation of TRASOP securities contributed by employer.* The plan must provide for the allocation under section 301(e)(5) of the 1975 TRA and this subparagraph (3) of TRASOP securities contributed by the employer. These allocations reflect a ratable reduction for TRASOP securities withheld by the employer under paragraph (c)(4)(i) of this section. TRASOP securities so allocated are deemed to be allocated under section 301(d) of the 1975 TRA. In applying § 1.46–8(d)(6) to this section, only subdivisions (ii), (iv), (ix), (x), (xi) and (xii) thereof apply to allocations under this section.

(4) *Effect of section 415.* In applying the limitations of section 415 to limitation years beginning after January 19, 1979, allocations are considered in the following order: first, allocations under § 1.46–8; second, allocations under this section; and third, other allocations. No suspense or escrow account may be maintained to hold contributions under this section that are unallocated because of section 415. Thus, section 415 in effect limits the availability of an extra additional credit in a particular year. However, if the plan so provides, a potential extra additional credit is treated as an investment credit carryover under the carryover option described in § 1.46–8(c)(1)(ii) to the extent that it is not used in a particular year because of section 415.

(5) *Nonforfeitability.* Employer contributions are also not considered to be forfeitable under § 1.46–8(d)(7) merely because the plan provides for their return to the corporation in an amount equal to the excess of employer contributions under this section over matching employee contributions or in the case of discriminatory operation under paragraph (f)(3) of this section. See paragraph (f)(3)(iv).

(6) *Distributions.* Notwithstanding § 1.46–8(d)(9)(i), a plan may not distribute from a participant's employer contribution account cash or employer securities attributable to unpaid pledges of the participant.

(e) *Additional operational plan requirements*—(1) *Start-up and administrative expenses*—(i) *In general.* The expense of establishing plan features relating to the extra additional credit is a start-up expense. The expense of collecting matching employee contributions is an administrative expense.

(ii) *Payment.* Under § 1.46–8(e) (6) and (7), an employee may withhold or a plan may use, to the extent not withheld, TRASOP securities for start-up and administrative expense payments. However, withdrawals must be either limited to employer contributions under § 1.46–8(c)(8) or reasonably apportioned between these employer contributions and contributions under paragraph (c)(4)(i) of this section. An example of reasonable apportionment is earmarking expenses attributable to each of the additional credits and allocating any remaining non-earmarked expenses on either a 2:1 or 1:1 ratio between the additional credits. Another example is simply apportioning expenses between the addtional credits on a 2:1 or 1:1 ratio basis without earmarking.

(iii) *Ceiling.* In determining the ceiling on start-up expenses under § 1.46–8(e)(6)(iii), only employer contributions under § 1.46–8(c)(8) and paragraph (c)(4)(i) of this section are considered. In determining the ceiling on administrative expenses under § 1.46–8(e)(7)(ii), dividends on all TRASOP securities, including those acquired with matching employee contributions, are considered.

(2) *Redeterminations and recaptures.* A reduction in investment credit because of a redetermination or recapture is allocated ratably under the principles of § 1.46–8(e)(9)(ii) among the 10-percent credit, the one-percent credit, and the one-half percent credit for a particular year. However, as illustrated in § 1.46–8(e)(9)(ii), this subparagraph (3) does not apply to a redetermination solely of one or both of the additional credits.

(3) *Withdrawal asset segregation.* The segregated accounting provisions of § 1.46–8 (f) apply independently to withdrawal assets attributable to TRASOP securities under § 1.46–8 and to TRASOP securities under this section.

(f) *Matching employee contributions*—(1) *Designation by employee.* The plan must state that each employee on whose behalf an allocation is made under § 1.46–8 (d)(6) for an applicable year is eligible to designate and contribute an amount to the TRASOP for that year as a matching employee contribution.

(2) *Form and timing of contribution*—(i) *Cash.* A participant may contribute in a manner provided under the plan a designated amount in cash directly to the plan or indirectly by the employer's withholding from amounts otherwise due the participant. The full amount, or pledge in lieu of an amount, for an applicable year must be contributed by the applicable last day described in § 1.46–8 (c) (8) (i).

(ii) *Optional pledges in lieu of cash.* The plan need not permit a pledge. However, when permitted by the plan, an irrevocable written pledge made in good faith by a participant is treated as a matching employee contribution of cash, whether or not the pledge is in fact contractually binding. The pledge must be to contribute, by no later than a time specified in the TRASOP, a designated amount in cash directly to the plan or indirectly by authorizing the employer to withhold from compensation otherwise due a participant. The specified time may not be later than 24 months after the close of the applicable year for which the amount is treated as a matching employee contribution.

(iii) *Basic and supplemental contributions.* A plan formula may limit a matching employee contribution to a basic amount. It may also permit matching employee contributions of supplemental amounts to the extent that total basic amount contributions do not equal the amount of the additional credit claimed under this section. Employees may make supplemental contributions covering unpaid pledges only after the employer has disclosed the value of securities and income attributable to the unpaid pledge.

(3) *Prohibited discrimination*—(i) *General rule.* Matching employee contributions must be based on a formula stated in the plan that does not result in prohibited discrimination under section 401 (a) (4) either in form or in operation. Thus, for example, a flat dollar amount required as a matching employee contribution to qualify for employer-provided benefits under this section may not be too high for lower-paid employees to contribute under the plan. Further, lower paid employees must participate to such an extent that allocations under this section do not result in prohibited discrimination.

(ii) *Compensation disregarded.* Compensation disregarded in allocations under § 1.46–8 (d) (6) (iv) is disregarded under this paragraph and for purposes of determining basic amounts under paragraph (f) (2) (iii) of this section.

(iii) *Former employees.* A TRASOP must give all participants a reasonable opportunity to make matching employee contributions. However, neither a former employee who is a participant at the end of the plan year by reason of § 1.46–8 (d) (6) (iii), nor the estate of a deceased employee, need have the same options as are available to other participants. Thus, for example, a former employee may be limited to cash contributions even though other participants are permitted to make pledges. Also, if former employees or estates of deceased employees fail to make matching employee contributions, they are not considered in determining whether or not a TRASOP is discriminatory.

(iv) *Return of contributions.* A plan may provide for the return of employee and employer contributions for a year to the extent that plan operation would otherwise result in prohibited discrimination.

(4) *Investment in employer securities*—(i) *General rule.* Matching employee contributions must be invested in TRASOP securities no later than 30 days after the time for funding a TRASOP under § 1.46–8 (c) (8) (ii) or, if later, the time specified under the special rule for pledges.

(ii) *Special rule for pledges.* Cash contributed to pay a pledge permitted by paragraph (f) (2) (ii) of this section must be invested in employer securities so that the cash is not held more than 3 months.

(5) *Reduction of matching employee contribution*—(i) *In general.* Matching employee contributions must be reduced in three cases. First, they are reduced to the extent that there are no corresponding employer contributions described in paragraph (c) (4) (i) of this section. This occurs, for example, when the aggregate of the basic amounts of matching employee contributions exceeds the allowable credit. Second, they are reduced to the extent that corresponding employer contributions matching them under paragraph (c) (4) (i) of this section are withdrawn under section 301 (f) of the 1975 TRA. Third, they are reduced by the amount of any pledge unpaid at the time specified in paragraph (f) (2) (ii) of this section.

(ii) *Apportioning reductions.* Generally, the account of each contributor under this section for an applicable year is reduced by a percentage of the account. This percentage equals the total reduction of all matching employee contributions for that year divided by the total, before the reduction, of all matching employee contributions. However, if a reduction is directly attributable to a particular contributor, only that contributor's account is reduced. A reduction is directly attributable to a particular contributor when, for example, the limits of section 415 prohibit a full allocation of employer contributions equal to the contributor's matching employee contribution for an applicable year or when a contributor fails to pay a pledge.

(iii) *Disposing of reductions.* If a participant's matching employee contribution is reduced, the amount of the reduction must either be treated as a voluntary contribution or returned to the participant by the later of two dates. The first date is 30 days after the time for investing in TRASOP securities under paragraph (f)(4) of this section. The second date is the 30th day after the date on which the withdrawal of employer contributions occurs that causes the reduction. It may be treated as a voluntary contribution only if, as stated in the plan, the participant so indicates in writing when making the matching employee contribution.

(iv) *Supplemental contributions covering unpaid pledges.* Notwithstanding the timing requirements of paragraph (f)(2) of this section, supplemental contributions covering unpaid pledges must be made no later than 60 days after accounting for the corresponding reduction under paragraph (f)(5)(ii) of this section.

(v) *Effect of reduction on credit.* For the purpose of applying section 415 to an additional allocation to the account of a participant attributable to a supplemental contribution covering an unpaid pledge, the contribution is treated as an annual addition to the supplemental contributor's account in the applicable year for which the reduction occurred. An amount in excess of the contribution may be allocated in equal amounts for each year from the applicable year to the year of the reduction. The employer's credit is reduced only to the extent that a proportionate transfer of assets is not made from the account of the participant to whom the reduction is attributable to the accounts of supplemental contributors.

(vi) *Example.* The rules contained in paragraph (f) (2) and (5) of this section are illustrated by the following example:

Example. Assume that A is an employee of corporation M, a calendar year taxpayer that maintains a TRASOP. A has pledged $100 as a matching employee contribution for 1977, the first applicable year of M's TRASOP. M has transferred employer securities valued at $100 that have been allocated to A's account under the plan. The TRASOP provides that pledges must be paid no later than 24 months after the end of the applicable year. Thus, A's $100 pledge must be paid by December 31, 1979. As of December 31, 1979, the employer securities attributable to A's pledge have a value of $90 and have produced undistributed dividend income of $13. Thus, the value of the portion of A's account attributable to the unpaid pledge is $103. After December 31, 1979, the value of this portion of A's account is disclosed to participants, and employee B chooses to pay off A's unpaid pledge, as provided in the plan, by making a $100 supplemental contribution. The full amount of the securities and dividend income attributable to the unpaid pledge are transferred from A's account to that of B as of December 31, 1979. M's credit for 1977 is not reduced. The $100 supplemental contribution is an annual addition to B's account for purposes of applying section 415 in 1979. Income attributable to the pledge in excess of the supplemental contribution, $3 ($103–$100), may be allocated and treated as an annual addition by spreading this excess amount over the years from the applicable year to the year of the reduction (1977, 1978, 1979).

(g) *Failure to comply*—(1) *General rule.* If a corporation elects under § 1.46–8(c)(2)–(5) and paragraph (c)(1) of this section to obtain an additional credit, § 1.46–8(h) (1), (2), (3), (5), (6), and (7) as modified by this paragraph (g) apply.

(2) *Failure to comply (penalty classifications)*—(i) *In general.* A corporation fails to comply with an extra additional credit election if a defect described in paragraph (g)(2)(ii)–(iv) of this section occurs in a taxable year.

(ii) *Funding defect.* A funding defect occurs under this section if a corporation or its TRASOP fails to satisfy the requirements of § 1.46–8(c) (8) or (9) or paragraph (c)(4) of this section, as they apply directly to the extra additional credit.

(iii) *Special operational defect.* A special operational defect occurs if a TRASOP fails in operation to satisfy the requirements described in § 1.46–8 (d)(5)–(9) (except (6)(i), (iii), and (v)–(viii)) or (e)(3), or paragraph (d) (5), (6), and (e)–(3) of this section, as they apply directly to the extra additional credit.

(iv) *De minimis defect.* A *de minimis* defect occurs if a corporation or its TRASOP fails to satisfy the requirements, other than those enumerated in paragraphs (c)(1) and (2) and (g)(2)(ii) and (iii), of this section or of § 1.46–8 other than those excluded under § 1.46–8(h)(4)(iv).

(3) *Amount involved.* The amount involved in a failure to comply under this section is based upon the extra additional credit within the meaning of section 46 (a)(2)(B)(ii).

(4) *Coordination of civil penalties.* The civil penalties under § 1.46–8 and this section are determined separately. In no case may the amount involved with respect to a particular failure to comply in one year exceed under both sections the full additional credit within the meaning of section 46 (a)(2)(B)(i) and (ii)

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc. 79–25581 Filed 8–16–79; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[29 CFR Part 1910]

[Docket No. H–103S]

Educational/Scientific Diving; Advance Notice of Proposed Rulemaking

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

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: Employers engaged in educational/scientific diving are currently required to comply with the provisions of 29 CFR Part 1910, Subpart T, "Commercial Diving Operations." OSHA is requesting comments and information to determine if equivalent safety and health protection for the employees involved could be more appropriately provided by modifications to the scope or requirements of the current OSHA regulations.

DATES: Comments and information should be submitted by October 15, 1979.

ADDRESS: Comments and information should be submitted in quadruplicate to the Docket Officer, Docket No. H–103S, Occupational Safety and Health Administration, Room S–6212, U.S. Department of Labor, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Joesph J. La Rocca, Directorate of Safety Standards Programs, Room N–3463, OSHA, 3rd Street and Constitution Avenue, NW, Washington, D.C. 20210. Phone: (202) 523–7216.

SUPPLEMENTARY INFORMATION: The current OSHA standards for commercial diving operations (Subpart T of 29 CFR Part 1910) cover diving activities in such varied areas as maintenance, mariculture/aquaculture, oil drilling and exploration, educational/scientific diving, and salvage operations. Subpart T was published on July 22, 1977 (42 FR 37668).

The scope of the current diving standard is stated in paragraph (a) (2) of § 1910.401 as follows:

> This standard applies to diving and related support operations conducted in connection with all types of work and employment, including general industry, construction, ship repairing, shipbuilding, shipbreaking and longshoring. However, this standard does not apply to any diving operation:
>
> (i) Performed solely for instructional purposes, using open-circuit, compressed-air SCUBA and conducted within the no-decompression limits;
>
> (ii) Performed solely for search, rescue, or related public safety pruposes by or under the control of a governmental agency; or
>
> (iii) Governed by 45 CFR Part 46 (Protection of Human Subjects, U.S. Department of Health, Education, and Welfare) or equivalent rules or regulations established by another federal agency, which regulate research, development, or related purposes involving human subjects.

The first exclusion in the standard singles out those diving operations "performed solely for instructional purposes." This exclusion in the final rule was substantially different from that which appeared in the proposed standards published November 5, 1976 (41 FR 50008). As initially proposed, exception to the coverage of the standards would have been provided for diving operations:

"(1) Performed solely for instructional or educational/scientific purposes; and

(2) Utilizing open-circuit, compressed-air SCUBA; and

(3) Conducted within the time-depth limits of no decompression diving."

In contrast to the proposal, the final standard exempted instructional diving but not educational/scientific diving because at the time of the final rule, the record was judged as not adequate to support a conclusion that the work conditions and risk exposure of scientific divers differ measurably from those of commercial diving. Educational/scientific diving is, therefore, generally covered by the standards except for that portion of scientific diving subject to the HEW human subjects rules at 45 CFR Part 46.

Since the issuance of the OSHA final regulation, several other governmental agencies and interested public groups have questioned the very limited exclusions provided in the commercial diving standards for those diving activities undertaken for educational or research and development purposes. As a specific example, the U.S. Coast Guard, on February 1, 1979, promulgated standards for Commercial Diving Operations (46 CFR Part 197, Subpart B) which exempt from coverage those diving operations "performed solely for marine scientific research and development purposes by educational insitutions."

OSHA has been requested by interested parties to consider whether the current standards should be amended to provide modified requirements for educational/scientific diving.

While HEW-sponsored diving research is exempted from the present OSHA standard, other non-HEW-sponsored research which has similar objectives and procedures is not exempted. Consequently, it is argued, such research is being restricted. Since the objective of such non-exempt research is to extend the safe limits of diving physiology and technology, scientific diving institutions and others maintain that the long term safety and health interests of divers would be best served by the continuation of this research, and that such research cannot reasonably be expected to comply with standards which are designed to reflect current operational commercial practices.

However, these institutions also recognize that it may be necessary to provide safety and health standards which more specifically address the different nature and environment of scientific diving tasks than do the current OSHA standards. Several organizations have developed recommendations for such protection (e.g., NOAA diving manual).

California is currently considering a proposed diving standard consisting of a

set of requirements applicable to all diving operations, combined with an additional set of requirements which would apply only to commercial diving. The California proposal was developed with the assistance of employers in the educational/scientific diving community. It is based on the view that such a bifurcated approach may be a more appropriate means of regulating both regular commercial and educational/scientific diving activity.

Significant new testimony and comments on educational/scientific diving have been received by the state of California throughout the development of its proposed diving standards. This new information has been made available to OSHA, and has been reviewed by the agency along with the materials already in the record of the commercial diving proceedings.

On the basis of the concern expressed by interested persons, as well as the information available from California, OSHA has decided to examine the question of whether Subpart T should be amended to provide separate considerations for diving performed solely for educational/scientific purposes. Comments and data are being solicited on issues pertaining to educational/scientific diving, including the following:

1. What additional information is now available on educational/scientific diving which was not available when Subpart T was promulgated?

2. In what ways, if any, do the present OSHA standards result in difficulties or inequities when applied to educational/scientific diving?

3. What provisions of Subpart T have caused the greatest difficulties for educational/scientific diving operations? How could such problems best be ameliorated?

4. What specific modifications, if any, to the present provisions should OSHA consider?

In discussing these issues, parties should concentrate on the appropriate scope of coverage for provision on educational/scientific diving, including definitions, personnel qualifications, medical surveillance, diving procedures, equipment, and recordkeeping.

Interested parties are invited to submit comments and additional information relating to educational/scientific diving. Comments and information should be sent in quadruplicate to the Docket Office, Room S-6212, Docket No. H-103S, Occupational Safety and Health Administration, U.S. Department of Labor, 3rd Street and Constitution Avenue, NW., Washington, D.C. 20210 by October 15, 1979. The communications received, as well as any previous information submitted to the Docket Office regarding diving, will be available for public inspection and copying at the above location.

Information which has already been submitted by interested persons to the rulemaking record for the commercial diving standard need not be resubmitted in response to this advance notice. A listing of documents presently in the record which specifically pertain to educational/scientific diving is available in the Docket Office.

This advance notice of proposed rulemaking is issued under the authority of sections 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599; 29 U.S.C. 655, 657), Section 41 of the Longshoremen's and Harbor Workers' Compensation Act, as amended (44 Stat. 1444; 33 U.S.C. 941), Section 107 of the Contract Work Hours and Safety Standards Act (the Construction Safety Act) (83 Stat. 96; 40 U.S.C. 333), Secretary of Labor's Order No. 8-76 (41 FR 25059) and 29 CFR Part 1911.

Signed at Washington, D.C., this 10th day of August 1979.

Eula Bingham,

Assistant Secretary of Labor.

FR Doc. 79-25580 Filed 8-16-79; 8:45 am]
BILLING CODE 4510-26-M

[29 CFR Part 1926]

[Docket No. S-007]

Guarding of Low-Pitched-Roof Perimeters During Roofing Work; Notice of Proposed Rulemaking

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Proposed Rulemaking.

SUMMARY: This notice proposes to amend Subpart M of Part 1926, by adding a standard for the guarding of low-pitch-roof perimeters during the performance of roofing work. This proposal is being issued after appropriate consultation with the Advisory Committee on Construction Safety and Health. It would clarify the application of the existing standards on perimeter guarding contained in Subpart M and would provide for the use of warning lines and direct supervision in certain specific situations involving roofing activities.

DATES: Comments on this proposed rule must be postmarked by October 12, 1979. A public meeting will be held on September 28, 1979, 9:00 a.m. Persons wishing to speak at the meeting should notify OSHA by September 14, 1979. Requests for a hearing must be postmarked by October 12, 1979.

ADDRESS: Comments, notifications and requests for hearings are to be sent to the Docket Officer, Docket No. S-007, Room S6212, U.S. Department of Labor, Washington, D.C. 20210.

PUBLIC MEETING LOCATION: Room N4437 A, B, and C, U.S. Department of Labor, Third Street and Constitution Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Roy F. Gurnham, Office of Construction and Civil Engineering Safety Standards, Third Street and Constitution Avenue, N.W., Room N3457, Washington, D.C. 20210, Telephone (202) 523-8161.

SUPPLEMENTARY INFORMATION:

I. Background

According to reports issued by the National Institute for Occupational Safety and Health (NIOSH), the National Bureau of Standards (NBS), and the Bureau of Labor Statistics (BLS), in recent years, the roofing and sheet metal industry, employing over 133,000 workers, has had one of the highest lost-time-injury-accident rates of any industry in the United States, exceeding even that for the coal mining industry. However, neither the Bureau of Labor Statistics, most state agencies, nor the insurance industry compile job related injury data in the format or detail necessary to determine the exact causes of accidents. Of the data that are available, the NIOSH report cites a 1970 State of California report that shows "falling off roofs", both low and high pitched, to comprise over 17.7 percent of all roofing accidents. The NIOSH report also cites a similar State of New York report that shows "falling to a different level" to be the most serious of all types of roofing accidents. Further, in a 1976 report issued for the State of Wisconsin, falls from roofs comprised 5.1 percent of all roofing accidents and 26 percent of all accidents in the category "falls to a different level." In addition, NIOSH reports there are, undoubtedly, many more workers injured in falls from roofs than are reported under these headings because, although the roofing and sheet metal industry does most of the commercial roofing work performed, employers whose business is less than 50 percent roofing work have their roofer employment and injury data placed under other classifications such as residential or nonresidential building construction.

Subpart M of Part 1926, entitled "Floor and Wall Openings, and Stairways", was promulgated in 1971, under section 6(a) of the Occupational Safety and Health Act of 1970. It contains the following provision pertaining to the guarding of perimeters:

§ 1926.500(d). Guarding of open-sided floors, platforms, and runways. (1) Every open-sided floor or platform 6 feet or more above adjacent floor or ground level shall be guarded by a standard railing, or the equivalent, as specified in paragraph (f)(i) of this section, on all open sides, except where there is entrance to a ramp, stairway, or fixed ladder.

Because there were no other specific standards in Subpart M that addressed the guarding of low-pitched-roof perimeters, OSHA interpreted § 1926.500(d)(1) as being applicable to such roofs. However, two circuit courts of appeals have ruled that the language of 29 CFR 1926.500(d)(1) is not amendable to such an interpretation because the word "roof" is not in the language of the standard (*Langer Roofing and Sheet Metal, Inc.* vs. *Secretary of Labor*, 524 F. 2d 1337 (7th Cir. 1975); *Diamond Roofing Co., Inc.* vs. *Occupational Safety and Health Review Commission*, 528 F. 2d 645 (5th Cir. 1976)).

OSHA has since reviewed the available data and information, together with the *Langer* and *Diamond* decisions, and has determined that a new provision should be proposed to cover the guarding of low-pitched-roof perimeters during roofing work. Protection for other roof level work operations would continue to be provided under provisions such as §§ 1926.28(a), 1926.104, 1926.105 as well as Section 5(a)(1) of the Occupational Safety and Health Act of 1970.

A "low-pitched roof" would be defined in the proposal as any roof with a pitch (slope) equal to or less than four in twelve. This limit together with the roof height of sixteen feet, was selected so that the new provisions would complement the provisions of § 1926.451(u)(3) contained in Subpart L, which apply only to roofs having a slope greater than four in twelve and ground to eave height greater than sixteen feet.

When a full revision of Subpart M is completed, OSHA intends to incorporate both low and steep-pitched roof perimeter protection requirements into that subpart. At that time, OSHA will consider the question of what slope should constitute the dividing line between low-pitched and steep-pitched roofs for all operations. For the purposes of the present proposal, involving only roofing work, however, a slope equal to or less than four in twelve will be used to define a low-pitched roof. (It should be noted that the proposal would limit the use of warning lines (discussed below) to roofs with a slope equal to or less than three in twelve as opposed to four in twelve.)

While considering the specific problem of low-pitched-roof perimeter guarding, OSHA received over 40 letters on the subject. Although none of the letters questions the need for low-pitched-roof perimeter protection, the letters generally object to the use of guardrails as the only acceptable means of protection during the performance of roofing work. Although guardrails can readily be used during construction of a roof deck, they must be removed prior to the application of roof waterproofing membranes and related sheet metal work at the roof edge. The reason for this is that, unless mounted on a parapet wall, the guardrail is normally mounted on the roof deck and impedes the application of the roof membrane. The use of freestanding guardrail systems as an alternative is also limited since such guardrails must also be moved out of the way when the membrane is applied near roof edges and thus are not a solution to the problem of providing fall protection.

The problems discussed above exist whether the work being done is a reroofing operation on an existing building or a new roof being applied on new contruction. Since guardrails have to be removed before any roof edge finishing work can be performed, roofing contractors question the necessity of erecting a guardrail in the first place.

Other expressed concerns include the increase in cost and time required to erect guardrails, and whether guardrails are needed when the work to be performed is not near the roof edge.

A report prepared for the National Roofing Contractors Association (NRCA) by the engineering firm of Simpson, Gumpertz and Heger has concluded that guardrails make orderly roofing work impossible and do not offer the protection desired since they must be removed prior to the completion of roof edge finishing work. In addition, the report concludes that some freestanding guardrail systems may seriously overstress the roof support system because the roof deck is normally not designed to hold the weight that would be necessary to keep the guardrail upright under an impact load of 200 pounds. Although not discussed in the report, it should be noted that those freestanding guardrail systems which do not overstress the roof would still have to be moved out of the way prior to the application of waterproofing membranes and related sheet metal work close to roof edges.

The NRCA report concludes that other conventional guarding systems also pose serious feasibility problems during roofing operations on low-pitched roofs. Catch platforms for example, cannot be used on a majority of building types because of the presence of high windows, lightweight wall panels, or unknown masonry structural details which make it very difficult to safely anchor the platform to the building. In addition, the effort necessary to erect the platform would, in itself, expose employees to the hazard of falling. Safety belt systems, according to the report, are difficult or impossible to anchor safely and result in chaos when used during roofing work. Most low-pitched roofs are covered with hot-asphalt waterproofing materials. When safety belts are used on such roofs, the lines drag in the hot tar, pose tripping hazards to employees working in hot tar areas, and tend to become tangled during the normal rapid movement of employees doing roofing work.

These difficulties with conventional guarding systems (referred to in the proposal as "motion-stopping safety (MSS) system".) would be avoided in the standard by allowing the use of a warning line and/or direct supervision as alternatives to such systems during the performance of roofing work on roofs with a slope equal to or less than three in twelve. Roofing work would be defined as the hoisting, storage, application, and removal of roofing materials and equipment, including related sheet metal work, but not including the construction of the roof deck.

MSS systems are defined in the proposal to include guardrails, platforms or scaffolds with guardrails, safety nets, and safety belt systems. Warning lines and direct supervision are discussed in detail below in the summary and explanation of the proposed standard.

The concepts of the warning line and direct supervision were first suggested by the National Roofing Contractors Association (NRCA) in a September 1977 letter to OSHA. These concepts have also received support from the United Slate, Tile and Composition Roofers, Damp and Waterproof Workers' Association (AFL–CIO), Associated General Contractors, and others familiar with the problem of falls from roofs. The warning line concept has also been endorsed by the Simpson, Gumpertz and Heger report which calls it a "practical solution" to the problem of roof-perimeter protection.

OSHA believes that warning lines and direct supervision can be effective safety systems for employees working on roofs which have a slope less than or equal to three in twelve, during the performance of roofing work. The three in twelve limit would be used because, according to industry sources, this is the maximum slope on which an employee can safely work on hot-asphalt without slipping. (Hot asphalt is the principal material used on low-pitched roofs.)

The MSS system, warning line, and direct supervision proposals have been reviewed by the Advisory Committee on Construction Safety and Health. At a meeting held on November 29, 1977, the proposals were first submitted to the committee for review. Action was postponed until the following meeting so that the committee would have time to evaluate them. During the February 1978 committee meeting, the proposals were discussed, modified, and determined by the committee to be acceptable procedures for use during roof level repair or construction.

The proposals were resubmitted to the committee at the December 5, 1978 meeting to show the committee how their modifications had been incorporated into the proposal language. The committee, which had just had a significant membership change, voted at this meeting to recommend the adoption of a standard that would require the use of MSS systems around low-pitched roof perimeters, and would not allow warning lines or direct supervision as alternatives.

The committee's suggested approach is not included in the present proposal, which is limited to roofing work, because serious questions are raised as to its feasibility and benefits for the operations involved. These questions are discussed more thoroughly both in the Economic Impact Assessment performed for OSHA by Centaur Associates, Inc. (See Section IV, Regulatory Assessment), and in the NRCA report referred to earlier.

The committee's recommendation that the standard require MSS system protection for all employees working on low-pitched roofs is being evaluated and some form of perimeter protection for other trades is expected to be included in subpart M when it is proposed for complete revision.

After careful evaluation of the committee's recommendations and a study of available data, OSHA believes that, during the performance of roofing work, the proposed provisions for the alternative use of MSS, warning line, and/or direct supervision systems, around low-pitched-roof perimeters are the most appropriate means of providing fall protection.

II. Summary and Explanation of Proposed Standard

Section 1926.500(g)(1)—General provisions. The general provisions of the standard, paragraph (g)(1), would require that, during the performance of roofing work, employees engaged in roofing work be protected from the hazard of falling off low-pitched-roof edges with a ground-to-eave height greater than 16 feet by the use of one or more of the following: motion-stopping-safety systems (MSS systems); warning lines; and/or direct supervision. A low-pitched roof would be defined as having a slope less than or equal to four in twelve. The standard would require the use of MSS systems on all roofs with a slope less than or equal to four in twelve; however, it would allow the use of warning lines and direct supervision in lieu of MSS systems on roofs with slopes less than or equal to three in twelve, as specified in paragraphs (g)(2) and (g)(3) respectively. The requirements of paragraph (g)(1) would not apply at points of access such as stairways, ladders, and ramps.

Because of the relatively short time, if any, spent near a roof edge, employers would be exempted from the requirements of paragraph (g)(1) if their employees are on the roof solely for the purpose of investigating, inspecting, or estimating roof level conditions.

Paragraph (g)(2)—Warning lines. This paragraph sets forth the specific requirements and limitations for the use of warning lines. Simply described, a warning line is a rope, chain, or wire, supported by a series of stanchions, erected along the edge of a roof. The lines are set back from the edge and serve as a physical barrier to warn and remind employees that they are approaching or working near a fall hazard. The lines function by proving a direct physical contact with the employee. The contact attracts the employee's attention, enabling him to stop in time to avoid falling off the roof. The system is not intended to serve as a positive restraint, but only as a warning system.

The proposal would not allow the use of a warning line on a roof having a slope greater than three inches in twelve. This limitation is due to the increased difficulty for a worker to stop his momentum unaided on roofs steeper than three in twelve. In addition, the chance of slipping on hot-asphalt increases as the roof pitch increases. Most hot-asphalt applications are made on roofs with a slope equal to or less than three in twelve.

The use of warning lines would be prohibited on all roofs, regardless of slope, which are not free of ice and snow in the work area.

Paragraph (g)(2)(i) of the proposal would require that the warning line be set back from the roof edge at least six feet when no mechanical equipment is being used and at least ten feet when mechanical equipment is being used. These distances were selected to allow a worker time to react to the warning line before he gets too close to a roof edge. This is especially important in the roofing trade where a worker may be moving backwards during the application of roofing materials. According to a University of Michigan study, this distance must be at least five feet for employees wearing normal clothing and who are not working with mechanical equipment. However, the NRCA porposal recommends that a distance of six feet be used to allow for the heavy clothing normally worn by construction employees. When mechanical equipment is being used, a distance of ten feet was recommended by the NRCA to allow for the added momentum of the equipment.

The University of Michigan report states that, to be effective, a warning line must be highly visible. Accordingly, the proposal, in paragraph (g)(2)(ii)(*a*), would require that the line be flagged with high-visibility material at no more than six foot intervals. However, since visibility is primarily dependent on the brightness contrast of the visual device to its environment and not on the color of the flagging material, no specific color would be specified for use.

Paragraph (g)(2)(ii)(*b*) would require the line to be positioned between 34 and 39 inches from the roof surface. As recommended by the University of Michigan report, the height is low enough to warn a short worker stooped over while, at the same time, it is high enough not to be a tripping hazard. The limits also allow for the sag which is present in any non-rigid system.

Because a worker may approach the line while moving backwards or may otherwise have his attention diverted, the line must offer sufficient resistance to attract a worker's attention when he touches it. The University of Michigan study recommends that the minimum force-resistance capacity (righting moment) of the stanchions be 25 pounds. Therefore, paragraph (g)(2)(ii)(*c*) would require that the stanchion, after being erected and the warning line attached, be designed to withstand a 25 pound force applied horizontally against the

top of the stanchion without it falling over. Using a factor of safety equal to four, paragraph (g)(2)(ii)(*d*) would require that the wire, rope, or chain have a minimum tensile strength capable of supporting a 100 pound load without breaking.

Paragraph (g)(2)(iii) would prohibit the storage of mechanical equipment outside the warning line; paragraph (g)(2)(iv) would prohibit the use of mechanical equipment outside the warning line unless the employees are protected by an MSS system; and paragraph (g)(2)(v) would require that points of access be connected to work areas by a path made of warning lines and that the path be closed when not in use.

Paragraph (g)(3)—Direct supervision. This paragraph sets forth the specific requirements and limitations for the use of direct supervision. Direct supervision would be defined as a safety system in which a competent person is directed by the employer to monitor the safety of workers exposed to a fall hazard and verbally warn the workers when it appears that they are unaware of the hazard or are acting in an unsafe manner. The individual would be required to be within visual sighting distance of the workers, on the same roof, and close enough to be able to verbally communicate with them.

Paragraph (g)(3)(i) would allow the use of direct supervision as a substitute for MSS systems for employees engaged in roofing work when they must work in the area between the warning line and the roof edge, provided that mechanical equipment is not being used.

Paragraph (g)(3)(ii) would also allow the use of direct supervision as an alternative to the MSS and warning line systems during the performance of roofing work on roofs with slopes less than or equal to three in twelve, and which are less than 50 feet wide provided that the employees are not using mechanical equipment on the roof. These roofs are too narrow for the practical use of a warning line.

Direct supervision would be allowed in these situations because of the nature of low-pitched roofing work which requires roofing employees to move along the roof edge at a relatively rapid pace. The use of safety belt systems by these employees would be cumbersome since they would have to continuously attach and detach their belts to get the freedom of movement necessary to work. In addition, as stated earlier, the safety lines would tend to drag in the hot tar, pose tripping hazards to employees working in hot tar areas, and become tangled during the normal movement of employees doing roofing work.

Paragraph (g)(4)—Roof edge materials handling areas and material storage. This paragraph would require that guardrails and/or safety belt sytems be used at all roof edge materials handling areas. These are particularly hazardous areas because employees often lean out over the edge in order to observe the hoisting operations. The warning line and/or direct supervision systems would not be allowed as alternatives to guardrails or safety belt systems in these areas. The feasibility question discussed earlier involving the dragging and tangling of safety lines during roofing work does not arise during materials handling operations at the roof edge.

Paragraph (g)(4)(vi) would prohibit the storage of materials within six feet of the roof edge unless a guardrail is erected. When materials are stacked next to a guardrail, paragraph (g)(4)(vii) would prohibit their being stacked higher than the guardrail.

Paragraph (g)(5)-Training. This paragraph of the proposal would require that every employee who works on roofs be trained in the proper techniques and practices applicable to the use of MSS, warning line, and direct supervision systems. These systems must be fully understood if they are to be used properly. For example, the employee must be instructed that a warning line will only warn him of the nearness of a roof edge and will not function as a positive restraint.

The proposal would not specify the contents of the training program. Instead, it would require that employees be fully informed about the hazards of working near roof edges and that they be instructed in the proper use and maintenance of the proposed safety systems. In this way, the standard would provide flexibility for the employer in providing his training program.

It would be required that the training be given to all new employees and to all employees before they start work on each new jobsite.

Additional issues. In addition to the areas disussed above, the following issues are relevant to the development of the final standard. In order for OSHA to assess these and other issues, public discussion is invited.

(1) *Whether OSHA should permit employees to work without an MSS system on some ice and snow covered roofs?* Presently, the proposal would not allow employees to work on ice or snow covered roofs unless protected by an MSS system. A recommendation has been made that the warning line and direct supervision systems be allowed as alternatives to this requirement on ice or snow covered roofs with a slope equal to or less than one in twelve. This would allow snow removal operations to take place on some buildings under construction. The sitution arises when snow falls on a roof where a warning line or direct supervision is already being used. Without a one-in-twelve exception, snow removal operations could not begin on any low-pitched roof until a guardrail system has been erected or employees are protected with a safety belt system.

(2) *Whether OSHA, if it permits employees to work without an MSS system on some ice and snow covered roofs, should use the suggested slope of one in twelve as the limitation for that exception?* The issue is whether or not the suggested slope of one in twelve is too steep and thus hazardous or whether, on the other hand, it is too conservative and should be increased.

(3) *Whether OSHA should extend the application of this standard in a future proposal to all trades working on low-pitched roofs?* OSHA is currently evaluating the feasibility of a requirement for all other employees working on low-pitched roofs to be protected by MSS sytems prior to, during, and after the performance of roofing work. In addition, OSHA is examining the issue of whether warning lines should be permitted as an alternative to MSS systems for other trades doing work on roofs, and under what conditions. Recommendations to OSHA that other trades be allowed to use warning lines and direct supervision should clearly explain why MSS systems cannot be used by the trades in question.

(4) *Whether OSHA should restrict the assigned duties of the individual responsible for direct supervision?* Should the employer-designated individual assigned to carry out the duties of direct supervision be prohibited from having any other duties or may the individual be a working member of the roofing crew? If the individual is not allowed to perform other duties, roofing crews may have to increase in size. If other duties are allowed, there is a question of how well the individual can supervise the safety of employees while his attention is on other work.

(5) *Whether OSHA should redefine the term "mechanical equipment"?* The term, as defined in the proposal, includes all motor-or-human-propelled, wheeled equipment. As used in the standard, this definition may be too

broad and some exceptions may be warranted.

(6) *Whether OSHA should allow the warning line to be placed six feet from the roof edges that are parallel to the direction of movement of mechanical equipment.* Presently, the proposal would require that the warning line be placed ten feet from all edges when mechanical equipment is used. However, the primary hazard is at the edges of a roof which are perpendicular to the path of operation of the mechanical equipment. These areas are the most dangerous because they are where employees are moving directly towards the roof edge and where mechanical equipment such as felt layers, must be turned around (a process that can place the employee near the edge without his being fully aware of the danger). OSHA believes that the ten foot requirement is appropriate for these areas. However, the parallel edges may not present the same hazards. Therefore, OSHA is considering whether warning lines should be allowed to be placed six feet from roof edges which are parallel to the direction of movement of mechanical equipment, allowing the warning line to be placed closer to the parallel roof edge would permit increased use of mechanical equipment.

III. References

The following reports, which have been referred to above, are available for public inspection and copying at the OSHA Docket Office, Room S6212, New Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. Telephone (202) 523–7894.

1. Advisory Committee on Construction Safety and Health: *Transcripts of meetings held on November 29, 1977; February 14, 1978; and December 5, 1978.*

2. Bureau of Labor Statistics (BLS) report: *Occupational Injuries and Illnesses in 1977: Summary*, U.S. Department of Labor, Report 561, 1979.

3. Centaur Associates, Inc.: *Economic Impact Statement/Assessment for the Proposed Amendment for Guarding of Low-Pitched Roof Perimeters*, June 22, 1979.

4. National Bureau of Standards (NBS) report: *Roofing Accident Data Base*, U.S. Department of Commerce, NBS–GCR 76–62, April 1975, p. 1

5. National Institute of Occupational Safety and Health (NIOSH) report: *Behavioral Analysis of Workers and Job Hazards in the Roofing Industry*, U.S. Department of Health, Education, and Welfare, No. (NIOSH) 75–176, June 1975, p. 2–3, 2–22, 2–23.

6. Simpson, Gumpertz and Heger, Inc. report: *Protection of Roofers From Falling Risks. An Analysis of Contemplated OSHA Standards for Flat Roofs*, National Roofing Contractors Association, 1975.

7. State of Wisconsin report: *Roofing and Sheet Metal SIC 1760, Analysis of Occupational Injuries and Illnesses for Wisconsin Industry*, Department of Industry, Labor and Human Relations, July 1976.

8. University of Michigan report: *An Ergonomic Basis for Recommendations Pertaining to Specific Sections of OSHA Standard, 29 CFR Part 1910, Subpart D—Walking and Working Surfaces*, College of Engineering, March 1978, pp. 79–135.

IV. Regulatory Assessment

In accordance with Executive Order No. 12044 (43 FR 12661, March 24, 1978), OSHA has assessed the potential economic impact of this proposal. Based on the economic identification guidelines of the Department of Labor (44 FR 5570, January 26, 1979), OSHA has concluded that the subject matter of this proposal is not a "major" action which would necessitate further economic impact evaluation and the preparation of a Regulatory Analysis.

Centaur Associates, Inc., has prepared for OSHA an economic assessment entitled "Economic Impact Statement/Assessment for the Proposed Amendments for the Guarding of Low-Pitched-Roof Perimeters." The study includes estimates of the benefits as well as the costs of compliance associated with the proposed amendments. The effects of the proposed regulation on productivity and market structure are also considered.

According to the study, compliance costs are not expected to reach the threshold for determining that a proposed regulation will have a major economic impact. The proposed amendments to Subpart M are also not expected to have any other economic impact that might be considered major. No significant market structure effects are projected nor is it expected that employment will be affected.

The report briefly discusses the feasibility of the MSS and the warning line systems. While warning lines are found to be feasible and easily fabricated and assembled by relatively unskilled workmen, the MSS systems are found to have feasibility problems. Guardrails, whether fixed or portable, must be removed prior to the completion of roof edge work. Thus, they cannot be in place at the time when they are needed most. Catch platforms may have anchorage problems because of high windows, lightweight panels, or unknown masonry details. Safety belts reduce necessary mobility, pose tripping hazards, and may not be possible to anchor safely. While these systems can work on some roofs, and therefore would not be excluded from use by the proposal, the warning line has the characteristic of being adaptable to any low-pitched roof situation.

The study concludes that compliance with the proposed standard is both technically and economically feasible.

OSHA certifies that this proposal is not "major" under Executive Order 12044 and the Secretary's guidelines (44 FR 5570).

The assessment is available for inspection and copying at the OSHA Technical Data Center, Room S6212, Third Street and Constitution Avenue, N.W., Washington, D.C. 20210. OSHA invites comments concerning the conclusions reached in the economic impact statement/assessment.

V. Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to this proposal and all issues involved therein including the Advisory Committee's recommendations. These comments must be postmarked on or before October 12, 1979 and submitted in quadruplicate to the Docket Officer, Docket No. S–007, U.S. Department of Labor, Third Street and Constitution Avenue, N.W., Room S6212, Washington, D.C. 20210. Written submissions must clearly identify the provisions of the proposal which are addressed and the position taken with respect to each issue.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely written submissions received will be made a part of the record of this proceeding.

To assist interested persons in submitting their written comments and data, OSHA is scheduling a public meeting during the comment period. The meeting will be held on September 28, 1979, in Room N4437 A, B, and C, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, D.C. It will begin at 9:00 a.m., will recess from 12 noon to 1 p.m., and will continue until 5 p.m.

The public meeting is intended as an informal forum for interested persons to present their concerns orally and to seek clarification of the proposal from representatives of OSHA who will conduct the public meeting.

OSHA requests that any person wishing to make an oral presentation at the meeting notify OSHA in advance. Please identify the person and/or organization intending to make a presentation, a telephone contact, the amount of time requested for that presentation, and the subject matter and a brief summary of the intended

presentation, if possible. This written notice should be sent to Docket S–007, Docket Office, Room S6212, U.S. Department of Labor, 3rd Street and Constitution Avenue, NW., Washington, D.C. 20210 no later than September 14, 1979. All persons giving advance notice will have time reserved for their oral presentations.

Persons wishing to speak who have not filed advance notices are requested to register from 8:00 a.m. to 9:00 a.m. on the morning of the public meeting. As long as time permits, all persons who wish to be heard will be allowed to speak. However, in the interest of time, persons who have provided advance notice will be given priority.

Detailed minutes or a transcript of the meeting will be prepared and will be made a part of the record of this rulemaking. Copies of the minutes or transcript will be available for inspection at the OSHA Docket Office, Room S6212, U.S. Department of Labor, 3rd Street and Constitution Avenue, NW., Washington, D.C. 20210.

Pursuant to 29 CFR 1911.11(b) and (c), interested persons may, in addition to filing written submissions and participating at the public meeting as provided above, file objections to the proposal, requesting an informal public hearing with respect thereto in accordance with the following conditions:

(1) The objections must include the name and address of the objector;

(2) The objections must be postmarked on or before October 12, 1979, and submitted to the Docket Office at the aforementioned address;

(3) The objections must specify with particularity the provision(s) of the proposed rule to which objection is taken, and must state the grounds therefor;

(4) Each objection must be separately stated and numbered; and

(5) The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

If objection and request for a hearing are timely filed, a hearing will be scheduled pursuant to section 6(b)(3) of the Occupational Safety and Health Act of 1970.

IV. Authority

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Third and Constitution Avenue, NW., Washington, D.C. 20210.

Accordingly, pursuant to section 6 of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655), section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96, 40 U.S.C. 333), Secretary of Labor's Order No. 8–76 (41 FR 25059), and 29 CFR Part 1911, it is proposed to amend Part 1926 of Title 29 of the Code of Federal Regulations as set forth below.

Signed at Washington, D.C. this 10th day of August, 1979.

Eula Bingham,

Assistant Secretary of Labor.

1. Section 1926.500 of Title 29 of the Code of Federal Regulations is proposed to be amended by adding a new paragraph (g) to read as follows:

§ 1926.500 Guardrails, handrails and covers.

* * * * *

(g) *Guarding of low-pitched-roof perimeters during roofing work.* (1) *General provisions.* During the performance of roofing work on low-pitched roofs with a ground to eave height greater than 16 feet (4.9 meters), employees engaged in performing roofing work shall be protected from falling from all unprotected sides and edges of the work area as follows:

(i) on roofs with a slope equal to or less than four in twelve but greater than three in twelve, by the use of a motion-stopping-safety system (MSS system);

(ii) on roofs with a slope equal to or less than three in twelve, by the use of one or more of the following: MSS system; warning line as provided in paragraph (g)(2) of this section; and/or direct supervision as provided in paragraph (g)(3) of this section. These provisions do not apply at points of access such as stairways, ladders, and ramps, or when employees are on the roof only to inspect, investigate, or estimate roof level conditions. Roof edge materials handling areas and materials storage shall be guarded as provided in paragraph (g)(4) of this section.

(2) *Warning lines.* Warning lines may be used only on roofs with a slope equal to or less than three in twelve and where the work area is free of ice and snow. Warning lines shall be erected and maintained as provided in this paragraph.

(i) Warning lines shall be erected around all sides of the work area.

(*a*) When mechanical equipment is not being used, the warning line shall be erected not less than six feet (1.8 meters) from the roof edge;

(*b*) When mechanical equipment is being used, the warning line shall be erected not less than ten feet (3.1 meters) from the roof edge.

(ii) The warning line shall consist of a rope, wire, or chain, and supporting stanchions as follows:

(*a*) The rope, wire, or chain shall be flagged at not more than six foot intervals with high-visibility material;

(*b*) The rope, wire, or chain shall be rigged and supported in such a way that its lowest point is no less than 34 inches (.86 meters) from the roof surface and its highest point is no more than 39 inches (1 meter) from the roof surface;

(*c*) After being erected, with the rope, wire, or chain attached, stanchions shall be capable of resisting, without tipping over, a force of at least 25 pounds (111 Newtons) applied horizontally against the top of the stanchion, perpendicular to the warning line, and in the direction of the roof edge; and

(*d*) The rope, wire, or chain shall be capable of supporting, without breaking, a load of at least 100 pounds (444 Newtons) in tension.

(iii) Mechanical equipment shall not be stored between the warning line and the roof edge.

(iv) Mechanical equipment shall not be used between the warning line and the roof edge unless the employees are protected by an MSS system.

(v) Access paths shall be erected as follows:

(*a*) Roof edge points of access, materials handling and storage areas shall be connected to the work area by a clear access path formed by two warning lines.

(*b*) When the path is not in use a rope, wire, or chain equal in strength and height to the warning line, shall be placed across the path at the point where the path intersects the warning line erected around the work area.

(3) *Direct supervision.* Direct supervision may be used only on roofs with a slope equal to or less than three in twelve, where the work area is free of ice and snow, in areas where mechanical equipment is not being used, and only in the following situations:

(i) When employees are performing roofing work between a warning line and the roof edge; or

(ii) When employees are performing roofing work on roofs less than 50 feet (15.25 meters) wide.

(4) *Roof edge materials handing areas and materials storage.* Employees working in roof edge materials handling areas with a ground to eave height greater than 16 feet (4.9 meters) shall be protected from falling by the use of an MSS system along the ungraded side and/or edge of the area as follows:

(i) When guardrails are used at hoisting areas, a minimum of four feet of guardrail shall be erected on each side

of the access point through which materials are hoisted.

(ii) A chain or gate shall be placed across the opening between the guardrail sections when hoisting operations are not taking place.

(iii) When guardrails are used at bitumen pipe outlets, a minimum of four feet of guardrail shall be erected on each side of the pipe.

(iv) When safety belt systems are used, they shall not be attached to the hoist.

(v) When safety belt systems are used they shall be rigged to allow the movement of employees only as far as the roof edge.

(vi) Materials shall not be stored within six feet of the roof edge unless guardrails are erected at the roof edge.

(vii) Materials shall not be stacked higher than the guardrails unless stacked more than six feet from the roof edge.

(5) *Training.* (i) The employer shall provide a training program to educate all roofing employees so that they are able to recognize and deal with the hazards of falling associated with working near a roof perimeter. The employees shall also be trained in the safety procedures to be followed in order to prevent such falls.

(ii) The employer shall assure that no employee engages in any roof level activity without being trained and instructed in the following areas:

(*a*) The nature of fall hazards in the work area near a roof edge;

(*b*) The function, use, and operation of the MSS system, warning line, and direct supervision system(s) to be used;

(*c*) The correct procedures for erecting, maintaining, and disassembly of the system(s) to be used;

(*d*) The role of the supervisor in the direct supervision system when this system is used;

(*e*) The limitations on the use of mechanical equipment; and

(*f*) The correct procedures for the handling and storage of equipment and materials.

(iii) At a minimum, training shall be provided for each new employee prior to any work assignment and for all employees before the start of work at each new jobsite.

2. Section 1926.502 of Title 29 of the Code of Federal Regulations is proposed to be amended by adding new paragraphs (p) through (x) to read as follows:

§ 1926.502 Definitions applicable to this subpart.

* * * * *

(p) "Direct supervision"—a safety system in which a competent person is directed by the employer to monitor the safety of workers exposed to a fall hazard and to verbally warn employees when it appears that they are unaware of the hazard or are acting in an unsafe manner. The competent individual shall be within visual sighting distance of the employees, on the same roof, and shall be close enough to verbally communicate with the employees.

(q) "Low-pitched roof"—a roof having a slope less than or equal to four in twelve.

(r) "Mechanical equipment"—motor or human propelled, wheeled equipment.

(s) "Motion-stopping-safety systems (MSS systems)"—fall protection using the following equipment singly or in combination: standard guardrails as described in § 1926.500(f), scaffolds or platforms with guardrails as described in § 1926.451, safety nets as described in § 1926.105; and safety belt systems as described in § 1926.104.

(t) "Roof"—the exterior surface on the top of a building. This does not include floors which, because a building has not been completely built, temporarily become the top surface of a building.

(u) "Roofing work"—the hoisting, storage, application, and removal of roofing materials and equipment, including related sheet metal work, but not including the construction of the roof deck.

(v) "Unprotected side or edge"—any side or edge of a roof where there is no wall three feet (.9 meters) or more in height.

(w) "Warning line"—a barrier of high visibility erected adjacent to a roof perimeter for the purpose of providing a warning to employees that they are near or are approaching the roof edge.

(x) "Work area"—that portion of a roof where work is being performed.

(Sec. 6, 84 Stat. 1593 (29 U.S.C. 655); sec. 107, 83 Stat. 96 (40 U.S.C. 333); Secretary of Labor's Order 8–76 (41 FR 25059); 29 CFR Part 1911)

[FR Doc. 79–25251 Filed 8–16–79; 8:45 am]
BILLING CODE 4510–26–M

VETERANS ADMINISTRATION

[38 CFR Part 26]

Environmental Effects of VA Actions

AGENCY: Veterans Administration.

ACTION: Proposed rule.

SUMMARY: This rule establishes Veterans Administration (VA) policies and procedures to supplement the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, November 29, 1978 (40 CFR Parts 1500–1508). These CEQ Regulations provide that Federal agencies shall adopt implementing procedures by July 30, 1979. This proposed rule provides implementing procedures and guidance to VA Components and assigns responsibility, as required by the CEQ Regulations.

DATES: Comments must be received on or before September 17, 1979.

ADDRESSES: Assistant Deputy Administrator for Administration and Logistics (004), Office of Environmental Affairs, Veterans Administration, 810 Vermont Ave., N.W., Washington, D.C. 20420.

FOR FURTHER INFORMATION CONTACT: Willard S. Sitler (004A), Telephone: (202) 389–2526.

The VA proposes to revise Title 38, CFR by publishing a new Part 26 to read as follows:

PART 26—ENVIRONMENTAL EFFECTS OF VA ACTIONS

Sec.

26.1 Reissuance and purpose.
26.2 Applicability and scope.
26.3 Definitions.
26.4 Policy.
26.5 Responsibilities.
Enclosure 1: VA Implementing Procedures.

Authority: 42 U.S.C. 4321 et seq., Executive Order 11514, as amended by EO 11991.

§ 26.1 Reissuance and purpose.

The purpose of these proposed rules is to implement the Council on Environmental Quality (CEQ) Regulations (National Environmental Policy Act Regulations, 43 FR 55978 (1978)) and to provide policy and procedures for Veterans Administration (VA) officials to be informed of, and to take into account, environmental considerations when authorizing or approving VA actions that affect the environment in the United States. The Council on Environmental Quality Regulations implement the procedural provisions, Section 102(2) of the National Environmental Policy Act of 1969, as amended (Pub. L. 91–190, 42 U.S.C. 4321 et seq.), and Executive Order 11514, as amended (35 FR 4247 [1970]), amended by Executive Order 11991, (42 FR 26967 [1977]).

§ 26.2 Applicability and scope.

Provisions of this Part apply to the Veterans Administration, and to "VA Components".

§ 26.3 Definitions.

(a) "United States" means all States, territories, and possessions of the United States; and all waters and air space subject to the territorial jurisdiction of the United States. The territories and possessions of the United States include the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(b) "VA Components" means VA operating department, including Department of Medicine and Surgery, Department of Memorial Affairs, and Department of Veterans Benefits.

(c) Other terms used in this Part are defined in Part 1508 of the CEQ Regulations.

§ 26.4 Policy.

(a) The Veterans Administration must act with care in carrying out its mission of providing services for veterans to assure that it does so by complying with national environmental policies. Care must be taken to assure that all practical means and measures are used to protect, to restore, and to enhance the quality of the environment; to avoid or to minimize adverse environmental consequences, consistent with other considerations of national policy; and to attain the following objectives:

(1) Achieving the fullest possible use of the environment without degradation, or undesirable and unintended consequences.

(2) Preserving important historical, cultural, and natural aspects of our national heritage, and maintaining, where possible, an environment that supports diversity and variety of individual choice.

(3) Achieving a balance between resource use and development within the sustained carrying capacity of the ecological system involved.

(4) Enhancing the quality of renewable resources and working toward the maximum attainable recycling of depletable resources.

(b) The Veterans Administration and VA Components shall:

(1) Assess environmental consequences of VA actions that affect the environment in accordance with CEQ Regulations for implementing the procedural provisions of the National Environmental Policy Act.

(2) Use a systematic, interdisciplinary approach to assure the integrated use of the natural and social sciences, and environmental considerations, in making plans and decisions with a potential for environmental impact.

(3) Assure that presently unmeasured environmental amenitites are considered during the decision-making process.

(4) Consider reasonable alternatives for a course of action in any proposal that involves conflicts concerning alternative uses of resources.

(5) Make available to States, counties, municpalities, institutions, and individuals any advice and information useful in restoring, maintaining, and enhancing the quality of the environment.

§ 26.5 Responsibilities.

(a) The Assistant Deputy Administrator for Administration and Logistics (Director, Office of Environmental Affairs) shall:

(1) Function as the responsible official for all VA environmental matters.

(2) Modify or supplement the enclosures of this Part, as required.

(3) Provide assistance in the preparation of environmental assessments and statements and assign lead Component responsibility in preparing environmental documentation, when more than one VA Component is involved.

(4) Direct the preparation of environmental documents.

(5) Provide appropriate, consolidated VA comments requested by other Federal agencies on draft and final environmental impact statements.

(6) Review actions of the VA that have environmental implications.

(7) Maintain liaison with the Council on Environmental Quality, the Environmental Protection Agency, the Office of Management and Budget, other Federal agencies, and State and local groups, concerning environmental analyses for VA actions affecting the environment.

(b) The General Counsel, VA, shall provide advice and assistance in meeting the requirements of this Part.

(c) The heads of the VA Components shall:

(1) Assess environmental consequences of proposed and continuing programs and actions within their respective VA Component.

(2) Prepare and process environmental documents as required by this Part.

(3) Integrate environmental considerations into their decisionmaking process.

(4) Assure that regulations and other major policy statements are reviewed for consistency with the requirements of this Part.

(5) Provide comments on environmental impact statements for actions within their area of knowledge or concern.

(6) Designate a single point of contact for environmental issues.

Enclosure 1—VA Implementing Procedures

A. General

1. Part 1507.3 of the Council on Environmental Quality Regulations, [National Environmental Policy Act Regulations, 43 FR 55978 [1978]] directs all Federal agencies to adopt procedures to implement the CEQ Regulations. This enclosure provides detailed VA implementing procedures to supplement the CEQ Regulations.

2. Provisions of this Part must be read together with those of the CEQ Regulations and the Act as a whole when applying the NEPA process.

3. This enclosure is organized sequentially from early planning to the final implementation of a VA action. Section references throughout this enclosure refer to appropriate sections in the CEQ Regulations.

B. Planning Consideration

1. *Early Planning.* VA Components shall integrate the NEPA process with other planning activities at the earliest possible time to assure that planning and decisions reflect environmental values, to avoid delays later in the process, and to avoid potential conflicts.

2. *Lead Agency.* To determine the lead VA Component or other lead Federal or State agency for actions when more than one VA Component or another Federal agency is involved, VA Components shall apply the criteria defined in Parts 1501.5 and 1501.6 and forward a request for lead agency determination to the Assistant Deputy Administrator for Administration and Logistics (Office of Environmental Affairs).

a. The Assistant Deputy Administrator for Administration and Logistics (Office of Environmental Affairs) will determine lead agency responsibility among VA Components.

b. In environmental issues involving a VA Component and another Federal agency, the Assistant Deputy Administrator for Administration and Logistics (Office of Environmental Affiars) will seek to resolve the differences. If this is not possible, the Assistant Deputy Administrator for Administration and Logistics (Office of Environmental Affairs) will file a request for determination with the Council on Environmental Quality.

3. *Assistance to Applicants.* Part 1501.2(d) provides for advising private applicants or other non-federal groups when VA involvement is reasonably foreseeable. Such reasonably foreseeable actions involve applications to a VA Component by private persons or State and local agencies and pertain primarily to permits, leases, and requests for financial assistance and grants, and related actions involving the use of VA land and property.

a. The following actions are initiated by private persons, State or local agencies, and other non-VA groups for which VA involvement may be reasonably foreseeable:

(1) Easements and right-of-ways on VA land.

(2) Petroleum, grazing and timber leases.

(3) Permits, licenses, use agreements or other grants of real property for use by non-VA groups.

(4) Application for subdivision approval for home loan guarantees.

(5) Application for grants-in-aid for acquisition, construction, expansion or improvement of State veterans' health care facilities and cemeteries.

b. Public notices or other means used to inform or solicit applicants for permits, leases, or related actions will describe the studies or information foreseeably required for later action by VA Components, and will advise of the assistance available to applicants by the VA Component.

c. When VA owned land is leased or otherwise provided to non-VA groups, the VA Component will initiate the NEPA process as early as possible and assure that appropriate consideration is given to environmental conservation factors such as waste disposal, necessary mitigation and long term restoration measures.

d. When VA grant funds are requested by a State agency, the VA Component will, in cooperation with the State A-95 Clearinghouse, initiate the NEPA process as early as possible, to assure full compliance with environmental and other State and local regulations, before the proposed action is approved.

4. *Determination of Requirement for EIS.* Determining whether to prepare an environmental impact statement is the first step in applying the NEPA process. Early VA determination will assure that necessary environmental documentation is prepared and integrated within the decision-making process. In deciding whether to prepare an environmental impact statement, a VA Component will determine whether the proposal is one that:

a. Normally requires an environmental impact statement.

b. Normally does not require either an environmental impact statement or an environmental assessment (Categorical exclusion).

c. Normally requires an environmental assessment, but not necessarily an environmental impact statement.

5. *Actions That Normally Require an EIS.* VA Components shall perform an environmental assessment to determine if a proposal requires an environmental impact statement. However, it may be readily apparent that a proposed action will have a significant impact on the environment; in such cases, an environmental assessment is not required and the VA Component will immediately begin to prepare the environmental impact statement. To assist in determining if an action normally requires the preparation of an environmental impact statement, the following criteria and categories of action are provided:

a. *Criteria.* Criteria used to determine categories of action that normally require an environmental impact statement are described in Part 1508.27 and include:

(1) Potential for significant degradation of environmental quality, including historic or cultural resources, park lands, prime farmlands, wetlands, or ecologically critical areas.

(2) Significant alteration of VA owned or leased real estate.

(3) Potential for threat or hazard to the public, or involving highly uncertain risks to the human environment.

(4) Potential for loss or destruction of significant scientific, cultural or historic resources.

(5) Potential for conflict with Federal, state or local environmental protection laws or requirements.

(6) Similarity to previous actions that required an environmental impact statement.

b. *Categories of Action.* The following categories of action normally require an environmental impact statement:

(1) Construction of major VA facilities.

(2) Major land acquisition, disposal, development or other action that significantly changes land use patterns.

(3) Home loan guarantees for housing developments with a flexible threshold determination, as set forth below in TABLE 1, for over 500 housing units within a Standard Metropolitan Statistical Area (SMSA), as an SMSA is defined by the Bureau of the Census.

Table 1.—*Flexible Environmental Impact Statement—Thresholds*

SMSA, county or county equivalent population range	Threshold—housing units
1,500,000+	2,500
1,000,000 to 1,499,999	2,100
750,000 to 999,999	1,800
600,000 to 749,999	1,500
500,000 to 599,999	1,200
400,000 to 499,999	1,000
300,000 to 399,999	900
200,000 to 299,999	800
100,000 to 199,999	700
50,000 to 99,999	600
Under 50,000	500

If a proposed action normally requires an environmental impact statement, a VA Component may prepare an environmental assessment to determine if an environmental impact statement is required.

6. *Categorical Exclusion.* The CEQ Regulations provide for the categorical exclusion (Part 1508.4) of actions that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required for such actions. Full implementation of this concept will permit VA Components to avoid unnecessary or duplicative effort and to concentrate their resources on significant environmental issues.

a. *Criteria.* Criteria used to determined those categories of action that normally do not require either an environmental impact statement or an environmental assessment include:

(1) Minimal or no effect on environmental quality.

(2) No significant change to existing environmental conditions.

(3) No significant cumulative environmental impact.

(4) Similarity to actions previously assessed that have no significant environmental impact.

b. *List of Categorical Exclusions.* Categories of action, identified in Annex A to this enclosure, have been determined by the VA to have no significant effect on the human environment; and are therefore categorically excluded from the preparation of environmental impact statements and environmental assessments.

c. *Changes to the List of Categorical Exclusion.*

(1) The VA List of Categorical Exclusion will be continually reviewed and refined as additional categories are identified and as experience is gained in the categorical exclusion process. VA Components may, at any time, recommend additions or changes to the VA List of Categorical Exclusion.

(2) VA Components are encouraged to develop, in their procedures implementing this Part, additional categories of exclusion necessary to meet their unique operational and mission requirements. Categories of exclusion identified by a VA Component will be submitted to the Assistant Deputy Administrator for Administration and Logistics (Office of Environmental Affairs) for review and approval, and for amendments to this Part, following public comment.

d. *Extraordinary Circumstances.* Determining if a proposal can be categorically excluded is a three step process in which the VA Component will:

(1) Determine the scope of the proposal and identify elements that may affect the environment.

(2) Determine if the proposal is included in one of the categories of action on the VA Component list of categorical exclusion.

(3) Determine if extraordinary circumstances may cause a significant environmental impact. If so, an environmental assessment will be prepared. Extraordinary circumstances that may have a significant environmental impact include:

(a) Greater scope or size than normally experienced for a particular category of action.

(b) Actions in highly populated or congested areas.

(c) Potential for degradation, although slight, of already existing poor environmental conditions.

(d) Use of unproven technology.

(e) Presence of endangered species, archeological remains, or other protected resources.

(f) Use of hazardous or toxic substances.

7. *Actions That Normally Require an Environmental Assessment.* If a project is not one that normally requires an environmental impact statement, and does not qualify for categorical exclusion, the VA Component will prepare an environmental assessment.

a. *Criteria.* Criteria used to determine those categories of action that normally require an environmental assessment, but not necessarily an environmental impact statement, include:

(1) Potential for minor degradation of environmental quality.

(2) Potential for cumulative impact on environmental quality.

(3) Presence of hazardous or toxic substances.

(4) Potential for violation of pollution abatement laws.

(5) Potential for impact on protected resources.

b. *Categories of Action.* The following categories of action normally require the preparation of an environmental assessment. VA Components may identify other categories of action that normally require an environmental assessment. An environmental assessment will normally be required if the proposed action:

(1) Involves acquiring or disposing of land.

(2) Involves land located in a wetland or a flood plain.

(3) Involves storm-water run-off and retainage.

(4) Conflicts with local zoning and planning regulations.

(5) Dislocates persons or residences, or causes major population shifts.

(6) Affects protected wildlife or vegetation.

(7) Involves new VA construction of more than 10,000 square feet.

(8) Increases off-site traffic flow by more than 10 per cent.

(9) Significantly alters off-site traffic flow.

(10) Involves a historically designated building or area.

(11) Conflicts with local, State, or Federal air and water emission and toxic substance standards.

(12) Conflicts with local or State regulations.

(13) Overloads available utility system capacities.

(14) Involves the cumulative use of pesticides.

(15) Disposal of VA real estate.

Other categories of action that normally require an environmental assessment include preparation of regulations, directives, manuals, or other guidance that have a potential for significant impact on the environment.

C. Environmental Assessment Phase

1. *When to Prepare.* VA Components will begin the preparation of an environmental assessment as early as possible after it is determined to be required. VA Components may prepare an environmental assessment at any time to assist planning and decisionmaking.

2. *Content and Format.* An environmental assessment is a concise public document to determine whether to prepare an environmental impact statement. An environmental assessment aids in complying with the Act when no environmental impact statement is necessary, and it facilitates the preparation of an environmental impact statement, if one is necessary. The environmental assessment shall contain brief discussions of the following topics:

a. Purpose and need for the proposed action.

b. Description of the proposed action.

c. Alternatives considered.

d. Environmental impact of the proposed action and alternative actions.

e. Listing of agencies and persons consulted.

f. Mitigating measures to avoid or to minimize environmental harm considered in analyzing the proposed action and alternative actions.

g. Conclusion about the need to prepare an environmental impact statement.

3. *Public Participation.* The VA Components shall include the participation of environmental agencies, applicants, and the public, to the extent practicable, in preparing environmental assessments. In determining "to the extent practicable," VA Components will consider:

a. Magnitude of the proposal.

b. Likelihood of public interest.

c. Need to act quickly.

d. Potential of meaningful public comment.

e. Need for permits.

f. Statutory authority of Federal, State and local environmental agencies related to the proposal.

4. *Finding of No Significant Impact.* If a VA Component completes an environment assessment and determines that an environmental impact statement is not required, then the VA Component shall prepare a finding of no significant impact in accordance with Part 1501.4(e). The finding of no significant impact shall be made available to the public by the VA Component as specified in Part 1506.6. A finding of no significant impact is not required when the decision not to prepare an environmental impact statement is based on categorical exclusion.

5. *Notice of Intent.* When a VA Component decides to prepare an environmental impact statement, it shall publish a notice of intent in the **Federal Register** in accordance with Parts 1501.7 and 1506.10. The notice of intent shall be published before initiation of the scoping process.

D. Environmental Impact Statement Phase

1. *Scoping.* After determining that an environmental impact statement will be prepared and publishing the notice of intent, the VA Component will initiate the scoping process in accordance with Part 1501.7.

2. *Preparation.* Based on the scoping process, the VA Component will begin to prepare the environmental impact statement. Procedures for preparing the environmental impact statement are set forth in Part 1502, CEQ Regulations.

3. *Supplemental Environmental Impact Statements.* VA Components may supplement a draft or final environmental impact statement at any time. VA Components shall prepare a supplement to either the draft or final environmental impact statement when required under the criteria contained in Part 1502.9(c). VA Components will prepare, circulate, and file a supplement to an environmental impact statement in the same fashion as a draft or final statement, and will introduce the supplement into their formal administrative record.

4. *Information on the NEPA Process.* Information or status reports on environmental impact statements and other elements of the NEPA process shall be provided to interested persons upon request.

a. Each VA Component shall designate, in its procedures implementing this Part, where interested persons can get such information.

b. For those actions related to the Administrator of the Veterans Administration, the VA Office of Environmental Affairs, or VA Components, information is available be writing the Assistant Deputy Administrator for Administration and Logistics (Office of Environmental Affairs), Veterans Administration, 810 Vermont Ave., NW., Washington, D.C. 20420.

5. *Circulation of Environmental Impact Statements.* VA Components shall circulate draft and final environmental impact statements as prescribed in Part 1502.19. VA Components shall also provide necessary copies of each draft and each final statement to the Assistant Deputy Administrator for Administration and Logistics (Office of Environmental Affairs).

E. Preimplementation Actions

1. *Decisionmaking.* VA Components shall assure that decisions are made in full compliance with the policies and procedures of the Act and that the NEPA process is integrated into the decisionmaking process. Proposals and actions may be initiated at any level including the facility level. Similarly, review and approval authority may be exercised at various levels depending on the nature of the action, available funding, and statutory authority. VA Components may provide further guidance, commensurate with their programs and organization, for integration of environmental considerations into the decisionmaking process. In accordance with Part 1505.1, such guidance shall include the following procedures:

a. VA Components, as a minimum, shall consider environmental effects at the following major decision points:

(1) Decision by the initiating organization or facility to forward a proposal to the approval authority.

(2) Decision by any intermediate review authority to forward a proposal to the approval authority.

(3) Decision by the approval authority to implement a proposal shall include:

a. Relevant environmental documents, comments, and responses that shall be made part of the record.

b. Relevant environmental documents, comments, and responses that shall accompany a proposal through existing VA Component review processes, so that Va Component decisionmakers use the environmental documents in making their decisions.

c. Alternative actions considered by the decisionmaker that shall include the range of alternatives discussed in relevant environmental documents. The decisionmaker shall consider the alternatives described in the environmental impact statement.

2. *Record of Decision.* In actions requiring an environmental impact statement, VA Components shall prepare a concise public record of the decision at the time of their decision or, when their recommendation is submitted to Congress, if appropriate. The

record of decision is not intended to be an extensive, detailed document justifying the decision. Rather, it is a concise document that describes the decision, the alternatives and relevant factors considered, as specified in Part 1505.2.

3. *Mitigation.* Throughout the NEPA process, VA Components shall consider mitigating measures to avoid or minimize environmental harm. Mitigating measures or programs will be identified, when appropriate, in the environmental impact statement and made available to all decisionmakers. Mitigating and other conditions established in the environmental impact statement, or during its review, and committed as part of the decision, shall be implemented by the VA Component.

4. *Monitoring.* If a VA Component determines that monitoring is required for an established mitigating action or program, then a monitoring program will be adopted to assure that the mitigating measures are accomplished. VA Components shall provide monitoring information, upon request, as specified in Part 1505.3. However, this does not include standing or blanket requests for periodic reporting.

5. *Emergencies.* If an emergency occurs, VA Components may be required to take immediate action with significant environmental impact. VA Components shall notify the Assistant Deputy Administrator for Administration and Logistics (Office of Environmental Affairs) of the emergency action at the earliest possible time to permit the Assistant Deputy Administrator for Administration and Logistics to consult with the Council. VA Components shall not delay any emergency action required to preserve human health.

Annex A—VA List of Categorical Exclusion

1. Preparation of regulations, directives, manuals, or other guidance that implement, but do not substantially change, the regulations, directives, manuals, or other guidance of higher organizational levels or another Federal agency.

2. Preparation of regulations, directives, manuals, and other guidance related to actions that qualify for categorical exclusion.

3. Procurement activities for goods and services for routine facility operations, maintenance, and support.

4. Routine facility maintenance and ground keeping activities.

5. Minor construction conducted in accordance with approved facility master plans.

6. Reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar causes.

7. Studies that involve no commitment of resources other than manpower and funding.

Approved: August 10, 1979.

Max Cleland,

Administrator.

[FR Doc. 79-25505 Filed 8-16-79; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 81]

[FRL 1299-2]

Air Quality Control Regions, Criteria, and Control Techniques; Section 107—Attainment Status Designations—Colorado

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: This proposed rulemaking changes the attainment status of the El Paso, Larimer and Weld Counties. These counties are redesignated to "cannot be classified" for the primary and secondary ozone standard.

DATES: Comments due by September 17, 1979.

ADDRESSES: Comments on this redesignation should be directed to:

Robert R. DeSpain, Chief, Air Programs Branch, Region VIII, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295.

Copies of the materials submitted by the Colorado Air Pollution Control Commission and comments received on this proposal, may be examined during normal business hours at:

Environmental Protection Agency, Region VIII Library, 1860 Lincoln Street, Denver, Colorado 80295.

Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Robert R. DeSpain, Chief, Air Programs Branch, Region VIII, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 837-3471.

SUPPLEMENTARY INFORMATION: In the March 3, 1978, **Federal Register** (43 CFR 81.306) El Paso, Larimer and Weld Counties were designated as not attaining the standard for photochemical oxidants. On May 24, 1979, public hearings were held by the Colorado Air Pollution Control Commission to consider the redesignation of El Paso, Larimer and Weld Counties.

On June 15, 1979, the Governor requested the Regional Administrator, Region VIII, to redesignate the counties of El Paso, Larimer and Weld to "cannot be classified".

El Paso (Colorado Springs), Larimer (Fort Collins) and Weld (Greeley) Counties are presently designated as nonattainment for the ozone ambient air quality standard. This designation was based on the old standard of 0.08 parts per million (ppm). On February 8, 1979, EPA revised the standard to 0.12 ppm. Review of the air quality monitoring data showed no violations of this revised standard.

The Colorado Air Pollution Control Commission redesignated these counties to "cannot be classified" rather than attainment for the following reasons:

1. The Fort Collins monitored data was within the standard.
2. The Greeley monitored data showed an upward trend.
3. The Colorado Springs monitor was not located at the point of expected maximum concentration.

In the interim, the Colorado Air Pollution Control Division will:

1. install an additional monitor in Colorado Springs to record the downwind concentration of ozone;
2. continue operation of the Greeley and Fort Collins monitors; and
3. investigate downwind transport of ozone from Denver to Larimer and Weld counties.

It is EPA's policy to redesignate areas to "cannot be classified" with one season of monitored data showing no violations. Since no ozone violations were monitored in 1978, these counties are proposed to be redesignated to "cannot be classified" for the ozone standard.

This notice of proposed rulemaking is issued under the authority of Section 107 of the Clean Air Act as amended.

Dated: August 6, 1979.

Alan Merson,

Regional Administrator.

[FR Doc. 79-25584 Filed 8-16-79; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[44 CFR Part 67]

[Docket No. FI-5207]

Revision of Proposed Flood Elevation Determinations for the Village of Bensenville, DuPage County, Ill., Under the National Flood Insurance Program

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

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Village of Bensenville, DuPage County, Illinois.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 44 FR 13507 on March 12, 1979, and in *The Voice*

published on or about March 14, 1979 and March 21, 1979, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood base (100-year) elevations are available for review at the Village Hall, Engineering Department, 700 West Irving Park Road, Bensenville, Illinois.

Send comments to: Mr. Richard A. Weber, Village President, Village of Bensenville, Village Hall, 700 West Irving Park Road, Bensenville, Illinois 60106.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii call Toll Free Line (800) 424–9080), Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the Village of Bensenville, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

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

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevations in feet, (national geodetic vertical datum
Bensenville Ditch	Approximately 550 feet downstream of Orchard Avenue.	661
	Just downstream of Chicago and North Western Railroad.	664
	Just upstream of Chicago and North Western Railroad.	665
	At Irving Park Road	666
Addison Creek tributary 1.	Just downstream Third Avenue.	656
	Just upstream of Evergreen Avenue.	658
	At Field Road	663
Addison Creek tributary 2.	At Confluence with Addison Creek Tributary 3.	662
	Downstream of York Road	663
	At Church Road	681
Addison Creek tributary 3.	Confluence with Addison Creek Tributary 2.	662
	Just upstream of George Street.	662
	Just upstream of Private Driveway.	669
	1,200 feet upstream of Private Drive.	676
Addison Creek tributary 4.	At Confluence of Addison Creek Tributary 2.	679
	Just upstream of Church Road.	683
Addison Creek	2,050 feet downstream of Diana Court.	656
	At George Street	656

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

Issued: August 2, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-25354 Filed 8-16-79; 8:45 am]

BILLING CODE 4210-23-M

[44 CFR Part 67]

[Docket No. FI-5344]

Revision of Proposed Flood Elevation Determinations for the City of East Chicago, Lake County, Ind., Under the National Flood Insurance Program

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

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of East Chicago, Lake County, Indiana.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 44 FR 26171 on April 11, 1979, and in the *Hammond Times* and the *Lake County Globe Ledger* published on or about April 12, 1979 and April 19, 1979, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood base (100-year) elevations are available for review at the City Hall, Planning Office, East Chicago, Indiana.

SEND COMMENTS TO: The Honorable, Robert Patrict, Mayor, City of East Chicago, City Hall, East Chicago, Indiana 46312. Attention: John Artes, Community Planner.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, (In Alaska and Hawaii call Toll Free Line (800) 424–9080), Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the City of East Chicago, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4 (a)).

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

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation, in feet, national geodetic vertical datum
Grand Calument River	Western corporate limits	585
	just upstream of Kennedy Avenue.	585
	Eastern corporate limits	586
Indiana Harbor Canal	Mouth at Lake Michigan	584
	Confluence with Grand Calument River.	585
Lake George Canal	Confluence with Indiana Harbor Canal.	584
	Western corporate limits	584
Lake Michigan	Shoreline	584
Indiana Harbor	Shoreline	584

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

Issued: August 2, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-25355 Filed 8-16-79; 8:45 am]

BILLING CODE 4210-23-M

[44 CFR PART 67]

[Docket No. FI-5372]

[Proposed Flood Elevation Determinations for the City of Geneva, Ashtabula County, Ohio, Under the National Flood Insurance Program; Correction

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

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a proposed rule on base (100-year) flood elevations that appeared on page 44 FR 21298 of the **Federal Register** of April 10, 1979.

EFFECTIVE DATE: April 10, 1979.

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

The following:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
Cowles Creek....a.....	Just downstream of Norfolk and Western Railway.	662
	Just upstream of Norfolk and Western Railway.	671
	Upstream corporate limit.....	672
Cowles Creek Tributary.	Just upstream of West Union Street.	687
	Just downstream of intersection of Broadway and State Route 84.	709
	About 400 feet upstream of intersection of Broadway and State Route 84.	712

Should be corrected to read:

Cowles Creek.....	Just downstream of Norfolk and Western Railway.	663
	About 150 feet upstream of Norfolk and Western Railway.	671
	Just downstream of South Ridge Road.	672
Cowles Creek Tributary.	Just upstream of Norfolk and Western Railway.	687
	Just downstream of intersection of West Broadway.	709
	About 400 feet upstream of South Ridge Road.	712

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

Issued August 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-25356 Filed 8-16-79; 8:45 am]

BILLING CODE 4210-23-M

DEPARTMENT OF COMMERCE

Maritime Administration

[46 CFR Parts 201, 208, and 251]

Requirements for ODS Applications; extension of comment date

AGENCY: Maritime Administration, Department of Commerce.

ACTION: Proposed regulation; extension of comment date.

SUMMARY: On June 25, 1979, Notice was published in the **Federal Register** (FR 37003) that the Maritime Administration proposes to amend its Rules of Practice and Procedure, 46 CFR, Part 201, to add a new Part 208 to 46 CFR entitled Procedures for Hearing on Operating-Differential Subsidy Applications, and to amend Part 251 of 46 CFR all for the purpose of improving administrative processing of applications for operating-differential subsidy.

Notice is hereby given that the closing date of this notice has been extended.

DATE: Comment date has been extended from August 24, 1979 to September 24, 1979.

ADDRESS: Comments from any interested person desiring to offer views and comments thereon for consideration by the Maritime Subsidy Board and the Maritime Administration should be submitted in writing, with 15 copies, by the close of business September 24, 1979, to the Secretary, Maritime Administration, Room, 3009–B, Department of Commerce Building, 14th & E Street, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Robert J. Patton, Jr., Maritime Administration, Office of the Secretary, Washington, D.C. 20230, Tel. (202) 377–2188.

Dated: August 14, 1979.

By order of the Assistant Secretary/Maritime Subsidy Board/Maritime Administration.

Robert J. Patton, Jr.,

Acting Secretary, Maritime Subsidy Board, Maritime Administration.

[FR Doc. 72-25606 Filed 8-16-79; 8:45 am]

BILLING CODE 3510-15-M

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 1]

[Gen. Docket No. 78-316; FCC 79-473]

Fee Refunds and Future FCC Fees

AGENCY: Federal Communications Commission.

ACTION: Second notice of inquiry.

SUMMARY: The FCC is continuing its inquiry into refunds of fees collected from 1970–76. This Phase of the inquiry deals with fees that were $20 and less. The FCC is taking this action in response to decisions of the U.S. Court of Appeals for the D.C. Circuit.

DATES: Comments are due October 1, 1979.

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

FOR FURTHER INFORMATION CONTACT: Thomas P. Campbell, Chief, Financial Management Division, Federal Communications Commission, Washington, D.C. 20554, telephone 202–632–7194.

[Gen. Docket No. 78-316; FCC 79-473]

In the matter fee refunds and future FCC fees. Second notice of inquiry [44 FR 21267].

Adopted: August 1, 1979.

Released: August 10, 1979.

By the Commission: Commissioner Lee absent; Commissioner Jones concurring and issuing a statement.

In a Notice of Inquiry released October 6, 1978, the Commission instituted this proceeding to consider both the refund of previously collected fees and the adoption of a new fee schedule for future applicability. (*See* 43 FR 46658, 69 FCC 2d 741). That Notice announced that the refund portion of this proceeding would be divided into two phases: Phase I dealing with fees which were greater than $20 and Phase II dealing with the smaller fees of $20 and less. In a First Report and Order released March 29, 1979 (44 FR 21267), the Commission adopted the final refund amounts and procedures to implement Phase I of the refund program. Refund request forms for Phase I were

distributed in June 1979 and that program is now underway. The purpose of this Second Notice is to solicit public comment on the proposed procedures and refund amounts which have been developed for Phase II of the refund program.

Identification of Services

In developing a recalculated schedule of fees for Phase II of the refund program, we have used essentially identical methods as were employed in Phase I. In constructing the recalculated schedule, we have retained a structure in which categories of services for which fees are charged closely parallel those used in previous fee schedules. This was done for three reasons. First, these services, which typically involve processing applications and authorizations which are necessary for orderly management of the radio spectrum are clearly identifiable and unambiguously confer special benefits from services rendered. Second, the courts have reviewed our statutory authority to collect fees for virtually all of these activities and have not explicity criticized our classification of reimbursable services. Finally, timely resolution of this matter necessitates that services defined in our retrospective fee schedule closely resemble those activities for which fees were previously assessed.

The Court of Appeals has established relatively explicit requirements for compliance with 31 U.S.C. 483a.[1] The requirement is basically in three parts: (1) Assessment of a fee must be justified by a clear statement of the service which it is intended to reimburse. (2) The cost basis for each fee must be calculated based on an allocation of direct and indirect costs, exclusion of expenses incurred to serve an independent public interest, and an explanation of the criteria used to include or exclude particular items. (3) The fee must be set at a rate which reflects the identified costs of services performed and value conferred on the recipient of the service.

The basic costing analysis undertaken by the bureaus and offices (which are available for inspection in the public reference room in this docket) provides a significant level of detail on the nature of the services for which fees are being charged which should satisfy the first requirement established by the court. We wish to point out, however, that changes in the regulatory environment since 1970 likely will warrant redefinition of certain regulatory activities for which we expect to be reimbursed in years ahead. We propose to carefully review these definitions and, if necessary, make appropriate changes to be incorporated in a new, prospective fee schedule which was discussed in Section C of the Notice of Inquiry. 69 FCC 2d at 757.

Having defined those services which confer special benefits it was then necessary to explicitly account for all costs incurred by the Commission in processing license applications and other authorizations. As we noted earlier, the Court has been fairly explicit in establishing requirements for adoption of fees, which naturally apply whether the Commission is developing a new fee schedule for future application or recalculating past costs for purposes of making a refund.

Pursuant to this directive, the staff has derived direct and indirect costs of providing services for which fees were collected between 1970 and 1976. Preliminary estimates of these costs are summarized in Appendix A of this Notice. It must be emphasized that these estimates are not final and are based on the staff's analysis of three major elements of the costs of providing services for which a fee was charged: (1) the basic personnel and related overhead costs associated with direct provision of the service at the branch level and below; (2) the costs associated with supervision and review at the division and bureau or office level; and (3) costs of the Commissioners' offices, the General Counsel's Office and the Office of Plans and Policy. A description of how these costs were developed and why they were allocated to specific fee categories is set out below.

A number of considerations should be reviewing this system of cost accounting.

(1) Cost estimates are based on 1970 expenses (or, in the case of unique fee categories *first* imposed in 1975, on 1975 expenses) since the purpose of this exercise is to recalculate what would have been a lawful fee in 1970 (or 1975, where applicable) based on the D.C. Circuit's most recent guidelines. These costs will be used only to calculate refunds and will apply regardless of when a fee was actually paid, i.e., if the recalculated fee is $3.50 and the original fee was $10.00, the refund will be $6.50 regardless of whether the $10.00 was paid in 1970 or a later year.

(2) Costs presented in Attachment A reflect only those costs that have been assigned to this point. Although we believe that the final recalculated schedule will not vary substantially from what is presented in Appendix A, there is the possibility that some additional expenses will be allocated (e.g., a portion of hearing and enforcement costs) which would increase the recalculated fees and thus reduce refunds.

(3) The costs set out in Appendix A necessarily involve some estimates and some projections. This has been necessary because of a lack of sufficiently detailed data for the early years of the 1970–76 period and because the Commission does not maintain cost accounting data in specific enough detail to have been useful for this purpose. However, the cost data that we have developed provide a reasonably precise estimate of the costs associated with these service categories during the relevant period. A review of the basic data upon which Appendix A is based will, we believe, support that view. As the court pointed out, "Any computation such as [these] must necessarily be based on numerous approximations and can only be expected to be accurate within reasonable limits." *NCTA* v. *FCC*, 554 F.2d 1094, 1105 (D.C. Cir. 1976).

(4) The format of the recalculated schedule does not track precisely earlier schedules. Filing and grant fees, for example, have been combined. The short descriptive titles of the new fee categories, however, should provide adequate guidance at this time.

Description of Costing Analysis[2]

a. *Direct Processing Costs.*—The following is a detailed discussion of how the costs were compiled. The Commission in recalculating a proper fee schedule must initially identify the services rendered for which it could legally charge a fee and, having done so, delineate those activities which went into providing those services. Based on that analysis, each bureau and office in the Commission undertook to analyze its activities at the branch level and below and to make its best estimate based on the professional judgment and experience of the personnel involved. The bureaus and offices calculated the average number of work hours that went into each element of professional and nonprofessional activity and that made up every service for which the Commission charged a fee. Although somewhat different approaches were taken in each bureau based on its particular needs, the focus was to reconstruct for the 1971 Fiscal Year the

[1] The Commission's authority for collection of fees is presently provided by Title V of the Independent Office Appropriations Act of 1952, 31 U.S.C. 483a.

[2] There have been inserted in the docket file in this proceeding more detailed explanatory material along with all of the work sheets used to develop the costs in Phase II.

type and extent of work activity that went into providing each service.

The foregoing data prepared by each bureau were provided in work hours or fractions thereof. These figures were converted into compensation dollars using fiscal year 1971 tables (or 1975 where appropriate). The basic compensation cost was figured by using the General Schedule grades of the professional and nonprofessional personnel involved, assuming a step level of 4, and multiplying the hourly rate for the grade and step by the number of hours indicated by the bureaus' and offices' analysis. (The hourly rates used for making these calculations came from salary tables numbers 54 and 60 for the 1970 and 1975 fees, respectively.) [3] The results of these computations established the basic personnel costs of providing each service.

The next step was to establish the personnel benefit cost associated with this basic compensation cost.[4] An average benefits cost for the Commision as a whole was first determined. This figure was obtained by calculating total Commission benefits paid, in the correct fiscal year, as a percentage of total Commission compensation paid for each year. This percentage rate was then applied to the basic compensation costs outlined above, resulting in a dollar amount of personnel benefits for each category of service. The total of this figure and the basic manpower compensation figure derived earlier provided the total direct manpower costs for each fee category.

Third, the appropriate amount for "other objects" (i.e., general overhead) costs was calculated for each category. The first step in this calculation was to list those other objects which could be related to the overall support of the Commission and therefore asociated with all of the services for which fees were charged, e.g., rent, utilities, mail, etc. The starting point was the actual amount obligated for these various other objects during the two relevant years, FY 1971 and FY 1975. These overhead costs were then broken down on a cost per Commission work year basis. Those cost elements applicable only to the Commission's headquarters operation were spread over total Commission work years less the work years associated with the Commission's field offices. The costs were then assigned to each fee category on a pro rata basis related to total direct work hours required for application processing.

The total of the three elements described above plus the Executive Director support costs described below constituted the "Branch" costs which are set out in column 3 of Appendix A.

b. *Indirect Costs.—Executive Director Support Costs.* These costs included the manpower and overhead costs associated with functions performed by the Office of the Executive Director for the Commission as a whole. These functions included financial management, personnel, procurement, administrative services and records management. These costs were developed by starting with the personnel compensation expended by the functional divisions and adding the appropriate cost for benefits. To this was added an overhead cost based on work hours associated with these divisions for the fiscal years 1971 and 1975. The sum of all personnel and overhead costs were then broken down on a per Commission work hour basis and applied to each fee category.

Bureau and Division Office Costs. These costs were developed in several steps. Each Bureau and Office was directed to provide an estimate of the percentage of total time spent by supervisory personnel at the bureau and division level along with their professional and nonprofessional staff in supervising the services for which fees were charged. Work hours for these personnel were converted to compensation to which were added amounts for personnel benefits, other objects and other indirect costs. The total office cost figure for each Bureau and Division was charged against each fee category in proportion to the Branch cost of processing each fee category and number of applications processed. Time devoted to non-fee areas such as rulemaking, enforcement or policy related matters was not included. The totals of these supervisory costs are set out in column 4 of Appendix A.

c. *Commissioners, General Counsel, Plans and Policy.* The final element in the cost allocation process is the apportionment of the costs of the Commissioners' offices, the Office of General Counsel, and the Office of Plans and Policy. These costs have been treated as a general overhead type of cost since it has been concluded that they each provide a general type of support service that is essential to providing the services with which we are concerned here. Costs of compensation benefits, other objects and Executive Director support for these organizations were obtained and converted to a work hour rate which was multiplied by the hours and fractions of hours required to provide the services in each fee category. These figures for each fee category are set out in Column 5 of Appendix A.

The costing analysis described above has resulted in a recalculated cost-based schedule of fees for fees of $20 and less. The total recalculated costs for each fee category are set out in column 6 of Appendix A. In the Phase I cost recalculations we rounded the total cost to the nearest dollar. However, because of the much smaller amounts involved in Phase II, we are proposing to use the actual dollars and cents totals without any rounding.

Administration of the Refund Program

Three major factors have had to be taken into consideration in developing procedures for administering Phase II of the refund program: (1) The Commission's records are not structured to permit us to make refunds on our own initiative, although it is possible to use those records as a basis for verification of refund requests. Thus it has been necessary to plan for a system smaller to that used in Phase I in which written requests for refund are filed with the Commission on a form specially designed for that purpose. (2) Refunds in Phase II will generally be paid to individuals and generally involve only one or two fees. Thus unlike Phase I, which in many cases involves many refunds of complex fees to corporations, it will be possible to use a much simpler refund request form and instructions for Phase II. (3) It is anticipated that more than two million refund requests may be received under Phase II. Thus it has been necessary to integrate data processing into the refund system to the full extent possible.

With these considerations in mind, the basic procedure for obtaining refunds under Phase II will involve filling out a simple one-page form which will require only the minimum information necessary to insure that the requester is entitled to a refund. Our experience with the Phase I form and instructions indicate that the instructions can be quite simple, perhaps as little as one page. Also made available with the form and instructions will be tables showing the amount of the refund, if any, for each fee in the Phase II categories.

As was the case with Phase I, the requester will be required to sign a statement on the form whereby he agrees to accept the amount claimed as

[3] These hourly rates assume a full 2080-hour work year. To adjust these figures to take into account such non-productive time as holidays, annual leave, sick leave, training, etc., totals were multiplied by a factor of 1.215. (This is a standard factor based on an estimate of 1712 productive work hours annually.)

[4] Personnel benefit costs include such items as the agency's contributions to employee retirement, health insurance, etc.

full satisfaction of any claim which he may have for refund of the particular fee in question. The purpose of this provision is to allow this phase of the refund program to proceed immediately where individuals are satisfied with the refund proposed. It is possible that renewed litigation will result from the initiation of Phase II and the waiver provision will prevent such litigation from interfering with refunds to those parties who are satisfied with the amount the Commission has proposed. The waiver provision is even more important to Phase II than it was to Phase I because of the substantially larger number of refund requesters involved in Phase II.

An additional factor that will have subtantial impact on administration of Phase II refunds is the minimum refund amount specified by § 1.1103(b) of the Commission's rules, 47 CFR 1.1103(b). That section provides that in the case of overpayment of a fee, a refund will be made only if the overpayment is greater than $3. This section has been in the rules since the 1970 schedule of fees was adopted. It has never been questioned in any of the extensive litigation that has arisen out of the 1970 and subsequent fee schedules. The minimum refund rule was not adopted as a means of avoiding refunds but as a recognition of the substantial administrative burden involved in refunding very small amounts of money.

Of the 53 fee categories involved in Phase II, 29 are not eligible for refunds because the Commission's recalculated cost of providing the service in those categories exceeded the amounts of the original fee. The impact of the $3 minimum refund rule is to eliminate an additional 12 categories which would otherwise be eligible for $1, $2, or $3 refunds. The most significant category involves the nearly 8 million $4 CB license fees paid during 1975 and 1976. But for the minimum refund rule, these licensees would be entitled to a $2 refund.

Naturally, we are sensitive to the position of those who argue that the Commission is obligated to pay whatever refund is due, no matter how small. However, we believe that consideration must be given to the enormous administrative burden that would be placed on the Commission if it were required to process a potential of 8 million more refund requests for refunds of $3 and less. Moreover, consideration must be given to the fact that these fees were very small to begin with. The bulk of the fees in this category were CB license fees of $4 for a five-year license. If any consideration at all were to be given to the value of those licenses to CB radio operators, a fee of 80 cents per year would have to be characterized as minimal fee.[5]

We encourage parties to-provide us with their views on the application of the minimum refund rule in these circumstances from both a policy and legal perspective.

Conclusion

We encourage comments on specific issues raised above as well as any other issues which are presented by this Second Notice of Inquiry. Written comments must be submitted by October 1, 1979. Section 1.419 of the Commission's rules requires that the original and five copies of comments be filed. Comments should be sent to: Secretary, Federal Communications Commission, Washington, D.C. 20554

Federal Communications Commission,[6]

William J. Tricarico,

Secretary.

Appendix A—Proposed Racalulated Costs and Refunds FCC Fee Refund Program—Phase II

BILLING CODE 6712-01-M

[5] The Court of Appeals appeared to recognize this type of situation when it stated: ". . . [W]e do not demand precise equality between the value conferred and the fee charges. To be valid, a fee need only bear a *reasonable* relationship to the cost of the services rendered by the agency. . . . Considerations of administrative convenience may certainly be taken into account as one factor in the calculation. For example, the FCC could probably reasonably justify a minimum fee for small stations. . . ." NCTA, 189 DC at 249.

[6] See attached Concurring Statement of Commissioner Anne P. Jones.

[1] Year	(1) Code	(2) Category	Recalculated Costs (3) Branch	(4) Office/Div.	(5) Commission/ OGC/OPP	(6) Total	(7) Original Fee	(8)* Amount of Refund
		Office of Chief Engineer						
1970	13-01-7010	Mod. Proto. Cert. Equip. Part 18	14.85	.19	1.68	16.72	F 5.00	None
1970	13-01-7020	Mod. Proto. Cert. Equip. Part 18	14.85	.19	1.68	16.72	G 15.00	3.28
		Cable Television Bureau						
1970	20-60-7280	Cars-License or renewal or reinstatement	25.76	29.89	2.39	58.04	15.00	None
1975	20-60-7615	Cars - License or renewal or reinstatement	25.76	29.89	2.39	58.04	5.00	None
1970	20-60-7290	Cars - Modification of Construction Permit or License	148.40	172.18	12.13	332.71	15.00	None
1975	20-60-7625	Cars - Modification of Construction Permit or License	148.40	172.18	12.13	332.71	5.00	None
1975	20-60-7635	Cars - Assignment of License or of Construction Permit, or for Transfer of control	105.01	628.33	5.89	739.23	10.00	None
1970	20-61-7300	Petition Waiver Hearing Grade A, 100 TV Market Ed. Stat./Indep. UHF Distant Signal	622.25	227.42	41.50	891.17	10.00	None

[2] Year	(1) Code	(2) Category	Recalculated Costs (3) Branch	(4) Office/Div.	(5) Commission/ OGC/OPP	(6) Total	(7) Original Fee	(8) * Amount of Refund
1970	20-61-7310	Notification 74.1105	2.33	.85	.32	3.50	10.00	6.50
		Common Carrier Bureau						
1975	16-10-7445	DPLMRS: Modification of Mobile Units	7.27	0.00	.47	7.74	6.00	None
		Field Operations Bureau						
1970	15-50-7030	Commercial Operator Radiotelephone and Radiotelegraph, First Class License	4.02	0.00	.52	4.54	5.00	None
1975	15-50-7325	Commercial Operator Radiotelephone and Radiotelegraph, First Class License - New	4.02	0.00	.52	4.54	4.00	None
1975	15-50-7335	Commercial Operator Radiotelephone and Radiotelegraph, First Class License - renewal, replacement, or duplicate	4.02	0.00	.52	4.54	2.00	None
1970	15-50-7040	Commercial Operator Radiotelephone and Radiotelegraph, Second Class License - New	4.16	0.00	.54	4.70	4.00	None
1975	15-50-7345	Commercial Operator Radiotelephone and Radiotelegraph, Second Class License - New	4.16	0.00	.54	4.70	4.00	None

Year [3]	(1) Code	(2) Category	Recalculated Costs (3) Branch	(4) Office/Div.	(5) Commission OGC/OPP	(6) Total	(7) Original Fee	(8)* Amount of Refund
1975	15-50-7355	Commercial Operator Radiotelephone and Radiotelegraph, Second Class License - renewal, replacement, or duplicate	4.16	0.00	.54	4.70	2.00	None
1970	15-50-7050	Commercial Operator Radiotelephone and Radiotelegraph, Third Class License	3.95	0.00	.52	4.47	3.00	None
1975	15-50-7365	Commercial Operator Radiotelephone and Radiotelegraph, Third Class License - New	3.95	0.00	.52	4.47	4.00	None
1975	15-50-7375	Commercial Operator Radiotelephone and Radiotelegraph, Third Class License - renewal, replacement, or duplicate	3.95	0.00	.52	4.47	2.00	None
1970	15-50-7060	Provisional Radiotelephone Third Class Operator Certificate with broadcast endorsement - new, replacement, or duplicate	3.05	0.00	.41	3.49	2.00	None
1975	15-50-7385	Provisional Radiotelephone Third Class Operator Certificate with broadcast endorsement - new, replacement, or duplicate	3.05	0.00	.41	3.49	2.00	None
1970	15-50-7070	Restricted Radiotelephone permit	.96	0.00	.12	1.08	8.00	6.92

Year [1]	(1) Code	(2) Category	Recalculated Costs (3) Branch	(4) Office/Div.	(5) Commission/ OGC/OPP	(6) Total	(7) Original Fee	(8)* Amount of Refund
1975	15-50-7395	Restricted Radiotelephone Permit	.96	0.00	.12	1.08	4.00	None
1975	15-50-7405	Restricted Radiotelephone Permit - replacement or duplicate	.96	0.00	.12	1.08	2.00	None
1970	15-50-7080	Restricted Radiotelephone Permit (Alien)	4.37	0.00	.58	4.95	2.00	None
1975	15-50-7415	Restricted Radiotelephone Permit (Alien) - new, or renewal	4.37	0.00	.58	4.95	4.00	None
1970	15-50-7090	Application for Endorsement of license or permit	3.80	0.00	.50	4.30	2.00	None
1975	15-50-7425	Application for Endorsement of license or permit	3.80	0.00	.50	4.30	2.00	None
1970	15-50-7100	Application for Verification Card (form 758-F)	.19	0.00	.03	.22	2.00	None
1975	15-50-7435	Application for Verification Card (form 758-F)	.19	0.00	.03	.22	2.00	None
1970	15-50-7110	Posting Statement	2.87	0.00	.39	3.26	2.00	None
		Safety and Special Radio Services						
1970	17-33-7220	Amateur Radio License- new renewal, or new class	3.26	2.03	.43	5.72	9.00	3.28
1975	17-33-7555	Amateur Radio License- new renewal, or new class	3.26	2.03	.43	5.72	4.00	None

Year	(1) Code	(2) Category	Recalculated Costs (3) Branch	(4) Office/Div.	(5) Commission/ OGC/OPP	(6) Total	(7) Original Fee	(8)* Amount of Refund
1970	17-33-7230	Amateur Radio License Modification without renewal	1.18	.73	.14	2.05	4.00	None
1975	17-33-7565	Amateur Radio License Modification without renewal	1.18	.73	.14	2.05	3.00	None
1970	17-33-7240	Amateur Radio License Modification with renewal	1.18	.73	.14	2.05	9.00	6.95
1975	17-33-7575	Amateur Radio License Modification with renewal	1.18	.73	.14	2.05	4.00	None
1970	17-31-7160	Aviation Radio Service-all other applications (other than microwave - new, renewal, or assignment)	3.53	.18	.41	4.12	20.00	15.88
1975	17-31-7495	Aviation Radio Service-all other applications (other than microwave-new renewal, or assignment)	3.53	.18	.41	4.12	4.00	None
1970	17-34-7260	Citizens Radio Service-Station License	1.14	.71	.16	2.01	20.00	17.99
1975	17-34-7595	Citizens Radio Service-Station License	1.14	.71	.16	2.01	4.00	None
1970	17-32-7180	Industrial, Land Transportation and Public Safety Service-Initial License, Mod., renewal or assignment	8.78	.51	.96	10.25	20.00	9.75

[6] Year	(1) Code	(2) Category	Recalculated Costs (3) Branch	(4) Office/Div.	(5) Commission/ OGC/OPP	(6) Total	(7) Original Fee	(8)* Amount of Refund
1975	17-32-7515	Industrial, Land Transportation, and Public Safety Service-Initial License, Mod., renewal or assignment	8.78	.51	.96	10.25	4.00	None
1970	17-32-7190	Industrial, Land Transportation, and Public Safety Service-Microwave Station without renewal	21.43	1.25	1.94	24.62	20.00	None
1975	17-32-7525	Industrial, Land Transportation and Public Safety Service-Microwave Station without renewal	21.43	1.25	1.94	24.62	4.00	None
1970	17-32-7200	Industrial, Land Transportation, and Public Safety Service-Microwave, CATV Systems yearly renewal	2.36	.14	.35	2.85	15.00	12.15
1975	17-32-7535	Industrial, Land Transportation and Public Safety Service-Microwave, CATV Systems yearly renewal	2.36	.14	.35	2.85	5.00	None
1970	17-30-7120	Marine Radio Service-Ship Station License (without interim authorization)	2.40	.12	.33	2.85	20.00	17.15
1975	17-30-7455	Marine Radio Service-Ship Station License (without interim authorization)	2.40	.12	.33	2.85	4.00	None

[7]

Year	(1) Code	(2) Category	Recalculated Costs (3) Branch	(4) Office/Div.	(5) Commission/ OGC/OPP	(6) Total	(7) Original Fee	(8)* Amount of Refund
1970	17-30-7130	Marine Radio Service-all other (including exemptions from ship radio station requirements)	7.17	.36	.89	8.42	20.00	11.58
1975	17-30-7465	Marine Radio Service-all other (including exemptions from ship radio station requirements)	7.17	.36	.89	8.42	4.00	None
1970	17-30-7140	Duplicate Station License	.74	.36	.11	1.21	6.00	4.79
1975	17-30-7475	Duplicate Station License	.74	.36	.11	1.21	2.00	None

*Column 8 is the difference between columns 7 and 6. If column 6 plus $3.00 is larger, column 8 is "none".

APPENDIX B

Proposed Total Refunds

FCC Fee Refund Program - Phase II

Bureau	Receipts	Projected Refunds (items)	Projected Refunds ($)	% of Receipts Refunded
Office of Chief Engineer	$240	12	$39.36	16
Cable Television	$45,030	1,167	$7,585.50	17
Common Carrier	$8,802	0	$0.00	0
Field Operations	$8,606,087	527,078	$3,647,379.76	42
Safety & Special Radio Services	$66,835,631	1,883,865	$27,515,128.07	41
Total	$75,495,790	2,412,122	$31,170,132.69	41

BILLING CODE 6712-01-C

Concurring Statement of Commissioner Anne P. Jones

In essence, I agree with this item. I believe that the $3 minimum refund rule is a necessary and reasonable method of administrative management and have no problem with the methodology used by the staff in determining amounts to be refunded.

I disagree only with the proposed waiver requirement. I think that it is improper, if not illegal, for the Commission to place such a condition precedent upon receipt of these funds when it is legally obligated to pay this reimbursement. Therefore, I concur with the issuance of this NOI, but wish to express my disapproval of language therein that advocates the use of a waiver device.

[FR Doc. 79-25382 Filed 8-16-79; 8:45 am]
BILLING CODE 6712-01-M

[47 CFR Parts 2 and 15]

[Gen. Docket No. 79-190; RM-3188; FCC 79-472]

Providing for the Operation of a Wireless Inflight Entertainment System

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to amend Part 15 of the Rules to make provisions for the operation of wireless inflight entertainment systems. This proceeding results from a petition for rulemaking filed by the Bell and Howell Corporation. Wireless inflight entertainment systems will improve passenger services and reduce the expense to the airlines of maintaining trouble-prone hardwired systems.

DATES: Comments must be received on or before September 14, 1979, and Reply Comments must be received on or before October 1, 1979.

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

FOR FURTHER INFORMATION CONTACT: Robert M. Bromery, Office of Science and Technology, (202) 632-7095.

Adopted: August 1, 1979.

Released: August 9, 1979.

By the Commission: Commissioner Lee absent.

1. The Commission herewith institutes a proposed rule making proceeding to consider adoption of the rules contained in the Appendix to this Notice. By this docket we propose to amend Part 15 of our Rules and Regulations[1] to include the Wireless Inflight Entertainment System among those low power communication devices which may be operated without an individual license from this Commission. This proceeding results from a petition for Rule Making filed August 10, 1978, by the Bell and Howell Corporation.[2] Comments on this petition were filed by the Academy of Model Aeronautics (Academy) and Telocator Network of America (Telocator). Bell & Howell filed reply comments.

The Bell & Howell Proposal

2. Bell & Howell's petition states that inflight entertainment systems provide commercial airline passengers with audio entertainment, including music and the audio portion of any motion picture entertainment, by means of headphones plugged into a jack at each passenger's seat. In the past, these systems were installed by connecting the passenger seats with twisted-pair cables. More recently, a different hardwired system has been used which multiplexes the entertainment on the same cables as the light controls and attendant call button.

3. All the hardwired systems are said to be trouble-prone and expensive to maintain. Normal airline operations require periodic removal and reconfiguration of the seats in the aircraft which results in breakage to the seat connections of the hardwired systems. This inherent vulnerability has caused passenger dissatisfaction and expense to the airlines. Moreover, marketplace forces have caused the airlines to increase the frequency in which seating arrangements can be changed. Each change in the seating arrangement of an aircraft, however, necessitates a concomitant rewiring of the hardwired inflight entertainment system. The expense and complexity of this process caused Bell & Howell to propose the Wireless Inflight Entertainment System.

4. Hardwired systems are also difficult and expensive to install in existing aircraft. Recently, some airlines have decided to improve their passenger services by adding inflight entertainment systems to some of their existing shorter range aircraft. In the past, shorter range commercial passenger aircraft, such as the Boeing 727, generally have not been wired for inflight entertainment. The cost to the airlines of adding wiring to existing aircraft, however, is a significant factor and the public would be better served if inflight entertainment could be provided on existing aircraft without rewiring the airframe.

5. Bell & Howell's wireless system is designed to provide distribution of audio entertainment within an aircraft by means of low power FM radio operating on twelve channels in the 72–73 MHz band. The transmitter will accept inputs from the music tape player, the video or motion picture entertainment system, and other inflight systems at the airline's option. In addition, the system will include a public address override of the audio entertainment when needed to provide the passengers with safety or other inflight information.

Technical Description of the Bell & Howell System

6. Bell & Howell's proposed twelve channel system would include twelve transmitters on individual plug-in printed circuit boards, using standard 400 Hz aircraft power. The twelve channels would utillize frequency modulation and would occupy a total bandwidth of 720 kHz. Bell & Howell suggests 30 kHz channels spaced 60 kHz apart, in the following frequency plan:

Channel	Frequency in MHz
1	73.00
2	72.94
3	72.88
4	72.82
5	72.76
6	72.70
7	72.64
8	72.58
9	72.52
10	72.46
11	72.40
12	72.34

7. The technical specifications proposed are modeled on specifications currently included in our rules for auditory training devices.[3] The maximum frequency tolerance permitted, over a range of 0° to 50° C, would be ±0.003%. Transmit power into the antenna system would be limited to 10 milliwatts or less. The maximum unmodulated carrier field strength proposed is 8000 microvolts/meter measured in free space at a point 30 meters from the antenna. The frequency deviation would be ±6 kHz. Of course, this system will transmit continuously when in operation.

8. The audio channels would be received by installation of a passenger control unit placed in each seat. Each unit will be battery-powered and will include a receiving antenna, an FM receiver, audio amplifier, output transducers, channel selector switch, volume control, and power switch. The power switch will be activated and

[1] 47 CFR § 15.1–15.423.

[2] The Bell & Howell petition was put on public notice August 29, 1978 (Report No. 1137).

[3] 47 CFR § 15.331–15.337

deactivated by connection and disconnection of the headphones.

9. The transmitting antenna for the proposed system will be one or more 300 ohm twin cables terminated in a 300 ohm load. These cables will be installed in the roof of the cabin, and extend throughout its length. Bell & Howell indicates that in order to ensure flexible installation and even signal distribution, if would be preferable in larger aircraft to split the power available to a number of antennas in different parts of the aircraft.

Bell & Howell Argument of the Proposed System

10. Bell & Howell contends that the Commission has recognized the public interest in authorizing unlicensed use of other low power communication devices, such as wireless microphones, radio controlled door openers, telemetering devices, and auditory training devices. The Commission's rules permitting such unlicensed uses are said to be intended to permit the public to realize the benefits of such usage as long as other radio services do not incur harmful interference as a result. The proposed Bell & Howell system is alleged to meet this test of public benefit without harmful interference.

11. Inflight entertainment systems generally are said to serve a valuable public function by relieving the tension and boredom of air travel and diverting the attention of those who fear flying. The Wireless Inflight Entertainment System will achieve these same benefits while improving substantially the performance of inflight entertainment systems. The Bell & Howell system purportedly will be less costly and more reliable than the hardwired systems currently in use, thereby furthering the public interest.

Telocator and Academy Comments on Proposed System

12. Neither of the parties that commented on this petition objected to Bell & Howell's basic proposal. Both Telocator and the Academy, however, request that the operations of their members be protected from any harmful interference that may be caused by the proposed operation.

13. Telocator is the national council of the independent, non-wireline radio common carrier industry. Its members provide one-way signaling and two-way radio-telephone and dispatch services. These common carriers are authorized to use certain frequencies in the 72–76 MHz band for control and repeater stations. Telocator's stated interest in the Bell & Howell proposal is to avoid harmful interference to those stations. In this regard, Telocator believes that more detailed testing and analysis of the proposed system's interference potential should be completed before a rulemaking is initiated.

14. The Academy is the governing body for model aircraft activities throughout the United States and serves as the United States representative to the Federation Aeronautique Internationale. Under our current rules, modelers are permitted to use seven channels in the 72 MHz region for radio control. One of the twelve frequencies proposed for inflight use by Bell & Howell—72.40 MHz—is among these seven radio control frequencies. In addition, the Academy has filed a Petition for Rule Making (RM–3248, filed November 17, 1978) seeking additional radio frequencies for use by model aircraft operators, including 72.52 MHz. Thus, both 72.40 MHz and 72.52 MHz would be shared by modelers and wireless inflight entertainment systems if the Bell & Howell and Academy petitions are both granted.

15. The concern expressed by the Academy with regard to the Bell & Howell proposal involves the radiation limits to be imposed on wireless inflight entertainment systems operating on the same frequencies with modelers. While the Academy acknowledges that Bell & Howell's proposed free space field of 8000 microvolts/meter at 30 meters currently is part of our rules governing operation of auditory training devices, it contends that this same standard creates greater potential for interference when applied to an aircraft in high-altitude flight. The Academy's calculations are said to show that the 8000 microvolts/meter radiation standard proposed by Bell & Howell would result in a detectable signal emanating as far as 18 miles away from the aircraft.

16. To alleviate its concern about harmful interference, the Academy suggests two changes in the rules proposed by Bell & Howell. First, that the maximum radiated signal level be reduced from 8000 to 800 microvolts/meter at 30 meters and, second, that compliance with the 800 microvolt standard be verified by actual measurements of a typical installation for each different aircraft model to utilize the Bell & Howell system, rather than through free space tests.

Bell & Howell's Reply

17. In its reply comments, Bell & Howell first noted that of the sixteen specific rules it proposed only one, provoked negative comment from any party. The only concerns expressed about any aspect of the Wireless Inflight Entertainment System were with regard to the potential for harmful interference said to be created by this 8000 microvolts/meter maximum radiation limitation.

18. In defense of its radiation limitation proposal, Bell & Howell argued that although its standards involved free space testing, actual operation of its system would occur only inside a metal-skinned aircraft. As a result, the actual carrier field strength measured 30 meters outside a sealed aircraft, as opposed to free space, would be far less than the 8000 microvolts/meter which the current rules permit for auditory training devices.

19. To support this contention, Bell & Howell supplied preliminary test data which show that a transmitter with three milliwatt power at 72.3 MHz generated a carrier field strength of 4000 microvolts/meter at 30 meters in free space. Because field strength increases as the square root of the power, extrapolation of the free space test indicates that a maximum ten milliwatt transmitter power would generate a carrier field strength of about 7300 microvolts/meter at 30 meters in free space. By way of comparison, a test was conducted with the transmitter mounted inside an aircraft and operating at one milliwatt transmit power. This test found that, with all aircraft doors open, the greatest carrier field strength measured at any point 30 meters from the plane was 220 microvolts/meter. This field strength, translated into ten milliwatt transmit power, would generate a signal of about 700 microvolts/meter at 30 meters. Thus, Bell & Howell contends that its preliminary tests indicate that, even with all aircraft doors open and the transmitter operating at maximum permissible output, the attenuation of the signal resulting from the aircraft fuselage is substantial and should assuage the fears of the commenting parties without the need for changes in the proposed rules.

Discussion

20. We find that Bell & Howell has demonstrated a sufficient public interest in its Wireless Inflight Entertainment System to merit issuance of a Notice of Proposed Rule Making at this time. As it correctly points out, we have recognized the public interest in authorizing the use of low power communication devices without an individual license. Such operations may be conducted pursuant to our general rules governing such

devices, 47 CFR §§ 15.101–15.143, or pursuant to the special rules governing specific devices, 47 CFR §§ 15.151–15.104.

21. It appears that rule making is required since two aspects of the Bell & Howell Wireless Inflight Entertainment System prevent its operation under our present general rules for operation above 70 MHz.[4] This regulation imposes a duty cycle restriction which prevents continuous operation require for the Bell & Howell system. In addition, this regulation limits operation at 72–73 MHz to a field strength of 50 μV/m at 30 meters—totally inadequate according to Bell & Howell.

Interference Potential

22. While we appreciate the concern expressed by Telocator, we believe that Bell & Howell has submitted sufficient information to justify the initiation of a rulemaking proceeding at this time. The rules proposed by Bell & Howell are consistent with at least the technical aspects of the rules already adopted for the use of auditory training devices without an individual license in the 72–73 MHz band.[5] However, the Commission cannot agree with Bell & Howell's contention that a radiation limitation of 8000 microvolts/meter at 30 meters from an airborne device will not pose any greater potential for harmful interference to other users of this band than that posed by the terrestially operated auditory training devices.

23. Bell & Howell points out that the fuselage of an aircraft will provide substantial attenuation of the signal and in actual operation this should result in field strength measurements at 30 meters from the aircraft of far below 8000 microvolts/meter. We believe the chances of interference from an airborne device, particularly in light of the large amount of commercial air traffic in metropolitan areas today, are sufficient to justify adoption of the Academy's alternative radiation standard. That proposal would change the limitation from 8000 microvolts/meter at 30 meters measured in free space to 800 microvolts/meter at 30 meters measured with the device operating inside an aircraft. The preliminary test data submitted by Bell & Howell indicates that their system would not have any trouble meeting these new limits and still adequately serve its intended function. In fact, this new limit, with aircraft attenuation, may allow these devices to operate at powers which would produce free space fields in excess of Bell & Howell's proposed 8000 microvolts/meter at 30 meters. The petitioner had indicated that wide body aircraft systems will undoubtedly have to operate at higher power levels, and on some aircraft it is possible that even their proposed standard of 8000 microvolts per meter at 30 meters for a free space field may be inadequate. Therefore, we feel that the adoption of a program of certification based on actual measurements of the system installed in a prototype of each different model of aircraft in which a system is to be installed, is the only way to predict with any accuracy, the actual field generated by a system under operating conditions. Nevertheless, we want to explore the potential for interference further and, therefore, we are asking interested persons including the petitioner, to address this matter fully in their comments.

Frequency Plan

24. In initiating this proceeding, we are proposing to modify the frequency plan from that suggested by Bell & Howell. We are proposing a band of frequencies rather than specific channels cited earlier in this notice. As long as no interference is caused by operation of these systems, we do not believe it is necessary to limit such systems to Bell & Howell's particular channelling arrangement. Other manufacturers may wish to produce systems with a greater or lesser number of channels and channel bandwidths different than those channels proposed by Bell & Howell.

25. Notice is given of proposed rule making in this matter. Any interested person may participate in this proceeding by filing comments by September 14, 1979. Reply comments may be filed by October 1, 1979.

Comments and reply comments may be addressed to the issues and proposals set forth in this Notice and to other issues as the participants believe are relevant and necessary to the resolution of these matters. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file and provided that the fact of the Commission's reliance on such information is noted in the Report & Order.

26. Authority for the proposed amendments is contained in Sections 3, 4(i), and 301–303 of the Communications Act of 1934, as amended. Pursuant to Section 1.415 of the Commission's Rules, an orignal and five (5) copies of all comments, reply comments, and other pleadings and submissions shall be furnished to the Commission. All documents will be avilable for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

27. For further information concerning this Notice, contact Mr. Robert Bromery, FCC, Office of Science and Technology, Washington, D.C. 20554, telephone 202–632–7095.

Federal Communications Commission,
William J. Tricarico,
Secretary.

Appendix

The following items are proposed amendments to Parts 2 and 15 of Chapter I of Title 47 of the Code of Federal Regulations.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS: GENERAL RULES AND REGULATIONS

1. A new § 2.1038 is added to read as follows:

§ 2.1038 Application for certification of a wireless inflight entertainment system (72–73 MHz).

(a) An application for certification of a wireless inflight entertainment system shall be filed for each different model of aircraft in which the system will be installed.

(b) The application shall be filed on FCC Form 731 with all items answered. Items that do not apply shall be so noted.

(c) The application shall be accompanied by the required technical report, photographs, expository statement, instruction manual, and other attachments specified in Part 15 for the particular equipment.

(d) The application shall be accompanied by photographs sufficient in number to show the general appearance of the transmitter(s), antennna, operating controls, and electric parts. These photographs should show equipment installed and uninstalled. At least one photograph must show the identification label in sufficient detail so that the information required by § 15.205 is legible. The photographs should be 8 x 10 inches in size. Smaller photographs may be submitted provided they are sharp and clear, show the necessary detail and are mounted on a sheet of letter size paper. In lieu of a photograph of the label, a sample label or engineering drawing of the label may be submitted together with a sketch showing where this label

[4] 47 CFR § 15.120.
[5] 47 CFR §§ 15.351–15.367.

will be placed on the equipment. The label and sketch should be mounted on a sheet of letter size paper to facilitate handling and filing.

2. A new § 2.1042 is added to read as follows:

§ 2.1042 Technical report of wireless inflight entertainment systems (72–73 MHz).

The application for certification of a wireless inflight entertainment system shall include a technical report containing the following information:

(a) The full name, mailing address, street address (if different), the telephone number of the manufacturer of the equipment.

(b) The model number, trade name (if any)

(c) A copy of the installation and operating instructions furnished to the user. A draft copy of such instructions may be submitted with the application provided a copy of the final document furnished to the user is submitted to the Commission as soon as it is available, but not longer than 60 days after the grant of certification.

(d) A report of measurements clearly showing that the equipment is capable of complying with the applicable technical specifications in Part 15 of this Chapter. The procedure for making the measurements is specified in Part 15. Measurement report shall clearly identify model of aircraft measured and include test data.

(e) A statement of the technical parameters that includes the nominal operating frequencies and any other pertinent operating characteristics.

(f) A statement of the operating conditions that must be observed to ensure that radiation during routine operation does not exceed the technical specifications that were measured and reported herewith.

PART 15—RADIO FREQUENCY DEVICES

3. A new paragraph (n) is added to § 15.4 to read as follows:

§ 15.4 General definitions.

(n) *Wireless Inflight Entertainment System.*—A transmitter or receiver used on board a commercial aircraft in flight status for the distribution of continuous audio entertainment throughout the aircraft cabin.

4. New § § 15.201–15.206 inclusive are added to Subpart E of Part 15.

Wireless Inflight Entertainment System

Sec.

15.201 General technical provisions.
15.202 Operation in the band 72–73 MHz.
15.203 Emission limitations.
15.204 Equipment authorization for transmitters.
15.205 Identification of a Wireless Inflight Entertainment System.
15.206 FAA Authorizations.

Wireless Inflight Entertainment System

§ 15.201 General technical provisions.

a wireless inflight entertainment system may operate on any of the frequency bands listed under Subpart D of this part, pursuant to the provisions therein.

§ 15.202 Operation in the band 72–73 MHz.

A wireless inflight entertainment system may operate on any frequency in the band 72–73 MHz provided the transmitter meets the technical specifications in § § 15.203–15.205 inclusive and the receiver has been certificated pursuant to Part 2 Subpart J to show compliance with Subpart C of this part.

§ 15.203 Emission limitations.

(a) For a wireless inflight entertainment system operating on any frequency within the band 72–73 MHz, the field strength of the emissions on any carrier frequency within the specified band shall not exceed 800 μV/m at 30 meters from the aircraft in which the system is installed.

(b) The bandwidth of emission due to modulation shall not exceed 100 kHz centered on the carrier. The 100 kHz band shall be wholly within the frequency range 72–73 MHz for each channel used in the system.

(c) The field strength of emissions radiated on any frequency outside of the specified 100 kHz band shall not exceed 15 μV/m at a distance of 3 meters from the aircraft.

§ 15.204 Equipment authorization for transmitters.

(a) A transmitter operating in the band 72–73 MHz as part of a wireless inflight entertainment system shall be certificated pursuant to procedure set out in Subpart J of Part 2.

(b) With certification regarding radiation based on measurements of a prototype, the equipment shall be installed in accordance with instructions which have been certified as being adequate to insure reasonable expectation of compliance with the radiation limits in § 15.203.

§ 15.205 Identification of a wireless inflight entertainment system.

(a) Each transmitter and each receiver operated as part of a wireless inflight entertainment system, other than those referred to in paragraphs (b) and (c) of this section, shall be identified pursuant to § 2.925, 2.1045, and to § 2.926 where applicable.

(b) Each wireless inflight entertainment system operating under § 15.202 for which certification applications are filed on or after October 27, 1980, shall be identified pursuant to § 2.925 and § 2.1045. The FCC Identifier for such equipment will be validated by the grant of certification issued by the Commission. The nameplate or label shall contain the following statement:

(1) "This device complies with FCC Rules Part 15 when installed pursuant to the manufacturer's instructions in the following model(s) of aircraft."

(2) The words "Aircraft Model Number" followed by the manufacturer's name and model number of all aircraft for which test data has been submitted and certification issued by the Commission.

(c) Each wireless inflight entertainment system operating under § 15.202 for which applications for certification are filed before October 27, 1980, shall bear a label containing the following information:

(1) Name pursuant to § 2.1045(b)(1) of this chapter.

(2) Model number pursuant to § 2.1045(b)(2) of this chapter.

(3) "This device complies with FCC Rules Part 15 when installed pursuant to the manufacturer's instructions in the following model(s) of aircraft."

(4) The words "Aircraft Model Number" followed by the manufacturer's name and model number of all aircraft for which test data has been submitted and certification issued by the Commission.

§ 15.206 FAA Authorizations

For all wireless inflight entertainment systems the Federal Aviation Administration will require Supplemental Type Certification for commercial aircraft in accordance with 14 CFR 21.111.

5. A new Subpart I of Part 15 is added to read as follows:

Subpart I—Measurement Procedures

Sec.

15.501 Scope of this Subpart.

Certification of a Wireless Inflight Entertainment System (72–73 MHz)

15.502 Instrumentation.
15.503 Location of Equipment.
15.504 Measurement of Field Strength.
15.505 Measurement Range.
15.506 Test Site.

Subpart I—Measurement Procedures

§ 15.501 Scope of this subpart.

This subpart describes the procedures for measuring radiated and conducted

emissions from equipment subject to certification under this part of the Commission's rules.

Certification of a Wireless Inflight Entertainment System (72–73 MHz)

§ 15.520 Instrumentation.

A field strength meter (FSM), or other means of measuring field strength, sufficiently accurate to demonstrate compliance shall be used. For measurements below 30 MHz an electrostatically shielded, calibrated loop antenna shall be employed. For measurements above 30 MHz and FSM shall be provided with a calibrated dipole antenna capable of being adjusted for horizontal and vertical polarization and varied in height from 2 to 7 meters above ground. Either type of antenna may be used between 18 and 30 MHz.

§ 15.503 Location of equipment.

For the purpose of measurements required in order to execute a certification of compliance, the transmitter, antenna, and aircaft housing such equipment may be considered as a single unit and the distance at which the measurements are made may be measured from the perimeter of the smallest circle that encloses the entire aircraft.

§ 15.504 Measurement of field strength.

Report as a polar radiation pattern around the aircraft. Measurements shall be made at 30 meters with enough readings to ensure determining the actual maximum field strength. Emissions more than 20 dB below the limit need not be reported.

§ 15.505 Measurement range.

(a) Measurements shall be made with the device operating at three frequencies: the lowest and highest at which it is capable of operating and one intermediate.

(b) At each frequency at which the device is measured, the spectrum shall be searched from 10 kHz up to at least 1000 MHz for harmonic or other spurious emissions generated by the device under test. This search shall be made at a distance which is much smaller than that specified in § 15.504, in order to increase the likelihood of detecting emissions. A calibrated spectrum analyzer with a broadband antenna may be used for this search. All detected emissions shall be measured to determine compliance with § 15.203(c).

§ 15.506 Test site.

The measuring site shall be on relatively level ground, free of any obstructions, and so located that the system under test and the dipole antennas used with the measuring equipment are both at least 30 meters from any reflective object. The measuring equipment and personnel shall be located to the side of the measuring antenna at as great a distance as is feasible.

Note.—A more detailed description of the test site is proposed to be required in a rule making proceeding in Docket No. 21371. This section will be conformed with the rules that may be promulgated in that proceeding.

[FR Doc. 79-25617 Filed 8-16-79; 8:45 am]
BILLING CODE 6712-01-M

[47 CFR Part 74]

[Docket 19128; FCC 79-483]

Maintenance of Program Logs for Cablecasting by Community Antenna Television Systems

AGENCY: Federal Communications Commission.

ACTION: Termination of proceeding in Docket 19128.

SUMMARY: In this Report and Order the Commission declined to adopt rules requiring cable television system operators to maintain a log of all programs cablecast. This decision is based on a finding that the requirement would impose burdens of compliance that could not be justified in terms of any regulatory need for the information collected.

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

FOR FURTHER INFORMATION CONTACT: Sharon Briley, Cable Television Bureau, (202) 632-6468.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of Subpart K of Part 74 of the Commission's rules and regulations with respect to the maintenance of program logs for cablecasting by community antenna television systems. *Report and Order.* [36 FR 3829] (Proceeding Terminated).

Adopted: August 1, 1979.

Released: August 9, 1979.

By the Commission: Commissioner Lee absent.

1. On January 13, 1971, the Commission adopted the *Notice of Proposed Rule Making in Docket 19128,* 27 FCC 2d 18 (1971), which proposed the adoption of rules requiring cable television system operators to maintain program logs for their program originations. Therein the Commission stated its belief that "maintenance of a program log for all cablecasts, and periodic reporting to the Commission and the public, will assist the Commission in fulfilling its regulatory obligation to monitor the progress of CATV program originations and note their impact on the broadcast field." Para. 4, *id.* at 18. Program log requirements were intended to facilitate this end by providing a uniform basis for cablecast programing data to be required by the Annual Report of Cable Television Systems (FCC Form 325).

2. Subsequent court and Commission decisions have eliminated the original regulatory purpose of the proposed rules. At the time of the *Notice, supra,* the Commission had adopted the mandatory origination rule, requiring cable television system operators having 3,500 or more subscribers and carrying television broadcast signals also to operate "to a significant extent as a local outlet by cablecasting" and to make facilities available for local production and presentation of nonautomated programing (formerly 47 CFR § 76.201). Shortly after the rule became effective, the U.S. Court of Appeals for the Eighth Circuit issued its decision in *Midwest-Video* v. *U.S.,* 441 F. 2d 1322 (8th Cir. 1971), stating that the origination requirement exceeded the Commission's authority. Although the U.S. Supreme Court sustained its authority on appeal in *U.S.* v. *Midwest Video Corp.,* 406 U.S. 649 (1972), the Commission never lifted the stay of the rule issued following the Eighth Circuit decision.[1] Ultimately, the Commission deleted the mandatory origination requirement in the *Report and Order in Docket 19968,* 49 FCC 2d 1090 (1974). In that decision and again in 1976 (*Report and Order in Docket 20508,* 59 FCC 2d 294 (1976)), the Commission made major revisions in its approach to cablecasting, emphasizing the use of access channels by the public as a preferable means of accomplishing the original goals of the origination requirement. On appeal, however, the Supreme Court found these rules to exceed the Commission's authority under the Communications Act. *FCC* v. *Midwest Video Corp.,* 47 U.S. L.W. 4335 (1979), *aff'g* 571 F. 2d 1025 (8th Cir. 1978).

3. Thus, with the elimination of both the mandatory origination and access requirements, the rules which created the principal reason for monitoring

[1] The Commission suspended the mandatory origination rule on May 27, 1971 (see FCC 71-577, 36 FR 10876). The rule had become effective on April 1, 1971.

program originations and thus for this proceeding no longer exist. To the extent the rules were also intended to aid in the monitoring of cablecasting impact on television broadcast service, we are not persuaded either that the logging requirement would be a useful means of addressing that issue or that there is sufficient risk of such impact to justify the considerable burden which the logging requirement would impose.

4. The need to present the detailed arguments submitted by parties filing in this proceeding seems unnecessary in light of removal of the original intent of the proposal. For the record, however, we note that broadcast interests generally supported the proposed rules, and some of them suggested additional requirements. For example, the Association of Maximum Service Telecasters, Inc., and the American Broadcasting Company suggested that program logs record separate per-channel or per-program charges and indicate whether a program was shown over-the-air by any broadcast station carried by the cable system. The Office of Communication of the United Church of Chirst recommended that the rules also require that the logs be available for public inspection, that they be retained throughout the franchise period, that a uniform log form be adopted, and that "Children" be added to the program sub-type definitions.

5. The majority of cable television interests, on the other hand, argued that the requirements would impose the burden of increased labor costs and logging of the programing of multiple automated channels. The National Cable Television Association objected to the application of program log rules originally developed for broadcasters to all cable systems and suggested that, if any requirements were found to be necessary, they be applied only to those systems engaging in cablecasting.

6. We believe that program log requirements would constitute an inordinate burden on cable television operators without remunerative value to the Commission or the public. During our regulatory experience with cable television, we have received few complaints that the retention of program logs would have been helpful in resolving and we have no other evidence before us to indicate that the public is being harmed by the lack of program log rules.

7. For the reasons presented above, therefore, we are not adopting the proposed program log requirements.

Accordingly, it is ordered, That the proceeding in Docket 19128 is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 79-25449 Filed 8-16-79; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

[49 CFR Ch. X]

[Ex Parte MC127]

Special Procedures Governing Return Hauls Applications for Motor Carrier Authority Complementary To Movements of Exempt Agricultural Commodities

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of petition to open a rulemaking proceeding.

SUMMARY: This notice requests public comment on a petition seeking the opening of a rulemaking proceeding to establish special procedures to permit motor carriers who haul exempt agricultural commodities to obtain summary grants of authority to haul regulated commodities on the return portion of their movement. The petition contains proposed rules which would (1) limit eligibility for the authority to carriers who can show that at least 50 percent of the annual tonnage they transport consists of exempt agricultural commodities, and (2) establish standards requiring that the regulated commodities be picked up within seven days of the delivery of the exempt commodities, with no other transportation taking place in between, and that they be picked up from a point within 150 miles of the point where the exempt commodities are delivered.

DATES: Written comments are due on or before October 16, 1979.

ADDRESSES: An original and 15 copies, if possible, of any comments should be sent to: Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423.

A copy of the comments should also be sent to petitioner's representatives: Dickson R. Loos and Barry Roberts, Pope Ballard and Loos, 888 17th Street, NW., Washington, D.C. 20006.

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

Petition's Proposals and Pertinent Arguments

On May 17, 1979, the United Fresh Fruit and Vegetable Association filed a petition requesting that this Commission institute a rulemaking proceeding to adopt special standards and procedures governing applications for operating authority for carriers and owner-operators whose primary business is the transportation of exempt agricultural commodities. The proposed rules would allow for summary grants of irregular-route, general commodities authority (with the usual exceptions), for backhaul movements as an incident to the hauling of exempt commodities on the headhaul. Specifically, it suggests adoption of regulations (or regulations having a similar effect) substantially as follows:

1. *Scope.* These special rules govern the filing and handling of applications for certificates of public convenience and necessity authorizing persons whose primary business is motor transportation of agricultural commodities exempt from economic regulation pursuant to 49 U.S.C. § 10526(6) to engage in the transportation of general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), when the transportation is in furtherance of their primary business of transporting exempt agricultural commodities.

2. *Eligible Persons.* A person shall be considered to be primarily engaged in the transportation of exempt commodities when at least 50 percent of the total transportation performed each year, measured by tonnage, is of exempt commodities.

3. *Applications.* Except as otherwise provided in these special rules, applicants shall file applications which are in the format of, and contain the information called for, in the form of application and in instructions prescribed by the Commission for applications for certificates of motor common carrier authority. Applicants may provide evidence of exempt agricultural commodities transported and empty backhaul miles in lieu of supporting shipper statements of support. Applicants may also provide a description of the territory served or to be served in the transportation of exempt commodities in lieu of designating the points or places to be served under the certificate granted hereunder.

4. *Federal Register Publication.* The Commission shall submit the application summary to the Federal Register office within ten days after the application has been filed.

5. *Authority.* Applications filed under these special rules shall be for authority as a common carrier of general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment) from a point within 150 miles of the final delivery of an immediately prior shipment of commodities exempt from regulation under 49 U.S.C. § 10526(6), in the same vehicle as the prior movement of exempt commodities, and commencing within 7 days after the completion of the prior movement, to points in the United States.

6. *Fees.* The filing fee for certificates of public convenience and necessity under these special rules shall be the same as for temporary authority under 49 U.S.C. § 10928.

7. *Tariffs.* Each application under these special rules shall be accompanied by a statement of rates, charges, and other provisions applicable to regulated transportation to be performed hereunder. The Commission shall adopt a simplified form for the publication of rates, charges, and other provisions applicable to regulated transportation to be performed under the special rules. If the applicant desires the rates, charges, and other provisions to become effective upon less than statutory notice, the application shall certify that the rates and charges are not less than existing motor common carrier rates and charges on the same commodities in like quantities from and to nearby points. Applicant shall provide references to existing rates. Upon a satisfactory showing, the Commission shall grant special permission allowing the rates, charges, and other tariff provisions to become effective at the same time as operating authority issued under these special rules becomes effective. Otherwise, all rates, charges, and other tariff provisions for service under the special rules shall be filed with the Commission on statutory notice.

8. *Petitions to Intervene and Requests for Hearings.* (A) Petitions to intervene will be accepted only upon the issue of aplicant's fitness to perform the proposed operations, and those containing only unsupported or generalized allegations may be rejected. Petitions must be filed within 15 days after the date notice of the filing of the application is published in the **Federal Register.** Every petition must contain a certification that it has been served upon the applicant or applicant's representative. The original and one copy of the petition must be filed with the Commission. (B) Any request for an oral hearing shall be supported by a specific explanation why the evidence to be presented cannot reasonably be submitted in the form of affidavits.

9. *Replies.* Applicant may reply to any petition to intervene. Replies are due within 15 days from the date the petition is due. The original and one copy of the reply must be filed with the Commission. The reply shall certify that it has been served upon the petitioner or the petitioner's representative.

10. *Processing.* (A) After all statements are received in an opposed case which is not assigned for oral hearing, the file will be referred to a review board for expedited processing under the Commission's modified procedure (rules 43–52 of the Commission's General Rules of Practice). However, only the original and one copy of any statement made pursuant to rule 49 must be filed with the Commission. The Commission shall issue a final decision within 45 days after all statements have been filed. (B) In an unprotested case applicant may commence operations 20 days after notice of the application is published in the **Federal Register.**

11. *Agents for the Service of Process and Insurance.* Applicants receiving authority under these special rules shall comply with Commission regulations concerning (a) the designation of agents for the service of process and (b) insurance.

12. *Reports.* Carriers operating pursuant to certificates of public convenience and necessity issued under these special rules shall file annual reports of operations in the form specified by the Commission. The Commission shall provide an abbreviated report form for carriers operating six or fewer vehicles pursuant to certificates of public convenience and necessity issued under these special rules.

Petitioner is a nationwide trade association composed of all factors in the fresh fruit and vegetable industry, including growers, packers, wholesalers, brokers, retailers, and others. It claims that its 2,700 member companies handle 80 percent of the fresh fruit and vegetables marketed commercially in the United States. Petitioner is interested in having sufficient motor carrier service available for its member companies.

Petitioner argues that many small carriers and owner-operators specializing in the transportation of exempt commodities [pursuant to the agricultural commodity exemption in 49 U.S.C. 10526(6)] have experienced large numbers of empty miles due to their inability to transport regulated commodities on the return movement. It also argues that, despite regulatory improvements made by this Commission, the time and expense of obtaining operating authority from the Commission continues to be a major impediment to the ability of these small carriers to enter the market of regulated motor transportation. United fears that, unless action is taken to reduce empty mileage, the scarcity of fuel and increased operating costs will force a large number of small carriers and owner-operators out of business, leaving its member companies with a shortage of motor carrier service. Petitioner argues that the purpose of the proposed regulations is to make it economically attractive for more carriers to transport agricultural commodities.

The Department of Agriculture, in a statement filed in support of the opening of the proposed rulemaking proceeding, states that the principal economic problems facing carriers of agricultural commodities is the "backhaul" problem. It argues that trip-leasing to regulated carriers is only a partial, and not altogether satisfactory, solution to the problem. It also suggests that the Commission determine whether the special procedures should apply to all exempt commodities.

Petitioner United asserts that the Commission's action on its petition will have no effect on the quality of the environment.

The public is invited to comment on all aspects of United's petition and proposed rules. The Commission has not determined whether to grant or deny the petition, and its decision will be based on the comments filed in response to this notice.

Dated: August 10, 1979.

By the Commission, Chairman O'Neal, Commissioners Stafford, Gresham, Clapp, Christian, Trantum and Gaskins. Commissioners Stafford, and Gresham would deny the petition.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-25493 Filed 8-16-79; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 410]

Fish and Wildlife Coordination Act: Notice of Preparation of Environmental Assessment

AGENCY: Fish and Wildlife Service, U.S. Department of the Interior, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Preparation of Environmental Assessment on Proposed Rulemaking.

SUMMARY: This notice invites public comment on whether or not the proposed Fish and Wildlife Coordination Act rules could have a significant effect on envorinmental quality. These proposed rules were first published in the **Federal Register** on May 18, 1979, 44 FR 29300. The comment period on the proposed rules closes on August 17, 1979.

DATES: Comments are due on or before September 17, 1979.

ADDRESS: Written comments should be addressed to Associate Director (AE), Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Karl F. Stutzman, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. 202–343–5000.

SUPPLEMENTARY INFORMATION:

Background: On May 18, 1979, proposed rules for implementing the Fish and Wildlife Coordination Act (FWCA) were published in the **Federal Register** (44 FR 29300). An environmental assessment on the proposed rules was prepared but no formal finding of no significant impact was made. Thus, the decision as to whether or not to prepare an environmental impact statement (EIS) in accordance with NEPA Regulations (40 CFR 1501.4(e)) has not yet been made. Since the time that the proposed FWCA rules were published the Department of the Interior has published proposed procedures for implementing the National Environmental Policy Act (44 FR 40436; July 10, 1979). These procedures supplement the NEPA regulations promulgated by the Council on Environmental Quality (43 FR 55976; November 29, 1978). The proposed Interior procedures set out specific guidelines for preparing environmental assessments to aid the decisionmaker in the determination as to whether or not to prepare an EIS. They include a provision for public involvement in the environmental assessment process.

Several persons who have submitted comments on the proposed FWCA rules have expressed their view that an EIS should be prepared for these rules. These comments, however, have not indicated what significant effects on environmental quality would result if the proposed FWCA rules are adopted.

Public Participation: In order to provide the public with an opportunity to participate in the resolution of this issue, it has been decided that a new environmental assessment will be prepared. In preparing the assessment the agencies involved will adhere to the proposed Interior NEPA procedures. Public comments on the scope and content of the environmental assessment are hereby solicited. In particular, comments are solicited on the following three issues: (1) specific examples of how the proposed FWCA rules will have a significant impact on the quality of the human environment; (2) alternatives to the proposed FWCA rules which should or should not be addressed in the environmental assessment and reasons therefor; (3) issues raised by the proposed FWCA rules which are and are not significant.

In addition to opportunity to comment in writing, a public meeting to comment on the question of whether the rules will have significant effects on environmental quality will be held in room 7000 A, U.S. Department of the Interior, 18th and C Streets, NW., Washington, D.C. at 9:00 a.m. on September 14, 1979. This meeting will be recorded and a transcript of the meeting will be placed in the administrative record.

At this time it is unclear whether the environmental assessment process (including preparation of an EIS if one is deemed necessary) will lead to significant substantive changes in the proposed FWCA rules. To the extent that significant changes are required, they will be republished in proposed form.

The primary author of this notice is Mark Squillace, Program Attorney, Office of the Solicitor (202–343–6346).

Dated this 13th day of August 1979.

Lynn A. Greenwalt,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 79–25436 Filed 8–16–79; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 44, No. 161
Friday, August 17, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Compliance and Enforcement Proceedings; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Compliance and Enforcement Proceedings of the Administrative Conference of the United States, to be held at 2:30 p.m., Monday, September 17, 1979, in the library of the Administrative Conference, Suite 500, 2120 L Street, NW., Washington, D.C.

The Committee will meet to discuss Professor Stanley Anderson's study of the role of inspectors general in federal agencies.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify this office at least two days in advance. Members of the Public may be permitted to present oral statements, if deemed appropriate by the Committee Chairman. Members of the public may also file a written statement with the committee before, during or after the meeting.

For further information concerning this meeting contact Sarah G. Flanagan (202–254–7065). Minutes of the meeting will be available upon request.

Richard K. Berg,

Executive Secretary.

August 3, 1979.

[FR Doc. 79–25511 Filed 8–16–79; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National Advisory Council on Maternal, Infant and Fetal Nutrition; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Council meeting:

Name: National Council on Maternal, Infant and Fetal Nutrition.

Date and time: 9:00 a.m., September 17–19, 1979.

Place: 500—12th Street, SW., Room 645, Washington, D.C. 20250.

Purpose of meeting: The Council will continue its study of the Special Supplemental Food Program for Women, Infants and Children (WIC) and the Commodity Supplemental Food Program (CSFP).

Proposed agenda: The Council will discuss the information to be included in their 1980 report to the President and the Congress. The remainder of the agenda will pertain to discussions on State Plan hearings, developmental projects, breastfeeding and other issues concerning the operation of the CSFP and WIC Program.

This meeting will be open to the public. As time permits, members of the public may participate in the meeting.

Persons wishing additional information about the meeting should contact Lindy Dahnk, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–8421.

Dated: August 10, 1979.

Carol Tucker Foreman,

Assistant Secretary.

[FR Doc. 79–25301 Filed 8–16–79; 8:45 am]

BILLING CODE 3410–30–M

Rural Electrification Administration

Seminole Electric Cooperative, Inc.; Final Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration as lead Federal agency has prepared a Final Environmental Impact Statement in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with a loan guarantee for Seminole Electric Cooperative, Inc., 2410 East Busch Boulevard, Tampa, Florida 33612. The U.S. Environmental Protection Agency, Region IV; U.S. Army Corps of Engineers, Jacksonville District; U.S. Department of the Interior (U.S. Fish & Wildlife Service) and U.S. Department of Commerce (National Marine Fisheries Service) have acted as cooperating agencies during the NEPA process.

The loan guarantee would allow Seminole to secure funds required for the construction of a proposed steam-electric generating station near Palatka, Putnam County, Florida. The project consists of two 600 MW coal-fired generating units scheduled for operation in 1983 and 1985, respectivly, and ancillary facilities. Proposed electric transmission associated with the project involves (1) a 230 kV double-circuit from the generating station to a point east of Palatka, and (2) a 230 kV double-circuit from the generating station to Silver Springs. An alternate 230 kV line from the generating station to Fort White and Suwannee would be implemented if an interconnection at Palatka or Silver Springs proves infeasible. The project will provide a reliable source of electric power to fill existing and projected future needs of Seminole's member distribution cooperatives. Additional information may be secured on request submitted to Mr. Joe S. Zoller, Assistant Administrator—Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250. The Final Environmental Impact Statement may be examined during regular business hours at the offices of REA in the South Agriculture Building, 12th Street and Independence Avenue, S.W., Washington, D.C., Room 5906 or at the borrower's address indicated above. Final action may be taken with respect to this matter after thirty (30) days.

Final REA action with respect to this matter (including any release of funds) will be taken only after REA has reached satisfactory conclusions with respect to its environmental effects and after procedural requirements set forth in the National Environmental Policy Act of 1969 have been met.

Dated at Washington, D.C., this 10 day of August, 1979.

Joseph Vellone,

Acting Administrator, Rural Electrification Administration.

[FR Doc. 79–2573 Filed 8–16–79; 8:45 am]

BILLING CODE 3410–15–M

Deseret Generation & Transmission Cooperative; Draft Environmental Impact Statement and Public Information Meetings

Notice is hereby given that the Rural Electrification Administration (REA) will be cooperating with the Department of the Interior (DOI) in the preparation of a draft environmental impact statement (EIS), in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with a proposed application for financing from Deseret Generation and Transmission Cooperative, 8722 South 300 West, Sandy, Utah 84070. At this time, it has not been determined which Federal agency will act as lead agency. Notice is also given that REA and/or DOI will hold public information meetings concerning the proposed project.

The statement will address a two unit 800 MW coal-fired electric generating station. REA financing may be requested for the first unit which is scheduled for completion in the mid 1980's. The plant may be located in either Utah or Colorado. Interested persons are invited to submit comments which may be helpful in the preparation of the draft EIS. Comments should be sent to the Assistant Administrator—Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

Representatives of the government and Deseret will host the public information meetings which will be held on September 10, 1979, in the Parkview Elementary School auditorium at 7:30 p.m., Rangely, Colorado, and on September 11, 1979, in the Golden Age Center auditorium at 7:30 p.m., Vernal, Utah. The meetings will be held in order to receive public input and comments concerning the need for the project, finalist sites proposed by Deseret, other potential alternatives, significant issues that should be addressed in the EIS and other matters concerning the proposal. Site selection studies result in two finalist sites under consideration. One is located northwest of Bonanza, Utah, in Uintah County, and the other is located northeast of Rangely, Colorado, in Rio Blanco County. A record will be made of the meetings and comments made will be addressed in the draft EIS.

The REA encourages the general public to attend these meetings and provide their input. Any person or group which desires to place its comments, questions, or recommendations in writing may do so either at the meetings or by submitting them to REA. Comments may be sent to the Rural Electrification Administration, at the address given above.

Requests for additional information or questions concerning the meetings may also be directed to Deseret at its address given above.

Dated at Washington, D.C., this 10th day of August, 1979.

Joseph Vellone,

Acting Administrator.

[FR Doc. 79-25574 Filed 8-16-79; 8:45 am]

BILLING CODE 3410-15-M

United Power Association; Draft Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration has prepared a joint Draft Environmental Impact Statement (DEIS) in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with a request for a loan guarantee commitment from the Rural Electrification Administration from United Power Association of Elk River, Minnesota. This loan guarantee commitment is planned to assist in obtaining financing for the construction of a 230 kV transmission line from the Benton County Substation near St. Cloud, Minnesota, to the Milaca Substation, east of Milaca, Minnesota.

Additional information may be secured on request, submitted to Mr. Joseph Zoller, Assistant Administrator-Electric, Rural Electrification Administration, Washington, D.C. 20250. Comments are particularly invited from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved from which comments have not been requested specifically.

Copies of the REA DEIS are being sent to various Federal, State and local agencies, as outlined in the Council on Environmental Quality regulations. The DEIS may be examined during regular working hours at the offices of REA in the South Agriculture Building, 12th Street and Independence Avenue, S.W., Washington, D.C., or at the office of United Power Association in Elk River, Minnesota.

Comments concerning the environmental impact of the construction proposed should be addressed to Mr. Zoller at the address given above. Comments must be received on or before October 1, 1979.

This Draft EIS has been jointly developed by REA and the Minnesota Environmental Quality Board (MEQB), Room 100, Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101, as joint lead agencies pursuant to Section 1501.5(b) of the Council of Environmental Quality regulations. MEQB has approval authority for the routing of high voltage transmission in Minnesota. MEQB also invites comments on the DEIS and these comments should be sent to Ms. Jennifer Calaway at the above address.

Final REA action with respect to this matter (including any release of funds) will be taken only after REA has reached satisfactory conclusions with respect to its environmental effects and after requirements set forth in the National Environmental Policy Act of 1969 have been met.

Dated at Washington, D.C., this 10th day of August 1979.

Joseph Vellone,

Acting Administrator, Rural Electrification Administration.

[FR Doc. 79-25575 Filed 8-16-79; 8:45 am]

BILLING CODE 3410-15-M

CIVIL AERONAUTICS BOARD

[Dockets 32711, 33019 and 34582]

Interstate Service at Love Field

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in this proceeding is assigned to be held before the Board on September 10, 1979, at 10:00 A.M. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C.

Each party which wishes to participate in the oral argument shall so advise The Secretary, in writing, on or before August 28, 1979, together with the name of the person who will represent it at the argument.

Dated at Washington, D.C., August 13, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-25517 Filed 8-16-79; 8:45 am]

BILLING CODE 6320-01-M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations

Notice is hereby given that, during the week ended August 10, 1979 CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity or foreign air

carrier permits under Subpart Q of 14 CFR 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original applications. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjunction with a motion to modify scope are due within 42 days after the original application was filed. If you are in doubt as to the type of application which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

Subpart Q Applications

Date filed	Docket No.	Description
Aug. 6, 1979	36300	Trans World Airlines, Inc., 605 Third Ave., New York, New York 10016. Application of Trans World Airlines, Inc. pursuant to section 401 of the Act for certificate authority to engage in scheduled foreign air transportation between the terminal point Pittsburgh, Pennsylvania, and the terminal point Toronto, Canada. Answers due August 31, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-25518 Filed 8-16-79; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

New Mexico Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the New Mexico Advisory Committee (SAC) of the Commission will convene at 3:00 pm and will end at 10:00 pm, on September 14, 1979, at the Eastern New Mexico University, Liberal Arts Building, Room 112, Portales, New Mexico 88130.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southwestern Regional Office of the Commission, Heritage Plaza, 418 South Main, San Antonio, Texas 78204.

The purpose of this meeting is to discuss civil rights issues affecting Portales and Clovis.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 13, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-25451 Filed 8-16-79; 8:45]

BILLING CODE 6335-01-M

Texas Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Texas Advisory Committee (SAC) of the Commission will convene at 3:00 pm and will end at 6:00 pm, on September 27, 1979, and will convene at 9:00 am and will end at 12 noon, on September 28, 1979, at the Sheraton Fairway, Brassie Room, South Tenth at Wichita, McAllen, Texas 78501.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southwestern Regional Office of the Commission, Heritage Plaza, 418 South Main, San Antonio, Texas 78204.

The purpose of this meeting is to discuss Ten Years Later Project with Texas SAC members.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 13, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-25452 Filed 8-16-79; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Industry and Trade Administration

[Transmittal No. 262; Order No. 43-1; D.O.O. Reference 10-3, 40-1]

Bureau of Export Development; Statement of Organization, Function and Delegation of Authority

Section 1. Effect on Other Orders

This order supersedes ITA Organization and Function Order 43-1 of December 4, 1977, as amended (43 FR 9177 and 43 FR 38069).

Section 2. Purpose

This order delegates authority to the Deputy Assistant Secretary for Export Development and prescribes the organization and assignment of functions within the Bureau of Export Development.

Section 3. Delegation of Authority

.01 Pursuant to Department Organization Order 10-3 of December 4, 1977, as amended, the following authorities delegated to the Assistant Secretary for Industry and Trade by the Secretary of Commerce are hereby delegated to the Deputy Assistant Secretary for Export Development:

a. Such provisions of the Act of February 14, 1903, (15 U.S.C. 1512 et seq.; 15 U.S.C. 171 et seq.) as amended, to foster, promote, and develop the foreign commerce of the United States, as are necessary to the performance of the Bureau's functions;

b. Section 6.01 (b) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 et seq.), and Section 302 of Executive Order 10973 of November 3, 1961, issued pursuant thereto, relating to drawing the attention of private enterprise to investment opportunities in less developed friendly countries;

c. Such portions as are necessary to the performance of the Bureau's functions of the delegation of authority, dated June 25, 1962 from the United States Information Agency under Section 5(e) of Executive Order 11034 of June 25, 1962 as amended by Executive Order 11380 of November 8, 1967, insofar as said delegation pertains to U.S. participation in trade missions abroad under the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2451 et seq.);

d. Executive Order 10978 of December 5, 1961 regarding the Presidential "E" Award, "E" Certificate of Service, and "E Star" Award, except final selection of recipients;

e. The Act of October 18, 1962, as amended (46 U.S.C. 1122b), which authorized mobile trade fairs;

f. The China Trade Act of 1922, as amended (15 U.S.C. 141 et seq.), and Section 941 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 941), as it relates to certification of special dividend distributions; and

g. Other authorities of the Assistant Secretary applicable to performing the functions assigned in this Order.

.02 The Deputy Assistant Secretary for Export Development may redelegate authorities listed in Section 3.01 to any employee of the Bureau of Export Development or to any other appropriate officer or agency of the Government subject to such conditions in the exercise of such authorities as he may prescribe.

Section 4. Organization Structure and Line of Authority

.01 The organization structure and line of authority of the Bureau of Export Development (the "Bureau") shall be as depicted in the attached organization chart.[1]

.02 The Bureau shall be headed by the Deputy Assistant Secretary for Export Development who shall be the Director and who shall report and be responsible to the Assistant Secretary for Industry and Trade. The Deputy Assistant Secretary shall be assisted by a *Deputy Director.*

Section 5. Office of the Deputy Assistant Secretary

.01 The *Deputy Assistant Secretary for Export Development* shall direct the Bureau and shall assist and advise the Assistant Secretary for Industry and Trade on export expansion; serve as the National Export Expansion Coordinator; provide counseling, marketing information services and promotional assistance to U.S. business firms; establish and maintain working relationships with other Federal agencies and private organizations having an interest in and/or responsibility for export development; develop and execute a national awareness campaign stressing the economic advantages of exporting to American companies and organize and conduct overseas sales events, trade missions and trade promotions in specific foreign countries excluding those countries which are the responsibility of the Deputy Assistant Secretary for East-West Trade. The functions of the DAS shall be carried out through the principal organizational elements prescribed below.

[1] Filed as part of the original document.

.02 The *Deputy Director* shall assist in the direction of the Bureau and perform the functions of the Deputy Assistant Secretary in the latter's absence.

.03 The Office of the Deputy Assistant Secretary shall plan, develop, supervise the implementation of and evaluate the Worldwide Information and Trade System (WITS), a computerized information system to provide exporters with prompt access to international marketing opportunities abroad and to expose American products to foreign buyers; serve as the principal source of advice to Bureau officials on all matters related to the planning, development, content, implementation, operation and evaluation of WITS; and be the principal interface between ITA, other Government agencies, the private sector, and foreign governments on these matters. The Office shall also provide staff support to the Executive Director of the President's Export Council and in this capacity encourage Government dialogue with U.S. business and be responsible for communicating the President's Export Council's recommendations from the Executive Director through the Secretary of Commerce to the President.

.04 The Bureau of Export Development shall include the following Offices:

Office of the Deputy Assistant Secretary.
Office of Export Marketing Assistance.
Office of Export Promotion.
Office of Country Marketing.
Office of Export Planning and Evaluation.

Section 6. Office of Export Marketing Assistance

.01 The *Office of the Director* includes the Director who shall direct the Office and provide principal direction to developing programs designed to foster an export consciousness in the United States and stimulate export marketing in all segments of the domestic economy which have the capability to export. The Office shall include the following components:

.02 The *Investment Advisory Staff* shall carry out the Department's "Investment in the U.S.A." program, designed to encourage and facilitate foreign direct capital investment and licensing by foreign firms in the United States; develop information on domestic investment, joint ventures and licensing opportunities for foreign business people and obtain specific investment, joint venture and licensing proposals from potential foreign investors for the U.S. business community; provide information and counsel to U.S. business concerning existing and planned overseas investments; and furnish information to U.S. foreign investors on private and public sources of investment capital, particularly foreign sources, guarantees and related types of capital for overseas investments and loans, particularly in developing countries.

.03 The *Export Awareness Division* shall conduct domestic programs which stimulate an interest in exporting and provide information and assistance to firms interested in international trade. The Division shall include the *Joint Export Marketing Assistance Staff* which shall assist in reducing the initial risk involved in new export marketing efforts in order to encourage small or medium size firms to take advantage of export opportunities; encourage the formation of associations of firms; and encourage the development of "high potential" markets where demand for specific types of U.S. goods has been identified; and the *Minority Business Assistance Staff* which shall identify minority owned businesses having export potential; ensure the widest possible participation of these firms in Bureau and other Federal export assistance programs; administer the joint working agreements with the Office of Minority Business Enterprise; ensure that all Bureau offices, Department elements and other Federal Government agencies are sensitive to the export assistance needs of minority business when they develop programs or regulations; and assist individual minority businesses with particular export-related problems by acting as their liaison with other ITA elements. The Division shall also include:

a. The *Export Marketing Advisory Service* Branch shall provide individual counseling services to U.S. exporters and prospective exporters on the mechanics of exporting; assist in the resolution of commercial trade disputes; and operate the Tailored Export Marketing Plans Service (TEMPS) through which the export capability of selected small and minority companies is determined, viable markets are identified, export marketing strategies are developed and advice and counsel provided. The services will be provided to the user and small and minority companies in cooperation with the District Offices.

b. The *Export Information Branch* shall serve as the central point in the Bureau for the coordination and development of export education activities. The Branch shall prepare promotional literature to support the Bureau's programs and establish facilities to develop and manage the Bureau's publications; it shall prepare "awareness" and general "how to" brochures and publications; collect and

arrange for the dissemination of foreign market reports, operate the New Product Information Service and produce the *Commercial News U.S.A.* The Branch shall organize conferences, seminars and other promotional activities to familiarize U.S. industry with the advantages of exporting; direct the national multiplier program; and administer the President's "E" and "E Star" Awards. In cooperation with the Office of Public Affairs and delivered through the Bureau of Field Operations, the Branch shall ensure that these publications, programs and services receive wide dissemination.

.04 The *Exporter Liaison Division* shall be the Bureau's primary contact with the U.S. business community to identify firms, particularly small, medium-sized, and companies in impacted industries which have not participated to their full potential in exporting; develop, in cooperation with other Bureau elements, programs aimed at such firms to ease their entrance into the world market; assure that U.S. industry's views are expressed to Bureau officials and work with all elements of the export community to support private sector program initiatives and develop joint programs. The Division shall include the following components:

a. The *Industry Relations Branch* shall maintain information on U.S. technological developments and marketing trends in selected industry segments with respect to the foreign marketplace and exporting; work with trade associations to identify "export capable" firms not fully exporting and encourage trade associations to promote exporting activities by their members; assist industry in obtaining speakers on exporting for conferences, seminars and workshops from within the Bureau. The Branch shall also work with District Offices in assisting export expansion activities of State, regional and local agencies and oversee the implementation of the ITA/SBA and ITA/EDA agreements.

b. The *Foreign Buyers Branch* shall stimulate and arrange visits to expositions and industrial facilities for foreign business people and government officials; identify, with the assistance of the U.S. Foreign Service, prospective foreign buyers and direct buyers to domestic trade shows; and arrange meetings between visiting foreign business people and U.S. manufacturers in order to facilitate sales.

.05 The *Major Projects Division* shall serve as the focal point in the Department for providing Government-wide assistance to U.S. firms on major international business transactions; identify foreign capital projects with major export potential which should be brought to the attention of U.S. industry or which are likely to require special U.S. Government assistance for successful participation by American firms; and inform U.S. firms of specific large-scale projects overseas with significant potential for exports of U.S. goods and services and assist them on a case-by-case basis in competing for such projects. The Division communicates directly with other Federal agencies, international financial institutions, and with U.S. Missions abroad. The Division shall include the following branches:

a. The *Industrial Systems/Equipment Branch* shall carry out the above functions with respect to American firms involved in planning, designing and constructing industrial and agribusiness facilities, and for supplying industrial equipment and materials.

b. The *Infrastructure Systems/Equipment Branch* shall carry out the above functions with respect to American firms involved in planning, designing and constructing power, communications, transportation and other infrastructure projects and supplying related equipment.

c. The *International Organizations and Strategic Systems Branch* shall carry out the above functions with respect to American firms involved in providing supplies and equipment to NATO and defense related goods to other countries; and provide all branches with information on international financial institutions, national budgets and development plans.

.06 The *Trade Facilitation Information and Services Division* shall maintain computerized data banks of information regarding the U.S. and foreign trading communities and identify, select and establish continuing relationships with specific foreign sales representatives, distributors, licensees and direct purchase customers; manage the collection of information on foreign firms through the World Traders Data Reports (WTDR) service; maintain the Foreign Traders Index and the American International Traders Register (AITR); operate the Trade Opportunity Program and the Agent/Distributor Service; and develop and implement the Exporter/Agency Information System (E/AIS). The Division consists of the following Branches:

a. The *World Trade Data Report Branch* shall maintain WTDR data submitted by the Foreign Service, disseminate WTDRs to the business community and maintain the American International Traders Register.

b. The *Export Contact List Branch* shall maintain the Foreign Traders Index; make data from the index available to the business community in the form of Exporter Contact Lists, Trade Lists and Data Tapes; and operate the Agent/Distributor Service for the purpose of assisting firms to identify foreign agents/distributors/business contacts.

c. The *Trade Opportunity Branch* shall operate the Trade Opportunity Program to collect specific foreign trade opportunity leads, disseminate those leads to interested U.S. firms and identify potential agents.

Section 7. Office of Export Promotion

.01 The *Office of the Director* includes the *Director* who shall manage the Office and provide principal guidance for exhibitor recruitment, staffing and overseas staging of the Department's trade promotion programs. The Office shall include the following divisions:

.02 The *Resources Management Division* shall provide fiscal management and support for the Bureau's trade promotion programs including design, planning and development for international/U.S. commercial exhibitions for Bureau of Export Development and the same, except for planning and development, for Bureau of East-West Trade events; organize, execute and supervise U.S. commercial exhibits at international trade fairs and at Export Development Offices; provide for leasing, design and refurbishment of overseas fixed facilities; and provide for the shipment of participants' products for all overseas trade promotion events.

.03 The *Industry Participation Division* shall develop and manage industry wide recruitment campaigns to attract U.S. industry to overseas exhibitions; be responsible for industry procurement contacts; provide input to Office of Export Planning and Evaluation and Office of Country Marketing for identification and scheduling of export promotion events and assist the Office of Export Marketing Assistance in structuring an effective industry liaison program to support recruitment activities. The Division shall include the following branches:

a. The *Communications/Transportation Branch, Industrial/Construction Branch,* and *Scientific/Electronic Branch,* for their designated industry and business sectors each shall recruit industry participants in Bureau

exhibitions, serve as a conduit for industry views on overall overseas activities and scheduling of events and serve as primary contact for overseas exhibition initiatives with their industries.

.04 The *Special Promotions Division* shall develop and plan innovative trade promotion techniques for export promotion activities. The Division shall include the following brances:

a. The *Trade Missions Branch* shall operate the trade and seminar missions program; in conjunction with the Office of Country Marketing, shall develop trade and seminar missions; procure industry participants and organize activities of U.S. Specialized Trade and Seminar Missions; provide advice and planning supervision for Industry-Organized Government-Approved Missions; assign trade and seminar mission directors, chairpersons and other personnel; and develop itineraries, publicity and contacts with U.S. Foreign Service.

b. The *Selective Marketing Techniques Branch* shall operate special export promotional events including U.S. Industry Catalog Exhibitions, Video Tape/Catalog Exhibitions and Consumer Product Promotions through overseas agents, distributors and retail organizations; develop new export promotion techniques; and assist in planning and scheduling overseas special events.

Section 8. Office of Country Marketing

.01 The *Office of the Director* includes the *Director* who shall direct the Office in the collection and analysis of foreign market, commercial and economic data and provide principal direction to coordinating the scheduling of overseas trade promotion events to be implemented by the Office of Export Promotion. The Office shall include the following components:

.02 The *Europe Division, Latin America Division and Asia/Africa Division* are divided into branches as follows and shall each facilitate trade between the United States and their respective countries and areas:

a. *Europe Division.* U.K./Canada Branch, France/Benelux Branch, Germany/Austria/Nordic Branch, Southern Europe Brance.

b. *Latin America Division.* Mexico/Central America Branch, Andean/Caribbean Branch, Brazil/River Plate Branch.

c. *Asia/Africa Division.* Japan/Korea/Hong Kong Branch, Taiwan/Australia/New Zealand Branch, South and Southeast Asia Branch, Africa Branch.

.03 The Divisions in Section 8.02 shall monitor information on marketing developments and other commercial information in their respective countries and regions; maintain in-depth marketing, commercial and economic expertise on individual countries; counsel U.S. firms on specific economic and commercial conditions, marketing practices and techniques; author publications on foreign commercial conditions, laws, regulations, tariff structures, and other marketing information, best prospects for exports, trade outlooks and other country data; prepare, in conjunction with other Bureau offices and the Department of State, the annual Country Commercial Program for major trading partners; identify product or industry themes to be promoted in particular markets; select and propose a schedule of overseas trade promotion events, and prepare market plans for those events; provide support for recommendations on Foreign Service economic/commercial staffing levels and other Foreign Service related issues; and suggest, participate in and work with the Office of Export Marketing Assistance to develop formal vehicles such as conferences and seminars to brief the U.S. business community on the intricacies of doing business in specific markets.

.04 The *Commerce Action Group for the Near East* (CAGNE) is divided into branches as follows. Each shall provide a coordinated ITA response to the economic situation and business opportunities in the Near East and North Africa for their respective countries and areas.

a. Arab States Branch.

b. Iran/Israel/Egypt/North Africa Branch.

c. Business Facilitation Branch.

.05 The branches in Section 8.04 a. and b. shall monitor and maintain information on and familiarity with their economies and with economic and political policies; assemble, analyze and disseminate to the business community, information on economic and commercial conditions and new opportunities to assist U.S. firms to plan and conduct operations in the Near East; counsel U.S. exporters to the area, especially those new to these markets; plan and direct promotional programs and new initiatives responsive to the needs of U.S. business; prepare and coordinate briefing material for Departmental officials for visits and intergovernmental meetings; through their regional expertise, contribute to the development of Arab Boycott policy; prepare in conjunction with other offices in the Bureau and the Department of State Country Commercial Programs for selected countries in the area, provide support to the Department of Commerce representative to such Joint Commissions or similar relationships as may be established, including representation on or contribution to working groups, and other activities involving the Department; and provide liaison with Commerce elements outside ITA whose functions contribute to the work of the Joint Commissions or similar relationships.

.06 The *Business Facilitation Branch* shall assist U.S. firms on a case-by-case basis to compete in the Near East markets by reviewing with them specific major project, joint-venture, and other opportunities, by arranging contacts between U.S. business and area officials, by developing a strategy for securing this business for American firms and by mobilizing U.S. Government support on behalf of U.S. bidders; develop and prepare special publications designed to assist U.S. firms in bidding on, negotiating, and winning major Near East contracts and other export opportunities; and suggest, participate in, and work with the Office of Export Marketing Assistance to develop formal vehicles such as conferences and seminars to brief the U.S. business community on the intricacies of doing business with the Near East and techniques for capitalizing on business opportunities in these markets.

Section 9. Office of Export Planning and Evaluation

.01 The *Office of the Director* includes the *Director* who shall manage the Office and provide principal direction to conducting market research; developing and managing a bureau-wide planning system which shall include new program development, formulation of recommendations for and monitoring of the allocation of all resources for the Bureau; and evaluation of the effectiveness and impact of Bureau programs. The Office shall have responsibility for coordination of financial planning within the Bureau.

.02 The Office of the Director shall be responsible for developing the design and specifications for the Country Commercial Programs (CCPs); reviewing and coordinating clearances for CCPs and Country Action Programs (CAPs); participating in review of performance of U.S. Foreign Service Posts in carrying out CCPs and CAPs and analyzing those posts resource utilization patterns; and for coordinating and monitoring Commerce contributions and clearance of policy and resource management papers (PARMs) within the National Security Council/Inderdepartmental

Group structure. The Office shall include the following divisions:

.03 The *Targeting Division* shall identify the types of companies and the mix of industries, products, foreign markets and programs which represent an optimum focus for the Bureau's export development activities, analyze the factors that determine potential for the promotion and export of specific U.S. product categories in major world markets and identify those particular industries and markets on which to target the Bureau's export promotion resources; prepare statistical data on exports of target industry products to target markets; prepare planning profiles for each target industry; develop recommendations for use in targeting allocation of export promotion resources on an industry-by-industry and country-by-country basis; and maintain information on proposed and actual allocation of the Bureau's promotion resources relevant to the targeting recommendations.

.04 The *Market Research Division* shall design, acquire and produce research on the markets for U.S. products in countries and regions abroad for use as a direct information source to the U.S. business community including Global Market Surveys, Country Market Surveys, Operational Research Studies, Country Sectoral Studies, Producer Goods Research, Consumer Goods Research, and other market research.

Based on the outputs of the Country Commercial Programs and the planning system, the Division shall perform research on industry needs for product, end-use sector, country, global, company and other foreign market research, produce operational research, establish schedules for the production of market research; design specifications for contracted market research; determine contractors and secure contractor compliance with market research specifications; analyze, report and make recommendations on the implications of completed market research for domestic export campaigns, for overseas country and event programming, and for trade policy purposes; and maintain market research materials on target and other selected industries and markets. It shall also direct the substantive analysis and preparation of research projects related to product market research abroad; edit and summarize completed contract research; and, for noncontract research, prepare studies on selected product and end-use sectors abroad.

.05 The *Planning and Evaluation Division* shall develop and manage a Bureau planning system which shall include short and long term objectives, goals, strategies, program initiatives, priorities for the Bureau's export development activities; recommend the allocation of Bureau resources and provide criteria for measuring and evaluating the performance of Bureau export development programs. The Division shall consult with other Bureau elements in the development of this system. The Division shall make recommendations designed to improve the efficiency, effectiveness and responsiveness of Bureau programs which will enable the Bureau to meet domestic/international market developments, exporter needs, and achieve export development objectives. It shall maintain a system to forecast quantitative accomplishments for Bureau programs; prepare analyses of program performance; analyze implications of program results and accomplishments; develop criteria for measuring and evaluating program performance; direct and conduct value analysis, benefit/cost analyses and similar analyses; review and coordinate Bureau responses to program recommendations and monitor compliance with and implementation of Bureau endorsed program recommendations.

Section 10. Administrative, Public Affairs, and Field Support

.01 Management, budget, personnel, travel and administrative services, and public affairs and information services for the Bureau will be provided by administrative offices of the Industry and Trade Administration.

.02 Field support necessary to Bureau activities will be provided by the Bureau of Field Operations.

Frank A. Weil,

Assistant Secretary for Industry and Trade.

Peter G. Gould,

Deputy Assistant Secretary for Export Development.

[FR Doc. 79-25512 Filed 8-16-79; 8:45 am]

BILLING CODE 3510-25-M

Maritime Administration

Approval of Request for Removal From Roster of Approved Trustees

On July 6, 1979, there was published at the request of the National Bank of North America in the **Federal Register** (44 FR 39572), pursuant to 46 CFR 221.28, a Notice of Request for Removal, Without Disapproval, from the Roster of Approved Trustees.

Pursuant to Public Law 89-346 and 46 CFR 221.21-221.30, the National Bank of North America with offices at 80 Pine Street, New York, New York is removed from the Roster of Approved Trustees.

This notice shall become effective on August 17, 1979.

Dated: August 14, 1979.

By Order of the Assistant Secretary of Commerce for Maritime Affairs.

Robert J. Patton, Jr.,

Acting Secretary.

[FR Doc. 79-25578 Filed 8-16-79; 8:45 am]

BILLING CODE 3510-15-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Announcement of Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Caribbean Fishery Management Council, established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), has established a Mollusk Steering Committee which will meet to discuss the development of a work plan as the initial step in preparing a fishery management plan for the mollusk fishery.

DATES: The meetings will convene on Wednesday, September 5, 1979, at 9:30 a.m., and on September 6, 1979, at 7:00 p.m. These meetings are open to the public.

ADDRESS: The meeting on Wednesday will take place at the Hotel Pierre, Santurce, Puerto Rico. The meeting on Thursday will take place at the Virgin Isles Hotel, St. Thomas, U.S. Virgin Islands.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918, Telephone: (809) 753-4926.

(16 U.S.C. 1801 et seq.)

Signed at Washington, D.C., this 14th day of August 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-25572 Filed 8-16-79; 8:45 am]

BILLING CODE 3510-22-M

Caribbean Fishery Management Council; Announcement of Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Caribbean Fishery Management Council, established by

section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), has established a Deep Water Reef Fishes Steering Committee which will meet to discuss the development of a work plan as the initial step in preparing a fishery management plan for the deep water reef fishes fishery.

DATES: The meetings will convene on Wednesday, September 5, 1979, at 9:30 a.m., and on September 6, 1979, at 7:00 p.m. These meetings are open to the public.

ADDRESS: The meeting on Wednesday will take place at the Hotel Pierre, Santurce, Puerto Rico. The meeting on Thursday will take place at the Virgin Isles Hotel, St. Thomas, U.S. Virgin Islands.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918, Telephone: (809) 753-4926.

(16 U.S.C. 1801 et seq.)

Signed at Washington, D.C., this 14th day of August 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-25571 Filed 8-16-79; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending Import Restraint Levels for Certain Cotton Textile Products from Pakistan

August 14, 1979.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Amending the bilateral agreement with Pakistan to: (1) Establish new specific ceilings for cotton printcloth in Category 315 and women's, girls' and infants' woven cotton blouses in Category 341; and increase the specific limit for cotton terry and other pile towels in Category 363; (2) Reduce the existing specific ceilings for cotton sheeting in Category 313 and carded cotton duck in Category 319; and (3) Increase the consultation levels for other woven cotton fabrics, such as lawn and voile, in Category 320; other apparel, such as mufflers, scarves and shawls, in Category 359; and other cotton manufactures, such as yarn, cordage and table damask, in Category 369.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), September 5, 1978 (43 FR 39408), January 2, 1979 (43 FR 94), March 22, 1979 (44 FR 17545), and April 12, 1979 (44 FR 21843)).

SUMMARY: On July 27 and 30, 1979 the Governments of the United States and Pakistan exchanged notes amending the Bilateral Cotton Textile Agreement of January 4 and 9, 1978 to establish new specific ceilings for Categories 315 and 341 and increase the existing specific ceiling for Category 363; decrease the existing specific ceilings for Categories 313 and 319; and increase the consultation levels for Categories 320, 359 and 369, all during the twelve-month period which began on January 1, 1979.

EFFECTIVE DATE: August 20, 1979.

FOR FURTHER INFORMATION CONTACT: Carl Ruths, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

SUPPLEMENTARY INFORMATION: On January 2, 1979, there was published in the **Federal Register** (44 FR 92) a letter dated December 27, 1978 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which prohibited, effective on January 1, 1979 and for the twelve-month period extending through December 31, 1979, entry into the United States for consumption or withdrawal from warehouse for consumption of cotton textile products in Categories 313, 315, 338 and 363 in excess of designated levels of restraint. On July 18, 1979, a further letter was published in the **Federal Register** (44 FR 41903) from the Chairman of the Committee for the Implementation of Textile Agreements which directed the Commissioner of Customs to control imports of cotton textile products in Category 341 at the designated consultation level established pursuant to the bilateral agreement for the agreement year which began on January 1, 1979.

In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to amend the directives of December 27, 1978 and July 13, 1979 to adjust the levels of restraint previously established for cotton textile products in Categories 313, 315, 341 and 363, as indicated, and to establish the designated levels of restraint for cotton textile products in Categories 319, 320, 359 and 369, produced or manufactured in Pakistan and exported to the United States during the twelve-month period which began on January 1, 1979.

The levels of restraint have not been adjusted to account for any imports in these categories after December 31, 1978. As the data become available, these imports will be charged. Further, as agreed by the two governments, prior years' overshipments in Categories 315, 320, 359 and 369 have been charged.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements, *August 14, 1979.*

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives of December 27, 1978 and July 13, 1979 from the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit, for the twelve-month period beginning on January 1, 1979 and extending through December 31, 1979, entry into the United States for consumption and withdrawal from warehouse for consumption of certain cotton textile products, produced or manufactured in Pakistan.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977, pursuant to the Bilateral Cotton Textile Agreement of January 4 and 9, 1978, as amended, between the Governments of the United States and Pakistan, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on August 20, 1979, to amend the levels of restraint previously established for Categories 313, 315, 341, and 363 to the following:

Category	Amended twelve-month level of restraint [1]
313	57,368,330 Sq. yds.
315	30,500,000 Sq. yds.
341	137,931 Doz.
363	17,433,640 Nos.

You are further directed to prohibit, effective on August 20, 1979 and for the twelve-month period which began on January 1, 1979 and extends through December 31, 1979, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 319, 320, 359 and 369, produced or manufactured in Pakistan, in excess of the following levels of restraint:

Category	Twelve-Month Level of Restraint [1]
319	11,253,470 sq. yds.
320	13,506,821 sq. yds.

Category	Twelve-Month Level of Restraint [1]
359	456,460 lbs.
369	3,248,869 lbs.

[1] The levels of restraint have not been adjusted to account for any imports after December 31, 1978.

Cotton textile products in Categories 319, 320, 359 and 369 that have been exported prior to January 1, 1979 shall not be subject to this directive.

Cotton textile products in Categories 319, 320, 359 and 369 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The actions taken with respect to the Government of Pakistan and with respect to imports of cotton textile products from Pakistan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 79-25565 Filed 8-16-79; 8:45 am]

BILLING CODE 3510-25-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1979; Proposed Addition

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

ACTION: Proposed Addition to Procurement List.

SUMMARY: The committee has received a proposal to add to Procurement List 1979 a service to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 19, 1979.

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

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following service to Procurement List 1979, November 15, 1978 (43 FR 53151):

SIC 7349

Janitorial/Custodial Service, Base Education Trailers, Fairchild Air Force Base, Spokane, Washington.

C. W. Fletcher,

Executive Director.

[FR Doc. 79-25499 Filed 8-16-79; 8:45 am]

BILLING CODE 6820-33-M

CONSUMER PRODUCT SAFETY COMMISSION

Toxicological Advisory Board; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting: Toxicological Advisory Board.

SUMMARY: This notice announces a meeting of the Toxicological Advisory Board on Wednesday, September 5, 1979 from 9:00 A.M. to 4:30 P.M. and Thursday, September 6, 1979 from 9:00 A.M. to 4:00 P.M. The meeting, which is open to the public, will be held in Room 456 at 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Catherine Bolger, Office of the Secretary, Suite 300, 1111 18th Street, NW, Washington, DC 20207 (202) 634-7700.

SUPPLEMENTARY INFORMATION: The Toxicological Advisory Board is a newly-established nine-member advisory committee which advises the Commission on precautionary labeling for acutely toxic household substances and on instructions for first aid treatment labeling. In addition, the Board reviews labeling requirements that have been issued under the Federal Hazardous Substances Act and recommends revisions it deems appropriate. The Toxicological Advisory Board was created on November 10, 1978 under the authority of Section 10 of the 1978 CPSC Authorization Act (Pub. L. 95-631).

The meeting on Wednesday, September 5, 1979 will include discussions on Petition HP 76-8, Special Labeling concerning the Cardiotoxicity of Methylene Chloride and Petition HP 78-2, Hydrofluoric Acid Rust Removers. The Board will also begin review of those portions of the CPSC Labeling Guide which address Acids and Acid-like Substances. On Thursday, September 6, 1979, the meeting will be devoted to the review of those portions of the CPSC Labeling Guide which address Acids and Acid-like Substances.

The two-day meeting is open to the public; however, space is limited. Persons who wish to make oral or written presentations to the Toxicological Advisory Board should notify the Office of the Secretary (see address above) by August 29, 1979.

The notification should list the name of the individual who will make the presentation, the person, company, group or industry on whose behalf the presentation will be made, the subject matter, and the approximate time requested. Time permitting, these presentations and other statements from the audience to members of the Board may be allowed by the presiding officer. Requesters will be informed of the decision before the meeting.

Dated: August 13, 1979.

Robert C. Bledsoe, Jr.,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 79-25437 Filed 8-16-79; 8:45 am]

BILLING CODE 6355-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

August 9, 1979.

The USAF Scientific Advisory Board Ad Hoc Committee on Turbine Engine Monitoring Systems will meet at the General Electric facilities, Lynn, Massachusetts, on September 5-7, 1979. The meeting will convene at 8:00 a.m. and adjourn at 5:00 p.m. on September 5 & 6, and convene at 8:00 a.m. and adjourn at 3:00 p.m. on September 7.

The Committee will review the status of the A-10/TF34 turbine engine monitoring system development. The briefings and discussions will be classified and closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1).

For further information, contact the Scientific Advisory Board Secretariat (202) 697-8845.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 79-25455 Filed 8-16-79; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Change of Mission at Fort Ord, Calif.; Filing of Environmental Impact Statement

In compliance with the National Environmental Policy Act of 1969, the Army, on August 10, 1979, provided the Environmental Protection Agency, as required by the Council on Environmental Quality, a Final Environmental Impact Statement (FEIS) concerning the permanent stationing of the 7th Infantry Division (—) at Fort Ord, California.

Copies of the statement have been forwarded to concerned Federal, State and local agencies. Interested organizations or individuals may obtain copies from Commander, 7th Infantry Division (—) and Fort Ord, Attention: AFZW-FE-E, Fort Ord, California 93941, telephone (408) 242-4505.

In the Washington area, inspection copies may be seen during normal duty hours in the Environmental Office, Office of Assistant Chief of Engineers, Room 1E676, Pentagon, Washington, DC 20310, telephone: (202) 694-3434.

Bruce A. Hildebrand,

Deputy for Environment, Safety and Occupational Health OASA (IL&FM).

[FR Doc. 79-25513 Filed 8-16-79; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee meeting:

Name of the committee: Army Science Board.
Dates of meeting: September 10-11, 1979.
Place: USA Training and Doctrine Command, Fort Monroe, Virginia.
Time: 0800-1015, September 10, 1979 (Open); 1015-1700, September 10, 1979 (Closed); 0800-1700, September 11, 1979 (Closed).
Proposed agenda: The Army Science Board will conduct a Fall General Membership Meeting to discuss studies done by the Board, future activities, and to receive briefings by Members of the Training and Doctrine Command (TRADOC) staff. Specifically, items to be discussed during the open portion include Human Issues Steering Group; Family of Military Computers; Army Laboratories; Safety of Propellant and Explosive Production at Radford Army Ammunition Plant. Discussions during the closed portion will include the status of Ballistic Missile Defense Standing Committee final letter report; Chemical Decontamination/ Contamination Avoidance Ad Hoc Group final report; 1979 Summer Study on "Technology Planning of Future Fielded Systems"; C-C3 Review Group; the TRADOC briefing will include Battlefield Development Plan and Division 86 reports. This meeting will be partially closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof. The classified and non-classified matters to be discussed during the closed portion are so inextricably intertwined so as to preclude opening any portion of the meeting during the period 1015-1700, September 10 and 0800-1700, September 11, 1979.

Robert F. Sweeney,

Lieutenant Colonel, GS Executive Secretary, Army Science Board.

[FR Doc. 79-25450 Filed 8-16-79; 8:45 am]

BILLING CODE 3710-08-M

Army, Corps of Engineers

San Antonio Channel Improvement Project, San Antonio, Bexar County, Tex.; Intent To Prepare a Supplement to the Final Environmental Impact Statement (SFEIS)

AGENCY: U.S. Army Corps of Engineers, DOD, Fort Worth District.

ACTION: Notice of Intent to Prepare a Draft Supplement to the Final Environmental Impact Statement (FEIS) for the authorized San Antonio Channel Improvement Project, filed with CEQ November 9, 1971.

SUMMARY: 1. The primary purpose for this project is to provide flood protection on the San Antonio River within San Antonio, Bexar County, Texas. The overall project is about 75% completed. The draft supplement to the FEIS will address Unit 8-3-2 only (South Alamo Street to Nueva Street) of the channel improvement project to evaluate project impacts and alternatives under current conditions. This portion of the San Antonio Channel Improvement Project is located downstream from the Riverwalk area and include proposed channel improvements on about .75 miles of the San Antonio River. Since the proposed project will require fill material below the plane of the high water mark of the San Antonio River, evaluation of the project under Section 404 of the Clean Water Act of 1977 will be required. The evaulation of environmental impacts associated with this project and Section 404 considerations will be discussed in the supplement.

2. Reasonable Alternatives: The project alternatives to be evaluated in the supplement include: No Action, Non-Structural, and Channelization.

3. Scoping Process.

a. Public Involvement. A comprehensive public involvement program is conducted locally by the San Antonio River Authority (SARA) and the city of San Antonio, local sponsors for the project, as a means of disseminating information and soliciting public views. Formal public meetings were held in February and July 1979, and informal public information sessions are being employed to involve organizations, Federal, State, and local agencies, citizen committees, and the interested public in the planning and design studies. Affected Federal, State, and local agencies and other interested private organizations and individuals are invited to contact the Fort Worth District regarding participation in these continuing public information sessions.

b. Significant Issues Requiring Indepth Studies. King Williams Historical Area.

c. Assignments. None.

d. Environmental Review and Consultation Requirements. The draft supplement will be circulated for review and all comments will be incorporated into the Final Supplement to the final environmental impact statement.

4. A scoping meeting will not be held, but the next public meeting is scheduled in October 1979 by SARA in San Antonio.

5. Estimated date when the Draft Supplement will be available to the public: November 1979.

ADDRESS: Person to contact for additional information: Mr. L. E. Horsman, Chief, Environmental Resources Section, U.S. Army Corps of Engineers, Fort Worth District, P.O. Box 17300, Fort Worth, Texas 76102, (817) 334-2095.

Dated: August 9, 1979.

Donald J. Palladino,

Colonel, CE District Engineer.

[FR Doc. 79-25439 Filed 8-16-79; 8:45 am]

BILLING CODE 3710-FR-M

Seacrest Marina, Elliott Bay, Seattle, Wash.; Notice of Intent To Prepare a Draft Environmental Statement

July 20, 1979.

AGENCY: U.S. Army Corps of Engineers, Seattle District.

ACTION: Preparation of a draft environmental impact statement (DEIS) for proposed construction at Seacrest Marina, Elliott Bay, in Seattle, Washington.

SUMMARY: The proposed plan includes the construction of a floating breakwater and a 600-slip marina at a site on Elliott Bay known as Seacrest, in Seattle, Washington. The Corps will be

responsible for the construction and installation of the floating breakwater. The local sponsors (the City of Seattle and the Port of Seattle) will be responsible for the construction and installation of the moorage facilities and all shore facilities including commercial areas, parking areas, and public access points. Alternatives to the proposed action include:

a. No action

b. Dry moorage, and

c. Variations on site and layout for alternate wet moorage development.

(1) The no action alternative would mean no involvement by the Corps of Engineers. The responsibility for constructing and maintaining a breakwater, a marina, and associated facilities would then be the local sponsors.

(2) Dry moorage would also preclude involvement by the Corps of Engineers. If pursued by local interests, the alternative would require additional boat launching ramps, piers, docks, or floats for tying up boats launched or waiting to be taken out of the water; some type of breakwater protection for the boat in launching and moorage area; and additional parking spaces for vehicles with trailers. There is already a shortage of parking space in the area, and the requirements for boat storage areas and additional parking areas would be hard to meet. The size of boats using the facilities would be limited to about 27 feet, as larger boats cannot be easily lifted or moved from storage.

(3) Nine additional sites were previously considered in the Seattle District, Corps of Engineers General Investigation Study of 1970. They were Fauntleroy Cove, Kellogg Island in the Duwamish Waterway, Duwamish Head in Elliott Bay, the central waterfront in Elliott Bay, Terminal 86 in Elliott Bay, Terminal 91 in Elliott Bay, West Point in Elliott Bay, Shilshole Bay South, and Golden Gardens North. The Seacrest site has continusously demonstrated engineering and economic feasibility as well as public and local agency support. Several alternative mooring arrangements at the Seacrest site will be evaluated to include various floating breakwater desings.

PUBLIC INVOLVEMENT: A public brochure was mailed to interested individuals, agencies, organizations, and industries in January 1972. A public meeting was held in February of 1972 and a revised brochure was mailed to the same people in May of 1972. These brochures narrowed the scope of study to Seacrest. We are currently investigating, in detail, marina design alternatives at that location. Three studygrams are tentatively scheduled to be mailed to all interested parties in August 1979, November 1979, and November 1980. A plan formulation public workshop is scheduled for September 1979 and a public meeting will be held in January 1981 to review tentative study findings and recommendations.

DEIS AVAILABILITY: The DEIS for Seacrest Marina should be available for review in December of 1980.

ADDRESS: Questions and/or comments on this proposed action and DEIS should be directed to: David Masters, Environmental Resources Section, U.S. Army Corps of Engineers, Seattle District, Post Office Box C–3755, Seattle, Washington 98124, Attn: NPSEN–PL–ER, Tel: (206) 764–3624, (FTS 399–3624).

Dated: August 9, 1979.

Maxey B. Carpenter,

Lt. Colonel, Corps of Engineers, Acting District Engineer.

[FR Doc. 79–25438 Filed 8–16–79; 8:45 am]

BILLING CODE 3710–ER–M

Department of the Army, Corps of Engineers

Lake Washington at Kenmore, Wash.; Notice of Intent

July 30, 1979.

AGENCY: U.S. Army Corps of Engineers, Seattle District.

ACTION: Notice of Intent to preapre a draft environmental impact statement (EIS) for the proposed channel improvements in Lake Washington at Kenmore, Washington.

SUMMARY: 1. *Proposed Action.* To improve the commercial navigation channel which serves the Kenmore Industrial Park, Kenmore, Washington, a Federal Channel would be dredged to a depth of 15 feet and a length of 2900 feet. The width would vary from 100 feet (inner channel) to 120 feet (outer channel). The Federal Government would remove about 126,000 cubic yards of dredged material. Local interests would be required to dredge the privately-owned berthing area to a depth commensurate with the Federal channel. About 3,000 cubic yards of material would be removed. The dredged material would be disposed at Four Mile Rock, an approved open-water disposal site in Puget Sound near the entrance to Elliott Bay. The site is managed by Washington State Department of Natural Resources.

2. *Alternatives.* Alternatives include (1) no action; (2) evaluating 12-, 15- and 18-foot channel depths; and (3) evaluating four upland disposal sites and two openwater disposl sites.

3. *Scoping Process.*

a. *Public Involvement.* Coordination letters were sent to Federal and state environmental and resource agencies to describe the study and the concerns that will be addressed. A public meeting will be held by the local sponsor (King County, Washington). All affected and interested agencies, organizations, and individuals will be invited.

b. *Significant Issues.* The most significant issue would be the effect on water quality, both in the project area and at the disposal site, because of relatively high concentrations of zinc and lead in the sediments. Close coordination has been, and will be maintained with Federal and state resource agencies.

4. *Scoping Meeting.* A scoping meeting, as described in the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969 (NEPA), will not be held.

5. *DEIS Availability.* The draft EIS is presently scheduled to become available to the public in October 1979.

6. *Address.* Information on the proposed action and the draft EIS can be obtained by contacting: Jean McManus or Ron Bush, Department of the Army, Seattle District, Post office Box C–3755, Seattle, Washington 98124.

Attn: NPSEN–PL–ER, Phone: (206) 764–3627, (FTS) 399–3627.

7. *Dated.* August 9, 1979.

Maxey B. Carpenter, Jr.,

Lt. Colonel, Corps of Engineers, Deputy District Engineer.

[FR Doc. 79–25634 Filed 8–16–79; 8:45 am]

BILLING CODE 3710–ER–M

DEPARTMENT OF ENERGY

National Petroleum Council, Task Group of the Committee on Unconventional Gas Sources; Meeting

Notice is hereby given that a task group of the Committee on Unconventional Gas Sources will meet in September 1979. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Unconventional Gas Sources will analyze the potential constraints in these areas which may inhibit future production and will report its findings to the National Petroleum Council. Its analysis and findings will be based on

information and data to be gathered by the various task groups. The task group scheduling a meeting is the Tight Gas Reservoirs Task Group. The time, location and agenda of the meeting follows:

The tenth meeting of the Tight Gas Reservoirs Task Group will be held on Thursday, September 27, 1979, starting at 1:00 p.m., and Friday, September 28, 1979, starting at 8:30 a.m., Conference Room, Mobil Oil Corporation, Prudential Plaza, 1645 Curtis Street, Denver, Colorado.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.
2. Discussion of the report outline of the Tight Gas Reservoirs Task Group.
3. Review of preliminary results of the Tight Gas Reservoirs Task Group.
4. Review of the Tight Gas Reservoirs Task Group's assignments.
5. Discussion of any other matters pertinent to the overall assignment of the Tight Gas Reservoirs Task Group.

The meeting is open to the public. The chairman of the task group is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the task group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Lucio A. D'Andrea, Office of Resource Applications, 202/633–9482, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public reivew at the Freedom of Information Public Reading Room, Room GA 152, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on August 2, 1979.

R. Dobie Langenkamp,

Deputy Assistant Secretary, Oil, Natural Gas and Shale Resources, Resource Applications.

August 2, 1979.

[FR Doc. 79–25421 Filed 8–16–79; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council, Subcommittee of the Committee on Materials and Manpower Requirements; Meeting

Notice is hereby given that a subcommittee of the Committee on Materials and Manpower Requirements has scheduled a meeting in August 1979. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Materials and Manpower Requirements will analyze the potential constraints in these areas which may inhibit future production and will report its findings to the National Petroleum Council. Its analysis and findings will be based on information and data to be gathered by the various task groups. The subcommittee scheduling a meeting is the Government Subcommittee. The time, location and agenda of the meeting follows:

The fifth meeting of the Government Subcommittee is scheduled for Thursday, August 16, 1979, starting at 9:00 a.m., Main Conference Room, GCO Minerals Company, One Allen Center Building, 500 Dallas Street, Houston, Texas.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.
2. Review the progress of the Business Environment and Regulatory Impact Task Groups.
3. Review the timetable of the Government Subcommittee.
4. Discussion of any other matters pertinent to the overall assignment of the Government Subcommittee.

The meeting is open to the public. The chairman of the subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform James R. Hemphill, Office of Resource Applications, 202/633–8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA 152, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on August 7, 1979.

R. Dobie Langenkamp,

Deputy Assistant Secretary, Oil, Natural Gas and Shale Resources, Resource Applications.

August 7, 1979.

[FR Doc. 79–25424 Filed 8–16–79; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council, Task Group of the Committee on Unconventional Gas Sources; Meeting

Notice is hereby given that a task group of the Committee on Unconventional Gas Sources will meet in August 1979. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Unconventional Gas Sources will analyze the potential constraints in these areas which may inhibit future production and will report its findings to the National Petroleum Council. Its analysis and findings will be based on information and data to be gathered by the various task groups. The task group scheduling a meeting is the Tight Gas Reservoirs Task Group. The time, location and agenda of the meeting follows:

The ninth meeting of the Tight Gas Reservoirs Task Group will be held on Wednesday, August 22, 1979, starting at 1:00 p.m., and Thursday, August 23, 1979, starting at 8:30 a.m., Conference Room, Marathon Oil Company, Denver Research Center, 7400 South Broadway, Littleton, Colorado.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.
2. Discussion of the report outline of the Tight Gas Reservoirs Task Group.
3. Review of preliminary results of the Tight Gas Reservoirs Task Group.
4. Review of the Tight Gas Reservoirs Task Group's assignments.
5. Discussion of any other matters pertinent to the overall assignment of the Tight Gas Reservoirs Task Group.

The meeting is open to the public. The chairman of the task group is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the task group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Lucio A. D'Andrea, Office of Resource

Applications, 202/633–9482, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA 152, DOE, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on August 2, 1979.

R. Dobie Langenkamp,

Deputy Assistant Secretary, Oil, Natural Gas and Shale Resources, Resource Applications.

August 2, 1979.

[FR Doc. 79–25425 Filed 8–16–79; 8:45 am]

BILLING CODE 6450–01–M

Designation of Inactive Uranium Mill Tailings Sites for Remedial Action

AGENCY: Department of Energy.

ACTION: Requests for information on inactive uranium mill tailings processing sites and properties contaminated with uranium mill tailings in response to the requirements of Pub. L. 95–604, "Uranium Mill Tailings Radiation Control Act of 1978," enacted November 8, 1978.

SUMMARY: This information is requested as a result of the passage by Congress of Pub. L. 95–604, entitled "Uranium Mill Tailings Radiation Control Act of 1978" enacted November 8, 1978. The Act authorizes the Secretary of Energy to enter into cooperative agreements with certain states respecting residual radioactive material at existing sites.

Section 102(a)(1) of the Act stipulates that by November 8, 1979, the Secretary of Energy shall designate processing sites for remedial action at or near the following locations:

Tuba City, Arizona
Monument Valley, Arizona
Durango, Colorado
Grand Junction, Colorado
Rifle, Colorado (two sites)
Gunnison, Colorado
Naturita, Colorado
Maybell, Colorado
Slick Rock, Colorado (two sites)
Lowman, Idaho
Shiprock, New Mexico
Ambrosia Lake, New Mexico
Lakeview, Oregon
Falls City, Texas
Cannonsburg, Pennsylvania
Salt Lake City, Utah
Green River, Utah
Mexican Hat, Utah
Riverton, Wyoming
Converse County, Wyoming

In addition, Section 102(a)(1) provides that the Secretary shall, by November 8, 1979, designate all other processing sites within the United States which he determines require remedial action to carry out the purposes of the law. Section 102(e)(1) of the Act requires the designation of processing sites shall include as far as practicable, any other real property or improvement thereon that is in the vicinity of such site, and is determined by the Secretary to be contaminated with residual radioactive materials derived from such site.

This notice requests from the public any information they may have regarding the existence of any sites in addition to those listed herein that may qualify under the Act, or of any property adjacent to any processing site believed to contain radioactive material from such site.

Sites that do qualify for clean up under the Act are those that:

1. Were owned or controlled by the Federal Government as of January 1, 1978;

2. Are now owned or controlled by the Federal Government;

3. Were licensed for production of any uranium or thorium product derived from ores on January 1, 1978, or have had a license renewed or issued since that date.

DATE: Request information and additional potential processing sites and contaminated properties in the vicinity of such sites as well as in the vicinity of the locations listed in Sec. 102(a)(1) of Pub. L. 95–604 be received on or before September 15, 1979.

ADDRESS FOR INFORMATION: Individuals with information about such sites should notify Dr. William E. Mott, Director, Environmental Control Technology Division, Office of the Assistant Secretary for Environment, Department of Energy, Mail Station E–201, Washington, D.C. 20545, telephone (301) 353–3016.

Issued at Washington, D.C. this 9th day of August 1979.

Ruth C. Clusen,

Assistant Secretary for Environment.

[FR Doc. 79–25431 Filed 8–16–79; 8:45 am]

BILLING CODE 6450–01–M

Intergovernmental and Institutional Relations; Approval of Designated Energy Impact Areas Under Section 601 of the Powerplant and Industrial Fuel Use Act

AGENCY: Intergovernmental and Institutional Relations, DOE.

ACTION: Notice of Acceptance.

SUMMARY: Title VI, Section 601 of the Powerplant and Industrial Fuel Use Act provides financial assistance to areas impacted by increased coal or uranium development activities. The Secretary of Energy must approve a Governor's designation of an energy impact area based on the following three criteria:

(1) During the most recent calendar year, the eligible employment in coal or uranium development activities within the area has increased by eight percent or more from the preceding year, or such employment will increase by eight percent or more per year during each of the next three calendar years.

(2) Because of increased employment in coal or uranium development activities, a shortage of housing, inadequate public facilities, or services exists or will exist in the area.

(3) Available State and local financial resources are inadequate to meet the public need for housing or public facilities and services at present or in the next three years.

The following areas have been approved as energy impact areas, and, as such, are eligible to apply for planning, land acquisition and site development grants through the Farmers Home Administration, USDA:

Alabama: Bibb, Blount, DeKalb, Jefferson, Marion and Tuscaloosa Counties.

South Dakota: Fall River County.

Louisiana: One area consisting of DeSoto, Natchitoches, Red River and Sabine Parishes.

Colorado: Jackson, Routt, Moffat, Rio Blanco, Garfield, Mesa, Delta, Montrose, Gunnison, Fremont and Las Animas Counties.

Texas: Jim Hogg, Webb, Grimes and Coleman Counties; the City of Childress; the Ark-Tex Region consisting of Titus, Franklin, Morris and Hopkins Counties; the Coastal Bend Region consisting of Bee, Duval, Jim Wells and Live Oak Counties.

Utah: An area consisting of Carbon, Emery, Grand and San Juan Counties; an area consisting of Sevier and Wayne Counties; and Garfield County.

Virginia: One area consisting of Lee, Wise, Scott, Buchanan, Dickenson, Russell and Tazewell Counties, and the City Norton.

North Dakota: Grant, McLean, Mercer, Morton and Oliver Counties; and an area consisting of Adams and Bowman Counties.

Montana: Musselshell, Treasure, Rosebud, Custer and Powder River Counties.

Wyoming: An area consisting of Campbell, Crook and Weston Counties; an area consisting of Lincoln, Uinta and

Sweetwater Counties; an area consisting of Converse and Natrona Counties; and Carbon and Fremont Counties.

Montana/Wyoming: A joint designation consisting of Carbon, Yellowstone and Big Horn Counties, Montana, and Sheridan and Johnson Counties, Wyoming.

Nebraska: The City of Alliance.

Missouri: Putnam County; and area consisting of Macon and Randolph Counties; and an area consisting of Bates and Henry Counties.

Arizona: An area consisting of Aguila, Morristown/Circle City, Wickenburg and Wittman in Maricopa County, and Congress and Yarnell in Yavapai County.

Tennessee: Anderson, Bledsoe, Campbell, Cumberland, Fentress and Scott Counties.

Maryland: An area consisting of Allegany and Garrett Counties.

Kentucky: An area consisting of Bell, Boyd, Breathitt Carter, Clay, Elliott, Floyd, Greenup, Harlan, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, McCreary, Magoffin, Martin, Menifee, Morgan, Owsley, Perry, Pike, Pulaski, Rockcastle, Wayne, Whitley and Wolfe Counties; and an area consisting of Butler, Caldwell, Christian, Daviess, Edmonson, Grayson, Hancock, Henderson, Hopkins, McLean, Muhlenberg, Ohio, Union, Warren and Webster Counties.

Ohio: An area consisting of Athens, Belmont, Carroll, Columbiana, Coshocton, Gallia, Guernsey, Harrison, Hocking, Holmes, Jackson, Jefferson, Lawrence, Mahoning, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Stark, Tuscarawas, Vinton, Washington and Wayne Counties; and an area consisting of Adams, Pike, Ross and Scioto Counties.

New Mexico: San Juan, McKinley, Valencia, Sandoval and Colfax Counties.

West Virginia: An area consisting of Barbour, Fayette, Grant, Greenbrier, Mineral, Nicholas, Randolph, Tucker, Upshur and Webster Counties; and an area consisting of Boone, Cabell, Clay, Kanawha, Lincoln, Logan, McDowell, Mercer, Mingo, Raleigh, Summers, Wayne and Wyoming Counties. An area consisting of Harrison, Marion, Monongalia, Preston, Taylor and Wetzel Counties is conditionally approved based on projected employment increases associated with the proposed Morgantown SRC II facility. Final approval of this area will be given upon the Federal Government's firm decision that a plant will be built there.

Indiana: An area consisting of Clay, Daviess, Dubois, Fountain, Gibson, Greene, Knox, Martin, Perry, Pike, Posey, Spencer, Sullivan, Vanderburgh, Vermillion, Vigo and Warrick Counties.

Pennsylvania: An area consisting of Armstrong, Butler and Clarion Counties; and area consisting of Centre and Clearfield Counties; an area consisting of Beaver, Fayette, Greene and Washington Counties; and Clinton, Jefferson, Lawrence, Somerset, Northumberland and Venango Counties.

Illinois: An area consisting of Clinton, Franklin, Jackson, Jefferson, Perry, Randolph, St. Clair and Williamson Counties; an area consisting of Fulton and Knox Counties; and Hamilton, Macoupin and McDonough Counties.

EFFECTIVE DATE: August 1, 1979.

FOR FURTHER INFORMATION CONTACT:
Mr. Jack Daly, Director, Program Planning and Analysis, Office of Intergovernmental Affairs, (202) 252–5660, M/S 8G–031, Forrestal Building, Washington, D.C. 20585.

Dated: August 13, 1979

Approved:

John H. Van Santen,

Director, Executive Office and Technical Information, Intergovernmental and Institutional Relations, U.S. Department of Energy.

[FR Doc. 79-25432 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

Texaco; Intent To Terminate All Distribution and Marketing of Motor Gasoline in States of Montana and Portions of Idaho, Washington, and North Dakota

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Request for Comments.

SUMMARY: The Economic Regulatory Administration of the Department of Energy hereby gives notice that on July 16, 1979, Texaco, Inc. (Texaco), in accordance with the provisions of 10 CFR Section 211.14(d) and 10 CFR Part 205, Subpart G, filed an application to be relieved of its obligation under 10 CFR Section 211.9 to supply wholesale purchasers and end-users in Montana, northern Idaho, eastern Washington, and western North Dakota, and requested a reassignment of Texaco's wholesale purchasers and end-users to another supplier or suppliers as Texaco is seeking to terminate all distribution and marketing of motor gasoline in these areas.

A copy of Texaco's application, with proprietary material deleted, may be examined at ERA's Office of Petroleum Operations, Room 6222–C, 2000 M Street, N.W., Washington, D.C. 20461, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

DATE: Interested firms may submit comments on Texaco's application until August 31, 1979.

ADDRESS: Send comments to Economic Regulatory Administration, Office of Petroleum Operations, 2000 M Street, N.W., Washington, D.C. 20461, Attn: Alan T. Lockard.

FOR FURTHER INFORMATION CONTACT:

John A. Carlyle, Office of Petroleum Operations, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 6222–C, Washington, D.C. 20461, Telephone (202) 254–3330.

Joel M. Yudson, Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A–127, Washington, D.C. 20461, Telephone (202) 252–6744.

Issued in Washington, D.C. on the 9th day of August 1979.

Paul T. Burke,

Deputy Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

[FR Doc. 79-25428 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Enserch Exploration, Inc.; 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 the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: August 9, 1979. Comments by: September 17, 1979.

ADDRESS: Send comments to: Wayne I. Tucker, District Manger of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235.

FOR FURTHER INFORMATION CONTACT:
Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235, Phone 214/767–7745.

SUPPLEMENTARY INFORMATION: On August 9, 1979, the Office of Enforcement of the ERA executed a

Consent Order with Enserch Exploration, Inc. of Dallas, Texas. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

Because the DOE and Enserch Exploration, Inc. wish to expeditiously resolve this matter as agreed and to avoid delay in the payment of refunds, the DOE has determined that it is in the public interest to make the Consent Order with Enserch Exploration, Inc. effective as of the date of its execution by the DOE and Enserch Exploration, Inc.

I. Consent Order

Enserch Exploration, Inc. with its home office in Dallas, Texas is a firm engaged in the production and sale of crude oil and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Part 210, 211, 212. The Office of Enforcement of the Economic Regulatory Administration (ERA) and Enserch Exploration, Inc. entered into a Consent Order to resolve certain civil actions which could be brought by ERA as a result of its audit of the crude oil sales by Enserch Exploration, Inc. This Consent Order settles those matters relative to Enserch Exploration, Inc.'s production and sale of crude during the period September 1, 1973 through December 31, 1977.

The significant terms of the Consent Order with Enserch Exploration, Inc. are as follows:

1. Enserch Exploration, Inc. improperly applied the provisions of 10 CFR 212.73 and its predecessor, 6 CFR 150.353 when determining the prices to be charged for certain domestic crude oil.

2. Enserch understands and agrees to refund $495,000.00 to the DOE by certified check. This amount is in full settlement of any and all civil liability within the jurisdiction of the DOE in regard to actions that might be brought by the DOE arising out of the specified transactions for the following properties:

J. H. Edwards C
Ealen Bray C
C. E. Strong "B" No. 2, 3
Laco Oil company
Leah Wylie Unit
Craft Water Board Unit No. 18
E. E. Norton Unit No. 2
Travis Peak Unit No. 5
Travis Peak Unit No. 6
Masonite Corp. D
Sewell Gage
O. E. Morris Gas Unit
M. T. Reynolds, "A" No. 2
C. E. Strong "B" No. 5, 6, 7, 9
C. E. Strong "B" (Woodbine "B")
Ida Mae Oldham B
Stidham-Gambrel
W. H. Ballard
Opelika Unit
E. E. Norton Unit No. 1
Craft Water Board Unit No. 7
W. G. Roberts
Craft Water Board Unit No. 17
Travis Peak Unit No. 7
Laco Oil Company D
Willow Springs Gas Unit No. 3
A. C. Adams No. 1, 2, 3
M. T. Reynolds "A" No. 3 and No. 4
C. E. Strong "B" (Woodbine)

3. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

Refunded overcharges as described in 2. above will be made in five installments, i.e., the first four payments at $100,000 each and the fifth payment at $95,000. The first payment is due 90 days after the effective date of the Consent Order and each 90 days thereafter until to total refund has been completed. Delivery of such payments shall be to the Assistant Administrator for Enforcement, Economic Regulatory Administration, in the form of a certified check made payable to the United States Department of Energy.

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 "person" (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 impossiblility to identify specific, adversely affected person, 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 205.1991(a).

III. Submission of Written Comments

Potential Claimants: Interested persons who believe that they have a claim to all or a portion of the 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 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.

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, Department of Energy, 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 214/767-7745.

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 Enserch Exploration, Inc. Consent Order." We will consider all comments we receive by 4:30 p.m., local time, within 30 days after this publication. 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 Dallas, Texas on the 9th day of August 1979.

Wayne I. Tucker,

District Manager of Enforcement, Southwest District Office, Economic Regulatory Administration.

[FR Doc. 79-25422 Filed 8-16-79; 8:45 am]
BILLING CODE 6450-01-M

[ERA Docket No. 79-16-NG]

Application of Montana Power Co. To Import Natural Gas

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of application for authorization to import natural gas, and invitation to submit petitions to intervene.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt of the application of Montana Power Company (Montana) to import approximately 1,060 Mcf per day or 364,600 Mcf per year of natural gas over approximately a 15-year term

commencing on May 1, 1979, to December 31, 1993, at a place on the international boundary line between Canada and the United States at Section 2, Township 1, Range 20 West of the Fourth Meridian, in the Province of Alberta. To accomplish the importation of this gas, applicant proposes to construct approximately one mile of 4½ inch (outer diameter) pipeline from a point at the international boundary to a point in Montana connecting with applicant's existing gathering system. The application for authorization to import gas is filed with ERA pursuant to Section 3 of the Natural Gas Act and the Secretary of Energy's Delegation Order No. 0204-25. Petitions to intervene are invited.

DATES: Petitions to intervene: To be filed on or before September 6, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Finn K. Neilsen, Director, Import/Export Division, Office of Petroleum Operations, Economic Regulatory Administration, 2000 M. ST., NW., Room 4126, Washington, D.C. 20461, telephone (202) 254-8202.

Mr. Martin S. Kaufman, Office of General Counsel, 12th and Pennsylvania Ave., NW., Room 5116, Federal Building, Washington, D.C. 20461, telephone (202) 633-9380.

SUPPLEMENTARY INFORMATION: Applicant states that the names of the producers of the gas to be imported are:

Canada Cities Service, Ltd.
Canadian-Montana Gas Company, Ltd.
Denison Mines, Ltd.
Resman Holdings, Ltd.
Universal Exploration, Ltd.
Universal Drilling Fund (1976) Ltd.
Universal Gas Company, Ltd.

The gas will be gathered by a system constructed and owned by Universal Gas Company, Ltd. and sold to the Canadian-Montana Pipe Line Company, a wholly-owned subsidiary of the Applicant, which will transport the gas to the Montana-Alberta border where it will be delivered to the Applicant. In addition, the Canadian-Montana Pipe Line Company will construct, operate and maintain approximately 1333.657 metres of 114.3 mm OD pipeline from the Universal Gas Company, Ltd. gathering system to the Montana-Alberta border to connect it with Applicant's system. Additional details are explained in the application.

Applicant further states that it is 65 percent dependent on Canadian natural gas to meet the needs of its customers and that the gas subject to this application will help to meet its present and future market requirements.

OTHER INFORMATION: The ERA invites petitions for intervention in the proceeding. Such petitions are to be filed with the Economic Regulatory Administration, Room 4126, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with the requirements of the rules of practice and procedure (18 CFR 157.10). Such petitions for intervention will be accepted for consideration if filed no later than 4:30 p.m., on September 6, 1979.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing which may be convened herein must file a petition to intervene. Any person desiring to make any protest with reference to the application for import authority should file a protest with the ERA in the same manner as indicated above for petitions to intervene. All protests filed with ERA will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

A formal hearing will not be held unless a motion for such hearing is made by any party or intervener and is granted by ERA, or if the ERA on its own motion believes that such a hearing is required. If such hearing is scheduled, due notice will be given.

A copy of Montana's application is available for public inspection and copying in Room B-120, 2000 M Street, N.W., Washington, D.C. 20461 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on August 10th, 1979.

Paul T. Burke,

Deputy Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

[FR Doc. 79-25429 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 79-02-NG (FERC Docket No. CP71-223)]

Great Lakes Gas Transmission Co.; Order Authorizing Amendment to Existing Import Authorization Permitting Sale of Imported Natural Gas Previously Restricted to Company Use and Granting Petitions To Intervene

On January 3, 1979, Great Lakes Gas Transmission Company (Great Lakes) filed with the Economic Regulatory Administration (ERA) a request for an amendment to its existing import authorization in Docket No. CP71-223 so as to allow Great Lakes to import for resale 1.3 billion cubic feet (Bcf) annually of natural gas previously authorized to be imported for compressor fuel and other company uses, but which could not be imported for resale because of restrictions in TransCanada Pipelines Limited's (TransCanada) export license and Great Lakes' import authorization. A companion application, under Sections 3 and 7 of the Natural Gas Act, was also filed before the Federal Energy Regulatory Commission (FERC) for a Certificate of Public Convenience and Necessity which would authorize the sale for resale of the 1.3 Bcf of gas.

In its January 3, 1979, application to ERA, Great Lakes stated that the 1.3 Bcf of natural gas which has been previously authorized to be imported for compressor fuel or other company use is not now required for such uses as a result of the conservation of gas resulting from a loop pipeline installed by Great Lakes.[1] This looping is expected to reduce the amount of fuel gas required by the company in rendering transportation and sales services.

On November 3, 1978, TransCanada filed an application with the National Energy Board of Canada (NEB) to amend its export license. The NEB approved TransCanada's application on January 25, 1979. While approval of this amendment will not allow any increase in the overall amount of gas TransCanada is authorized to export, it will allow the export to Great Lakes for sale to U.S. customers of the 1.3 Bcf of natural gas which Great Lakes is expected to save annually due to the looping program. This 1.3 Bcf is a portion of the 17 Bcf of natural gas previously authorized by the FPC for importation for compressor fuel and other company uses.[2]

Two U.S. customers of Great Lakes have agreed to purchase this gas. Natural Gas Pipeline Company of America (Natural) will purchase up to 2,604 Mcf per day and Michigan Consolidated Gas Company (Michigan Consolidated) will purchase up to 957 Mcf per day, the combined purchases not to exceed 1.3 Bcf per year. The entry point is Great Lakes' existing interconnection with TransCanada on the international boundary near Emerson, Manitoba. Approval of the amendment by ERA will allow Great Lakes to import the additional gas commencing with the first day of the month following the date on which all requisite Canadian and U.S. regulatory approvals have been received.

On May 17, 1979, Great Lakes filed a "Supplement to Application" with ERA

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[1] Certificated by the FERC in Docket CP77-502, December 6, 1977.

[2] Findings and Order Authorizing the Importation and Exportation of Natural Gas, Great Lakes Gas Transmission Company, FPC Docket No. CP71-233, issued by the FPC on June 1, 1971 (45 FPC 1037).

to reflect the current border price for imports of natural gas from Canada of $2.30 per MMBtu recently approved by an ERA Order issued on April 30, 1979. The supplement contained a copy of the Candian export authorization issued to TransCanada on January 25, 1979.

After ERA published a Federal Register notice of receipt of application (44 FR 17254, March 21, 1979), petitions to intervene were filed by Natural and Michigan Consolidated. Both petitioners are regular U.S. customers of Great Lakes and if the request for amendment is granted Great Lakes would sell this gas to Natural and Consolidated. As prospective purchasers, both petitioners have a direct interest in this proceeding, are not adequately represented by any other party, and are hereby granted intervention. Natural and Consolidated urge the ERA to approve Great Lakes' application in the above-captioned docket and each petitioner requests that it be permitted to intervene herein with the full rights of a party so as to protect its interests as they may appear. Both petitioners do not request a hearing but desire to participate in the event a hearing is convened. No protests were filed with ERA with reference to the application and petitions.

Since the filing of Great Lakes' application on January 3, 1979, U.S. Government policies have emphasized the significant role natural gas can play in reducing U.S. reliance on oil imports. The approval of this petition should make more natural gas available for displacement of fuel oils. While the volume of gas represented by this increased import will not in itself solve the energy problem, each increment contributes to the overall success of DOE's national program of encouraging end-users with an alternate fuel capability to switch from fuel oils to natural gas.

ERA finds that it is in the public interest that any volume of natural gas conserved due to increased efficiency of the domestic operation of Great Lakes' pipeline-network (looping) be approved for import into the United States. This proposal does not, in itself, require any new facility construction.

Order

It is ordered that the following be substituted in place of Ordering paragraph (C) of FPC's Findings and Order Authorizing the Importation and Exportation of Natural Gas, Great Lakes Gas Transmission Company, June 1, 1971, (FERC Docket No. CP71-223):

(C) The maximum firm volumes of gas to be imported and exported for transportation for the account of Trans-Canada shall not exceed 900,000 Mcf daily and the maximum volumes of gas to be imported by Applicant under the subject authorization to be utilized by Applicant for fuel and other company uses shall not exceed 17,000,000 Mcf during each contract year, of which up to 1,300,000 Mcf is authorized to be imported for sale in the United States.

Issued in Washington, D.C., on August 10th, 1979

Paul T. Burke,

Deputy Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

[FR Doc. 79-25430 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

Applications for Amendment To Import Authorizations To Provide for Increase in Border Price of Gas Imported From Canada, and Invitation To Submit Petitions To Intervene, and of Interim Order Authorizing the Importation of Natural Gas at the Newly Established Canadian Border Price

In the matter of:

Midwestern Gas Transmission Company, ERA Docket No. 79-17-NG (FERC Docket Nos. G-18314, CP66-121, CP70-25 and CP77-458).

Great Lakes Gas Transmission Company, ERA Docket No. 79-18-NG (FERC Docket Nos. CP66-110 *et al.*, CP70-19 *et al.*, CP70-100 and CP71-222, *et al.*).

Montana Power Company, ERA Docket NO. 79-19-NG (FERC Docket No. CP74-187).

Michigan Wisconsin Pipe Line Company, ERA Docket No. 79-20-NG (FERC Docket No. CP70-22).

Inter-City Minnesota Pipelines Ltd., Inc., ERA Docket No. 79-21-NG (FERC Docket No. CP70-289).

Northwest Pipeline Corp., ERA Docket No. 79-22-NG (FERC Docket Nos. CP75-341 and CP75-342).

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt of the above captioned Applications to amend current import authorizations to increase the established U.S.A.-Canadian border export price of $2.30 per MMBtu ($2.122 per Gigajoule). On July 12, 1979, the Privy Council of the Government of Canada set the price at $2.80 per MMBtu ($2.61 per GJ), effective August 11, 1979, for gas exported from Canada under existing import licenses, except under License GL29 where the new price is set at $2.50 (for further details, see Application of Inter-City Minnesota Pipelines Ltd., Inc., ERA Docket No. 79-21-NG).

DATES: Petitions to Intervene: to be filed on or before August 20, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Finn K. Neilsen, Director, Import/Export Division, Economic Regulatory Administration, 2000 M St. NW., Room 4126, Washington, D.C. 20461, telephone: (202) 254-8202.

Mr. Martin S. Kaufman, Office of General Counsel, 12th and Pennsylvania Avenue, N.W., Room 5116, Washington, D.C. 20461, telephone: (202) 633-9380.

SUPPLEMENTARY INFORMATION: Because the Privy Council Order provided one month's notice prior to implementation of the new price, applicants were precluded from making application to ERA of the DOE 30 days before the implementation, as is required under the procedures established in 18 CFR Part 153.

Upon consideration of the Applicants' pleadings, ERA believes that the public interest is best served by permitting the continued importation of natural gas from Canada under existing authorizations, at the increased price. Cessation of delivery of all or any part of the existing flow of Canadian gas would jeopardize those customers served by gas distribution utilities totally or substantially dependent upon imported Canadian gas.

Consequently, ERA is issuing an Interim Order to permit petitioners to continue to import the previously authorized volumes of natural gas from Canada at the increased price of $2.80 ($2.50 under license GL29), pending final findings of fact after conclusion of the comment period. The Interim Order is appended to this Notice.

OTHER INFORMATION: The ERA invites petitions for intervention in these proceedings. Such petitions are to be filed with the Economic Regulatory Administration, Room 4126, 2000 M Street, NW., Washington, D.C. 20461, in accordance with the requirements of the rules of practice and procedure (18 CFR 157.10). Such petitions for intervention will be accepted for consideration if filed no later than 4:30 p.m., on the 20th of August 1979.

Any person wishing to become a party to these proceedings or to participate as a party in any hearing which may be convened therein must file a petition to intervene. Any person desiring to make any protest with reference to the petitions should file a protest with the ERA in the same manner as indicated above for petitions to intervene. All protests filed with ERA will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

A formal hearing will not be held unless a motion for such hearing is made

by any party or intervener and is granted by ERA, or if the ERA on its own motion believes that such a hearing is required. If such hearing is required, due notice will be given.

Copies of Applicants' petitions are available for public inspection and copying in Room B–120, 2000 M Street, N.W., Washington, D.C. 20461, between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on August 10th, 1979.

Paul T. Burke,

Deputy Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

[FR Doc. 79–25426 Filed 8–16–79; 8:45 am]

BILLING CODE 6450–01–M

Interim Order Authorizing the Importation of Natural Gas at the Newly Established Canadian Border Price

In the matter of:

Midwestern Gas Transmission Company, ERA Docket No. 79–17–NG (FERC Docket Nos. G–18314, CP66–121, CP70–25 and CP77–458).

Great Lakes Gas Transmission Company, ERA Docket No. 79–18–NG (FERC Docket Nos. CP66–110 *et al.*, CP70–19 *et al.*, CP70–100 and CP71–222, *et al.*).

Montana Power Company, ERA Docket No. 79–19–NG (FERC Docket No. CP74–187).

Michigan Wisconsin Pipe Line Company, ERA Docket No. 79–20–NG (FERC Docket No. CP70–22).

Inter-City Minnesota Pipelines Ltd., Inc., ERA Docket No. 79–21–NG (FERC Docket No. CP70–289).

Northwest Pipeline Corp., ERA Docket No. 79–22–NG (FERC Docket Nos. CP75–341 and CP75–342).

A. *Background.*—The Canadian National Energy Board (NEB) has, since 1974, periodically conducted review of the price of natural gas exported from Canada and has made recommendations to the Canadian Government for changes in that price. The first increase in 1979, effective on May 1, 1979, was granted to Applicants by ERA's *Order Granting Interventions and Requests To Amend Orders Authorizing the Importation of Natural Gas at the Newly Established Canadian Border Price* on April 30, 1979. To avoid ambiguity and to correct certain technical errors, this Order was amended on July 9, 1979.

Taking into account the actual official ceiling prices for imported crude oil, as established by the Organization of Petroleum Exporting Countries, the Canadian Government issued on July 12, 1979, an order increasing, effective August 11, 1979, the established U.S.A.-Canadian border export price of $2.30 per MMBtu ($2.122 per Gigajoule) to $2.80 per MMBtu ($2.61 per GJ) under all licenses except GL–29 of Inter-City Minnesota Pipelines Ltd., Inc. The export price for gas exported under License GL–29 is increased to $2.50 per MMBtu ($2.33 per GJ).

B. *Discussion.*—After receiving notification of the Canadian Privy Council Order, some importers of natural gas affected by the price change filed requests for amendments of existing import authorizations to reflect the new border price. Because the Privy Council Order provided only one month's notice prior to implementation of the new price, the Applicants were precluded from making application to ERA 30 days before the implementation, as is required under the procedures established in 18 CFR, Part 153.

Upon consideration of the Applicants' pleadings, ERA believes that the public interest is best served by permitting the continued importation of natural gas from Canada under existing authorizations, at the increased price. Cessation of delivery of all or any part of the existing flow of Canadian gas would jeopardize those customers served by gas distribution utilities totally or substantially dependent upon imported Canadian gas.

C. *Findings.*—Based on the information filed with the applications, ERA finds:

1. Previous authorizations issued to Midwestern, Great Lakes, Northwest Pipeline, Montana, Inter-City, and Michigan Wisconsin should temporarily be amended to permit Applicants to continue to import natural gas at currently authorized volumes at a price of $2.80 ($2.50 under License GL–29) effective August 11, 1979, as hereinafter ordered and conditioned, as the continued importation has been shown to be not inconsistent with the public interest.

2. ERA is withholding final consideration of these applications pending the receipt of comments and petitions for intervention following the close of the period for receiving comments and interventions pursuant to the notice of applications published today in the **Federal Register**.

Therefore, ERA orders:

Pursuant to the authority under Section 3 of the Natural Gas Act, import authorizations previously granted to:

Midwestern Gas Transmission Company, ERA–77–004–NG.
Great Lakes Gas Transmission Company, ERA–79–09–NG.
Northwest Pipeline Corp., ERA 79–10–NG.
Montana Power Company, ERA 79–11–NG.
Michigan Wisconsin Pipe Line Company, ERA 79–13–NG.
Inter-City Minnesota Pipelines Ltd., Inc., Under Licenses GL–28 and GL–30, ERA 79–12–NG.

for the importation of natural gas from Canada are hereby temporarily amended to permit the import of previously authorized volumes of natural gas from Canada at a price of $2.80 per MMBtu ($2.61 per Gigajoule) effective August 11, 1979, pending final findings of fact after conclusion of the comment period. The new border price for gas to be imported under license GL–29 of Inter-City Minnesota Pipelines Ltd., Inc., is $2.50 under the same conditions as above.

This interim authority to purchase natural gas imported from Canada affects only the price to be paid, and in no manner changes any other condition imposed in the respective existing authorizations to import issued to each Applicant.

Issued in Washington, D.C., on August 10th, 1979.

Paul T. Burke,

Deputy Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

[FR Doc. 79–25427 Filed 8–16–79; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP78–390 and CP75–134]

Natural Gas Pipeline Co. of America; Proposed Changes in FERC Gas Tariff

August 1, 1979.

Take notice that on July 25, 1979, Natural Gas Pipeline Company of America, (Natural) tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 2. Natural states that the proposed changes will make effective

Second Revised Sheet No. 495,
Second Revised Sheet No. 500,
First Revised Sheet No. 1201,
First Revised Sheet No. 1208,
First Revised Sheet No. 1220,
First Revised Sheet No. 1228.

Natural states that the purpose of the revised tariff sheets is to amend gas exchange agreements with Trunkline Gas Company (Natural's Rate Schedule Nos. X–52, X–100, and X–101) to change the conversion factors used to convert

gas volumes from one pressure base to another in order to conform those factors with those generally in use in the parties' accounting systems.

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 Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 14, 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 be proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-25398 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP75-74]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

August 1, 1979.

Take notice that Transwestern Pipeline Company (Transwestern) on July 25, 1979, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, various tariff sheets reflecting revised rates for the period October 1, 1975 through May 31, 1977. These sheets are issued pursuant to ordering Paragraph (B) of Opinion No. 43, Opinion and Order Affirming In Part and Modifying In Part Initial Decision, issued June 25, 1979 in Docket No. RP75-74. These sheets reflect revised rates for Docket No. RP75-74 locked-in period, October 1, 1975 through May 31, 1977 in accordance with the terms of the initial decision and Opinion No. 43.

Transwestern states that it has filed an Application for Rehearing and Motion for Stay of Opinion No. 43 and that the filing of these tariff sheets is made subject to such application and it is not an agreement to make refunds as prescribed in Opinion No. 43.

Copies of the filing were served upon the company's jurisdictional customers and interested state 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, DC 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 August 13, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-25399 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. RP72-122 (PGA78-3), RP78-51, and RP79-1]

Colorado Interstate Gas Co.; Order Approving Stipulation and Agreement, Severing Issue and Consolidating Proceedings

August 8, 1979.

On April 16, 1979, Colorado Interstate Gas Company (CIG), the Commission Staff, and certain designated parties [1] filed a stipulation in the captioned proceedings, as well as a motion asking Commission approval of the stipulation. On April 17, 1979, Presiding Administrative Law Judge Jon G. Lotis certified the proposed stipulation to the Commission, pursuant to 18 CFR § 1.27(b)(8). Our review of the proposed stipulation indicates that it is in the public interest and is consistent with the orderly administration of the Commission's business. Accordingly, the proposed stipulation shall be approved for the reasons set forth below.

A brief discussion of the procedural history of the instant case is in order. On August 15, 1978, CIG filed a proposed rate increase in Docket No. RP72-122 (PGA78-3), in which it sought authorization to collect approximately $94.8 million in purchase gas costs. A certain portion of these costs, about $34.8 million, was attributable to unrecovered purchased gas costs for a prior period. The remainder of the increase was attributable to estimated purchase costs for the period October 1, 1978 to September 30, 1979. On October 1, 1978, the Commission suspended the proposed increase for one day and ordered a hearing concerning the prudence of CIG's incurral of certain nonjurisdictional purchase costs.

In a prior stipulation in this case, the parties has agreed that certain issues were within the proper scope of the proceeding and should be litigated in Docket No. RP72-122 (PGA78-3).[2] Subsequently, on January 22, 1979, the parties filed a proposed settlement agreement to the Commission. On January 29, 1979, Judge Lotis certified this agreement to the Commission. On May 25, 1979 the Commission approved the settlement in a letter order addressed to CIG. This settlement of January 22 resolved all issues contained in the prior stipulation save the prudence of the incurral of purchase costs and gathering fees, as well as the inclusion of most favored nations clauses, in CIG's contracts with two intrastate sellers,[3] Nueces Company and Koch Industries, Inc.

The stipulation of April 16, 1979 was filed in recognition of the fact that one of the issues left open for litigation, the prudence of CIG's gathering fee in its contract with the Nueces Company, was not within the scope of the proceeding in Docket No. RP72-122 (PGA78-3). Rather, the costs associated with the Nueces gathering fee were included in CIG's rate filings in Docket Nos. RP78-51 and RP79-1. Thus, if the parties were to litigate the prudence of this gathering fee, it was necessary for the Commission to take some procedural action. The parties then entered into the April 16 stipulation, the purpose of which is to permit the trial and resolution, within the proceedings in docket No. RP72-122 (PGA78-3), of an issue which is not within the scope of that proceeding. The parties agree that, should the Commission determine that any part or all of the Nueces gathering fee was not prudently incurred, CIG will make the appropriate refunds, with interest, through Docket Nos. RP78-51 and RP79-1.

The stipulation of April 16 permits the trial of related issues in one docket. Accordingly, it constitutes an

[1] These parties are The Public Service Company of Colorado and The City of Colorado Springs.

[2] These issues were:

1. The effect of the Natural Gas Policy Act of 1978 on the Commission's authority to review the prudence of CIG's intrastate purchases;

2. The prudence of CIG's incurral of purchase costs and gathering fees in certain purchase contracts; and

3. The prudence of CIG's agreeing to the inclusion of most favored nations clauses in certain purchase contracts.

[3] The proposed stipulation left the following issues unresolved:

1. The prudence of CIG's payment of payment of purchase prices above the ceiling prescribed in Opinion No. 770-A in CIG's Contract No. 693 with the Nueces Company and its Contract No. 429 with Koch Industries, Inc.;

2. The prudence of the gathering fees included in CIG's Contract No. 429 with Koch Industries, Inc.;

3. The prudence of CIG's inclusion of a most favored nations in CIG's Contract No. 693 with the Nueces Co.

All other issues were resolved.

appropriate use of the Commission's resources and is thus in the public interest. Therefore, we approve the stipulation of April 16, 1979.

The Commission orders: (A) The stipulation of April 16, 1979, is approved subject to the provisions of this order.

(B) The question of the prudence of CIG's incurral of gathering fees as provided in its Contract No. 693 with the Nueces Co. is severed from the proceedings in Docket Nos. RP78–51 and RP79–1.

(C) The issue referred to in Ordering Paragraph (B), above, is consolidated for purposes of hearing and disposition with the proceedings in Docket No. RP72–122 (PGA78–3).

(D) In the event the Commission determines that any portion or all of the fees referred to in Ordering Paragraph (B), above, were imprudently incurred, CIG shall distribute the appropriate refunds, with interest, as may be prescribed by the Commission's regulations through Docket Nos. RP78–51 and RP79–1.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79–25462 Filed 8–16–79; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. GP79–62]

Commonwealth of Virginia and Philadelphia Oil Co; Preliminary Finding

August 2, 1979.

In the matter of: Commonwealth of Virginia, section 108 NGPA Determinations and Philadelphia Oil Co. JD79–9265 through JD79–9281.

On June 18, 1979, the Commonwealth of Virginia, Department of Labor and Industry, Division of Mines submitted to the Commission notices of determination that seventeen Philadelphia Oil Company wells qualify as stripper wells under section 108 of the Natural Gas Policy Act of 1978 (NGPA).[1] The record shows that all the wells except P–33 Nell Phipps, et al. (JD79–9271) produced natural gas at an average rate less than 60 Mcf per production day for the 90-day and 12 months periods. P–33 Nell Phipps, et al. (JD79–9271) produced natural gas at an average rate of 56 Mcf per production day for the 90 day period and 71 Mcf per production day for the 12 month period.

Section 274.206 of the Commissions interim regulations establishes the filing requirements for stripper well natural gas. Section 274.206(a)(6) requires the applicant to submit production records for crude oil produced from the well for the 90-day production period on which the application is based. This information is required to demonstrate that the natural gas produced during the 90-day production period is "non-associated natural gas" as defined in § 271.803(b) of the Commission's interim regulations. The record shows that no such production records were submitted. Accordingly, the determinations are not supported by substantial evidence.

Furthermore, we note that the production records accompanying the notice of determination show that the average daily production of natural gas from the P–33 Nell Phipps, (JD79–9271) well during the 90-day period upon which the application is based was 56 Mcf per day. However, no current production capability test establishing a maximum efficient rate of flow was reported and production records for the 12 month period, ending on the last day of the 90-day qualifying period, show an average production of 71 Mcf of gas per day.

Accordingly, the Commission hereby makes a preliminary finding (pursuant to § 275.202(a)(1)(i) that the determinations submitted by the Commonwealth of Virginia concerning the subject wells are not supported by susbtantial evidence in the record on which the determinations were made.

By direction of the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79–25463 Filed 8–16–79; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ER79–541]

Connecticut Light & Power Co.; Filing of Rate Schedule

August 2, 1979.

The filing Company submits the following:

Take Notice that on July 27, 1979, The Connecticut Light and Power Company (CL&P) tendered for filing as an initial rate schedule of an exchange agreement (the "Agreement") between CL&P and The Hartford Electric Light Company (HELCO) (the NU Companies); and Central Vermont Public Service Corporation (CVPS). The Agreement, dated as of July 1, 1978, provides for the NU Companies to exchange capacity in Middletown Unit No. 4 and Montville Unit No. 6, both mid-range fossil-fired steam units, for gas turbine capacity from CVPS's system.

The Agreement provides that the parties will determine prior to 12:01 a.m. of the first Monday of each week during the Term of the Agreement whether it is economically advantageous to the parties that an exchange, pursuant to the Agreement, shall take place during that week.

CVPS will pay capacity charges to the NU Companies in an amount equal to the capacity exchanged during the week times $0.00274 times the number of hours during each week subject to a pro rata deduction for any hour during which CVPS calls for receipts from or deliveries to the NU Companies and the NU Companies are unable to meet such demands. CVPS will purchase energy from such units at the incremental cost of providing such energy. The NU Companies will pay CVPS's incremental cost of providing any energy taken by the NU Companies pursuant to the Agreement.

CL&P requests an effective date of July 1, 1978 for the Agreement.

HELCO and CVPS have filed certificates of concurrence in this docket.

The Agreement has been executed by the NU Companies and by CVPS and copies have been mailed to each of them.

CL&P further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest for the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426 in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 27, 1979. Protests will be considered by the Commission in determining appropriate action be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79–25464 Filed 8–16–79; 8:45 am]

BILLING CODE 6450–01–M

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[1] P–6 David Cooley (JD79–9265), P–8 Rainwater Ramsey (JD79–9266), P–17 Joshua Pressley (JD79–9267), P–19 Joseph Kelly (JD79–9268), P–29 Rainwater Ramsey (JD79–9269), P–31 Nell Phipps, et al. (JD79–9270), P–33 Nell Phipps, et al. (JD79–9271), P–38 Nell Phipps, et al. (JD79–9272), P–40 Nell Phipps, et al. (JD79–9273), P–45 Nell Phipps, et al. (JD79–9274), P–46 Nell Phipps, et al. (JD79–9275), P–48 Brown Trust (JD79–9276), P–49 Brown Trust (JD79–9277), P–50 Brown Trust (JD79–9278), P–57 S. H. Richardson (JD79–9279), P–58 L. C. Smith (JD79–9280), P–60 L. C. Smith (JD79–9281).

[Docket No. CP75-158]

Consolidated Gas Supply Corp.; Notice of Petition to Amend

August 1, 1979

Take notice that on July 9, 1979, Consolidated Gas Supply Corporation (Petitioner), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP75-158 a petition to amend the order of May 29, 1975,[1] as amended, in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize certain changes in the replacement program for its West Virginia wet gas transmission system previously authorized herein, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

The order of May 29, 1975, as amended, in the instant docket authorized Petitioner to carry out a four-year program to replace its West Virginia wet gas transmission system at an estimated cost of $18,301,700.

Petitioner requests that the Commission amend the May 29, 1975, order as amended, so as to provide for the following modifications in the previously authorized projects:

(A) The construction and operation of 5.5 miles of 10-inch Line No. TL-427 from Douglas Junction to Kennedy Station in lieu of 4.7 miles of 10-inch Line No. TL-427 from Dent Junction to Kennedy Station as previously authorized [1979 project (1)];

(B) The reclassification from transmission to production of 1.1 miles of 10-inch Line No. TL-207 from Dent Junction to Douglas Junction, in addition to the 4.7 miles of 10-inch Line No. TL-207 from Douglas Junction to Linder Meters previously authorized to be reclassified from transmission to production [1979 project (4)];

(C) The construction and operation of 1.25 miles of 8-inch Line No. TL-369 (extension) in lieu of 0.85 mile of 8-inch and 0.4 mile of 12-inch Line TL-369 (extension) previously authorized [1978] project (6)];

(D) The reclassification from dry to wet gas transmission service at this time only of 19.2 miles of Line No. TL-264 from Jones Station to Fleming Junction in lieu of 19.2 miles of Line No. TL-264 and 19.4 miles of Line No. H-192 [1979 project (12)];

(E) The construction and operation of 3.1 miles of 16-inch Line No. TL-432 from Fleming Junction connecting Line No. TL-418 to Line No. TL-264 only, in lieu of connecting to both Line No. TL-264 and Line No. H-192 [1979 project (11)]; and

(F) The utilization of existing 12-inch Line No. H-194 to connect Line No. TL-264 to Line No. H-138 at Jones Station in lieu of constructing and operating 0.2 mile of 12-inch pipeline to connect Line No. H-192 to Line No. H-138 [1978 project (5)].

Petitioner indicates that the proposed changes were made necessary by difficulties encountered in securing the originally-planned pipeline right-of-way from the owners of the surface estates. The instant proposals, Petitioner states, are minor changes in certain of the individual projects previously authorized, and, given the scope of the overall program, would result in no discernible modifications in estimated capital cost, or in any other aspect of the program.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 22, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 79-25465 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

[Docket No. GP79-63]

Coquina Oil Corp., Bass State No. 1 Well; Notice of Preliminary Finding

Issued: August 2, 1979.

On June 18, 1979, the Oil Conservation Division of the New Mexico Department of Energy and Minerals submitted to the Commission a notice of determination that the Bass State No. 1 Well (JD79-9126) met all the requirements of a stripper well under Section 108 of the Natural Gas Policy Act of 1978 (NGPA). The Commission published notice of the determination on July 3, 1979.

Section 108(b)(1)(A) of the NGPA provides that in order to qualify as a stripper well, a well must produce non-associated natural gas at a rate which did not exceed an average of 60 Mcf per production day during the 90-day production period. Section 108(b)(3)(A) defines "production day" as (1) any day during which natural gas is produced, and (2) any day during which natural gas is not produced if production during such day is prohibited by a requirement of state law or a conservation practice recognized or approved by the state agency having regulatory jurisdiction over natural gas production.

The data submitted with this determination purport to demonstrate that average production for the well was calculated on a basis of 90 qualifying "production days" in the 90-day production period. However, the data also illustrate that during 30 days of the 90-day production period the well did not produce because of an inability to meet existing line pressure. Accordingly, there is a lack of substantial evidence that these 30 days met the statutory definition of "production days."

If total production from this well for the 90-day production period is divided by the number of qualifying "production days" (60 rather than 90), the well is shown to produce an average of 70.48 Mcf per production day. Accordingly, the well exceeds the statutorily-permitted average of 60 Mcf per production day.

The Commission hereby makes a preliminary finding, pursuant to 18 C.F.R. § 275.202(a)(1)(i), that the notice of determination submitted by the Oil Conservation Division of the New Mexico Department of Energy and Minerals for the above-referenced well is not supported by substantial evidence.

By direction of the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-25484 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP73-322]

Crown Zellerbach Corp.; Notice of Petition to Amend

August 9, 1979.

Take notice that on July 20, 1979, Crown Zellerbach Corporation (Crown), One Bush Street, San Francisco, California 94104, filed in Docket No. CP73-322 a petition to amend the order

of October 1, 1973,[1] issued in said docket pursuant to Section 7(c) of the Natural Gas Act so as to amend the attachment of gas supplies condition, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Crown seeks to amend the attachment of gas supplies condition issued in the aforementioned docket to read "Any future attachment of gas supplies by CZ in excess of 11,624,995 Mcf per annum would require Commission authorization". The original condition reads "Any future attachment of gas supplies by CZ would require future Commission authorization".

Crown states that the purpose of the amended condition is to facilitate more easily the transportation of any new additional sources of gas without having to apply for Commission approval up to 11,624,995 Mcf per annum.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 30, 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. 79-25466 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-414]

East Tennessee Natural Gas Co.; Notice of Application

August 9, 1979.

Take notice that on July 20, 1979, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 10245, Knoxville, Tennessee 37919, filed in Docket No. CP79-414 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of additional sales metering facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

East Tennessee proposed to construct and operate an additional sales metering facility to serve Chattanooga Gas Company (Chattanooga) near Chattanooga, Hamilton County, Tennessee and an additional sales metering facillity to serve the United Cities Gas Company (United Cities) in Sullivan County, near Blountville, Tennessee.

East Tennessee states that the cost of the proposed facilities would be financed from funds on hand at an estimated cost of $48,890 for the Chattanooga facility and $36,730 for the United Cities facility.

East Tennessee asserts that Chattanooga requires this delivery point to serve high priority customers in the Collegedale and Ooltewah communities of its service area. Additionally, the new delivery point is needed to reinforce its present line serving the Collegedale and Ooltewah areas where serious pressure problems exist in Chattanooga's existing facilities on peak days. The additional delivery point would help solve operating difficulties experienced during past curtailment periods which resulted in transfers in natural gas from East Tennessee via an intermediary pipeline to Southern Natural Gas Company at a point in Louisiana to meet the Priority 1 requirements of Chattanooga's customers in the Collegedale and Ooltewah area.

United Cities primary requirement for the proposed delivery point is for reinforcement of its system. On peak days very low pressures are experienced in the southwest portion of United Cities distribution system, with such low pressure only being maintained by manually controlling the pressure at the existing Town Border Station of United Cities.

The application indicates that the new delivery points would enable Chattanooga and United Cities to serve high priority customers in the affected portion of their distribution systems which cannot now be served because of insufficient peak day operating pressures and would enable service to new high priority consumers in growing communities within their service areas.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 30, 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 Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdication conferred upon the Federal Energy Regulatory Commission by Section 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 East Tennessee to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-25467 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. G-103 and CP76-452]

Compania De Gas De Nuevo, Laredo, S. A. v. Entex, Inc.; Notice of Petition

August 9, 1979.

Take notice that on July 23, 1979, Entex, Inc. (Entex), Entex Building, Houston, Texas 77002, filed in Docket Nos. CP76-452 and G-103 a petition pursuant to Section 1.7 of the Commission's Rules of Practice and Procedure (18 CFR 1.7) for a declaration by order of the Commission that the issue in controversy in the above-captioned docket is moot and that the proceeding should be terminated, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

It is stated that the above-mentioned case is on remand from the decision of the United States Court of Appeals for the District of Columbia in *Entex, Inc.* v. *Federal Energy Regulatory Commission*, Docket No. 78-1071 (Judgment entered

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

April 19, 1979). In that option, the D.C. Circuit reviewed an order of the Commisson issued on September 30, 1977, in the above referenced dockets. It is stated that the issue in controversy was whether a exporter of natural gas under Section 3 of the Natural Gas Act, 15 U.S.C. § 717b (1976), who has not received payment or assurances of payment for an extended period of time for deliveries previously made may temporarily suspend deliveries of gas pursuant to a clause in its export contract until the arrearage is paid without seeking and obtaining prior authorizaton from the Commission. In the Court's opinion it was stated that Entex, at the demand of its customer Compania de Gas de Nuevo Laredo (CGNL), has made no further deliveries of export gas to CGNL or to the Mexican governmental authority which now operates CGNL's local gas distribution facilities in Nuevo Laredo, Mexico since May 9, 1978.

Entex states that it is unaware whether and to what extent it may be called upon by its Mexican customer to make any further deliveries. Entex is generally aware that Nuevo Laredo's natural gas requirements now are being met by use of natural gas supplied by Pemex, the Mexican national energy corporation.

Under the circumstances it is Entex's positon that further proceedings before the Commission to explore the legal and policy nuances of the suspension-for-nonpayment clause in the export contract between Entex and CGNL would be inappropriate absent some true controversy, and that such proceedings should be terminated.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 30, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petiton to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-25468 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. ER79-416 and ER78-19, et al.]

Florida Power & Light Co.; Order Accepting for Filing and Suspending Rate Schedule, Providing for Hearing and Consolidating Proceedings

Issued: August 2, 1979.

On June 4, 1979, the Florida Power & Light Company (FP&L) tendered for filing, pursuant to 18 CFR § 35.13, an unexecuted "Amendment Number Three To Agreement To Provide Specified Transmission Service Between Florida Power & Light Company and City of Homestead."[1] According to FP&L, this filing amends the transmission service agreement between FP&L and the City of Homestead (Homestead) dated April 19, 1978 and filed with the Commission on April 20, 1978 in Docket No. ER78-325, which was consolidated with *Florida Power & Light Company*, Docket Nos. ER78-19, *et al.*, for investigation.[2] In this filing, FP&L is proposing modifications to certain terms and conditions, not affecting rates, contained in the transmission service agreement. FP&L seeks an effective date for this amendment of no later than 60 days after the date of filing.

Public notice of FP&L's filing was issued on June 8, 1979, with protests and petitions to intervene to be filed on or before June 29, 1979. No petitions or protests have been received.

FP&L's proposed amendment number three to agreement to provide specified transmission service between FP&L and Homestead has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential or otherwise unlawful. The Commission shall suspend the proposed amendment to the transmission service agreement for one day, to become effective August 5, 1979, subject to refund, pending the outcome of a hearing and decision thereon.

FP&L has made previous filings for specified transmission service and the terms and conditions of this filing is identical to those filed in the previous submittals.[3] The prior filings were suspended for one day and consolidated with the ongoing proceeding in Docket Nos. ER78-19, *et al.* The Commission finds that since common issues of law and fact exist, it is appropriate to consolidate Docket No. ER79-416 with the ongoing proceeding in Docket Nos. ER78-19, *et al.*

The Commission orders: (A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Act and by the Federal Power Act, particularly Sections 205, 206, 301, 308, and 309 thereof, and pursuant to the Rules of Practice and Procedure and the Regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the rate schedules proposed by FP&L in the instant dockets.

(B) Pending a hearing and decision thereon, FP&L's proposed filing is hereby accepted for filing and suspended for one day, to become effective August 5, 1979, the rates thereunder to be subject to refund.

(C) Docket No. ER79-416 is hereby consolidated with the proceeding in Docket Nos. ER78-19, *et al.*, for the purpose of hearing and decision.

(D) The Secretary shall cause prompt publication of this order to be made in the **Federal Register.**

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[1] Designated as: *Florida Power & Light Company*, Supplement No. 4 to Rate Schedule No. 25.

[2] On April 20, 1978, in Docket No. ER78-325, FP&L submitted for filing a transmission service agreement between itself and Homestead. Under that agreement, FP&L transmits power and energy for Homestead as required to implement Homestead's interchange agreements with Orlando Utilities Commission, Tampa Electric Company, Florida Power Corporation, Ft. Pierce and the Utilities Commission of New Smyrna Beach, Florida. By order issued May 19, 1978, that docket was consolidated with Docket No. ER78-19, *et al.*, for a hearing and decision thereon. FP&L proposed to amend the original agreement in Docket No. ER78-527 to implement Homestead's interchange agreement with the Lake Worth Utilities Authority. That docket was also consolidated with Docket Nos. ER78-19, *et al.* In Docket No. ER79-162, FP&L proposed to amend the transmission service agreement between itself and Homestead to accommodate the amendment of the interchange agreement between Homestead and Ft. Pierce. Docket No. ER79-162 was consolidated with Docket Nos. ER78-19, *et al.*

[3] The specified transmission agreements are: (1) Tampa Electric Company, Docket No. ER78-508, ER78-567, ER79-44; (2) City of Vero Beach, Florida, ER78-566; (3) City of Lake Worth, Florida, ER78-478; (4) City of Fort Pierce, Florida, ER79-171, ER79-172, ER78-376; and (5) City of New Smyrna Beach, Florida, ER79-352. All of the above mentioned dockets have been consolidated with Docket Nos. ER78-19, et al.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-25469 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Project No. 2177]

Georgia Power Co.; Notice of Application for Amendment of License and Withdrawal of Exhibit R

August 7, 1979.

Take notice that an application for amendment of license and a request to withdraw a revised Exhibit R were filed on March 28, 1979, under the Federal Power Act (16 U.S.C. §§ 791a–825r), by Georgia Power Company (Applicant) for the Middle Chattahoochee River Project No. 2177. The project is located on the Chattahoochee River in Harris and Muscogee Counties, Georgia and in Chambers, Lee, and Russell Counties, Alabama. Copies of correspondence regarding the applications should be sent to: Mr. I. S. Mitchell, III, Vice President and Secretary, Georgia Power Company, P.O. Box 4545, Atlanta, Georgia 30302.

Applicant seeks an amendment to the license for Project No. 2177 which would allow Georgia Power Company to grant, without prior Commission approval, permits for the construction of bulkheads and retaining walls to prevent erosion of waterfront property, and for the construction of piers, boat docks, boat ramps, and similar structures within the project boundary.

Applicant also seeks permission to withdraw its application for approval of a revised Exhibit R. The revised Exhibit R is Applicant's proposed plan for public utilization of project waters and adjacent lands for recreational purposes. As the basis for its request to withdraw the exhibit, Applicant states that it intends to redevelop the Goat Rock Dam, one of the three developments included in Project No. 2177, and that redevelopment of Goat Rock Dam may affect the revised Exhibit R.

Anyone desiring to be heard or to make any protest about this application should file a protest or a petition to intervene with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure ("Rules"), 18 CFR § 1.10 or § 1.8 (1977). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any protest or petition to intervene must be filed on or before September 17, 1979. The Commission's address is: 825 N. Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-25470 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RA79-29]

Husky Oil Co.; Granting of Extension of Time

August 9, 1979.

On July 27, 1979, Husky Oil Company, Viking Exploration Inc., Tejos Production Company, and Victory Oil Company filed respective motions requesting extensions of time to appeal the final decision of the Office of Hearings and Appeals in DOE Case Nos. DEE–1436 and DEE–1444.

The motions state that while Husky Oil Company was served on July 3, 1979, with the June 27, 1979 decision, other parties in this proceeding were not served until July 25, 1979. In order to coordinate the appeal effort and accumulate the required data, the parties are requesting extensions of time to file their appeals.

Upon consideration, notice is hereby given that an extension of time is granted to and including August 27, 1979, for the filing of appeals in this proceeding.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-25471 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Project 2579]

Indiana & Michigan Electric Co.; Land Withdrawal, Indiana

August 3, 1979.

On March 8, 1966, the Indiana and Michigan Electric Company filed Exhibit K, sheets 1 through 4, inclusive (FPC Nos. 2579 –2 through –5, inclusive), as part of an application for license for the Twin Branch Project, designated as Project No. 2579, and located on the St. Joseph River in the State of Indiana. Pursuant to a requirement of the license issued June 21, 1977, Exhibit K, sheet 3, was revised to show certain federal lands. In accordance with the provisions of Section 24 of the Act of June 10, 1920, as amended, notice is hereby given that the land hereinafter described, insofar as title remains in the United States, is from the date of said filing, reserved from entry, location or other disposal under the laws, of the United States until otherwise directed by this Commission or by Congress:

Second Principal Meridian, Indiana

All portions of the following described subdivision lying within the project boundary as delimited on Exhibit K, sheet 3 (FPC No. 2579–4):

T. 37 N., R. 4 E.,

Sec. 2, island in the SW¼ identified by the official plat of survey, accepted March 17, 1846.

Approximately 4.50 acres of U.S. lands are occupied by the subject project. Copies of the aforementioned map exhibit have been transmitted to the U.S. Geological Survey and the Bureau of Land Management.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-25472 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket ER79-535]

Kansas City Power & Light Co.; Notice of Filing

August 2, 1979.

The filing company submits the following:

Take notice that on July 26, 1979, Kansas City Power & Light Company (KCPL) tendered for filing Amendatory Agreement No. 1 to the Peaking Capacity Sales Agreement between KCPL and Kansas Gas and Electric Company (KG&E). KCPL requests an effective date of April 1, 1979. The proposed Amendatory Agreement No. 1 updates the rates for Peaking Capacity and Energy in the Peaking Capacity Sales Agreement (KCPL's Rate Schedule FPC No. 31C).

KCPL states that the proposed rates are the same as those included in Rate Schedule P–3, Wholesale Rates for Hydro Peaking Power and Seasonal Peaking Power, of the Southwestern Power Administration (SPA) which supplied to KG&E. SPA Rate Schedule P–3, which was confirmed and approved by the Department of the Interior, effective April 1, 1979, increased the SPA rates to KCPL for such Peaking Capacity and Energy.

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 and 1.10). All such petitions and protests should be filed on or before August 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-25473 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-531]

Long Island Lighting Co.; Notice of Filing

August 2, 1979.

Take notice that Long Island Lighting Company on July 24, 1979, tendered for filing a supplement to FERC Rate Schedule No. 15 with the Incorporated Village of Freeport which redefines the fuel cost adjustment provision that is applicable to energy sales made under this rate schedule.

Any person desiring to be heard or 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 and 1.10). All such petitions or protests should be filed on or before August 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-25474 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket RP76-4]

National Fuel Gas Supply Corp.; Notice of Proposed Changes in FERC Gas Tariff

August 10, 1979.

Take notice that on July 30, 1979, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Twenty-Seventh Revised Sheet No. 4, proposed to be effective September 1, 1979, and Second Revised Schedule K-1, Sheet 1 of 2, in support thereof.

National states that these sheets are being filed pursuant to the Commission's Opinion No. 45, issued June 28, 1979, in Docket No. RP76-4, in order to eliminate zones and geographic rate differentials on National's system and to establish a uniform systemwide rate as prescribed in Opinion No. 45.

It is stated that copies of the filing have been mailed to all of its jurisdictional customers, interested state regulatory commissions and parties to the proceeding in Docket No. RP76-4.

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 and 1.10). All such petitions or protests should be filed on or before August 27, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants party 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. 79-25475 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-212]

National Gas Storage Corp.; Notice of Amendment

August 9, 1979.

Take notice that on July 19, 1979, National Gas Storage Corporation (National), 10 Lafayette Square, Buffalo, New York 14203 filed in Docket No. CP79-212 an amendment to its application filed in said docket pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a long-term underground storage service to five additional customer utilities through facilities certificated in Docket No. CP76-492, *et al.*, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

National proposes to render underground gas storage service to Fitchburg Gas and Electric Light Company (Fitchburg) bringing the total number of new customers to six and the maximum aggregate amount of top gas capacity covered in the application to 2,545,000 Mcf through facilities proposed in Docket No. CP76-492, *et al.*

National and Fitchburg have entered into a gas storage agreement which requires National to provide the storage service over a fourteen-year period commencing April 1, 1980, in maximum volumes as follows (all volumes in Mcf):

Customer	Annual storage quantity	Maximum daily injection volume	Maximum daily withdrawal volume
Fitchburg.....	50,000	333	455
Total.....	2,545,000	16,966	23,137

Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. would perform the necessary transportation service for Fitchburg.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before August 30, 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. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-25476 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-532]

Northern States Power Co.; Notice of Supplement No. 1

August 2, 1979.

The filing company submits the following:

Take notice that Northern States Power Company, on July 25, 1979, tendered for filing Supplement No. 1, dated July 18, 1979, to the Interconnection and Interchange Agreement, dated September 16, 1977, with the City of Madelia.

Supplement No. 1 amends Article IV of the Interconnection and Interchange Agreement deleting sections no longer needed because Madelia desires to purchase Load Pattern Power from Northern States to supply its requirements.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, in accordance with Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions and protests should be filed on or before August 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. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-25477 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. CP75-341 and CP75-342]

Northwest Pipeline Corp.; Notice of Petition To Amend

August 1, 1979.

Take notice that on July 23, 1979, Northwest Pipeline Corporation (Northwest), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket Nos. CP75-341 and CP75-342 a petition to amend further the orders issued in said dockets pursuant to Section 3 of the Natural Gas Act so as to authorize Northwest to continue to import natural gas at the Sumas, Washington, and the Kingsgate, British Columbia, import points at an increased border price ordered by the National Energy Board of Canada (NEB), effective August 11, 1979, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

The gas imported at the Sumas and Kingsgate import points is purchased from Westcoast Transmision Company Limited (Westcoast) at the current border price of $2.30 (U.S.) per Mcf, effective May 1, 1979. Northwest states that the NEB has ordered an increase in the border price from $2.30 to $2.80 (U.S.) per Mcf, effective August 11 1979. Accordingly, Northwest requests authorization to continue the importation of gas at said points at the increased price.

Northwest asserts that it must pay Westcoast the increased price ordered by the NEB in order that Westcoast comply with its export licenses or Northwest would suffer the loss of these supplies, which comprise approximately ⅜ of its projected annual gas supply.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 22, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 79-25478 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. CP77-263 and CP77-625]

Northwest Pipeline Corp. and RMNG Gathering Co.; Notice of Petition To Amend

August 9, 1979.

Take notice that on July 10, 1979, Northwest Pipeline Corporation (Northwest), 315 East Second South, Salt Lake City, Utah 84111, and RMNG Gathering Co. (RMNG), 420 Capitol Life Center, 1600 Sherman Street, Denver, Colorado 80203, filed in Docket Nos. CP77-263 and CP77-625, respectively, a joint petition to amend the order of December 6, 1977, as amended, in the instant dockets so as to authorize Northwest to sell and RMNG and Northwest to exchange natural gas from five additional wells acquired by Northwest from acreage in Garfield County, Colorado, and from any wells hereinafter owned or controlled by Northwest on the specific acreage, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Pursuant to the order of December 6, 1977, as amended, in the instant dockets, Northwest was granted authorization to sell to RMNG certain volumes of gas and Northwest and RMNG were granted authorization to exchange gas controlled by Northwest between them, pursuant to the terms of a gas purchase, transportation and exchange agreement between the two companies, dated February 2, 1977, as amended. Pursuant to such authorization, Northwest delivers to RMNG, for exchange, certain volumes of natural gas which Northwest controls or has acquired on the acreage covered by the agreement, as amended, at mutually acceptable points on RMNG's gathering system facilities in the vicinity of the wells and RMNG then redelivers thermally equivalent volumes, less 25 percent of the volumes which RMNG has the option to purchase from Northwest, at the existing RMNG exchange meter station on Northwest's mainline in Mesa County, Colorado.

Northwest indicates that it has acquired gas from five additional wells from acreage in Garfield County. In order to receive this gas into its system Northwest and RMNG have entered into an amendment dated March 12, 1979, to their February 2, 1977, exchange agreement, which provides for the establishment of mutually agreeable point on RMNG's gathering system in the vicinity of each of the five additional wells, where Northwest may deliver volumes of gas to RMNG for exchange. Therefore, Northwest and RMNG request that the Commission amend the orders in the instant dockets so as to authorize the exchange of the volumes of natural gas controlled by Northwest from the five additional wells and to authorize the exchange of volumes of natural gas hereinafter owned or controlled by Northwest on any acreage subject to the March 12, 1979, agreement. Northwest further requests authorization to sell to RMNG up to 25 percent of the volumes of gas delivered to RMNG for exchange from the five additional wells and from any such wells which may be developed in the future on the specific acreage.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 30, 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. 79-25479 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP72-154 (PGA 78-1) et al.]

Northwest Pipeline Corp.; Notice of Rate Change Deferral and Plan of Refund

August 10, 1979.

Take notice that on August 6, 1979, Northwest Pipeline Corporation ("Northwest") tendered for filing its response to Opinion No. 46 issued July 6, 1979 at Docket Nos. RP72-154, RP76-115 (AP 78-1), RP72-74 (DCA 78-1). Said Opinion concerns advance payments totaling $425,000 made by Northwest to Provident Resources, Inc. ("Provident") on October 31, 1977.

As more fully explained in the instant filing, Northwest, in compliance with Opinion No. 46, has (1) excluded from its rate base $300,000 of advance payments attributable to wells from which deliveries of gas had commenced prior to the date said advance payment was made, (2) included revised rate sheets and supporting schedules reflecting the required rate change with a proposal to defer said rate change until October 1, 1979 the date of Northwest's next purchased gas cost adjustment, and (3) proposed a plan of refund, due to overcollections, providing for recording such overcollections in FERC Account No. 191.

A copy of this filing has been served on Northwest's jurisdictional customers and affected state 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, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 27, 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. 79-25480 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. TC79-136]

Nucor Steel-Nebraska, Division of Nucor Corp.; Notice of Petition for Extraordinary Relief

August 9, 1979.

Take notice that on July 18, 1979, Nucor Steel-Nebraska, Division of Nucor Corporation (Nucor) P.O. Box 309, Norfolk, Nebraska 68701, filed in Docket No. TC79-136, pursuant to Section 1.7(b) of the Commission's Rules of Practice and Procedure (18 CFR 1.7(b)), a petition for extraordinary relief from certain provisions of a proposed tariff and curtailment plan of Kansas-Nebraska Natual Gas Company (K-N). Nucor claims that it requires additional volumes of gas from K-N to serve "process" gas needs at Nucors' steel mill in Norfolk, Nebraska. This petition is on file with the Commission and open to public inspection.

Nucor states that it is served natural gas by Cengas which in turn, is supplied by K-N. Nucor further states that its gas purchases are subject to K-N's tarriff limitations[1] which limit Nucor's entitlement to 664,020 Mcf per year.

That volumetric limitation according to Nucor, would cause a curtailment of approximately 55 percent of its actual entitlements. This is so, Nucor claims, because the volumetric limit was set during a period of low steel production and correspondingly low natural gas consumption by Nucor. To satisfy its current "process" needs Nucor claims it must have available approximately 1,500 Mcf of gas per year and 7,000 Mcf of gas on a peak day.

Nucor claims that the only alternate fuel available to it is propane. Under the present K-N tariff proposal limiting Nucor to 664,020 Mcf per year. Nucor anticipates that a switch to propane will cost approximately $683,000 more than the cost of natural gas alone.

Any person desiring to be heard or to make protest with reference to said petition should on or before August 30, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the 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. 79-25481 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

[1] K-N's Gas Tarriff Revised Volume No. 1, Section 13b (1)(b), which is currently pending on review before the Presiding Judge in Docket No. RP76-90.

[Project No. 2729]

Power Authority of the State of New York; Order Providing For Hearing

Issued: August 9, 1979.

On May 26, 1977, the Power Authority of the State of New York filed an amended application for a license authorizing the construction, operation, and maintenance of the Prattsville Pumped Storage Project No. 2729. The proposed project would utilize as its lower reservoir the existing Schoharie Reservoir, which is owned and operated by the City of New York as part of its water supply system.[1]

PASNY's application has been circulated for agency comment. The Commission's staff has also prepared a draft and final environmental impact statement. Fifty-eight parties have been granted intervention.[2]

[1] The original application sought a license for the proposed Breakabeen Pumped Storage that would have been located on Schoharie Creek, in Schoharie County, New York.

[2] The parties to the proceeding include Richard H. Moody, Jr.; Assemblyman Charles D. Cook, 105th District, New York; New York Farm Bureau, Inc.; Petition of the Town of Durham, the Association for the Preservation of Durham Valley, and eight individual landowners; Town of Fulton; The Breakabeen Grange No. 767; The United Presbyterian Churches of Breakabeen and North Blenheim; Schoharie Valley Environmental Conservation Association, Inc.; Schoharie County Farm Bureau; Village of Middleburgh; Joe Segelman; Town of Blenheim; Kenneth E. Birsen; New York State Department of Environmental Conservation; County of Schoharie; New York State Conservation Council, Inc.; Eastern Milk Producers' Cooperative Association, Inc.; Greene County Planning Board; Schoharie Valley Landowner's Association; Schoharie County Conservation Association; Veronica Trombley; Schenectady Chapter of the Adirondack Mountain Club, Inc.; Sierra Club; New York State Council of Churches, Inc.; Catskill Center for Conservation and Development, Inc.; N.Y. State Department of Agriculture and Markets; Cascade; Tri-County Power Line Association; Citizens to Preserve the Hudson Valley; Emerson Mead; Town of Conesville, N.Y.; Gilboa-Conesville Center School District; Town of Prattsville; Phoenicia Fish & Game Association; Town of Shandaken; Catskill Mountain Chapter-Trout Unlimited; Dorothy Brandow; Theodore Gordon Flyfisher's, Inc.; Ulster County Planning Board; Assemblyman Maurice D. Hinchey;

Footnotes continued on next page

Since the filing of the application, considerable opposition to the project has developed. Significant factual issues have also been raised by the parties. These issues range from the need for the project power to the project's impact on fishery resources in Esopus Creek.

We find that it is appropriate and in the public interest that a hearing be held to determine whether a license should be issued for the Prattsville Project No. 2729, and if so, what conditions should be included in any license. The hearing shall consider all evidence relating to issues concerning the proposed project, including evidence on alternatives to the project. The Presiding Administrative Law Judge may, at his discretion, hold a part of the hearing, including a public session for statements from the general public, in the vicinity of the project.

The Commission orders:

(A) Pursuant to the provisions of the Federal Power Act, particularly Sections 4(e), 10(a), 10(g), 308, and 309, and the Commission's rules of practice and procedure, a hearing shall be held concerning all issues relevant and material to the application by the Power Authority of the State of New York for a major license for the Prattsville Project No. 2729.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall preside at the hearing in this proceeding. The Presiding Judge shall convene a prehearing conference in this proceeding at 10:00 a.m. on September 5, 1979, in Room 110 on the concourse level at the Convention & Arts Center, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242.

(C) The Secretary shall cause prompt publication of this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-25483 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-533]

Public Service Co. of Indiana, Inc.; Notice of Filing

August 2, 1979.

The filing company submits the following:

Take notice that Public Service Company of Indiana, Inc. on July 25, 1979 tendered for filing pursuant to the Interconnection Agreement between Public Service Company of Indiana, Inc., and Indiana & Michigan Electric Company Modification No. 5 to become effective September 20, 1979.

Said modification increases the demand charge for Short Term Power from 60 cents per kilowatt to 70 cents per week, increases the transmission charge for Short Term Power supplied from another system from 15 cents per kilowatt per week to 17.5 cents per kilowatt per week, increases the demand charge for Limited Term Power from $3.25 per kilowatt per month to $3.75 per kilowatt per month, and increases the transmission charge for Limited Term Power supplied from another system from 65 cents per kilowatt per month to 75 cents per kilowatt per month.

Copies of the filing were served upon the American Electric Power Service Corporation, the Public Service Commission of Indiana, and the Michigan Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (CFR 1.8, 1.10). All such petitions should be filed on or before August 20, 1979. Protests should be filed on or before August 20, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the filing are available for public inspection at the Federal Energy Regulatory Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-25482 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP78-58]

South Texas Natural Gas Gathering Co.; Order Approving Settlement

Issued: August 3, 1979.

South Texas Natural Gas Gathering Company (South Texas) purchases, gathers, and transports gas from fields located in southern Texas for sale and delivery to Transcontinental Gas Pipe Line Corporation (Transco) and Natural Gas Pipeline Company of America (Natural). In addition to such sales, South Texas transports gas for Natural as well as Shell Oil Company (Shell), Tenneco, Inc. (Tenneco), and Continental Oil Company (Conoco).

By order issued May 31, 1978, we set for hearing the lawfulness of the increased resale rates filed by South Texas on April 28, 1978. At the same time, we granted South Texas' motion for an investigation under Section 5(a) of the Natural Gas Act of its transportation rates,[1] and consolidated that investigation with the rate increase proceeding.

The settlement before us would resolve the transportation rate issue; the cost of service issues would remain for resolution by the presiding judge. The settlement was filed on March 6, 1979, and certified to us by the presiding judge on April 6, 1979. The staff filed comments opposing the settlement on March 30, 1979. On June 1, 1979, comments in support of the settlement were filed by Transco and Natural, and by Conoco, Shell, and Tenneco commenting jointly.

South Texas sells 97.6 percent of its resale volumes to Transco. The remainder is sold to Natural. Natural is also a transportation customer. For transportation services, Natural is charged a rate of 1.5 cents per Mcf. South Texas transports liquids and liquefiable hydrocarbons a distance of 48–75 miles for Shell, Tenneco, and Conoco at no charge.[2]

Under the settlement, the transportation rate for Natural and the producers will be increased prospectively to 4.6 cents per Mcf at 14.73 psia, with annual escalations of .25 cents for a total of four years. The staff believes that on the basis of what it regards as the proper cost allocation methodology, the transportation rate

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Footnotes continued from last page
American League of Anglers, Inc.; Town of Olive; Environmental Defense Fund; Federation of Fly Fisherman; Betty L. Hamilton; Dale Smith; Dr. Harvey J. Hatchfield; Richard E. Cammer; Alfonso Scarpa; Federated Sportsmen's Club of Ulster County; Ann Cooper McAllister; James W. Keene; Dr. J. Calvin Keene; City of New York; Dr. B. Wesley Andrew; and Dr. Nina Levinson.

[1] We also granted South Texas' request for such an investigation in Docket No. RP77-59, which request was precipitated by the proposal in the staff's top sheets to reallocate South Texas' transportation costs after the company had filed increased resale rates in that proceeding. South Texas subsequently filed increased rates in Docket No. RP78-58, which we made effective on November 1, 1978, subject to refund, and asked for a Section 5(a) investigation in that docket as well. The Section 5(a) investigation initiated in RP77-59 has been terminated by letter order dated June 20, 1979, accepting an uncontested settlement of the issues in that proceeding for the locked-in period of November 1, 1977, through October 31, 1978. Permanent resolution of the transportation cost allocation question was deferred to the instant docket. The record developed in RP77-59 on that issue is offered in support of the settlement proposal in the present proceeding.

[2] South Texas also has a contract with its parent, Coastal States Gas Producing Company (Coastal), which provides for a transportation charge of one cent per Mcf per 100 miles. However, such services have not been rendered since March 1978.

should be substantially higher than the settlement rate.

Upon review of the record and in light of the Commission's policy of encouraging settlements which are in the public interest, we conclude that the settlement should be approved. We note that the settlement rate of 4.6 cents, with annual escalations, constitutes a substantial increase over the rates now being paid by Natural and the producers. We also attach some weight to the fact, which is not contested by the staff, that the settlement rate is higher than the charges imposed by other firms in the area for comparable services, particularly since, as Transco observes in its comments, the rate recommended by the staff might impede the ability of South Texas to retain its present transportation customers and attract new ones, to the possible detriment of resale customers such as Transco. In addition, as we found in our order of May 31, 1978, South Texas' contracts with Natural and the producers do not permit South Texas to file unilaterally for transportation rate increases; such increases may be implemented only prospectively based upon a Commission order. Consequently, it is in the public interest that the transportation rate issue be resolved expeditiously so that the increased transportation rates can be put into effect promptly.

Accordingly, while we do not adopt any ratemaking principle or methodology urged by the proponents of the settlement,[3] we find that the settlement is fair and reasonable under the circumstances in this case. We will therefore approve the settlement and terminate the Section 5(a) investigation in this docket as to Natural and the producers.

However, although our order of May 31, 1978 included Coastal's transportation rates within the scope of the Section 5(a) investigation, the settlement does not provide any rate for transportation services rendered to Coastal. In our previous order, we noted that, unlike the Natural and producer contracts, the Coastal contract contains no provision for changing rates pursuant to a Commission order. Hence, we found that, under the *Mobil-Sierra* doctrine, the rates for Coastal could be changed prospectively only upon a showing that the existing rate is so low as to adversely affect the public interest. Inasmuch as the settlement does not deal with the Coastal contract except to note that no gas has been transported for Coastal since March 1978, the Section 5(a) investigation with respect to Coastal's rate must remain open for resolution in this proceeding. However, the presiding judge shall be authorized to terminate that investigation upon written notification from Coastal either that the subject transportation contract with South Texas has been terminated or that the contractual rates will be amended to conform to the settlement rates approved in this order.

Article II of the settlement agreement includes the following provisions, at page 4:

"Final rates for the resale customers shall be developed in RP78–58 by crediting an amount computed using the revised transportation rates and test-year transportation volumes to the revenue requirements developed in the Section 4 investigation. Refunds, if any, in RP78–58 shall be based on the actual transportation revenues received during the period prior to resolution of the case."

These provisions do not specify when the final resale rates developed by means of the crediting procedure are to be made effective. It appears, however, that the settlement contemplates that such rates will be made effective prospectively from and after the date of the Commission's final order establishing such rates. It further appears that the resale rates to be effective between November 1, 1978 (the effective date of the proposed higher resale rates) and the date of the Commission's final resale rate order will be developed by crediting only the transportation revenues collected during that period, including the increased revenues which will be collected from and after the effective date of the present settlement. Our consideration and disposition of the proposed settlement is premised on the above understandings.

The Commission orders: (A) The stipulation and agreement in settlement of rate proceedings filed by South Texas on March 6, 1979, is approved.

(B) The Section 5(a) investigations into the transportation rates to Natural and the producers are terminated. The Section 5(a) investigation into the transportation rates to Coastal, previously consolidated with South Texas' pending rate proceeding, shall continue; *provided, however,* that the presiding judge is authorized to terminate that investigation upon receipt of written notification from Coastal either that the subject transportation contract with South Texas has been terminated or that the rates therein will be amended to conform to the rates specified in the settlement approved in paragraph (A) above.

(C) The presiding judge shall establish a schedule for the resumption of the remaining phases of this proceeding.

(D) The Secretary shall cause prompt publication of this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–25485 Filed 8–16–79; 8:45 am]

BILLING CODE 6450–01–M

[3] As we have observed elsewhere, settlement agreements determine dollar amounts, not principles. Hence, they have no precedential effect.

[Docket No. ER 79–534]

Southern Indiana Gas & Electric Co.; Notice of Filing

August 2, 1979.

Take notice that Southern Indiana Gas and Electric Company on July 25, 1979, tendered for filing, Supplement No. 6 to Electric Power Agreement dated May 28, 1971 (Alcoa Generating Corporation Rate Schedule FPC No. 2) modifying said Agreement, as modified by the First, Second, Third, Fourth, and Fifth supplements thereto (Southern Indiana Gas and Electric Company Rate Schedule FPC No. 32).

The instant filing proposes short term power at a demand charge of $0.70 per kilowatt reserved which shall be reduced $0.12 per kilowatt of reduction per day for the balance of the week for which the power is reserved and limited term firm power at a demand charge of $3.75 per kilowatt reserved which shall be reduced $0.12 per kilowatt of reduction for each day during which any reduction is in effect.

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 and 1.10). All such petitions or protests should be filed on or before August 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-25486 Filed 8-16-79 8:45 am]

BILLING CODE 6450-1-M

[Docket RP79-7]

Southern Natural Gas Co.; Notice of Certification of Stipulation and Agreement

August 10, 1979.

Take notice that on May 10, 1979, Presiding Administrative Law Judge George P. Lewnes certified to the Commission a stipulation and agreement in this docket. In essential part the stipulation, if approved, will hold hearing procedures in abeyance pending the Commission's disposition of litigated issues in Docket No. RP 78-36 (Phase I).

Any person desiring to be heard or to protest said settlement agreement should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before August 20, 1979, and reply comments on or before August 27, 1979. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-25487 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP75-73 (AP79-1)]

Texas Eastern Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

August 10, 1979.

Take notice that Texas Eastern Transmission Corporation on July 1979 tendered for filing as a part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets:

Fiftieth Revised Sheet No. 14
Fiftieth Revised Sheet No. 14A
Fiftieth Revised Sheet No. 14B
Fiftieth Revised Sheet No. 14C
Fiftieth Revised Sheet No. 14D

Texas Eastern is reducing its rates pursuant to Article V of the Stipulation and Agreement submitted to the Commission on May 20, 1976, under Docket No. RP75-73, as modified and accepted by Commission Orders issued June 6, 1977, and August 1, 1977. According to the terms and conditions of Article V of the Stipulation and Agreement in Docket No. RP75-73, Texas Eastern is required to file any rate reduction pursuant to this article within thirty days after the month in which the rate reduction obligation occurs. The attached schedule reflects that Texas Eastern is obligated to reduce its rates based on the balance of advance payments outstanding as of June 30, 1979.

The proposed effective date is September 1, 1979.

Copies of the filing were served on the company's jurisdictional customers and interested state 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, DC 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 August 27, 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. 79-25488 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket CP79-413]

Texas Sea Rim Pipeline, Inc.; Notice of Application

August 9, 1979.

Take notice that on July 20, 1979, Texas Sea Rim Pipeline, Inc. (Sea Rim), P.O. Box 71, Conroe, Texas 77301, filed in Docket No. CP79-413 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 14 miles of pipeline connecting State Tract 14-L in the Sabine Pass Area, Jefferson County, Texas, with a reseparation facility owned by Sea Rim located approximately three miles west of Sabine Pass, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Sea Rim's parent company, The Superior Oil Company (Superior), sought Commission authorization to construct and operate the proposed facilities as a part of a sale to Natural Gas Pipeline Company of America (Natural) under a contract dated July 5, 1978. The Commission granted Superior a temporary certificate authorizing the sale but stated that the certificate does not authorize Superior to construct and operate any facilities subject to the jurisdiction of the Commission necessary for such sale. It is stated that in Docket No. CP79-117, the Commission made it clear that the facilities constructed from the Block 14-L platform to Sea Rim's reseparation plant are pipeline, rather than gathering facilities. Accordingly, Commission certification of the proposed facilities is required.

Sea Rim states that the proposed facilities would enable Superior to transport volumes of gas produced from the Block 14-L platform to the onshore reseparation facility, as required by Superior's July 5, 1978 gas purchase contract with Natural. Pursuant to this agreement, Superior is obligated to transport the volumes of gas to Natural's facilities without charge. There would be no rate applicable to the transportation service performed by Sea Rim on behalf of Natural.

Sea Rim estimates the total cost of the proposed facilities to be approximately $5.7 million which cost would be financed from internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 30, 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. 79-25489 Filed 8-16-79; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1299-3]

Availability of Environmental Impacts Statements

AGENCY: Office of Environmental Review Environmental Protection Agency.

PURPOSE: This Notice lists the Environmental Impact Statements which have been officially filed with the EPA and distributed to Federal Agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's Regulations (40 CFR Part 1506.9).

PERIOD COVERED: This Notice includes EIS's filed during the week of August 6 to August 10, 1979.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this Notice is calculated from August 17, and will end on October 1, 1979. The 30-day wait period for final EIS's as calculated from August 17, 1979 will end on September 17, 1979.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this Notice you should contact that Federal agency which prepared the EIS. This Notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the Notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Kathi Weaver Wilson, Office of Environmental Review (A-104), Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (202) 245-3006.

SUMMARY OF NOTICE: On July 30, 1979, the CEQ Regulations became effective. Pursuant to § 1506.10(a), the 30-day wait period for final EIS's received during a given week will now be calculated from Friday of the following week. Therefore, for all final EIS's received during the week of August 6 through August 10, 1979, the 30-day wait period will be calculated from August 17, 1979. The wait period will end on September 17, 1979.

Appendix I sets forth a list of EIS's filed with EPA during the week of August 6 to August 10, 1979 the Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the State(s) and County(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number if available. Commenting entities on draft EIS's are listed for final EIS's.

Appendix II sets forth the EIS's which agencies have granted an extended review period or a waiver from the prescribed review period. The Appendix II includes the Federal agency responsible for the EIS, the name, address, and telephone number of the Federal agency contact, the title, State(s) and County(ies) of the EIS, the date EPA announced availability of the EIS in the **Federal Register** and the extended date for comments.

Appendix III sets forth a list of EIS's which have been withdrawn by a Federal agency.

Appendix IV sets forth a list of EIS retractions concerning previous Notices of Availability which have been made because of procedural noncompliance with NEPA or the CEQ regulations by the orginiating Federal agencies.

Appendix V sets forth a list of reports or additional supplemental information on previously filed EIS's which have been made available to EPA by Federal agencies.

Appendix VI sets forth official corrections which have been called to EPA's attention.

William N. Hedeman, Jr.,

Director, Office of Environmental Review.

Appendix I.—EIS's Filed With EPA During the Week of July 6 to 10, 1979

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 412A, Washington, D.C. 20250, 202-447-3965.

Forest Service

Draft

Belknap-Foley geothermal area, Willamette, NF, Lane and Linn Counties, Oreg., August 6: Proposed is the leasing of approximately 167,082 acres of land in the Belknap-Foley area of the Willamette National Forest, Linn and Lane Counties, Oreg. Leases for lands in the 4,706 acres Belknap-Foley known geothermal resource area would be issued on a competitive bid basis. The remaining lands would be leased to applicants on a noncompetitive basis. The alternatives consider varying amounts of acreage to be leased with no surface occupancy and substantial development constraints. (EIS Order No. 90851.)

Final

Beaver-Marten-Vermilion planning unit, Kootenai NF, Sanders County, Mont., August 10: Proposed is a revised multiple-use land management plan for the Beaver-Marten-Vermilion planning unit in Kootenai National Forest, Sanders County, Mont. The plan recommends that 163,563 acreas be managed for timber, esthetics, recreation, watershed, wildlife and range. An area of 45,923 acres which will remain unroaded will be managed for wildlife, recreation, esthetics and watershed. In total the project will affect approximately 209,486 acres of land which is divided into 14 management areas. (USDA-FS-FES (ADM) 01-14-79-05) Comments made by: USDA, EPA, DOI, State agencies, groups, individuals and businesses. (EIS Order No. 90857.)

Zeigler planning unit, Kootenai, NF, Lincoln County, Mont., August 10: Proposed is a land management plan for the Zeigler planning unit of the Kootenai National Forest located in Lincoln County, Mont. Features of the proposal are: (1) Maintenance or improvement of stream recreation, (2) protection of fisheries, watershed, and wildlife throughout the unit, (3) management of forest development roads, as land access roads, (4) use and management of wood, water and forage resources, and (5) reevaluation of wilderness resource areas. Two alternatives are considered which include: (1) Emphasis on economic development, and (2) emphasis on natural quality and wilderness study. (R1-78-12-USDA-FS-FES (ADM)) Comments made by: DOI, EPA, State and local agencies, groups and businesses. (EIS Order No. 90863.)

Alpine Lakes area acquisitions, several counties in Washington, August 10: This proposal involves the acquisition of non-Federal lands from six landowners for inclusions as federally owned lands in the Alpine Lakes Wilderness Area and "Intended Wilderness." These lands are located in Chelan, King, Kittitas, Pierce, Skagit, Snohomish, and Yakima Counties, Wash. In the process of acquisition some Federal lands will be exchanged and the remainder will be bought from six different sources. Certain rights and future development plans to lands exchanged may be revoked. (USDA–FS–FES–(ADM) 78–06) Comments made by: CIA, HUD, USDA, DOE, DOT, EPA, DOI, AHP, State and local agencies, groups, individuals and businesses. (EIS Order No. 90864.)

Rural Electrification Administration

Draft

230 kv transmission line, Benton County to Milaca, Benton County, Mich., and Mille Lacs County, Minn., August 10: Proposed is the issuance of REA loans funds for the construction of a 230 kv transmission line from Benton County to Milaca, Mille Lacs County, Minn. The Project will include: (1) the possible construction of two microwave towers, (2) single shaft steel or concrete poles, (3) the possible acquisition of additional right-of-way. The proposed range from 24.2 to 38.7 miles in length. (USDA–REA–EIS(ADM)79–5) (EIS Order No. 90867.)

Final

Seminole plant, units 1 and 2, transmission, Putnam County, Fla., August 10: Proposed is the issuance of loan guarantees for construction and operation of a 1,200 mw, net, coal-fired steam electric generating station to be located on an approximate 2,000 acre site adjacent to the St. Johns River in Putnam County, Fla. Major station facilities include two approximate 450-foot high natural draft cooling towers, a wet limestone flue gas desulfurization (FGD) system, electrostatic precipitators, boilers, a single 675-foot stack, a chemical waste treatment system, onsite disposal of FGD wastes as stabilized cake, and rail delivery of coal and approximately 69 or 190 miles of double-circuit 230 kv transmission line. (USDA–REA–(ADM)–79–3–F) Comments made by: USDA, EPA, DOI, State and local agencies, groups, and individuals. (EIS Order No. 90868.)

161 kv transmission line, Genoa, WI to Lansing, Iowa, Vernon County, Wis., Houston County, Minn., Allamakee County, Iowa, August 10: Proposed is the issuance of REA loan funds for the construction of a 161 kv transmission line from Genoa, Vernon County, Wis. through Houston County, Minn. to Lansing, Allamakee County, Iowa. The transmission line will extend for approximately 28 miles. The alternatives considered are: (1) No project, (2) use of local generation, (3) alternate transmission line routes, (4) alternate refuge crossings, and (5) undergrounding the transmission line at the Mississippi River crossing at Lansing. (USDA–REA–ES(ADM)78–1–F) Comments made by: USDA, DOI, COE, EPA, State and local agencies, groups, individuals and businesses. (EIS Order No. 90859.)

Draft Supplement

San Miguel lignite unit 1, transmission (DS–1), Atascosa and Whitney Counties, Tex., August 8: This statement supplements a final EIS, No. 61226, filed August 20, 1976 concerning the San Miquel lignite unit 1, associated mine and related transmission lines in Atascosa and Whitney Counties, Tex. The project includes a 447 megawatt Steam electric generating unit, an adjacent lignite surface mine, approximately 254 miles of 345 kv transmission lines, 195 miles of 138 kv transmission lines, and 25 miles of 69 kv transmission lines. This statement considers an alternate route which would reduce the length of the 345 kv line by 176 miles. (USDA–REA–EIS–(ADM)–76–7–F–DS) (EIS Order No. 90852.)

Soil Conservation Service

Draft

Wheeling Creek watershed project, Several Counties Pennsylvania, Ohio, and West Virginia, August 6: Proposed is the Wheeling Creek watershed project located in Greene and Washington Counties, Pennsylvania and Ohio and Marshall Counties, West Virginia. The project would involve several methods of land treatment on 35,380 acres and the construction of two floodwater retarding dams on the Enlow and Dunkard forks. The project would provide municipal and industrial water supply and recreational development. The alternatives consider: (1) Nonstructural measures, (2) channel or diking work, (3) flood retarding dams with permanent pools, (4) flood retarding dams with no permanent pools, and (5) no project. (USDA–SCS–EIS–WS–(ADM)–79–2(D)–PA) (EIS Order No. 90848.)

U.S. ARMY CORPS OF ENGINEERS

Contact: Dr. C. Grant Ash, Office of Environmental Policy, Attn: DAEN–CWR–P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue, S.W., Washington, D.C. 20314, 202–693–6795.

Draft

Novata center development, permit, Marion County, Calif., August 6: Proposed is the issuance of a permit for the filling of 48 acres of historic wetlands and 8 acres of existing brackish marsh for the development of the Novato Center in Marin County, Calif. A portion of the 56 acres to be filled and an adjacent upland portion are proposed as the site for a 77-acre regional shopping center. No development plans have been submitted for the remainder of the area proposed to be filled. The alternatives considered are: (1) No project, (2) reduced project, (3) development in accordance with city zoning, and (4) an alternate project site at Hamilition AFB. (San Francisco district.) (EIS Order No. 90850.)

Springfield municipal water intake, permit, Greene County, Mo., August 10: proposed is the issuance of a permit for the construction and operation of a raw sewer intake structure at mile 95.4 on the James River for the city of Springfield in Greene County, Mo. The project would include the construction of 10 deep wells and a new 30 million-gallon-per-day treatment plant. The alternatives consider various methods of both interim and long term water supply. (Little Rock District.) (EIS Order No. 90869.)

Final

Aquatic Plant Control, Georgia, August 6: This project consists of aquatic plant control in the State of Georgia. The proposed program will provide for the management of problem aquatic plants in the navigable waters of Georgia. Only the problem plants of water hyacinth and alligator weed have been approved under this program. Excessive growth of problem aquatic plants will be primarily controlled with the use of the herbicide 2, 4–D. Other control methods would include biological, physical, mechanical and combinations of these methods (Savanah District). Comments made by: (EIS Order No. 90847.)

Upper White Oak Bayou and Tributaries, Harris County, Tex., August 10: The proposed Action consists of constructing flood control improvements in Upper White Oak Bayou and its tributaries, Cole and Vogel Creeks, in Harris County, Texas. Channel improvements considered for Upper White Oak Bayou would extend from the terminus of the existing Federal flood control project at mile 10.7 to mile 19.9. For the tributary streams, Cole and Volgel Creeks, improvements would extend from their mouths at White Oak Bayou upstream 4.9 and 4.5 miles respectively. The improvements will include rectification, enlargement and partial lining with concrete (Galveston District). Comments made by: USDA, DOT, HEW, DOI, EPA, AHP, State and local agencies, individuals. (EIS Order No. 90862.)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Deputy Assistant Secretary, Environmental Affairs, Department of Commerce, Washington, D.C. 20230, (202) 377–4335.

Final Supplement

Knoxville International Energy Exposition, Tennessee, June 12: This statement supplements a final EIS, No. 70386, filed March 25, 1977, concerning the proposed Knoxville International Energy Exposition to be located in Tennessee. This supplement concerns the awarding of funds for the construction of a Federal pavilion. The statement also examines the results of the ongoing environmental monitoring comments made by: DOI, GSA, DOC, groups and individuals (EIS Order No. 90872).

National Oceanic and Atmospheric Administration

Final

Elkhorn Slough Estuarine Sanctuary, Grant, Monterey County, Calif. Proposed is the awarding of a grant to the State of California for the acquisition of approximately 1,510 acres of wetlands and uplands at Elkhorn Slough, Monterey County, California. The acquired lands will be uses for research and education as an estuarine sanctuary. Other uses could include low-intensity recreation,

hunting, fishing, and wildlife observation. The alternatives considered address boundaries and management structures. Comments made by: EPA, DOI, HUD, DOT, State and local agencies, groups, individuals and businesses. (EIS Order No. 90860).

Final

Apalachicola R. and Bay Estuarine Sanctuary, Grant, Franklin, Gulf Counties, Fla., August 10: Proposed is awarding of an acquisition grant to the State of Florida for the acquisition, development, and operation of a estuatine sanctuary located in the Apalachicola River and Bay Region of Franklin and Gulf Counties, Florida. The grant would apply to 12,467 acres of land, to be included within the boundaries of a proposed sanctuary encompassing approximately 192,758 acres. The purposes of acquisition include recreation, wildlife management, and conservation and protection of environmentally unique and irreplaceable lands. Comments made by: USAF, EPA, HUD, DOI, DOC, DOT, GSA, State and local agencies, groups, individuals, and businesses (EIS Order No. 90858).

South Carolina Coastal Zone management program, South Carolina, August 9: Proposed is a coastal zone management for: South Carolina. The program will provide for: (1) The establishment of a permanent South Carolina coastal council; (2) The development and administration of a comprehensive CZM program; (3) A permit process for activities on tidelands, coastal waters, beaches, and primary ocean front sand dunes; and (4) a mechanism for consistency of the CZM program by State and local agencies. Comments made by: USDA, COE, DOD, DOE, DOI, HEW, DOT, FERC, EPA, State and local agencies, groups, individuals, and businesses (EIS Order No. 90855).

DEPARTMENT OF THE DEFENSE ARMY

Contact: Col. Charles E. Sell, Chief of the Environmental Office, Headquarters DAEN-ZCE, Office of the Assistant Chief of Engineers, Department of the Army, Room 1E676, Pentagon, Washington, D.C. 20310, (202) 694-4269.

Draft

Fort Leavenworth Ongoing Mission, Leavenworth County, Kans., August 10: Proposed is the continuation of the Ongoing Mission of Fort Leavenworth and the U.S. Army Combined Arms Center located in Leavenworth County, Kans. The present mission includes: (1) The U.S. Army Command and General Staff College, (2) The combined arms combat developments activity, (3) The combined arms training developments activity, (4) The U.S. disciplinary barracks, (5) The U.S. Munson Army Hospital, (6) U.S. Army Communications Command detachment, (7) U.S. Army Training and Doctrine Command Data Processing Field Office, (8) Army field printing plant, (9) Defense Property Disposal Office, and (10) All needed functions to support the above activities (EIS Order No. 90866).

Final

Fort Ord Mission change, Monterey County, Calif., August 10: This actions involves the conversion of the Fort Ord Mission from a training center to a permanent station for the Seventh Infantry Division and the transfer of the command of the installation from the Headquarters, U.S. Army Training Center and Fort Ord to Headquarters, Seventh Infantry Division and Fort Ord. Under the old mission, the greater portion of the training dealt with the individual soldier. The new mission will deal primarily with unit-type training since elements of the division must train together to function effectively. Fort Ord is located on the coast of California approximately 118 miles south of San Francisco in Monterey County. Comments made by: HEW, DOE, DOT, DOI, EPA, AHP, State and local agencies, groups and individuals (EIS Order No. 90861).

ENVIRONMENTAL PROTECTION AGENCY

Final

Contact:

Ms. Alexandria Smith, Region X, Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington 98101, (202) 442-1285.

Combined sewer overflow abatement project, Spokane, Spokane County, Wash., August 6: Proposed is the issuance of contruction grant funding for a combined sewer overflow abatement project in the city and county of Spokane, Wash. The present system discharges untreated sewage into the Spokane River at more than 30 points throughout the city during times of heavy rainfall and snowmelt. The preferred alternative would involve the construction of a separate stormwater conveyance system which would include 120 miles of pipeline and the treatment of all sewage before release into the river (EPA-910/9-78-053). Comments made by: USDA, COE, HUD, DOI, DOT, AHP, State and local agencies, individuals, and businesses (FIS Order No. 90844).

Final

Contact: Mr. Clinton Spotts, Region VI, Environmental Protection Agency, First International Building, 1201 Elm Street, Dallas, Tex. 75270, (214) 767-2716.

San Antonio Wastewater Treatment System, grant, Bexar County, Tex., August 9: The proposed action is the granting of funds to the city of San Antonio, Bexar County, Tex. for improvement of wastewater treatment facilities in order to meet the requirements of the Federal Water Pollution Control Act amendments of 1972. The proposal consists of five major actions: (1) Abandonment of the Rilling Road Plant, (2) Improvement of the Leon Creek and Salado Creek plants, (3) Construction of a new plant, (4) Emplacement of sewage transfer lines, and (5) Expansion of sewage collector and interceptor system. Comments made by: AHP, USDA, COE, DOC, DOI, USAF, State and local agencies, individuals, and businesses (EIS Order No. 90856).

Final

Contact: Mr. Kenneth Bigos, Region IX, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, (415) 556-8030.

Eastern Marin-Southern Sonoma WWT management, Marin, Sonoma, County, Calif., August 6: Proposed is the awarding of funds to upgrade municipal WWT facilities of the East Marin-South Sonoma Counties area to meet the water quality standards required for discharges to the San Francisco Bay and its tributaries. This project has essentially evolved into four subregional study areas where treatment plant improvements and consolidated discharges are the suggested solutions. The four areas are: Southern Marin, Central Marin, North Marin and Southern Sonoma. All plants will need to achieve a minimum of secondary treatment, adequate treatment of wet weather flows, and improved outfall and disposal facilities (EPA-9-CA-Marion/Sonoma-WWTP-79). Comments made by: AHP, GSA, DOT, DOE, DOC, COE, State and local agencies, groups, individuals, and businesses (EIS Order No. 90843).

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7274, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, (202) 755-6306.

Draft

Ridgeway Estates subdivision, mortgage insurance, Shelby County, Tenn., August 9: Proposed is the issuance of HUD Home Mortgage Insurance for the Ridgeway subdivision and vicinity in Shelby County, Tenn. The development is located on a 3,854 acre tract of land and is expected to consist of approximately 12,000 dwelling units, including single family homes, apartments, and townhouses (HUD-R04-EIS-78-21) (EIS Order No. 90854).

Final

The Mesa, Hamden Hills at Aurora, Arapahoe County, Colo., August 10: Proposed is the issuance of HUD Home Mortgage Insurance for the Hampden Hills at Aurora, a part of the Mesa master plan, in Arapahoe County, Colo. The development will consist of 609 single family houses and lots, 366 cluster houses and 1,201 multifamily units (HUD-R.O. 8-EIS-79-XI-F). Comments made by: DOI, DOE, COE, SCS, HEW, EPA, State and local agencies (EIS Order No. 90871).

Final

Burlington conventional urban renewal project, Alamance County, N.C., August 6: Proposed is a conventional urban renewal program for the city of Burlington, Alamance County, N.C. The project provides for the rehabilitation, clearing, and redevelopment of 50.3 acres of blighted, predominantly nonresidential land located in the central business district area of Burlington. Approximately 77 buildings will be acquired and cleared, 58 buildings will be rehabilitated, and 13 will receive no treatment (HUD-RO4-EIS-78-08-F).

Comments made by: USDA, COE, EPA, GSA, HEW, DOI, state agencies (EIS Order No. 90845).

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, room 4256, Interior Building, Department of the Interior, Washington, D.C. 20240, (202) 343–3891.

Bureau of Land Management

Draft

Aravaipa Canyon Wilderness, Graham, Pinal Counties, Ariz., August 10: Proposed is the inclusion of the Aravaipa Canyon Wilderness Primitive Area, located in Graham and Pinal Counties, Ariz., in the National Wilderness Preservation System. The area encompasses 4,044 acres, and will be managed for the retention of primitive and wilderness values and the regulation of public use. The alternatives consider: (1) No action and (2) the increase of the size of the proposed wilderness area (DES–79–51). (EIS Order No. 90865).

Final

Beaufort Sea oil and gas lease sale, Alaska, August 10: Proposed is a Federal/State oil and gas lease sale in the Beaufort Sea off the coast of Alaska. The tracts extend from the Canning River on the east to the Kuparuk River on the west and generally seaward from the coast to the 66 foot isobath. Ownership involves 327,043 acres of State tracts, 89,167 acres of Federal tracts, and 97,977 acres which are under dispute, a total of 514,192 acres (FES–79–33). Comments made by: DOI, DOC, EPA, STAT, AHP, DOT, FERC, MMC, State and local agencies, groups, individuals and business (EIS Order No. 90870).

DEPARTMENT OF TRANSPORTATION

Contract: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, (202) 426–4357.

Federal Highway Administration

Draft

IA–163 improvement, Pella, Marion, Mahaska Counties, Iowa, August 6: Proposed is the improvement of a 10 mile segment of IA–163 in Marion and Mahaska Counties, Iowa. The facility would be extending from approximately 2½ miles northwest of the city of Pella to approximately 4 miles southeast of the east corporate limits. The alternatives consider three alignments through Pella providing a four lane facility, improvements to the present facilities and four alignments which would bypass Pella providing to two-lane rural facility (FHWA–IOWA–EIS–79–02–D) (EIS Order No. 90849).

I–690, Lake Onondaga west shore development, Onondaga, N.Y., August 9: Proposed is the construction of the Lake Onondaga northwest arterial connection from the Town of Van Buren to the Town of Geddes in Onondaga County, N.Y. The project includes the reconstruction of I–690/NY–690, construction of an interchange between I–690/NY–690, construction of an interchange between I–690 and the thruway exit 39 access road or relocation of the I–690/thruway exit 39 interchange, construction of an I–690/Van Vleck Road/State Fair Boulevard interchange and reconstruction of Van Vleck Road and State Fair Boulevard (FHWA–NY–EIS–77–05–D) (EIS Order No. 90853).

Final

FAP 51, Hanamaula to Ahukini, cutoff road; Kauai County, Hawaii, August 6: The proposed project involves construction of a cutoff highway in the Lihue area on the Island of Kauai, Kauai County, Hawaii. The Hanamaula-Ahukini cutoff road will extend Kapule Highway, FAP 51, northward from its present terminus at Ahukini Road, to Kuhio Highway just north of Hanamaula. The cutoff road will be constructed in two stages, with a two-lane roadway and a single two-lane bridge constructed in the first stage. During the second stage the cutoff road will be expanded to four lanes and a second two-lane bridge added. (FHWA–HI–EIS–78–03–F). Comments made by: DOT, USDA, DOI, HUD, EPA, AHP, COE, USAF, State and local agencies, groups, individuals, and businesses (EIS Order No. 90846).

I–95/MA–128 interchange and MA–128 improvements; Essex County, Mass., August 10: Proposed is a highway project in the city of Peabody, Essex County, Mass. The actions under consideration in this project are: (1) Completing I–95 from Forest Street Route 128; (2) Relocating and improving Route 128 from U.S. to Route 114 (Andover Street); and (3) An interchange between the new I–95 and the improved 128. The proposed I–95 from the Route 1 access ramps to Route 128, about a half mile long, will be a multilane divided facility. The proposed median and about 4.5 miles in length (FHWA–MASS–EIS–74–04–F). Comments made by: USDA, DOT, DOI, EPA, State and local agencies (EIS Order No. 90587).

The above final EIS was retracted in the July 20, 1979, **Federal Register**. The EIS has been refiled as of August 10, 1979. The comments are due on September 17, 1979.

EIS's Filed During the Week of Aug. 6 to 10, 1979

[Statement Title Index—By State and County]

State	County	Status	Statement title	Accession No.	Date filed	Orig agency No.
Alaska		Final	Beaufort Sea Oil and Gas Lease Sale	90870	08–10–79	DOI
Arizona	Graham	Draft	Aravaipa Canyon Wilderness	90865	08–10–79	DOI
	Pinal	Draft	Aravaipa Canyon Wilderness	90865	08–10–79	DOI
California	Marin	Final	Eastern Marin-Southern Sonoma WWT Mgmt.	90843	08–06–79	EPA
	Marion	Draft	Novata Center Development, Permit	90850	08–06–79	COE
	Monterey	Final	Elkhorn Slough Estuarine Sanctuary, Grant	90860	08–10–79	DOC
		Final	Fort Ord Mission Change	90861	08–10–79	USA
	Sonoma	Final	Eastern Marin-Southern Sonoma WWT Mgmt.	90843	08–06–79	EPA
Colorado	Arapahoe	Final	The Mesa, Hamden Hills at Aurora	90871	08–10–79	HUD
Florida	Franklin	Final	Apalachicola R. and Bay Estuarine Sanctuary, Grant.	90858	08–10–79	DOC
	Gulf	Final	Apalachicola R. and Bay Estuarine Sanctuary, Grant.	90858	08–10–79	DOC
	Putnam	Final	Seminole Plant, Units 1 and 2, Transmission	90868	08–10–79	USDA
Georgia		Final	Aquatic Plant Control, Georgia	90847	08–06–79	COE
Hawaii	Kauai	Final	FAP 51, Hanamaula to Ahukini, Cutoff Road	90846	08–06–79	DOT
Iowa	Allamakee	Final	161KV Transmission Line, Genoa, WI to Lansing, IA.	90859	08–10–79	USDA
	Mahaska	Draft	IA–163 Improvement, Pella	90849	08–06–79	DOT
	Marion	Draft	IA–163 Improvement, Pella	90849	08–06–79	DOT
Kansas	Leavenworth	Draft	Fort Leavenworth Ongoing Mission	90866	08–10–79	USA
Michigan	Benton	Draft	230KV Transmission Line, Benton Co. to Milaca	90867	08–10–79	USDA
	Mille Lacs	Draft	230KV Transmission Line, Benton Co. to Milaca	90867	08–10–79	USDA
Massachusetts	Essex	Final	I–95/MA–128 Interchange and MA–128 Improvements.	90587	08–10–79	DOT
Minnesota	Houston	Final	161KV Transmission Line, Genoa, WI to Lansing, IA.	90859	08–10–79	USDA
Missouri	Greene	Draft	Springfield Municipal Water Intake, Permit	90869	08–10–79	COE
Montana	Lincoln	Final	Zeigler Planning Unit, Kootenai NF	90863	08–10–79	USDA
	Sanders	Final	Beaver-Marten-Vermilion Planning Unit, Kootenai NF.	90857	08–10–79	USDA
New York	Onondaga	Draft	I–690, Lake Onondaga West Shore Development	90853	08–09–79	DOT
North Carolina	Alamance	Final	Burlington Conventional Urban Renewal Project	90845	08–06–79	HUD
Oregon	Lane	Draft	Belknap-Foley Geothermal Area, Willamette NF	90851	08–06–79	USDA
	Linn	Draft	Belknap-Foley Geothermal Area, Willamette NF	90851	08–06–79	USDA
Pennsylvania	Greene	Draft	Wheeling Creek Watershed Project	90848	08–06–79	USDA
	Washington					
South Carolina		Final	South Carolina Coastal Zone Management Program	90855	08–09–79	DOC

EIS's Filed During the Week of Aug. 6 to 10, 1979

[Statement Title Index—By State and County]

State	County	Status	Statement title	Accession No.	Date filed	Orig agency No.
Tennessee	Shelby	Draft	Ridgeway Estates Subdivision, Mortgage Insurance.	90854	08-09-79	HUD
		Draft	Supplement Knoxville International Energy Exposition.	90872	08-12-79	DOC
Texas	Atascosa	Supple	San Miguel Lignite Unit 1, Transmission (DS-1)	90852	08-08-79	USDA
	Bexar	Final	San Antonio Wastewater Treatment System, Grant.	90856	08-09-79	EPA
	Harris	Final	Upper White Oak Bayou and Tributaries	90862	08-10-79	COE
	Whitney	Supple	San Miguel Lignite Unit 1, Transmission (DS-1)	90852	08-08-79	USDA
Washington	Several	Final	Alpine Lakes Area Acquisitions	90864	08-10-79	USDA
	Spokane	Final	Combined Sewer Overflow Abatement Project, Spokane.	90844	08-06-79	EPA
West Virginia	Ohio	Draft	Wheeling Creek Watershed Project	90848	08-06-79	USDA
	Marshall					
Wisconsin	Veron	Final	161KV Transmission Line, Genoa, WI to Lansing, IA.	90859	08-10-79	USDA

Appendix II.—*Extension/Waiver of Review Periods on EIS's Filed With EPA*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Waiver/ extension	Date review terminate
DEPARTMENT OF AGRICULTURE					
Mr. Barry Flamm, Coordinator, Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 412A, Washington, D.C. 20250, (202) 447-3965.	Belknap-Foley Geothermal Area, Willamette NF, Linn and Lane Counties, Oreg.	Draft 90851	Aug. 17, 1979, see app. I.	Extension	Oct. 30, 1979.
	San Miguel Lignite Unit I, Associated Mine and Transmission Facilities, Atacosa and Whitney, Tex.	Draft supp. 90852	Aug. 17, 1979, see app. I.	Extension	Oct. 5, 1979.

Appendix III.—*EIS's Filed With EPA Which Have Been Officially Withdrawn by the Originating Agency*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Date of withdrawal
None.				

Appendix IV.—*Notice of Official Retraction*

Federal agency contact	Title of EIS	Status/number	Date notice published in "Federal Register"	Reason for retraction
None.				

Appendix V.—*Availability of Reports/Additional Information Relating to EIS's Previously Filed With EPA*

Federal Agency Contact	Title of Report	Date made available to EPA	Accession No.
None.			

Appendix VI.—*Official Correction*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Correction
DEPARTMENT OF COMMERCE				
Dr. Sidney R. Galler, Deputy Assistant Secretary, Environmental Affairs, Department of Commerce, Washington, D.C. 20230, (202) 377-4335.	Knoxville International Energy Exposition, Tennessee.	Draft Supplemental 90872	Should have been published in June 22, 1979 FEDERAL REGISTER.	See app. I for the notice of the final supplement on this project.

[FR Doc. 79-25577 Filed 8-16-79; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL COUNCIL ON THE AGING

Meeting

The Federal Council on the Aging was established by the 1973 amendments to the Older Americans Act of 1965 (Pub. L. 93–29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health, Education, and Welfare, the Commissioner on Aging, and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. app. 1, Sec. 10, 1976) that the Council will hold a meeting on September 12 from 1:00 p.m. to 5:00 p.m.; September 13 from 9:00 a.m. to 5:00 p.m. and September 14 from 9:00 a.m. to 4:00 p.m., Room 1813, HEW, Food and Drug Administration Building, 200 C Street, S.W., Washington, D.C. 20201.

The agenda will consist of a discussion of the differences in social security benefits based on sex and related issues; a review of the Administration's Mental Health Systems Act Legislation; the impact of the energy crisis on older Americans now and in the future; and, the 1981 White House Conference on Aging. Status reports will be given by the Council's standing committees on proposed national policy recommendations on long term care; older workers; the needs and concerns of the rural and Indian elderly; the congressionally mandated study; and the disposition of the Study on Policy Issues Concerning the Minority Elderly. The Council will also discuss other issues relevant to the well-being of the aged.

Further information on the Council may be obtained from the Federal Council on the Aging, Washington, D.C. 20201, telephone (202) 245–0441. FCA meetings are open for public observation.

Dated: August 10, 1979.

Nelson H. Cruikshank,

Chairman, Federal Council on the Aging.

[FR Doc. 79–25526 Filed 8–16–79; 8:45 am]

BILLING CODE 4110–92–M

Long Term Care Committee; Meeting

The Federal Council on the Aging was established by the 1973 amendments to the Older Americans Act of 1965 (Pub. L. 93–29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health, Education, and Welfare, the Commissioner on Aging, and the Congress, on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. app. 1, sec. 10, 1976) that the Committee will hold a meeting on Wednesday, September 5, 1979 from 9:30 a.m. to 4:30 p.m., in Room 529A–503A, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201.

The agenda will consist of a discussion with representatives from non-Federal agencies on the issues and problems in long term care.

Further information on the Council may be obtained from the Federal Council on the Aging, Washington, D.C. 20201, telephone (202) 245–0441. FCA meetings are open for public observation.

Dated: August 13, 1979.

Nelson H. Cruikshank,

Chairman, Federal Council on the Aging.

[FR Doc. 79–25527 Filed 8–16–79; 8:45 am]

BILLING CODE 4110–92–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FDAA–578–DR; Docket No. NFD–729]

Alabama; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This Notice amends the Notice of a major disaster for the State of Alabama (FDA–578–DR), dated April 18, 1979.

DATED: July 20, 1979.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Office of Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 634–7825.

NOTICE: The Notice of a major disaster for the State of Alabama dated April 18, 1979, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 18, 1979. For Federal assistance to disaster-damaged oyster beds under Section 4(b), Public Law 88–309:

The oyster reefs contained in the submerged lands of Mobile Bay, property of the State of Alabama.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance; No. 11.406, Commercial Fisheries Disaster Assistance.)

William H. Wilcox,

Acting Director, Office of Disaster Response and Recovery, Federal Emergency Management Agency.

[FR Doc. 79–25535 Filed 8–16–79; 8:45 am]

BILLING CODE 4210–22–M

[FEMA–594–DR; Docket No. FEMA–3]

California; Notice of Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of California (FEMA–594–DR), dated July 27, 1979, and related determinations.

DATED: July 27, 1979.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Office of Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 634–7825.

NOTICE: Pursuant to the authority vested in the Director of Federal Emergency Management Agency by the President under Executive Order 12148 effective July 15, 1979, and delegated to me by the Director under Federal Emergency Management Agency Delegation of Authority, and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that, in a letter of July 27, 1979, the President declared a major disaster as follows:

I have determined that the damage in certain areas of the State of California resulting from heavy rains, flash flooding and mud flows on July 19–20, 1979, is of sufficient

severity and magnitude to warrant a major-disaster declaration under Public Law 93–288. I therefore declare that such a major disaster exists in the State of California.

Notice is hereby given that pursuant to the authority vested in the Director of Federal Emergency Management Agency under Executive Order 12148, and delegated to me by the Director under Federal Emergency Management Agency Delegation of Authority, I hereby appoint Mr. Francis S. Manda of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared major disaster.

I do hereby determine the following area of the State of California to have been affected adversely by this declared major disaster.

The following County for Individual Assistance only: Riverside County.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

William H. Wilcox,

Acting Director, Office of Disaster Response and Recovery, Federal Emergency Management Agency.

[FR Doc. 79–25538 Filed 8–16–79; 8:45 am]

BILLING CODE 4210–22–M

[FEMA–596–DR; Docket No. NFD–735]

Indiana; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This Notice amends the Notice of a major disaster for the State of Indiana (FEMA–596–DR), dated July 31, 1979.

DATED: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Office of Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 634–7825.

NOTICE: The Notice of a major disaster for the State of Indiana dated July 31, 1979, is hereby amendment amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 31, 1979.

The following County for Public Assistance only: Knox.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

William H. Wilcox,

Acting Director, Office of Disaster Response and Recovery, Federal Emergency Management Agency.

[FR Doc. 79–25529 Filed 8–17–79; 8:45 am]

BILLING CODE 4210–22–M

[FEMA–596–DR; Docket No. NFD–734]

Indiana; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This Notice amends the Notice of a major disaster for the State of Indiana (FEMA–596–DR), dated July 31, 1979.

DATED: August 6, 1979.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Office of Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 634–7825.

NOTICE: The Notice of a major disaster for the State of Indiana dated July 31, 1979, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 31, 1979.

The following Counties for Public Assistance only:

Greene, Jackson, Lawrence.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

William H. Wilcox,

Acting Director, Office of Disaster Response and Recovery, Federal Emergency Management Agency.

[FR Doc. 79–25530 Filed 8–16–79; 8:45 am]

BILLING CODE 4210–22–M

[FEMA–596–DR; Docket No. NFD–733]

Indiana; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This Notice amends the Notice of a major disaster for the State of Indiana (FEMA–596–DR), dated July 31, 1979.

DATED: August 3, 1979.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Office of Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 634–7825.

NOTICE: The Notice of a major disaster for the State of Indiana dated July 31, 1979, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 31, 1979.

The following County for Public Assistance in addition to Individual Assistance: Vermillion.

The following Counties for Individual Assistance and Public Assistance:

Sullivan, Vigo.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

William H. Wilcox,

Acting Director, Office of Disaster Response and Recovery, Federal Emergency Management Agency

[FR Doc. 79–25531 Filed 8–16–79; 8:45 am]

BILLING CODE 4210–22–M

[FEMA–596–DR; Docket No. NFD–732]

Indiana; Notice of Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Indiana (FEMA–596–DR), dated July 31, 1979, and related determinations.

DATED: July 31, 1979

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Office of Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 634–7825.

NOTICE: Pursuant to the authority vested in the Director of Federal Emergency Management Agency by the President under Executive Order 12148 effective July 15, 1979, and delegated to me by the Director under Federal Emergency Management Agency Delegation of Authority, and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that, in a letter of July 31, 1979, the President declared a major disaster as follows:

I have determined that the damage in certain areas of the State of Indiana resulting from severe storms and flooding beginning on or about July 25, 1979, is of sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93–288. I therefore declare that such a major disaster exists in the State of Indiana.

Notice is hereby given that pursuant to the authority vested in the Director of Federal Emergency Management

Agency under Executive Order 12148, and delegated to me by the Director under Federal Emergency Management Agency Delegation of authority, I hereby appoint Mr. Dennis H. Kwiatkowski of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared major disaster.

I do hereby determine the following areas of the State of Indiana to have been affected adversely by this declared major disaster.

The following Counties for Individual Assistance and Public Assistance:

Crawford, Gibson, Orange.

The following Counties for Public Assistance only:

Dubois, Martin, Perry, Pike, Spencer, Warrick.

The following County for Individual Assistance only: Vermillion.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

William H. Wilcox,

Acting Director, Office of Disaster Response and Recovery, Federal Emergency Management Agency.

[FR Doc. 79-25532 Filed 8-16-79; 8:45 am]

BILLING CODE 4210-22-M

[FDAA-584-DR; Docket No. NFD-728]

Louisiana; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This Notice amends the Notice of a major disaster for the State of Louisiana (FDAA-584-DR), dated May 2, 1979.

DATED: July 15, 1979.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Office of Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 634-7825.

NOTICE: The Notice of a major disaster for the State of Louisiana dated May 2, 1979, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 2, 1979.

For Federal assistance to disaster-damaged oyster beds under Section 4(b), Public Law 88-309:

The natural oyster seed grounds contained in the submerged lands of Lake Borgne and Breton Sound, property of the State of Louisiana.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance; No. 11.406, Commercial Fisheries Disaster Assistance.)

William H. Wilcox,

Acting Director, Office of Disaster Response and Recovery, Federal Emergency Management Agency.

[FR Doc. 79-25536 Filed 8-16-79; 8:45 am]

BILLING CODE 4210-22-M

[FEMA-595-DR; Docket No. NFD-731]

Texas; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This Notice amends the Notice of a major disaster for the State of Texas (FEMA-595-DR), dated July 28, 1979.

DATED: August 8, 1979.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Office of Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 634-7825.

NOTICE: The Notice of a major disaster for the State of Texas dated July 28, 1979, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 28, 1979.

The following for Public Assistance in addition to Individual Assistance:

Brazoria County
Galveston County
Precincts numbers 1 and 2 of Harris County

The following for Public Assistance Only: The City of Dayton in Liberty County.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

Thomas R. Casey,

Acting Director, Office of Disaster Response and Recovery, Federal Emergency Management Agency.

[FR Doc. 79-25533 Filed 8-16-79; 8:45 am]

BILLING CODE 4210-22-M

[FEMA-595-DR; Docket No. NFD-730]

Texas; Notice of Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Texas (FEMA-595-DR), dated July 28, 1979, and related determinations.

DATED: July 28, 1979.

FOR FURTHER INFORMATION CONTACT: Sewell H. E. Johnson, Office of Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 634-7825.

NOTICE: Pursuant to the authority vested in the Director of Federal Emergency Management Agency by the President under Executive Order 12148 effective July 15, 1979, and delegated to me by the Director under Federal Emergency Management Agency Delegation of Authority, and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that, in a letter of July 28, 1979, the President declared a major disaster as follows:

I have determined that the damage in certain areas of the State of Texas resulting from severe storms and flash flooding beginning on or about July 24, 1979, is of sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93-288. I therefore declare that such a major disaster exists in the State of Texas.

Notice is hereby given that pursuant to the authority vested in the Director of Federal Emergency Management Agency under Executive Order 12148, and delegated to me by the Director under Federal Emergency Management Agency Delegation of Authority, I hereby appoint Mr. Dale Milford of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared major disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared major disaster.

The following Counties for Individual Assistance only.

Chambers County
Brazoria County
Galveston County
Harris County
Jefferson County
Orange County

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

William H. Wilcox,

Acting Director, Office of Disaster Response and Recovery, Federal Emergency Management Agency.

[FR Doc. 79-25534 Filed 8-16-79; 8:45 am]

BILLING CODE 4210-22-M

[FDAA-580-DR; Docket No. FEMA-2]

Texas; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This Notice amends the Notice of a major disaster for the State of Texas (FDAA-580-DR), dated April 26, 1979.

DATED: July 20, 1979.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Office of Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 634-7825.

NOTICE: The Notice of a major disaster for the State of Texas dated April 26, 1979, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 26, 1979. For Federal assistance to disaster-damaged oyster beds under Section 4(b), Public Law 88-309: The oyster reefs contained in the submerged lands of Galveston Bay, property of the State of Texas.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance; No. 11.406, Commercial Fisheries Disaster Assistance.)

William H. Wilcox,

Acting Director, Office of Disaster Response and Recovery, Federal Emergency Management Agency.

[FR Doc. 79-25539 Filed 8-16-79; 8:45 am]

BILLING CODE 4210-22-M

[FEMA-593-DR; Docket No. NFD-727]

Commonwealth of Virginia; Notice of Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA-593-DR), dated July 20, 1979, and related determinations.

DATED: July 20, 1979.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Program Support Staff, Office of Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20410 (202) 634-7825.

NOTICE: Pursuant to the authority vested in the Director of Federal Emergency Management Agency by the President under Executive Order 12148 effective July 15, 1979, and delegated to me by the Director under Federal Emergency Management Agency Delegation of Authority, and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143), notice is hereby given that, in a letter of July 20, 1979, the President declared a major disaster as follows:

> I have determined that the damage in certain areas of the Commonwealth of Virginia resulting from severe storms and flash flooding on July 15-16, 1979, is of sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93-288. I therefore declare that such a major disaster exists in the Commonwealth of Virginia.

Notice is hereby given that pursuant to the authority vested in the Director of Federal Emergency Management Agency under Executive Order 12148, and delegated to me by the Director under Federal Emergency Management Agency Delegation of Authority, I hereby appoint Mr. Robert J. Adamcik of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared major disaster.

I do hereby determine the following area of the Commonwealth of Virginia to have been affected adversely by this declared major disaster.

The following County for Individual Assistance and Public Assistance: Buchanan County.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

William H. Wilcox,

Acting Director, Office of Disaster Response and Recovery, Federal Emergency Management Agency.

[FR Doc. 79-25537 Filed 8-16-79; 8:45 am]

BILLING CODE 4210-22-M

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

Open Committee Meetings

Pursuant to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, September 6, 1979
Thursday, September 20, 1979
Thursday, September 27, 1979

The meetings will convene at 10 a.m., and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives of five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives of five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the prevailing rate system and other matters pertinent to the establishment of prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Managment thereon.

These scheduled meetings will convene in open session with both labor and management representatives attending. During the meeting either the labor members or the managment members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would impair to an unacceptable degree the ability of the Committee to reach a consensus on the matters being considered and disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public on the basis of a determination made by the Director of the Office of Personnel Management under the provisions of Section 10(d) of the Federal advisory Committee Act (P.L. 92-463) and 5 U.S.C., section 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations thereon, and related activities. These reports are also available to the public, upon written request to the Committee Secretary.

Members of the public are invited to submit material in writing to the Chairman concerning Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information concerning these meetings may be obtained by contacting the Secretary, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E

Street, NW., Washington, D.C. 20415 (202–632–9710).

Jerome H. Ross,

Chairman, Federal Prevailing Rate Advisory Committee.

August 10, 1979.

[FR Doc. 79–25461 Filed 8–16–79; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committees; Meetings

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National Advisory bodies scheduled to assemble during the month of September 1979:

National Advisory Mental Health Council—September 18–20, 1979; 9:30 a.m., Conference Rooms G and H, Parklawn Building, Rockville, Maryland 20857.

Open—September 18.

Closed—Otherwise.

Contact Mrs. Zelia Diggs, Room 11–101, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301/443/4333.

Purpose: The National Advisory Mental Health Council advises the Secretary of Health, Education, and Welfare, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, regarding the policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research, training, and services in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and the amount of, these grants.

Agenda: On September 18 the meeting will be open for discussion of NIMH policy issues. These will include current administrative, legislative, and program developments. Otherwise, the Council will conduct a final review of grant applications for Federal assistance and these sessions will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions set forth in section 552b(c)(6), Title 5 U.S. Code, Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

National Advisory Council on Alcohol Abuse and Alcoholism—September 17–18, 1979, 9:00 a.m., Conference Room 10, Building 31C, National Institutes of Health, Bethesda, Maryland 20014.

Open—September 17.

Closed—September 18.

Contact James F. Vaughan, Room 16C–10, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301/443–3888.

Purpose: The Council advises the Secretary of Health, Education, and Welfare regarding policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these applications in terms of scientific merit and coherence with Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.

Agenda: September 17 will be devoted to general business of the Council, administrative reports, and a discussion of National Institute on Alcohol Abuse and Alcoholism training and treatment programs.

September 18, the Council will conduct a final review of grant applications for Federal assistance and this session will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions set forth in Section 552b(c)(6), Title 5 U.S. Code and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

National Advisory Council on Drug Abuse—September 27 and 28, 1979, Conference Room C, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Closed: September 27, 1979, 9:30 a.m.–Noon.

Open: Otherwise.

Contact Ms. Pamela Jo Thurber, Room 1005, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 301/443–6480.

Purpose: The National Advisory Council on Drug Abuse advises and makes recommendations to the Secretary of Health, Education, and Welfare, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Drug Abuse, on the development of new initiatives and priorities, and the efficient administration of drug abuse research, training, demonstration, prevention, and community services programs. The Council also gives advice on policies and priorities for drug abuse grants and contracts, and reviews and makes recommendations on grant applications.

Agenda: From 9:30 a.m. to 12 noon, September 27, the meeting shall be closed for final review of grant applications for Federal assistance in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

The remainder of the meeting from 1:30 p.m. on September 27 until adjournment on September 28 will be open to the public for a discussion of issues in the field of drug abuse, and administrative announcements.

Substantive program information may be obtained from the contact persons listed above. The NIMH Information Officer who will furnish upon request summaries of the meeting and rosters of the Council members is Mr. Paul Sirovatka, Chief, Public Information Branch, Division of Scientific and Public Information, NIMH, Room 15–105, 5600 Fishers Lane, Rockville, Maryland 20857, 301/443–4536. The NIAAA Information Officer who will furnish upon request summaries of the meeting and rosters of the Council members is Mr. Harry Bell, Associate Director, Office of Public Affairs, NIAAA, Room 11A–17, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301/443–3306. For the NIDA, summaries of the meeting and rosters of the Council members may be obtained from the contact person listed above.

Dated: August 10, 1979.

Elizabeth A. Connolly,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 79–25440 Filed 8–16–79; 8:45 am]

BILLING CODE 4110–86–M

Advisory Committees; Meetings

In Accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National Advisory body scheduled to assemble during the month of September, 1979.

Mental Health Small Grant Review Committee—September 20–22, 1979, 1:00 p.m., Club Room A and B, the Shoreham Americana Hotel, 2500 Calvert Street, N.W., Washington, D.C. 20008.

Open: September 20, 1:00–2:00 p.m.

Closed: Otherwise.

Contact: Mary D. Cope, Room 10C–14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301/443–4337.

Purpose: The Committee is charged with the initial review of small grant applications for Federal assistance in all disciplines relevent to the National Institute of Mental Health and for small grant projects submitted for support to other Institutes of the Alcohol, Drug Abuse, and Mental Health Administration, and makes recommendations to the National Advisory Councils of the respective Institutes for final review.

Agenda: From 1:00–2:00 p.m. on September 20, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determinations, by the Administrator, Alcohol, Drug Abuse and Mental Health Administration, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463 (5 U.S.C Appendix I).

Substantive program information may be obtained from the contact person listed above. The NIMH Information Officer who will furnish upon request summaries of the meeting and rosters of

the Committee members is Mr. Paul Sirovatka, Chief, Public Information Branch, Division of Scientific and Public Information, NIMH, Room 15–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301/443–4536.

Dated: August 10, 1979.

Elizabeth A. Connolly,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 79–25441 Filed 8–16–79; 8:45 am]

BILLING CODE 4110–88–M

Food and Drug Administration

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming consumer exchange meeting to be chaired by Hayward E. Mayfield, Nashville District Director, Nashville, TN.

DATE: The meeting will be held at the Radnor Baptist Towers, Inc., Community Room, 3110 Nolensville Rd., Nashville, TN 37211.

FOR FURTHER INFORMATION CONTACT: Barbara B. Shields, Consumer Affairs Officer, Food and Drug Administration, 297 Plus Park Blvd., Nashville, TN 37217, 615–251–7127.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials to identify and set priorities for current and future health concerns; to enhance relationships between local consumers and FDA's Nashville District Office; and to contribute to the agency's policymaking decisions on vital issues; and more specifically to obtain input on the new patient labeling proposal.

Dated: August 9, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79–25110 Filed 8–16–79; 8:45 am]

BILLING CODE 4110–03–M

[Docket No. 78D–0343]

Potassium Iodide as a Thyroid-Blocking Agent in a Radiation Emergency; Changes To labeling Guideline

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces several minor changes in the labeling guideline developed by the Bureau of Drugs for potassium iodide as a thyroid-blocking agent. These changes are based on the agency experience gained during its involvement in the Three-Mile Island nuclear reactor accident. The purpose of this announcement is to outline guideline labeling that is acceptable to the agency for the benefit of persons who intend to submit a new drug application (NDA) for potassium iodide in oral dosage forms for use as a thyroid-blocking agent.

EFFECTIVE DATE: The date of the guideline is August 17, 1979.

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

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

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 15, 1978 (43 FR 58798), FDA announced the availability of a labeling guideline for potassium iodide in oral dosage forms for use as a thyroid-blocking agent in a radiation emergency. At the time of the radiation emergency at Three-Mile Island, FDA arranged for an emergency supply of potassium iodide because it was not commercially available in sufficient quantity. Although the drug was not used and its labeling intended for the public was not distributed, FDA experience with this drug gained during its involvement in the Three-Mile Island nuclear reactor accident has shown that several minor changes should be made to the labeling guideline.

When the labeling guideline was first written, the agency believed that it was not necessary for the dropper or dropper system of each manufacturer to deliver a uniform amount of potassium iodide per drop. Thus, the December 15, 1978 guideline labeling did not specify how many milligrams (mg) of potassium iodide a calibrated drop should contain. Instead, each manufacturer was to determine the amount of potassium iodide its dropper or dropper system delivered and to calculate how many drops would equal 65 or 130 mg. (Sixty-five mg is one-half the daily dose for persons 1 year and older and the full daily dose for persons under 1 year.)

In arranging for an emergency supply of potassium iodide for potential use in the area around the Three-Mile Island nuclear reactor site, however, the agency realized that uniform dosage instructions may be critical. It is important for each manufacturer of saturated solution of potassium iodide for thyroid-blocking in a radiation emergency to use a dropper or dropper system that delivers an equal amount of saturated solution of potassium iodide per drop. A nuclear reactor accident could clearly affect more than one State. Under the present guideline, if the States involved have received their supplies of potassium iodide from different manufacturers, each manufacturer's dropper or dropper system might require a different number of drops of potassium iodide to deliver the proper dose. Public confusion, if not actual danger to the public health, may result if different dosage advice must be given by the various public health authorities. This is particularly likely when the dosage advice of one public health authority is given over the public media and it reaches people in different States. To preclude this public health danger and because a uniform potency is feasible, the labeling guideline is revised to state that the dropper or dropper system delivers a calibrated drop containing 21 mg of potassium iodide. Also, an important advantage of a uniform 21 mg or multi-drop dose compared to a one or two drop dose is that in case of an error in calculating the number of drops, the differences in the amount of potassium iodide delivered are significantly less with the mulit-drop dose. Thus, the multi-drop dose significantly reduces the chance a person will receive a sub-therapeutic dose or a dose that greatly exceeds the recommended dose. The agency believes this is important for the safe and effective use of this drug product.

Several other revisions to the labeling guideline include description and dosage language that is modified to be consistent with the revised dropper or dropper-system language. Several editorial changes are also made to the labeling intended to be provided to the public. These changes are intended to avoid information overload and thereby encourage public compliance, yet still provide essential information about precautions and side effects.

Finally, although FDA is prepared to approve an NDA submitted for various oral dosage forms of potassium iodide for thyroid-blocking in a radiation emergency, the agency especially encourages an NDA submission for a solid oral dosage form (tablet). The agency believes a tablet is the most suitable dosage form for several

reasons, including ease of storage and clarity of directions for use.

The guideline is entitled "Guideline Labeling for Potassium Iodide for Use as a Thyroid-Blocking Agent in a Radiation Emergency." The date of the guideline is August 17, 1979. This guideline and the labeling included in it supercedes the December 15, 1978 guideline.

The guideline is available for public examination between 9 a.m. and 4 p.m., Monday through Friday, in the office of the Hearing Clerk (address below). Requests for single copies of the guideline can be made in writing to that office.

Interested persons may submit written comments on the guideline to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857. Such comments will be considered in determining whether further amendments to or revisions of the guideline are warranted. Comments should be in four copies (except that individuals may submit single copies), identified with the Hearing Clerk docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the Hearing Clerk's office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 9, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-25111 Filed 8-16-79; 8:45 am]

BILLING CODE 4110-03-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

The Commissioner approves the scheduling of meetings at locations outside of the Washington, DC, area on the basis of the criteria of 21 CFR 14.22 of FDA's regulations relating to public advisory committees.

Committee name	Date, time, and place	Type of meeting and contact person
1. Subcommittee on Hepatotoxicity of the Gastrointestinal Drugs Advisory Committee.	September 24, 9 a.m., Conference Rm. C, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Open public hearing, 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 5 p.m.; Joan C. Standaert (HFD-110), 5600 Fishers Lane, Rockville, MD 20850, 301-443-4730.

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of gastrointestinal disorders.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. The Committee will discuss the draft guidelines for testing of drugs in patients with liver disease and the draft guidelines for evaluation of hepatotoxicity in children.

Committee name	Date, time, and place	Type of meeting and contact person
2. Microbiology/Immunology/Cell Biology Subcommittee of the Science Advisory Board.	September 24 and 25, 8:30 a.m., Bldg. 13, National Center for Toxicological Research, Jefferson, AR.	Open public hearing, September 24, 8:30 a.m. to 9:30 a.m. open committee discussion September 24, 9:30 a.m. to 4:30 p.m. September 25, 8:30 a.m. to 1 p.m.; Ruth Magee, National Center for Toxicological Research, Jefferson, AR 72079, 501-541-4528.

General function of the Committee. The Committee advises on establishment and implementation of a research program that will assist the Commissioner of Food and Drugs and the Administrator, Environmental Protection Agency, in fulfilling their regulatory responsibilities.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. The Subcommittee will discuss introduction to the immunology program at NCTR; models for evaluating immunocompetence, humoral immunity, and cell-mandated immunity and macrophage function; support sytems for immunotoxicological studies; methods for separation of cells and nuceli during cell cycles; investigation of proteins and DNA after exposure to toxic agents; new studies under development in immunology; microsurveillance program status; expanded role of virology; collaborative endeavors in biodegradation of azo dyes and role microflora in carcinogenesis.

Committee name	Date, time, and place	Type of meeting and contact person
3. Mutagenesis Subcommittee of the Science Advisory Board	September 26, 8:30 a.m. Bldg. 13, National Center for Toxicological Research, Jefferson, AR.	Open public hearing, 8:30 a.m. to 9:30 a.m.; open committee discussion 9:30 a.m. to 4 p.m., Ruth Magee, National Center for Toxicological Research, Jefferson, AR 72079, 501-541-4528.

General function of the Committee. The Committee advises on establishment and implementation of a research program that will assist the Commissioner of Food and Drugs and the Administrator, Environmental Protection Agency, in fulfilling their regulatory responsibilities.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. The Subcommittee will discuss: Introduction—Development and Modification of in vivo microlesion and Macrolesion assays potential for risk assessment; final report on Exper. 014–Microlesion assay; future activities and direction; strain selection studies for HTA development; positive control studies for HTA development; discussion of spontaneous frequency protocol; utility of cytogenic analysis as related to translocation.

Committee name	Date, time, and place	Type of meeting and contact person
4. Miscellaneous External Drug Products Panel	September 28 and 29, 9 a.m. Conference Rm. B, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD, (September 28), Holiday Inn, Bethesda, MD, (September 29).	Open public hearing September 28, 9 a.m. to 10 a.m.; open committee discussion September 28, 10 a.m. to 4:30 p.m.; September 29, 9 a.m. to 4:30 p.m.; John T. McElroy (HFD–510), 5600 Fishers Lane, Rockville, MD 20857, 301–443–1430.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the Committee. Those who desire to make such a presentation should notify the contact person before September 21, 1979, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for the presentation.

Open committee discussion. The Panel will review data submitted in response to the over-the-counter (OTC) review's call for data for this Panel (see also § 330.10(a)(2) (21 CFR 330.10(a)(2))).

The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Committee name	Date, time, and place	Type of meeting and contact person
5. Miscellaneous Internal Drug Products Panel	September 29 and 30, 9 a.m., University of Washington, School of Pharmacy, Bagley Hall, Rm. 319, Seattle, WA.	Open public hearing, September 29, 9 a.m. to 10 a.m.; open committee discussion September 29, 10 a.m. to 4:30 p.m.; September 30, 9 a.m. to 4:30 p.m.; John T. McElroy, (HFD–510), 5600 Fishers Lane, Rockville, MD 20857, 301–443–1430.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the Committee. Those who desire to make such a presentation should notify the contact person before September 21, 1979, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open committee discussion. The Panel will review data submitted in response to the over-the-counter (OTC) review's call for data for this Panel (see also § 330.10(a)(2) (21 CFR 330.10(a)(2))).

The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting.

Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC–18), 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner approves the scheduling of meetings at locations outside of the Washington, DC, area on the basis of the criteria of 21 CFR 14.22 of FDA's regulations relating to public advisory committees.

Dated: August 10, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79–25277 Filed 8–16–79; 8:45 am]

BILLING CODE 4110–03–M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Committee name	Date, time, and place	Type of meeting and contact person
Fertility and Maternal Health Drugs Advisory Committee.	September 27 and 28, Conference Rm. G–H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Open public hearing, September 27, 9 a.m. to 10 a.m., open committee discussion September 27, 10 a.m. to 11:30 a.m.; closed committee deliberations September 27, 11:30 a.m. to 1:30 p.m.; open committee discussion September 27, 1:30 p.m. to 5 p.m.; September 28, 9 a.m. to 5 p.m., A. T. Gregoire, (HFD–130), 5600 Fishers Lane, Rockville, MD 20857, 301–443–3520.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in the practice of obstetrics and gynecology.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. The Committee will discuss Norethindrone Enanthate (IND 11,693); Ritodrine (NDA 18–280) for treatment of premature labor; and safety and efficacy of Pitocin Citrate Buccal Tablets (NDA 13–508) for induction of labor.

Closed committee deliberations. The Committee will discuss safety issues relating to IND 11,693. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC–18), 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency

documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee metings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

Dated: August 10, 1979.

Joseph P. Hile,

Acting Commissioner of Food and Drugs.

[FR Doc. 79-25279 Filed 8-16-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79N-0109]

American Cyanamid Co. et al.; Mephenoxalone Tablets and Emylcamate Tablets; Withdrawal of Approval of New Drug Applications; Correction

AGENCY: Food and Drug Administration.

ACTION: Correction.

SUMMARY: In FR Doc. 71-11057 (Docket No. FDC-D-350) appearing at page 14276 in the Federal Register of August 3, 1971, the NDA number for the product Trepidone Tablets, Lederle Laboratories, listed as NDA 12-741, is corrected to read NDA 12-471.

FOR FURTHER INFORMATION CONTACT: Herbert Behrens, Bureau of Drugs (HFD-105), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4320.

Dated: August 7, 1979.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 79-25272 Filed 8-16-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79F-0210]

American Cyanamid Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The American Cyanamid Co. has filed a petition proposing that the specifications for glycerol esters of tall oil rosin, presently listed for use as a component of chewing gum base, be amended.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTAL INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7A3322) has been filed by American Cyanamid Co., Wayne, NJ 07470, proposing that the specifications for glycerol esters of tall oil rosin, presently listed for use as a component of chewing gum base in § 172.615(a) (21 CFR 172.615(a)), be amended by changing the acid specification number to read "not to exceed 10" rather than "5-12" as presently stated.

The agency has determined that the proposed action falls under § 25.1(f)(1)(iv) (21 CFR 25.1(f)(1)(iv)) and is exempt from the need of an environmental impact analysis report, and that no environmental impact statement is necessary.

Dated: August 7, 1979.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 79-25274 Filed 8-16-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79N-0105]

Blue Line Chemical Co., et al.; New Drug Applications; Withdrawal of Approval; Correction

AGENCY: Food and Drug Administration.

ACTION: Correction.

SUMMARY: In FR Doc. 73-1940 (Docket No. FDC-D-581) appearing at page 3208 in the Federal Register of February 2,1973, the NDA number for the product Balcort Solution and Vaginal Suppositories, Endo Laboratories, listed as NDA 10-621, is corrected to read NDA 10-612.

FOR FURTHER INFORMATION CONTACT: Herbert Behrens, Bureau of Drugs (HFD-105), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4320.

Dated: August 7, 1979.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 79-25268 Filed 8-16-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79N-0107]

Certain Combination Antacid-Anticholinergic Drugs; Estomul Tablets and Estomul Liquid; Martab No. 2 and No. 3 Tablets; Final Order on Objections and Requests for a Hearing Regarding Withdrawal of Approval of New Drug Application; Correction

AGENCY: Food and Drug Administration.

ACTION: Correction.

SUMMARY: In FR Doc. 73-21644 (Docket No. FDC-D-566) appearing at page 28094 in the Federal Register of October 11, 1973, the NDA number for the product Estomul Liquid and Tablets, Riker Laboratories, listed in the last paragraph on page 28101 as NDA 12-820, is corrected to read NDA 12-830.

FOR FURTHER INFORMATION CONTACT: Herbert Behrens, Bureau of Drugs (HFD-105), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4320.

Dated: August 7, 1979.

J. Richard Crout.

Director, Bureau of Drugs.

[FR Doc. 79-25267 Filed 8-16-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 75N-0230; DESI 1786]

Certain Combination Drugs Containing Organic Nitrates; Opportunity for Hearing on Proposal To Withdraw Approval of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice proposes to withdraw approval of new drug applications for certain organic nitrates combined with a sedative used to treat angina pectoris and offers an opportunity for a hearing on the proposal. This class of drug product was previously concluded to lack substantial

evidence of effectiveness. Some of the drug products are no longer marketed.

DATES: Any request for hearing must be submitted on or before September 17, 1979. All data and information relied upon in support of any such request and any other comments must be submitted on or before October 16, 1979.

ADDRESSES: Communications in response to this notice are to be identified with Docket No. 75N–0230 and reference number DESI 1786, and directed to the appropriate office below.

Requests for hearing: Hearing Clerk (HFA–305), Rm. 4–65, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Suzanne O'Shea, Bureau of Drugs (HFD–32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 1786, Docket No. FDC–D–643, now Docket No. 75N–0230) published in the **Federal Register** of February 25, 1972 (37 FR 4001), isosorbide dinitrate and pentaerythritol tetranitrate, either alone or in combination with another drug, were classified as possibly effective in the treatment, maintenance, and prophylaxis of angina pectoris based on a report of the National Academy of Sciences-National Research Council (NAS–NRC).

In a notice of opportunity for a hearing published in the **Federal Register** of August 29, 1973 (38 FR 23349) and in an amended notice of opportunity for a hearing published in the **Federal Register** of December 9, 1975 (40 FR 57377) the Commissioner of Food and Drugs proposed to withdraw approval of the new drug applications.

Except for the new drug applications that are the subjects of hearing requests, approval of all new drug applications listed in the August 29, 1973 notice of opportunity for hearing was withdrawn because the combinations lack substantial evidence of effectiveness. The notices withdrawing approval were published in the **Federal Register** of March 31, 1976 (41 FR 13646) and April 14, 1978 (43 FR 15778).

The drug products that are the subject of this notice were inadvertently omitted from the previous notices of opportunity for hearing and have the same active ingredients as the drug products for which approval was previously withdrawn. Therefore, it is necessary to initiate proceedings to withdraw approval of the following new drug applications:

NDA 16–193; Sorbitrate with Phenobarbital Tablets containing isosorbide dinitrate and phenobarbital; Stuart Pharmaceuticals, Division of ICI Americas, Inc., Wilmington, DE 19897.

NDA 16–460; Pentaerythritol Tetranitrate 10 milligrams with Phenobarbital ¼ grain tablets, and Pentaerythritol Tetranitrate 20 milligrams with Phenobarbital ¼ grain tablets; Kirkman Laboratories, Inc., 934 N. E. 25th Ave., Portland, OR 97208.

NDA 16–554; Pentran No. 3 with Phenobarbital ¼ grain tablets, and Pentran No. 4 with Phenobarbital ¼ grain tablets containing pentaerythritol and phenobarbital; Halsey Drug Co., Inc., 1827 Pacific St., Brooklyn, NY 11233.

NDA 16–556; Pentaerythritol Tetranitrate 10 milligrams with Phenobarbital ¼ grain tablets, and Pentaerythritol Tetranitrate 20 milligrams with Phenobarbitol ¼ grain tablets; Zenith Laboratories, Inc., 150 South Dean St., Englewood, NJ 07631.

NDA 16–559; Pentaerythritol Tetranitrate with Phenobarbital Tablets; West-Ward, Inc., 465 Industrial Way West, Eatontown, NJ 07724.

NDA 16–458; Pentritol 30 milligrams with Butabarbital containing pentaerythritol tetranitrate and butabarbital; formerly manufactured by Armour Pharmaceutical Co., P.O. Box 511 Kankakee, Il 60901.

NDA 16–497; Duotrate 30 with Phenobarbital Sustained Release Capsules, containing pentaerythritol tetranitrate and phenobarbital; formerly manufactured by Marion Laboratories, Inc., 10236 Bunker Ridge Rd., Kansas City, MO 64137.

NDA 16–643; Pentaerythritol Tetranitrate 10 milligrams and 20 milligrams with Phenobarbitol 15 milligram tablets; formerly manufactured by American Pharmaceutical Co., 120 Bruckner Blvd., Bronx, NY 10454.

NDA 16–26; Pentaerythritol Tetranitrate 10 milligrams and 20 milligrams with Phenobarbital ¼ grain Tablets; manufactured by Bolar Pharmaceuticals, Inc., 130 Lincoln St., Copiague, NY 11726.

NDA 16–546; Pentaerythritol Tetranitrate 10 milligrams and 20 milligrams with Phenobarbital 15 milligrams; manufactured by Lit Drug Co., 2530 Polk St., Union, NJ 07083.

On the basis of all the data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled clinical investigation that demonstrates the effectiveness of these drugs. Because all of the drugs are combinations, evidence of effectiveness must be derived from adequate and well-controlled studies meeting the requirements of both 21 CFR 314.111, which sets forth the essential elements of adequate and well-controlled studies, and 21 CFR 300.50, which sets forth the criteria for fixed combination prescription drugs.

Notice is given to the holders of the new drug applications and to all other interested persons that the Director of the Bureau of Drugs proposes to issue an order under Section 505(e) of the Federal Food, Drug, and Cosmetic Act withdrawing approval of the new drug applications and all amendments and supplements thereto on the ground that new information before him with respect to the drug products, evaluated together with the evidence available to him at the time of approval of the applications, shows there is a lack of substantial evidence that the drug products will have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

In addition to the grounds for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938, contained in section 201(p) of the act, or pursuant to section 107(c) of the Drug Amendments of 1962 or for any other reason.

In accordance with the provisions of section 505 of the act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Parts 310, 314), the applicants are hereby given an opportunity for a hearing to show why approval of the new drug applications should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above.

An applicant who decides to seek a hearing, shall file (1) on or before September 17, 1979, a written notice of appearance and request for hearing, and (2) on or before October 16, 1979, the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of

opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant to file timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the person not to make use of the opportunity for a hearing concerning the action proposed with respect to the product and constitutes a waiver of any contentions concerning the legal status of any such drug product. Any such drug product may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions pursuant to this notice are to be filed in quintuplicate. These submissions, except for data and information prohibited from public disclosure pursuant to 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Hearing Clerk between 9 a.m. and 4 p.m., Monday through Friday.

This notice issued under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053, as amended (21 U.S.C. 355)), and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.82).

Dated: August 8, 1979.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 79-25275 Filed 8-16-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79N-0106]

New Drug Applications; Withdrawal of Approval; Correction

AGENCY: Food and Drug Administration.

ACTION: Correction.

SUMMARY: In FR Doc. 72-4688 (Docket No. FDC-D-393) appearing at page 6342 in the **Federal Register** of March 28, 1972, the NDA number for the product Sulthigel Gel, George Breon & Co., Inc., listed as NDA 5-096, is corrected to read NDA 5-069.

FOR FURTHER INFORMATION CONTACT: Herbert Behrens, Bureau of Drugs (HFD-105), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4320.

Dated: August 7, 1979.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 79-25269 Filed 8-16-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79N-0104]

New Drug Applications; Withdrawal of Approval; Correction

AGENCY: Food and Drug Administration.

ACTION: Correction.

SUMMARY: In FR Doc. 71-11136 (Docket No. FDC-D-259) appearing at page 18885 in the **Federal Register** of September 23, 1971, the corrections set forth below are made.

FOR FURTHER INFORMATION CONTACT: Herbert Behrens, Bureau of Drugs (HFD-105), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4320.

Corrections

1. On page 18886, Chola-K Tablets, Buffington, Inc., listed as NDA 3-378, should be NDA 3-778.

2. On page 18887, Mephenesin, Chase Chemical Co., listed as NDA 9-337 should be NDA 9-237.

3. On page 18887, Vial 90A Sterile Solution Injection, Chemedic, Division Chicago Pharmaceutical Co., listed as NDA 12-566, should be NDA 12-556.

4. On page 18889, the product name for NDA 3-312, Flint Eaton & Co., incorrectly listed as Sulfathizole Tablets, should be Sulfapyridine Tablets.

5. On page 18893, Hydrocortone AC 2.5 Pc. Dental Ointment & Injection, Merck Sharp & Dohme, listed as NDA 8-856, should be NDA 8-656.

6. On page 18895, Dicumarol Cap., Schieffelin & Co., listed as NDA 5-984, should be NDA 5-948.

7. On page 18896, the entry under SMA Corp. incorrectly listed as NDA 4-861, Vit. D. Injection, should be NDA 4-364, Vitamin B.

Dated: August 7, 1979.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 79-25271 Filed 8-16-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79N-0108]

New Drug Applications; Withdrawal of Approval; Correction

AGENCY: Food and Drug Administration.

ACTION: Correction.

SUMMARY: FR Doc. 70-9292 (Docket No. FDC-D-135) appearing at page 11929 in the **Federal Register** of July 24, 1970, the NDA numbers are corrected as set forth below:

FOR FURTHER INFORMATION CONTACT: Herbert Behrens, Bureau of Drugs (HFD-105), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4320.

Corrections

1. On page 11931, Tablets Raupesine, George N. Bell Mfg. Co., listed as NDA 9-475, should be NDA 9-745.

2. On page 11934, Cala Corn Solution, Dermatol Chemical Co., listed as NDA 1-642, should be NDA 1-672.

3. On page 11944, Indrazide Tablets, Paramino Corp., listed as NDA 5-059, should be NDA 9-059.

Dated: August 7, 1979.

J. Richard Crout,

Director, Bureau of Drugs,

[FR Doc. 79-25273 Filed 8-16-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79N-0110]

Oral Combination Drugs Containing Hexamethonium Chloride With Reserpine or Alseroxylon and Meprobamate With Pentolinium Tartrate; Withdrawal of Approval of New Drug Applications; Correction

AGENCY: Food and Drug Administration.

ACTION: Correction.

SUMMARY: In FR Doc. 71-10447 (Docket No. FDC-D-301) appearing at page 13695 in the **Federal Register** of July 23, 1971, the NDA number for the product Hexatina Tablets, Fellows-Testagar, listed on page 13696 as NDA 10-326, is corrected to read NDA 10-236.

FOR FURTHER INFORMATION CONTACT: Herbert Behrens, Bureau of Drugs (HFD-105), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4320.

Dated: August 7, 1979.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 79-25270 Filed 8-16-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79N-0156]

Radiation Exposure Recommendations for Diagnostic X-ray Examinations

AGENCY: Food and Drug Administration.

ACTION: Notice of Inquiry.

SUMMARY: The Food and Drug Administration (FDA) is considering development of radiation exposure recommendations for diagnostic x-ray examinations. Radiation exposure appears to vary widely for the same procedure performed at different facilities, with some patients receiving too much radiation and others so little that the diagnostic information being sought may not be obtained. The agency is requesting further information before beginning to develop recommendations for such radiation exposure.

DATE: Comments, data, and information by December 17, 1979.

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

FOR FURTHER INFORMATION CONTACT: Raymond F. Coakley, Jr., Bureau of Radiological Health (HFX-460), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: FDA may develop radiation exposure recommendations for diagnostic x-ray examinations through its Bureau of Radiological Health (BRH) and under the authority of the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90-602, 42 U.S.C. 263b et seq.). FDA conducts and supports research, training, and operational activities to minimize unnecessary exposure of the public to electronic product radiation. In carrying out this purpose, FDA is authorized to make such recommendations for the control of electronic product radiation as the agency considers appropriate. In this capacity, the agency is considering the development of radiation exposure recommendations for diagnostic x-ray examinations. The impetus for establishing these voluntary recommendations comes from several sources:

1. The Nationwide Evaluation of X-Ray Trends (NEXT) program has consistently demonstrated wide variation in the x-radiation entrance skin exposure that would be received by a standard-size patient undergoing the same diagnostic x-ray procedure at different medical facilities.

2. Data from two BRH programs (Dental Exposure Normalization Technique (DENT) and Breast Exposure—Nationwide Trends (BENT)) indicate cases of radiation exposure both so low and so high that the diagnostic usefulness of the radiograph may be impaired.

3. Two States have established exposure limits for certain x-ray procedures. Illinois, in its "Rules and Regulations for Protection Against Radiation" (1974), included radiation exposure limits which consist of table-top exposure values per radiograph for four commonly performed medical x-ray procedures. Vermont has instituted legislation (effective December 10, 1977) establishing entrance skin exposure criteria or limits for eight diagnostic views. Several other States are developing exposure guidance for individual diagnostic x-ray procedures either as regulations, recommendations, or educational guides.

4. The Presidential document on Radiation Protection Guidance to Federal Agencies for Diagnostic X-Rays, published in the **Federal Register** on February 1, 1978 (43 FR 4377), includes specific radiation exposure guides for 10 diagnostic x-ray examinations (projections).

5. The BRH Medical Radiation Advisory Committee (MRAC) recommended in February, 1977 that BRH study the feasibility of developing recommendations concerning ranges of skin exposure of organ doses per exposure for diagnostic radiology examinations. MRAC is a committee established pursuant to section 222 of the Public Health Service Act (42 U.S.C. 217a). This committee advises on the formulation of policy and the development of coordinated national programs relating to the use of ionizing radiation in the healing arts.

The wide variety of exposures used to obtain satisfactory radiographs seen in the NEXT data indicates that some patient exposures are greater than necessary. By contrast, low exposure levels, observed in the DENT and BENT program data entail the risk of an unsatisfactory radiograph and the necesssity for an additional exposure (i.e., a repeat). A range of exposures defined by both upper and lower limits appears advisable. Satisfactory diagnostic x-ray examinations should be obtainable within this range.

To assist in the study and in the development of useful recommendations, the agency specifically invites scientific and technical data, as well as comments or suggestions supported by detailed rationale and justification, on all of the following concerns:

1. Should radiation exposure recommendations be developed and published for diagnostic x-ray examinations? Are there better alternatives to protect the public from unnecessary x-radiation? How should recommendations be published?

2. Can useful recommendations be developed? What information and data exist either to support or to refute the feasibility of establishing exposure recommendations?

3. What might be the impact of voluntary exposure recommendations? How would they affect the development of technology, e.g., development of faster image receptors or of higher-exposure techniques that yield greater diagnostic information? How would they affect dose reduction, image quality, and cost?

4. How could the recommendations be reevaluated and updated in light of improvements in equipment and procedure? Should the recommendations be made only for very specific combinations of equipment, procedure, and patient characteristics? How should the recommendations be affected by developments in technology?

5. How broad or narrow should the recommendations be? Should they include all radiographic views or a selected few? Should they address radiography only or fluoroscopy as well? Should they be developed for different film screen combinations and grid usage or expressed in general terms, which may indirectly require certain image receptor and grid combinations? Should they be specified as a function of the x-ray beam quality (i.e., x-ray spectrum, kilovolt peak potential, and/or half

value layer)? Should they refer to a "standard patient" or address the range of patient sizes found in actual practice? For any answers to these questions, please give a rationale.

6. What values should be provided by these recommendations and how can they be determined? How can the associated diagnostic adequacy be determined? Would upper and lower limits of exposure be more useful than maximum exposure limits only? What exposures should be addressed: Entrance skin exposure, midline dose, specific organ dose, image receptor dose? If fluoroscopy were addressed, how would variables such as x-ray beam on-time, field size, output, etc. be taken into account?

7. Should the recommendations be established for individual views or for the total exposure in specific examinations? If the former, how would exposure recommendations for an individual view restrict the amount of diagnostic information in that view? If the latter, how would total exposure recommendations restrict the number of views and the total amount of diagnostic information?

8. How could the recommendations be used? How would facilities verify continued operation within the recommendations? Would recommendations provide the most efficient means for a facility or a radiation control agency to identify potential radiation exposure problems?

Individuals or organizations wishing to receive draft copies of these recommendations or related documents may have their names placed on the mailing list by writing to the Division of Compliance (HFX-460), Bureau of Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Interested persons are invited to participate in developing the proposed recommendations by submitting written comments or data on the subject. Communications on the proposed recommendations should be identified with the docket number appearing in brackets in the heading of this document and should be sent to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857 before December 17, 1979. Four copies of all comments should be submitted, except that individuals may submit single copies. Comments received after this deadline may be considered, depending on the stage of development of any recommendations. Any recommendations that are developed will be published in the **Federal Register** as proposals and public comment will be invited.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 356, 82 Stat. 1174-1176 (42 U.S.C. 263d)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1).

Dated: August 10, 1979.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-25276 Filed 8-16-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79N-0314]

Radiofrequency Sealers, Heaters, and Gluers; Open Workshop

AGENCIES: Food and Drug Administration; Occupational Safety and Health Administration.

ACTION: Notice.

SUMMARY: The Bureau of Radiological Health (BRH) of the Food and Drug Administration (FDA) and the Occupational Safety and Health Administration (OSHA) announce an open workshop to discuss potential hazards to persons involved in the use of radiofrequency (RF) sealers, heaters, and gluers. Techniques for the control or elimination of hazards from such RF-emitting devices are also being sought.

DATES: The workshop will be held September 12 and 13, 1979, and will convene at 9 a.m. each day.

ADDRESSES: The workshop will be held at the Department of Labor auditorium, New Department of Labor Building, Second and Constitution Ave. NW., Washington, DC 20210.

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

FOR FURTHER INFORMATION CONTACT:

Zory Glaser, Bureau of Radiological Health (HFX-460), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426; or

Frank Tipton, OSHA—OHP, Rm. N-3718, Department of Labor, Second and Constitution Ave., NW., Washington, DC 20210, 202-523-7174.

SUPPLEMENTARY INFORMATION: BRH and OSHA are concerned about potential adverse health effects on personnel exposed to RF energy emitted from RF sealers, heaters, and gluers. these RF-emitting devices are also known as: heat sealers, fusers, molders, fasteners or embossers; high frequency (HF) sealers or dryers; electronic or electromagnetic sealers or welders; and dielectric heaters. They are generally designed to operate at a frequency between 3 and 100 megahertz (MHz). Another class of electromagnetic radiation-emitting devices which operate at or near these frequencies include induction heating equipment.

The open workshop is being scheduled to bring together users, manufacturers, Federal agency staff, employee representatives, trade associations, and others concerned with RF sealers, so that BRH and OSHA may benefit from their expertise, as well as to ensure that the present knowledge of the possible hazards of these devices is appreciated in the affected industries. Field measurements have confirmed that a significant number of personnel are exposed to high levels of RF radiation from these devices. Because the RF energy at these frequencies can penetrate deeply into the body without activating the heat sensors located in the skin, operators of such RF equipment may be unaware of exposures to the RF energy.

The workshop will cover topics important to the assessment and control of the possible hazards of RF energy from RF sealers, heaters, and gluers. The topics to be discussed are expected to include:

a. Measurement of electric and magnetic field intensities generated by these devices;

b. A brief review of biological effects at frequencies between 3 MHz and 100 MHz;

c. Explanation of the near-field conditions that are a part of these exposures, and the difficulty posed under these conditions in exposure measurement and in predicting possible adverse effects to persons so exposed;

d. A discussion of RF radiation measurement equipment and techniques;

e. Procedures or techniques available for control of RF emissions;

f. Possible initiatives of Federal agencies on the control of RF-emitting devices;

g. Technical aspects related to the use or application of RF heater-type equipment, and the possible resultant effects upon intended functions and unnecessary radiation emission; and

h. Other topics pertinent to the discussion of possible health hazards from RF equipment, particularly RF heaters, sealers, and gluers.

BRH and OSHA are anxious to gain information especially from users and manufacturers of RF sealers, heaters, and gluers, on the techniques for

measurement of emissions of such RF energy assessment of operator exposure to the RF energy, and the techniques and procedures for the control or elimination of stray RF emission from sealers, heaters, and gluers. Other relevant information is also solicited.

Several speakers from the involved agencies are expected to make short presentations on the above topics. Opportunity will be provided for comments and questions by any interested person. Persons wishing to present brief prepared statements should contact Zory Glaser or Frank Tipton by September 5, 1979.

As time permits, other persons present will be given the opportunity to make brief statements. This will be an informal open workshop, but a transcript will be made so that the maximum benefit may be derived from the workshop. Anyone wishing to submit written statements or other information relevant to the subject of this workshop for inclusion in the permanent record may do so at the workshop, or by sending it to the FDA Hearing Clerk (address above) by October 12, 1979. Written submissions should be clearly identified with the words "BRH–OSHA open workshop on RF sealers."

Although this workshop is not a hearing, and is not a part of any formal rulemaking, all the information and opinion submitted in preparation for, during or in response to this workshop will become a part of a permanent file for any new or modified rules that may be issued by either agency concerning RF heaters, sealers, and gluers.

Dated: August 10, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-25278 Filed 8-16-79; 8:45 am]

BILLING CODE 4110-03-M

Office of the Assistant Secretary for Health

National Committee on Vital and Health Statistics; Renewal

Pursuant to the Federal Advisory Committee Act, Public Law 92–463 (5 U.S.C. Appendix I), the Office of the Assistant Secretary for Health announces the renewal by the Secretary, HEW, with concurrence by the General Services Administration, of the following advisory committee:

Designation: National Committee on Vital and Health Statistics.

Purpose: The Secretary is charged under section 306 of the Public Health Service Act, as amended, 42 U.S.C. 242K, with the responsibility to collect, analyze and disseminate national health statistics on vital events and health activities, including the physical, mental, and physiological characteristics of the population, illness, injury, impairment, the supply and utilization of health facilities and manpower, the operation of the health services system, health economic expenditures, and changes in the health status of people; administer the Cooperative Health Statistics System; stimulate and conduct basic and applied research in health data systems and statistical methodology; coordinate the overall health statistical activities of the programs and agencies of the Department and provide technical assistance in the management of statistical information; maintain operational liaison with statistical gathering and processing services of other health agencies, public and private, and provide technical assistance within the limitations of staff resources; foster research consultation and training programs in international statistical activities; and participate in the development of national health statistics policy with Federal agencies.

Authority for this Committee will expire on July 18, 1981, unless the Secretary, HEW, with the concurrence of the General Services Administration formally determines that continuance is in the public interest.

Dated: August 13, 1979.

Marilyn McCarroll,

Acting Executive Secretary, Office of Health Research, Statistics and Technology.

[FR Doc. 79-25528 Filed 8-16-79; 8:45 am]

BILLING CODE 4110-85-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Outer Continental Shelf Western and Central Gulf of Mexico; Proposed Oil and Gas Lease Sale No. 58A

With regard to oil and gas leasing on the Outer Continental Shelf (OCS), the Secretary of the Interior has established a policy pursuant to Sec. 19 of the OCS Lands Act with respect to sale notices to further and enhance consultation with the affected coastal States. That policy includes providing the affected States the opportunity to review the proposed sale notice before its final publication in the **Federal Register.** The following is a sale notice for proposed Sale No. 58A in the offshore waters of the Western and Central Gulf of Mexico Area. This notice is hereby published as a matter of information to the public. The sale date published in this notice is tentative and could be changed.

Dated: August 13, 1979.

Ed Hastey,

Associate Director, Bureau of Land Management.

Approved:

Heather L. Ross,

Deputy Assistant Secretary of the Interior.

Proposed Sale Notice

1. *Authority.* This notice is published pursuant to the Outer Continental Shelf Lands Act of 1953 (Pub. L. No. 95–372, 92 Stat. 629) as amended by the OCS Lands Act Amendments of 1978 (92 Stat. 629) and the regulations issued thereunder (43 CFR Part 3300).

2. *Filing of Bids.* Sealed bids will be received by the Manager, New Orleans Outer Continental Shelf (OCS) Office, Bureau of Land Management, Hale Boggs Federal Building, 500 Camp Street, Suite 841, New Orleans, Louisiana 70130. Bids may be delivered, either by mail or in person, to the above address until 4:15 p.m., c.s.t., November 26, 1979; or by personal delivery to sale site in New Orleans, Louisiana (to be announced) between the hours of 8:30 a.m., c.s.t., and 9:30 a.m., c.s.t., November 27, 1979. Bids received by the Manager later than the times and dates specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or withdrawal is received by the Manager prior to 9:30 a.m., c.s.t., November 27, 1979. All bids must be submitted and will be considered in accordance with applicable regulations, including 43 CFR Part 3300. The list of restricted joint bidders which applies to this sale was published in FR 1979.

3. *Method of Bidding.* A separate bid in a sealed envelope, labeled "Sealed Bid for Oil and Gas Lease (insert number of tract), not to be opened until 10 a.m., c.s.t., November 27, 1979", must be submitted for each tract. A suggested form appears in paragraph 17 of this notice. Bidders are advised that tract numbers are assigned solely for administrative purposes and are not the same as block numbers found on official protraction diagrams or leasing maps. All bids received shall be deemed submitted for a numbered tract. Bidders must submit with each bid one-fifth of the cash bonus in cash or by cashier's check, bank draft, or certified check, payable to the order of the Bureau of Land Management. No bid for less than a full tract as described in paragraph 13 will be considered. Bidders submitting joint bids must state on the bid form the

proportionate interest of each participating bidder, in percent to a maximum of five decimal places, as well as submit a sworn statement that the bidder is qualified under 43 CFR 3316.3. The suggested form for this statement to be used in joint bids appears in paragraph 18. Other documents may be required of bidders under 43 CFR 3316.4. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. *Bonus Bidding With a Fixed Sliding Scale Royalty.* Bids on tracts 58A–3, 58A–4, 58A–6, 58A–9, 58A–12, 58A–13, 58A–14, 58A–15, 58A–17, 58A–27, 58A–28, 58A–30, 58A–31, 58A–33, 58A–39, 58A–47, 58A–48, 58A–49, 58A–50, 58A–51, 58A–55, 58A–56, 58A–57, 58A–58, 58A–61, 58A–62, 58A–63, 58A–64, 58A–65, 58A–66, 58A–67, 58A–68, 58A–69, 58A–70, 58A–78, 58A–86, 58A–87, 58A–88, 58A–89, 58A–93, 58A–94, 58A–95, 58A–100, 58A–101, 58A–107, 58A–108, 58A–109, 58A–110, 58A–111, 58A–112, 58A–113, 58A–114, 58A–120, 58A–122, and 58A–125, must be submitted on a cash bonus bid basis with the percent royalty due in amount or value of production saved, removed or sold fixed according to the sliding scale formula described below. This formula fixes the percent royalty at a level determined by the value of lease production during each calendar quarter. For purposes of determining the royalty percent due on production during a quarter, the value of production during the quarter will be adjusted for inflation as described below. The determination of the value of the production on which royalty is due will be made pursuant to 30 CFR 250.64.

The fixed sliding scale formula operates in the following way: when the quarterly value of production, adjusted for inflation, is less than or equal to $13.236229 million, a royalty of 16.66667 percent in amount or value of production saved, removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $13.236230 million, but less than or equal to $1662.854082 million, the royalty percent due on the unadjusted value or amount of production is given by

$$Rj = b[Ln\ (Vj/S)]$$

where

Rj = the percent royalty that is due and payable on the unadjusted amount or value of all production saved removed or sold in quarter j

b = 10.0

Ln = natural logarithm

Vj = the value of production in quarter j, adjusted for inflation, in millions of dollars

S = 2.5

When the adjusted quarterly value of production is equal to or greater than $1662.854083 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In determining the quarterly percent royalty due, Rj, the calculation will be carried to five decimal places (for example, 18.17612 percent). This calculation will incorporate the adjusted quarterly value of production, Vj, in millions of dollars, rounded to the sixth digit, i.e., to the nearest dollar (for example, 15.392847 millions of dollars).

The form of the sliding scale royalty schedule is illustrated in Figure 1. Note that the effective quarterly royalty rate depends upon the inflation adjusted quarterly value of production. However, this rate is applied to the unadjusted quarterly value of production to determine the royalty payments due.

BILLING CODE 4310–84–M

Figure 1
Form of the Sliding Royalty Schedule

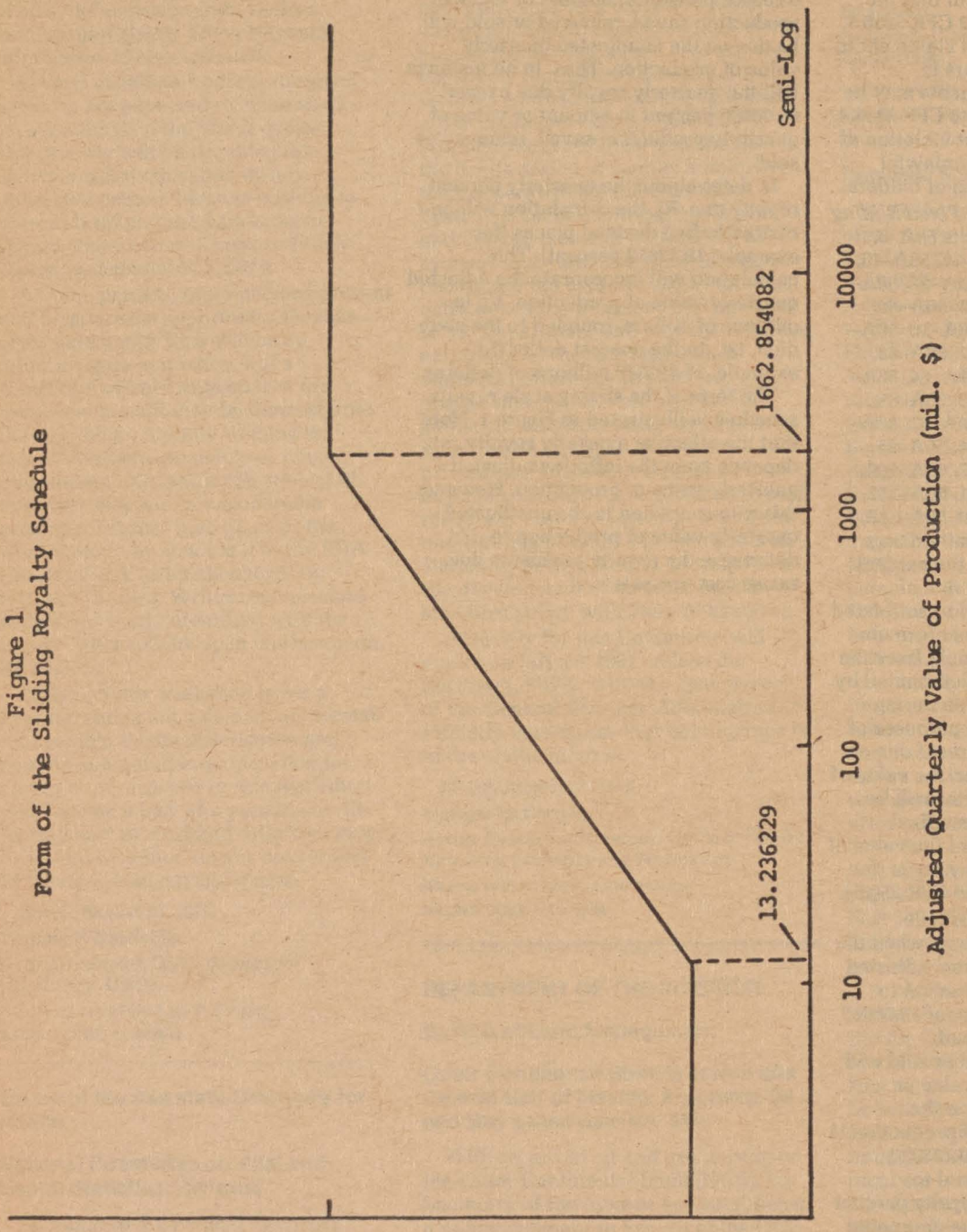


TABLE 1. HYPOTHETICAL QUARTERLY ROYALTY CALCULATIONS

(A) Actual Value of Quarterly Production (Millions of Dollars)	(B) GNP Fixed Weighted Price Index	(C) Inflation Factor[1]	(D) Adjusted Value of Quarterly Production[2] (Vj, Millions of $)	(E) Percent Royalty Rate (Rj)	(F) Royalty Payment[3] (Millions of Dollars)
10.000000	200.0	4/3	7.500000	16.66667	1.666667
30.000000	200.0	4/3	22.500000	21.97225	6.591675
90.000000	200.0	4/3	67.500000	32.95837	29.662533
270.000000	200.0	4/3	202.500000	43.94449	118.650123
810.000000	200.0	4/3	607.500000	54.93061	444.937941
10.000000	250.0	5/3	6.000000	16.66667	1.666667
30.000000	250.0	5/3	18.000000	19.74081	5.922243
90.000000	250.0	5/3	54.000000	30.72693	27.654237
270.000000	250.0	5/3	162.000000	41.71306	112.625262
810.000000	250.0	5/3	486.000000	52.69918	426.863358

1 Column (B) divided by 150.0 (assumed value of GNP fixed weighted price index at time leases are issued).

2 Column (A) divided by Inflation Factor.

3 Column (A) times Column (E). All values are rounded for display purposes only.

BILLING CODE 4310-84-C

In adjusting the quarterly value of production for use in calculating the percent royalty due on production during the quarter, the actual value of production will be adjusted to account for the effects of inflation by dividing the actual value of production by the following inflation adjustment factor. The inflation adjustment factor used will be the ratio of the GNP fixed weighted price index for the calendar quarter preceding the quarter of production to the value of that index for the quarter preceding the issuance of the lease. The GNP fixed weighted price index is published monthly in the Survey of Current Business by the Bureau of Economic Analysis, U.S. Department of Commerce. The percent royalty will be due and payable on the actual amount or value of production saved, removed, or sold as determined pursuant to 30 CFR 250.64. The timing of procedures for inflation adjustments and determinations of the royalty due will be specified at a later date. Table 1 provides hypothetical examples of quarterly royalty calculations using the sliding scale formula just described under two different values for the quarterly price index.

Leases awarded on the basis of a cash bonus bid with fixed sliding scale royalty will provide for a yearly rental or minimum royalty payment of $3 per acre or fraction thereof.

Bidders for these tracts should recognize that the Department of Energy is authorized, under Section 302 (b) and (c) of the Department of Energy Organization Act, to establish production rates for all Federal oil and gas leases.

5. *Bonus Bidding With a Fixed Constant Royalty.* Bids on the remaining tracts to be offered at this sale must be on a cash bonus basis with a fixed royalty of 16⅔ percent, except for tract 58A–7 which is offered with a fixed royalty of 20 percent. Leases which may be issued will provide for a yearly rental payment or minimum royalty payment of $3 per acre or fraction thereof. A suggested cash bonus bid form is shown in paragraph 17.

6. *Equal Opportunity.* Each bidder must have submitted by 9:30 a.m., c.s.t., November 27, 1979, the certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140–8 (November 1973), and the Affirmative Action Representation Form, Form 1140–7 (December 1971).

7. *Bid Opening.* Bids will be opened on November 27, 1979, beginning at 10 a.m., c.s.t., at the address stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing and recording bids received and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight, November 27, 1979, that bid will be returned unopened to the bidder, as soon thereafter as possible.

8. *Deposit of Payment.* Any cash, cashier's checks, certified checks, or bank drafts, submitted with a bid may be deposited in a suspense account in the Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

9. *Withdrawal of Tracts.* The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid for that tract.

10. *Acceptance or Rejection of Bids.* The United States reserves the right to reject any and all bids for any tract. In any case, no bid for any tract will be accepted and no lease for any tract will be awarded to any bidder unless:

(a) The bidder has complied with all requirements of this notice and applicable regulations;

(b) The bid is the highest valid cash bonus bid; and

(c) The amount of the bid has been determined to be adequate by the Secretary of the Interior.

No bid will be considered for acceptance unless it offers a cash bonus in the amount of $25 or more per acre or fraction thereof.

11. *Successful Bidders.* Each person who has submitted a bid accepted by the Secretary of the Interior will be required to execute copies of the lease specified below, pay the balance of the cash bonus bid together with the first year's annual rental and satisfy the bonding requirements of 43 CFR Subpart 3318 within the time provided in 43 CFR 3316.5.

12. *Leasing Maps/Official Protraction Diagrams.* Tracts offered for lease may be located on the following leasing maps/official protraction diagrams which are available from the Manager, New Orleans Outer Continental Shelf Office at the address stated in paragraph 2.

(a) Outer Continental Shelf Leasing Maps—Texas Nos. 1 through 8. These maps are arranged in two sets, Nos. 1 through 4 (7 maps), which sell for $5 per set; and Nos. 5 through 8 (9 maps), which sell for $7 per set.

(b) Outer Continental Shelf Leasing Maps—Louisiana Nos. 1 through 12. This is a set of 27 maps which sells for $17.

(c) Outer Continental Shelf Official Protraction Diagrams—NH 15–12 Ewing Bank, NH 16–7 Viosca Knoll, NH 16–10 Mississippi Canyon. These sell for $2 each.

13. *Tract Descriptions.* The tracts offered for bid are as follows:

Note.—There may be gaps in the numbers of the tracts listed. Some of the blocks identified in the final environmental statement may not be included in this notice. Some of the blocks are included in prior environmental statements rather than the environmental statement for this sale.

BILLING CODE 4310-84-M

TENTATIVE TRACT LIST
SALE #58A

OCS LEASING MAP, SOUTH PADRE ISLAND AREA, EAST ADDITION, TEXAS MAP NO. 1A
(Approved May 6, 1965)

Tract	Block	Description	Acreage
58A-1	A-43	All	5760
58A-2	A-54	All	5760

OCS LEASING MAP, NORTH PADRE ISLAND AREA, TEXAS MAP NO. 2
(Approved July 16, 1954)

Tract	Block	Description	Acreage
58A-3	947	All	5760
58A-4	957	All	5760

OCS LEASING MAP, MUSTANG ISLAND AREA, TEXAS MAP NO. 3
(Approved July 16, 1954; Revised October 30, 1961)

Tract	Block	Description	Acreage
58A-5	759	All	5760

OCS LEASING MAP, MUSTANG ISLAND AREA, EAST ADDITION, TEXAS MAP NO. 3A
(Approved January 23, 1967)

Tract	Block	Description	Acreage
58A-6	A-84	All	5760

OCS LEASING MAP, MATAGORDA ISLAND AREA, TEXAS MAP NO. 4
(Approved July 16, 1954)

Tract	Block	Description	Acreage
58A-7	566	All	5760
58A-8	680	All	5760
58A-9	698	All	5760
58A-10	709	All	5760

OCS LEASING MAP, BRAZOS AREA, SOUTH ADDITION, TEXAS MAP NO. 5B
(Approved September 24, 1959)

Tract	Block	Description	Acreage
58A-11	A-78	All	5760
58A-12	A-131	All	5760

OCS LEASING MAP, GALVESTON AREA, TEXAS MAP NO. 6
(Approved July 16, 1954)

Tract	Block	Description	Acreage
58A-13	239	All	5760
58A-14	240	All	5760
58A-15	241	N1/2	2880
58A-16	424	All	5760

OCS LEASING MAP, GALVESTON AREA, SOUTH ADDITION, TEXAS MAP NO. 6A
(Approved September 24, 1959)

Tract	Block	Description	Acreage
58A-17	A-128	All	5760

OCS LEASING MAP, HIGH ISLAND AREA, TEXAS MAP NO. 7
(Approved July 16, 1954; Revised August, 1955)

Tract	Block	Description	Acreage
58A-18	154	S1/2	2880

OCS LEASING MAP, HIGH ISLAND AREA, SOUTH ADDITION, TEXAS MAP NO. 7B
(Approved September 24, 1959)

Tract	Block	Description	Acreage
58A-19	A-495	All	5760
58A-20	A-514	All	5760
58A-21	A-515	All	5760
58A-22	A-541	All	5760

OCS LEASING MAP, HIGH ISLAND AREA, EAST ADDITION, SOUTH EXTENSION, TEXAS MAP NO. 7C
(Approved September 24, 1959)

Tract	Block	Description	Acreage
58A-23	A-346	All	5760

OCS LEASING MAP, SABINE PASS AREA, LOUISIANA MAP NO. 12
(Approved March 7, 1977)

Tract	Block	Description	Acreage
58A-24	11	All	5000

OCS LEASING MAP, WEST CAMERON AREA, LOUISIANA MAP NO. 1
(Approved June 8, 1954; Revised July 22, 1954)

Tract	Block	Description	Acreage
58A-25	29	1/	2816.35
58A-26	(30	1/	
	(31	1/	1405.70
58A-27	96	All	5000
58A-28	113	All	5000
58A-29	199	All	5000

OCS LEASING MAP, WEST CAMERON AREA, WEST ADDITION, LOUISIANA MAP NO. 1A
(Approved November 15, 1955; Revised January 30, 1957)

Tract	Block	Description	Acreage
58A-30	393	All	5000
58A-31	431	All	5000

OCS LEASING MAP, WEST CAMERON AREA, SOUTH ADDITION, LOUISIANA MAP NO. 1B
(Approved September 8, 1959)

Tract	Block	Description	Acreage
58A-32	446	All	5000
58A-33	491	All	5000
58A-34	575	All	5000
58A-35	618	All	5000
58A-36	631	All	5000
58A-37	636	All	5000

OCS LEASING MAP, EAST CAMERON AREA, LOUISIANA MAP NO. 2
(Approved June 8, 1954; Revised August 1, 1973)

Tract	Block	Description	Acreage
58A-38	25	All	5000
58A-39	90	All	5000
58A-40	105	All	5000
58A-41	130	All	5000

OCS LEASING MAP, EAST CAMERON AREA, SOUTH ADDITION, LOUISIANA MAP NO. 2A
(Approved September 8, 1959)

Tract	Block	Description	Acreage
58A-42	262	All	5000
58A-43	329	All	5000

OCS LEASING MAP, VERMILION AREA, LOUISIANA MAP NO. 3
(Approved June 8, 1954; Revised June 25, 1954; July 22, 1954)

Tract	Block	Description	Acreage
58A-44	27	E1/2[4/]	1697.006
58A-45	59	All	5000
58A-46	100	All	5000
58A-47	112	All	4958.96

OCS LEASING MAP, SOUTH MARSH ISLAND AREA, LOUISIANA MAP NO. 3A
(Approved August 7, 1959)

Tract	Block	Description	Acreage
58A-48	18	All	5000
58A-49	26	All	5000

OCS LEASING MAP, VERMILION AREA, SOUTH ADDITION, LOUISIANA MAP NO. 3B
(Approved September 8, 1959)

Tract	Block	Description	Acreage
58A-50	273	All	5000
58A-51	289	All	5000
58A-52	311	All	4273.11
58A-53	315	All	5000
58A-54	381	All	5000

OCS LEASING MAP, SOUTH MARSH ISLAND AREA, SOUTH ADDITION, LOUISIANA MAP NO. 3C
(Approved September 8, 1959)

Tract	Block	Description	Acreage
58A-55	82	All	5000
58A-56	83	All	5000
58A-57	90	All	5000
58A-58	91	All	5000
58A-59	119	All	3221.11
58A-60	123	All	5000
58A-61	156	All	5000
58A-62	157	All	5000

OCS LEASING MAP, SOUTH MARSH ISLAND AREA, NORTH ADDITION, LOUISIANA MAP NO. 3D
(Approved April 16, 1971; Revised January 18, 1972)

Tract	Block	Description	Acreage
58A-63	238	2/	4463.70
58A-64	239	2/	2139.54
58A-65	240	All	3327.87
58A-66	241	All	5000

OCS LEASING MAP, EUGENE ISLAND AREA, LOUISIANA MAP NO. 4
(Approved June 8. 1954; Revised July 22, 1954)

Tract	Block	Description	Acreage
58A-67	46	All	5000
58A-68	49	All	5000
58A-69	135	All	5000
58A-70	155	All	5000

OCS LEASING MAP, EUGENE ISLAND AREA, SOUTH ADDITION, LOUISIANA MAP NO. 4A
(Approved September 8, 1959)

Tract	Block	Description	Acreage
58A-71	297	All	5000
58A-72	303	All	5000
58A-73	375	All	5000

OCS LEASING MAP, SHIP SHOAL AREA, LOUISIANA MAP NO. 5
(Approved June 8, 1954)

Tract	Block	Description	Acreage
58A-74	133	All	5000
58A-75	156	All	5000
58A-76	157	All	5000
58A-77	181	All	5000
58A-78	189	All	5000

OCS LEASING MAP, SHIP SHOAL AREA, SOUTH ADDITION, LOUISIANA MAP NO. 5A
(Approved September 8, 1959)

Tract	Block	Description	Acreage
58A-79	245	All	5000
58A-80	250	All	5000

OCS LEASING MAP, SOUTH PELTO AREA, LOUISIANA MAP NO. 6
(Approved June 8, 1954; Revised July 22, 1954; December 9, 1954)

Tract	Block	Description	Acreage
58A-81	1	1/	1568.03

OCS LEASING MAP, SOUTH TIMBALIER AREA, LOUISIANA MAP NO. 6
(Approved June 8, 1954; Revised July 22, 1954; December 9, 1954)

Tract	Block	Description	Acreage
58A-82	16	1/	1564.65
58A-83	25	All	2148.46
58A-84	33	All	3772.18
58A-85	170	All	5000

OCS LEASING MAP, SOUTH TIMBALIER AREA, SOUTH ADDITION, LOUISIANA MAP NO. 6A
(Approved September 8, 1959; Revised July 22, 1968)

Tract	Block	Description	Acreage
58A-86	220	All	5000
58A-87	245	All	5000
58A-88	270	All	5000
58A-89	300	All	4480.52

OCS LEASING MAP, WEST DELTA AREA, LOUISIANA MAP NO. 8
(Approved June 8, 1954)

Tract	Block	Description	Acreage
58A-90	34	S1/2	2500
58A-91	49	All	5000
58A-92	76	All	5000
58A-93	86	S1/2	2500
58A-94	107	All	5000

OCS LEASING MAP, WEST DELTA AREA, SOUTH ADDITION, LOUISIANA MAP NO. 8A
(Approved September 8, 1959; Revised November 24, 1961)

Tract	Block	Description	Acreage
58A-95	118	All	5080.60

OCS LEASING MAP, SOUTH PASS AREA, LOUISIANA MAP NO. 9
(Approved June 8, 1954; Revised July 22, 1954; May 11, 1973)

Tract	Block	Description	Acreage
58A-96	36	1/	3525.40
58A-97	39	1/	619.17
58A-98	42	4/	256.82
58A-99	43	1/	4177.03

OCS LEASING MAP, SOUTH PASS AREA, SOUTH AND EAST ADDITION, LOUISIANA
MAP NO. 9A
(Approved September 8, 1959)

Tract	Block	Description	Acreage
58A-100	68	All	5000
58A-101	69	All	5000
58A-102	73	All	5000

OCS LEASING MAP, MAIN PASS AREA, LOUISIANA MAP NO. 10
(Approved June 8, 1954; Revised July 22, 1954)

Tract	Block	Description	Acreage
58A-103	123	All	4994.55
58A-104	143	All	4994.55
58A-105	145	All	4994.55

OCS LEASING MAP, MAIN PASS AREA, SOUTH AND EAST ADDITION, LOUISIANA
MAP NO. 10A
(Approved September 8, 1959)

Tract	Block	Description	Acreage
58A-106	303	All	4999.96

OCS OFFICIAL PROTRACTION DIAGRAM, EWING BANK, NH 15-12
(Approved February 15, 1973; Revised December 2, 1976)

Tract	Block	Description	Acreage
58A-107	305	All	5214.74
58A-108	306	All	2459.43

OCS OFFICIAL PROTRACTION DIAGRAM, VIOSCA KNOLL, NH 16-7
(Approved October 10, 1972; Revised February 15, 1973; August 1, 1973; December 2, 1976)

Tract	Block	Description	Acreage
58A-109	989	All	5760
58A-110	990	All	5760

OCS OFFICIAL PROTRACTION DIAGRAM, MISSISSIPPI CANYON, NH 16-10
(Approved February 15, 1973; Revised December 2, 1976)

Tract	Block	Description	Acreage
58A-111	27	All	5760
58A-112	28	All	5760
58A-113	531	All	5760
58A-114	575	All	5760

OCS LEASING MAP, HIGH ISLAND AREA, EAST ADDITION, SOUTH EXTENSION, TEXAS
MAP NO. 7C
(Approved September 24, 1959)

Tract	Block	Description	Acreage
58A-115	A-374	All	5760

OCS LEASING MAP, BRAZOS AREA, TEXAS MAP NO. 5
(Approved July 16, 1954)

Tract	Block	Description	Acreage
58A-116	436	All	5760

OCS LEASING MAP, GALVESTON AREA, TEXAS MAP NO. 6
(Approved July 16, 1954)

Tract	Block	Description	Acreage
58A-117	389	All	5760

OCS LEASING MAP, HIGH ISLAND AREA, EAST ADDITION, SOUTH EXTENSION, TEXAS MAP NO. 7C
(Approved September 24, 1959)

Tract	Block	Description	Acreage
58A-118	A-385	All	5760

OCS LEASING MAP, VERMILION AREA, SOUTH ADDITION, LOUISIANA MAP NO. 3B
(Approved September 8, 1959)

Tract	Block	Description	Acreage
58A-119	330	All	5000

OCS LEASING MAP, SOUTH MARSH ISLAND AREA, SOUTH ADDITION, LOUISIANA MAP NO. 3C
(Approved September 8, 1959)

Tract	Block	Description	Acreage
58A-120	75	All	5000

OCS LEASING MAP, MAIN PASS AREA, LOUISIANA MAP NO. 10
(Approved June 8, 1954; Revised July 22, 1954)

Tract	Block	Description	Acreage
58A-121	111	All	4994.55

OCS LEASING MAP, MAIN PASS AREA, SOUTH & EAST ADDITION, LOUISIANA
MAP 10A
(Approved September 8, 1959)

Tract	Block	Description	Acreage
58A-122	312	All	4999.96

OCS LEASING MAP, HIGH ISLAND AREA, TEXAS MAP NO. 7
(Approved July 16, 1954; Revised August 1955)

Tract	Block	Description	Acreage
58A-123	143	All	5760

OCS LEASING MAP, SOUTH TIMBALIER AREA, LOUISIANA MAP NO. 6
(Approved June 8, 1954; Revised July 22, 1954; December 9, 1954)

Tract	Block	Description	Acreage
58A-124	183	All	2148.46

OCS OFFICIAL PROTRACTION DIAGRAM, VIOSCA KNOLL NH 16-7
(Approved October 10, 1972; Revised February 15, 1973; August 1, 1973; December 2, 1976)

Tract	Block	Description	Acreage
58A-125	942	All	5231.5

OCS LEASING MAP, WEST CAMERON AREA, SOUTH ADDITION, LOUISIANA MAP NO. 1B
(Approved September 8, 1959)

Tract	Block	Description	Acreage
58A-126	648[3]	All	5000

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[1] That portion of the lease block which is more than three geographical miles seaward from the line described in the supplemental decree of the U.S. Supreme Court, June 16, 1975 (United States vs. Louisiana, 422 U.S. 13).

[2] That portion of the lease block located in Zone 3 as that Zone is defined in the Interim Agreement (October 12, 1956) between the United States and the State of Louisiana.

[3] This block was not included among those considered in the lease sale EIS. However, an Environmental Assessment Record (EAR) was completed on this tract and it was concluded that its inclusion in the proposed lease sale offering, in and of itself or in conjunction with the other tracts, does not constitute a major Federal action having a significant impact on the environment, requiring full EIS analysis.

[4] That portion of the lease block which is more than three geographical miles seaward from the line described in the supplemental decree of the U.S. Supreme Court, June 16, 1975 (United States vs. Louisiana, 422 U.S. 13), and/or that portion of the lease block which lies in Zone 2 as that Zone is defined in the Interim Agreement (October 12, 1956) between the United States and the State of Louisiana, the landward boundary of the lease block being controlled by the Zone 2 line and/or the 1975 decree line, whichever line is most seaward.

14. *Lease Terms and Stipulations.* All leases issued as a result of this sale will be for an initial term of 5 years. Leases issued as a result of this sale will be on from 3300–1 (September 1978), available from the Manager, New Orleans Outer Continental Shelf Office, at the address stated in paragraph 2. For leases resulting from this sale for tracts offered on a cash bonus basis with fixed sliding scale royalty, listed in paragraph 4, Form 3300–1 will be amended as follows:

Sec. 6. *Royalty on Production.* (a) The lessee agrees to pay the lessor a royalty of that percent in amount or value of production saved, removed or sold from the leased area as determined by the sliding scale royalty formula as follows. When the quarterly value of production, adjusted for inflation, is less than or equal to $13.236229 million, a royalty of 16.66667 percent in amount or value of production saved, removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $13.236230 million, but less than or equal to $1662.854082 million, the royalty percent due on the unadjusted value or amount of production is given by

$$Rj = b[Ln (Vj/S)]$$

where

Rj = the percent royalty that is due and payable on the unadjusted amount or value of all production saved, removed or sold in quarter j

b = 10.0

Ln = natural logarithm

Vj = the value of production in quarter j, adjusted for inflation, in millions of dollars

S = 2.5

When the adjusted quarterly value of production is equal to or greater than $1662.854083 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In determining the quarterly percent royalty due, Rj, the calculation will be carried to five decimal places (for example, 18.17612 percent). This calculation will incorporate the adjusted quarterly value of production, Vj, in millions of dollars, rounded to the sixth digit, i.e., to the nearest dollar (for example, 15.392847 millions of dollars). Gas of all kinds (except helium) is subject to royalty. The lessor shall determine whether production royalty shall be paid in amount or value.

Except as otherwise noted, the following stipulations will be included in each lease resulting from this proposed sale. In the following stipulations the term Supervisor refers to the Gulf of Mexico Area Oil and Gas Supervisor for Operations of the Geological Survey and the term manager refers to the Manager of the New Orleans OCS Office of the Bureau of Land Management.

Stipulation No. 1

If the Supervisor, having reason to believe that a site, structure or object of historical or archaeological significance hereinafter referred to as "cultural resource", may exist in the lease area, gives the lessee written notice that the lessor is invoking the provisions of this stipulation, the lessee shall upon receipt of such notice comply with the following requirements:

Prior to any drilling activity or the construction or placement of any structure for exploration or development on the lease, including but not limited to, well drilling and pipeline and platform placement, hereinafter in this stipulation referred to as "operation", the lessee shall conduct remote sensing surveys to determine the potential existence of any cultural resource that may be affected by such operations. All data produced by such remote sensing surveys as well as other pertinent natural and cultural environmental data shall be examined by a qualified marine survey archaeologist to determine if indications are present suggesting the existence of a cultural resource that may be adversely affected by any lease operation. A report of this survey and assessment prepared by the marine survey archaeologist shall be submitted by the lessee to the Supervisor and to the Manager for review.

If such cultural resource indicators are present the lessee shall: (1) Locate the site of such operation so as not to adversely affect the identified location; or (2) establish, to the satisfaction of the Supervisor, on the basis of further archaeological investigation conducted by a qualified marine survey archaeologist or underwater archaeologist using such survey equipment and techniques as deemed necessary by the Supervisor, either that such operation will not adversely affect the location identified or that the potential cultural resource suggested by the occurrence of the indicators does not exist.

A report of this investigation prepared by the marine survey archaeologist or underwater archaeologist shall be submitted to the Supervisor and the Manager for review. Should the Supervisor determine that the existence of a cultural resource which may be adversely affected by such operation is sufficiently established to warrant protection, the lessee shall take no action that may result in an adverse effect on such cultural resource until the Supervisor has given directions as to its preservation.

The lessee agrees that if any site, structure or object of historical or archaeological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the Supervisor, and make every reasonable effort to preserve and protect the cultural resource from damage until the Supervisor has given directions as to its preservation.

Stipulation No. 2

(To be included only in the lease resulting from this proposed sale for Tract 58A–20).

Operations within the following aliquots shall be restricted as specified in either paragraph (a) or (b) below at the option of the lessee:

High Island Area, South Addition, Block A–514: W1/2E1/2NE1/4; W1/2NE1/4; NW1/4; N1/2SW1/4; SW1/4SW1/4; NW1/4SE1/4.

(a) All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than ten meters, from the bottom.

(b) The operator (lessee) shall submit a monitoring plan as part of the exploration and development and production plans. The monitoring plan will be designed to assess the effects of oil and gas exploration, development, and production operations on the biotic communities of the nearby banks:

The monitoring program shall indicate that the monitoring investigations will be conducted by qualified independent scientific personnel and that these personnel and all required equipment will be available at the time of operations. The monitoring team will submit its findings to the Supervisor, on a schedule established by the Supervisor, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations. If it is decided by the Supervisor that surface disposal of drilling fluids or cuttings present no danger to the bank, no further monitoring of that particular well or platform will be required. If, however, the monitoring program indicates that the biota of the bank are being harmed, or if there is a great likelihood that operation of that particular well or platform may cause harm to the biota of the bank, the Supervisor shall require shunting as specified in paragraph (a) above or other appropriate operational restrictions.

Stipulation No. 3

(To be included only in the lease resulting from this proposed sale for Tract 58A–37).

Operations within the circle with a radius of 8110 meters around point A, located by X=1,366,160; Y=−276,160 (Louisiana Lambert System), shall be restricted as specified in either paragraph (a) or (b) below at the option of the lessee:

(a) All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than ten meters, from the bottom.

(b) The operator (lessee) shall submit a monitoring plan as part of the exploration and development and production plans. The monitoring plan will be designed to assess the effects of oil and gas exploration, development, and production operations on the biotic communities of the nearby banks:

The monitoring program shall indicate that the monitoring investigations will be conducted by qualified independent scientific personnel and that these personnel and all required equipment will be available at the time of operations. The monitoring team will submit its findings to the Supervisor, on a schedule established by the Supervisor, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations. If it is decided by the Supervisor that surface disposal of drilling fluids or cuttings present no danger to the bank, no further monitoring of that particular well or platform will be required. If, however, the monitoring program indicates that the biota of the bank are being harmed, or if there is a great likelihood that operation of that particular well or platform may cause harm to the biota of the bank, the Supervisor shall require shunting as specified in paragraph (a) above or other appropriate operational restrictions.

Stipulation No. 4

(To be included only in the lease resulting from this proposed sale for Tract 58A–89).

Operations within the circle with a radius of 6400 meters around point B, located byX = 2,205,050; Y = −209,485 (Louisiana Lambert System), shall be restricted as specified in either paragraph (a) or (b) below at the option of the lessee:

(a) All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than ten meters, from the bottom.

(b) The operator (lessee) shall submit a monitoring plan as part of the exploration and development and production plans. The monitoring plan will be designed to assess the effects of oil and gas exploration, development, and production operations on the biotic communities of the nearby banks:

The monitoring program shall indicate that the monitoring investigations will be conducted by qualified independent scientific personnel and that these personnel and all required equipment will be available at the time of operations. The monitoring team will submit its findings to the Supervisor, on a schedule established by the Supervisor, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations. If it is decided by the Supervisor that surface disposal of drilling fluids or cuttings present no danger to the bank, no further monitoring of that particular well or platform will be required. If, however, the monitoring program indicates that the biota of the bank are being harmed, or if there is a great likelihood that operation of that particular well or platform may cause harm to the biota of the bank, the Supervisor shall require shunting as specified in paragraph (a) above or other appropriate operational restrictions.

Stipulation No. 5

(To be included only in the lease resulting from this proposed sale for Tract 58A–115).

(a) No structures, drilling rigs, or pipelines will be allowed within the aliquots established for the East Flower Garden Bank as follows:

High Island Area, East Addition, South Extension, Block A–374: SW¼NW¼NW¼; NW¼SW¼NW¼; S½SW¼NW¼; SW¼NE¼SW¼; W½SW¼; W½SE¼SW¼; SE¼SE¼SW¼.

(b) Exploration, development, and production operations are permitted within the aliquots described below with the following restrictions:

All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom; however, if the shunting method is not adequate, as determined by the monitoring program proceedings outlined in this stipulation, to protect the unique character of the subject area, then the material must be transported a minimum of ten miles from any 50-meter isobath surrounding live reef-building coral before disposal. Disposal sites must be approved by the Supervisor.

No garbage, untreated sewage, or other solid waste shall be disposed of from vessels (workboats, crew-boats, supply boats, pipelaying vessels) during exploration and development operations.

No drilling permits shall be issued by the Supervisor until he has found that the lessee's exploration plans and development and production plans filed under 30 CFR 250.34 are adequate to insure that exploration, development and production operations in the leased area will have no significant adverse affect on the biotic communities associated with the high value reef sites on the Flower Garden Banks.

As a part of the exploration plans and development and production plans, a reef monitoring program must be included. The monitoring program will be designed to assess the effects of oil and gas exploration, development, and production operations on the viability of the coral reefs and associated communities. The monitoring plan shall indicate that the monitoring investigations will be conducted by qualified independent scientific personnel and that program personnel and equipment will be available at the time of operations. The monitoring team will submit its findings to the Supervisor, on a regular schedule established by the Supervisor, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations.

The affected aliquots are as follows:

High Island Area, East Addition, South Extension, Block A–374: SW¼SW¼NE¼; W½NE¼NW¼; SE¼NE¼NW¼; N½NW¼W¼; SE¼NW¼NW¼; NE¼SW¼NW¼; SE¼NW¼; N½NE¼SW¼; SE¼NE¼SW¼; NE¼SE¼SW¼; W½NW¼SE¼; SE¼NW¼SE¼; SW¼SE¼; SW¼SE¼SE¼.

(c) Exploration, development, and production operations are permitted within the aliquots described below with the following restrictions:

All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

No garbage, untreated sewage, or other solid waste shall be disposed of from vessels (workboats, crew-boats, supply boats, pipelaying vessels) during exploration, development, and production operations.

No drilling permits shall be issued by the Supervisor until he has found that the lessee's exploration plans and development and production plans filed under 30 CFR 250.34 are adequate to insure that exploration, development, and production operations in the leased area will have no significant adverse effect on the biotic communities associated with the high value reef sites on the Flower Garden Banks.

The affected aliquots are as follows:

High Island Area, East Addition, South Extension, Block A–374: N½NE¼; N½S½NE¼; SE¼SW¼NE¼; S½SE¼NE¼; NE¼NE¼NW¼; NE¼SE¼; NE¼NW¼SE¼; N½SE¼SE¼; SE¼SE¼SE¼.

Stipulation No. 6

(To be included only in the lease resulting from this proposed sale for Tract 58A–118.)

(a) Exploration, development, and production operations are permitted within the aliquots described below with the following restrictions:

All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom; however, if the shunting method is not adequate, as determined by the monitoring program proceedings outlined in this stipulation, to protect the unique character of the subject area, then the material must be transported a minimum of ten miles from any 50-meter isobath surrounding live reef-building coral before disposal. Disposal site must be approved by the Supervisor.

No garbage, untreated sewage, or other solid waste shall be disposed of from vessels (workboats, crew-boats, supply boats, pipelaying vessels) during exploration and development operations.

No drilling permits shall be issued by the Supervisor until he has found that the lessee's exploration plans and development and production plans filed under 30 CFR 250.34 are adequate to insure that

exploration, development, and production operations in the leased area will have no significant adverse effect on the biotic communities associated with the high value reef sites on the Flower Garden Banks.

As a part of the exploration plans and development and production plans, a reef monitoring program must be included. The monitoring program will be designed to assess the effects of oil and gas exploration, development, and production operations on the viability of the coral reefs and associated communities. The monitoring plan shall indicate that the monitoring investigations will be conducted by qualified independent scientific personnel and that program personnel and equipment will be available at the time of operations. The monitoring team will submit its findings to the Supervisor on a regular schedule established by the Supervisor, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operation.

The affected aliquots are as follows:

High Island Area, East Addition, South Extension, Block A-385: SW¼NW¼NW¼; SW¼NW¼; W½SW¼; W½E½SW¼.

(b) Exploration, development, and production operations are permitted within the aliquots described below with the following restrictions:

All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

No garbage, untreated sewage, or other solid waste shall be disposed of from vessels (workboats, crew-boats, supply boats, pipelaying vessels) during exploration, development, and production operations.

No drilling permits shall be issued by the Supervisor until he has found that the lessee's exploration plans and development and production plans filed under 30 CFR 250.34 are adequate to insure that explorations, development, and production operations in the leased area will have no significant adverse effect on the biotic communities associated with the high value reef sites on the Flower Garden Banks.

The affected aliquots are as follows:

High Island Area, East Addition, South Extension, Block A-385: E½; E½E½W½; W½E½NW¼; E½NW¼NW¼; NW¼NW¼NW¼.

Stipulation No. 7

(To be included in any leases resulting from this proposed sale for the sliding scale royalty tracts listed in paragraph 4 of this notice.)

(a) The royalty rate on production saved, removed or sold from this lease is subject to consideration for reduction under the same authority that applies to all other oil and gas leases on the Outer Continental Shelf (30 CFR 250.12 (e)). The Director, Geological Survey, may grant a reduction for only one year at a time and reduction of royalty rates will not be approved unless production has been underway for one year or more.

(b) Although the royalty rate specified in section 6(a) of this lease or as subsequently modified in accordance with applicable regulations and stipulations is applicable to all production under this lease, not more than 16⅔ percent of the production saved, removed or sold from the lease area may be taken as royalty in amount, except as provided in Sec. 15(d); the royalty on any portion of the production saved, removed or sold from the lease in excess of 16⅔ percent may only be taken in value of the production saved, removed or sold from the lease area.

Stipulation No. 8

(To be included in any leases resulting from this sale for tracts 58A-1, 58A-2, 58A-3, 58A-4, 58A-5, 58A-6, 58A-8, 58A-9, and 58A-10.)

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf, to any persons or to any property of any person or persons who are agents, employees or invitees of the lessee, its agents, independent contractors, or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the Outer Continental Shelf, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors or subcontractors, or any of their officers, agents or employees, being conducted as a part of, or in connection with the programs and activities of the Naval Air Training Command, Naval Air Station, Corpus Christi, Texas.

Notwithstanding any limitation of the lessee's liability in Sec. 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against and to defend at its own expense the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against, and to defend at its own expense the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installations, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of its officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

The lessee agrees to control his own electromagnetic emissions and those of his agents, employees, invitees, independent contractors or subcontractors emanating from individual designated defense warning areas in accordance with requirements specified by the commander of the appropriate onshore military installation, i.e., Naval Air Training Command, Naval Air Station, Corpus Christi, Texas, to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing or operational activities, conducted within individual designated warning areas. Necessary monitoring control, and coordination with the lessee, his agents, employees, invitees, independent contractors or subcontractors, will be affected by the commander of the appropriate onshore military installation conducting operations in the particular warning area: *Provided, however,* That control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any period of time, between a lessee, its agents, employees, invitees, independent contractors or subcontractors and onshore facilities.

The lessee, when operating or causing to be operated on its behalf, boat or aircraft traffic into the individual designated warning areas shall enter into an agreement with the commander of the appropriate onshore military installation, i.e., Naval Air Training Command, Naval Air Station, Corpus Christi, Texas, utilizing an individual designated warning area prior to commencing such traffic. Such agreement will provide for positive control of boats and aircraft operating into the warning areas at all times.

Stipulation No. 9

(To be included only in any leases resulting from this sale for tracts: 58A-93 (S1/2); 58A-94; 58A-96; 58A-97; 58A-98; 58A-99; 58A-100; 58A-101; 58A-102; 58A-107; 58A-108; 58A-113; and 58A-114).

All or portions of this tract may be subject to mass movement of sediments related to unstable slopes, unconsolidated sediments, or gaseous sediments. Exploratory drilling operations, emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas, and the emplacement of pipelines will not be allowed within the potentially unstable portions of this lease block unless or until the lessee has demonstrated to the Supervisor's satisfaction that mass movement of sediments is unlikely or that exploratory drilling operations, structures (platforms), casing, wellheads, and pipelines can be safely designed to protect the environment in case such mass movement occurs at the proposed location. This may necessitate that all exploration for and development of oil or gas be performed from locations outside of the area of unstable sediments, either within or outside of this lease block.

If exploratory drilling operations are allowed, site-specific surveys shall be conducted to determine the potential for slumping and mass movement of sediments. If emplacement of structures (platforms) or seafloor wellheads for produciton or storage of oil or gas is allowed all slump blocks or mass movements of sediments in the lease block must be mapped.

15. *Information to Lessees.* The Department of the Interior will seek the advice of the States of Texas, Louisiana,

Mississippi, Alabama, Florida, and other Federal agencies, to identify areas of special concern which might require appropriate protective measures for live bottom areas and areas which might contain cultural resources.

If it is determined that live bottom areas might be adversely impacted by the proposed activities then the Supervisor, in consultation with the Regional Director, Fish and Wildlife Service (FWS), the Manager, BLM and the States, will require the lessee to undertake any measures deemed economically, environmentally, and technologically feasible to protect live bottom areas.

On September 18, 1978, the OCS Lands Act Amendments of 1978 was enacted (Pub. L. 95–372, 92 Stat. 629). Some sections of current regulations applicable to OCS leasing operations are inconsistent with this new legislation and the legislation requires the issuance of some new regulations. The inconsistencies will be corrected by rulemakings and the new regulations will be issued as soon as possible. Nevertheless, bidders are notified that provisions of the new OCS Lands Act Amendments shall apply to all leases offered at this lease sale and shall supersede all inconsistent provisions in current regulations applicable to OCS leasing operations.

Some of the tracts offered for lease may fall in areas which may be included in fairways, precautionary zones, or traffic separation schemes. Corps of Engineers permits are required for construction of any artificial islands, installations and other devices permanently or temporarily attached to the seabed located on the Outer Continental Shelf in accordance with section 4(e) of the Outer Continental Shelf Lands Act of 1953, as amended.

Bidders are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

Bidders are also advised that in accordance with Sec. 16 of each lease offered at this sale, the lessor may require a lessee to operate under a unit, pooling or drilling agreement, and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases with either a different royalty rate or a royalty rate based on a sliding scale.

16. *OCS Orders.* Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Gulf of Mexico Orders, as of their effective date, and any other applicable OCS Order as it becomes effective.

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17. Suggested Bid Form. It is suggested that bidders submit their bids to the Manager, New Orleans Outer Continental Shelf Office, in the following form:

Oil and Gas Bid

The following bid is submitted for an oil and gas lease on the tract of the Outer Continental Shelf specified below:

Tract No.	Total Amount Bid	Amount per Acre	Amount of Cash Bonus Submitted with Bid
_____	_____	_____	_____

Proportionate Interest of Company(s) Submitting Bid

Qualification No. _____ _____
Company

Percent Interest _____ _____
Address

_____
Signature
(Please type signer's name under signature)

18. Required Joint Bidders Statement. In the case of joint bids, each joint bidder is required to execute a joint bidder's statement before a notary public and submit it with his bid. A suggested form for this statement is shown below.

Joint Bidder's Statement

I hereby certify that _____ (entity submitting bid) is eligible under 43 CFR 3316.3 to bid jointly with the other parties submitting this bid.

_____
Signature
(Please type signer's name under signature)

Sworn to and subscribed before me this ___ day of _____ 1979

_____
NOTARY PUBLIC

State of _____

County of _____

[FR Doc. 79-25314 Filed 8-16-79; 8:45 am]
BILLING CODE 4310-84-C

BLM Slates Nellis Des Public Hearing; End of Comment Period Set

The Bureau of Land Management will conduct a public hearing at 7 p.m. Sept. 18 in the Gold Room of the Las Vegas Convention Center, 350 S. Paradise Road, Las Vegas, NV, on the draft environmental statement concerning the proposed withdrawal of 2.9 million public land acres in Southern Nevada for use as a bombing and gunnery range. The proposed action does not involve new acreage for Air Force use, but is an application for continued use of the existing Nellis USAF Bombing and Gunnery Range after its original 20-year authority expired in 1977.

Persons wishing to testify at the hearing should contact Ed Ciliberti, BLM, P.O. Box 5400, Las Vegas, NV 89102 or (702) 385–6403 prior to Sept. 14. To enable all to be heard who wish to speak, those giving testimony will be limited to 10 minutes.

Written comments should be sent to BLM, Room 3008, Federal Building, 300 Booth St., Reno, NV 89505. The comment period will end Sept. 28, 1979.

Dated: August 10, 1979.

Roger J. McCormack,

Acting State Director, Nevada.

[FR Doc. 79–25515 Filed 8–16–79; 8:45 am]

BILLING CODE 4310–84–M

Boise District Idaho Grazing Advisory Board; Meeting

In accordance with Pub. L. 92–463 the Federal Advisory Committee Act, and Pub. L. 94–579 the Federal Land Policy and Management Act, notice is hereby given that the Boise District Grazing Advisory Board will meet on September 26 and 27, 1979.

The meeting will begin at 9:00 a.m. on September 26 at the Boise District Conference Room, 230 Collins Road, Boise, Idaho. After a short meeting, the Board will travel to the Owyhee Resource Area to consider future alotment management plans and range improvements in the Owyhee Grazing Environmental Statement Area.

The public may attend the meeting and tour but must supply their own transportation, lodging and food.

Further information on this meeting and tour is available from the Boise District, Bureau of Land Management, 230 Collins Road, Boise, Idaho 83702, 208–384–1582. Minutes of the meeting will be available for public inspection at the District Office.

James Gabettas,

Acting District Manager.

August 10, 1979.

[FR Doc. 79–25442 Filed 8–16–79; 8:45 am]

BILLING CODE 4310–84–M

[ES 20154, Survey Group 75]

Michigan; Filing of Plats of Survey Stayed

On Thursday, July 19, 1979, there was published in the Federal Register, Volume 44, No. 140, at page 42340, a notice of the filing of plats of survey of lands along the Pere Marquette River, T. 18 N., R. 17 W., and T. 18 N., R. 18 W., Michigan Meridian, Michigan, accepted September 22, 1978.

The official filing of the plats is hereby stayed pending consideration of all protests and a final determination on all objections to the survey. The plat will not be officially filed until the day after all protests have been resolved or subsequent appeals have been decided by the Interior Board of Land Appeals.

All inquiries relating to lands described in the notice published on July 19, 1979, should be sent to the Director, Eastern States, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304.

David P. Lodzinski,

Acting Director, Eastern States.

[FR Doc. 79–25443 Filed 8–16–79; 8:45 am]

BILLING CODE 4310–84–M

Date Change for Public Participation Events in the Special Overthrust Belt Intensive Wilderness Inventory in BLM's Las Vegas District

As a result of work conflicts and consultation with members of the public, the dates of several public participation events in the Special Overthrust (O & G) Intensive Wilderness Inventory in BLM's Las Vegas District have been changed.

The informational open houses will be conducted on the following schedule: Aug. 28, 1979 from 2 to 4:30 p.m. and from 7 to 9 p.m. in Gibson Junior High School, 3900 W. Washington Ave., Las Vegas, NV; Aug. 29, 1979 from 7 to 9 p.m. at the Moapa Community Center, Overton, NV; and Aug. 30, 1979 from 7 to 9 p.m. at the BLM office in Caliente, NV.

One field trip will be conducted the weekend of Sept. 29–30, 1979. Further information can be obtained from the Las Vegas District Office.

It remains the intention of the district to conduct a public forum in early October to obtain oral public comment on the proposals. Format, dates, times, etc. for that event will be determined in early or mid September.

Dated: August 10, 1079.

Roger J. McCormack,

Acting State Director, Nevada.

[FR Doc. 79–25445 Filed 8–16–79; 8:45 am]

BILLING CODE 4310–84–M

[NM 37732 and 37733]

New Mexico; Applications

August 7, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Gas Company of New Mexico has applied for two 6-inch natural gas pipelines and two well site rights-of-way across the following lands:

New Mexico Principal Meridian, New Mexico

T. 19 S., R. 32 E.,
Sec. 12, SE¼NE¼ and N½SE¼.
T. 19 S., R. 33 E.,
Sec. 5, S½NW¼ and NW¼SW¼;
Sec. 6, NE¼SE¼ and SW¼SE¼;
Sec. 7, lots 1, 2, NW¼NE¼ and NE¼NW¼.

These pipelines and well sites will convey natural gas across 12.71 acres of public lands in Lea County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

Fred E. Padilla,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79–25514 Filed 8–16–79; 8:45 am]

BILLING CODE 4310–84–M

[NM 37970]

New Mexico; Application

August 8, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Northwest Pipeline Corporation has applied for one 4½-inch natural gas pipeline right-of-way across the following land:

New Mexico Principal Meridian, New Mexico

T. 26 N., R. 8 W.,
Sec. 6, lots 6 and 7.

This pipeline will convey natural gas across 0.252 of a mile of public land in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

Fred E. Padilla,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-25444 Filed 8-16-79; 8:45 am]

BILLING CODE 4310-84-M

[W-68837]

Wyoming; Application

August 9, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct a 6⅝ inch O.D. pipeline for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 18 N., R. 98 W.,
Sec. 2, SE¼NE¼ and E½SE¼.

The proposed pipeline will transport natural gas from the TRU No. 40 Well located in the SW¼ of section 1 to a point of connection with an existing pipeline in the SE¼NE¼ of section 2, all within T. 18 N., R. 98 W., Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 N., P.O. Box 1869, Rock Springs, Wyoming 82901.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-25446 Filed 8-16-79; 8:45 am]

BILLING CODE 4310-84-M

[W-68912]

Wyoming; Application

August 9, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northern Gas Company of Casper, Wyoming filed an application for a right-of-way to construct a 4½ inch O.D. gathering pipeline and appurtenant facilities for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 23 N., R. 88 W.,
Sec. 6, lot 3, SE¼NW¼ and E½SW¼.
T. 24 N., R. 88 W.,
Sec. 6, lots 4, 5, 6 and 7;
Sec. 18, E½W½;
Sec. 30, E½W½.

The proposed pipeline will transport natural gas from the Dolezal-Cullen Well located in the SE¼SW¼ of section 6, T. 23 N., R. 88 W., to a point of connection with an existing pipeline located in lot 4 of section 6, T. 24 N., R. 88 W., Carbon County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-25447 Filed 8-16-79; 8:45 am]

BILLING CODE 4310-84-M

[AA-9205-C and AA-9205-D]

Alaska Native Claims Selections

This decision approves lands in the vicinity of Hobart Bay, Port Houghton, and Berner's Bay for conveyance to Goldbelt, Incorporated, in accordance with the "Exchange Agreement" dated April 11, 1979, between Goldbelt, Incorporated; Sealaska Corporation; the Secretary of the Interior; and the Secretary of Agriculture.

On December 17, 1975, Goldbelt, Incorporated, filed selection application AA-9205-C, as amended, under the provisions of Sec. 14(h)(3) of the Alaska Native Claims Settlement Act (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(h)(3) (1976)), for the surface estate of lands within the Tongass National Forest (Proclamation, February 16, 1909, as amended) located on Admiralty Island, Berner's Bay, and Douglas Island. Approximately 19,618 acres were selected on Admiralty Island.

Public Land Order 5548 withdrew lands on Admiralty Island for selection by Goldbelt, Incorporated, under Sec. 14(h)(3) of the Alaska Native Claims Settlement Act. The validity of PLO 5548 has been challenged in court proceedings; also, substantial public sentiment exists for maintaining lands on Admiralty Island in wilderness status. In order to avoid continued litigation and further delays in land conveyances, Goldbelt, Incorporated, proposed and was willing to accept an exchange of its Admiralty Island land selection for title to the surface estate of specifically identified off-Admiralty lands.

On April 11, 1979, Goldbelt, Incorporated; Sealaska Corporation; the Secretary of the Interior; and the Secretary of Agriculture entered into an "Exchange Agreement" pursuant to Sec. 22(f) of the Alaska Native Claims Settlement Act (ANCSA) of December 18, 1971 (85 Stat. 688, 714; 43 U.S.C. 1601, 1621(f) (1976)). The agreement provides, among other things, for the exchange of 27,774 acres, more or less, of off-Admiralty lands for all interests in lands held by Goldbelt, Incorporated, on Admiralty Island.

In accordance with Section II, Subsection F, of the "Exchange Agreement" of April 11, 1979, the Assistant Secretary of Agriculture examined the agreement in light of the final Environmental Statement for the Tongass Land Use Management Plan. On June 28, 1979, the Secretary of Agriculture confirmed that the "Exchange Agreement" was compatible with the final Environmental Statement and action was to proceed on effectuating the exchange according to the terms agreed upon.

In view of the foregoing, the surface estate of the following described lands, aggregating approximately 27,774 acres, is considered proper for acquisition by the Natives of Juneau and is hereby approved for conveyance to Goldbelt, Incorporated:

Copper River Meridian, Alaska (Unsurveyed)

T. 36 S., R. 63 E.,
Sec. 17 (fractional), all;
Sec. 20 (fractional), all;
Sec. 21 (fractional), W½W½;
Sec. 29 (fractional), all;
Sec. 32 (fractional), all.
Containing approximately 830 acres.
T. 37 S., R. 63 E.,
Sec. 1 (fractional), all.
Containing approximately 160 acres.
T. 51 S., R. 74 E.,
Sec. 2, S½;
Secs. 10 and 11 (fractional), all;
Sec. 12, S½;
Sec. 13 (fractional), all;
Sec. 14 (fractional), all;
Secs. 23, 24, and 25 (fractional), all.
Containing approximately 2,805 acres.
T. 52 S., R. 74 E.,
Sec. 1 (fractional), all;
Secs. 12 and 13 (fractional), all.
Containing approximately 835 acres.
T. 51 S., R. 75 E.,
Sec. 1, all;
Sec. 2, NE¼, S½;
Sec. 3, SE¼;
Sec. 7, NW¼, S½;
Sec. 8, S½;
Secs. 9 to 12, inclusive, all;
Secs. 13, 14, and 15 (fractional), all;
Secs. 16 and 17, all;
Secs. 18 to 23 (fractional), all;
Sec. 24, NW¼;
Sec. 26 (fractional), W½;
Secs. 27, 28, and 29 (fractional), all;
Sec. 30 (fractional), NW¼NW¼;
Sec. 31 (fractional), S½;
Secs. 32 to 35 (fractional), inclusive, all.
Containing approximately 12,641 acres.
T. 52 S., R. 75 E.,
Sec. 4, all;
Sec. 5, N½;
Sec. 6 (fractional), all;
Sec. 7, all;
Sec. 8, NE¼;
Sec. 9, N½;
Sec. 18 (fractional), SW¼;
Secs. 19 and 20 (fractional), all;
Sec. 21 (fractional), NE¼, S½;
Sec. 22, all;
Secs. 26, 27, and 28 (fractional), all.
Containing approximately 4,720 acres.
T. 50 S., R. 76 E.,
Secs. 31 and 32, all.
Containing approximately 1,261 acres.
T. 51 S., R. 76 E.
Secs. 5 and 6, all.
Containing approximately 1,263 acres.
T. 52 S., R. 76 E.
Sec. 26 (fractional), S½;
Sec. 27 (fractional), SE¼SE¼;
Sec. 34 (fractional), E½;
Secs. 35 and 36 (fractional), all.
Containing approximately 675 acres.
T. 52 S., R. 77 E.
Sec. 19 (fractional), SE¼SE¼;
Sec. 20 (fractional), S½S½, S½N½SW¼;
Sec. 29 (fractional), all;
Sec. 30 (fractional), S½, SW¼NE¼;
Sec. 31 (fractional), W½;
Sec. 32, N½.
Containing approximately 1,539 acres.
T. 53 S., R. 77 E.
Sec. 2 (fractional), all;
Sec. 3 (fractional), N½;
Sec. 4, NW¼NE¼, N½NW¼.
Containing approximately 1,045 acres.
Aggregating approximately 27,774 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(h)(3) (1976);

2. Pursuant to Section II, Subsection E, of the "Exchange Agreement" dated April 11, 1979 between Goldbelt, Incorporated; Sealaska Corporation; the Secretary of the Interior; and the Secretary of Agriculture, copies of which will be found in case file AA–9205–EE, the following interests are reserved to the United States for the uses and purposes listed below:

Uses and Purposes

a. The construction and maintenance of roads, trails, ditches, bridges, culverts, and other structures or facilities deemed necessary for the utilization of the easement as a transportation route.

b. The construction and maintenance of pipelines, utility and communication transmission lines and facilities.

c. Access by officials of federal, state and local governments.

d. Access by any person lawfully entering adjacent public lands under any contract, permit, lease or license.

e. Access by any person exercising a property right within the adjacent public lands.

f. In addition to the above uses, trail reservation Nos. 9, 10 and 11 are for access to the public for lawful recreation purposes.

Reserved Interests

Reservation No. 1: Sumdum B–4 (100' R–O–W) A road, located in NW¼ SE¼, section 30, T. 52 S., R. 77 E., thence through the NE¼ SE¼, and SE¼ SE¼, section 30, thence through the SW¼ SW¼, section 29, thence through the NW¼ NW¼, and SE¼ NW¼, section 32, all in T. 52 S., R. 77 E., CRM, beginning with a 5-acre site reservation.

Reservation No. 2: Sumdum B–4 (100' R–O–W) A road beginning at the junction with Reservation No. 1 in NW¼ NW¼, section 32, thence through the NE¼ NW¼, section 32. Continuing through the SE¼ SW¼, NE¼ SW¼, SW¼ NE¼, and the NW¼ NE¼, section 29, thence through the SW¼ SE¼, and NE¼ SW¼, section 20, all in T. 52 S., R. 77 E., CRM. Also including the east fork of Reservation No. 2 beginning in the SW¼ NE¼ section 29, thence easterly through that quarter-quarter and the SE¼ SE¼ to the boundary, all in T. 52 S., R. 77 E., CRM.

Reservation No. 3: Sumdum B–4 (100' R–O–W) A road located in the NE¼ NE¼, section 34, thence through the SW¼ NW¼, NW¼ SW¼, and the SE¼ SW¼, section 35 to the boundary line, all in T. 52 S., R. 76 E., beginning with a 5-acre site reservation.

Reservation No. 4: Sumdum B–5 (100' R–O–W) A road located in the NE¼ NE¼, section 28, through that quarter into and through the SE¼ SE¼, section 21, thence along the section line between section 22 and 27 to the quarter corner, thence into and through the NW¼ NE¼, section 27, thence through the SE¼ SE¼ and the NE¼ SE¼, section 22, to the boundary, all in T. 52 S., R. 75 E., CRM, beginning with a 5-acre site reservation.

Reservation No. 5: Sumdum B–5 (100' R–O–W) A road located in the SE¼ NE¼, thence through the NW¼ SE¼, NE¼ SW¼, SW¼ SE¼ and the SE¼ SE¼ section 32, crossing through the SW¼ SW¼ section 33, into and through NW¼ NW¼, NE¼ NW¼, SE¼ NW¼, NE¼ SW¼, SE¼ SW¼, SW¼ SE¼ and the SE¼ SE¼ section 4, and through the NE¼ NE¼ section 9 to the boundary, all in T. 52 S., R. 75 E., CRM.

Reservation No. 6: Sumdum B–4 and B–5 (100' R–O–W) A road with a 5-acre site reservation, beginning in the SE¼ SE¼ section 22, thence southeasterly through the SW¼ SW¼, section 23, thence southeasterly through NW¼ NW¼, SW¼ NW¼, NW¼ SW¼, and the SW¼ SW¼ of section 26, thence through the NW¼ NW¼, SW¼ NW¼, NW¼ SW¼, NE¼ SW¼, NW¼ SE¼, and SE¼ NE¼ section 35, to the boundary, all in T. 51 S., R. 75 E., CRM.

Reservation No. 7: Sumdum B–4 (100' R–O–W) A road beginning at the north boundary of the exchange boundary in the NE¼ NW¼ thence through the SW¼ NE¼, NW¼ SE¼, NE¼ SE¼, and the SE¼ SE¼ section 32, all in T. 50 S., R. 76 E., thence through the NE¼ NE¼, section 5 to the boundary, all in T. 51 S., R. 76 E.

Reservation No. 8: Juneau C–3 (100' R–O–W) A road located in the SE¼ SE¼ section 20, through that quarter-quarter, thence through the NE¼ NE¼ and the SE¼ NE¼, section 29, to the boundary, all in T. 36 S., R. 63 E., CRM, beginning with a 5-acre site reservation.

Reservation No. 9: Sumdum B–5 (25' R–O–W) A trail beginning at the 1-acre site easement located in the SE¼ SE¼ section 15, through that quarter-quarter, thence through the SW¼ SW¼, NW¼

SW¼, SW¼ NW¼, NE¼ SW¼, NW¼ SE¼, NE¼ SE¼, section 14, thence through the NW¼ SW¼, through the SW¼ NW¼ terminating at the 1-acre site easement north of the creek in NE¼ NW¼, section 13, all in T. 51 S., R. 75 E., CRM.

Reservation No. 10: Sumdum B–5 and 4 (25' R–O–W) An existing trail crossing through the SW¼ SW¼, NW¼ SW¼, and the NE¼ SW¼, section 2 all in T. 51 S., R. 74 E., CRM

Reservation No. 11: Sumdum B–5 (25' R–O–W) A trail located in the NE¼ NE¼, section 19 through that quarter-quarter to the boundary, all in T. 52 S., R. 75 E., CRM, beginning with the 1-acre site reservation.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the unsurveyed lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g) (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 Alaska Native Claims Settlement Act any valid existing right recognized by Alaska Native Claims Settlement Act shall continue to have whatever right of access as is now provided for under existing law;

3. Requirements of Sec 22(k) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 715; 43 U.S.C. 1601, 1621(k) (1976)), that, until December 18, 1983, the portion of the above-described lands located within the boundaries of a national forest shall be managed under the principles of sustained yield and under management practices for protection and enhancement of environmental quality no less stringent than such management practices on adjacent national forest lands;

4. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c) (1976)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section; and

5. The terms and conditions of the "Exchange Agreement" dated April 11, 1979, between the Secretary of the Interior, the Secretary of Agriculture, Sealaska Corporation and Goldbelt, Incorporated. A copy of the agreement shall be attached to and become a part of the conveyance document and shall be recorded therewith. A copy of the "Exchange Agreement" is located in the Bureau of Land Management case file for Goldbelt, Incorporated, serialized as AA–9205–EE. Any person wishing to examine this agreement may do so at the Bureau of Land Management, Alaska State Office, 701 C Street, Anchorage, Alaska.

There are no easements to be reserved to the United States pursuant to Sec. 17(b)(3) of the Alaska Native Claims Settlement Act.

There are no inland water bodies considered to be navigable within the above described lands.

To date, approximately 27,774 acres of land off Admiralty Island have been approved for conveyance to Goldbelt, Incorporated, in exchange for all interests held by Goldbelt, Incorporated, to lands on Admiralty Island. Goldbelt, Incorporated, has a remaining entitlement to 3,422 acres at Berner's Bay and the west side of Douglas Island. Goldbelt's acceptance of the lands approved for conveyance herein together with the conveyance of such additional 3,422 acres shall constitute full satisfaction of the land entitlement of the Natives of Juneau, Alaska, provided under Sec. 14(h)(3) of ANCSA.

Conveyance of portions of the subsurface estate will be made at a later date to Sealaska Corporation as provided by Section II, Subsection C, of the "Exchange Agreement".

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the Anchorage Times and in the Southeast Alaska Empire. 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 September 17, 1979, to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Goldbelt, Incorporated, 811[A] West 12th Street, Juneau, Alaska 99801.

Judith A. Kammins,

Chief, Division of ANCSA Operations.

[FR Doc. 79–25622 Filed 8–16–79; 8:45 am]

BILLING CODE 4310–84–M

Bureau of Reclamation

Chikaskia Project, Kansas-Oklahoma; Notice of Intent To Prepare a Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare a draft environmental statement for the Chikaskia Project, Kansas-Oklahoma. The purpose of the project is to provide a municipal and industrial water supply to meet both short-term and long-term needs of the cities of Wichita and Wellington, Kansas. In addition, the project would provide vitally needed flood control for the Chikaskia River Basin in Kansas and Oklahoma. All viable alternatives are centered around a dam and surface reservoir on the Chikaskia River near Corbin, Kansas. An aqueduct and pipeline would convey the water to the respective communities. Three alternatives have been evaluated:

(1) Dam and reservoir on Chikaskia River near Corbin, Kansas; three pumping plants; and about 40 miles of aqueduct, pipeline and related transmission lines. Preservation and enhancement of riparian habitat above and below the reservoir would total about 380 acres.

(2) Same as above, but would also include two 6,600-foot-long rock jetties in the reservoir for fish spawning enhancement and 5,000 feet of terracing on the reservoir side of the dam. Also included would be 6,270 acres of

preserved and enhanced riparian habitat above and below the reservoir plus an additional 4,130 acres of riparian habitat on Bluff Creek. An 800-acre demonstration farm was also proposed with this plan.

(3) This plan, which is being recommended for authorization and subsequent construction consists of the same physical features as the previous two alternatives, but represents a trade-off in perceived values to be more responsive to the multiple objectives expressed as desirable by the planning team participants and at many public meetings. This plan includes the low level terracing of "Plan 2" but reduces the preserved streamside corridor to approximately 3,600 acres. Four designated recreation areas would be managed by the State of Kansas.

A nonstructural plan was also investigated which would have utilized additional ground water from the Equus Beds aquifer in conjunction with conservation of usage. Detailed analyses indicated this alternative to be nonresponsive to long range water needs and hazardous to the preservation of water needs for other communities, agriculture, and preservation of instream flows of several major streams in the study area.

The present investigation has been underway since 1973. During this time, considerable input has been received from interested agencies and individuals. Consequently, there will not be a scoping session.

The contact person for this draft environmental statement is Mr. Daniel Rubenthaler, Bureau of Reclamation, Herring Plaza, Box H–4377, Amarillo, Texas 79101, telephone (806) 376–2218.

Dated: August 9, 1979.

R. Keith Higginson,

Commissioner.

[FR Doc. 79–25109 Filed 8–16–79; 8:45 am]

BILLING CODE 4310–09–M

Heritage Conservation and Recreation Service

Proposed Lower Little Miami National Wild and Scenic River; Application for Addition of the Lower Segment of the Little Miami River in Ohio to the National Wild and Scenic Rivers System as a State Administered River Area.

This notice is to acknowledge that on June 29, 1979, the Governor of the State of Ohio made formal application to the Secretary of the Interior to include the lower segment of the Little Miami River in Ohio, a State designated scenic river, in the National Wild and Scenic Rivers System under Section 2(a)(ii) of Pub. L. 90–542, as amended.

The segment of the Little Miami River for which national designation has been requested begins at the lower terminus of the previously designated Little Miami National Wild and Scenic River at the town of Foster, Ohio, and extends downstream for approximately 28 miles to its confluence with the Ohio River.

On July 18, 1979, as required under section 4(c) of the act, the Secretary of the Interior notified the heads of affected Federal agencies and provided them with a 90 day period for review and comment on the proposal. After consideration of any timely comments received, the Secretary will make his decision. Should he approve the proposed inclusion of the lower segment of the Little Miami River, notice to that effect will be published in the **Federal Register.**

Questions concerning this application may be addressed to the Heritage Conservation and Recreation Service, U.S. Department of the Interior, Federal Building, Ann Arbor, Michigan 48107 (phone 313–668–2023) or 440 G Street, NW, Washington, D.C. 20243 (phone 202–343–4793).

The Governor's application is published herewith as required under section 2(a) of the act.

Dated: August 14, 1979.

Meg Maquire,

Acting Director.

State of Ohio,
Office of the Governor,
Columbus 43215.

June 29, 1979.

The Honorable Cecil B. Andrus, *Secretary, U.S. Department of the Interior, Interior Building, Washington, D.C. 20240.*

Dear Secretary Andrus: We have reviewed the letter from Mr. Frank Jones, Regional Director, Heritage Conservation and Recreation Service, Ann Arbor, discussing the inclusion of the lower Little Miami River as a component of the National Wild and Scenic River system and we concur with his findings. We accept the recommendation that the State of Ohio administer the lower Little Miami River as a component of the National Wild and Scenic River system. We are presently providing river management along the river. Therefore, we are willing and able to assume the responsibility for administering the additional portion of the Little Miami River from Foster to its confluence with the Ohio, as a National Recreational River segment.

In accordance with Section 2(a)(ii) of the Wild and Scenic Rivers Act, Public Law 90–542, I do hereby request on behalf of the State of Ohio that the Little Miami River be designated a National Recreational River segment as recommended by Mr. Jones in his letter of June 22, 1979.

The State of Ohio has already complied with all of the provisions set forth in Section 2(a)(ii) of Pub. L. 90–542.

1. The National Wild and Scenic Rivers System shall comprise rivers under Section 2(a)(ii) that are designated as wild, scenic, or recreation rivers by, or pursuant to, an act of the legislature of the state. The State of Ohio complied with this provision in October 1971, when the entire Little Miami River was designated as a Scenic River under the provisions established in the State Scenic Rivers Act.

2. The Little Miami River, from Foster to its confluence with the Ohio, has been found to meet the criteria necessary for inclusion as a National Recreational River as indicated in Mr. Jones' letter.

3. Land has been purchased without expense to the United States government as provided in Section 2(a)(ii) although Land and Water Conservation Fund money will be used to match state funds whenever approval to do so is granted. As you are aware, the Ohio General Assembly appropriated $1,000,000 to be used for the acquisition of the abandoned Penn Central Railroad Right-of-way along the Little Miami River.

4. The Scenic Rivers Program has prepared a river assistance manual for the river and its proceeding with its implementation.

A local advisory council, consisting of 10 members, has been appointed for the purpose of developing and implementing the assistance manual. This detailed manual includes specific recommendations on local land use controls, the level of recreational use to be provided, the exact nature and location of recreational facilities, and other aspects of the overall effort to provide protection for the Little Miami River.

Therefore, I respectfully request your consideration and approval to include the aforementioned segment of the Little Miami River into the National System of Wild and Scenic Rivers.

Sincerely,

James A. Rhodes,

Governor.

[FR Doc. 79–25570 Filed 8–16–79; 8:45 am]

BILLING CODE 4310–03–M

National Park Service

Notice of Intention To Negotiate Concession Contract

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Jackglo, Inc., authorizing it to continue to provide fast food and non-alcoholic beverage services and the sale of souvenirs for the public at Muir Woods National Monument for a period of five (5) years from January 1, 1980, through December 31, 1984.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having a significant impact of the environment under the National Environmental Policy Act of 1969. The environmental assessment may be reviewed in the Office of the Regional Director, Western Region, National Park Service, 450 Golden Gate Avenue, San Francisco, California 94102.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1979, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. This provision, in effect, grants Jackglo, Inc., as the present satisfactory concessioner, the right to meet the terms of responsive proposals for the proposed new contract and a preference in the award of the contract, if, thereafter, the proposal of Jackglo, Inc., is substantially equal to others received. In the event a responsive proposal superior to that of Jackglo, Inc., (as determined by the Secretary) is submitted, Jackglo, Inc., will be given the opportunity to meet the terms and conditions of the superior proposal the Secretary considers desirable, and, if it does so, the new contract will be negotiated with Jackglo, Inc. The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be post marked or hand delivered on or before the thirtieth (30th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Western Regional Office, National Park Service, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirements of the proposed contract.

Dated: August 10, 1979.

Boyd Evison,

Acting Associate Director, National Park Service.

[FR Doc. 79-25453 Filed 8-16-79; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

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 modifications 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 petitions 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: August 8, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

Affirmative Decisions on Petitions for Modification

Docket No.	FR notice	Petitioner	Regulation affeted	Summary of findings
M-76-84	41 FR 7436	Island Creek Coal Company	30 CFR 75.1710	Use of cabs or canopies on petitioner's cutting machines roof bolting machines and shuttle cars would result in a diminution of safety in specified low mining heights. Granted in part with conditions.
M-76-131	41 FR 13968	Sewell Coal Company	30 CFR 75.1710	Use of cabs or canopies on petitioner's continuous mining machines, roof bolting machines and shuttle cars would result in a diminution of safety in specified areas of the petitioner's mines in current low mining heights. Granted in part with conditions.
M-76-204	41 FR 30371	Stewart Coal Company	30 CFR 75.1710	Use of cabs or canopies on petitioner's scoops and cutting machine would result in a diminution of safety in current low mining heights. Granted in part with conditions.
M-76-255	41 FR 19234	Beth-Elkhorn Coal Corp	30 CFR 75.1710	Use of cabs or canopies on petitioner's continuous mining machines, shuttle cars, roof machines and scoops would result in a diminution of safety in specified areas of the petitioner's mines in current low mining heights. Granted in part with conditions.
M-76-263	41 FR 16591	Elkhorn and Jellico Coal Company (Formerly Pratt Bros. Coal Co.).	30 CFR 75.1710	Use of cabs or canopies on petitioner's shuttle cars would result in a diminution of safety in specified low mining heights. Granted in part with conditions.
M-76-289	41 FR 18888	Scotia Coal Company	30 CFR 75.1710	Use of cabs or canopies on petitioner's shuttle cars and loading machines would result in a diminution of safety in specified low mining heights. Granted in part with conditions.
M-76-324	41 FR 44202	Wright Coal Company	30 CFR 75.1710	Use of cabe or canopies on petitioner's scoops would result in a diminution of safety in specified low mining heights. Granted in part with conditions.

Affirmative Decisions on Petitions for Modification—Continued

Docket No.	FR notice	Petitioner	Regulation affeted	Summary of findings
M-76-507	41 FR 31916	McCoy Elkhorn Coal Corporation	30 CFR 75.1710	Use of cabs or canopies on petitioner's shuttle cars, loading machines, cutting machines and roof bolting machines would result in a diminution of safety in current low mining heights. Granted in part with conditions.
M-76-546	41 FR 39360	Blue Diamond Mining, Inc	30 CFR 75.1710	Use of cabs or canopies on petitioner's shuttle cars, coal drills, cutting machine, loading machine and roof bolting machines would result in a diminution of safety in specified areas of the petitioner's mines in specified low mining heights. Granted in part with conditions.
M-76-564	41 FR 48593	Peabody Coal Company	30 CFR 75.1710	Use of cabs or canopies on petitioner's shuttle cars would result in a diminution of safety in specified areas of the petitioner's mine in current low mining heights. Granted in part with conditions.
M-76-698	41 FR 50487	Eastern Coal Corporation	30 CFR 75.1710	Use of cabs or canopies on petitioner's continuous miner, shuttle cars and scoop would result in a diminution of safety in specified low mining heights. Granted in part with conditions.
M-76-113	42 FR 13160	Peabody Coal Company	30 CFR 75.1710	Use of cabs or canopies on petitioner's cutting machines, loading machines and shuttle cars would result in a diminution of safety in specified areas of the petitioner's mine in specified low mining heights. Granted in part with conditions.
M-77-135	42 FR 18140	Cannelton Industries	30 CFR 75.1710	Use of cabs or canopies on petitioner's roof bolting machine, cutting machine, continuous mining machine, shuttle cars and scoop would result in diminution of safety in specified areas of the petitioner's mines in current low mining heights. Granted in part with conditions.
M-77-148	42 FR 31655	Deskins Branch Coal Company	30 CFR 75.1710	Use of cabs or canopies on petitioner's cutting machine, loading machine and shuttle cars would result diminution of safety in current low mining heights. Granted in part with conditions.182
M-77-182	42 FR 40502	Ranger Fuel Corporation	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-77-186	42 FR 31657	Red Ash Sales Company, Inc	30 CFR 75.1710	Use of cabs or canopies on petitioner's battery scoop and tractors would result in diminution of safety in current low mining heights. Granted in part with conditions.
M-78-29	43 FR 2773	Consolidation Coal Company	30 CFR 75.305	Due to poor roof conditions, petitioner's proposal to establish air-monitoring checkpoints on specified return airways, considered acceptable alternative to making weekly inspections of the airways. Granted with conditions.
M-78-36	43 FR 9378	Hiysota Fuel Company	30 CFR 75.1710	Use of cabs or canopies on petitioner's coal haulers would result in diminution of safety in specified low mining heights. Granted with conditions.
M-78-93-C	43 FR 49580	Braztah Corporation	30 CFR 75.503	Due to adverse mining conditions in the petitioner's mine, trailing cables limited to maximum permissible lengths would result in a diminution of safety. Petitioner's proposal to use longer cables in conjunction with a circuit breaker test program considered acceptable alternative method of trailing cable usage. Granted with conditions.
M-78-100-C	43 FR 59924	Pyro Mining Company, Inc	30 CFR 75.1710	Use of cabs or canopies on petitioner's loading machine, cutting machine, roof bolting machine, coal drill and shuttle cars would result in a diminution of safety in specified low mining heights. Granted with conditions.
M-78-108-C	43 FR 50272	Valley Camp Coal Company	30 CFR 75.1403-8	Due to uncertain support function of gunite-sealed posts and timbers, attempts to widen specified portions of petitioner's track haulage road would result in diminution of safety. Petitioner's proposed operation procedures for specified road sections considered acceptable as alternative track haulage road safeguards.
M-78-133-C	43 FR 10139	Piney Creek Coal Company	30 CFR 75.305	Due to poor roof conditions, petitioner's proposal to establish air-monitoring checkpoints on specified return airways considered acceptable alternative to making weekly inspections of the airways. Granted with conditions.
M-79-4-C	44 FR 19553	Standard Sign and Signal Company.	30 CFR 75.1710	Use of cabs or canopies on petitioner's shuttle cars would result in diminution of safety in specified low mining heights. Granted in part with conditions.
M-79-6-C	44 FR 6790	L & M Coal Company	30 CFR 75.305	Due to poor roof conditions, petitioner's proposal to establish air-monitoring checkpoints on specified return airways considered acceptable alternative to making weekly inspections of the airways. Granted with conditions.

Affirmative Decisions on Petitions for Modification—Continued

Docket No.	FR notice	Petitioner	Regulation affeted	Summary of findings
M-79-18-C	44 FR 19552	O. C. Coal Company	30 CFR 77.1605(k)	Berms on a limited and infrequently used portion of petitioner's elevated roadway would interfere with winter snow removal and runoff water drainage, resulting in a diminution of safety. Granted.
M-79-8-M	44 FR 16045	Atlas Minerals	30 CFR 57.19-22	Petitioner's proposal procedures for attaching wire rope to hoist drum considered acceptable alternative method of wire rope attachment. Granted with conditions.

[FR Doc. 79-25241 Filed 8-16-79; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Radiofrequency Sealers, Heaters, and Gluers; Open Workshop

Cross Reference: For a notice of open workshop issued by the Food and Drug Administration and the Occupational Safety and Health Administration to discuss potential hazards of using radiofrequency sealers, heaters, and gluers, see FR Doc. 79-25278 appearing in the Notices section of this issue.

BILLING CODE 4110-03-M

Office of the Secretary

[TA-W-5677]

Allied Chemical Corp., Semet Solvay Division, Fairfield, Ala.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on June 29, 1979 in response to a worker petition received on June 22, 1979 which was filed on behalf of workers and former workers producing coal, coke and tar at the Fairfield, Alabama facility of Allied Chemical Corporation, Semet Solvay Division. The investigation revealed that the plant produces primarily creosote oil and pitch. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

The average number of production workers at the Fairfield, Alabama tar plant of Allied Chemical Corporation, Semet Solvay Division, remained constant from 1977 through June of 1979. The average weekly hours worked per employee did not change significantly from 1977 to 1978 and increased in the first six months of 1979 when compared with the first six months of 1978. There is no immediate threat of separation of workers at this plant.

Conclusion

After careful review, I determine that all workers of Allied Chemical Corporation, Semet Solvay Division, Fairfield, Alabama are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of August 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-25542 Filed 8-16-79; 8:45 am]

BILLING CODE 4510-28-M

American Air Filter Co., Inc., et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 27, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 27, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 9th day of August 1979.

Harold A. Bratt,

Acting Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
American Air Filter Company, Inc. (UAW)	Shelbyville, Ky	8/6/79	6/21/79	TA-W-5,839	Hepa air filters.
Andray Products, Inc. (ILGWU)	East Orange, N.J 8/6/79		8/2/79	TA-W-5,840	Polyethylene and polypropylene woven swimming pool covers.
D B Systems (company)	Rindge, N.H	8/6/79	8/2/79	TA-W-5,841	Electronic high fidelity equipment.
Fay Sportswear (ILGWU)	Burlington, N.J	8/6/79	7/26/79	TA-W-5,842	Children's dresses.
Icon, Incorporated (company)	Lynchburg, Va	8/6/79	8/3/79	TA-W-5,843	Men's, women's and children's shoes.
K & M Sportswear (ILGWU)	Bridgeton, N.J	8/6/79	7/26/79	TA-W-5,844	Ladies' skirts and slacks.
Uniroyal, Inc. (URW)	Eau Claire, Wis	8/8/79	8/2/79	TA-W-5,845	Passenger bias tires, passenger radial tires, monoply tires, truck small heavy service tires.
Uniroyal, Inc. (URW)	Chicopee, Mass	8/8/79	8/3/79	TA-W-5,846	Truck and passenger car tires.

[FR Doc. 79-25543 Filed 8-16-79; 8:45 am]

BILLING CODE 4510-28-M

Bay-Bee Shoe Co., et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolutely decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not late than August 27, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 27, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 13th day of August 1979.

Harold A. Bratt,

Acting Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Bay-Bee Shoe Co. (workers)	Dresden, Tenn	8/8/79	8/3/79	TA-W-5,847	Children's western style boots.
Campbell Minning Company, Campbell Strip Mine (UMWA).	Fayette County, W. Va	8/6/79	8/1/79	TA-W-5,848	Mining of coal.
Carter Leather Goods Co., Inc. (International Leather Goods, Plastic & Novelty Workers Union).	New York, N.Y	8/6/79	8/1/79	TA-W-5,849	Men's and ladies' wallets, check secretaries, billfolds, clutches, french purses and key cases.
Celia's Sportswear Manufacturing Corp. (company).	New York, N.Y	8/8/79	7/30/79	TA-W-5,850	Ladies' sportswear.
Herman Kay Company, Inc. (ILGWU)	New York, N.Y	8/6/79	8/1/79	TA-W-5,851	Ladies' raincoats and wool coats.
International Shoe Company (United Shoe Workers of America).	Salem, Mo	8/6/79	8/1/79	TA-W-5,852	Women's dress shoes.
Mountaineer Coal Co. (UMWA)	Clear Creek, W. Va	8/8/79	7/27/79	TA-W-5,853	Mining of coal.
Peg Sportswear, Inc. (Company)	New York, N.Y	8/8/79	7/30/79	TA-W-5,854	Purchases raw materials, makes samples, and ship finished product to customers for Celia's Sportswear Mfg. Corp.
Pfister & Vogel Tanning Co. Division of Beatrice Foods (workers).	Milwaukee, Wis	8/8/79	8/6/79	TA-W-5,855	Tanners of side leather.
Philip Gurian Sons, Inc. (workers)	Tamaqua, Pa	8/7/79	7/11/79	TA-W-5,856	Ladies' sportswear.
Jodi Scott (ILGWU)	Pitman, N.J	8/8/79	7/26/79	TA-W-5,857	Ladies' dresses and blouses.
Trace Fork Coal Company, Tug River Mine (UMWA).	McDowell County W. Va	7/20/79	7/12/79	TA-W-5,858	Mining of coal.
United Pocahontas Coal Co., Algoma Preparation Plant (UMWA).	McDowell County, W. Va	8/8/79	8/1/79	TA-W-5,859	Cleaning of coal.

[FR Doc. 79-25544 Filed 8-16-79; 8:45 am]

BILLING CODE 451-28-M

[TA-W-5668]

Big Four Trucking Co., Inc., Logan, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on June 28, 1979, in response to a worker petition received on June 26, 1979, which was filed on behalf of workers and former workers of Big Four Trucking Company, Incorporated, Logan, West Virginia, engaged in hauling coal.

Big Four Trucking Company, Incorporated was engaged in providing the service of transporting coal by truck from a customer's mine to a tipple.

Thus, workers of Big Four Trucking Company, Incorporated did not produce an article within the meaning of section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Big Four Trucking Company, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the produce impacted by imports.

Big Four Trucking Company, Incorporated and its customers had no controlling interest in one another. The subject firm was not corporately affiliated with any other company.

All workers engaged in transporting coal by truck at Big Four Trucking Company, Incorporated were employed by that firm. All personnel actions and payroll transactions were controlled by Big Four Trucking Company, Incorporated. All employee benefits were provided and maintained by Big Four Trucking Company, Incorporated. Workers were not, at any time, under employment or supervision by customers of Big Four Trucking Company, Incorporated. Thus, Big Four Trucking Company, Incorporated, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Big Four Trucking Company, Incorporated, Logan, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of August 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-25545 Filed 8-16-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5750]

Bryant Trucking Co., Rainelle, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on July 17, 1979 in response to a worker petition received on July 9, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers engaged in the hauling of coal at Bryant Trucking, Greenbriar County, West Virginia. The investigation revealed that the correct company name is Bryant Trucking Company, and that the company is located in Rainelle, West Virginia.

Bryant Trucking Company is engaged in providing the service of transporting coal by truck from a customer's mine to a rail siding.

Thus, workers of Bryant Trucking Company do not produce an article within the meaning of section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Bryant Trucking Company by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Bryant Trucking Company and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in transporting coal by truck at Bryant Trucking Company are employed by that firm. All personnel actions and payroll transactions are controlled by Bryant Trucking Company. All employee benefits are provided and maintained by Bryant Trucking Company. Workers are not, at any time, under employment or supervision by customers of Bryant Trucking Company. Thus, Bryant Trucking Company, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Bryant Trucking Company, Rainelle, W. Va. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 13th day of August 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-25546 Filed 8-16-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5560]

Casuals of Maine, Inc., Lewiston, Maine; Certifcation Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on June 14, 1979 in response to a worker petition received on June 11, 1979 which was filed on behalf of workers and former workers producing men's and women's shoes at Casuals of Maine, Incorporated, Lewiston, Maine. It is concluded that all of the requirements have been met.

U.S. imports of men's dress and casual footwear, except athletic, increased

relative to domestic production from 1977 to 1978.

U.S. imports of women's nonrubber footwear, except athletic, increased absolutely and relative to domestic production from 1977 to 1978 and increased absolutely and relative to domestic production in the first quarter of 1979 compared to the same period of 1978.

A survey of the major customers of Casuals of Maine, Inc. revealed that customers decreased their purchases of men's and women's casual shoes from Casuals of Maine, Incorporated and increased purchases of imported shoes in 1978 and in the first five months of 1979 compared to the same period of 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's and women's casual shoes produced at Casuals of Maine, Incorporated, Lewiston, Maine contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of Casuals of Maine, Incorporated, Lewiston, Maine who became totally or partially separated from employment on or after July 22, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 13th day of August 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-25547 Filed 8-16-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4860]

Cities Service Co., Plainview Terminal, Plainview, N.Y.; Negative Determination Regarding Application for Reconsideration

By letter of May 30, 1979, an official of the Oil, Chemical and Atomic Workers International Union requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers transporting gasoline for the Plainview Terminal of Cities Service Company, Plainview, New York. The determination was published in the **Federal Register** on May 8, 1979, (44 FR 26973).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The petitioning union disputes the Department's statement that the gasoline distributed through the Plainview Terminal was not owned and produced by the workers' parent firm, Cities Service Company. Further, the union claims that the separation of workers at the Plainview Terminal was a result of reduced demand for the workers' services by their parent firm and that this reduced demand was caused by the decreased availability and high cost of foreign crude oil.

The Department concurs with the petitioner that the gasoline distributed through the Plainview Terminal was in fact owned by Cities Service and that the separation of workers at Plainview was a result of reduced demand for the workers' services by their parent firm. Nevertheless, the Department must conclude that the petitioners have failed to meet one of the group eligibility requirements necessary for certification: that increased imports of articles like or directly competitive with the articles produced by the workers' firm (i.e., gasoline) have contributed importantly to the declines in employment and production at the workers' firm. The union's contention that the high cost and coincident decreased availability of imported crude oil (in effect, decreased imports) have caused the workers' separations manifestly fails to meet this requirement.

It should be noted that gasoline, whether foreign or domestically produced, must be distributed through a terminal such as the one at Plainview and, therefore, increased imports of gasoline would most likely have the effect of enhancing rather than reducing employment.

Thus, increased imports of gasoline have not been an important factor in the separations at Plainview. Rather, it appears that unprofitable retail outlet locations forced a cutback in Cities Service transport operations at Plainview and eventually in the transfer of operations to a common carrier.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., 10th day of August 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-25548 Filed 8-16-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5581]

Craftsman Coat Co., Inc., Hoboken, N.J.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on June 15, 1979 in response to a worker petition received on June 12, 1979 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats and suits at the Craftsman Coat Company, Incorporated, Hoboken, New Jersey. The investigation revealed that the petition was filed by an official of the Craftsman Coat Company and that ladies' suits accounted for an insignificant portion of Craftsman's production. It is concluded that all of the requirements have been met.

The ladies' coats produced by Craftsman Coat are included in the import category "Women's Misses' and Children's Coats and Jackets". Imports in this category increased both absolutely and relative to domestic production in 1978 compared to 1977.

A survey of the manufacturers Craftsman Coat Company worked for was conducted. A manufacturer that accounted for a majority of sales in 1977 and 1978 increased purchases of imported ladies' coats while reducing purchases from Craftsman in the last.

half of 1978 compared to the last half of 1977 and in the first five months of 1979 compared to the same period in 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the ladies' coats produced by the Craftsman Coat Company, Incorporated, Hoboken, New Jersey contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Craftsman Coat Company, Incorporated, Hoboken, New Jersey who became totally or partially separated from employment on or after September 11, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 13th day of August 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-25549 Filed 8-16-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5554]

East West Leathers, Inc., San Francisco, Calif.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigations regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on June 12, 1979 in response to a worker petition received on June 7, 1979 which was filed on behalf of workers and former workers producing leather garments at East West Leathers, Incorported, San Francisco, California. It is concluded that all of the requirements have been met.

Imports of leather coats and jackets increased absolutely and relative to domestic production in 1978 compared to 1977 and increased absolutely in the first quarter of 1979 compared to the same period in 1978. Imports of leather coats and jackets by East West Leathers increased in 1978 compared to 1977 and in the first half of 1979 compared to the first half of 1978. The firm will cease all domestic production in favor of increased company imports in the second half of 1979.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with leather coats and jackets produced at East West Leathers, Inc., San Francisco, California contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of East West Leathers, Inc., San Francisco, California who became totally or partially separated from employment on or after September 6, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of August 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-25550 Filed 8-16-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5555]

Ekco Housewares, Massillon Division, Massillon, Ohio; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on June 12, 1979 in response to a worker petition received on June 4, 1979 which was filed by the United Steelworkers of America on behalf of workers and former workers producing skillets and saucepans at the Ecko Housewares, Massillon, Ohio. The investigation revealed that the plant primarily produces stainless steel cookware and a line of tin-plated bakeware. The correct name of the company is Ekco Housewares (not Ecko). In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A survey of customers with declining purchases from Ekco Housewares in 1979 revealed that the customers did not import cookware. The surveyed customers reduced their purchases from Ekco by an amount large enough to account for all the sales decline experienced by the firm.

Average employment increased in 1978 when compared to 1977, and average hours remained stable when comparing the same periods.

Conclusion

After careful review, I determine that all workers of Ekco Housewares, Massillon Division, Massillon, Ohio are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of August 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-25551 Filed 8-16-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5682]

Ford Aerospace & Communications Corp., Connersville, Ind.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on July 2, 1979 in response to a worker petition received on June 29, 1979 which was filed by the International Union of Electrical, Radio and Machine Workers on behalf of workers and former workers producing auto air conditioner components at Ford Aerospace and Communications Corporation, Connersville, Indiana. Without regard to whether any of the other criteria have

been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of air conditioners for original equipment mobile vehicles are negligible.

The customer of Ford Aerospace and Communications Corporation does not import either automobile air conditioner components or automobile air conditioners.

Conclusion

After careful review, I determine that all workers of Ford Aerospace and Communications Corporation, Connersville, Indiana are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of August 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-25552 Filed 8-16-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5600]

H & P Garment Co., Inc., Hoboken, N.J.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on June 18, 1979 in response to a worker petition received on June 12, 1979 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats and raincoats at H & P, Hoboken, N.J. The investigation revealed that the correct corporate title is H & P Garment Company, Incorporated and that the firm produces primarily ladies' coats. It is concluded that all of the requirements have been met.

U.S. Imports of women's, Misses', and children's coats and jackets increased in 1978 compared with 1977.

Manufacturers with whom H & P did contract work who were surveyed reported that they decreased purchases of ladies' coats from the subject firm while increasing their reliance upon foreign sources for similar garments during the period under investigation.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies' coats produced at H & P Garment Company, Incorporated, Hoboken, N.J. contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of H & P Garment Company, Incorporated, Hoboken, N.J. engaged in employment related to the production of ladies' coats who became totally or partially separated from employment on or after July 8, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 13th day of August 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-25553 Filed 8-16-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5622]

International Embroidery Works, Union City, N.J.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) The Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on June 19, 1979 in response to a worker petition received on June 12, 1979 which was filed on behalf of workers and former workers producing embroideries, laces and emblems for the garment industry at International Embroidery Works, Union City, New Jersey. The investigation revealed that in June 1978 the company relocated to Edgewater, New Jersey. In the following determination, without regard to whether any of the other critieria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A Departmental survey of customers of International Embroidery Works revealed that customers' purchases of imported ornamented fabric and trim are very small relative to purcahses from domestic sources. The survey results show that no customers decreased purchases from International and increased purchases of imported ornamented fabric and trim, in the last six months of 1978 compared to the last six months of 1977. Customers which decreased purchases from International and increased purchases of imported fabric and trim, in the first six months of 1979 when compared to the same period of the previous year, relied on imports for only a small portion of their supply. Additionally these customers did not exert an important influence on International's total sales of embroideries and lace.

U.S. imports of ornamented fabric declined absolutely and relative to domestic production from 1977 to 1978. U.S. imports declined in the first quarter of 1979 when compared to the same quarter in 1978.

Conclusion

After careful review, I determine that all workers of International Embroidery Works, Union City, New Jersey (currently located in Edgewater, New Jersey) are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 13th day of August 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-25554 Filed 8-16-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5567]

Island Creek Coal Co., Northern Division, Birch 2A Mine, Werth, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the

results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on June 14, 1979 in response to a worker petition received on June 11, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers mining and transporting coal for Island Creek Coal Company, Northern Division, Birch 2A Mine, Craigsville, West Virginia. The investigation revealed that the workers do not transport coal and the mine is located in Werth, West Virginia. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Island Creek Coal Company, a wholly-owned subsidiary of Occidental Petroleum Corporation, operates several coal mines throughout the United States. The Birch 2A mine is located in the Northern Division.

The Birch 2A mine extracts metallurgical grade coal which it ships to the Gauley Preparation Plant, accounting for all of this plant's metallurgical coal output. Most of the metallurgical coal processed at the preparation plant is exported. Domestic sales of metallurgical coal by this plant increased in 1978 compared to 1977, and increased the first half of 1979 compared to the same period of 1978. Export sales of metallurgical coal by the preparation plant declined in 1978 compared to 1977.

The U.S. Department of Labor conducted a survey of the customers purchasing metallurgical coal from the Gauley Preparation Plant. The survey revealed that domestic purchases of metallurgical coal by the preparation plant's customers increased significantly during the first half of 1979 compared to the same period of 1978.

Conclusion

After careful review, I determine that all workers of Island Creek Coal Company, Northern Division, Birch 2A Mine, Werth, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 10th day of August 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 25555 Filed 8-16-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5605]

LeSande Shoe Co., Inc., Haverhill, Mass.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on June 18, 1979 in response to a worker petition received on June 12, 1979 which was filed on behalf of workers and former workers producing ladies' novelty shoes at LeSande Shoe Company, Haverhill, Massachusetts. The investigation revealed that the correct name of the firm is LeSande Shoe Company, Incorporated and that it produces women's nonrubber, nonathletic footwear. It is concluded that all of the requirements have been met.

U.S. imports of women's nonrubber footwear, except athletic, increased from 192.4 million pairs in 1977 to 215.2 million pairs in 1978, and from 57.4 million pairs in the first quarter of 1978 to 72.2 million pairs in the first quarter of 1979. The ratio of imports to domestic production increased from 136.2 percent in 1977 to 150.1 percent in 1978, and from 146.1 percent in the first quarter of 1978 to 185.1 percent in the same period in 1979.

Major customers of LeSande Shoe Company, Incorporated were surveyed regarding their purchases of women's dress and casual shoes. Several customers which reduced purchases from LeSande Shoe Company, Incorporated in the first five months of 1979 compared with the same period in 1978 increased their purchases of imported women's dress and casual shoes over the same period.

A certification applicable to the petitioning group of workers was issued on July 15, 1977 (TA-W-1964). That certification remained in effect until July 15, 1979—two years from its date of issuance.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's nonrubber, nonathletic footwear produced at LeSande Shoe Company, Incorporated, Haverhill, Massachusetts contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of LeSande Shoe Company, Incorporated, Haverhill, Massachusetts who became totally or partially separated from employment on or after July 15, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 9th day of August 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-25556 Filed 8-16-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5778]

M. P. Goodkin Co., Irvington, N.J.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 26, 1979 in response to a worker petition received on July 24, 1979 which was filed on behalf of workers and former workers producing industrial cameras at M. P. Goodkin Company, Irvington, New Jersey.

In a letter, the petitioner requested withdrawal of the petition. On the basis of this request, continuing the investigation would serve no purpose. Consequently, the investigative has been terminated.

Signed at Washington, D.C. this 10th day of August 1979.

Harold A. Bratt,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-25557 Filed 8-16-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5607]

Madam Coat, Inc., Jersey City, N.J.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the

Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on June 18, 1979 in response to a worker petition received on June 12, 1979 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats at Madam, Jersey City, New Jersey. The investigation revealed that the company's full name is Madam Coat, Incorporated. In the following determination, without regard to whether any of the criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Quarter to quarter declines in production at Madam Coat, Incorporated were the result of seasonal fluctuations in the ladies' coat industry. Customers did not reduce orders with Madam Coat in favor of imports.

The ladies' and children's coat industry is typically a seasonal operation. In most years, contractors suffer a period of negligible orders during the first quarter of the year, before winter coat production begins.

Production of ladies' coats by Madam Coat, Incorporated declined slightly in 1978 compared with 1977. The annual decline was attributable to reduced coat orders during the first quarter of that year. In 1979, production again declined in the first quarter. However, comparing the first six months of 1979 to the like period of 1978 shows an increase in production at Madam Coat.

A Department survey revealed that a manufacturer providing Madam Coat with a large percentage of its contract work did not employ any foreign sources for the manufacture of ladies' coats and did not purchase imported coats in 1978 or 1979. Another manufacturer for which Madam Coat sews ladies' coats indicated decreased imports of finished coats in January-June 1979 compared with January-June 1978. Imports of ladies' coats represent an insignificant portion of the manufacturer's sales.

Both manufacturers reported an increase in sales in the first half of 1979 compared with the like period in 1978. Both manufacturers also indicated increased contracts with domestic sources during January-June 1979 compared with January-June 1978.

Conclusion

After careful review, I determine that all workers of Madam Coat, Incorporated, Jersey City, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of August 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-25558 Filed 8-16-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4541]

Master Corp. of Texas, Abilene, Tex.; Negative Determination Regarding Application for Reconsideration

By letter of April 16, 1979, several of the petitioners requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers of Master Corporation of Texas, Abilene, Texas. The determination was published in the **Federal Register** on March 20, 1979, (44 FR 16981).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The petitioners base their request for administrative reconsideration on their belief that imports of component parts used in the manufacture of the electric appliances formerly produced by Master Corporation of Texas have adversely affected employment and production at the Abilene, Texas, firm. The petitioners, in effect, state that the Department should allow a broader interpretation of "like or directly competitive" articles which would consider component parts like or directly competitive with the finished articles they compose.

The basis for the Department's denial is that increases of imports of articles "like or directly competitive," as that term is used in the Trade Act of 1974, with articles produced by the workers' firm have not contributed importantly to the separations and to the declines in production at Master Corporation of Texas.

Master Corporation of Texas was primarily an assembly operation during the period under review, 1978–1979. The firm did not produce the components (i.e. thermostats, heating elements and motors) whose importation the petitioners identify as contributing to their separations. Therefore, imports of finished electric appliances must be considered in determining import injury to workers manufacturing such appliances. The Department's investigation revealed that imports of appliances like or directly competitive with those manufactured by the workers of Master Corporation of Texas (i.e. deep fryers, hamburger cookers, portable heaters and corn poppers) are negligible.

Components of electric appliances, such as thermostats, heating elements and motors cannot be considered like or directly competitive with the finished articles.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 13th day of August 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-25559 Filed 8-16-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5686]

Neumier Co., New York, N.Y.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility

requirements of section 222 of the Act must be met.

The investigation was initiated on July 2, 1979 in response to a worker petition received on June 29, 1979 which was filed on behalf of workers and former workers producing window curtains at the Neumier Company, New York, New York. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and the absolute decline in sales or production.

Evidence developed during the course of the investigation revealed that U.S. imports of curtains and draperies are negligible. The ratio of U.S. imports to domestic curtain production was less that one-tenth of one percent in each year during the 1974–1978 period. A Department survey revealed that the major customer of the Neumier Company reduced purchases of imported curtains from 1977 to 1978 and in January–April 1979 compared to January–April 1978.

Conclusion

After careful review, I determine that all workers of the Neumier Company, New York, New York are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 13th day of August 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-25560 Filed 8-16-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4189]

Sharon Fabrics, New York, N.Y.; Revised Determination

On July 20, 1979, the Department of Labor issued a Notice of Affirmation of Negative Determination (44 FR 44304) affirming the negative determination made on January 2, 1979, in the case of former workers of Sharon Fabrics, New York, New York (44 FR 2039). Subsequent to the issuance of the Notice of Affirmation of Negative Determination, the Department of Labor, on its own motion, reopened the investigation in the light of other determinations on petitions from workers in the same industry (men's shirting).

In reopening its investigation, the Department evaluated a second survey of Sharon Fabrics' customers of men's shirtings, and the evaluation revealed that the "contributed importantly" test was met. One of the important customers surveyed reported decreasing its purchases of men's shirting from Sharon in the January–September 1978 period compared to the same period in 1977 while increasing its imports. U.S. imports of finished fabric increased somewhat in the first six months of 1978 compared to the same period in 1977.

Conclusion

After review of the application and the investigative file, I conclude that there is an adequate basis to revise the determination. Therefore, I make the following revised determination:

"All workers engaged in producing or selling men's shirting at Sharon Fabrics, New York, New York, who became totally or partially separated from employment on or after January 31, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C., this 9th day of August 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-25561 Filed 8-16-79; 8:45 am]

BILLING CODE 4510-28-M

State of New Hampshire Department of Employment Security; Notice of Hearing

This notice announces an opportunity for a hearing for the Department of Employment Security of the State of New Hampshire, pursuant to section 3304(c) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(c)), and pursuant to sections 303(a) and 303(b) of the Social Security Act (42 U.S.C. 503(a) and (b)) and 20 Code of Federal Regulations 601.5(a).

The hearing is scheduled to be held at 10 o'clock in the morning of September 4, 1979 in Courtroom A, Vanguard Building, 1111 20th Street, N.W., Washington, D.C.

The hearing will be on the general question of whether the State of New Hamphire has amended its Unemployment Compensation Law: (1) so that it contains, for the 12-month period ending on October 31, 1979, each of the provisions required to be contained therein by reason of the enactment of the Unemployment Compensation Amendments of 1976 (Pub. L. 94–566, approved October 20, 1976, 90 Stat. 2667 et seq.) and Title III of the Emergency Unemployment Compensation Extension Act of 1977 (Pub. L. 95–19, approved April 21, 1977; 91 Stat. 39, 43, et seq.); so that it includes the provisions specified in Section 303(a) of the Social Security Act, 42 U.S.C. 503(a); and/or (3) so that it has with respect to the 12-month period ending on October 31, 1979, failed to comply substantially with any of the required Federal law provisions as provided in Section 3304(c) of the Internal Revenue Code of 1954 and Section 303(b) of the Social Security Act, 26 U.S.C. 3304(c) and 42 U.S.C. 503(b).

More particularly, the hearing will be on the following issues:

1. *Issue.* Whether the New Hampshire Unemployment Compensation Law (RSA 282, hereafter NHUCL) has been amended so that services performed in the employ of the State of New Hampshire, its political subdivisions, and their instrumentalities, are covered by the NHUCL for the purposes of payment of unemployment compensation, for the 12-month period ending on October 31, 1979.

Basis for Issue. The definition of "employment" in RSA 282:1,H, as amended by Chapter 328 (H.B. 808), Laws 1979, does not expressly include coverage of the State of New Hampshire, its political subdivisions, and their instrumentalities.

The definition of "employer" in RSA 282:1,G, as amended by Chapter 328 (H.B. 808), Laws 1979, does not expressly include coverage of the State of New Hampshire, its political subdivisions, and their instrumentalities.

The provisions of RSA 282:1,H(4)(a), (b), (t), and (u) and RSA 282:1,N(1)(a), as amended by Chapter 328 (H.B. 808), Laws 1979, exempt the services and wages described therein, respectively, from coverage as "employment" and as "annual earnings", respectively.

The Federal law at 26 U.S.C. 3304(a)(6)(A) and 3309(a)(1) requires coverage of employees of the State of New Hampshire, its political subdivisions, and their instrumentalities, except for services described in 26 U.S.C. 3309(b) and in 26 U.S.C. 3306(c) (other than service described in paragraph (7) thereof). The exceptions to coverage of governmental employees permitted by 26 U.S.C. 3309(b) and 3306(c) do not include exceptions such as those found in RSA 282:1,H(4)(a), (b), (t), and (u) and RSA 282:1,N(1)(a).

The NHUCL, therefore, appears not to be in conformity with the requirements of 26 U.S.C. 3304(a)(6)(A).

2. *Issue.* Whether the NHUCL has been amended so that services performed in the employ of nonprofit organizations are covered by the

NHUCL for the purposes of payment of unemployment compensation, for the 12-month period ending on October 31, 1979.

Basis for Issue. The definition of "employment" in RSA 282:1,H, as amended by Chapter 328 (H.B. 808), Laws 1979, does not expressly include services performed in the employ of nonprofit organizations described in 26 U.S.C. 501(c)(3) which are exempt from income tax under 26 U.S.C. 501(a).

The definition of "employer" in RSA 282:1,G, as amended by Chapter 328 (H.B. 808), Laws 1979, does not expressly include such nonprofit organizations.

The provisions of RSA 282:1,H(4)(a), (b) and (t) and RSA 282:1,N(1)(a), as amended by chapter 328 (H.B. 808), Laws 1979, exempt the service and wages described therein, respectively, from coverage as "employment" and as "annual earnings", respectively.

The Federal law at 26 U.S.C. 3304(a)(6)(A) and 3309(a)(1) requires coverage of employees of such nonprofit organizations, except for services described in 26 U.S.C. 3309(b) and 26 U.S.C. 3306(c) (other than services described in paragraph (8) thereof). The exceptions to coverage of employees of nonprofit organizations permitted by 26 U.S.C. 3309(b) and 3306(c) do not include exceptions such as those found in RSA 282:1,H(a), (b) and (t) and RSA 282:1,N(1)(a).

The NHUCL, therefore, appears not be in conformity with the requirements of 26 U.S.C. 3304(a)(6)(A).

3. *Issue.* Whether the NHUCL has been amended to include provision for a due date for payments due, for adequate means of enforcing collection of payments due, for assessment of interest and-or penalties for delinquent payments, and so as to contain provision for immediate deposit into the State unemployment fund of amounts due as contributions and/or payments in lieu of contributions from governmental entities and nonprofit organizations described in Issues 1 and 2 above, for the 12-month period ending on October 31, 1979.

Basis for Issue. Neither the provisions of RSA 282:6,A, A–1, or A–2, or RSA 282:12,N, as amended by Chapter 328 (H.B. 808), Laws 1979, nor any other provisions of the NHUCL, including RSA 282:12, J, contain such provisions.

The "methods of administration" clause of 42 U.S.C. 503(a)(1) is interpreted as requiring State unemployment compensation laws to provide for effective methods of insuring the collection into the State's unemployment fund of payments due to the fund under the State law. These requirements include provisions for a due date for payments due from employers as contributions and/or payments in lieu of contributions, adequate means of enforcing collection of payments due to the State's unemployment fund, and provision for interest and/or penalties on delinquent payments. In addition, 42 U.S.C. 503(a)(4) and 26 U.S.C. 3304(a)(3) require the immediate deposit of money received as contributions and/or payments in lieu of contributions into the Unemployment Trust Fund in the United States Treasury.

The NHUCL, therefore, appears not to be in conformity with the requirements of 42 U.S.C. 503(a)(1) and 503(a)(4) and 26 U.S.C. 3304(a)(3).

4. *Issue.* Whether the NHUCL has been amended to provide that the State of New Hampshire, its political subdivisions, and their instrumentalities, shall be liable as reimbursing employers for the full costs of extended benefits paid under the NHUCL which are attributable to services in the employ of such governmental entities, for weeks of unemployment beginning after December 31, 1978.

Basis for Issue. RSA 282:6,C(1) continues without amendment to provide that the liability of such governmental entities to reimburse the State unemployment fund is "in an amount equal to one-half of such benefits. * * *"

Section 204(a)(4) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) was added by Section 212 of Pub. L. 94–566 to discontinue Federal sharing of extended benefit costs attributable to service in the employ of governmental entities, with respect to weeks of unemployment beginning after December 31, 1978. This is made a requirement for State unemployment compensation laws by 26 U.S.C. 3304(a)(11). In addition, 26 U.S.C. 3304(a)(6)(B) and 3309(a)(2) require reimbursing employers to make payments in lieu of contributions in amounts equal to the amounts of compensation attributable under the State law to service in their employ.

The NHUCL, therefore, appears not to be in conformity with the requirements of 26 U.S.C. 3304(a)(6)(B) and 3304(a)(11).

5. *Issue.* Whether the NHUCL has been amended to provide that unemployment compensation payable on the basis of services required to be covered, as stated in Issues 1 and 2 above, is payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to the NHUCL, for the 12-month period ending on October 31, 1979.

Basis for Issue. The NHUCL as amended does not contain an express provision such as that described under the Issue.

The Federal law at 26 U.S.C. 3304(a)(6)(A) requires a State law to provide that compensation is payable on the basis of service to which Section 3309(a)(1) applies (relating to coverage of governmental entities and nonprofit organizations) in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to the State law.

The NHUCL, therefore, appears not to be in conformity with the requirements of 26 U.S.C. 3304(a)(6)(A).

6. *Issue.* Whether the NHUCL has been amended to provide for the denial of unemployment compensation between two successive sport seasons (or similar periods) to participants in sports events other than professional athletes, where the participants perform services in the employ of a governmental entity or a nonprofit organization, for the 12-month period ending on October 31, 1979.

Basis for Issue. RSA 282:1,O, as amended by Chapter 328 (H.B. 808), Laws 1979, appears to be applicable to ancillary sports personnel, such as coaches, trainers, and referees, as well as professional athletes participating in sports events.

The Federal law at 26 U.S.C. 3304(a)(6)(A) requires a State law to provide that compensation is payable on the basis of service to which Section 3309(a)(1) applies (relating to coverage of governmental entities and nonprofit organizations) in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to the State law. In addition, 26 U.S.C. 3304(a)(13) only requires a State law to provide for denial of unemployment compensation to professional athletes in specified circumstances between successive sport seasons.

The NHUCL, therefore, appears not to be in conformity with 26 U.S.C. 3304(a)(6)(A) and 3304(a)(13).

7. *Issue.* Whether the NHUCL has been amended to provide for the denial of unemployment compensation to employees of institutions of higher education who perform services in other than an instructional, research, or principal administrative capacity for any week which commences during an established and customary vacation

period or holiday recess, for the 12-month period ending on October 31, 1979.

Basis for Issue. RSA 282:3,F(4), as amended by Chapter 328 (H.B. 808), Laws 1979, provides for the denial of unemployment compensation for any week specified in the Issue if an individual performed services in the employ of a public or other nonprofit educational institution described in paragraph (2) or (3) of RSA 282:3,F, including institutions of higher education.

The Federal law at clauses (ii) and (iii) of 26 U.S.C. 3304(a)(6)(A) permits a State law to provide for the denial of unemployment compensation for certain prescribed periods to nonprofessional employees (those not employed in an instructional, research, or principal administrative capacity) of educational institutions, but expressly excludes from their application nonprofessional employees of institutions of higher education.

The NHUCL, therefore, appears not to be in conformity with the requirements of 26 U.S.C. 3304(a)(6)(A).

8. *Issue.* Whether the State of New Hampshire has failed to comply substantially with any of the Federal law provisions referred to in Issues 1, 2, 3, 5, 6, and 7 for the 12-month period ending on October 31, 1979, as provided in 26 U.S.C. 3304(c) and 42 U.S.C. 503(b), and in Issue 4 for the 10-month period ending on October 31, 1979, as provided in 26 U.S.C. 3304(c).

The decision following the hearing will have a bearing on whether the State of New Hampshire is certifiable on October 31, 1979, with respect to normal and additional tax credits allowable to New Hampshire employers pursuant to subsections (a) and (b) of Section 3302 of the Internal Revenue Code of 1954 for taxable year 1979, and also on certification of payment to the State of New Hampshire of granted funds pursuant to Section 302(a) of the Social Security Act (42 U.S.C. 502(a)) and Section 5(b) of the Wagner-Peyser Act (29 U.S.C. 49d(b)).

The proceedings in this matter shall be in accordance with the Rules of Procedure set out below.

Signed at Washington, D.C., on August 14, 1979.

Ray Marshall,

Secretary of Labor.

Rules of Procedure

1. An Administrative Law Judge will be designated by the Chief Administrative Law Judge, United States Department of Labor, to preside over the hearing and perform the functions required by these rules.

2. The parties of record shall be the State agency (as defined in 26 U.S.C. 3306(e)) named in the Notice of Hearing and the U.S. Department of Labor.

3. Any other State agency, individual worker, or employer, or any organization or association of workers, employers, or the public, having an interest in these proceedings, may be permitted by the presiding Administrative Law Judge to participate in these proceedings. Participation by any such interested person shall be limited to the presentation of oral argument as provided in Paragraph 12 below and to the submittal of a brief as provided in Paragraph 13(a) below. Any such State agency, person, organization, or association described above may apply for permission to participate in these proceedings as an interested person, by filing in the office of the Chief Administrative Law Judge, U.S. Department of Labor, Room 720, Vanguard Building, 1111 20th Street, N.W., Washington, D.C. 20036, not later than 1 week prior to the date of the hearing, a written request setting forth the applicant's name and address and the name, address and the title or position of any person who will represent the applicant. The presiding Administrative Law Judge shall rule on all applications and inform the applicants and the parties of the rulings.

4. The hearing will be conducted in an informal but orderly and expeditious manner. The presiding Administrative Law Judge will regulate all matters pertaining to the course and conduct of the proceedings and may, at the request of either party, or *sua sponte*, grant extensions of time regarding the submission of briefs and other papers, and may reschedule the hearing for another time or date, on good cause shown. In light of the statutory time constraints for the making of the decision herein, the granting of extensions of time (inclusive of continuances, etc.) shall be limited as follows:

(a) The State agency may request and, for good cause shown, may be granted an extension or extensions of time regarding the hearing date, submission of briefs and/or other matters, which cumulatively do not exceed 7 days.

(b) The U.S. Department of Labor may request, and for good cause shown, may be granted an extension or extensions of time regarding the hearing date, submission of briefs and/or other matters, which cumulatively do not exceed 7 days.

(c) Extensions of time granted *sua sponte* by the Administrative Law Judge shall cumulatively not exceed 3 days.

(d) No other extensions of time may be granted.

5. The parties of record shall have the opportunity to present oral and documentary evidence, and cross-examine witnesses, except as hereinafter provided in this paragraph.

(a) In the event that the State agency wishes to raise any issue other than the precise issue(s) identified in the Notice of Hearing and/or offer evidence regarding such issue as a part of this proceeding, it must first file with the presiding Administrative Law Judge a written Statement which contains:

(1) a statement of each such additional issue which it proposes to raise; and

(2) a summary of the evidence to be offered with respect to each such issue; this summary must specify with particularity the substance and form of the evidence to be offered. More particularly: (i) if oral testimony is to be offered regarding such additional issue(s), the Statement must specify the name of each such witness (and qualifications, if an expert witness) and provide a summary of the testimony to be offered; and (ii) if any documentary evidence is to be offered at the hearing the Statement must list each such document by title, summarize the relevant portion or portions thereof, and attach a copy of each such document (unless such document was previously furnished to the presiding Administrative Law Judge and the other party of record).

(c) In the event that a Statement is filed with meets the requirements of Paragraphs 5 (a) and (b), and the U.S. Department of Labor wishes to offer countervailing evidence regarding any issue identified in that Statement, it must file a Reply Statement which meets the requirements of Paragraph 5(a)(2).

(d) This Reply Statement must be filed not later than 5 days prior to the date set for the hearing or within 7 days of its receipt of the Statement, whichever occurs later; in no event shall the Reply Statement be filed later than 1 day prior to the hearing.

6. Upon the commencement of the hearing, the representative of the U.S. Department of Labor will make an opening statement as to the nature of the hearing and the matters in issue. The representative of the State agency will then be offered an opportunity to make an opening statement.

7. The order of the presentation of evidence will be as follows:

(a) The U.S. Department of Labor will proceed first by presenting any evidence it may wish to offer which is relevant to the issue(s) specified in the Notice of Hearing.

(b) The State agency will proceed next to offer any evidence it may wish to present which is relevant to the issue(s) referred to in Paragraph 7(a), above. Upon the conclusion of this presentation, the State agency may present evidence relevant to any issue which it has specified in, and as to which it has provided a summary of the evidence to be offered in, a Statement filed in accordance with Paragraphs 5(a) and (b) of these rules.

(c) Finally, the U.S. Department of Labor may present relevant countervailing evidence as to which it has provided a summary of the countervailing evidence to be offered in a Reply Statement filed in accordance with Paragraphs 5(c) and (d) of these rules.

(d) Evidence may be presented only by the parties of record, and only upon issues identified in the Notice of Hearing or in a Statement or Reply Statement filed in accordance with Paragraph 5 of these rules.

8. Technical rules of evidence shall not apply to this proceeding. The presiding Administrative Law Judge will rule upon offers of proof and the admissability of evidence, and receive all relevant evidence. He may exclude irrelevant, immaterial, unduly repetitious or any other evidence

excludable under these rules, and may examine witnesses. All writings, charts, tabulations, and similar data offered in evidence at the hearing shall, upon a satisfactory showing of their authenticity, relevancy, materiality, and admissability under these rules, be received in evidence.

9. During the hearing the Administrative Law Judge may require the production and introduction of further evidence upon any relevant matter. After the hearing is closed, no further evidence shall be taken except at the direction of the Secretary of Labor, unless provision has been made at the hearing for the later receipt of such evidence for the record.

If the Secretary of Labor directs that further evidence be taken, due and reasonable notice of the time and place of the reopened hearing shall be given to the parties of record and any interested person permitted to participate in the proceedings.

10. The proceedings at the hearing shall be recorded verbatim. Copies of the transcript of the record of the hearing shall be furnished to the presiding Administrative Law Judge and the parties of record, and may be obtained at cost by any interested person permitted to participate in the proceedings.

11. When any document is received in evidence, one additional copy thereof shall be furnished to the presiding Administrative Law Judge and a copy shall be furnished to the other party of record.

12. (a) At the conclusion of the receipt of evidence, the presiding Administrative Law Judge shall hear oral argument presented by the parties of record and interested persons permitted to participate in the proceedings, except that oral argument shall not be heard with respect to the constitutionality of any Federal statute.

(b) Oral arguments shall be in the following order: Opening argument for the U.S. Department of Labor, unless waived; opening argument for the State agency, unless waived; argument of each of the interested persons who wish to present oral argument, in such order as the presiding Administrative Law Judge shall determine; closing argument for the State agency, unless waived; and closing argument for the U.S. Department of labor, unless waived. Oral argument by an interested person shall not be longer than 15 minutes. All oral arguments shall be transcribed and made a part of the record.

13. (a) The parties of record and any interested person permitted to participate in these proceedings shall be permitted to file a brief and/or proposed findings of fact and conclusions of law on the matters in issue. All such briefs and other papers shall be filed with the presiding Administrative Law Judge not later than 14 days after the transcript of the hearing is available.

(b) The transcript of the hearing shall be deemed to be available as of the date it is received by the Office of Administrative Law Judges. Upon receipt of the transcript, the presiding Administrative Law Judge will notify both of the parties and all interested persons as to the date of receipt.

14. Within 14 days after the time has expired for the filing of briefs, the presiding Administrative Law Judge shall prepare a recommended decision containing his findings of fact and conclusions of law. No conclusions of law regarding the constitutionality of any Federal statute shall be made. The presiding Administrative Law Judge shall promptly certify to the Secretary of Labor his recommended decision and the entire record of the proceedings, and forward a copy of his certification and recommended decision to each party of record and to each interested person permitted to participate in the proceedings.

15. Within 10 days after the certification and recommended decision are mailed to them, the parties of record may file with the presiding Administrative Law Judge a Statement of Exceptions in writing setting forth any exceptions they may have to the recommended decision. Upon receipt of any timely filed Statement of Exceptions, the presiding Administrative Law Judge shall promptly forward such Statement of Exceptions to the Secretary of Labor.

16. Following the certification to him in accordance with Paragraph 14 above and consideration of any timely filed Statement of Exceptions, the Secretary of Labor shall render his decision in the matter, in writing, and shall cause the parties of record and the interested persons permitted to participate in the proceedings to be notified thereof.

17. (a) Any briefs, Statements, and other papers filed with the presiding Administrative Law Judge in this proceeding shall be mailed to the address specified in Paragraph 3 of these rules. Such documents shall be deemed to be filed on the date they are postmarked if they are transmitted by the U.S. Postal Service, and shall be deemed to be filed on the date they are received in the office of the presiding Administrative Law Judge if they are transmitted by other means.

(b) If the last day of a time limit prescribed by these rules falls on a Saturday, Sunday, or a Federal holiday, the time limit shall be extended to the next official business day; those time limits may be extended by the presiding Administative Law Judge for good cause shown, subject to the limitations set out in Paragraph 4 above.

(c) Briefs, Statements and all other papers filed with the presiding Administrative Law Judge shall be promptly served upon the other party or parties.

(d) Briefs, Statements and all other papers filed with the presiding Administrative Law Judge shall be submitted in duplicate and shall be accepted subject to timely filing and sufficient proof of service upon the other party or parties.

[FR Doc. 79-25525 Filed 8-16-79; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-5700]

Synthetics Finishing Corp., Philadelphia, Pa.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on July 5, 1979 in response to a worker petition received on June 26, 1979 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing shrink, Scotchguard and fireproof materials at the Philadelphia, Pennsylvania plant of Synthetics Finishing Corporation. In the following determination, without regard to whether any of the criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Synthetics Finishing Corporation is closing its Philadelphia, Pennsylvania plant as a result of the loss of the plant site to the city of Philadelphia. The firm was notified by the city of Philadelphia in 1978 to vacate its plant at 462 N. Eight Street, Philadelphia, Pennsylvania. The city is acquiring the plant site in connection with the construction of a transit route. Synthetics Finishing Corporation will not relocate the Philadelphia plant. Orders will be processed at other domestic plants.

Conclusion

After careful review, I determine that all workers of Synthetics Finishing Corporation, Philadelphia, Pennsylvania are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 13th day of August 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-25562 Filed 8-16-79; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-5676]

Universal Carloading Distributing Co., Inc., New York, N.Y.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the

Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on June 28, 1979, in response to a worker petition received on June 22, 1979, which was filed on behalf of workers and former workers engaged in unloading and forwarding freight at the New York, New York facility of Universal Car-Loading Distributing Company. The investigation revealed that the correct company name is Universal Carloading Distributing Company, Incorporated.

Universal Carloading Distributing Company, Incorporated is a common carrier engaged in providing the service of handling freight of many types. The company is a subsidiary of Transway International.

Thus, workers of Universal Carloading Distributing Company, Incorporated do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from the parent firm, a firm otherwise related to Universal Carloading Distributing Company, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Universal Carloading Distributing Company, Incorporated and its customers have no controlling interest in one another. The services performed by the subject firm are not directed toward any products produced by the parent firm or any of its subsidiaries.

All workers engaged in handling freight at Universal Carloading Distributing Company, Incorporated are employed by that firm. All personnel actions and payroll transactions are controlled by Universal Carloading Distributing Company, Incorporated. All employee benefits are provided and maintained by Universal Carloading Distributing Company, Incorporated. Workers are not, at any time, under employment or supervision by customers of Universal Carloading Distributing Company, Incorporated. Thus, Universal Carloading Distributing Company, Incorporated, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of the New York, New York facility of Universal Carloading Distributing Company, Incorporated are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 13th day of August 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-25563 Filed 8-16-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5495]

Venable & Billups Corp., Perry Branch Mine No. 1, Chapmanville, W. Va.; Negative Determination Regarding Application for Reconsideration

By a petition dated July 18, 1979, one of the petitioners requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers mining coal at Venable & Billups Corporation's Perry Branch Mine #1, Chapmanville, West Virginia. The determination was published in the **Federal Register** on June 29, 1979, (44 FR 38022).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The petitioner claims in his application that workers at Perry Branch Mine #1 of Venable & Billups Corporation were laid off because the company was unable to sell coal, supposedly because of imports.

The Department's review of the investigative file revealed that workers at Venable & Billups Corporation mining coal at Perry Branch Mine #1 were laid off in January, 1979 as a result of a contract dispute between Venable & Billups Corporation and the firm holding the sublease to the mine. The mine began operating in September, 1977 and continued through January, 1979 except for the period of the United Mine Workers' strike which lasted from December, 1977 through March, 1978. Production and sales increased in September, October and November, 1978 compared to the same period in 1977, the only comparable period for which data is available.

The dominant cause for the separation of workers at Venable & Billups Corporation's Perry Branch Mine was a contract dispute between Venable & Billups and the sublessors of the mine.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 9th day of August 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-25564 Filed 8-16-79; 8:45 am]

BILLING CODE 4510-28-M

NATIONAL COMMISSION ON AIR QUALITY

Establishment of Panel To Review the Formation, Transport and Control of Photochemical Oxidants

The National Commission on Air Quality (NCAQ), a legislative Commission established to examine the Clean Air Act and make recommendations to Congress regarding that law, invites nominations of individuals to serve on a Photochemical Oxidant Review Panel established as part of the Commission's studies.

The panel will be asked to provide the Commission with the most up-to-date scientific information and methods for use in the Commission's studies and to clarify some of the uncertainties regarding this subject. Panel members will be asked to address the following:

1. Acceptability of analytical methods used to simulate or evaluate oxidant formation and to assess control measure impact;

2. Selection of most appropriate analytical techniques for use in the Commission's Regional Studies;

3. Selection of most appropriate technique for use in continuing planning and implementation activities including the 1982 SIP submittals;

4. Relationship of hydrocarbons and oxides of nitrogen in formation and control of oxidants;

5. Areas of further development to enhance the state of the knowledge; and

6. Specific steps necessary to translate research techniques into tools for policy analysis at the federal, state and local levels.

Selection of Panel

The panel will consist of up to 10 persons. Selection will be based on the following criteria:

1. Demonstrated expert knowledge in the formation and control of photochemical oxidants;

2. Experience in the application of scientific data and knowledge to programs at the federal, state and local levels;

3. Knowledge of the capabilities of federal, state and local agencies to use analytical methods; and

4. Breadth of technical background and institutional perspectives (academic, government, private industry, chemistry, meteorology, modeling, and simulations).

Nominations to Panel

Nominations for the Photochemical Oxidant Review Panel should be submitted within 20 days of this notice to: Vernon Krause, National Commission on Air Quality, 499 South Capitol Street, S.W., Second Floor, Washington, D.C. 20003.

Professional qualifications, preferably including a list of publications and work performed under contract, should accompany all nominations.

Members of the Panel will be expected to attend at least one 3- to 4-day meeting (probably in November or December). Initial recommendations will be made at that time, and the final Panel report will be provided within 60 days of the end of the session. One or more participants may be called upon to report the conclusions of the panel to the Commission or the Commission's Research Committee. All expenses of the participants will be paid by the Commission.

Comments on Issues

NCAQ recognizes that many individuals and groups have particular issues and perspectives that should be considered by the Photochemical Oxidant Review Panel. To accommodate these issues and perspectives, NCAQ solicits written position and/or background statements from interested individuals or groups. Three copies of these statements should be sent to the address listed above on or before September 17, 1979.

National Commission on Air Quality.

William H. Lewis, Jr.,

Director.

[FR Doc. 79-25506 Filed 8-16-79; 8:45 am]

BILLING CODE 6820-98-M

Establishment of Panel To Review Atmospheric Dispersion Modeling

The National Commission on Air Quality (NCAQ), a legislative Commission established to examine the Clean Air Act and make recommendations to Congress regarding that law, invites nominations of individuals to serve on an Atmospheric Dispersion Modeling Review Panel established as part of the Commission's studies. The Panel, will consist of up to 15 persons expert in atmospheric dispersion modeling for air quality assessment and in the use of models in air quality decision making.

The Panel will review and evaluate existing state-of-the-art atmospheric dispersion models used for estimating concentrations of sulfur dioxide (SO_2) and total suspended particulates (TSP). Based on these evaluations, the Panel will recommend to the Commission specific models to be used in the Commission's Regional Studies, taking into consideraiton:

1. Distances and averaging times of concern;

2. Types and number of sources in the region;

3. Topographic and meteorological characteristics of the region; and

4. Quality of the data bases available.

The Panel will develop specific recommendations on the following topics:

1. Appropriate methodologies for determining short-term (3 to 24 hours) and annual average concentrations;

2. Appropriate plume spread parameters based on source height (e.g., elevated or ground-level) and source location (e.g., urban or rural);

3. Use of stability typing schemes or direct determination of plume spread parameters;

4. Corrections or adjustments for topographic features;

5. Type, quality, and length of record of meteorological data used as input to models;

6. Plume rise formulations and effective stack height determinations;

7. Characterization of wake entrainment for releases from buildings and vents; and

8. Significance of removal and transformation processes in estimates of downwind concentrations.

The Panel also will develop a position statement on the appropriate uses for, and limitations of, atmospheric dispersion models and specific algorithms in regulatory decisions.

Nominations to Panel

Nominations for the Atmospheric Dispersion Modeling Review Panel should be submitted within 20 days of this notice to: James E. Fairobent, National Commission on Air Quality, 499 South Capitol Street, S.W., Second Floor, Washington, D.C. 20003.

Professional qualifications, preferably including a list of publications and work performed under contract, should accompany all nominations. Qualified nominees should have a demonstrated expertise in either atmospheric transport and diffusion processes or removal and transportation processes, experience in application of atmospheric dispersion models to air quality assessments on local and regional scales, or the development of policy relating to the use of such models.

Members of the Panel will be expected to attend at least one 3- to 4-day meeting (probably in late October or November). Initial recommendations will be made at that time, and the final Panel report will be provided within approximately 60 days of the end of the session. One or more participants may be called upon to report on the conclusions of the Panel to the full Commission or the Commission's Research Committee. All expenses of the participants will be paid by the Commission.

Comments on Issues

NCAQ recognizes that many individuals and groups have particular issues and perspectives that should be considered by the Atmospheric Dispersion Modeling Panel. To accommodate these issues and perspectives, NCAQ solicits written position and/or background statements from interested individuals or groups. Three copies of these statements should be sent to the address listed above on or before September 17, 1979.

National Commission on Air Quality.

William H. Lewis, Jr.,

Director.

[FR Doc. 79-25507 Filed 8-16-79; 8:45 am]

BILLING CODE 6820-98-M

OFFICE OF THE FEDERAL REGISTER

Availability of U.S. Senate Procurement Regulations

Editorial Note

The United States Senate Committee on Rules and Administration adopted procurement regulations for the United States Senate on July 26, 1979, which apply to all procurements of personal

property and non-personal services with some exceptions. For a copy of these regulations write to: The Chairman, United States Senate, Committee on Rules and Administration, Room 305, Russell Senate Office Building, Washington, DC. 20510.

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 15998; SR-CSE-78-4]

Cincinnati Stock Exchange; Order Approving Proposed Rule Change

July 5, 1979.

I. Background

On December 12, 1978, the Cincinnati Stock Exchange (the "CSE" Dixie Terminal Building, Cincinnati, Ohio 24502, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 (17 CFR 250.19b-4) thereunder, copies of a proposed rule change (the proposed "CSE Rules Package") which would competely revise the CSE's current rules,[1] with the exception of those CSE rules now governing the CSE Multiple Dealer Trading System (the "MDTS" or the "System").[2] This revision, which the CSE began approximately there years ago, updates the CSE's rules and attempts to conform them to the provisions of the Act as amended by the Securities Acts Amendments of 1975 (the "1975 Amendments").[3]

[1] File No. SR-CSE-78-4. Notice of the proposal was provided in Securities Exchange Act Release No. 15544 (January 30, 1979), 16 SEC Docket 877 (February 13, 1979), and by publication in full in 44 FR 7852 (February 7, 1979). The instant rule filing supersedes File No. SR-CSE-77-1 (filed June 30, 1977), noticed in Securities Exchange Act Release No. 13788 (July 21, 1977), 12 SEC Docket 1293 (August 2, 1977), and published in full in 42 FR 38447 (July 28, 1977), which the CSE formally withdrew by letter dated May 17, 1979.

[2] The MDTS, which has been treated in separate Commission orders, was initially authorized by the Commission on April 18, 1978, as a nine-month pilot program, and on December 15, 1978, was extended by twelve months to January 31, 1980. *See*, Respectively, Securities Exchange Act Release No. 14674 (April 18, 1978), 14 SEC Docket 817 (May 2, 1978), 43 FR 17894 (April 26, 1978) and Securities Exchange Act Release No. 15413 (December 15, 1978), 16 SEC Docket 510 (January 2, 1979), 44 FR 129 (January 2, 1979).

[3] The CSE's Board of Trustees determined on April 14, 1976, to revise the CSE rules. This decision was prompted by a letter dated March 2, 1976 from the Commission to the CSE in connection with the Commission's "General Inquiry on Exchange Rules" pursuant to its mandate under Section 31(b) of the 1975 Amendments. For text of letter, *see* Securities Exchange Act Release No. 12157 (March 2, 1976), 41 FR at 10665. Section 31(b) of the 1975 Amendments (Pub. L. No. 94-29; 89 Stat 97, at 170) provides that: "If it appears to the Commission at any time within one year of the effective date of any amendment made by this Act to the Securities Exchange Act of 1934 that the organization or rules of any national securities exchange or registered securities association registered with the Commission on the date of enactment of this Act do not comply with such Act as amended, the Commission shall so notify such exchange or association in writing, specifying the respects in which the exchange or association is not in compliance with such Act."

II. The CSE Rules Package

The rules package is organized into three parts: (1) "Articles of Incorporation," which is a one page declaration of corporate purpose that remains essentially unchanged from its predecessor document; (2) "By-Laws," in effect a constitution which provides basic governmental rules concerning CSE membership, meetings, elections, the Board of Trustees (the "Board"), officers and committees, and the amending process; and (3) "Rules," which detail CSE operations, including, among other things, standards for business conduct, record keeping, supervision, disciplinary proceedings, adverse actions, and trading.

The more significant features of the rules package are discussed as follows:

1. Government of the Exchange

Under the proposed By-Laws, the basic form of government of the CSE remains unchanged. The Board would be increased from eight to nine members,[4] though at least one member will remain a representative of the public as required by Section 6(b)(3) of the Act. In general, the language of the proposed By-Laws merely sets forth the Exchange's existing governmental organization in more precise language than its predecessor rules, without significant changes.[5]

2. Classes of Members

The name of the present class of "regular members" would be changed to "proprietary members." A second class of "access participant members" would be created and would be comprised of those 398 persons who are now "access non-members" under the current (old) CSE rules as well as any other eligible persons who thereafter may decide to become access participants.[6] A proprietary member, however, as the owner of a seat, would continue to have a residuary interest in the equity of the Exchange; access participants, not having acquired a seat, would lack such equity interest and be required to renew their memberships annually by filing with the CSE.

Further, under the current rules, "access non-members" have limited access to the CSE floor and its MDTS facility, although the terms of such access and the lack of specific restrictions on its exercise in the current CSE rules could result in such "non-members" being viewed as statutory members of the CSE pursuant to Section 3(a)(3)(A)(i) of the Act.[7] Under the proposed rules, these same persons would become designated as members, and the rules would clearly indicate that, unless otherwise amended by the CSE Board, "access participants" (*i.e.*, access members) would be entitled to access to the CSE (including the MDTS) only through the facilities of proprietary members.[8] The Commission believes

[4] *See* File No. SR-CSE-78-4 (filed December 12, 1978) [hereinafter the CSE Rules package] Form 19b-4A, Exhibit 2, By-Laws, Article V, Section 1.

[5] The question of "fair representation" of CSE members in exchange matters, as required by Section 6(b)(3) of the Act, is discussed *infra*, at 5-7.

[6] *Id.*, Article I, Section 1(a), at 1; Article II, Section 1.

[7] Section 3(a)(3)(A) of the Act provides in part: "The term 'member' when used with respect to a national securities exchange means (i) any natural person permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, (ii) any registered broker or dealer with which such a natural person is associated, (iii) any registered broker or dealer permitted to designate as a representative such a natural person, and (iv) any other registered broker or dealer which agrees to be regulated by such exchange and with respect to which the exchange undertakes to enforce compliance with the provisions of this title, the rules and regulations thereunder, and its own rules." *See also*, Senate Committee on Banking, Housing and Urban Affairs, "The Securities Act Amendments of 1975," S. Rep. No. 94-95, 94th Cong., 1st Sess. (1975), at 23-25.

[8] Article II, Section 2(b) of the proposed By-Laws states that "[e]xcept as otherwise provided in the rules of the Exchange, Access Participants shall be permitted to execute transactions on the Exchange only through the facilities of a Proprietary Member." Proposed Rules 11.9(a)(8) and 11.9(*o*), however, in defining terms relevant to multiple dealer trading, include "members" within the "users" which may obtain "electronic means of direct access" to the MDTS upon payment of such "reasonable fees as the Board of Trustees may specify from time to time in an effective rule filed with the Securities and Exchange Commission pursuant to Section 19(b)(2) or 19(b)(3) of the Act." The CSE has not yet sought to prescribe such terms of access for Access Participants and, under the proposed rules, unless and until the CSE prescribes such terms of access only Proprietary Members may obtain direct electronic access to the MDTS.

that the replacement of "access non-members" with "access participant members" conforms current CSE practices to the requirements of the Act and is consistent with the purposes of the Act, which provides at Section 6(b)(2) that any broker or dealer and certain natural persons may become members of any securities exchange except as provided in Section 6(c) of the Act.

3. Voting Rights

At membership meetings each proprietary member would have one vote on all voting issues regardless of the number of seats owned. Access participant members would be entitled to vote only for the election of the Board and on those matters that would reduce the rights or increase the burdens of access participants.[9]

Section 6(b)(3) of the Act requires that an exchange assure the "fair representation" of its members.[10] Neither the Act nor its legislative history defines in specific terms the meaning of "fair representation" as applied to voting provisions under exchange rules.[11] In the context of a previous rules submission, however, the Commission considered the meaning of "fair representation" in a matter involving the establishment of annual access members of the New York Stock Exchange, Inc. ("NYSE").[12] In that instance, the Commission said that fairness did not require the NYSE to grant its annual members, who constitute a temporary class of membership and lack any equity interest in the exchange, voting rights coextensive with those of its proprietary members. Accordingly, in view of the CSE's proprietary members' equity interest in the CSE, the lack of any equity interest by access participants, and the right of access participants to vote for the election of Board members (as well as their current freedom from any access fees),[13] the Commission finds that the proposed voting procedures are adequate and consistent with the "fair representation" requirement of Section 6(b)(3) of the Act.

4. Trading Practices

As required by Section 6(b)(5) of the Act,[14] the proposed rules[15] prohibit certain trading practices in order to prevent fraud and manipulation and to protect investors. As further required by Section 6(b)(5) of the Act, the rules package sets forth "rules of fair practice,"[16] which emphasize dealings with customers, including advertising, recommendations, and handling of discretionary accounts, and which also include procedures governing the clearance and settlement of transactions. The current (old) rules contain no rules governing clearance and settlement, and the CSE's current (old) rules governing trading and the prevention of fraud and manipulation have been carried forward and expanded in the proposed rules.[17]

5. Ability to Enforce Compliance

The Act requires in Sections 6(b)(1),[18] 6(b)(6)[19] and 19(g)(1)(A)[20] that an exchange be able to enforce compliance and to provide appropriate discipline with respect to its members and associated persons for violations of the Act and the rules thereunder and rules of the exchange. In this regard, the proposed rules package provides that any member alleged to have violated the Act or the rules thereunder or the rules of the CSE is subject to the disciplinary jurisdiction of the Exchange for the purpose of investigation and prosecution as well as for the possible sanctions of expulsion, suspension, limitation of activities, fine, censure, suspension or bar from association with a member, or other sanction.[21] Hearings, pleadings, and disciplinary actions are to be conducted by the CSE's Business Conduct Committee.

The proposed rules provide that each member must "establish, maintain and enforce written procedures" that will enable the member to supervise the activities of its associated persons and "assure their compliance" with applicable securities laws and rules thereunder, and the rules of the Exchange. Additionally, the member must conduct periodic review of all customers' accounts and must designate a person in each office to supervise enforcement of the written procedures.[22]

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[9] CSE Rules Package, By-Laws, Article II, Section 10.4, at 17–18. The access participant members would be entitled to vote in all Board elections, not just those involving election of an access participant member to the Board.

[10] Section 6(b)(3) of the Act requires that: "The rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer."

[11] *Id. See also* Senate Comm. on Banking, Housing and Urban Affairs, "The Securities Acts Amendments of 1975," S. Rep. No. 94–95, 94th Cong., 1st Sess. (1975), at 22–30, 95; House Comm. on Interstate and Foreign Commerce, "Securities Reform Act of 1975," H.R. Rep. No. 94–123, 94th Cong., 1st Sess (1975), at 60–61.

[12] *See* Securities Exchange Act Release No. 14535 (March 7, 1978), 14 SEC Docket 383, 384, (March 21, 1978), 43 FR 10659 (March 14, 1978), by which the Commission approved SR–NYSE–77–21. That proposal created two new classes of NYSE "annual memberships" (electronic access and physical presence access memberships) and amended Article VII, Sections 10b and 10c of the NYSE Constitution, to provide that the physical presence members were restricted from voting on certain matters subject to general membership vote and that electronic access members were entitled a to one-half vote, subject also to the same voting restrictions as physical presence members.

[13] The proposed By-Laws provide at Article V, Section 1, that at least three of the nine Board members shall be proprietary members and that at least one of the nine Board members shall be an access participant member. Upon approval of this rule, the CSE would have 29 proprietary members and 398 access participant members.

[14] Section 6(b)(5) of the Act provides that: "An exchange shall not be registered as a national securities exchange unless the Commission determines that the rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange."

[15] CSE Rules Package, Rule 12.

[16] *Id.*, Rule 3.

[17] Those rules and amendments relating to the possible use of the Consolidated Tape for fraudulent or manipulative purposes were reviewed and approved by the Commission in 1975. *See* Securities Exchange Act Release No. 12432 (May 12, 1976), 9 SEC Docket 623 (May 25, 1976).

[18] Section 6(b)(1) of the Act provides that: "An exchange shall not be registered as a national securities exchange unless the Commission determines that such exchange is so organized and has the capacity to be able to carry out the purposes of this title and to comply, and (subject to any rule or order of the Commission pursuant to section 17(d) or 19(g)(2) of this title) to enforce compliance by its members and persons associated with its members, with the provisions of this title, the rules and regulations thereunder, and the rules of the exchange."

[19] Section 6(b)(6) of the Act provides that: "An exchange shall not be registered as a national securities exchange unless the Commission determines that the rules of the exchange provide that (subject to any rule or order of the Commission pursuant to Section 19(d) or 19(g) of this title) its members and persons associated with its members shall be appropriately disciplined for violation of the provisions of this title, the rules or regulations thereunder, or the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine censure, being suspended or barred from being associated with a member, or any other fitting sanction."

[20] Section 19(g)(1)(A) of the Act provides that: "Every self-regulatory organization shall comply with the provisions of this title, the rules and regulations thereunder, and its own rules, and (subject to the provisions of section 17(d) of this title, paragraph (2) of this subsection, and the rules thereunder) absent reasonable justification or excuse enforce compliance—(A) in the case of a national securities exchange, with such provisions by its members and persons associated with its members."

[21] CSE Rules Package, Rule 8.

[22] *Id.*, Rule 5.

Under plans of agreement ("plans") between the CSE and both the NYSE [23] and the NASD,[24] pursuant to Section 17(d) of the Act, the NYSE and the NASD will eventually assume the bulk of the examination and compliance burdens of the CSE with respect to the CSE's dual members.[25] The NASD and NYSE plans, however, do not include any marketplace regulation of either the CSE trading floor or the MDTS. That surveillance is conducted by the CSE itself and involves monitoring trades by visual review of transaction sheets and by matching transaction prices against quotations, tasks which currently involve a minimal commitment of resources since there is only one dealer operating on the Cincinnati trading floor and the limited trading which occurs on the floor occurs primarily in issues dually-traded on the NYSE.[26] CSE's requirements for member firm recordkeeping concerning orders directed to its floor appear to be adequate under the proposed rules, and compliance with such rules will be assured by implementation of the joint plans described above and as the NYSE, NASD and CSE identify those rules which are unique to the CSE and for which the NYSE and NASD ultimately will be responsible.[27] It is expected that the NYSE and the NASD plans concerning the CSE will provide for examination by the NYSE and the NASD of all CSE rules that require on-sight examination, and enforcement by those organizations of all CSE rules except CSE's marketplace rules and its unique rules.

With respect to CSE trading which occurs through the facilities of the MDTS, every bid and offer entered into the System (whether executed or not) and every execution is captured on computer magnetic tape. From this locked-in data base, the CSE prepares a daily "activity log" in hard copy which records in chronological order the time (to the nearest second) when every bid or offer is entered, modified, or withdrawn; the time when any execution occurs; and the identity of the person making the entry, as well as the capacity (agent or principal) in which that person is acting. The CSE also prepares a daily "execution report" which provides a similar chronological record for all executions in the MDTS. Consequently, a virtually complete audit trail is constructed and preserved for all activity in the System. In addition, during the nine-month initial phase of the MDTS pilot program, the NASD examined (on behalf of the CSE) each MDTS participant and found no significant compliance problems.[28]

In the Commission's view, the ability of the MDTS to provide the CSE with trade information based on locked-in trades and an automatic audit trail, augumented by periodic examinations to assure compliance by users with rules governing access to and use of the System, provides the CSE with the capacity to carry out the purposes of the Act with respect to the MDTS, and to comply, and enforce compliance by its members and associated persons, with the provisions of the Act and the rules thereunder, and the rules of the CSE.

Accordingly, the Commission finds, with respect to both the CSE trading floor in Cincinnati and the MDTS, that the CSE's proposed trading rules and its efforts to maintain ongoing controls designed to assure compliance, together with its establishment of disciplinary measures for violations, satisfy the requirements of the Act.

6. Disciplinary Procedures

Sections 6(b)(7)[29] and 6(d)(1) of the Act [30] require the existence of "fair procedures for the disciplining of members," including, as provided in Section 6(d)(1) of the act, the bringing of specific charges in writing which detail the act allegedly committed, the provisions of the Act and/or of the rules of the exchange allegedly violated, an opportunity for the accused member to defend against the charges, and the keeping of a record of the proceeding. In this regard, the CSE disciplinary procedure set forth in the rules package provides for such a written statement of charges, a reasonable period for response, a duly noticed hearing with the right to counsel, a formal record of the proceeding, the right to copies of all documents, the right to appellate review before the Board, and other judicially recognized rights of due process.[31] By contrast, the current (old) CSE "Rules and Regulations" expressly deny both the right to counsel and the right to appellate review in Exchange disciplinary proceedings and are silent on many other due process rights.[32] The Commission believes that the proposed CSE rules comply with the due process standards of Sections 6(b)(7) and 6(d) and mark a substantial improvement over the CSE's former rules.

7. Adverse Actions

In accordance with Section 6(d)(2) of the Act,[33] the new rules [34] provide an

[23] *See* "Regulatory Plan between the New York Stock Exchange, Inc. and the Cincinnati Stock Exchange for Allocating Regulatory Responsibilities for CSE–NYSE Dual Members," noticed in Securities Exchange Act Release No. 14152 (November 9, 1977), 13 SEC Docket 658 (November 22, 1977), and published in 42 FR 59339 (November 16, 1977).

[24] *See* "Agreement between the National Association of Securities Dealers, Inc. and the Cincinnati Stock Exchange pursuant to SEC Rule 17d–2 under the Securities Exchange Act of 1934" (June 20, 1977), noticed in Securities Exchange Act Release No. 14094 (October 25, 1977), 13 SEC Docket 410 (November 8, 1977), and published in 42 FR 57197 (November 1, 1977). *See also*, "Temporary Order Granting Approval," Securities Exchange Act Release No. 15191 (September 26, 1978), 15 SEC Docket 1163 (October 11, 1978), 43 FR 46093 (October 5, 1978).

[25] "Dual members" are defined as brokers and dealers which belong to more than one self-regulatory organization. *See* "Temporary Order Granting Approval," Securities Exchange Act Release No. 15191 (September 26, 1978), 15 SEC Docket 1163 (October 11, 1978), 43 FR 46093 (October 5, 1978). All 19 of the CSE's proprietary members are dual members. The NYSE is the designated examining authority for 11 and the NASD the designated examining authority for 8.

[26] This surveillance is currently performed by the CSE's Executive Secretary and staff.

[27] *See* "Temporary Order Granting Approval," Securities Exchange Act Release No. 15191 (September 26, 1978), 15 SEC Docket 1163 (October 11, 1978), 43 FR 46093 (October 5, 1978). Rules "unique to the CSE" means regulatory rules: (a) that cannot be monitored by marketplace surveillance and (b) that are not comparable to provisions of the Act and rules and regulations thereunder or to the NASD rules. *Id.*, 15 SEC Docket at 1165–66, 43 FR 46094.

[28] *See* "Order Approving Rule Change" (File No. SR–CSE–78–2), Securities Exchange Act Release No. 15413 (December 15, 1978), 16 SEC Docket 510 (January 2, 1979), 44 FR 129 (January 2, 1979).

[29] Section 6(b)(7) of the Act provides that: "An exchange shall not be registered as a national securities exchange unless the Commission determines that the rules of the exchange are in accordance with the provisions of subsection (d) of this section, and, in general, provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the exchange offered by the exchange or a member thereof."

[30] Section 6(d)(1) of the Act provides: "In any proceeding by a natioanl securities exchange to determine whether a member or person associated with a member should be disciplined (other than a summary proceeding pursuant to paragraph (3) of this subsection), the exchange shall bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record. A determination by the exchange to impose a disciplinary sanction shall be supported by a statement setting forth—(A) any act or practice in which such member or person associated with a member has been found to have engaged, or which such member or person has been found to have omitted; (B) the specific provision of this title, the rules or regulations thereunder, or the rules of the exchange which any such act or practice, or omission to act, is deemed to violate; and (C) the sanction imposed and the reasons therefor."

[31] CSE Rules Package, Rule 8.

[32] Section 69, "Trial and Punishment of Members."

[33] *See, supra*, note 30, at 13.

[34] CSE Rules Package, Rule 10.

opportunity for hearing as well as appellate review by the Board for persons aggrieved by certain "adverse actions" of the CSE including denial of Exchange membership or being barred from association with an Exchange member. The parties to the hearing are expressly authorized the customary rights of due process, including the right to counsel. The current (old) CSE rules, by contrast, contain no comparable rights. In the Commission's view, the proposed CSE rules comply with the intent of Section 6(b)(2)[35] of the Act, which encourages open access to exchange membership, and with Section 6(b)(7) of the Act, which mandates means of disciplining person who act, or have acted, in a manner inconsistent with Section 6(b)(2).

8. *Burden on Competition*

Section 6(b)(8) of the Act [36] prohibits the rules of an exchange from imposing any burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act. The Commission believes that the CSE rules impose no such burdens on competition. Neither the proposed membership rules, which provide for greater ease of access to that Exchange, nor the proposed trading rules, which provide the investing public with added protections, appear to impose any burdens on competition. To the contrary, competition would appear to be fostered by the greater accessibility and the greater scope and clarity of the proposed rules. With respect to the MDTS, the Commission previously considered its competitive effects and concluded that the MDTS apparently enhances competition and, moreover, that it apparently facilitates the national market system mandates of the Act.[37] Finally, to the extent that any of the CSE rules may be viewed as imposing burdens on competition, the Commission believes that such burdens are justified as necessary or appropriate in furtherance of the purposes of the Act.

III. Conclusion

The Commission finds that, for the purpose of providing the CSE with a governing body of rules, the proposed rule change is consistent with the requirements of the Act, as amended, and with the rules and regulations thereunder applicable to national securities exchanges, and, in particular, that it is consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder.[38]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above referenced rule change be, and hereby is, approved.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-25506 Filed 8-16-79; 8:45 am]

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[35] Section 6(b)(2) of the Act provides that: "An exchange shall not be registered as a national securities exchange unless the Commission determines that subject to the provisions of subsection (c) of this section, the rules of the exchange provide that any registered broker or dealer or natural person associated with a registered broker or dealer may become a member of such exchange and any person may become associated with a member thereof."

[36] Section 6(b)(8) of the Act provides that: "An exchange shall not be registered as a national securities exchange unless the Commission determines that the rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title." *See also*, Section 11A(a)(1)(C)(ii) of the Act.

[37] The Commission, in its April 1978 order approving the MDTS nine month pilot program, considered the potential effects of the MDTS on competition and declared: "the 'open access' nature of the proposed pilot program may afford an opportunity for enhanced competition among brokers and dealers [and] among exchange markets" and further said, "[t]he CSE's proposed pilot program appears to be the kind of 'competition-enhancing' development the Commission should foster under the Act, rather than foreclose, in carrying out the Act's national market system mandate." *See* "Order Approving Rule Change," Securities Exchange Act Release No. 14674 (April 18, 1978), 14 SEC Docket 817, 822–23 (May 2, 1978), 43 FR 17894 (April 26, 1978).

[38] In making its findings, the Commission notes that the volume of trading in, and the particular characteristics of, the marketplace regulated by a self-regulatory organization, and the nature and extent of the organization's self-regulatory duties are factors that might require another exchange to address concerns that were not present here. Should these factors change with respect to the CSE, the CSE itself also might have to augment this rules package.

[Rel. No. 16072]

Midwest Stock Exchange, Inc.; Unlisted Odd-Lot Trading Privileges in Certain Securities; Opportunity for Hearing

July 31, 1979.

The above-named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted odd-lot trading privileges in the common or capital stock of twenty-five companies, which securities are listed and registered on one or more of the national securities exchanges. The twenty-five companies are the issuers of all such securities listed on the New York Stock Exchange, Inc. ("NYSE") that are currently not listed or admitted to unlisted trading privileges on the Midwest Stock Exchange, Inc. ("MSE").[1] A list of such companies is reproduced below.

Upon receipt of a request, on or before August 24, 1979, from any interested person, the Commission will determine whether the application with respect to any or all of the companies named shall be set down for hearing. Any such request should state briefly the title of the security to which the request pertains, the nature of the interest of the person making the request and the position which the interested party proposes to take at a hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. Reference should be made to File No. 7–5109. If no one requests a hearing with respect to the particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

List of Companies Whose Securities are the Subject of Midwest Stock Exchange, Inc., Application for Unlisted Odd-Lot Trading Privileges

AVX Corporation
American Savings & Loan of Florida
Analog Devices, Inc.
Arrow Electronics, Inc.
Cannon Mills, Co.
Connecticut General Ins. Co.
Computervision Corporation
Documation, Inc.
Elcor Corporation
Growth Realty Investors
Huffy Corporation
Iowa Resources, Inc.
LaQuinta Motor Inns, Inc.
Legget & Platt, Inc.
NCNB Corporation
Newcorp, Inc.
Newell Co., Inc.
Pennsylvania Corp. Financial
Scientific-Atlanta, Inc.
Sealed Air Corp.
Security Pacific Corp.
Southwest Gas Corp.
Sta-Rite Industries, Inc.
Teradyne, Inc.
Toys "R" Us, Inc.

[FR Doc. 79-25567 Filed 8-16-79; 8:45 am]

BILLING CODE 8010-01-M

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[1] The Commission previously granted two MSE applications for unlisted odd-lot trading privileges in a total of 987 securities, which securities are among those listed and registered on the NYSE. *See* Securities Exchange Act Release Nos. 14800 (May 25, 1978) and 15906 (June 8, 1979).

[Rel. No. 21181; 70-6222]

Ohio Power Co. and Ohio Electric Co.; Merger of Generating Subsidiary Into Parent

August 10, 1979.

Notice is hereby given that Ohio Power Company ("Ohio Power"), an electric utility subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, and Ohio Electric Company ("Ohio Electric"), 301 Cleveland Avenue, S.W., Canton, Ohio 44701, an electric utility subsidiary of Ohio Power, have filed with this Commission an application-declaration and an amendment thereto pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(b) and 12 of the Act and Rule 43 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Ohio Power requests authorization to merge its generating subsidiary, Ohio Electric, into itself. Ohio Electric was organized on January 31, 1972, to complete construction of and to operate the General James M. Gavin Plant, consisting of two 1,300 megawatt generating units, situated on the Ohio River near Cheshire, Ohio. It was originally intended that these facilities be built and operated by Ohio Power. By order dated March 21, 1972 (HCAR No. 17504), Ohio Power was authorized to transfer the facilities to Ohio Electric. All of the common stock of Ohio Electric is owned by Ohio Power, which is Ohio Electric's sole customer.

The proposed merger will be carried out in accordance with all applicable Ohio laws, including provisions under which upon consummation of the merger (1) title to all property of Ohio Electric will become vested in Ohio Power; (2) all liens upon the respective properties of Ohio Power and Ohio Electric will be preserved unimpaired; and (3) Ohio Power will become liable for all the obligations of Ohio Electric.

The proposed merger will be consummated pursuant to the terms of an Agreement of Merger ("Agreement") to be entered into by Ohio Power and Ohio Electric. The Agreement will provide, among other things, that all of the outstanding shares of Ohio Electric common stock, which are owned by Ohio Power, will be extinguished. The Agreement must be approved by the respective Boards of Directors of Ohio Power and Ohio Electric. No authorization or consent by any shareholders of Ohio Power or Ohio Electric is required under Ohio law or under their respective articles of incorporation.

Ohio Power proposes, pursuant to article 14 of Ohio Electric's mortgage and deed of trust ("Deed of Trust"), to execute and deliver to the trustee a supplement to the Deed of Trust in which supplement Ohio Power, as successor to Ohio Electric, would assume and agree to pay the principal of and interest on the first mortgage bonds issued under the Deed of trust and would agree to perform and fullfill all of the covenants and conditions of of said Deed of Trust. The proposed supplement amends the definition of "excepted encumbrances" and another section of the Deed of Trust. Such amendments have been consented to by the purchasers of $200,000,000 principal amount of Ohio Electric's bonds, which amount constitutes more than 66⅔% of Ohio Electric's first mortgage bonds.

Ohio Power also proposes that it will, subsequent to the effective date of the merger and prior to its utilization of any property owned by Ohio Electric at the effective date of the merger as property additions for the purpose of authenticating bonds under Ohio Power's deed of trust or for any other purpose thereunder, execute and deliver to the trustees under Ohio Power's deed of trust a supplement conveying to said trustees, subject to the prior lien of the Ohio Electric Deed of Trust, such properties of Ohio Electric acquired pursuant to the Agreement as can be utilized by Ohio Power as property additions under deed of trust.

It is stated that by eliminating the separate corporate existence of Ohio Electric, the proposed merger will simplify the corporate structure of Ohio Power and of the AEP holding company system.

The fees and expenses to be incurred in connection with the proposed transactions will be supplied by amendment. The Public Utilities Commission of Ohio has authorized the proposed transactions. It is stated that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than September 6, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended, or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-25568 Filed 8-16-79; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 10826; 812-4474]

Union Bank of Finland, Ltd.; Application

August 10, 1979.

Notice is Hereby given that Union Bank of Finland, Ltd. Aleksanter inkatu, 30 SF-00101 Helsinki 10, Finland ("Applicant") filed an application on May 11, 1979, and an amendment thereto on August 6, 1979, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that is the oldest and one of the two largest commercial banks in Finland. According to the Application, on December 31, 1978, Applicant's total consolidated assets and deposits were $4,731,682,410 and $3,828,659,430 respectively. Applicant states that it is a

joint stock company with approximately 145,000 shareholders, of whom approximately 97% are individuals and that Applicant's shares are traded on the Helsinki stock exchange. According to the application, on December 31, 1978, Applicant had approximately 26,880,000 ordinary and 6,720,000 preference shares outstanding which represented an aggregate market value of approximately $85,779,934. The application further states that Applicant expects to have increased its share capital to approximately $142,966,556 by the end of September, 1979, through issuance of a new share issue. Applicant states that it conducts its domestic business through a network of 362 branches and sub-branch offices in Finland.

Applicant states that, as an institution carrying on the normal business of a commercial bank in Finland, it it primarily engaged in the business of accepting deposits and extending credit to a variety of commercial and other borrowers. Applicant further states that it provides a broad range of domestic financial services, including the receipt of deposits from both individuals and corporations, the making of loans and granting guarantees, and the provision of lease financing and factoring services. Applicant states that it also acts as a securities broker but represents that income from brokerage activities accounted for less than 0.5% of its total income in 1978. In addition to its domestic banking services, Applicant states that if facilitates a major portion of Finland's foreign trade and provides foreign exchange, trade and investment financing and other international banking activities, both directly and through its wholly-owned subsidiary in Luxembourg, affiliate banks and representative offices in ten countries, and correspondent banks worldwide.

Applicant states that on December 31, 1978, its consolidated loans and advances to customers represented approximately 65% of its total assets and 80.9% of deposits on a consolidated basis. According to the application, at the close of 1978 Applicant's total consolidated net interest earnings for that year amounted to $93,406,670 or 132% of its total consolidated net earnings of $70,498,847. Applicant states that its holdings of investment securities amounted to approximately 6.8% of its consolidated assets on December 31, 1978, and that for the year ended December 31, 1978, Applicant's investment income constituted 10.4% of its consolidated income. According to the application, over 90% of Applicant's total loans and 69% of its deposits at December 31, 1978, represented credit extended to or deposits made by Finnish individuals, Finnish commerce and industry, and Finnish institutions.

According to the application, Finnish banking legislation subjects all banks to regulation by the Bank Inspectorate, which is in turn responsible to the Ministry of Finance. This regulation includes formal inspections at periodic intervals by independent auditors, supervision of the lending activities of commercial banks such as Applicant, and specific requirements regarding mandatory cash reserves and permissible debt-to-equity ratios. According to the application, commercial banks in Finland are required to submit to the Bank inspectorate monthly reports regarding their financial condition, contingent liabilities, interest rates and other information, and annual reports regarding deposits, credits and principal borrowers. Under Finnish law, Applicant states that each commercial bank is required to join a private joint security fund, under supervision of the Ministry of Finance, to which all banks of the same type must contribute annually and which is empowered to make support loans and other payments to banks in financial difficulty.

The application states that Finland's central bank, the Suomen Pankki-Finlands Bank, administers, the basic monetary policies of Finland, sets the maximum amount of credit which commercial banks may draw from the central bank, interest rates for such borrowings and penalties for excess borrowings; according to the application, the central bank also regulates the Finnish call money market, foreign borrowings and foreign exchange markets. In addition, the application states that under Finnish law commercial banks such as Applicant may not engage substantially in commerce.

Applicant states that it presently proposes to issue and sell unsecured prime quality commercial paper notes (the "Notes"), in bearer form and denominated in United States dollars, with maturities not to exceed nine months, to a commercial paper dealer in the United States which will then reoffer the notes in minimum denominations of $100,000 to American institutional investors and other entities and individuals who normally purchase commercial paper. Applicant states that it presently intends that no more than $100,000,000 of the Notes will be outstanding at any one time. Applicant further states that it believes the United States commercial paper market to be an attractive source of funds with which to finance or refinance its short-term credits granted in foreign currencies, mainly in United States dollars. According to the application, the Notes will be direct liabilities of Applicant and will rank *pari passu* among themselves and equally with all other unsecured, unsubordinated indebtedness of Applicant, including its deposit liabilities. The Notes will rank prior to the subordinated indebtedness of Applicant and claims of holders of its ordinary shares and preferred shares.

Applicant states that the Notes, based on their maturity, the manner of the offering and the Applicant's intention to use the proceeds therefrom to finance current transactions, will qualify for the exemption from registration under the Securities Act of 1933, as amended (the "1933 Act"), provided by Section 3(a)(3) of that Act, and therefore Applicant does not propose to register the Notes under the 1933 Act. Applicant represents that it will not issue or sell any Notes until it has received an opinion of its special legal counsel in the United States to the effect that, under the circumstances of the proposed offering, the Notes would be entitled to the Section 3(a)(3) exemption. Applicant does not request Commission review or approval of such opinion and the Commission expresses no opinion as to the availability of any such exemption. Applicant further states that the Notes and any future issues of its securities in the United States shall have received, prior to issuance, one of the three highest investment grade ratings from at least one of the nationally recognized statistical rating organizations, and that Applicant's special legal counsel in the United States shall have certified that such rating has been received. Applicant states that it is not subject to the reporting requirements of the Securities Exchange Act of 1934 and will not become subject to such requirements as a result of the issuance and sale of the Notes. Applicant undertakes to ensure that the dealer will provide to each offeree of the Notes a memorandum which describes the business of the Bank and includes Applicant's most recent publicly available fiscal year-end balance sheet and income statement, which shall have been audited in such a manner as is customarily done for Applicant by Finnish auditors. The aforementioned memoranda will be at least as comprehensive as those customarily used in commercial paper offerings in the United States, and such memoranda will be updated periodically to reflect material changes in Applicant's financial status to the extent

not previously reflected in such memoranda or aforementioned financial statements.

Although it has no present intention of doing so, Applicant states that it may in the future offer other securities (other than shares of its capital stock) for sale in the United States. Applicant represents that any such future offerings of securities in the United States will be made pursuant to a registration statement under the 1933 Act or pursuant to an applicable exemption from registration under the 1933 Act and any such offering will be made on the basis of a disclosure document appropriate for such registration or exemption, and in any event at least as comprehensive as that used in the presently proposed offering. Applicant undertakes to ensure that such a disclosure document will be provided to each offeree who has indicated an interest in the securities then being offered, prior to any sale of such securities to such offeree, except that in the case of an offering made pursuant to a registration statement under the 1933 Act such a disclosure document will be provided to such persons and in such manner as may be required by the 1933 Act and the rules and regulations thereunder.

Applicant consents to any Order granting the relief requested pursuant to Section 6(c) being expressly conditioned upon its compliance with the foregoing undertakings regarding disclosure documents.

Applicant represents that it will appoint the Consul General of Finland whose offices are located in New York, New York, and his successors as its agent in the United States to accept service of process in any action based on the Notes and instituted in any state or federal court by a holder of any of the Notes. Applicant further represents that it will expressly accept the jurisdiction of any state or federal court in the City and State of New York with respect to any such action, and that both its appointment of an agent to accept service of process and its consent to jurisdiction will be irrevocable until all amounts due and to become due with respect to the Notes have been paid by Applicant.

Applicant also represents that it will, in connection with any future offerings of its securities in the United States, appoint an agent to accept any process which may be served in any action based on such securities instituted in any state or federal court by any holder of such securities. Applicant further undertakes that it will expressly accept the jurisdiction of an appropriate state or federal court with respect to any such action and that both its appointment of an agent to accept service of process and its consent to jurisdiction with respect to such future offerings will be irrevocable so long as such securities remain outstanding and until all amounts due and to become due with respect to such securities have been paid.

Section 3(a)(3) of the Act defines investment company to mean "any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities, having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." Applicant states that there is uncertainty as to whether it would be considered an investment company as defined under the Act.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision under the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant requests an order pursuant to Section 6(c) of the Act exempting it from all provisions of the Act. Applicant asserts that it is subject to extensive regulation by Finnish banking authorities and therefore that application of the requirements of the Act to Applicant would be unnecessary and further that, as a Finnish commercial bank subject to such regulation, Applicant is significantly different from the type of institution that Congress intended the Act to regulate. Applicant also asserts that an exemption pursuant to Section 6(c) of the Act would benefit institutional and other sophisticated investors, since they would otherwise be precluded from purchasing Applicant's commercial paper. Applicant also asserts that the requested exemption would further the purposes of recent banking legislation designed to place United States banks and foreign banks on a basis of competitive equality in their United States transactions. Applicant concludes that granting an exemptive order pursuant to Section 6(c) of the Act would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than September 4, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of the fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 29549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79–25569 Filed 8–16–79; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area 1665]

California; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that Riverside County and adjacent counties

within the State of California constitute a disaster area because of damage resulting from heavy rains, flash flooding and mud flows on July 19–20, 1979. Applications will be processed under the provisions of Pub. L. 96–38. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on September 27, 1979, and for economic injury until close of business on April 28, 1980, at: Small Business Administration, District Office, 350 S. Figueroa St., 6th Floor, Los Angeles, California 90071 or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 1, 1979.

A. Vernon Weaver,

Administration.

[FR Doc. 79-25411 Filed 8-16-79; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 04/04-5171]

Global Investments Inc.; Application for License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has been filed by Global Investments Incorporated (applicant), with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1979). The officers, directors and stockholders of the applicant are as follows:

Richard E. Roberts, 106 Brookhaven Trail, Smyrna, Tennessee 37167, President, Director, 23.53% Stockholder.

Donald E. Moser, 1502 Georgetown Court, Murfreesboro, Tennessee 37130, Vice President, Director, 9.80% Stockholder.

Joseph R. Arnold, Country Village Apartments, D–3, Crockett Court, Route 9, Smyrna, Tennessee 37167, Secretary, Director, 13.73% Stockholder.

John T. Ward, 201 Coleman Street, Smyrna, Tennessee 37167, Treasurer, Director, .98% Stockholder.

Willie C. Edwards, 1801 Staring Lane, Baton Rouge, Louisiana 70815, Director, 4.90% Stockholder.

Nelson R. Rychener, 419 Robertson, Smyrna, Tennessee 37167, Director, 37.26% Stockholder.

Dovie A. Campbell, 704 Southeast Circle, Hattiesburg, Mississippi 39401, Director, 4.90% Stockholder.

Gregory N. Pack, Country Village Apartments, A–3, Smyrna, Tennessee 37167, Director, 4.90% Stockholder.

David G. Bolin, 504 Lowry Street, Smyrna, Tennessee 37167, Director.

James F. Hansley, 309 Pepper Building, Winston-Salem, North Carolina 27101, Investment Counselor.

The applicant, a Tennessee Corporation, with its principal place of business at U.S. 41/70 South, Smyrna, Tennessee 37167, will begin operations with $500,000 of paid-in capital and paid-in surplus derived from the sale of 500,000 shares of common stock.

The applicant will conduct its activities principally in the State of Tennessee, Rutherford County, and the City of Smyrna.

Applicant intends to provide assistance to all qualified socially or economically disadvantaged small business concerns as the opportunity to profitably assist such concerns is presented.

As a small business investment company under Section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed management, and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than September 4, 1979, submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Acting Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Smyrna, Tennessee.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 8, 1979.

Peter F. McNeish,

Acting Associate Administrator for Finance and Investment.

[FR Doc. 79-25401 Filed 8-16-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1667]

Indiana; Declaration of Disaster Loan Area

The following two counties and adjacent counties within the State of Indiana constitute a disaster area as a result of natural disasters as indicated:

County	Natural Disaster(s)	Date(s)
Perry	Flood	6/8–9/79
Pike	Flood	6/8–9/79

Applications will be processed under provisions of Pub. L. 96–38. Eligible persons, firms and organizations may file applications for loans for physical damage until close of business on February 4, 1980, and for economic injury until close of business on May 5, 1980, at: Small Business Administration, District Office, Federal Building, 5th Floor, 575 North Pennsylvania Street, Indianapolis, Indiana 46204, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 3, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 25413 Filed 8-16-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1670]

Indiana; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that the following 4 counties: Crawford, Gibson, Orange and Vermillion and adjacent counties within the State of Indiana, constitute a disaster area because of damage resulting from severe storms and flooding beginning on or about July 25, 1979. Applications will be processed under the provisions of Pub. L. 96–38. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on October 1, 1979, and for economic injury until close of business on May 1, 1980, at: Small Business Administration, District Office, Federal Building—5th Floor, 575 North Pennsylvania Street, Indianapolis, Indiana 46204; or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 1, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-25416 Filed 8-16-79; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-5367]

Japanese American Capital Corp.; Issuance of a License To Operate as a Small Business Investment Company

On June 27, 1979, a notice was published in the **Federal Register** (44 FR 37571), stating that Japanese American Capital Corporation located at 120 Broadway, New York, New York 10005, has filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1979) for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

Interested parties were given until the close of business July 12, 1979, to submit their comments to SBA. No comments were received.

Notice is hereby given that having considered the application and other pertinent information, SBA has issued License No. 02/02-5367 to Japanese American Capital Corporation on August 7, 1979.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: August 9, 1979.

Peter F. McNeish,

Acting Associate Administrator for Finance and Investment.

[FR Doc. 79-25403 Filed 8-16-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1659]

Kansas; Declaration of Disaster Loan Area

Gove and Stevens counties and adjacent counties within the State of Kansas constitute a disaster area of a result of natural disaster as indicated:

County	Natural disaster(s)	Date(s)
Gove	Drought	Summer and Fall of 1978 and through the growing season of 1979
Stevens	Snow and freeze	5/3/79
Do	Windstorm	5/8/79
Do	Hail, rain and freeze	6/7/79

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on January 23, 1980, and for economic injury until the close of business on April 23, 1980, at: Small Business Administration, District Office, Main Place Building, 110 East Waterman Street, Wichita, Kansas 67202, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 23, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-25405 Filed 8-16-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1666]

Kansas; Declaration of Disaster Loan Area

Lincoln and Wallace Counties and adjacent Counties within the State of Kansas Constitute a disaster area as a result of natural disaster as indicated:

County	Natural Disaster(s)	Date(s)
Lincoln	Severe hail and windstorm	6/27/79
Wallace	Severe hail storm	6/16/79

Applications will be processed under the provisions of Pub. L. 96-38. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on February 1, 1980, and for economic injury until the close of business on May 1, 1980, at: Small Business Administration, District Office, Main Place Building, 110 East Waterman Street, Wichita, Kansas, 67202, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

A. Vernon Weaver,

Administrator.

August 1, 1979.

[FR Doc. 79-25412 Filed 8-16-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #1662]

Kentucky; Declaration of Disaster Loan Area

As result of the President's major disaster declaration, I find that Pike County and adjacent counties within the State of Kentucky constitute a disaster area because of damage resulting from severe storms and flash flooding on July 15, 1979. Applications will be processed under the provisions of Pub. L. 94-305. Interest rate is 7⅜ percent. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on September 17, 1979, and for economic injury until close of business on April 17, 1980, at: Small Business Administration, District Office, Federal Office Building—Room 188, 600 Federal Place, Louisville, Kentucky 40202, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 23, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-25408 Filed 8-16-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1660]

Michigan; Declaration of Disaster Loan Area

Wayne County and adjacent counties within the State of Michigan constitute a disaster area as a result of damage caused by severe thunderstorms, heavy rains and flooding which occurred on July 11, 1979. Applications will be processed under the provisions of Pub. L. 94-305. Interest rate is 7⅜ percent. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business September 17, 1979, and for economic injury until the close of business on April 21, 1980, at: Small Business Administration, District Office, McNamara Bldg., Room 515, 477 Michigan Avenue, Detroit, Michigan 48226; or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 19, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-25406 Filed 8-16-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1669]

New York; Declaration of Disaster Loan Area

The area of 1591 to 1601 Westchester Avenue and 1205 to 1207 Stratford Avenue in Bronx County, in the City of New York, New York State, constitute a disaster area because of damage resulting from a fire which occurred on July 1, 1979. Applications will be processed under the provisions of Pub. L. 96-38. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on October 9, 1979, and for economic injury until the close of business on May 8, 1980, at: Small Business Administration, District Office, 26 Federal Plaza—Room 3100, New York, New York 10007; or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 8, 1979.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 79-25415 Filed 8-16-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1671]

New York; Declaration of Disaster Loan Area

The area of 64-71½ Vineyard Street Highland, Town of Lloyd, Ulster County, New York constitute a disaster area because of damage resulting from a fire which occurred on April 24, 1979. Applications will be processed under the provisions of Pub. L. 96-38. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on October 9, 1979, and for economic injury until the close of business on May 8, 1980, at: Small Business Administration, District Office, 26 Federal Plaza—Room 3100, New York, New York 10007; or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 8, 1979.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 79-25417 Filed 8-16-79; 8:45 am]

BILLING CODE 8025-01-M

[Delegation of Authority No. 30, Rev. 15, Amdt. 31]

Program Activities in Field Offices; Delegation of Authority

Delegation of Authority No. 30, Rev. 15, republished in the **Federal Register** on November 24, 1978 (43 FR 5220), as amended (44 FR 963, 44 FR 5039, 44 FR 19572, 44 FR 21108, and 44 FR 46553), is further amended to delegate authority for the 8(a) Contracting Authority in accordance with reorganization in field offices in Regions VI and VIII.

Accordingly, Part VI of Delegation of Authority No. 30, Revision 15, is amended as follows:

Part VI—Procurement Assistance Program

* * * * *

Section B—*Section 8(a)(1)(A) Contracting Authority*

1. To enter into contracts on behalf of the Small Business Administration with the United States Government and any department, agency, or officer thereof having procurement powers, obligating the Small Business Administration to furnish articles, equipment, supplies, services, or materials to the Government or to perform construction work for the Government, subject to the following monetary limitations:

a. Regional Administrators; Unlimited.

b. Assistant Regional Administrators for PA, except Regions VI and VIII; Unlimited.

c. Assistant Regional Administrators for MSB/COD, Region VI and Region VIII only; Unlimited.

d. Chief, Office of Business Development, Region III, R/O only; $100,000.

e. Contract Specialist, Region X, R/O only; $250,000.

f. District Director, Washington, Denver, Richmond, and Philadelphia, D/O's only; Unlimited.

g. District Directors, New York, Newark, Chicago, Detroit, Columbus and all Region VI D/O's only; $350,000.

h. District Directors, all Region IX and all Region X District Office only; $500,000.

i. Deputy District Director, Washington D/O; Unlimited.

j. Assistant District Directors for PA, San Francisco and Los Angeles D/O's only; $100,000.

k. Assistant District Director for PA, New York and Newark D/O's only; $350,000.

l. Contract Specialist, Anchorage D/O only; $250,000.

m. Branch Manager, El Paso Branch Office only; $350,000.

2. *Subcontracting.* To arrange for the performance of such procurement contracts as stated in paragraph 1 above by negotiating or otherwise letting subcontracts to socially and economically disadvantaged small business concerns for the construction work, services or the manufacture, supply, or assembly of such articles, equipment, supplies, or materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Small Business Administration to perform such contracts subject to the following monetary amounts:

a. Regional Administrators; Unlimited.

b. Assistant Regional Administrators for PA, except Regions VI and VIII; Unlimited.

c. Assistant Regional Administrators for MSB/COD, Regions VI and VIII only; Unlimited.

d. Chief, Office of Business Development, Region III R/O only; $100,000.

e. Contract Specialist, Region X R/O only; $250,000.

f. District Director, Washington, Denver, St. Louis, Richmond, and Philadelphia D/O's only; Unlimited.

g. District Directors, New York, Newark, Chicago, Detroit, Columbus and all Region VI D/O's only; $350,000.

h. District Directors, all Region IX and all Region X District Offices only; $500,000.

i. Deputy District Director, Washington D/O; Unlimited.

j. Assistant District Director for PA, San Francisco and Los Angeles D/O's only; $100,000.

k. Business Development Specialist, St. Louis D/O only; Unlimited.

l. Contract Specialist, Anchorage D/O's only; $250,000.

m. Branch Manager, El Paso Branch Office only; $350,000.

3. To certify to any officer of the Government having procurement powers that the Small Business Administration is competent and responsible to perform any specific Government procurement contract to be let by any such officer. Such contracts not to exceed the following amount:

a. Regional Administrators; Unlimited.

b. Assistant Regional Administrator for PA, except Regions VI and VIII; Unlimited.

c. Assistant Regional Administrators for MSB/COD, Regions VI and VIII only; Unlimited.

d. Chief, Business Development, Region III, R/O only; Unlimited.

e. Contract Specialist, Region X, R/O only; $250,000.

f. District Director, Washington, Denver, Philadelphia, Richmond and St. Louis D/O's only; Unlimited.

g. District Directors, New York, Newark, Chicago, Detroit, Columbus and all Region VI D/O's only; $350,000.

h. District Directors, all Region IX and all Region X D/O's only; $500,000.

i. Deputy District Director, Washington D/O; Unlimited.

j. Assistant District Director for PA, Region IX; $500,000.

k. Assistant District Director for PA, New York and Newark D/O's; $350,000.

l. Contract Specialist, Anchorage D/O only; $250,000.

m. Business Development Specialist, St. Louis D/O only; Unlimited.

n. Branch Manager, El Paso Branch Office only; $350,000.

* * * * *

Effective Date: August 17, 1979.

Dated: August 9, 1979.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 79-25400 Filed 8-16-79; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council; Public Meeting

The Small Business Administration Region III Advisory Council, located in the geographical area of Richmond, Virginia, will hold a public meeting at 10:00 a.m., Thursday, September 13, 1979, through noon on Friday, September 14, 1979, at the Martha Washington Inn, Abingdon, Virginia, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Raymond P. Kuttenkuler, District Director, U.S. Small Business Administration, P.O. Box 10126, Richmond, Virginia 23240—(804) 782-2741.

Dated: August 8, 1979.

K. Drew,

Deputy Advocate for Advisory Councils.

[FR Doc. 79-25419 Filed 8-16-79; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License 04/04-5175]

Sun-Delta Capital Access Center, Inc.; Application for License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has been filed by Sun-Delta Capital Access Center, Inc. (Sun-Delta), with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1979).

The officers, directors and principal stockholders of Sun-Delta are as follows:

Charles D. Bannerman, 525 Cherry Street, Greenville, Mississippi 38701, President, Director.

Scott Roy Daugherty, 730 Arnold Avenue, Greenville, Mississippi 38701, Vice President, General Manager, Director.

Keith Henry Earley, Rt. 3, Lake Ferguson, Greenville, Mississippi 38701, Secretary, Director.

Orestes Charles Carmicle, 1572 Canal, Greenville, Mississippi 38701, Treasurer, Director.

Delta Foundation, Inc., A non-profit Organization, 100 percent.

Sun Delta, a Mississippi corporation with its principal place of business located at 819 Main Street, Greenville, Mississippi, will begin operations with $1,250,100 of combined paid-in capital and paid-in surplus derived from of paid-in capital and paid-in surplus derived from the sale of 1,250,100 shares of common stock.

Sun-Delta will conduct its activities principally in the State of Mississippi.

As a small business investment company under Section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than September 4, 1979, submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Acting Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Greenville, Mississippi.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 9, 1979.

Peter F. McNeish,

Acting Associate Adminstrator for Finance and Investment.

[FR Doc. 79-25402 Filed 8-16-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1657]

Texas; Declaration of Disaster Loan Area

Refugio County and adjacent counties within the State of Texas constitute a disaster area as a result of damage caused by a tornado, hailstorm and wind which occurred on April 29, 1979. Applications will be processed under provisions of Public Law 94-305. Interest rate is 7⅜ percent. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on January 14, 1980, and for economic injury until close of business on April 14, 1980, at: Small Business Administration, District Office, 727 East Durango—Room A 513, Federal Building, San Antonio, Texas 78206 or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 13, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-25404 Filed 8-16-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1668]

Texas; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that the following 6 counties: Chambers, Brazoria, Galveston, Harris, Jefferson and Orange Counties and adjacent counties within the State of Texas, constitute a disaster area because of damage resulting from severe storms and flash flooding beginning on or about July 24, 1979. Applications will be processed under the provisions of Pub. L. 96-38. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on September 27, 1979, and for economic injury until close of business on April 28, 1980, at: Small Business Administration, District Office, One Allen Center—Suite 705, 500 Dallas, Houston, Texas 77002 or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.

Dated: August 1, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-25414 Filed 8-16-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1672]

Texas; Declaration of Disaster Loan Area

The area of Woodway Square Apartments, 1501 Winrock, Houston, Harris County, Texas, constitute a disaster area because of damage resulting from a fire which occurred on July 31, 1979. Applications will be processed under the provisions of Pub. L. 96-38. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on October 5, 1979, and for economic injury until the close of business on May 6, 1980, at: Small Business Administration, District Office, One Allen Center—Suite 705, 500 Dallas Street, Houston, Texas 77002, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 6, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-25418 Filed 8-16-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1663]

Virginia; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that Buchanan County and adjacent counties within the State of Virginia constitute a disaster area because of damage resulting from severe storms, and flash flooding on July 15-16, 1979. Applications will be processed under the provisions of Pub. L. 96-38. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on September 20, 1979, and for economic injury until the close of business on April 21, 1980, at: Small Business Administration, District Office, Federal Building, Room 3015, 400 North Eighth Street, Richmond, Virginia 23240, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 31, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-25409 Filed 8-16-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1664]

Washington; Declaration of Disaster Loan Area

The following 7 counties and adjacent counties within the State of Washington constitute a disaster area as a result of natural disaster as indicated:

County	Natural disaster(s)	Date(s)
Benton	Freezing and wind	11/9/78-2/9/79
Island	Freezing	11/1/78-3/31/79
King	Frost	In January 1979
Pierce	Freezing	Last week of December 1978 through first week of February 1979
San Juan	Freezing	11/1/78-3/31/79
Skagit	Freezing	11/1/78-3/31/79
Yakima	Excessive cold temperature	Winter of 1978 through 3/31/79

Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on January 24, 1980, and for economic injury until the close of business on April 24, 1980, at: Small Business Administration, District Office, 651 U.S. Courthouse, Spokane, Washington 99210, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 26, 1979.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 79-25410 Filed 8-16-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1661]

Wyoming; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that Laramie County and adjacent counties within the State of Woming, constitute a disaster area because of damage resulting from severe storms and tornadoes, on July 16, 1979. Applications will be processed under the provisions of Pub. L. 94-305. Interest rate is 7⅜ percent. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on September 17, 1979, and for economic injury until close of business on april 21, 1980, at: Small Business Administration, District Office, Federal Building—Room 4001, 100 East B Street, Casper, Wyoming 82601 or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 23, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-25407 Filed 8-16-79; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Customs Service

Removal of Prohibition on the Importation of Tuna and Tuna Products From Costa Rica

Correction

In FR Doc. 79–24859 appearing at page 47431 in the issue of Monday, August 13, 1979, in the middle column, under "Effective Date," in the last line, change the effective date from "August 10, 1979" to "August 13, 1979".

BILLING CODE 1505-01-M

Privacy Act of 1974; Revised System of Records

AGENCY: Office of the Secretary, Department of the Treasury.

ACTION: Notice of Intent to Revise Privacy Act Systems of Records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) the Assistant Director (Telecommunications Management) gives notice of the proposed revision and update of the information contained in previous notices for systems Treasury/OS 00.190 and Treasury/OS 00.193. This revision consolidates the two systems into one system entitled, Treasury/OS 00.193, Employee Locator and Automated Directory System, and updates the authority for maintenance of the system. This revision also clarifies the routine uses of records maintained in the system and the purpose of such uses. This revision does not constitute an expansion of the systems involved.

DATES: Public comments on this system of records must be received on or before September 17, 1979. If no public comments are received, to which the Department publishes a revision to incorporate comments, this system of records will become effective September 18, 1979.

ADDRESS: Department of the Treasury, Office of Administrative Programs, Telecommunications Management, Mezzanine Floor, 1331 G Street, N.W., Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Mr. Harold R. Patterson, Assistant Director (Telecommunications Management), Department of the Treasury, 1331 G Street, N.W., Mezzanine Floor, Washington, D.C. 20220, 202–376–0413.

Dated: August 10, 1979.

W. J. McDonald,

Assistant Secretary (Administration).

Treasury/OS 00.193

SYSTEM NAME:

Employee Locator and Automated Directory System.

SYSTEM LOCATION:

(1) Employee Locator: Main Treasury Building, 15th and Pennsylvania Avenue, N.W., Washington, D.C. 20220. (2) Automated Directory System: Main Computer—Bowne Timesharing, Church Street Station, New York, New York 10249; Terminal and Readout—Main Treasury Building, Washington, D.C. 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Department of the Treasury employees located in the Washington, D.C., Metropolitan Area.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Employee Locator—name of individual, office address, office telephone extension, home address, home telephone, emergency notification data. (2) Automated Directory System—name of individual, office address, office telephone extension.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Used at the Treasury Switchboard Information Positions to assist callers in locating Treasury employees and to notify a designated emergency contact in the event of an emergency involving the employee. (2) Used to compile Departmental and Bureau Telephone Directories. For additional routine uses see Appendix AA. USERS: Subscribers to Treasury Telephone System and Telephone Information Operators.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

(1) Employee Locator—Card form TD F 73–50.1. (2) Automated Directory System—Magnetic tape.

RETRIEVABILITY:

Indexed by name and/or block code numbers.

SAFEGUARDS:

(1) Employee Locator—24-hour switchboard operation with controlled access. (2) Automated Directory System—computer access codes.

RETENTION AND DISPOSAL:

Maintained until notice of change or employment is terminated. The card form is destroyed by burning and the information on the magnetic tape is erased.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director (Telecommunications Management), Office of Administrative Programs, Office of the Secretary, Washington, D.C. 20220.

NOTIFICATION PROCEDURE:

Assistant Director (Telecommunications Management), Office of Administrative Programs, see above.

RECORD ACCESS PROCEDURES:

Assistant Director (Telecommunications Management), Office of Administrative Programs, see above.

CONTESTING RECORD PROCEDURES:

Assistant Director, (Telecommunications Management), Office of Administrative Programs, see above.

RECORD SOURCE CATEGORIES:

Information is provided by individual employees, who are given the option of non-release of the home address, telephone and emergency information.

[FR Doc. 79–25579 Filed 8–16–79; 8:45 am]

BILLING CODE 4810-25-M

INTERSTATE COMMERCE COMMISSION

[Notice No. 121]

Assignment of Hearings

August 13, 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 145806 (Sub-2F), Red Arrow Delivery Service Co., Inc., now assigned for hearing

on October 30, 1979 (9 days), at Nashville, TN, in a hearing room to be later designated.

MC 41581 (Sub-1F), Wagner Tours, Inc., now assigned for hearing on September 17, 1979 at Newark, NJ, and will be held at the Peter Rodino, Jr. Federal building, 970 Broad Street.

MC 118159 (Sub-294F), National Refrigerated Transport, Inc., now assigned for hearing on September 5, 1979 at Dallas, TX, and will be held in Room No. 5A15–17, Federal Building, 1100 Commerce, Street.

MC 118159 (Sub-294F), National Refrigerated Transport, Inc., now assigned for hearing on September 10, 1979 at Chicago, IL, and will be held in Room 1319, Everett McKinley Dirksen Bldg., 219 S. Dearborn Street.

MC 138882 (Sub-221F), Wiley Sanders Truck Lines, Inc., now assigned for hearing on September 24, 1979 (1 day), at Philadelphia, PA, and will be held at the New U.S. Courthouse, 601 Market Street.

MC 110420 (Sub-796F), Quality Carriers, Inc., now assigned for hearing on September 25, 1979 (1 day), at Philadelphia, PA, and will be held at the New U.S. Courthouse, 601 Market Street.

MC 145583 (Sub-1F), Xpress Truck Lines, Inc., now assigned for hearing on September 26, 1979 (1 day), at Philadelphia, PA, and will be held at the New U.S. Courthouse, 601 Market Street.

MC–C–10331, Pennsylvania Public Utility Commission, Mushroom Transportation Co., Inc., now assigned for hearing on September 27, 1979 (2 days), at Philadelphia, PA, at the New U.S. Courthouse, 601 Market Street.

MC 143496 (Sub-1), United Coach Companies of Tidewater, Inc., now assigned for hearing on September 10, 1979 at Norfolk, VA, and will be held in the Court Room 7, Circuit Court (State), 100 St. Paul's Blvd.

MC–F–13622, Paris Motor Freight, Inc.—Purchase (Portion)—Rock Island Transit Company, now assigned for continued hearing on September 11, 1979 (3 days), at Little Rock, AR, in a hearing room to be later designated.

MC 106887 (Sub-10), A.D. Ray Trucking, Inc., now assigned for hearing on September 10, 1979 (5 days), at Denver, CO, is postponed indefinitely.

MC 121159 (Sub-3F), Gator Freightways, Inc., now assigned for hearing on September 24, 1979 (2 weeks), at Orlando, FL, and will be held in Room No. 455, Federal Building, 80 North Hughey Avenue.

Agatha L. Mergenovich,

Secretary

[FR Doc. 79–25495 Filed 8–16–79; 8:45 am]

BILLING CODE 7035–01–M

[No. 37173]

Mississippi Intrastate Freight Rates and Charges—1979

Decided: August 9, 1979.

By joint petition filed April 23, 1979, Alabama Great Southern Railroad Company, Illinois Central Gulf Railroad Company, Louisville & Nashville Railroad Company, Missouri Pacific Railroad Company, St. Louis-San Francisco Railway Company and Southern Railway Company (petitioners), each operating in intrastate commerce in Mississippi, request that this Commission institute an investigation of their Mississippi intrastate freight rates and charges under 49 U.S.C. 11501 and 11502 and U.S.C. 10704. Petitioners seek an order authorizing them to increase such rates and charges in the same amounts approved for interstate application by this Commission in Ex Parte No. 357, Nationwide Increased Freight Rates and Charges 1978. Petitioners have stated grounds sufficient to warrant instituting an investigation.

It is ordered, The petition is granted. An investigation, under 49 U.S.C. 11501 and 11502 and 49 U.S.C. 10704 is instituted to determine whether the Mississippi intrastate rail freight rates in any respect cause any unjust discrimination against or any burden on interstate or foreign commerce, or cause undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce and persons or localities in interstate or foreign commerce, or are otherwise unlawful, by reason of the failure of such rates and charges to include the full increases authorized for interstate application by this Commission in Ex Parte No. 357. In the investigation we shall also determine if any rates or charges, or maximum or minimum charges, or both, should be prescribed to remove any unlawful advantage, preference, discrimination, undue burden, or other violation of law, found to exist.

All persons who wish to participate in this proceeding and to file and receive copies of pleadings shall make known that fact by notifying the Office of Proceedings, Room 5356, Interstate Commerce Commission, Washington, DC 20423, on or before 15 days from the Federal Register publication date. Although individual participation is not precluded, to conserve time and to avoid unnecessary expense, persons having common interests should endeavor to consolidate their presentations to the greatest extent possible. This Commission desires participation of only those who intend to take an active part in this proceeding.

As soon as possible after the last day possible for indicating a desire to participate in the proceeding, this Commission will serve a list of names and addresses upon all persons upon whom service of all pleadings must be made. Thereafter, this proceeding will be assigned for oral hearing or handling under modified procedure.

A copy of this order shall be served upon each of the petitioners. Mississippi shall be notified of the proceeding by sending copies of this decision by certified mail to the Governor of Mississippi and the Mississippi Public Service Commission. Further notice of this proceeding shall be given to the public by depositing a copy of this decision in the office of the Secretary of the Interstate Commerce Commission at Washington, D.C. and by filing a copy with the Director, Office of the Federal Register, for publication in the **Federal Register.**

This is not a major regulatory action under the Energy Policy and Conservation Act of 1975. Furthermore this is not a major Federal Action significantly affecting the quality of the human environment.

By the Commission, Alan Fitzwater, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79–25494 Filed 8–16–79; 8:45 am]

BILLING CODE 7035–01–M

[MC 138553 (Sub-1) F]

M & N Grain Co.; Extension—Hides (Nevada, Mo.)

Decided: June 20, 1979.

Applicant, a corporation, seeks a certificate of public convenience and necessity authorizing operations substantially as set forth in the appendix. The evidence has been considered under the modified procedure. The application is opposed by Momsen Trucking Co., a motor common carrier. Applicant filed argument in rebuttal.

Preliminary Matter

In its rebuttal, applicant moves to strike the verified statement of Karl E. Momsen submitted on behalf of protestant on the grounds that the statement improperly commingles fact and argument and has not been verified as required by Rule 48 of the Commission's General Rules of Practice (49 CFR 1100.48). Momsen did not reply to applicant's motion.

Although the content of protestant's pleading is in substantial compliance, we note that the statement submitted by Momsen has not been verified as required. Accordingly, applicant's motion to strike will be granted.

Pertinent Facts

Cox Hide Company, a subsidiary of Beggs & Cobb Corporation, purchases, processes, and sells hides and pelts. As pertinent, it operates two warehouses at Butler, MO. It sells the pelts and hides to its parent company as well as to independent tanneries. Cox ships in excess of 30 truckloads of hides a month between points sought in the application, and will tender to applicant all of this traffic in the event of a grant. Shipper needs expedited pickups because its customers have greatly reduced the size of their inventories to cut overhead costs. Some of its smaller customers process hides as soon as they are delivered. Shipper complains that existing carriers, including protestant Momsen, provide poor delivery service and sometimes fail to make pickups. In addition, Momsen interlines shipper's traffic, resulting in further delays and customer inconvenience. Momsen is not presently participating in shippers' traffic.

Discussion and Conclusions

A public need for the proposed service has been demonstrated by the facts of records. Because the statement of protestant Momsen has been stricken from the record for lack of verification, the application is effectively unopposed.

The evidence indicates that shipper has experienced a number of service deficiencies, especially delayed pickups and deliveries. Timely service is particularly important because of the low inventory levels maintained by shipper's customers. A grant of the application will help to alleviate these problems.

In the notice of the filing of the application published in the Federal Register, "Danversport, MN" was incorrectly listed as a sought destination in part (3). Danversport is actually located in the State of Massachusetts. Because the authority granted varies from the authority described in the notice of the filing of the application in the Federal Register and because it is possible persons who have relied upon the notice of the application as published may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this decision, a notice of the authority actually granted will be published in the Federal Register and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper person in interest may file an appropriate petition for leave to intervene in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

We find, The present and future public convenience and necessity require operation by applicant, performing the service described in the appendix. Applicant is fit, willing, and able properly to perform the granted service and to conform to the requirements of Title 49, Subtitle IV, U.S. Code, and the Commission's regulations. An appropriate certificate should be granted. This decision does not significantly affect the quality of the human environment.

It is ordered: The statement of Momsen Trucking Co., protestant, is stricken from the record.

The application is granted to the extent set forth in the appendix.

The right of the Commission is expressly reserved to impose such terms, conditions, or limitation in the future to assure that applicant's operations continue to conform to the provisions of 49 U.S.C. 10930[a][formerly section 210 of the Interstate Commerce Act]

Operations may begin only following the service of a *certificate* which will be issued if applicant complies with the following requirements set forth in the Code of Federal Regulations: insurance (49 CFR 1043), designation of process agent (49 CFR 1044), and tariffs (49 CFR 1310).

Compliance with these requirements must be made within 90 days after the date of service of this decision or the grant of authority shall be void.

By the Commission, Review Board Number 2, Members Boyle, Eaton, and Liberman.

Agatha L. Mergenovich,

Secretary.

Appendix

Authority to conduct the following operations will be issued in an appropriate document. This decision does not constitute authority to operate.

To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *hides and pelts,* (1) from Little Rock and Searcy, AR, Belmond and Waterloo, IA, McCook and Norfolk, NE, Columbus, OH, Texarkana and Tyler, TX, and Muskego, WI, to Butler, MO, (2) from Butler, MO, to Phoenix, AZ, Woburn, MA, Hartland, ME, St. Paul, MN, Manchester and Penacook, NH, Buffalo, Glovesville, and Johnstown, NY, and Memphis, TN, (3) from Columbus, OH, to Danversport, MA, Hartland, ME, and Milwaukee, WI, (4) from Great Bend, KS, to Los Angeles, CA, Manchester, NH, and Laredo, TX, and (5) from Muskego, WI, to Danversport, MA, and Laredo, TX.

Condition

Publication of the authority actually granted in the Federal Register and withholding of the certificate for 30 days from publication to allow any interested party to petition for intervention.

[FR Doc. 79-25496 Filed 8-16-79; 8:45 am]

BILLING CODE 7035-01-M

[Notice No. 144]

Motor Carrier Temporary Authority Applications

Important Notice: The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the filed official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

MC 13726 (Sub-7TA), filed April 18, 1979. Applicant: WILSON TRUCKING, INC., P.O. Box 1, Linton, IN 47441. Representative: William E. Wilson, P.O. Box 1, Linton, IN 47441. *General*

Commodities except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between points in Marion, Morgan, Putnam, Owen, Clay, Vigo, Sullivan, Greene, Knox, Daviess, Gibson, Pike, Dubois, Vanderburgh, Warrick, Spence, Crawford, Perry, Harrison, and Floyd Counties, IN on the one hand, and on the other hand Louisville, KY and Lawrenceville, IL for 180 days. Supporting Shippers: 51 Supporting Shippers. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio St., RM 429, Indianapolis, IN 46204.

MC 26396 (Sub-272TA), filed July 9, 1979. Applicant: POPELKA TRUCKING CO. d.b.a. THE WAGGONERS, P.O. Box 31357, Billings, MT 59107. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501.

Agricultural chemicals and agricultural chemical tank cleaning compound (except in bulk) from the facilities of West Chem in CO to the International Boundary line between the U.S. and Canada located in MT, ND and MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): West Chem, 1505 Lockwood Road, Billings, MT 59101. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue, North, Billings, MT 59101.

MC 26396 (Sub-273TA), filed July 16, 1979. Applicant: POPELKA TRUCKING CO. d.b.a. THE WAGGONERS, P.O. Box 31357, Billings, MT 59107. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501.

Structural steel from Atlantic and Des Moines, IA to points in WY, for 180 days. Supporting Shipper(s): Venetian Iron Works, Inc., 5281 N.E. 17th St., Des Moines, IA 50301. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue, North, Billings, MT 59101.

MC 26396 (Sub-274TA), filed July 17, 1979. Applicant: POPELKA TRUCKING CO. d.b.a. THE WAGGONERS, P.O. Box 31357, Billings, MT 59107. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501.

Building materials, from Kirkland, WA to points in ND, for 180 days. An underlying ETA seks 90 days authority. Supporting Shipper(s): American Prefinish, 11615 N.E. 116th, Kirkland, WA 98033. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue, North, Billings, MT 59101.

MC 26396 (Sub-275TA), filed July 23, 1979. Applicant: POPELKA TRUCKING CO. d.b.a. THE WAGGONERS, P.O. Box 31357, Billings, MT 59107. Representative: Barbara S. George (same address as applicant).

Barite from Missoula, MT to the U.S.-Canada International Boundary line located in MT, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Wyo Ben, 1242 North 28th Street, Billings, MT 59101. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue, North, Billings, MT 59101.

MC 30446 (Sub-13TA) filed July 13, 1979. Applicant: BRUCE JOHNSON TRUCKING COMPANY, INC., P.O. Box 5647, Charlotte, NC 28225. Representative: Charles Ephraim, Suite 600, 1250 Connecticut Ave, NW, Washington, DC 20036. *General commodities, except those requiring special equipment, unmanufactured tobacco and accessories, commodities in bulk, household goods as defined by the Commission, classes A and B explosives, commodities of unusual value, livestock and brick,* between points in NC within 40 miles of Charlotte, NC (except those in Mecklenburg County, NC), on the one hand, and, on the other, points in NC, for 180 days. An underlying ETA seeks 90 days authority. Applicant intends to interline with other carriers at Hickory and Statesville, NC. These applications have been filed because the authority sought was inadvertently omitted from the gateway elimination application in No. MC–30446 (Sub-No. 10F), which was directly related to the application in No. MC–F–13648, Bruce Johnson Trucking Company, Inc.—Merger Air Freight, Incorporated. Supporting Shipper(s): There are no supporting shippers. Send protests to: Terrell Price, 800 Briar Creek Rd.—Rm CC516, Charlotte, NC 28205.

MC 37656 (Sub-15TA), filed July 10, 1979. Applicant: DOYLE TRUCKING CORPORATION, 100 Plaza Center, Secaucus, NJ 07094. Representative: Edward L. Nehez, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. Contract carrier, irregular routes for 180 days. Commodities dealt in or used by manufacturers of furniture, bedding and home furnishings (except commodities in bulk) between the facilities of Simmons Company at Elizabeth, NJ and Linden, NJ, on the one hand, and, on the other, points in ME, NH and VT. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Simmons Company, Brunswick & Allen Streets, Elizabeth, NJ. Send protests to: Robert E. Johnston, DS, ICC, 744 Broad Street, Room 522, Newark, NJ 07102.

MC 42487 (Sub-931TA) filed July 12, 1979. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. General commodities, except those of unusual value, Casses A and B explosives, household goods as defined by the Commission, commodities in bulk and commodities requiring special equipment, (1) Between Flagstaff, AZ and Liberal, KS, serving the intermediate point of Albuquerque, NM and serving the junction U.S. Hwy 54 and U.S. Hwy 64 at Guymon, OK for purpose of joinder only: From Flagstaff via U.S. Hwy 66 to Albuquerque, NM, then over Interstate Hwy 25 to junction U.S. Hwy 64 at or near Raton, NM, then over U.S. Hwy 64 to Hooker, OK, then over U.S. Hwy 54 to Liberal, and return over the same route. (2) Between Albuquerque, NM and the junction U.S. Hwy 54 and U.S. Hwy 64 to Guymon, OK, serving no intermediate points: From Albuquerque over U.S. Hwy 66 to Santa Rosa, NM, then over U.S. Hwy 54 to junction U.S. Hwy 54 and U.S. Hwy 64 at Guymon, OK and return over the same route. (3) Between Albuquerque, NM and Fort Worth, TX, serving no intermediate points: From Albuquerque over U.S. Hwy 66 to Amarillo, TX then over U.S. Hwy 287 to Fort Worth, TX and return over the same route. Authority is sought to serve all points in the Albuquerque, NM Commercial Zone. Supporting Shipper(s): There are 43 statements of support to this application, the original may be examined at Headquarters or copies at Field Office named below. Send protests to: D/S N. C. Foster, 211 Main—Suite 500, San Francisco, CA 94105.

Note.—Applicant intends to tack the authorities described above. Applicant also intends to tack to its existing authority and any authority it may obtain in the future.

MC 49387 (Sub-55TA), filed July 19, 1979. Applicant: ORSCHELN BROS. TRUCK LINES, INC., U.S. Highway 24 East, P.O. Box 658, Moberly, MO 65270. Representative: Frank W. Taylor, Jr., Suite 600, 1221 Baltimore Ave., Kansas City, MO 64105. *General commodities (except those of unusual value, Classes A and B explosives, household goods, commodities in bulk, and those requiring special equipment),* Orscheln proposes to operate over the following routes: (1) Between Evansville, IN, and Nashville, TN, serving the intermediate points of Madisonville, Hopkinsville, Nortonville and Sebree, KY, and the off-route point of Owensboro, KY, the plantsite of Customs Resins, Inc.,

Division of Bemis Co., Inc. at or near Henderson, KY, and the plantsite of Firestone Steel Products Co., Division of Firestone Tire and Rubber Co. at or near Henderson, KY. From Evansville over U.S. Hwy 41 to its junction with Interstate Hwy 24, then over Interstate Hwy 24 to Nashville and return over the same route. (2) Between Bloomington, IL, and Nashville, TN, serving the junctions of Interstate Hwy 57 and U.S. Hwy 36, Interstate Hwys 64 and 57, Interstate Hwy 24 and U.S. Hwy 62 at or near Paducah, KY, Interstate Hwy 24 and U.S. Hwy 68 near Paducah, KY, Interstate Hwy 24 and U.S. Hwy 68 at or near Gracey, KY, Interstate Hwy 24 and U.S. Hwy 62 near Kuttawa, KY, and U.S. Hwy 60 and Interstate Hwy 24 at or near Paducah, KY, as points of joinder only. From Bloomington over Interstate Hwy 74 to junction Interstate Hwy 57, then over Interstate Hwy 57 to junction Interstate Hwy 24, then over Interstate Hwy 24 to Nashville and return over the same route. (3) Between the junction of Interstate Hwy 24 and U.S. Hwy 62 at or near Paducah, KY, and the junction of U.S. Hwys 62 and 41 serving the junctions of U.S. Hwy 62 and Interstate Hwy 24 at or near Kuttawa, KY, for purposes of joinder only. From the junction of Interstate Hwy 24 and U.S. Hwy 62 at or near Paducah, KY, over U.S. Hwy 62 to its junction with U.S. Hwy 41 and return over the same route. (4) Between the junction of Interstate Hwy 24 and U.S. Hwy 68 at or near Paducah, KY, and the junction of U.S. Hwys 68 and 41, serving the junction of Interstate Hwy 24 and U.S. Hwy 68 at or near Gracey, KY, for purposes of joinder only. From the junction of Interstate Hwy 24 and U.S. Hwy 68 at or near Paducah, KY, over U.S. Hwy 68 to its junction with U.S. Hwy 41 and return over the same route. (5) Between Springfield, MO, and junction Interstate Hwy 24 and U.S. Hwy 60 at or near Paducah, KY, serving the junction for purposes of joinder only. From Springfield, MO, over U.S. Hwy 60 to its junction with Interstate Hwy 24 and return over the same route. Supporting Shipper(s): 98 supporting shippers statements may be viewed in Washington or Kansas City, MO offices. Send protests to: John V. Barry, D/S, ICC, Room 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 51146 (Sub-710TA), filed July 10, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 E. Commercial Blvd., Ft. Lauderdale, FL 33308. *Such commodities as are dealt in or used by grocery and food business houses* from Jeffersonville, IN to Minneapolis, MN and points in IL and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Colgate Palmolive Co., State and Woerner St., Jeffersonville, IN 47130. Send protests to: Gail Daugherty, TA, ICC, 517 E. Milwaukee Ave., Rm. 619, Milwaukee, WI 53202.

MC 51146 (Sub-711TA), filed July 10, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 E. Commercial Blvd., Ft. Lauderdale, FL 33308. *Such commodities as are dealt in by manufacturers and distributors of industrial and commercial appliances* from facilities of Hobart Corp., at points in KY to points in and east of ND, SD, NE, KS, OK & TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hobart Corp., World Headquarters Ave., Troy, OH 45374. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 51146 (Sub-712TA), filed July 12, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John Patterson, 2480 E. Commercial Blvd., Ft. Lauderdale, FL 33308. *Aluminum cans* from Winston-Salem, NC to Baltimore, MD and its commercial zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): National Can Corp., 727 S. Wolfe St., Baltimore, MD 21231. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 51146 (Sub-713TA), filed July 13, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John Patterson, 2480 E. Commercial Blvd., Ft. Lauderdale, FL 33308. *Such commodities as are dealt in by department stores* from points in CT, DE, DC, MA, NH, NJ, NY, PA, RI, VT, VA & WV to facilities of the May Co. and its subsidiaries in Chicago, IL and points in its commercial zone; Decatur, Peoria, Springfield, and Moline, IL; Davenport, IA; Kansas City, MO and points in its commercial zone; Crystal City, Springfield, and St. Louis, MO; and Kansas City, KS and points in its commercial zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Venture Stores/ May Co., 615 NW Plaza, St. Ann, MO 63074. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 51146 (Sub-714TA), filed July 13, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John Patterson, 2480 E. Commercial Blvd., Ft. Lauderdale, FL 33308. *Vinyl plastic* from Winchester, VA & Lebanon, PA to Green Bay, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): National Merchandising Corp., 922 Oak St., DePere, WI 54115. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 51146 (Sub-715TA), filed July 24, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John Patterson, 2480 E. Commercial Blvd., Ft. Lauderdale, FL 33308. *Containers and container ends* from Oak Creek, WI to Des Moines, IA and Quincy, IL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): National Can Corp., 8101 W. Higgins Rd., Chicago, IL 60631. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 59957 (Sub-59TA), filed July 2, 1979. Applicant: MOTOR FREIGHT EXPRESS, P.O. Box 1029, York, PA 17405. Representative: William A. Chesnutt, 1333 New Hampshire Ave., N.W., Suite 960, Washington, DC 20036. *Common; regular: General commodities, except those of unusual value, dangerous explosives, household goods as defined in Practices of Motor Common Carriers of Household Goods 17 M.C.C. 467, commodities in bulk, and commodities requiring special equipment* alternate routes for operating convenience only as per attached. Authority is sought to tack this authority and to interline with other motor carriers for 180 days. Supporting shipper(s): Applicant's statement of facts. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 61977 (Sub-21TA), filed June 26, 1979. Applicant: ZERKLE TRUCKING COMPANY, 2400 Eighth Ave., Huntington, WV 25703. Representative: John M. Friedman, 2930 Putnam Ave., Hurricane, WV 25526. *Aluminum and aluminum articles,* from the facilities of Kaiser Aluminum & Chemical Corp. at or near Ravenswood, WV to points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VT, VA, WV, WI, DC, for 180 days. Supporting shipper(s): Kaiser Aluminum & Chemical Corp., P.O. Box 98, Ravenswood, WV 26164. Send protests

to: I.C.C., Federal Res. Bank Bldg., 101 N. 7th St., Room 620, Phila., PA 19106.

MC 63417 (Sub-219TA), filed June 15, 1979. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same as applicant). *Steel containers* from New Orleans, LA to points in GA, and to Birmingham, AL and its commercial zone for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Inland Steel Container Co., 4300 W. 130th St., Chicago, IL 60658. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 63417 (Sub-220TA), filed June 20, 1979. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant). *Flat glass*, from Nashville, TN to Rocky Mount, VA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Weaver Mirror Co., Inc., P.O. Box 359, 421 N. Main St., Rocky Mount, VA 24151. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 63417 (Sub-221TA), filed June 28, 1979. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant). *Petroleum, petroleum compounds, vehicle body sealer and/or sound deadener compounds (except commodities in bulk), and filters*, from Warren County, MS to points in TN for 180 days. Supporting shipper(s): Quaker State Oil Refining Corp., P.O. Box 989, Oil City, PA 16301. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 63417 (Sub-222TA), filed June 28, 1979. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant). *Wood squares, rounds, dimension stock, stair treads*, from Millersburg, OH, Forestville, Great Valley, Salamanca and Angelica, NY; Roulette and Emporium, PA; Red House, MD; Elkins, WV to points in NC, VA and TN, for 180 days. Supporting shipper(s): Emerson Phares Lumber Co., P.O. Box 1698, Elkins, WV 26241. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 63417 (Sub-223TA), filed July 5, 1979. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant). *Such commodities as are dealt in or used by manufacturers and distributors of containers and related articles (except commodities in bulk)* from Quakertown, PA and Niles, OH to points in GA, KY, NC, SC, TN, VA, and WV for 180 days. Supporting shipper(s): Cleveland Steel Container Corp., 350 Mill St., Quakertown, PA 18951. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 69116 (Sub-245TA), filed July 17, 1979. Applicant: SPECTOR INDUSTRIES, INC., d.b.a. SPECTOR FREIGHT SYSTEM, 1050 Kingery Hwy., Bensenville, IL 60106. Representative: Edward G. Bazelon, 39 S. La Salle St., Chicago, IL 60603. *Lawn movers, tillers, tractors and parts, accessories and attachments for lawn mowers, tillers and tractors*, between Winneconne, WI, on the one hand, and, on the other, all points in the States of AL, AR, CT, DE, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VA, WV, WI, VT and the District of Columbia, for 180 days. Supporting shipper(s): J. I. Case, 119 S. 1st, Winneconne, WI 54986. Send protests to: David Hunt, TA, Rm. 1386, 219 S. Dearborn St., Chicago, IL 60604.

MC 70557 (Sub-16TA), filed July 19, 1979. Applicant: NIELSEN BROTHERS CARTAGE CO., INC., 5619 West Homer Street, Chicago, Illinois 60639. Representative: Carl L. Steiner, 39 South La Salle Street, Chicago, Illinois 60603. (a) *Malt beverages* (except in bulk) and related advertising materials from the facilities of Miller Brewing Company at or near Albany Georgia, to points in the States of AL, FL, GA, KY, LA, MS, NC, SC, and TN; (b) *Materials, equipment, and supplies, used in the manufacture, sale, and distribution of malt beverages* from points in the States of AL, FL, GA, KY, LA, MS, NC, SC, and TN, to facilities of Miller Brewing Company at or near Albany, Georgia, and their suppliers for 180 days. Supporting shipper(s): Miller Brewing Company, 3939 W. Highland Blvd., Milwaukee, WI 53208. Send protests to: Cheryl G. Livingston, TA, 219 S. Dearborn St., Room 1386, Chicago, Illinois 60604.

MC 78687 (Sub-72TA), filed July 16, 1979. Applicant: LOTT MOTOR LINES, INC., West Cayuga Street (P.O. Box 751), Moravia, NY 13118. Representative: Dwight L. Koerber, Jr., 805 McLachlen Bank Bldg., 666 Eleventh Street, N.W., Washington, DC 20001. *Building or insulating materials, and accessories and supplies used in the installation thereof (except commodities in bulk)*, between the plantsite of Masonite Corporation, at or near Towanda, PA, on the one hand, and, on the other, points in CT, DE, ME, MD, MA, NH, NJ, NY, NC, OH, RI, SC, VT, VA, WV and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Masonite Corporation, PO Box 311, Towanda, PA 18848. Send protests to: Richard H. Cattadoris, DS, ICC, 910 Federal Bldg., 111 West Huron St., Buffalo, NY 14202.

MC 86247 (Sub-19TA), filed July 9, 1979. Applicant: I.C.L. INTERNATIONAL CARRIERS LIMITED, 1333 College Avenue, Windsor, Ontario, Canada N9C 3Y9. Representative: Joseph P. Allen, 7701 W. Jefferson, Detroit, MI 48209. *Aluminum and steel scrap*, in dump vehicles, from the international boundary line between the United States and Canada, at Detroit and Port Huron, MI to Toledo, Sandusky and Cleveland, OH, Gary, IN and Chicago, IL; restricted to foreign traffic originating in Canada. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Lake Ontario Steel Company Limited, Hopkins Street, South, Whitby, Ontario, Canada L1N 5T1; Top Iron & Metal Company, Ltd., 2 Sheppard Ave., Sheppard Center, Willowdale, Ontario M2N 5Y7; Dominion Foundries & Steel Co., Ltd., Burlington Street, Hamilton, Ontario, Canada. Send protests to: C. R. Flemming, D/S. I.C.C., Federal Building, Lansing, MI 48933.

MC 86247 (Sub-20TA), filed July 11, 1979. Applicant: I.C.L. INTERNATIONAL CARRIERS LIMITED, 1333 College Avenue, Windsor, Ontario, Canada N9C 3Y9. Representative: Joseph P. Allen, 7701 West Jefferson Avenue, Detroit, MI 48209. Dry Commodities, in bulk, in dump equipment, between the international boundary of the United States and Canada at Detroit and Port Huron, MI, on the one hand, and all points in the lower peninsula of MI on the other. Restricted to foreign traffic originating at or destined to points in Canada. For 180 days. Supporting shipper(s): Steetley Industries Limited, Box 2029 Station A, 605 James Street, N, Hamilton, Ontario, Canada L8N 3S9; I. Waxman & Sons Ltd., 75 Windermere Street, Hamilton, Ontario, Canada; Domtar Chemicals Limited—Lime Division, P.O. Box 10 Station T, Toronto, Ontario, Canada, M6B 3Z9. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 95876 (Sub-293TA), filed July 9, 1979. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Avenue North, St. Cloud, MN 56301. Representative: William L. Libby (same as applicant). *Aircraft ground support*

equipment, from Foley, MN to points in CA, WA, TX, MO, TN, MI, OH, NY, PA, NC, and Miami, FL, Atlanta, GA, Newark, NJ, Boston, MA, Chicago, IL, New Orleans, LA, Mobile, AL, Jackson, MS, Richmond, VA, Columbia, SC, Manchester, NH, Windsor Locks and Hartford, CT, Denver, CO, and Salt Lake City, UT, Las Vegas, NV, Fort Wayne, IN, Milwaukee, WI, Albuquerque, NM, Phoenix, AZ, and Omaha, NB, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Clyde Machines, Inc., Vice President, Glenwood, MN 55364. Send protests to: Judith L. Olson, TA, ICC, 414 Federal Building and U.S. Courthouse, 110 South 4th Street, Minneapolis, MN 55401.

MC 95876 (Sub-294TA), filed July 10, 1979: Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Avenue, North, St. Cloud, MN 56301. Representative: William L. Libby (same address as applicant). *Plastic pipe and fittings* from the facilities of Certain-Teed Corporation at or near Eads, TN to points in IA, MN and SD, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Certain-Teed Corporation, P.O. Box 1100, Blue Bell, PA 19422. Send protests to: Judith L. Olson, TA, ICC, 414 Federal Building & U.S. Courthouse, 110 South 4th Street, Minneapolis, MN 55401.

MC 102676 (Sub-14TA), filed July 17, 1979. Applicant: FOX BUS LINES, INC., P.O. Box 1042, Worcester, Massachusetts 01613. Representative: David M. Marshall, Marshall and Marshall, 101 State Street, Suite 304, Springfield, MA 01103. *Passengers and their baggage,* between Auburn, Oxford, Charlton, Webster, Dudley, Southbridge and Sturbridge, MA, on the one hand, and, on the other, the facilities of Pratt & Whitney Aircraft Group, Division of United Techologies Corp. at East Hartford, CT, for 180 days. An underlying ETA was granted 90 days authority. Supporting shipper(s): There are nine shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: David M. Miller, DS, ICC, 436 Dwight Street, Springfield, MA 01103.

MC 105566 (Sub-200TA), filed July 19, 1979. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO. 63701. Representative: Thomas F. Kilroy, Suite 406, 6901 Old Keene Mill Rd., Springfield, VA 22150. *Evaporated milk* and *non-dairy coffee creamer,* from Defiance, OH to Dallas, TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Defiance Milk Products Co., 24 N. Clinton St., Defiance, OH 43512. Send protests to: P. E. Binder, DS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 108587 (Sub-27TA), filed May 24, 1979. Applicant: SCHUSTER EXPRESS, INC., 48 Norwich Avenue, Colchester, CT 06415. Representative: Kahn and Kahn, 733 Investment Building, Washington, DC 20005. *General commodities, except those of unusual value, Classes A and B explosives, commodities in bulk, commodities requiring special equipment, and household goods as defined by the Commission,* between Boston, MA, on the one hand, and, on the other, points and places in Massachusetts, and those within 110 miles of Boston in Maine and New Hampshire. Regular routes: *General commodities, except those of unusual value, Classes A and B explosives, commodities in bulk, commodities requiring special equipment, and household goods as defined by the Commission,* between Lowell, MA and Boston, MA, over U.S. Highway 3, serving all intermediate points, for 180 days. Send protests to: J. D. Perry, Jr., DS, ICC, 135 High Street, Hartford, CT 06101.

MC 108587 (Sub-28TA), filed May 24, 1979. Applicant: SCHUSTER EXPRESS, INC., 48 Norwich Avenue, Colchester, CT 06415. Representative: Kahn and Kahn, 733 Investment Building, Washington, DC 20005. Common carrier, irregular routes. Irregular routes: *General commodities, except those of unusual value, Classes A and B explosives, commodities in bulk, commodities requiring special equipment, and household goods as defined by the Commission,* between Boston, MA, on the one hand, and, on the other, points and places in Massachusetts, and those within 110 miles of Boston in Maine and New Hampshire. Regular routes: *General commodities, except those of unusual value, Classes A and B explosives, commodities in bulk, commodities requiring special equipment, and household goods as defined by the Commission,* between Lowell, MA and Boston, MA, over U.S. Highway 3, serving all intermediate points, for 180 days. Send protests to: J. D. Perry, Jr., District Supervisor, Interstate Commerce Commission, 135 High Street, Hartford, CT 06101.

MC 109026 (Sub-22TA), filed July 20, 1979. Applicant: MANNING MOTOR EXPRESS, INC., P.O. Box 685, Glasgow, Ky. 42141. Representative: Walter Harwood, Atty., P.O. Box 15214, Nashville, TN 37215. Wooden or metal curtain rods, with or without fixtures; hooks, iron or steel, from the facilities of Scotscraft, Inc., at or near Scottsville, KY, to the facilities of Kirsch, Inc., at or near Dallas, TX, and at or near Houston, TX. Supporting shipper(s): Gene Garrison, Scotscraft, Inc., Gallatin Road, Scottsville, Ky. 42164. Send protests to: Ms. Clara L. Eyl, T/A, ICC, 426 Post Office Bldg., Louisville, Ky. 40202.

MC 111658 (Sub-10TA), filed July 9, 1979. Applicant: FRANK LAMBIE, INC., Pier 79 North River, New York, NY 10018. Representative: Edward M. Alfano and John L. Alfano, Esqs., Alfano & Alfano, P.C., 550 Mamaroneck Avenue, Harrison, NY 10528. *Contract carrier,* irregular routes: *Such commodities as are dealt with by a manufacturer or distributor of paint and paint products; food and food products; powder metals and metal products; paper and paper products; supplies and equipment used in connection therewith, except commodities in bulk,* (a) from New York, NY, and its commercial zone, to points in IL, IN, MI, OH, and PA, and (b) from the Counties of Cook, Du Page, Elgin, Grundy, Kankakee, Kendall, Lake, McHenry, and Will, IL; and Lake County, IN, to MD, MI, NJ, NY, OH, and PA; restricted to transportation service to be performed under continuing contract(s) with SCM Corporation of Cleveland, OH; for 180 days. Supporting shipper(s): SCM Corporation, 900 Union Commerce Building, Cleveland, OH 44115. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

MC 112617 (Sub-444TA), filed July 16, 1979. Applicant: LIQUID TRANSPORTERS, INC., P.O. Box 21395, Louisville, KY 40221. Representative: Larry Thompson, Asst. Traffic Manager (same as above). Liquid Coal Tar Pitch, in bulk, in tank vehicles, equipped with Propane Heaters, from Ironton, OH to Columbia, TN. Supporting shipper(s): Ralph K. Brechter, Union Carbide Corp., 270 Park Ave., New York, NY 10017. Send protests to: Ms. Clara L. Eyl, T/A, ICC, 426 Post Office Bldg., Louisville, KY 40202.

MC 112617 (Sub-445TA), filed July 20, 1979. Applicant: LIQUID TRANSPORTERS, INC., P.O. Box 21395, Louisville, KY 40221. Representative: Charles R. Dunford (same as above). Aluminum Sulfate, in bulk, in tank vehicles, from East St. Louis, IL to Louisville, KY. Supporting shipper(s): Jos. D. Guittari, Allied Chemical Corp., P.O. Box 1139, Morristown, NJ 07960. Send protests to: Ms. Clara L. Eyl, D/S, ICC, 426 Post Office Bldg., Louisville, KY 40202.

MC 114457 (Sub-525TA), filed July 18, 1979. Applicant: DART TRANSIT CO., 2102 University Ave., St. Paul, MN 55114. Representative: James Wills (same address as applicant). *Such merchandise as is dealt in by a book distributor* (except commodities in bulk) from Crawfordsville, IN and Versailles, KY to Westminster and Savage, MD, for 180 days. Supporting shipper(s): Random House, Inc., 400 Hahn Rd., Westminster, MD 21157. Send protests to: Judy Olson, TA, ICC, 414 Federal Bldg., 110 S. Fourth St., Minneapolis, MN 55401.

MC 114457 (Sub-526TA), filed July 18, 1979. Applicant: DART TRANSIT CO., 2102 University Ave., St. Paul, MN 55114. Representative: James Wills, 2102 University Ave., St. Paul, MN 55114. (1) *Foodstuffs* and (2) *materials, equipment and supplies used in the manufacture, sale, and distribution of foodstuffs* (except commodities in bulk) between the facilities of Douglas Foods, Inc. at Douglas, GA on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, KS, OK, and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Douglas Foods, Inc., P.O. Box 1208, Douglas, GA 31533. Send protests to: Judy Olson, TA, ICC, 414 Federal Bldg., 110 S. Fourth St., Minneapolis, MN 55401.

MC 114457 (Sub-527TA), filed July 20, 1979. Applicant: DART TRANSIT COMPANY, 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills (same address as applicant). *Automatic power and manual feeders, skinning and fleshing machines, conveyors, wood splitters, cleaning drums, cleaning equipment, parts, and accessories, crated and uncrated* from Eden Valley, MN to points in the United States (except AK and HI), for 180 days. Supporting shipper(s): Lester Mills Fur Farm Supply Company, Eden Valley, MN 55329. Send protests to: Judith L. Olson, TA, ICC, 414 Federal Bldg., 110 S. 4th St., Minneapolis, MN 55401.

MC 114896 (Sub-77TA), filed July 16, 1979. Applicant: PUROLATOR SECURITY, INC., 255 Old New Brunswick Road, Piscataway, NJ 08854. Representative: Carl T. Kessler, 255 Old New Brunswick Road, Piscataway, NJ 08854. Contract carrier, irregular routes for 180 days. Haitian Currency and negotiable instruments between New York, NY and Chicago, IL. An underlying ETA seeks 90 days authority. Supporting shipper(s): American Bank Note Company, Garrison Avenue & Tiffany Street, Bronx, NY 10474. Send protests to: Irwin Rosen, TS, ICC, 744 Broad Street, Room 522, Newark, NJ 07102.

MC 114896 (Sub-78TA), filed July 20, 1979. Applicant: PUROLATOR SECURITY, INC., 255 Old New Brunswick Road, Piscataway, NJ 08854. Representative: Carl T. Kessler, 255 Old New Brunswick Road, Piscataway, NJ 08854. Contract carrier, irregular routes for 180 days. Precious metals between New York, NY and Chicago, IL. An underlying ETA seek 90 days authority. Supporting shipper(s): Peters and Co., Suite 1575, 141 W. Jackson, Chicago, IL 60607. Send protests to: Irwin Rosen, TS, ICC, 744 Broad Street, Room 522, Newark, NJ 07102.

MC 115357 (Sub-12TA), filed July 12, 1979. Applicant: TAT, INC., 800 Wyoming Street, P.O. Box 4013, Kansas City, MO 64101. Representative: Peter Gearin, 3900 N.W. Yeon Ave., Portland, OR 97510; Marvin Handler, 100 Pine Street Suite 2550, San Francisco, CA 94111. *Automobiles and trucks (weighing less than 15,000 pounds), in secondary movements, in truckaway service,* between Kansas City, MO and points in the State of Missouri including the St. Louis Commercial Zone, for 180 days. Supporting shipper(s): Mazda Motors of America (Central), 3040 East Ana Street, Compton, CA 90221. Send protests to: Vernon V. Coble, D/S, ICC, Room 600 Federal Bldg., 911 Walnut Street, Kansas City, MO 64106.

MC 116077 (Sub-417TA). Applicant: DSI TRANSPORTS, INC., 4550 One Post Oak Place/Suite 300, Houston, TX 77027. Representative: J. C. Browder (same as applicant). Vegetable oil, in bulk, in tank vehicles from Casa Grande, Phoenix and Tucson, AZ to Houston, TX and from Fresno, Bakersfield and Chowchilla, CA to Houston, TX for 180 days. Supporting shipper(s): Koppel Incorporated, P.O. Box 2330, Long Beach, CA 90801. Send protests to: John F. Mensing, DS, ICC, 515 Rusk Ave. #8610, Houston, TX 77002.

MC 116227 (Sub-9TA), filed July 17, 1979. Applicant: POLMAN TRANSFER, INC., Rt. 3, Box 470, Wadena, MN 56482. Representative: Robert P. Sack, P.O. Box 6010, W. St. Paul, MN 55118. (1) *Furnaces, parts and accessories* (2) *materials, supplies and equipment (except commodities in bulk) used in the manufacture of the commodities named in (1) above* (1) From Menahga, MN to Burlington, Hyannis, Fitchburg, Boston, Salem, Greenfield, Pittsfied, Springfield, MA; Merrimack, Dover, Lebanon and Manchester, NH; Greenville, SC; Portland, and Bangor, ME; Willston, Barre, Rutland, St. Johnsbury, VT; Saginaw, Bay City, Gaylord and Marquette, MI; Binghamton, Elmira, Olean, Liberty, Plattsburgh and Fishhill, NY; Lancaster, PA and Des Moines, IA (2) From Elyria and Cleveland, OH; St. Louis, MO; Lynn, MA; Chciago, IL; Walled Lake and Holland, MI; Fort Wayne, IN; Racine and Milwaukee, WI to Menahga, MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Itasca Mfg., Inc., P.O. Box 105, Menahga, MN 56464. Send protests to: Judy Olson, TA, ICC, 414 Federal Bldg., 110 S. 4th St., Minneapolis, MN 55401.

MC 117676 (Sub-12TA), filed July 12, 1979. Applicant: HERMS TRUCKING, INC., 620 Pear St., Trenton, NJ 08648. Representative: Alan Kahn, Esquire, 1920 Two Pen Center Plaza, Philadelphia, PA 19102. *Sulphur,* except in bulk, from Middlesex, NJ to points in IL, IN, MD, NY, OH and PA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): H. M. Royal, Inc., 689 Pennington Avenue, Trenton, NJ 08601. Send protests to: Joel Morrows, D/S, ICC, 744 Broad St., Room 522, Newark, NJ 07102.

MC 118457 (Sub-35TA), filed July 10, 1979. Applicant: ROBBINS DISTRIBUTING COMPANY, INC., 11104 W. Becher St., West Allis, WI 53227. Representative: Jack Meyer, 111 E. Wisconsin Ave., Milwaukee, WI 53202. (a) *Meats, meat products, meat by-products and articles distributed by meat packing houses* as described in Appendix I to the Report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk) and (b) *foodstuffs* (except in bulk), all moving in vehicles equipped with mechanical refrigeration, from facilities of Jones Dairy Farm at or near Ft. Atkinson and Jefferson, WI to points in CT, DC, MD, MA, NJ, NY & PA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Jones Dairy Farm, Jones Ave., Ft. Atkinson, WI 53538. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 119726 (Sub-160TA), filed July 10, 1979. Applicant: NAB TRUCKING CO, INC., 1644 W. Edgewood Avenue, Indianapolis, IN 46217. Representative: James L. Beattey, Suite 1000, 130 E. Washington Street, Indianapolis, IN 46204. *Domestic and commercial household appliances and parts, accessories and attachments for domestic and commercial appliances,* from the plantsite and warehouse facilities of the Kitchen Appliance Division of McGraw-Edison at or near Chattanooga, TN; Air Comfort Division

of McGraw-Edison at or near Albion, MI; and Laundry Products Division of McGraw-Edison at or near Madisonville, KY, to points in the states in and east of ND, SD, NE, KS, OK and TX, for 180 days. SUPPORTING SHIPPER: McGraw-Edison 1275 Davis Road, Elgin, IL 60120. SEND PROTESTS TO: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio St., Rm 429, Indianapolis, IN 46204.

MC 119767 (Sub-361TA), filed July 11, 1979. Applicant: BEAVER TRANSPORT CO., P.O. Box 186, Pleasant Priarie, WI 53158. Representative: John Sims, Jr., 915 Pennsylvania Bldg., 425 13th St., NW, Washington, DC 20004. *Commodities dealt in by wholesale and retail grocery and drug stores, plastic articles and chemicals,* except in bulk, in tank vehicles, from facilities of Dry Storage Corp. at Chicago and Des Plaines, IL to points in IN, IA, KY, MI, MN, MO, NE, ND, OH, SD & WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Dry Storage Corp., 2005 W. 43rd St., Chicago, IL 60609. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 119787 (Sub-7TA), filed July 13, 1979. Applicant: F. W. GROVES TRUCKING CO., Rt. 4, Box 89, Leland, NC 28451. Representative: Fred W. Groves (same as above). *Lumber products, rough, finished, treated and untreated; poles, pilings and fence posts, treated and untreated* from the facilities of Burke-Parsons-Bowlby Corp., at Leland, NC, on the one hand, to points in NC, SC, GA, AL, MS, OH, DE, PA, TN, VA, WV, CT, IN, KY, MD, MI, NJ, NY, RI, MA, VT, ME, DC, NH and FL, on the other, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Burke-Parsons-Bowlby Corp., P.O. Box 370, Leland, NC 28451. Send protests to: Terrell Price, 800 Briar Creek Rd—Rm CC516, Charlotte, NC 28205.

MC 119837 (Sub-15TA), filed July 9, 1979. Applicant: OZARK MOTOR LINE, INC., 27 West Illinois, Memphis, TN 38106. Representative: Thomas A. Stroud, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. *Such commodities as are used or dealt in by manufacturers of electrical appliances, electrical equipment, wood products and parts thereof,* between the facilities of Sanyo Manufacturing Corp. at Forrest City, AR, on the one hand, and, on the other, points in the United States (except AK and HI), for 180 days. Supporting shipper(s): Sanyo Manufacturing Corp., 3333 Sanyo Road, Forrest City, AR 72335. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building—Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 121626 (Sub-19TA), filed July 20, 1979. Applicant: BAYVIEW TRUCKING, INC., 7080 Florin-Perkins Road, Sacramento, CA 95828. Representative: Donald L. Stern, PH: (402) 392–1220, 7171 Mercy Road, Suite 610, Omaha, NE 68106. *Meat products, meat by-products and commodities used in the manufacturing* of meat products and meat by-products in mechanically refrigerated equipment, between the facilities of H. Shenson, Inc. at Omaha, NE on the one hand and, on the other, San Francisco and Los Angeles, CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): H. Shenson, Inc., 1955 Carroll Avenue, San Francisco, CA 94124. Send protests to: A. J. Rodriguez, 211 Main Street, Suite 500, San Francisco, CA 94105.

MC 120737 (Sub-56TA), filed June 29, 1979. Applicant: STAR DELIVERY & TRANSFER, INC., P.O. Box 39, Canton, IL 61520. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. *Iron and Steel articles,* from the facilities of Keystone Consolidated Industries, Inc., at or near Peoria, IL to points in AR, IN, IA, KY, LA, MI, MN, MS, MO, OH, OK, TN, TX, and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Keystone Consolidated Industries, Inc., 7000 W. Adams St., Peoria, IL 61641. Send protests to: David Hunt, TA, Rm. 1386, 219 S. Dearborn, Chicago, IL 60604.

MC 120737 (Sub-57TA), filed June 29, 1979. Applicant: STAR DELIVERY & TRANSFER, INC., P.O. Box 39, Canton, IL 61520. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. *Iron and Steel articles,* from the facilities of Keystone Consolidated Industries, Inc., at or near Crawfordsville, IN to points in IL, IA, MN, MO and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Keystone Consolidated Industries, Inc., 7000 W. Adams St., Peoria, IL 61641. Send protests to: David Hunt, TA, Rm. 1386, 219 S. Dearborn St., Chicago, IL 60604.

MC 121496 (Sub-32TA). Applicant: CANGO CORPORATION, 1100 Milam Bldg./2900, Houston, TX 77002. Representative: Tom E. Davis (same as applicant) *Chemicals,* in bulk, in tank vehicles from the facilities of Georgia-Pacific Corp. at or near Plaquemine, LA to all points in the U.S.A. (except AK and HI) for 180 days. Supporting shipper(s): Georgia-Pacific Corporation, P.O. Box 629, Plaquemine, LA 70764. Send protests to: John F. Mensing, DS, ICC, 515 Rusk Ave, No. 8610, Houston, TX 77002.

MC 123407 (Sub-587TA), filed July 16, 1979. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Rt. 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr., (same address as applicant). *Vinyl covered gypsum wallboard and steel studding,* from Oklahoma City, OK to South Bend, IN, for 180 days. An underlying ETA was granted for 30 days. Supporting shipper(s): The Denman Co., Inc., 3023 N. Oklahoma, Oklahoma City, OK 73105. Send protests to: David Hunt, TA, Rm. 1386, 219 S. Dearborn St., Chicago, IL 60604.

MC 124117 (Sub-39TA), filed July 10, 1979. Applicant: EARL FREEMAN AND MARIE FREEMAN, d.b.a. MID-TENN EXPRESS, P.O. Box 101, Eagleville, TN 37060. Representative: Roland M. Lowell, 618 United American Bank Building, Nashville, TN 37219. *Malt beverages, related advertising materials, containers, pallets, materials, equipment and supplies used in the manufacturing and distributing of malt beverages* (1) between Evansville, IN and its commercial zone, on the one hand, and, on the other, points in FL, LA, and AR; and (2) between Newport, KY and its commercial zone, on the one hand, and, on the other, points in NC, SC, and VA, for 180 days. Supporting shipper(s): G. Heilemen Brewing Company, 925 South Third Street, LaCrosse, WI 54601. Send protests to: Glenda Kuss, TA, ICC, Suite A/422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 124247 (Sub-18TA), filed July 16, 1979. Applicant: DAN LODESKY TRUCKING, INC., P.O. Box 236, Gurnee, IL 60031. Representative: Edward G. Bazelon, 39 S. LaSalle St., Chicago, IL 60603. *Building materials, and gypsum and gypsum products (except in bulk),* from the facilities of United States Gypsum Company, located at E. Chicago, IN, to points in the states of IL and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): United States Gypsum Co., 101 S. Wacker Dr., Chicago, IL 60606. Send protests to: David Hunt, TA, Rm. 1386, 219 S. Dearborn St., Chicago, IL 60604.

MC 124887 (Sub-89TA), filed July 18, 1979. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1, Box 230, Altha, FL 32421. Representative: Sol R. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *General commodities (except those of unusual value, Classes A and B explosives, commodities, requiring*

special equipment, household goods as defined by the Commission, and motor vehicles), in containers or trailers, having an immediately prior to subsequent movement by water, and (2) empty containers, trailers, and trailers chasses, between Panama City, FL and points in AL, FL, GA, and MS for 180 days. An ETA seeks 90 days authority. Supporting shipper(s): Panama City Port Authority, P.O. Box 388, Panama City, FL 32401. Contract Marine Carriers, Inc., 23 Broad St., P.O. Box 66, Charleston, S.C. 29402. Send protests to: Jean King, TA, ICC Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 124997 (Sub-5TA), filed July 19, 1979. Applicant: R. F. TRUESDELL CO., 6515 Anno Avenue, Orlando, FL 32809. Representative: Kim G. Meyer, 235 Peachtree Street, NE., Suite 1200, Atlanta, GA 30343. *Contract carrier,* irregular routes, transporting (1) *paper and paper articles* from the facilities of Inland Container Corporation at Hattiesburg, MS to points in AR, GA, TN and Orlando, FL, and, (2) *Paper and paper articles and materials and supplies used in the manufacture thereof (except commodities in bulk)* from AL, LA, AR, GA, TN, and that portion of FL west of the Apalachicola River to the facilities of Inland Container Corporation at Hattiesburg, MS, for 180 days. An Underlying ETA seeks 90 days authority. Supporting shipper(s): Inland Container Corp., 151 N. Delaware St., Indianapolis, In 46206. Send protests to: Jean King, TA, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 125417 (Sub-15TA), filed July 11, 1979. Applicant: BULK FREIGHTWAYS, 8332 Wilcox Avenue, P.O. Box 1069, South Gate, CA 90280. Representative: Patricia M. Schnegg, Knapp, Grossman & Marsh, 707 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017. Plastic materials, in bulk, other than liquid, from Los Angeles and Orange Counties, CA to AZ for 180 days. Supporting shipper(s): Soltex Polymer Corporation, 3333 Richmond Avenue, Houston, TX 77027. B. F. Goodrich Co., Chemcial Group, 6100 Oak Tree Blvd., Cleveland, OH 44131. Wilson & George Myer Company, 2060 South Garfield, Los Angeles, CA. Union Carbide, One California Street, San Francisco, CA 94111. Send protests to: Irene Carlos, TA, ICC, P.O. Box 1551, Los Angeles, CA 90053.

MC 125996 (Sub-81TA), filed July 16, 1979. Applicant: GOLDEN TRANSPORTATION, INC., P.O. Box 26908, Salt Lake City, UT 84125. Representative: John P. Rhodes, P.O. Box 5000, Waterloo, IA 50704. *Flavorings, toppings and syrups,* in glass and cans, not requiring mechanical refrigeraton, from the facilities of Lyons-Magnus Company, Clovis, CA to AZ, CO, ID, IS, MO, MT, OR, UT and WA, for 180 days. Supporting shipper(s): Lyons-Magnus Company, 3789 East Alluvial Ave., Clovis, CA 93612. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 125996 (Sub-82TA), filed June 26, 1979. Applicant: GOLDEN TRANSPORTATION, INC., 2200 South 400 West, Salt Lake City, UT 84115. Representative: John P. Rhodes, P.O. Box 5000, Waterloo, IA 50704. *Magazines and periodicals* from Pewaukee, WI, to AZ, CA (except Los Angeles and San Francisco), CO (except Denver), IA, KS, MN, MO, OK, OR, and WA (except Seattle), for 180 days. Supporting shipper(s): Quad/Graphics, Inc., W224 N3322 DuPlainville Road, Pewaukee, WI 53072. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 125996 (Sub-83TA), filed June 27, 1979. Applicant: GOLDEN TRANSPORTATION, INC., 2200 South 400 West, Salt Lake City, UT 84115. Representative: John P. Rhodes, P.O. Box 5000, Waterloo, IA 50704. *Frozen foodstuffs* between Indianapolis, IN, on the one hand, and, on the other, points in AZ, CA, NV, NM, OR, UT, WA, restricted to shipments originating at or destined to the facilities of Monument Distribution Warehouse, Inc., Indianapolis, IN, for 180 days. Supporting shipper(s): Monument Distribution Warehouse, Inc., 3320 S. Arlington Ave., Indianapolis, IN 45203. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 126276 (Sub-205TA), filed July 13, 1979. Applicant: FAST MOTOR SERVICE, INC., 9100 Plainfield Rd., Brookfield, IL 60513. Representative: Albert A. Andrin, 180 N. LaSalle St., Chicago, IL 60601. *Contract carrier:* irregular routes: *Plastic containers,* from the facilities of Cutler Plastics Corporation, at Champaign, IL to Memphis, TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Cutler Plastics Corporation, 3202C W. Clark, Champaign, IL 61820. Send protests to: David Hunt, TA, Rm. 1386, 219 S. Dearborn St., Chicago, IL 60604.

MC 126927 (Sub-3TA), filed July 18, 1979. Applicant: PANTHER TRANSPORTATION, INC., 7301 W. 15th Ave., Gary, IN 46404. Representative: William H. Towle, 180 N. LaSalle St., Chicago, IL 60601. *Liquid sugar, corn syrup and blends thereof in bulk, in tank vehicles,* between the facilities of Process Supply Co., Inc., at Ft. Wayne, IN, on the one hand, and on the other, points in IL, IN, KY, MI, MO and OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Process Supply Company, Inc., P.O. Box 1271, Muncie, IN 47305. Send protests to: Annie Booker, Rm. 1386, 219 S. Dearborn St., Chicago, IL 60604.

MC 128007 (Sub-141TA), filed July 12, 1979. Applicant: HOFER, INC., P.O. Box 583, Pittsburg, KS 66762. Representative: William B. Barker, 641 Harrison, Topeka, KS 66603. (1) *Livestock Handling and feeding equipment,* from facilities of Orbit Products at or near Carthage, MO to points in AL, AR, CO, FL, GA, IL, IN, IA, KS, KY, LA, MS, NE, NM, OK, SD, TN & TX; and (2) *Materials and supplies utilized in the manufacture and distribution of livestock handling and feeding equipment,* from points in the destination states named in Part (1) above in the reverse direction, for 180 days, common, irregular; 90-day ETA filed simultaneously and permanent will be filed. Supporting shipper(s): Orbit Products, P.O. Box 115, Carthage, MO 64836. Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS 67202.

MC 128246 (Sub-50TA), filed July 11, 1979. Applicant: SOUTHWEST TRUCK SERVICE, P.O. Box A. D., Watsonville, CA 95076. Representative: W. F. King, Suite 500, Overlook Bldg., 6121 Lincolnia Rd., Alexandria, VA 22312. Contract carrier; irregular routes: *Frozen Fruits, Frozen Vegetables and Frozen Berries,* from points in CA to points in IA, IL, KS, MN, MO, NE and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): John Inglis Frozen Foods Co., P.O. Box 3111, Modesto, CA 95353. Send protests to: D/S N. C. Foster, 211 Main, Suite 500, San Francisco, CA 94105.

MC 128246 (Sub-51TA), filed July 19, 1979. Applicant: SOUTHWEST TRUCK SERVICE, P.O. Box A. D., Watsonville, CA 95076. Representative: W. F. King, Suite 400, Overlook Bldg., 6121 Lincolnia Rd., Alexandria, VA 22312. Contract carrier; irregular routes: Meats, meat products, meat by-products and articles distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk), from the facilities of Swift & Company at or near Cactus, TX, Clovis NM and Guymon, OK to

points in IA, NE, and WI. Supporting shipper(s): Swift & Company, 115 W. Jackson Blvd., Chicago, IL 60604. Send protests to: D/S N. C. Foster, 211 Main, Suite 500, San Francisco, CA 94105.

MC 128746 (Sub-54TA), filed July 3, 1979. Applicant: D'AGATA NATIONAL TRUCKING CO., 3240 South 61st St., Philadelphia, PA 19153. Representative: Edward J. Kiley, 1730 M Street NW., Washington, D.C. 20036. *Plastic bottles, materials and supplies used in the sale, manufacture and distribution of plastic bottles (except in bulk)* from the facilities of Hoover Beverage Bottle Division of Hoover Universal, Inc., located at or near New Castle, DE to Lynchburg, Marion, Winchester, and Norfolk, VA and Washington, D.C. and its commercial zone for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hoover Universal, Inc., Rt 2, Triport Road, Georgetown, KY 40324. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm 620, Philadephia, PA 19106.

MC 133796 (Sub-59TA), filed July 2, 1979. Applicant: GEORGE APPEL TRUCKING, INC., 249 Carverton Rd., Trucksville, PA 18708. Representative: Joseph F. Hoary, 121 S. Main St., Taylor, PA 18517. *Electric light bulbs* from Los Angeles, CA to Portland, OR, Seattle, WA, Phoenix, AR, Tucson, AR, Denver, CO, Salt Lake City, UT, Boise, ID, and Albuquerque, NM for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers(s): Action Tungsram, 11 Elkins Rd., East Brunswick, NJ 08876. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Philadelphia, PA 19106.

MC 134017 (Sub-8TA), filed July 18, 1979. Applicant: R. M. HENDERSON, d.b.a., H & M MOTOR LINES, P.O. Box 3535, Greenville, SC 29608. Representative: Gerald K. Gimmel, Gimmel and Weiman, 4 Professional Drive, Suite 145, Gaithersburg, MD 20760. *Contract Carrier*; irregular routes; Water, in bottles, from Jackson County, NC to points in FL under a continuing contract with Carolina Mountain Spring Water Company, Inc., Cashiers, NC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers(s): Carolina Mountain Spring Water Co., Inc. P.O. Box 407, Cashiers, NC. Send protests to: E. E. Strotheid, D/S, ICC, Rm. 302, 1400 Bldg., 1400 Pickens St., Columbia, SC 29201.

MC 134477 (Sub-356TA), filed May 9, 1979. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, MN 55118. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Plastic articles; cloth, cotton or synthetic, not woven; flashlights, lanterns, batteries, lighting fixtures, and equipment, other products, materials and supplies used in the manufacture and/or distribution of the above named commodities (except commodities in bulk)* between points in the states of CA, CT, GA, IL, MD, MA, MI, MN, MO, NJ, NY, NV, NC, OH, OR, PA, SC, TN, TX and WI, restricted to the transportation of traffic originating at or destined to the facilities of Ray-O-Vac Division, ESB, Inc. at points in the named states, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers(s): Ray-O-Vac Division, ESB, Inc., 101 East Washington Avenue, Madison, WI 53703. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, South 4th Street, Minneapolis, MN 55401.

MC 135797 (Sub-244TA), filed July 11, 1979. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant (same address as applicant). *Such materials and supplies* as are used in the manufacture, distribution, packaging, warehousing and sale of foodstuffs (except commodities in bulk in tank vehicles) from points in the United States in and east of MN, IA, MO, OK and TX to Greenville, MS for 180 days. Underlying ETA sought corresponding authority for 90 days. Supporting shippers(s): Uncle Ben's Foods, P.O. Box 1752, Houston, TX 77001. Send protests to: William H. Land, Jr., DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 135797 (Sub-245TA), filed July 11, 1979. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant (same address as applicant). (1) *Trunks, traveling bags and related articles* and, (2) *materials, equipment and supplies* used in the manufacture of the commodities in (1) above between the facilities of Samsonite Corporation at Nogales and Tucson, AZ and Denver, CO for 180 days. Underlying ETA sought corresponding authority for 90 days. Supporting shipper(s): Samsonite Corporation, 11200 East Forty-fifth Ave., Denver, CO 80239. Send protests to: William H. Land, DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 135797 (Sub-246TA), filed July 19, 1979. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant (same address as applicant). *Plastic pellets* from Big Springs, TX to Sallisaw, OK for 180 days. Underlying ETA sought corresponding authority for 90 days. Supporting shipper(s): Electro Foam Packaging Corp., P.O. Box 645, Sallisaw, OK 74955. Send protests to: William H. Land, DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 135867 (Sub-7TA), filed July 17, 1979. Applicant: H. T. L. Inc., P.O. Box 122, Fairfield, AL 35064. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. Contract, Irregular: *(1) Pipe, fittings, valves, fire hydrants, and castings and materials and supplies used in the installation thereof,* from the facilities of the U.S. Pipe and Foundry Company in Jefferson County, AL to points in the United States in and east of ND, SD, WY, CO, and NM (including TX); and *(2) Materials and supplies used in the manufacture of commodities as shown in (1) above* (except commodities in bulk, in tank vehicles) from points in the United States in and east of ND, SD, WY, CO, and NM (including TX) to the facilities of the U.S. Pipe and Foundry Company in Jefferson County, AL. For 180 days. Supporting shipper(s): U. S. Pipe and Foundry Company, 3300 First Avenue N., Birmingham, AL 35202. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 136246 (Sub-30TA), filed July 11, 1979. Applicant: GEORGE BROS. INC., P.O. Box 492, Sutton, NE 68979. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Road, Omaha, NE 68106. (1) *Knocked down metal buildings and related accessories* from Wathena, KS to points in the U.S. in and west of OH, KY, TN, GA and AL; (2) *Equipment, materials and supplies used in the construction and manufacture of metal buildings* from Warren, OH; Newport, KY; Chicago, IL; St. Louis, MO; and Gadsden, AL and their commercial zones to Wathena, KS; (3) *Knocked down metal buildings and related accessories and equipment, materials and supplies used in the construction and manufacture of metal buildings* between Wathena, KS; Columbus, GA; Pomona, CA and York, NE. Restricted to traffic originating at or destined to the facilities of Pascoe Steel Corporation. Requesting 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Pascoe Steel Corporation, P.O. Box 619, Wathena, KS 66090. Send protests to: D/S Carroll Russell, ICC, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 136647 (Sub-21TA), filed July 18, 1979. Applicant: GREEN MOUNTAIN CARRIERS, INC., P.O. Box 1319, Albany, New York 12201. Representative: Gordon Sands (same address). *Fresh meats and packing house products and articles distributed by meat packing*

houses as described in Motor Carriers Certificate 61 MCC 209 and 766 (except hides and commodities in bulk), from facilities of and utilized by Swift and Company from points in IL, WI, MN, IA, MO, NE, KS, OK, TX and NM to points in the US east of IL–IN State line and Mississippi River, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Swift & Company, 115 West Jackson Boulevard, Chicago, IL 60604. Send protests to: David M. Miller, DS, ICC, 436 Dwight Street, Springfield, MA 01103.

MC 138157 (Sub-169TA), filed July 9, 1979. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn (same address as applicant). *Building materials, perlite, plant bed media, plastic articles, chemicals, potting soil, vermiculate and materials, equipment and supplies used in the application of the above-named commodities and materials, equipment and supplies used in the manufacture, production and distribution of the above-named commodities (except in bulk and commodities which by reason of size or weight require the use of special equipment),* between Little Rock, AR; Boca Raton, Jacksonville, Pompana Beach and Tampa, FL; Atlanta, GA; Chicago, IL; Wilders, KY; New Orleans, LA; Muirkirk, MD; Easthampton, MA; Dearborn, MI; Minneapolis, MN; St. Louis, MO; North Bergen and Trenton, NJ; Weedsport, NY; High Point, NC; New Castle and Allentown, PA; Enoree and Travelers Rest, SC; Nashville, TN; Dallas, Houston and San Antonio, TX; and Milwaukee, WI, on the one hand, and on the other, points in the United States (except AK and HI), for 180 days. Restriction: Restricted to traffic originating at or destined to the facilities of W. R. Grace & Co. Supporting shipper(s): W. R. Grace & Co., 62 Whittemore Avenue, Cambridge, MA 02140. Send protests to: Glenda Kuss, TA, ICC, Suite A–422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 138157 (Sub-170TA), filed July 27, 1979. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn (same address as applicant). *Eye and skin care products* from the facilities of Allergan Pharmaceuticals, Inc., in Santa Ana, CA to Atlanta and Stone Mountain, GA; Chicago, IL and Rochester, NY, for 180 days. Supporting shipper(s): Allergan Pharmaceuticals, Inc., 2525 Pullman Avenue, Santa Ana, CA 92705. Send protests to: Glenda Kuss, TA, ICC, Suite A–422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 138157 (Sub-171TA), filed July 25, 1979. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREGHT, 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn (same address as applicant). See attached Sheet. Supporting shipper(s): W. R. Grace & Co., 55 Hayden Ave., Lexington, MA 02173. Send protests to: Glenda Kuss, Suite A–422, 801 Broadway, Nashville, TN 37203.

MC 138286 (Sub-6TA), filed July 12, 1979. Applicant: JOHN F. SCOTT CO., P.O. Box 8, 404 Washington Ave., Dravosburg, PA 15034. Representative: John M. Musselman, P.O. Box 1146, 410 Third St., Harrisburg, PA 18108. *Iron and steel articles, and materials, equipment and supplies used or useful in the manufacture of iron and steel articles,* between pts. in DE, MD, NJ, NY, OH, PA, WV, and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wheeling-Pittsburgh Steel Corp., P.O. Box 118, Pittsburgh, PA 15230. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 138977 (Sub-2TA), filed July 16, 1979. Applicant: EDWARD W. SKINNER & EDWARD W. SKINNER, JR. d.b.a. SKINNER TRUCKING, Box 709, Twin Falls, ID 83301. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. *Irrigation pipe, fittings and accessories,* from Twin Falls, ID to points in MT. Restricted to traffic moving for the account of Alumax Irrigation Products, for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): Alumax Irrigation Products, Box 1425, Twin Falls, ID 83301. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83702.

MC 139906 (Sub-58TA), filed July 12, 1979. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, 2156 West 2200 South, P.O. Box 30303, Salt Lake City, UT 84125. Representative: Richard A. Peterson, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. *Agricultural insecticides and fungicides, NOIBN, and weed killing compounds, NOIBN, in packages,* (except in bulk), from North Little Rock, AR to the states of IL, IN, IA, IS, MD, MI, MN, MO, NE, NJ, NY, OH, PA, VA, and WI, for 180 days. Supporting shipper(s): Stauffer Chemical Company, Westport, CT 06880. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 139906 (Sub-59TA), filed July 13, 1979. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, 2156 West 2200 South, P.O. Box 30303, Salt Lake City, UT 84125. Representative: Richard A. Peterson, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. *Office filing equipment and parts, materials, and supplies used in the manufacture, sale and distribution thereof* (except in bulk), from the facilities of Supreme Equipment & Systems Corp., at or near Brooklyn, NY, to Los Angeles, CA; Chicago, IL; Cincinnati, OH; and Dallas and Houston, TX and points in their respective commercial zones, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Supreme Equipment & Systems Corp., 170—53rd Street, Brooklyn, NY 11232. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 140186 (Sub-37TA), filed July 18, 1979. Applicant: TIGER TRANSPORTATION, INC., P.O. Box 2248, Missoula, MT 59801. Representative: Joel E. Guthals, P.O. Box 2533, Billings, MT 59103. *Aluminum plate, sheet and foil* from Riverdale, IA to points in CA, OR, WA, NV, MT and ID, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Aluminum Company of America, 1501 Alcoa Bldg., Pittsburgh, PA 15219. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 141187 (Sub-6TA), filed July 13, 1979. Applicant: BLUFF CITY TRANSPORTATION, INC., 5410 Lamar Avenue, P.O. Box 18391, Memphis, TN 38118. Representative: James N. Clay, III, 2700 Sterick Building, Memphis, TN 38103. *Contract Carrier: Irregular Routes:* (1) *Plastic film, plastic film bags, boneguard cloth and aluminum packaging clips; and* (2) *Materials, equipment and supplies used in the manufacture and distribution of the items in (1) above,* (1) from Iowa Park, TX to points in the U.S. (except AK and HI); and (2) from points in the U.S. (except AK and HI) to Iowa Park, TX, for 180 days. Under a continuing contract with W. R. Grace & Co., Cryovac Division. Supporting shipper(s): W. R. Grace & Co., Cryovac Div., P.O. Box 308, Duncan, SC 29334. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 141187 (Sub-7TA), filed July 19, 1979. Applicant: BLUFF CITY TRANSPORTATION, INC., 2877 Farrisview Boulevard, Memphis, TN 38118. Representative: James N. Clay, III, 2700 Sterick Building, Memphis, TN 38103. *Contract Carrier:* irregular routes: *Proprietary antifreeze preparation in drums or packages,* from Houston, TX, Memphis, TN and Wilmington, NC to all points in the United States (except AK and HI), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Jefferson Chemical Company, Inc., 4800 Fournace Place, P.O. Box 430, Bellaire, TX 77401. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 141187 (Sub-8TA), filed July 19, 1979. Applicant: BLUFF CITY TRANSPORTATION, INC., 2877 Farrisview Boulevard, Memphis, TN 38118. Representative: James N. Clay, III, 2700 Sterick Building, Memphis, TN 38103. *Contract Carrier:* irregular routes: *Chemicals in drums or packages,* from the facilities of Jefferson Chemical Co. at Austin, Port Neches and Youens, TX to points in the United States (except AK and HI). Supporting shipper(s): Jefferson Chemical Company, Inc., 4800 Fournace Place, P.O. Box 430, Bellaire, TX 77401. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 141197 (Sub-39TA), filed July 12, 1979. Applicant: FLEMING-BABCOCK, INC., 4106 Mattox Road, Riverside, MO 64151. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068. *Dry bulk fertilizer and/or fertilizer ingredients, including ammonium nitrate, in bulk, in dump vehicles,* from Lawrence, KS to all points in the State of MO, for 180 days. Supporting shipper(s): Missouri Farms Association, Inc., 201 South 7th Street, Columbia, MO 65201. Send protests to: Vernon V. Coble, D/S, ICC, Room 600, Federal Bldg., 911 Walnut Street, Kansas City, MO 64106.

MC 142897 (Sub-15TA), filed May 14, 1979. Applicant: KENNEDY FREIGHT LINES, INC., 7401 Fremont Pike, Perrysburg, OH 43551. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215. *Glass containers,* from the facilities of Owens-Illinois, Inc., at Charlotte, MI to points in NC and Williamsburg, VA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Owens-Illinois, Inc., P.O. Box 1035, Toledo, OH 43666. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Philadelphia, PA 19106.

MC 143236 (Sub-36TA), filed July 17, 1979. Applicant: WHITE TIGER TRANSPORTATION, INC., 40 Hackensack Avenue, Kearny, NJ 07032. Representative: Elizabeth Eleanor Murphy, 40 Hackensack Avenue, Kearny, NJ 07032. Commodities as are dealt in by retail department stores and including materials, supplies and equipment (except in bulk) between the facilities of Gotham Distribution at or near Jersey City, NJ and points in the States of OH, IN, PA, TN, VA, WV, NY, KY, MD, for 180 days. Restricted to traffic going to Hills Department Store. An underlying ETA seeks 90 days authority. Supporting shipper(s): Gotham Distribution, 107 Industrial Drive, Jersey City, NJ 07303. Send protests to: Robert E. Johnston, DS, ICC, 744 Broad Street, Room 522, Newark, NJ 07102.

MC 143236 (Sub-37TA), filed July 17, 1979. Applicant: WHITE TIGER TRANSPORTATION CO., INC., 40 Hackensack Avenue, Kearny, NJ 07032. Representative: Elizabeth Eleanor Murphy, 40 Hackensack Avenue, Kearny, NJ 07032. *Beer and related material and equipment* used in the sale and brewing of beer between the facilities of Anheuser-Busch, Inc., at Jacksonville and Tampa, FL to points in the states of CT, DE, MD, MA, NJ, NY, NH, NC, SC, OH, PA, VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Anheuser-Busch, Inc., 721 Pestalozzi Street, St. Louis, MO 63118. Send protests to: Robert E. Johnston, DS, ICC, 744 Broad Street, Room 522, Newark, NJ 07102.

MC 143417 (Sub-7TA), filed June 27, 1979. Applicant: FLASH INTERSTATE DELIVERY SYSTEM, INC., 4711 W. 16th Street, Cicero, IL 60650. Representative: Barry Roberts, 888 17th Street, Washington, DC 20006. *Bananas and bananas moving in mixed loads with exempt agricultural commodities,* from New York City, NY, and Baltimore, MD, to points in OH, MI, PA, IL, and IN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Castle & Cooke Foods, 350 Motor Parkway, Hauppauge, NY 11787. Send protests to: David Hunt, TA, Rm. 1386, 219 S. Dearborn, Chicago, IL 60604.

MC 144027 (Sub-14TA), filed July 18, 1979. Applicant: WARD CARTAGE AND WAREHOUSING, INC., Route No. 4, Glasgow, KY 42141. Representative: Walter Harwood, Atty., P.O. Box 15214, Nashville, TN 37215. *Brushes, handles, and materials and supplies* used in the manufacture of brushes and handles, between the facilities of National Brush Co., at or near Aurora, IL and Glasgow, KY, and between said facilities at Aurora, IL and Glasgow, KY, on the one hand, and, on the other, points in KY, TN, GA, AL, MS, and FL. Supporting shipper(s): Robert G. Hauth, National Brush Co., 101 W. Illinois Ave., Aurora, IL 60507. Send protests to: Ms. Clara L. Eyl, T/A, ICC, 426 Post Office Bldg., Louisville, KY. 40202.

MC 144827 (Sub-27TA), filed July 5, 1979. Applicant: DELTA MOTOR FREIGHT, INC., 2877 Farrisview, Memphis, TN 38111. Representative: R. Connor Wiggins, Jr., Suite 909, 100 North Main Street, Memphis, TN 38103. *General Commodities* (except those of unusual value, Classes A & B explosives, commodities in bulk, household goods, and those requiring special equipment) which at the time are moving on bills of lading of Freight Forwarders, from Secuacus, NJ to Dallas, Houston and San Antonio, TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Florida-Texas Freight, Inc., P.O. Box 670777, Miami, FL 33167. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 144827 (Sub-28TA), filed July 16, 1979. Applicant: DELTA MOTOR FREIGHT, INC., 2877 Farrisview, Memphis, TN 38118. Representative: R. Connor Wiggins, Jr., Suite 909, 100 North Main Bldg., Memphis, TN 38103. *Foodstuffs, not frozen, in individual portion controlled packages* (except meats, meat products and meat by-products) from the facilities of Serv-A-Portion, Inc. at Chatsworth, CA to points in AR, TX and OK, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Serv-A-Portion, Inc., 9140 Lurline Avenue, Chatsworth, CA 91311. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 144827 (Sub-29TA), filed July 17, 1979. Applicant: DELTA MOTOR FREIGHT, INC., 2877 Farrisview, Memphis, TN 38118. Representative: R. Connor Wiggins, Jr., Suite 909, 100 North Main Building, 100 North Main Street, Memphis, TN 38103. Fasteners and metal articles (except commodities in bulk, or those which by reason of size or weight require the use of special equipment), from the facilities of Russell, Burdsall and Ward, Inc. at or near Los Angeles, CA, to the facilities of

Russell, Burdsall and Ward, Inc., at or near Chicago, IL; Dallas, TX; and Ontario, OH; for 180 days. Supporting shipper(s): Russell, Burdsall and Ward, Inc., 841 Hawthorne Lane, West Chicago, IL 60185. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 145557 (Sub-8TA), filed May 30, 1979. Applicant: LIBERTY TRANSPORT, INC., 3409 South Belt Hwy., St. Joseph, MO 64503. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068. *Foodstuffs and such commodities as are dealt in by retail variety, discount and drug stores and wholesale houses serving such stores (except frozen commodities & commodities in bulk),* from the facilities of Colgate Palmolive located at or near Kansas City, KS to points in CO, IA, MN, ND, NE, NM, OK, SD, TX and WY, for 180 days. Supporting shipper(s): Colgate-Palmolive Co., 1806 Kansas Ave., Kansas City, KS 66105. Send protests to: Vernon Coble, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 145557 (Sub-10TA), filed June 15, 1979. Applicant: LIBERTY TRANSPORT, INC., 4614 South 40th Street, St. Joseph, MO 64503. Representative: Tom B. Kretsinger, Kretsinger & kretsinger, 20 East Franklin, Liberty, MO 64068. *Meats, meat products and meat by-products,* and articles distributed by meat packinghouses as described in Sections A & C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk) and foodstuffs and such commodities as are dealt in by retail variety, discount and drug stores and wholesale houses serving such stores (except frozen commodities and commodities in bulk). Supporting shipper(s): Oldham Farm Sausage Co.; 622 W. 3rd St., Lees Sumit, MO 64063; The Keller Food Corp., 2917 Brooklin Ave., P.O. Box 4824, Kansas City, MO 64109; Ranch Hand Foods, Inc., P.O. Box 13253, Edwardsville, KS 66113. Six more supporting shippers may be viewed in Washington, D.C. or District office. Send protests to: Vernon V. Coble, ICC, d/s, Room 600, Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 145567 (Sub-1TA), filed June 25, 1979. Applicant: UNITED STATES TRANSPORTATION, INC., 4963 Provident Drive, Cincinnati, OH 45246. Representative: Michael Spurlock, Berry & Spurlock Co., L.P.A., 275 East State St., Columbus, OH 43215. *Contract carrier:* Irregular routes: *Liquid resins, core compounds, formaldehyde, acetone, caustic soda, methanol, phenol, ethanol, and nitrogen fertilizer solution, in bulk in tank vehicles,* between the plant site of Georgia Pacific Corp., located at Franklin County, OH, on the one hand, and, on the other, points in IL, IN, MI (lower peninsula) and KY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Georgia-Pacific Corp., 900 S.W. Fifth Ave., Portland, OR 97204. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA. 19106.

MC 145577 (Sub-9TA), filed April 27, 1979. Applicant: GULLETT-GOULD, LTD., P.O. Box 406, Union City, IN 47390. Representative: Jerry B. Sellman, 50 West Broad Street, Columbus, OH 43215. *Iron and steel articles,* from Williamsport, Avis and Mountoursville, PA to points in CA, for 180 days. Supporting shipper: Jersey Shore Steel Company, Inc., P.O. Box 5055, Jersey Shore, PA 17740. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio St., Rm. 429, Indianapolis, IN 46204.

MC 145577 (Sub-10TA), filed June 20, 1979. Applicant: GULLETT-GOULD, LTD., P.O. Box 406, Union City, IN 47390. Representative: Jerry B. Sellman, 50 West Broad Street, Columbus, OH 43215. *Compressors, liquid or gas, and evaporator coils,* from Somerset, KY to City of Industry, CA, for 180 days. Supporting shipper: BDP Company, a Division of Carrier Corp., 855 Anaheim-Puente Road, La Puente, CA 91749. Send protest to: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio St., Rm. 429, Indianapolis, IN 46204.

MC 145577 (Sub-11TA), filed April 30, 1979. Applicant: GULLETT-GOULD, LTD., P.O. Box 406, Union City, IN 47390. Representative: Jerry B. Sellman, 40 W. Broad Street, Columbus, OH 43215. *Photographic apparatus, equipment, materials, supplies and products used solely for photographic application, manufacturing and processing* (except commodities in bulk, (1) between the facilities of Eastman Kodak Company at Rochester, NY and Windsor, CO, and (2) from the facilities of Eastman Kodak Company at Windsor, CO, to the facilities of Eastman Kodak Company at San Ramon and Whittier, CA, for 180 days. Supporting shipper: The Eastmen Kodak Company, 2400 Mt. Read Blvd., Rochester, NY, 14650. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio St., Rm. 429, Indianapolis, IN 46204.

MC 145956 (Sub-4TA), filed July 11, 1979. Applicant: TRANSMEDIC CARRIERS, INC., P.O. Box 1934, Largo, FL 33540. Representative: Paul Meilleur, 1340 Indian Rocks Rd., Belleair, FL 33540. *Such commodities as are dealt in by wholesale, retail, and chain grocery and food business houses and materials, equipment, and supplies* used in connection therewith (except frozen commodities in bulk) between points in IN, IL, MI, OH, KY, TX, GA, FL and LA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Colgate-Palmolive Co., State & Woerner St., Jeffersonville, IN 47130. Send protests to: Donna M. Jones, T/A, BOp-ICC, Monterey Bldg., Room 101, 8410 N.W., 53rd Ter., Miami, FL 33166.

MC 145997 (Sub-6TA), filed July 10, 1979. Applicant: J. E. M. EQUIPMENT, INC., P.O. Drawer 396, Alma, AR 72921. Representative: Thomas B. Staley, 1550 Tower Bldg., Little Rock, AR 72201. *Heating and air conditioning equipment,* and *component parts* used in the manufacture of same between Fort Smith, AR and Milledgeville, GA and all points located within all States within contiguous 48 States, except WY, ID, MT, ND, SD and NE for 180 days. Underlying ETA sought corresponding authority for 90 days. Supporting shipper(s): Rheem Manufacturing Company, 5600 Old Greenwood Road, Fort Smith, AR 72901. Send protests to: William H. Land, DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 146256 (Sub-4TA), filed July 23, 1979. Applicant: SHORT LINE TRUCKING CO., INC., P.O. Box 20026, Louisville, KY 40220. Representative: Mr. Lavern R. Holdeman, Peterson, Bowman & Johanns, 521 So. 14th St., Suite 500, Lincoln, NE 68501. Equipment, materials and supplies used in the manufacture, sale and distribution of such commodities as are dealt in by wholesale, retail and chain, grocery, drug and food business houses, (except in bulk), from points in the States of OH and MI to the facilities of Colgate-Palmolive Co., Inc., at or near Jeffersonville, IN. Supporting shipper(s): H. Robert Schroeder, Colgate-Palmolive Co., Inc., State & Woerner Sts., Jeffersonville, IN 47130. Send protests to: Ms. Clara L. Eyl, T/A, ICC, 426 Post Office Bldg., Louisville, KY 40202.

MC 146887 (Sub-2TA), filed July 6, 1979. Applicant: RINALDI MOTOR TRANSPORT, INC., P.O. Box 879, 216 W. Harris Ct., So. San Francisco, CA 94080. Representative: R. C. Chauvel, 100 Pine St., Suite 2550, San Francisco, CA 94111. (1) Electrical appliances, equipment and parts, as described in

Appendix VII of Ex Parte No. MC–45, Descriptions in Motor Carrier Certificates, 61 M.C.C. 209, (2) Air conditioning units, parts and supplies and (3) construction materials, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are 10 statements in support attached to this application which may be examined at the I.C.C. in Washington, D.C. or copies of which may be examined in the field office named below. Send protests to: D/S N. C. Foster, 211 Main, Suite 500, San Francisco, CA 94105.

MC 146717 (Sub-2TA), filed July 19, 1979. Applicant: JACK MYER AND BUDDY C. MOORE, d.b.a. MIDWEST VIKING, Johnson, NE 68378. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. *Industrial and construction machinery and equipment and materials, supplies and parts used in the manufacture and distribution thereof* (1) From the facilities of Auburn Consolidated Industries at or near Auburn, NE to points in Los Angeles County, CA; Dallas County, TX; Mecklenburg County, NC; Hinds County, MS; and Gwinnett County, GA (2) From Mahoning County, OH; Lake County, IN; and Cook County, IL to the facilities of Auburn Consolidated Industries at or near Auburn, NE for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Auburn Consolidated Industries, 2100 South "J" Street, Auburn, NE 68305. Send protests to: D/S Carroll Russell, ICC, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 147107 (Sub-3TA), filed May 18, 1979., Applicant: ROBERT L. BUELL and LAWRENCE W. DERRY, d.b.a., SPOKANE-ST. MARIES AUTO FREIGHT SERVICE, 3810 Boone Ave., E., Spokane, WA 99202. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Lumber and lumber products,* from the facilities of Idaho Forest Industries, Inc. at or near Coeur d'Alene, ID to points in KS and MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Idaho Forest Industries, Inc., P.O. Box 1030, Coeur d'Alene, ID 83814. Send protests to: Shirley M. Holmes, T/A, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 147277 (Sub-1TA), filed July 23, 1979. Applicant: RESERVE AGRI-BUSINESS, INC., Reserve, MT 59258. Representative: John J. Hemmingson, Reserve, MT 59258. *Anhydrous Ammonia, in tank vehicles,* between points in MT and ND, and from points in MT and ND to the U.S.-Canada International Boundary line located at ports of entry in MT and ND, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Cominco American, Inc., 2304 So. University Drive, Fargo, ND 58102. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 147366 (Sub-1TA), filed July 20, 1979. Applicant: LEAVITT TRUCKING, INC., 1905 Covina Dr., Sparks, NV 89431. Representative: Ralph K. Leavitt (same as applicant). *General commodities, except commodities in bulk, articles of unusual value, household goods as defined by the I.C.C., and Class A explosives,* (a) over regular routes via U.S. Hwy. 395 between Reno and Sparks, NV, on the one hand, and, on the other hand, Carson City, NV. (b) Over irregular routes between Reno and Sparks, NV, on the one hand, and on the other, all points on U.S. Hwy. 50 between and including Dayton and Silver Springs, NV, and Ft. Churchill, NV, with interlining authorized at Reno, Sparks and Carson City, NV, for 180 days. Supporting shipper(s): There are 11 shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: DS W. J. Huetig, ICC, 203 Federal Bldg., Carson City, NV 89701.

MC 147386 (Sub-1TA), filed July 16, 1979. Applicant: BAER'S TRANSIT, INC., 754 Airport Road, Menasha, WI 54952. Representative: James A. Spiegel, Olde Towne Office Park, 6425 Odana Road, Madison, WI 53719. Contract carrier; irregular routes; *Malt beverages* from St. Paul, MN to Menasha, WI. Restriction: transportation to be performed under a continuing contract(s) with Baer's Beverage Inc. and Capital Sales, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Baer's Beverage Inc., 754 Airport Road, Menasha, WI 54952, and Capital Sales, Inc., 754 Airport Road, Menasha, WI 54952. Send protests to: J. E. Ryden, DS, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 147387 (Sub-1TA), filed June 26, 1979. Applicant: GLEN HOLMAN ENTERPRISES, INC., 4779 Dover Drive, Colorado Springs, CO 80916. Representative: Duitch, Duitch & Gerig, 105 E. Vermijo, Suite 118, Colorado Springs, CO 80903. *Pre-fabricated kitchen cabinets,* from Burnet, TX and Jasper, IN, Sparks, NV and San Jose, CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Timberline Cabinet Corp., P.O. Box 878, Aptos, CA 95003. Send protests to: H. Ruoff, 492 New Customs House, Denver, CO 80202.

MC 147536 (Sub-6TA), filed July 11, 1979. Applicant: D. L. SITTON MOTOR LINES, INC., 3305 Range Line, P.O. Box 1567, Joplin, MO 64801. Representative: David L. Sitton (as above). *Glass Containers, caps, enclosures for glass containers when shipped with glass containers,* (A) from Ada, Muskogee, and Sapulpa, OK, to points in AR, IL, IN, IA, KS, MN, MO, NE, TN, TX and WI, and (B) from Rosemount, MN, to points in IL, IA, KS, MO, OK and TX, for 180 days. Supporting shipper(s): Brockway Glass Company, Inc., P.O. Box 8, Muskogee, OK 74401; Liberty Glass Company, P.O. Box 520, Sapulpa, OK 74066; Brockway Glass Company, Inc., P.O. Box L, Rosemount, MN 55068. Send protests to: John V. Barry, D/S, ICC, Room 600, Federal Bldg., Kansas City, MO 64106.

MC 147536 (Sub-7TA), filed July 12, 1979. Applicant: D. L. SITTON MOTOR LINES, INC., 3305 Range LIne, P.O. Box 1567, Joplin, MO 64801. Representative: David L. Sitton (as above). *Canned goods,* from the facilities of Oconomowoc Canning Company in Columbia, Dane, Dodge, and Lincoln Counties, WI, to all points in AR, KS, MO, NM, OK, TN and TX, for 180 days. Supporting shipper(s): Oconomowoc Canning Company, P.O. Box 248, Oconomowoc, WI 53066. Send protests to: John V. Barry, D/S, ICC, Room 600, Federal Bldg., 911 Walnut Street, Kansas City, MO 64106.

MC 147536 (Sub-8TA), filed July 12, 1979. Applicant: D. L. SITTON MOTOR LINES, INC., 3305 Range Line, P.O. Box 1567, Joplin, MO 64801. Representative: David L. Sitton (as above). *Beverages, carbonated and non-carbonated,* from Lenexa, KS to points in AR, MO, OK and TX, for 180 days. Supporting shipper(s): Mid-America Container Corporation, 10001 Industrial, P.O. Box 53215, Lenexa, KS 66215. Send protests to: John V. Barry, D/S, ICC, Room 600, Federal Bldg., 911 Walnut Street, Kansas City, MO 64106.

MC 147536 (Sub-9TA), filed July 16, 1979. Applicant: D. L. SITTON MOTOR LINES, INC., 3305 Range Line, P.O. Box 1567, Joplin, MO 64801. Representative: David L. Sitton, as above. *Furniture, furniture parts and components and accessories, aluminum products, materials and supplies used in the manufacture and distribution of articles dealt in by Leggett and Platt Incorporated (except in bulk),* (A) from Mason, OH, and points in KY to Chicago, IL, Detroit, MI, Kenyon, MN, St. Louis, MO, and Nashville, TN; (B) from Carthage and Springfield, MO, to Chicago, IL, and points in KY, MN, and

OH; (C) from Grafton, WI, to Evansville, IN, and points in AR, TN, MS, and TX; (D) from Little Rock, AR, to Chicago, IL, for 180 days. Supporting shipper(s): Leggett and Platt Incorporated, 18th Road, P.O. Box 757, Carthage, MO 64638. Send protests to: John V. Barry, D/S, ICC, Room 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 147607 (Sub-1TA), filed July 11, 1979. Applicant: RONALD D. OFFUTT, JR., d.b.a. RONALD OFFUTT & SON, Box 126, Glyndon, MN 56547. Representative: James B. Hovland, 414 Gate City Building, P.O. Box 1680, Fargo, ND 58107. *Carpet*, from points in GA to points in MN, ND, SD and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Carpeton Mills, Inc., P.O. Box 57, Hwy 411 North, Eton, Ga 30724. Cumberland Mills, Inc., P.O. Box 189, Chatsworth, GA 30705. Paint & Glass Supply, Inc., 223 Fourth Street, Devils Lake, ND 58301. Len-Dal Cpt., Inc., Box 39, Chatsworth, GA 30705. Keating's of Devils Lake, Inc., 2nd Ave. & 4th St., Devils Lake, ND 58301. Lanas Carpet Co., P.O. Box 476, Eton, GA 30724. Explorer Carpet Mills, Inc., Box 1007, Highway 411, Chatsworth, GA 30705. Send protests to: H. E. Farsdale, DS, ICC, Bureau of Operations, Room 268 Fed. Bldg. and U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 147617 (Sub-1TA). Applicant: FOUR J ENTERPRISES, INC., 3822 West Park Ave., Orange, TX 77630. Representative: Jesse J. Jimerson, P.O. Box 1162, Orange, TX 77630. *Synthetic rubber, and the materials, supplies and equipment used in the production, processing, sale and distribution of the above commodity* between Orange, TX and points in AL, CA, FL, GA, IL, IN, KY, PA, LA, MA, MS, OH, SC, and TX. Under a continuing contract with Rubber Technology, Inc. of Orange, TX for 180 days. Supporting shipper(s): Rubber Technology, Inc., Rt. 9, Box 661, Orange, TX 77630. Send protests to: John F. Mensing, DS, ICC, 515 Rusk #8610, Houston, TX 77002.

MC 147627 (Sub-1TA), filed July 2, 1979. Applicant: ROADRUNNER DELIVERY SERVICE, INC., BWI Airport, Box 8765, Baltimore, MD 21240. Representative: Edward N. Button, 1329 Pennsylvania Ave., Hagerstown, MD 21740. *General commodities (except Classes A & B Explosives, commodities in bulk, household goods and commodities requiring special equipment)*, between Baltimore, MD, and its commercial zone and Philadelphia, PA and its commercial zone, restricted to traffic having a prior or subsequent movement by air, for 90 days. An underlying ETA seeks 90 days. Supporting shipper(s): Stephen E. Murray, Summit Airlines, Inc., Scott Plaza Two, Philadelphia, PA 19153. Send protests to:

MC 147647 (Sub-1TA), filed July 16, 1979. Applicant: LOUIE R. PARRISH and ALICE L. PARRISH, d/b/a PARRISH TRUCK LINE, P.O. Box 762, Monticello, AR 71655. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. Common regular carrier *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment). Supporting shipper(s): Approximately 57 shippers. Send protests to: William H. Land, Jr., DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 147657 (Sub-1TA), filed July 13, 1979. Applicant: FLEETCO, INC., 801 N. Interstate 85 Charlotte, NC 28216. Representative: W. G. Reese, II, P.O. Box 3004, Charlotte NC 28203. *Lumber, veneer or forest products, plywood, veneer or wood, built up or combined* between the facilities of Vanply, Inc. located at or near Charlotte NC on the one hand and points and places in NC and SC, on the other, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Vanply, Inc., P.O. Box 8289, Charlotte, NC 28208. Send protests to: Terrell Price, 800 Briar Creek Rd-Rm CC516, Charlotte NC 28205.

MC 147677 (Sub-1TA), filed July 13, 1979. Applicant: J & L TRUCK LINES, INC., 620 West Second Street, Odessa, TX 79760. Representative: Joe L. White, 1419 Byron Street, Odessa, TX 79761. *Common Carrier*, regular route: *General commodities* (except those of unusual value, Classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment.) (1) Between Odessa, TX and Artesia, NM, from Odessa over U.S. Hwy 385 to Andrews, TX, then over TX ST Hwy 176 to junction NM ST Hwy 18, then over NM ST Hwy 18 to junction U.S. Hwy 82, then over U.S. Hwy 82 to Artesia, NM, and return over the same route, serving all intermediate points including the off route points of Monument and Oil Center, NM. (2) Between Odessa, TX and Artesia, NM, from Odessa over TX ST Hwy 302 to junction TX ST Hwy 18, then over TX and NM ST Hwy 18 to junction U.S. Hwy 62 and 180, then over U.S. Hwy 62 and 180 to junction U.S. Hwy 285, then over U.S. Hwy 285 to Artesia, NM and return over the same route, serving all intermediate points in NM, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are approximately 60 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Wash., DC or copies may be examined in the Field Office named below. Send protests to: Opal M. Jones, TCS, Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, TX 76102.

Note.—Applicant intends to interline with other carriers at Odessa, TX; Hobbs, NM; Artesia, NM and Carlsbad, NM.

MC 147696 (Sub-1TA), filed July 17, 1979. Applicant: RAZORBACK FARMS CO., P.O. Box 291, Springdale, AR 72764. Representative: Michael H. Mashburn, P.O. Box 869, Springdale, AR 72764. *Canned goods* from points in the state of WI and Ft. Smith, Alma, Van Buren, Lowell, Siloam Springs, Gentry and Springdale, AR; Proctor, Stigler and Westville, OK; Moorhead, MS; and Oak Grove, LA, to points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WV, and WI, for 180 days. Underlying ETA sought corresponding authority for 90 days. Supporting shipper(s): Allen Canning Company, P.O. Box 250, 305 East Main, Siloam Springs, AR 72761. The Krier Preserving Company, 705 Main St., Belgium, WI 53004. Send protests to: William H. Land, DS, 3108 Federal Bldg., Little Rock, AR 72201.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-25488 Filed 8-16-79; 8:45 am]

BILLING CODE 7035-01-M

[MC 115826 (Sub-325) F]

W. J. Digby, Inc., Extension—Mixed Loads (Denver, Colo.)

[Decided: July 2, 1979.

Applicant seeks a certificate of public convenience and necessity as a common carrier by motor vehicle, authorizing operations as described in the appendix. The origin specified in the application for part (a) is limited to the facilities of Van De Kamp's Frozen Foods. The evidence has been considered under the modified procedure. Frozen Food Express, Inc., filed an opposition statement, and Midwest Emery Freight System, Inc., and Little Audrey's Transportation Co., Inc., companies under common control, filed a joint opposition statement. Applicant filed a rebuttal statement.

The Frozen Food Division of Van De Kamp's, the supporting shipper, produces approximately 45 different types of frozen food items including various types of frozen fish dinners and Mexican dish entrees for sale to retail and wholesale purchasers and military installations. It maintains production and warehouse facilities at the proposed origins of Santa Fe Springs, CA, and Erie, PA. However, shipper states that the California traffic originates at the facilities of Arctic Cold Storage, Santa Fe Springs. Shipper indicates that its fish products are considered exempt agriculture products for transportation purposes. Shipper pays the freight and selects the carrier on the movment of its traffic from these points. All of its products are ordered through its Santa Fe Springs facility and then a determination is made whether to ship the product from California or Pennsylvania. It anticipates a sales volume increase of about 25 percent in 1979 over 1978 figures with anticipated expanded sales solicitation in the eastern United States. It ships between 9 and 18 truckloads a month from Santa Fe Springs to the involved destination areas and between 17 and 20 truckloads a month from Erie.

Van De Kamp's will tender applicant 40 percent of its traffic from Santa Fe Springs and between 25 and 50 percent of the traffic moving from Erie. Van De Kamp's emphasized that due to the perishable nature of its products all of its shipments must be handled in mechanically refrigerated equipment. Its products are low density and high cubed resulting in a trailer being fully loaded before reaching maximum shipping weight. As a result, its truckload shipments average 30,000 to 33,000 pounds on 40-foot and 42-foot trailers. Shipper needs high-cube 45-foot trailers to ship a minimum of 35,000 pounds which many of the existing authorized carriers cannot provide. Under existing authority applicant presently provides shipper with high-cube 45 foot trailers.

Applicant is an irregular-route common carrier by motor vehicle. It is engaged in the specialized transportation of perishable and non-perishable foods and other commodities with operations in most States. Under existing authority and through interlining Digby currently handles on the average 1 or 2 loads a month for Van De Kamp's. Applicant asserts that a grant of the authority here would improve its operative balance as it presently has a need for outbound traffic from California and equipment is needed in the midwestern and eastern destination areas to transport traffic to the southwest, west, northwest, and Rocky Mountain region.

Protestant FFE is authorized to transport certain specified items, including fish, and foodstuffs (except the specified items) when moving in mixed loads with one or more of the specified items from points in California to points in Illinois, Michigan, Ohio, Kansas, and Missouri. It maintains a full service terminal in Los Angeles, CA and states that as an experienced perishable food carrier it can provide the service which the shipper is seeking to the above named States. It has participated in shipper's traffic from the Santa Fe Springs to points in Texas and Oklahoma. It argues that its services fit satisfactorily the shipper's transportation requirements and that no need has been shown for additional service. It urges that it must be afforded an opportunity of providing the service requested before the additional operations should be approved. FFE indicates that all of the trailers which it operates are 40 to 42 feet in length.

Midwest Emery is a motor common carrier of both general and specialized commodities operating principally between points in the Midwest and East. It has authority to provide direct service from Erie, PA, to all points in Illinois and Ohio, as well as Syracuse, NY, and alleges that it is authorized to provide direct service to all points in Michigan, Minnesota, Missouri and Wisconsin from Erie.

Little Audrey's operates between the Midwest on the one hand, and, on the other, the Far West. It is authorized to transport fresh and frozen foods from points in California to points in Kansas, as well as portions of Illinois, Michigan, and Missouri. It also holds itself to provide a service to all points in Iowa through interline with its parent company Midwest Emery at Muscatine, IA, or Rock Island, IL, and thus can offer a through service to the remainder of Illinois, all of Ohio, the remainder of Missouri, as well as Erie, PA, and Syracuse, NY.

Joint protestants argue that the application should be denied to the extent they may provide the service urge that if any grant of authority is made, the resultant certificate must be resricted to the transportation of traffic which originates at the shipper's facilities in order to protect the overhead traffic which they now enjoy. They submit an abstract of traffic handled by Midwest which is arguable subject to diversion through the Erie origin.

By way of rebuttal, applicant stresses that the shipper has expressed a need for the type of equipment it offers, that none of the protestants have the authority applicant seeks, and that none have shown that they will be materially harmed by the authorization of additional carrier service.

With regard to the request for a restriction to traffic originating at shipper's facilities, applicant states that part (a) of the application cannot be so restricted because the movements originate at the facilities of Arctic Cold Storage and to so restrict the application would preclude Digby from providing the requested service. In so far as part (b) of the application is concerned, applicant argues that there is no justifiable basis for such a restriction.

Discussion and Conclusions

We believe that the application should be granted. The supporting shipper has considerable traffic moving from the involved origins and the protestants have not demonstrated any participation in shipper's traffic within the scope of the application. Applicant has suitable extra-cube equipment to provide the proposed service and this would benefit shipper. We do not believe that protestants have established that they will be seriously affected by a grant. We do not believe that the restrictions sought by protestants are warranted in the absence of more extensive documentation of participation in other shippers traffic which could be diverted by applicant as a practical matter. We conclude that the benefits to the public in having the proposed service available outweigh any detriments, actual or potential, that may befall protestants as a result of applicant's competition.

The grant of authority must be rephrased to reflect that the Santa Fe traffic moves from the facilities, of Arctic Cold Storage and not from applicant's. The grant will be subject to republication so that any carriers having an interest in traffic moving out of Artic Cold Storage facility may intervene.

We find: The present and future public convenience and necessity require operation by applicant, performing the service described in the appendix, subject to prior publication in the Federal Register. Applicant is fit, willing, and able properly to perform the granted service and to conform to the requirements of Title 49, Subtitle IV, U.S. Code, and the Commission's regulations. This decision does not significantly affect the quality of the human environment. An appropriate certificate should be granted.

It is ordered: The application is granted to the extent set forth in the

appendix. Subject to publication in the **Federal Register**, operations may begin only following the service of a *certificate* which will be issued if applicant complies with the following requirements set forth in the Code of Federal Regulations: insurance (49 CFR 1043) designation of process agent (49 CFR 1044), and tariffs (49 CFR 1310).

Compliance with these requirements must be made within 90 days after the date of service of this decision or the grant of authority shall be void.

By the Commission, Review Board No. 3, Members Parkers, Fortier, and Hill (Board Member Hill not participating).

Agatha L. Mergenovich,

Secretary.

Appendix

Authority to conduct the following operations will be issued in an appropriate document. This decision does not constitute authority to operate.

To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *frozen prepared foods*, and (2) *agricultural commodities*, otherwise exempt from economic regulation under 49 U.S.C. 10526(a)(6)(D), when moving in mixed loads with frozen prepared foods, in vehicles equipped with mechanical refrigeration (a) from the facilities of Artic Cold Storage, at or near Santa Fe Springs, CA, to Erie, PA, Syracuse, NY, and points in Illinois, Kansas, Michigan, Missouri, and Ohio, and (b) from Erie, PA, to Atlanta, GA, Syracuse, NY, and points in Illinois, Kansas, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

Condition: The grant of authority here is subject to prior publication in the **Federal Register** of a notice of the authority actually granted by this decision and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication in order to allow interested persons to file petitions for intervention, setting forth in detail the precise manner in which they have been prejudiced by the grant of authority from the Sante Fe Springs, CA origin. The prior publication did not properly identify the facilities at that point.

[FR Doc. 79-25497 Filed 8-16-79; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte 241; Rule 19; Exemption 168]

Chicago, Milwaukee, St. Paul & Pacific Railroad Co.; Car Service Rules

Correction

In FR Doc. 79-23090 appearing on page 43850 in the issue for July 26, 1979, an incorrect Exemption No. was given in the heading. The correct Exemption No. appears above.

BILLING CODE 1505-01-M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

August 15, 1979

Meeting

Pursuant to Sec. 10(a)(2), of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976), notice is hereby given that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold a 2-day meeting on Monday and Tuesday, September 10–11, 1979. The sessions will be opened to the public and will be held in the Penthouse, Page Building Number 1, 2001 Wisconsin Avenue, N.W., Washington, D.C. The session on Monday will begin at 9:00 a.m.; the Tuesday session will begin at 8:00 a.m.

The Committee, consisting of 16 non-Federal members, appointed by the President from State and local government, industry, science and other appropriate areas, was established by the Congress by Public Law 95–63, on July 5, 1977. Its duties are to: (1) undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to the carrying out of the programs of the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to the Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atmospheric activities, and submit such other reports as may from time to time be requested by the President or the Congress.

The tentative meeting schedule follows:

Monday, September 10, 1979

9:00 a.m.–9:30 a.m.—Plenary Session: Opening Remarks—Acting Chairperson.
9:00 a.m.–12:00 noon—Discussion and selection of ocean and atmosphere issues to be addressed by NACOA in 1979/80.
12:00 noon–1:00 p.m.—Lunch.
1:00 p.m.–5:00 p.m.—Panel meetings (to be determined from discussion in a.m.).

Tuesday, September 11, 1979

8:00 a.m.–12:00 noon—Panel meetings (to be determined from discussion in 10 a.m.).
12:00 noon–1:00 p.m.—Lunch.
1:00 p.m.–3:00 p.m.—Plenary session: Panel chairman reports.
3:00 p.m.—Adjourn.

Persons desiring to attend will be admitted to the extent seating is available. Persons wishing to make formal statements should notify the Chairperson in advance of the meeting. The Chairperson retains the prerogative to impose limits on the duration of oral statements and discussions. Written statement may be submitted before or after each session.

Additional information concerning this meeting may be obtained through the Committee's Executive Director, Mr. John W. Connolly, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, N.W., (Room 434, Page Building #1), Washington, D.C. 20235. The telephone number is (202) 254–8418.

Dated: August 16, 1979.

John W. Connolly,

Executive Director.

[FR Doc. 79-25776 Filed 8-16-79; 12:08 pm]

BILLING CODE 3510-12-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 161
Friday, August 17, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Federal Election Commission	1
Federal Home Loan Bank Board	2
Federal Maritime Commission	3
International Trade Commission	4
National Transportation Safety Board	5
Merit Systems Protection Board	6

1

FEDERAL ELECTION COMMISSION.

"FEDERAL REGISTER" NO. 1586.

PREVIOUSLY ANNOUNCED DATE AND TIME: At 10 a.m., Thursday, August 16, 1979.

CHANGE IN MEETING: The following matter has been added to the portion open to the public—Primary Matching Fund Regulations: Eligibility for Certification.

PERSONS TO CONTACT FOR INFORMATION: Mr. Fred S. Eiland, Public Information Officer, telephone 202–523–4065.

Lena L. Stafford,

Acting Secretary to the Commission.

[S–1635–79 Filed 8–15–79; 10:03 am]

BILLING CODE 6715–01–M

2

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 44 FR page 47440, August 13, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., August 16, 1979.

PLACE: 1700 G Street N.W., Sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Franklin O. Bolling 202–377–6677.

CHANGES IN THE MEETING: The following item has been added to the agenda for the open meeting:

Application to Increase Accounts of an Insurable Type by Purchase of Branch Offices By—Santa Barbara Savings and Loan Association, Santa Barbara, California from State Savings and Loan Association, Stockton, California.

August 15, 1979.

[S–1637–79 Filed 8–15–79; 3:18 pm]

BILLING CODE 6720–01–M

3

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 10 a.m., August 22, 1979.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Report of the Secretary on Notation Items disposed of during July 1979.
2. Report of the Secretary on times shortened for submitting comments on section 15 agreements pursuant to delegated authority during July 1979.
3. Report of the Secretary on Applications for Admission to Practice approved during July 1979, pursuant to delegated authority.
4. Assignment of Informal Dockets by the Secretary during July 1979.
5. Response to request for rate justification from Neptune Orient Lines, Ltd.
6. Rates established independently by controlled carriers Baltic Shipping Company and Polish Ocean Lines as parties to Agreements Nos. 9427 and 9552.
7. Agreement No. 8090–16: Modification of the Mediterranean/North Pacific Coast Freight Conference Agreement to extend its scope to interior points in Greece and to permit discussion with other conferences on rates and rules regarding inland Europe.
8. Agreement No. 9836–8: Modification of the Malaysia-Pacific Rate Agreement to conform to Commission General Order 7.
9. Agreement No. 10292–1: Modification of the Bermuda Discussion Agreement to extend its term of approval.
10. Agreement No. 10363: Agency agreement between Tecomar, S. A. and United States Lines, Inc.
11. Proposed Rulemaking Proceeding—Temporary Tariff Filings.
12. Notice of Intent to Prepare an Environmental Assessment: Docket No. 79–2—Agreement No. 10293 and Docket No. 79–3—Agreement No. 10395.
13. Bunker surcharge increase filed by Matson Navigation Company.
14. Trailer Marine Transport Corporation reduced proportional rates.
15. Docket No. 79–15: Westinghouse Electric Corporation v. Sea-Land Service, Inc.—Review of order of discontinuance.
16. Informal Docket No. 594(I): Girton Manufacturing Company v. Hellenic Lines, Ltd.—Review of Settlement Officer's decision.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202)523–5725.

[S–1638–79 Filed 8–15–79; 3:18 pm]

BILLING CODE 6730–01–M

4

INTERNATIONAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 45546 August 2, 1979 and 44 FR 47209 August 10, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Thursday, August 16, 1979.

CHANGES IN THE MEETING: Emergency notice of deletion of the following agenda item scheduled for the meeting of Thursday, August 16, 1979.

6. Investigation 332–87 (Conditions of Competition in the Western U.S. Steel Market)—consideration of the report.

By action jacket approved August 14, 1979, Commissioners Alberger, Moore, Bedell, and Stern determined by recorded vote that Commission business requires the change in subject matter by deletion of the agenda item, and affirmed that no earlier announcement of the deletion to the agenda was possible. The Commission also determined that the report should be circulated in an action jacket for later ratification, and directed the issuance of this notice at the earliest practicable time. Commissioner Parker did not participate in the vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

[S–1634–79 Filed 8–15–79; 10:03 am]

BILLING CODE 7020–02–M

5

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 2 p.m., Wednesday, August 15, 1979.

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED: A majority of the Board has determined by recorded vote that the business of the Board requires that the following item

be discussed on this date and that no earlier announcement was possible: *Briefing*—Safety Objectives for the Funding Year 1981 Budget.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, 202–472–6022.

August 14, 1979.

[S–1636–79 Filed 8–15–79; 1:14 pm]

BILLING CODE 4910–58–M

6

MERIT SYSTEMS PROTECTION BOARD

Note.—This document originally appeared in the **Federal Register** for Thrusday, August 16, 1979. It is reprinted in this issue to meet requirements for publication on an assigned day of the week. (See OFR notice 41 32914, August 6, 1976.)

AGENCY HOLDING MEETING: Merit Systems Protection Board.

TIME AND DATE OF MEETING: 9:30 a.m. Thursday and Friday, August 23 and 24, 1979.

PLACE: Room 404, 717 Madison Place, NW., Washington, D.C.

STATUS: Open.

SUBJECT. Continuation of hearing in case of: *In re Frazier, et al.*

CONTACT PERSON FOR MORE INFORMATION: Charles J. Stanislav, Jr., Acting Director, Office of the Secretary, (202–653–7130).

Merit Systems Protection Board.

Charles J. Stanislav, Jr.,

Acting Secretary, Office of the Secretary.

[S–1630–79 Filed 8–16–79; 2:57 pm]

BILLING CODE 1505–01–M

Reader Aids

Federal Register

Vol. 44, No. 161

Friday, August 17, 1979

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Federal Register, Daily Issue:

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202-523-5022	Washington, D.C.
312-663-0884	Chicago, Ill.
213-688-6694	Los Angeles, Calif.
202-523-3187	Scheduling of documents for publication
523-5240	Photo copies of documents appearing in the Federal Register
523-5237	Corrections
523-5215	Public Inspection Desk
523-5227	Finding Aids
523-5235	Public Briefings: "How To Use the Federal Register."

Code of Federal Regulations (CFR):

523-3419	
523-3517	
523-5227	Finding Aids

Presidential Documents:

523-5233	Executive Orders and Proclamations
523-5235	Public Papers of the Presidents, and Weekly Compilation of Presidential Documents

Public Laws:

523-5266 -5282	Public Law Numbers and Dates, Slip Laws, U.S. Statutes at Large, and Index
275-3030	Slip Law Orders (GPO)

Other Publications and Services:

523-5239	TTY for the Deaf
523-5230	U.S. Government Manual
523-3408	Automation
523-4534	Special Projects
523-3517	Privacy Act Compilation

FEDERAL REGISTER PAGES AND DATES, AUGUST

45115-45358....1
45359-45586....2
45587-45916....3
45917-46248....6
46249-46426....7
46427-46776....8
46777-47028....9
47029-47262....10
47263-47522....13
47523-47754....14
47755-47914....15
47915-48140....16
48141-48642....17

CFR PARTS AFFECTED DURING AUGUST

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.

1 CFR

305....47755

3 CFR

Administrative Orders:

Presidential Determinations:

No. 79-12 of July 31, 1979....47915

No. 79-13 of August 3, 1979....47916

Executive Orders

12093 (Amended by EO 12151)....48141

12151....48141

12152....48143

Proclamations:

4671....48145

4672....48147

4 CFR

81....47755

5 CFR

Ch. I....47523

Ch. XIV....45359

210....45587

430....45587

432....45591

534....47029

720....48149

752....47029

772....46249

1001....47525

Proposed Rules:

451....48228

630....46288

733....47543

771....45629

6 CFR

Proposed Rules:

705....47232

706....48632

7 CFR

Ch. II....45880

210....48149

220....48157

27....45917

53....45320

245....47034

277....47037

301....45594, 48160

417....47525

781....47526

908....45359, 46777, 47917

910....45595, 47039, 48160

919....46427

925....46249

926....46427, 47757

947....46250

967....47917

979....45917

993....46250

1011....46777

1124....47263

1421....47526

1435....45596

1464....45115, 47533

1806....45115

1822....46250

1861....46250

1863....46250

1872....46250

1910....48160

1945....46250

1951....46250

1955....46250

1980....48160

2852....45602

Proposed Rules:

Ch. XVIII....46852

318....48230

431....46468

432....47917

722....47543

799....45631

927....46777

933....45400

979....46474

1040....47774

1065....47950

1135....48128

1260....46288

1427....47096, 47544

1804....47774

1924....47774

2859....47096

8 CFR

238....47757

Proposed Rules:

214....46853

9 CFR

51....45604

73....48162

78....47534

82....46263

97....45605

201....45359

309....45605

318....45606

381....45606

Proposed Rules:

1....45912

2....45912

3....45912

92....45631

112....46290

113....45634

318.....47098
381.....47098

10 CFR

2.....47758
19.....47535
20.....47535
50.....47918
51.....45362, 45374
70.....47918
73.....47758
208.....45918
211.....45375
212.....45352
463.....47264
508.....46676
595.....47920
711.....45918
1021.....45918
1023.....48163

Proposed Rules:

Ch. II.....47736
Ch. III.....47736
Ch. IX.....47736
9.....47950
71.....48234
211.....46244, 47546
212.....45900, 45909, 45957, 47546
214.....47951
375.....45900, 45909, 46236
376.....46236
391.....45900, 45909
420.....45958
485.....45976
503.....46854
505.....46854
903.....45141

12 CFR

4.....46263, 48169
7.....46428
201.....45115
205.....46432
217.....46434, 46436, 46437, 47535
226.....46438
329.....46264
344.....45375
526.....46440, 46441
531.....46445
541.....46444
545.....45116, 46441, 46444, 47759–47764
556.....46445
563.....46441, 47764
571.....47764
715.....45607
741.....45607
747.....45607

Proposed Rules:

Ch. II.....45406
219.....46475
220.....47775, 47776
226.....45141
509.....45175
509a.....45175
545.....45635, 46477
550.....45175
563.....45635, 46477
566.....45175

13 CFR

107.....45120
108.....45123
121.....47039

Proposed Rules:

Ch. I.....45412
121.....47098

14 CFR

21.....46778
39.....45375–45377, 45918, 45919, 46872, 46783, 47322, 47924
45.....45378
65.....46778
71.....45379, 45920, 45921, 46784–46791, 47322–47324, 47925, 47926
73.....46787, 46790, 46792, 47325
75.....46787, 46788, 46790, 47326
91.....45921
97.....47326
207.....47536
208.....47536
299.....45380
300.....47536
302.....46446
399.....45608
1203.....45610

Proposed Rules:

39.....45960, 46855
71.....45413, 45960–45962, 46857, 47345, 47951, 47952
73.....45413–45416, 45962, 46856, 47953
75.....45963
91.....45964
152.....46858
204.....46880
312.....45637

15 CFR

922.....46266

16 CFR

2.....47766
13.....47926, 48170
14.....47328
1105.....48618

Proposed Rules:

Ch. I.....45178
13.....45181, 47098, 47346
802.....47099

17 CFR

200.....46793
210.....45610
211.....47537
231.....46752
240.....46447, 46736
249.....46447

Proposed Rules:

1.....45192
240.....46748, 47953
249.....47953
270.....47100, 47546

18 CFR

1.....46449, 46453, 48171
3.....46449
35.....46453
154.....48174
157.....48174
271.....48180
277.....46454
281.....45922, 48184
294.....46455

Proposed Rules:

Ch. I.....48257
154.....46291
159.....47348
275.....48262

19 CFR

4.....467943
10.....46794
11.....46794
24.....46794
127.....46794
132.....46794
141.....46794
142.....46794
143.....46794
144.....46794
151.....46794
158.....46794
159.....45923, 46794
172.....46794
173.....46794

Proposed Rules:

Ch. I.....45334
6.....46880
134.....47103

20 CFR

404.....47766
416.....47766
655.....47040
676.....47260, 48185

Proposed Rules:

Ch. III.....48040
901.....46881

21 CFR

74.....45614
101.....46266
102.....45614
145.....48186
178.....47537, 47538
201.....45615, 46267, 47042
314.....47042
431.....48186
436.....48186
446.....48186
507.....48598
520.....47043, 47538
522.....45618, 47538
524.....46268, 47539
540.....47044
546.....48186
556.....45618
558.....45618, 47044
601.....45617
610.....45617
650.....45617
1010.....48190

Proposed Rules:

Ch. I.....48040, 48264
16.....47698, 47699
50.....47713
56.....47698, 47699
71.....47698, 47699, 47713
101.....45641
135.....48265
171.....47698, 47699, 47713
172.....48269
173.....45641
180.....47698, 47699, 47713
182.....48269
189.....45641
201.....47547
203.....47104
207.....47547
250.....45642
310.....47698, 47699, 47713
312.....47698, 47699, 47713
314.....47698, 47699, 47713
320.....47698, 47699, 47713
330.....47698, 47699, 47713
361.....47698, 47699, 47713
429.....47528
430.....47698, 47699, 47713
431.....47548, 47698, 47699, 47713
514.....47548
601.....47698, 47699, 47713
630.....47698, 47699, 47713
680.....45642
701.....47547
801.....45644
808.....47105
813.....47713
1000.....45645
1003.....47698, 47699, 47713
1010.....47698, 47699, 47713
1020.....45645

22 CFR

6a.....47767
17.....47927
1001.....45618

23 CFR

230.....46831
630.....46835

Proposed Rules:

635.....46882

24 CFR

42.....47329
58.....45568
108.....47012
203.....46835
220.....46835
221.....46835
222.....46835
226.....46835
235.....46835
510.....47512
570.....46836
841.....46996

Proposed Rules:

Subtitle A.....45342
Subtitle B.....45342
9.....45416
55.....47006
107.....46295
109.....46295
203.....46885, 46886, 47549
204.....46886
213.....46886
220.....46886
240.....46886
265.....46295
390.....46891
882.....46296
2205.....47105

25 CFR

55a.....46269
153.....47329

26 CFR

1 ..... 46459, 46838, 47046, 48191
12 46459
48 47767

Proposed Rules:

1 ..... 45192, 47550, 48269
53 47958
601 45192

27 CFR

Proposed Rules:

Ch. I 45326
6 45298
8 45298
10 45298
11 45298

28 CFR

0 46272
60 46459

Proposed Rules:

Ch. I 45295

29 CFR

89 48201
1600 47516
1601 47058
1613 45623
2618 47059

PROPOSED RULES:

1910 48274
1926 48275

30 CFR

55 ..... 48490, 48535
56 ..... 48490, 48535
57 ..... 48490, 48535
252 46404

Proposed Rules:

45 47746
250 47109

31 CFR

8 47059

Proposed Rules:

Subtitle A 45326
51 45335

32 CFR

158 47332
168 47767
214 46841
360 ..... 47335, 47931
505 46459
701 46272
810 45623
813a 45624
879 47540
903 47929
940 45624

Proposed Rules:

41 46296
513 45967
953 45193

33 CFR

17 47932
117 ..... 45924, 47335
161 ..... 45381, 47932
165 ..... 45925, 47335, 47336, 47933
183 47934

Proposed Rules:

117 45969
161 47349

36 CFR

7 45124
223 45925
907 45925
1228 47018

Proposed Rules:

231 46480
261 47110
1213 45417

37 CFR

304 45130

Proposed Rules:

201 47550
202 47555

38 CFR

3 45930
36 47336

Proposed Rules:

3 46891
26 48281

39 CFR

10 46460

Proposed Rules:

10 47556
111 47959

40 CFR

1 45131
52 ..... 46273, 46465, 46845, 47769
65 ..... 46274, 46275, 47060–47063, 47540, 48202, 48203, 48211
80 ..... 46275, 47541
86 ..... 47884, 48204
122 47063
125 47063
162 45131
180 ..... 45386, 47934
205 ..... 45194, 45203, 45204, 45210, 45624
408 45944
600 46846

Proposed Rules:

50 47959
51 46481
52 ..... 45210, 45420, 45647, 46481, 46482, 46892–46895, 47350, 47557, 47559, 47777, 47959
60 47778
65 ..... 47111, 47960
81 ..... 45210, 45650, 44970, 47778, 48285
85 46686
86 ..... 46296, 47113
120 45651
162 ..... 45218, 46303, 46414
163 47777
414 47113
416 47113

41 CFR

18 ..... 48205, 48209
101–26 47934
101–36 47359

Proposed Rules:

101–36 46305

42 CFR

21 46846
53 45946
57 45946
90 45946
100 45946
122 47064

Proposed Rules:

Ch. I–IV 48040
405 47117
440 46899

43 CFR

1600 46386
3422 45946

Proposed Rules:

Ch. II 45425

Public Land Orders:

4228 (Corrected by PLO 5675) 45133
5675 45133
5676 45133

44 CFR

64 ..... 45133, 45387, 48221, 48222
65 ..... 45136, 45137, 45388, 45390, 48224
67 45391–45394

Proposed Rules:

60 45652
67 48285–48287
67 ..... 45225–45227, 45970–45972, 47560, 47568

45 CFR

174 47444
175 47444
176 47444
302 45137
1388 45947
1968 47935

Proposed Rules:

Subtitles A & B 48040
46 47688
64 45973
161g 45976
640 46901
1062 47961

46 CFR

Proposed Rules:

Ch. I 47359
201 48287
208 48287
221 46492
251 48287

47 CFR

Ch. I 47935
1 45396
13 48225
18 48178
31 47359
33 47359
42 47359
43 47359
73 ..... 45395, 45625, 45626, 45951, 47092, 47936, 48225
76 45951
81 45396
83 ..... 45396, 45627
87 45627
201 47772
202 47772

Proposed Rules:

1 48287
2 48299
15 ..... 45227, 48299
64 47961
73 ..... 45653, 47962–47964
74 48303
81 46493
83 46493
87 47118

49 CFR

Ch. X 46847
1 47937
173 47937
571 ..... 46849, 46850
393 47938
609 47343
1033 ..... 45397, 46277, 46278, 46460, 47773
1036 47541
1245 45956
1246 45956

Proposed Rules:

Ch. X 48304
127 47966
171 47966
172 47966
173 47966
174 47966
175 47966
176 47966
177 47966
571 ..... 45426, 47966
1056 45429
1065 47120

50 CFR

18 45565
20 ..... 46462, 47093
32 ..... 45137, 46279, 46280, 46463, 46464, 47093, 47939–47942
33 ..... 45397, 46464
611 ..... 45398, 46285
653 48226
674 ..... 45398, 46286
810 47902

Proposed Rules:

17 47862
20 47246
216 46903
402 47862
405 47862
410 48305
530 45654
540 47123
611 ..... 46903, 47124
652 45227
672 47124
810 47386

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/SECRETARY*	USDA/ASCS		DOT/SECRETARY*	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/FHWA	USDA/FSQS		DOT/FHWA	USDA/FSQS
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLS	HEW/FDA		DOT/SLS	HEW/FDA
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

***NOTE: As of July 2, 1979, all agencies in the Department of Transportation, will publish on the Monday/Thursday schedule.**

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

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Public Health Service—

42060 7-18-79 / Requirements for a health maintenance organization

INTERIOR DEPARTMENT

Land Management Bureau—

41792 7-18-79 / Omitted lands and unsurveyed islands

Office of the Secretary—

41790 7-18-79 / Department hearings and appeals procedures; Grazing procedures

STATE DEPARTMENT

41777 7-18-79 / Denial of passport facilities to minors and in cases involving a criminal court order

List of Public Laws

Last Listing August 16, 1979

This is a continuing listing 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 202-275-3030).

H.R. 3324 / Pub. L. 96-53 "International Development Cooperation Act of 1979" (Aug. 14, 1979; 93 Stat. 359) Price: $1.25

H.R. 4616 / Pub. L. 96-54 To make certain technical and clerical amendments to title 5, United States Code (Aug. 14, 1979; 93 Stat. 381) Price: $.75

H.R. 4811 / Pub. L. 96-55 For the relief of the city of Nenana, Alaska, and to amend the Act of January 2, 1976, as amended, and for other purposes (Aug. 14, 1979; 93 Stat. 386) Price: $.75

H.R. 2807 / Pub. L. 96-56 To amend the Bankruptcy Act to provide for the nondischargeability of certain student loan debts guaranteed or insured by the United States (Aug. 14, 1979; 93 Stat. 387) Price: $.75

H.R. 3914 / Pub. L. 96-57 To amend the National Capital Transportation Act of 1969 to remove the limitation on the amount authorized for District of Columbia contributions for the cost of construction of the rapid transit system of the National Capital Region (Aug. 14, 1979; 93 Stat. 388) Price: $.75

H.R. 4057 / Pub. L. 96-58 To increase the fiscal year 1979 authorization for appropriations for the food stamp program, and for other purposes (Aug. 14, 1979; 93 Stat. 389) Price: $.75

S. 41 / Pub. L. 96-59 To require the Secretary of Agriculture to convey a reversionary interest held by the United States in certain lands located in Bell County, Kentucky, to the Board of Education, Bell County, Kentucky (Aug. 14, 1979; 93 Stat. 394) Price: $.75

H.R. 3363 / Pub. L. 96-60 To authorize appropriations for fiscal years 1980 and 1981 for the Department of State, the International Communication Agency, and the Board for International Broadcasting (Aug. 15, 1979; 93 Stat. 395) Price: $1.00

S. 917 / Pub. L. 96-61 To authorize appropriations to carry out the Fishery Conservation and Management Act of 1976 during fiscal years 1980, 1981, and 1982, and for other purposes (Aug. 15, 1979; 93 Stat. 407) Price: $.75

8-17-79
Vol. 44—No. 161
BOOK 2:
PAGES
48487-48642

federal register

Book 2 of 2 Books
Friday, August 17, 1979

Part II—LABOR/MSHA:
Metal and Nonmetal Mine Safety

Part III—LABOR/ESA:
Minimum Wages for Federal and Federally Assisted Construction

Part IV—HEW/FDA:
Good Manufacturing Practices for Low-Acid Pet Foods

Part V—CPSC:
Development of Proposed Consumer Product Safety Standards

Part VI—COUNCIL ON WAGE AND PRICE STABILITY:
Proposed Revision of Procedural Rules

Part VII—OMB:
Federal Employee Parking Facilities

Table of Contents

federal register

Friday
August 17, 1979

Part II

Department of Labor

Mine Safety and Health Administration

Metal and Nonmetal Mine Safety; Advisory Standards Revoked or Revised and Made Mandatory

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 55, 56, and 57

Metal and Nonmental Mine Safety; Advisory Standards Revoked or Revised and Made Mandatory

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

ACTION: Final rule.

SUMMARY: This final rule revokes or revises and makes mandatory existing advisory safety and health standards applicable to metal and nonmental mines by amending 30 CFR Parts 55, 56, and 57. This rulemaking is required under section 301(b)(2) of the Federal Mine Safety and Health Amendments Act of 1977. The new mandatory standards cover: ground control; air quality and ventilation; explosives; drilling; file prevention and control; rotary jet piercing; loading, hauling, dumping; aerial tramways; travelways and escapeways; electricity; compressed air and boilers; use of equipment; material storage and handling; safety programs; hoisting; and gassy mines. The conversion of the advisory standards to enforceable mandatory standards will afford miners in metal and nonmental mines and mills additional protection from injuries and occupational diseases. For the convenience of the mining community, current versions of Parts 55, 56, and 57 (including sections amended by this rule) will be republished by MSHA as a separate document.

EFFECTIVE DATE: These standards shall be effective on November 15, 1979, except standards 55/56/57.4–5 [1] (tank storage of combustible and flammable liquids), 55/56/57.4–25 (fire hydrants), 55/56/57.4–39A (flammable and combustible liquids and flammable materials stored in buildings or rooms), and 57.4–61A (ventilation doors) which shall be effective February 13, 1980; and standard 57.4–57 (trailing cables) which shall be effective November 12, 1980.

FOR FURTHER INFORMATION CONTACT: Frank Delimba, Chief, Division of Safety, Metal and Nonmetal Mine Safety and Health, Mine Safety and Health Administration, Room 717, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, (703) 235–8646.

SUPPLEMENTARY INFORMATION:

Background

On November 9, 1977, Congress enacted the Federal Mine Safety and Health Amendments Act of 1977 [the "amendments Act"], Pub. L. 95–164, 91 Stat. 1290 *et seq.*, which amended the Federal Coal Mine Health and Safety Act of 1969, Pub. L. 91–173, 83 Stat. 742, 30 U.S.C. 801 *et seq.* (1976 ed.), and repealed the Federal Metal and Nonmetallic Mine Safety Act of 1966 [the "Metal Act"], Pub. L. 89–577, 80 Stat. 772, 30 U.S.C. 721 *et seq.* (1976 ed.). The resulting law, the Federal Mine Safety and Health Act of 1977 [the "Mine Act"], 30 U.S.C. 801 *et seq.* (1976 ed. and Supp. I (1977)), established for the first time a single safety and health statute applicable to all mining.

Section 301(b)(2) of the Amendments Act, 91 Stat. 1317, 30 U.S.C. 961(b)(2) (Supp. I 1977)), directed the Secretary of Labor (Secretary) to review all of the existing advisory safety and health standards which had been promulgated under the Metal Act, and to determine which of those standards should be promulgated as new mandatory standards.

As required by the statute, the Secretary appointed an Advisory Committee which was formed on January 5, 1978 and consisted of three representatives each from labor and management, and seven public members with no economic interest in the mining industry. It was formally chartered under section 102 of the Mine Act, 91 Stat. 1295, 30 U.S.C. 812 (Supp. I (1977)), and under the Federal Advisory Committee Act, Pub. L. 92–463, 86 Stat. 770, as amended by Pub. L. 94–409, 90 Stat. 1247, 5 U.S.C., Appendix I.

After publishing notices of meetings in the **Federal Register** and making copies of the agenda available to the public, the Advisory Committee held public meetings in Washington, D.C. on March 6–10, 1978 (43 FR 7071); Tucson, Arizona on April 4–7, 1978 (43 FR 11278); Arlington, Virginia on May 1–5, 1978, (43 FR 15805); and Washington, D.C. on May 22–25, 1978, (43 FR 19477).

Based on its review of the 229 existing advisory standards in 30 CFR Parts 55, 56 and 57, the Advisory Committee recommended that 68 advisory standards be revoked and that 161 standards be revised and made mandatory. The Advisory Committee submitted its final recommendations to the Secretary on July 5, 1978.

On September 12, 1978, all of the recommendations of the Advisory Committee were published by the Secretary in Part VIII of the **Federal Register** (43 FR 40766) as proposed rules amending 30 CFR Parts 55, 56 and 57.

Interested persons were originally given until October 9, 1978, to submit written comments and data. The comment period was extended to October 17, 1978 (43 FR 43475), and further extended to November 3, 1978 (43 FR 47213). In response to these notices, the Mine Safety and Health Administration (MSHA) received over 100 written comments from a wide variety of individuals and organizations, including miners and their representatives, large and small mine operators, contractors, trade associations, equipment manufacturers, professional groups and other interested individuals and organizations. Most of the commenters addressed nearly all aspects of the proposed rule.

When the Amendments Act was enacted (November 9, 1977), certain formal rulemaking proceedings related to safety and health were pending before the Secretary of the Interior. Section 301(c)(3) of the Amendments Act, 91 Stat. 1318, 30 U.S.C. 961(c)(3) (Supp. I (1977)), transferred rulemaking responsibilities to the Secretary and authorized the completion of rulemaking proceedings which had been initiated by the Secretary of the Interior. Two such proceedings begun under section 6 of the Metal Act involved several advisory safety and health standards and resulted in formal recommendations to the Secretary by Administrative Law Judges Harvey C. Sweitzer and George A. Koutras on November 16, 1977 and February 10, 1978 (corrected March 13, 1978), respectively. The advisory standards considered by the judges were also submitted to the Advisory Committee since final action had not yet been taken. The recommended decisions of the Administrative Law Judges have been adopted with modifications by the Secretary, and were published as final rules in the **Federal Register** on August 17, 1979 (44 FR 48490) and on June 1, 1979 (44 FR 31908).

In addition, a third rulemaking also was pending at the time the Amendments Act was enacted. In this proceeding, several new and revised mandatory safety and health standards were proposed (43 FR 40766, January 28, 1977), many of which were based on existing advisory standards. Since no hearing had been held and no final action had been taken on these proposed standards, the advisory standards were included in the comprehensive review made by the Advisory Committee and the proposed

[1] Standards uniformly applicable to 30 CFR Parts 55, 56, 57 are referred to in this document as "55/56/57." Standards applicable to open pit mines are published in Part 55; standards applicable to sand, gravel and crushed stone operations are published in Part 56; and standards applicable to underground mines (and their surface operations) are published in Part 57.

rulemaking of September 12, 1978. Therefore, final determinations have been made on these new mandatory standards in this rulemaking under section 301(b) of the Amendments Act, 91 Stat. 1317, 30 U.S.C. 961(b) (Supp. I (1977)), in order to achieve the congressional goal of promptly upgrading advisory standards, where appropriate, to mandatory standards.

The following former advisory standards have been affected:

Administrative Law Judge Sweitzer—55/56/57.6–7 (storage of explosive materials); 55/56/57.6–9 (storage of explosives); 55/56/57.6–10 (stacking of explosives); 55/56/57.6–48 (transportation of explosive materials); 55/56/57.6–55 (transportation of explosive materials); 55/56/57.6–98 (connection of detonators to primers and detonating cord to explosives); 55/56/57.6–106 (examination for undetonated explosive materials); 55/56/57.6–109 (damaged safety fuse, igniter cord, and detonating cord); 55/56/57.6–118 (timing of safety fuse); 55/56/57.6–121 (electrical testing of blasting circuits); 55/56/57.6–132 (delay connectors); 55/56/57.6–138 (premature ignition in drilled or sprung holes, proposed as 55/56/57.6–142, originally 55/56/57.6–169); 55/56/57.6–139 (re-entering blast areas, originally 55/56/57.6–176); 55/56/57.6–140 (protection from extraneous electricity, originally 55/56/57.6–180); 55/56/57.6–167 (damaged detonating cord).

Administrative Law Judge Koutras—55/56/57.9–1 (safety defects); 55/56/57.9–34 (haulage equipment); 55/56/57.9–104 (warning devices); 55/56/57.19–78 (hoisting buckets); 55/56/57.20–8 (sanitary facilities); 55/56/57.21–21 (gassy mines—continuous operation of main fans).

January 28, 1977 proposed rule—57.3–58 (rock bolts, proposed as 55/56/57.3–52, originally 57.3–32); 57.4–66 (automatically-actuated fire suppression systems on conveyor belt drives); 55/56/57.19–12 (size and pitch of grooved drums); 55/56/57.19–36 (height of head frames); 55/56/57.19–37 (fleet angles); 55/56/57.19–39 (drum and sheave tread diameters); 55/56/57.19–67 (supervision of man trips); 55/56/57.19–72 (use of cages and skips); 55/56/57.19–74 (shaft conveyance restrictions); 55/56/57.19–81 (conveyances not in use); 55/56/57.19–91 (signals to hoist operator); 55/56/57.19–93 (standard hoisting signals); 55/56/57.19–124 (rope cut at conveyance end); 55/56/57.19–125 (rope cut at drum end); 55/56/57.19–126 (rope calipering); 55/56/57.19–130 (conveyance testing before hoisting personnel); 55/56/57.19–131 (inspection of conveyance connection); 55/56/57.19–132 (inspection of safety catches); 55/56/57.21–65 (examinations and tests for hazardous conditions).

II. Discussion and Summary of the Final Rule

A. *General Discussion.* the provisions of the new Mine Act signaled important changes in the types of protections afforded to miners in the metal and nonmetal mining industries. The congressional endorsement of mandatory safety and health standards and the statutory changes designed to improve the rulemaking process reflect a strong belief that the development of timely, enforceable standards is one of the most effective ways to improve safety and health conditions in the Nation's mines. Congress viewed the conversion of the advisory standards to mandatory standards as an important step in achieving these improved conditions.

The Advisory Committee appointed by the Secretary to initiate the review of the advisory standards was faced with the enormous task of reviewing a wide range of health and safety issues in metal and nonmetal mining, many of which were both longstanding and difficult to resolve. In addition, the language and intent of many of the standards were vague or overly broad.

Under the Metal Act, a large number of safety and health standards covering metal and nonmetal mines were issued only as advisory guidelines or recommended work practices. The Advisory Committee fully addressed many of the complex issues related to improving protection for miners through mandatory, enforceable safety and health standards. Its final recommendations, which were published as the proposed rule, were extremely important in advancing the rulemaking effort.

The public comments, which were received from virtually all segments of the mining community, raised many significant new issues which required full and careful consideration. Other considerations also made deliberate and intensive review of the proposed rule imperative. MSHA is committed to ensuring that regulations are written plainly and simply; that they are developed only in response to significant safety and health concerns; and that they are formulated in a way which minimizes the burdens imposed. These goals have been reinforced by several Adminisration initiatives to discourage unnecessary regulation, and to encourage public participation in the regulatory process and agency responsiveness to the affected public. In order to assure that these considerations would be fully addressed, it became apparent to MSHA that it would not be in the best interests of the mining community to adhere strictly to the 30 day statutory timetable for the publication of a final rule.

The comments on the proposed rule pointed out a substantial number of provisions which: were unclear or ambiguous; would not have allowed sufficient flexibility of application for various types of operations; were overly detailed or confusing; and were not significantly related to safety or health. Other comments were directed to such issues as: the extent of proposed changes to particular advisory standards; the need for alterations to mine equipment, facilities or practices which might justify a delay in the effective date of certain standards; the economic impact of certain standards; recordkeeping and reporting requirements; and the need in some instances for additional rulemaking.

MSHA also realized that the impact of these new rules upon many segments of the metal and nonmetal mining industries would be significant. Therefore, MSHA has tried to assure that these rules do not impose unnecessary burdens upon the industry and that their cumulative impact is fully justified in terms of improved safety and health conditions.

In its attempts to be responsive to the expressed needs and concerns of the mining community, MSHA has made numerous changes: to eliminate certain types of recordkeeping, as well as requirements that do not affect safety; to alter requirements to meet current states of the art in equipment and machinery; to simplify and clarify language; to provide delayed effective dates; and to grandfather certain requirements. All of the 68 advisory standards which were proposed to be revoked on September 12, 1978 have been revoked in the final rule. MSHA's review also has led to the revocation of 21 additional standards. These standards have been revoked primarily to: avoid unnecessary duplication with existing standards; eliminate those standards that are not directly related to health or safety; or undertake further studies and evaluations of specific hazards and protective measures.

MSHA believes that it has achieved the congressional goal of strengthening the safety and health protection afforded metal and nonmetal miners by integrating this new set of mandatory standards into the existing body of enforceable standards. Every effort has been made to be responsive to the comments without compromising the

safety and health of the Nation's metal and nonmetal miners.

This rulemaking is a major step towards providing a comprehensive framework for reducing accidents and occupational diseases among the Nation's metal and nonmetal mine workforce through the development of safety and health standards. In conjunction with its long-term standards development policy and Presidential directives, such as Executive Order 12044, MSHA intends to conduct a comprehensive study of all the health and safety standards contained in 30 CFR Parts 55, 56, and 57 in order to assess their continued applicability and effectiveness. In addition, the agency will evaluate changes in technology, economic conditions and other factors which affect the applicability of its existing standards, and will revise them accordingly. An integral part of MSHA's review will be the development of new or revised health and safety standards under section 101 of the Mine Act, 91 Stat. 1291.30 USC 811 (Supp. I (1977)).

Due to the large number of changes in the agency's standards as a result of this rule and related rulemakings, 30 CFR Parts 55, 56, and 57 will be updated and republished by MSHA as a separate document for the convenience of the mining community.

B. Discussion and Summary of Final Standards

Section 3—Ground Control

§ 57.3–29

The proposed standard stated that shaft pillars must have sufficient strength to protect operating shafts. A comment questioned whether the standard required shaft pillars. MSHA recognizes that leaving a solid block of ore around the shaft is not the only means of protecting the shaft against earth movement. Among other means of maintaining the integrity of the shaft are reinforced concrete, steel, or timber. In response to the comment, and to clarify that the standard is not intended to require the use of shaft pillars, the phrase "or other support systems" has been added after "shaft pillars."

§ 57.3–58

It was proposed to add a new mandatory standard to Parts 55, 56 and 57 providing for the installation of rock bolts as soon as the area is exposed. The original advisory standard (57.3–32) was applicable to underground mines only. Therefore, MSHA has promulgated the final standard only in Part 57 at this time. No substantive comments were received, and the language of the proposed standard has been changed for editorial purposes. The final standard provides that when rock bolts are needed for ground support, they shall be installed as soon as practicable after an area is exposed.

Section 4–Fire Prevention and Control

§§ 55/56/57.4–3

The proposed standard would have required areas within 25 feet of all flammable and combustible liquid storage tanks and electric substations to be kept free of dry grass, weeds and other combustible materials. Comments suggested that this standard should not apply to buried storage tanks. Since buried tanks are protected by the earth around them, the standard has been modified to apply to "unburied" tanks used for the storage of flammable or combustible liquids. Editorial changes have been made in the standard for clarity.

§§ 55/56/57.4–5

The proposal stated that fixed unburied flammable and combustible liquid storage tanks shall be mounted securely on firm foundations and that piping shall be provided with connections or fittings where necessary to prevent leakage caused by tank settling. Several comments questioned whether the requirement for "firm foundations" would eliminate the use of "floating foundations." A properly constructed floating foundation is acceptable to MSHA as a firm foundation. Additional comments stated that the portion of the standard requiring flexible connections or special fittings to prevent leaks from tank settling was unnecessary. Leaks which can result from tank settling must be prevented to assure the safety of personnel. Pipe flexibility can be provided with negligible cost: for example, by a swing joint. Editorial changes have been made in the standard for clarity, and a delayed effective date has been added to provide operators with additional time to comply with the requirements of the standard.

§§ 55/56/57.4–7

The proposal stated that means must be provided to remove or control spilled flammable or combustible liquids. Comments requested clarification. Channels or impoundments or a means of draining the spill to a safe location would satisfy the requirements in the event of a large spill. Absorbent material would be a means of controlling a small spill. The words "confine" and "drain away" have been deleted in the final standard to avoid redundancy.

§§ 55/56/57.4–12

MSHA has renumbered this standard, which was proposed standard 55/56/57.4–27B, by using "reserved" number 55/56/57.4–12. Proposed standard 55/56/57.4–27B stated that all flammable and combustible liquids must be disposed of in a manner which prevents accumulation where they can create a fire hazard to personnel. No comments were received on this standard and it is promulgated with editorial changes.

§§ 55/56/57.4–13

The proposal stated that in areas where fire is a hazard, materials subject to spontaneous combustion must be placed in covered metal containers. MSHA disagrees with a suggestion that the standard apply only to oily waste and oily rags because this modification would unreasonably restrict the standard and expose miners to fire hazards from other materials. The standard is promulgated with editorial changes for clarity.

§§ 55/56/57.4–16

The proposal stated that drip pans must be provided to catch leakage or spillage when oil or combustible or flammable liquids are dispensed in a place or manner which could create a hazard, and that floor areas where drip pans are used must be kept clean. A comment suggested deletion of the word "oil" from the final standard. MSHA agrees that the word is redundant and it is deleted. Other comments stated that it is impossible to always keep floor areas clean where drip pans are used. Some spills are inevitable and, consequently, the standard has been revised to require that floor areas be cleaned immediately after spills.

§§ 55/56/57.4–25

The proposal stated that fire hydrants shall have uniform fittings and that wrenches or keys to open the valves shall be readily available. In addition, where necessary, adapters capable of connecting hydrant fittings to the hose equipment of local fire departments must be readily available. Several comments questioned whether the standard was intended to require fire hydrants. The standard is not intended to require fire hydrants, but is intended to be applied when fire hydrants are used. To prevent misinterpretation, the phrase "whenever fire hydrants are used" is included in the final standard. Several comments suggested that the standard only apply to surface

installations. The difficulties encountered in underground fire fighting justify the application of this standard to underground installations. A delayed effective date has been added to provide operators with additional time to comply with the requirements of the standard.

§§ *55/56/57.4–26*

The proposal stated that certain equipment used for fire fighting purposes must be inspected every three months and tested annually. A comment stated that inspections every six months would be adequate. However, the three month inspection schedule and annual testing requirements are retained in the final rule. These requirements conform to the recommendations of recognized fire protection codes. Several comments questioned whether MSHA's requirements supersede those of state, county, or local governments. Section 506 of the Mine Act provides for compliance with the most stringent of the applicable standards, whether federal, state, county, or local. Consequently, when the federal standard is more stringent than the corresponding state, county, or local standard, the federal standard shall be applied.

§§ *55/56/57.4–27*

Proposed standard 55/56/57.4–27A, which is a revision of advisory standard 55/56/57.4–39, has been renumbered 55/56/57.4–27. The proposed standard stated that no self-propelled mobile equipment shall be operated unless a suitable fire extinguisher is accessible to the operator. Several comments requested clarification of the term "suitable". Because of the many different types and sizes of mining equipment covered by the standard, the term "suitable" (defined in 30 CFR 55/56/57.2, "Definitions") is used to provide operators with the flexibility needed to choose appropriate fire extinguishers. Additional comments questioned if "accessible to the operator" required that the fire extinguisher be located in the equipment's cab. The fire extinguisher need not be located inside the cab provided it is "readily accessible" to the equipment operator. The word "readily" has been included in the final standard to clarify that the equipment operator must be capable of reaching the fire extinguisher quickly and without difficulty in the event of a fire. A comment questioned whether the standard required that fire extinguishers be placed inside staff automobiles. The standard does not require that such automobiles be equipped with fire extinguishers.

§§ *55/56/57.4–39A*

Proposed standard 55/56/57.4–39A, based on advisory standard 55/56/57.4–6, stated that buildings or rooms in which oil, grease, flammable liquids, or similar flammable materials are stored shall be well-ventilated and of one-hour fire-resistance construction. In response to comments requesting that the standard exempt structures which are not located near working areas, the clause "which are within 100 feet of where miners normally work" has been added. This change conforms to the provisions of recognized fire protection codes. Several comments requested definitions for "flammable" and "combustible." These terms are defined in 30 CFR 55/56/57.2, "Definitions." Additional comments requested clarification for the phrase "one-hour fire-resistance construction." In response to these comments a clarifying change has been made in the final standard. A delayed effective date has been added to the standard to provide operators with adequate time for compliance.

§§ *55/56/57.4–39B*

Proposed standard 55/56/57.4–39B, a revision of advisory standard 55/56/57.4–31, stated that emergency fire fighting plans and training, in combination with suitable evacuation and rescue plans and equipment, must be established. In addition, plans must be coordinated with available professional fire fighting organizations and drills must be held at least twice a year. Several comments stated that fire fighting training is covered by 30 CFR Part 48, "Health and Safety Training and Retraining of Miners," issued as Part IV of the **Federal Register** on October 13, 1978, 43 FR 47454–47468 (Training Regulations). MSHA agrees with these comments and is removing the training requirement from the standard. Certain aspects of this standard are also the subject of MSHA's proposed regulations on mine rescue teams (proposed as 30 CFR Part 49 on January 5, 1979, 44 FR 1536). In developing the final mine rescue team standards, MSHA will take into consideration any areas of potential overlap or conflict.

The word "professional" is deleted from the phrase "available * * * fire fighting organizations" in response to comments that many operators in rural areas use volunteer fire fighting forces. Contrary to comments, MSHA believes that coordination with available fire fighting organizations is essential since these organizations may be called upon to assist in emergencies and to fight mine fires.

§§ *55/56/57.4–41*

The proposal would have required that every building or structure designed for human occupancy be provided with exits sufficient to permit the prompt escape of occupants in case of fire or other emergency. The proposal also contained general requirements for the design of exits. In response to several comments which stated that the proposed standard was vague and ambiguous, changes have been made. The phrase "designed for human occupancy" has been replaced by "where persons normally work" and the phrase "or other emergency" has been deleted since this standard addresses fire emergencies only. The second sentence, relating to the design of exits and other safeguards, has been deleted to avoid confusion. The final standard requires that every building or structure where persons normally work be provided with exits sufficient to permit the prompt escape of persons in case of fire.

§ *57.4–42*

MSHA has consolidated proposed standards 57.4–42 and 57.4–44 to coordinate the requirements of these standards. Proposed standard 57.4–42 stated that the excess of one day's supply of combustible mine supplies could not be stored within 100 feet of mine openings or mine ventilation fans. Proposed standard 57.4–44 stated that areas within 25 feet of mine openings must be kept free of combustible materials, except for installed wiring and materials in use for ground and track support. New mandatory standard 57.4–42 (a) and (b) places restrictions upon the materials allowed within prescribed distances of main and booster fans and mine openings.

Paragraph 57.4–42(a) states that no combustible materials are permitted within 25 feet of mine openings, and no combustible materials, except for one day's requirements of mine materials and supplies, are permitted within 100 feet of main and booster fans and mine openings.

Paragraph 57.4–42(b) clarifies the meaning of the phrase "combustible materials" (only as the term is used in this standard) by excluding installed wiring, ground support and track support, headframes, materials in transit, and buildings or other structures in compliance with new mandatory standard 57.4–43. MSHA recognizes that these combustible materials may

necessarily be located near fans and mine openings. The phrase "materials in transit" was added in the final standard to permit the transportation of materials into, and out of, mines. The exclusion for buildings and other structures in compliance with standard 57.4–43 was added in response to a comment suggesting that structures complying with the fire protection requirements of standard 57.4–43 should be allowed within the areas designated by standard 57.4–42.

The phrase "main and booster fans" in paragraph (a) was substituted for the proposed phrase "mine ventilation fans" to clarify those fans to which the standard applies. Both "booster fans" and "main fans" are defined in 30 CFR 57.2, "Definitions." In order to further clarify the standard, the proposed phrase "one day's supply" has been changed to "one day's requirements of mine materials or supplies." This determination is to be made by each particular mine's usage.

MSHA points out that the 25 foot restriction in new mandatory standard 57.4–42 applies to mine openings only, while the 100-foot restriction applies to both fans and mine openings. The restrictions placed upon materials permitted within 25 feet of main and booster fans is covered by standard 57.5–18B. Standard 57.5–18B, promulgated June 1, 1979 (44 FR 31917), requires that areas within 25 feet of main and booster fans be kept free of combustible materials except for installed wiring, materials used for fan maintenance, direct fired heaters, and materials used for ground support.

§ *57.4–43*

The proposal stated that buildings and other structures erected after the effective date and within 100 feet of any mine opening must be of at least one-hour fire-resistant construction, and that existing buildings must meet the same requirements within 3 years.

For clarity, the final standard has been written in two paragraphs. Regarding 57.4–43(a), several comments requested clarification of the phrase "one-hour fire-resistant construction." In response, the phrase has been changed to "constructed of materials having a fire-resistance rating of no less than one (1) hour as tested under the appropriate National Fire Protection Association (NFPA) fire-resistance test or under a test of another approved testing agency." The term "approved" is defined in 30 CFR 57.2, "Definitions." This change is also in response to a comment stating that the proposed requirement for one-hour fire-resistance construction would not allow for openings in buildings, such as openings through which hoist ropes pass. MSHA agrees, and the final standard, as modified, would allow for the passage of hoist ropes from hoist rooms to outside headframes.

In the final standard, the term "other structures" has been changed to "other similar structures" to clarify that the standard applies to buildings and other structures similar to buildings. Therefore, the term "other similar structures" is not applicable to headframes or facilities of open construction and built of unprotected structural steel such as elevator machinery, crushing stations or conveyor transfer stations. The standard, however, is applicable to such structures as office facilities, supply houses and shops. Furthermore, the standard applies to buildings and other similar structures that are located either completely or partially within 100 feet of mine openings and are located on mine property. In response to comments, the term "mine openings" has been clarified in the final standard to "mine openings used for intake air and mine openings that are designated escapeways in exhaust air."

In response to additional comments, buildings and other similar structures constructed of materials such as sheet metal, corrugated metal, and steel will comply with the standard if the materials are tested and found to meet a fire-resistance rating of no less than one hour.

Comments indicated that the proposed standard would require an extensive rebuilding program on the part of the mining industry, and recommended that operators be provided with the alternative of installing a suitable automatic fire suppression system in existing buildings or structures. The final standard provides, in 57.4–43(b), that an automatic sprinkler system or other suitable automatic fire suppression system may be installed as a substitute for the one-hour fire-resistance material requirements in existing buildings and in buildings under construction. The standard provides the time within which these systems must be installed. To be "suitable" such a system must provide a degree of safety equivalent to that provided by compliance with the requirement for one-hour fire-resistance construction.

§ *57.4–44*

The proposed standard has been consolidated with standard 57.4–42.

§ *57.4–45*

The proposal stated that blacksmith shops had to be well-ventilated, equipped with exhaust vents over the forge, inspected at the end of each shift for smoldering fires, of at least one-hour fire-resistant construction and located at least 100 feet from mine openings or fan installations. Further, the shops could not be located in buildings or snowsheds adjoining mine openings or fan installations unless provided with a fire wall or fire doors. Several comments requested that this standard apply only to blacksmith shops established after the effective date of the standard. Because of the serious consequences of a fire in a blacksmith shop located near a mine opening or fan installation, it is essential that existing blacksmith shops comply with the requirements of the standard.

The phrase "one-hour fire-resistant construction" has been clarified in response to comments requesting guidance as to the phrase's meaning. The term "fire door" is defined in 30 CFR 57.2, "Definitions." Editorial changes have been made for clarity. In particular, the term "vagrant" has been deleted from paragraph (b) and paragraph (d) has been restated.

§§ *55/56/57.4–47*

Proposed standard 55/56/57.4–47, based on advisory standards 55/56/57.4–34 and 57.4–47, stated that where ignition of a conveyor belt would create a hazard to personnel, belt conveyors must be equipped with a safety switch to stop the drive pulley automatically in the event of excessive slippage. A comment stated that generally conveyor belts only smolder when excessively heated by friction and, consequently, the possibility of conveyor belt fires should be viewed as remote. MSHA disagrees. Conveyor belt fires can result from excessive slippage at the belt drive. Consequently, the standard is being retained. However, in response to comments, the standard has been modified and applies only when a belt conveyor is operated in a location "where ignition of the belt would create a hazard to personnel."

Recent experience has demonstrated that a second sentence must be added to cover those instances where it may be necessary to operate the conveyor belt while temporarily by-passing the safety switch or any automatic function of the switch. In those instances, a person will be required to attend the belt at the drive pulley.

While this standard applies to surface activities, existing mandatory standard

57.4–75 requires that belt conveyors located underground must be provided with slippage and sequence switches.

§ *57.4–55*

The proposed standard would have required that suitable fire protection be provided in transformer stations, pump rooms, and compressor rooms located in designated underground fire areas. Several comments requested a definition for the word "suitable." The word, defined in 30 CFR 57.2, "Definitions," has been retained to afford operators flexibility in choosing a system of fire protection that responds to their individual needs. MSHA has withdrawn for further study the proposed definition for "designated underground fire areas." The final standard requires that transformer stations, pump rooms, compressor rooms and similar installations located in "timbered areas or in areas where exposed rock is combustible" be provided with suitable fire protection.

§ *57.4–57*

The proposal stated that trailing cables must be flame-resistant in accordance with section 18.64, Part 18, CFR 30. No substantive comments were received on this standard. However, the advisory committee recommended that the Secretary allow time for compliance by industry. Consequently, this standard will become effective 15 months after publication in the **Federal Register.** Editorial changes have been made in the final standard for clarity.

§ *57.4–61A*

The proposed standard, based on advisory standard 57.4–61, stated that fire doors on ventilation control doors must be: provided as part of an overall evacuation plan on shaft stations or other appropriate locations where necessary to prevent the spread of smoke or gas; equipped with latches operable from both sides; remotely controlled where appropriate; and equipped with suitable man doors. The proposal also stated that the location and design of these doors had to be submitted to the Secretary for review and comment.

Standard 57.4–61A addresses the recognized potential for underground fires and the need to control air coursed into, and through, a mine in the event of fire. This control is essential to the protection and evacuation of miners in the event of an emergency.

The Sunshine Mine in Kellog, Idaho, had a major mine fire on May 2, 1972, which resulted in the deaths of 91 miners from smoke and harmful gas inhalation. The postfire investigation by the Bureau of Mines, Department of the Interior, determined that had ventilation doors (similar to a type required by this standard) been present at certain key locations, it is likely that the smoke and harmful gases from the fire could have been prevented from reaching the area where most of the men died. [Final Bureau Report, issued 2/14/73, p. 4, "Abstract," No. 9 and Report, p. 69, "Recommendations," Item 2(e).]

Comments questioned the types of doors required by the proposal. To clarify this issue, the reference to "fire doors or ventilation control doors" has been changed to "ventilation doors." The intent of the proposal was that the criteria for ventilation doors contained in existing mandatory standard 57.5–31 would be applied to the ventilation doors required by this standard. New paragraph (a) has been added in the final standard to clarify this intent and to provide operators with the requested guidance for construction of the ventilation doors. Consistent with standard 57.5–31, all doors required by standard 57.4–61A must be substantially constructed, covered with fire-retardant material (if constructed of wood), maintained in good condition, self-closing (if manually operated), and equipped with audible or visual warning devices (if mechanically operated).

New paragraph (b) of the final standard deals specifically with ventilation doors located in timbered areas, in areas where the exposed rock is combustible, or in areas where a significant fire hazard is present. In these areas, there is an increased danger of a fire destroying the doors, or causing them to fail. Doors in these areas, in addition to satisfying the requirements of standard 57.5–31, must be constructed according to the specifications within the definition of "fire door" in 30 CFR 57.2, "Definitions."

New paragraph (c) of the final standard clarifies, in response to comments, what was meant by the proposed phrase remotely controlled "where appropriate." The doors required by the standard must be provided with a means of remote closure "unless other means of closing the door are assured." Instead of remote control, operators many provide that a person is available in the area at all times to open or close doors in the event of a fire. The person must be in constant communication with the surface, whether by telephone, radio, or an equivalent means.

New paragraph (d) provides that the doors must not reopen as a result of a differential in air pressure. This provision has been added because the unintentional opening of doors could misdirect the mine ventilation air, including smoke or gas, thereby hampering escape and evacuation during an emergency and endangering the lives of miners.

New paragraph (e) clarifies the intent of the proposed requirements that the doors be "equipped with latches operable from both sides * * * and equipped with suitable man doors." The latches operable from both sides of the door were intended to insure that the door would be capable of being opened from either side by one person. Paragraph (e) states that the doors must be constructed so that they can be opened from either side by one person, or provided with a man door that can be opened from either side. Therefore, man doors are not required in all instances.

MSHA has found that, when ventilation and fire doors are installed, timber and other material is often piled around the frames of the doors. To promote safety, new paragraph (f) requires that all doors be kept clear of obstructions and extraneous materials.

Several comments questioned the relationship of this standard with mandatory standard 57.11–53. The proposed standard stated that doors shall be provided on shaft stations or other appropriate locations "as a part of an overall evacuation plan." To clarify the relationship of these standards, this wording has been changed to: "doors shall be installed at or near shaft stations of intake shafts and at any shaft designated as an escapeway under standard 57.11–53, or at other locations which provide equivalent protection." Once the required doors are installed, their locations must be indicated in the escape and evacuation plan.

With respect to the location of the required doors, MSHA agrees with comments which stated that the location of fire and ventilation doors must be determined on an individual mine-by-mine basis. MSHA has found that in most mines the best location for ventilation doors intended to prevent the spread of smoke or gas in the event of a fire has proved to be at or near shaft stations of intake shafts and at shafts designated as escapeways. The reference to these locations has been included in the final standard to serve as a guide regarding the ultimate location of the required doors. However, NSHA recognizes that in some mines the doors may be installed at appropriate locations other than those mentioned. Consequently, the phrase "or at other locations which provide equivalent protection" is included in the standard.

Many factors must be considered in determining the appropriate location in a particular mine for fire and ventilation doors. Among the factors to be considered are: the configuration of the mine; the escape and evacuation plan; the mine ventilation system; the ability to reverse air direction at fans; whether or not automatic fire suppression devices have been installed; the location of potential fire sources; whether facilities such as flammable or combustible liquid storage depots, explosives magazines and underground shops are located on separate splits of air; and the locations of seals.

In the proposed rulemaking, MSHA stated that it was particularly concerned that the portion of the proposed rule which provided for "review and comment" by the Secretary might not adequately ensure that all factors relevant to the location of the required doors would be fully considered and implemented in all cases [43 FR 40766]. Several comments were received in this regard. A few comments stated that review and comment was sufficient to insure full compliance and understanding of the standard. However, another comment stated that, as a practical matter, the location of the doors would have to be approved before an operator could proceed with assurance of full compliance with the standard. Another comment stated that the phrase "review and comment" allowed the Secretary only to make recommendations for which there was no enforcement authority; the recommendations could be rejected, and doors could be placed in inappropriate locations. MSHA agrees. It is the obligation of both the mine operators and the Secretary, through MSHA, to do everything possible to prevent disasters such as the one which occurred at the Sunshine Mine. The intent of the advisory standard can only be realized if MSHA ensures that doors are installed at appropriate locations. Consequently, the phrase "review and approval" has been included in the final standard. This provides MSHA with the authority to require that doors be installed at appropriate and specified locations. The submission of the location by the mine operators, and MSHA's review and approval, is consistent with the concurrent responsibility of both the mine operators and MSHA to protect the lives of miners in the event of a fire underground.

The final standard states that the location (and relocation) of the doors shall be submitted to MSHA for review and approval. For the standard to be fully effective, it is essential that MSHA approve all changes in the location of the doors. This standard is be effective February 13, 1980. To ease the burden on operators, requests for door location approval may be coordinated with escape and evacuation plan submissions under standard 57.11–53.

MSHA points out that approval of the location of doors in a particular mine does not relieve operators from the duty of constantly maintaining safe fire protection conditions in their underground mines. The requirement of approval will alert operators to the seriousness of fires in underground facilities. It also reflects a recognition that each mine is unique and presents particular problems.

§ *57.4–61B*

The proposal, based on advisory standard 57.4–61, stated that mine operators had to install a fire door or bulkhead of fire door construction in each shop opening to confine and prevent the spread of toxic gases from a fire originating in an underground shop. The fire door had to be: constructed to prevent reopening as a result of differential air pressure; provided with a man door capable of being opened from either side; suitably airtight; and clear of obstructions and extraneous material. The proposed standard further stated that it was to be applied where shop exhaust air could not be routed directly to an exhaust system and people would be endangered elsewhere in the mine by toxic gases from a shop fire.

The proposal has been revised in response to comments indicating confusion about the standard's application. The final standard clarifies that operators must either install fire doors or bulkheads in each opening to an underground shop, or route mine shop exhaust directly to an exhaust system in such a manner that personnel would not be exposed to toxic gases in the event of a fire originating in an underground shop.

Comments questioned the need for a specific standard for underground shops. The standard is being promulgated because undergound shops are particularly hazardous areas of mines. The maintenance of equipment involves oils, greases, and tires which, in combination with grinding, welding, heating and cleanup procedures, create a high potential for fire. A comment stated that it would be difficult to install fire doors or bulkheads in large open stope mines where large openings are needed for the movement of equipment. The standard provides operators with the option of routing mine shop exhaust directly to an exhaust system.

A comment expressed the opinion that there is no need for fire doors or bulkheads in the intake air opening of a shop if fire doors or bulkheads are in the exhaust air opening. In underground fires, smoke tends to roll back against the intake ventilation current; consequently, closing only the doors in the exhaust air opening could result in the contamination of intake air. In response to a comment regarding the necessity of a man door in a small fire door, paragraph (b)(2) of the final standard has been revised to allow fire doors without man doors if the fire doors can be opened from either side by one person.

§ *57.4–62*

The proposal stated that for a distance of 200 feet inside the mine portal or collar, timber and mine entrances must meet a flame spread rating of 25 or less as defined in ASTM M162–67 or have adequate fire protection. The final standard is corrected to read "Timber *in* mine entrances" in response to comments accurately citing a typographical error. A comment stated that the standard should apply only to mine entrances in intake ventilation. However, entrances in exhaust air also need the protection provided by this standard to prevent damage to the exhaust portal. A comment asked if the flame spread rating applies to timber in its installed condition "soaking wet" or to new dry timber before installation. Since the possibility exists that wet timber used in mine entrances could dry out, the flame spread rating applies to timber in its dry state. MSHA has reworded the language regarding flame spread ratings and deleted the phrase "as defined in ASTM M162–67." MSHA will accept ASTM method of test E–162 ("M162" was a typographical error), or an equivalent test, provided the operator establishes its equivalency.

§ *57.4–63*

The proposal stated that waterline outlets located at shaft stations had to have at least one fitting suitably located for connecting fire fighting equipment. No significant comments were received on this standard. It is promulgated with editorial changes in the proposed language.

§ *57.4–66*

The proposal stated that suitable fire protection must be provided for head, tail, drive and takeup pulleys on belt conveyors and at suitable intervals along belt lines. Several comments stated that the term "suitable" was

vague. The term is defined in 30 CFR 57.2, "Definitions." MSHA has retained this term since it provides mine operators with flexibility in choosing a fire protection system appropriate for their conveyor installations. The standard is promulgated with editorial changes in the proposed language.

§ *57.4–72*

The proposal stated that only trained mine rescue personnel can advance beyond the fresh air base in rescue and fire fighting operations. No substantive comments were received on this standard. It is promulgated with editorial changes in the proposed language. Certain aspects of this standard are also the subject of MSHA's proposed regulations on mine rescue teams (proposed as 30 CFR Part 49 on January 5, 1979, 44 FR 1536). In developing the final mine rescue team standards, MSHA will take into consideration any areas of potential overlap or conflict.

Section 5—Air Quality, Ventilation, Radiation, and Physical Agents

§ *57.5–25*

The proposed standard required that main fans be maintained either according to manufacturer's recommendations or a written periodic schedule adopted by the operator and available at the operation on request of the Secretary.

Several comments objected to the requirement that operators establish their own schedule for main fan maintenance in the absence of manufacturer's recommendations. MSHA believes that establishing such a schedule does not place an undue burden on operators. Furthermore, this alternative provides operators with flexibility in choosing a schedule which reflects their needs. The standard is promulgated with editorial changes.

§ *57.5–27*

The proposal stated that flame safety lamps or other suitable devices shall be used to test for acute oxygen deficiency. The proposed standard is promulgated without change. This standard addresses the need for a safe, quick test for acute oxygen deficiency. It is not intended to suggest that the devices required by this standard are adequate to test for compliance with mandatory standard 57.5–15. Standard 57.5–15 requires that air in all active workings contain at least 19.5 volume percent oxygen. Oxygen analyzers are generally used to measure for oxygen levels.

§ *57.5–29*

The proposed standard would have required that auxiliary fan systems (when used) be installed to prevent recirculation and be maintained to provide ventilation air that effectively sweeps the working places. In the final standard, the phrase "to prevent recirculation" has been changed to "to minimize recirculation" in response to comments. MSHA recognizes that minor recirculation at fans and leakage of air at stoppings can be tolerated so long as air quality standards are met. The standard is promulgated with the above revision and with editorial changes.

Section 6—Explosives

§§ *55/56/57.6–130*

The proposal stated that an least a 15-foot air gap must be provided between the blasting circuit and the electric power source. The advisory standard recommended a 5-foot air gap. Several comments objected to the increased from 5 feet to 15 feet for the gap between the blasting circuit and the electric power source, stating that small (e.g., 5' x 8') cross-section drifts could not comply. The cross-sectional width of drifts does not affect an operator's ability to comply with the standard. The 15-foot distance can be measured along the line of the drift. Because of the extremely high currents involved, even distant lightning strikes can detonate electric initiation systems in both underground and surface operations. The danger of lightning is increased considerably if there is any conductor to carry current between the storm and the shot location. A 15-foot air gap must be provided to act as a lightning break and the gap should be bridged by a flexible jumper cable just prior to firing the blast. The standard is promulgated with editorial changes.

§ *57.6–141*

The proposal, based on advisory standard 57.6–178, provided that shots must be initiated from one source in secondary blasting if more than one shot is to be fired at one time. There were no comments received on this standard. It is promulgated as proposed.

Section 7—Drilling

§§ *55/56/57.7–9*

The proposal stated that the drill helper (when used) shall be in sight of the operator at all times and shall assist the operator while the drill is being moved to a new drilling area. Several comments questioned whether the proposed standard was intended to require a drill helper to assist the dirll operator during movement of drill to a new location. The standard is revised to clarify that a drill helper is not required. However, if a drill helper is used, the mine operator must comply with the standard. Several comments stated that it is unnecessary and at times impossible to have the drill helper constantly in view of the operator. In response to these comments, MSHA has revised the proposal to require that the helper be "in sight of, or in communication with" the operator at all times. One means of communication is by radio. The language of the advisory standard, "to a new location," is substituted for the proposed phrase "to a new drilling area" because MSHA has determined that the proposed phrase would place undue limitations on the standard by excluding movements of drills to new locations for purposes other than drilling; for example, moving drills to a repair station. MSHA intends that the standard be applied in all instances that a drill helper is used to assist a drill operator during movement of the drill to a new location.

§ *57.7–28*

The proposal would prohibit persons form resting their hands on the chuck or centralizer while drilling. No significant comments were received on this standard and it is promulgated as proposed.

§ *57.7–32*

The proposal stated that columns and the drills mounted on them shall be anchored firmly before drilling is started and shall be so maintained while drilling. No comments were received on this standard and it is promulgated with editorial changes.

§§ *55/56/57.7–50*

Advisory standards 55/56/57.7–6 and 57.7–30 have been consolidated, made applicable to surface and underground, and renumbered 55/56/57.7–50. Proposed standard 55/56/57.7–50, based on the above advisory standards, stated that receptacles or racks shall be provided for drill steel and tools stored or carried on drills. No substantive comments were received and the standard is promulgated with the proposed language.

§§ *55/56/57.7–51*

Proposed standard 55/56/57.7–51, based on advisory standard 55/56/57.7–7, stated that tools and other objects shall not be left loose on the mast or drill platform. Comments questioned the use of the term "drill platform." With respect to mobile drills, the term drill

platform is commonly used throughout the mining industry to mean the work areas on those drills. Drill platforms are included in the standard because movement of the drill unit may relocate loose tools or objects to positions on the platforms that could be hazardous to personnel. The standard is promulgated with the proposed language.

§§ *55/56/57.7–52*

Advisory standards 55/56/57.7–15, 57.7–26, and 57.7–27 are consolidated, made applicable to surface and underground, and renumbered 55/56/57.7–52. Proposed standard 55/56/57.7–52, based on the above advisory standards, stated that persons must not drill from positions that hinder their access to control levers, or from insecure staging, or from atop unsuitable equipment. Some comments questioned whether the standard applies to all drills. The standard applies to hand operated drills, such as jackleg drills, where the operator might lose control of the drill if the operator is improperly positioned or is drilling from insecure footing or staging. The standard is promulgated with editorial changes in the proposed language.

§§ *55/56/57.7–53*

Advisory standards 55/56/57.7–19 and 57.7–29 are consolidated, made applicable to surface and underground, and renumbered 55/56/57.7–53. Proposed standard 55/56/57.7–53, based on the above advisory standards, provided that before hand-held drills are moved from one working area to another, air shall be turned off and bled from the hose. Several comments questioned whether the standard is applicable to all movements of hand-held drills. In this standard, "working area" means the working location of the drill. This standard is intended to apply when hand-held drills are moved from one working location to another. It is not intended to apply to movements of drills from hole to hole within a working location. Hand-held drills are heavy pieces of machinery that could severely injure personnel if accidently turned on. For this reason, MSHA is requiring that air be turned off and bled from the hose before drills are moved. A few commenters felt that safety shutoff valves provided adequate safeguards. MSHA disagrees. Valves in the air line do not automatically eliminate pressure in the hose to the drill. Hand-held drills can run for significant periods of time from residual air pressure in the lines and the drills will operate if the drill's admission valve is inadvertently depressed. The standard is promulgated as proposed.

§ *57.7–54*

Proposed standard 57.7–54, based on advisory standard 57.7–31, stated that drill operators shall be certain that all persons are in the clear before starting or moving equipment. Since no substantive comments were received, the standard is promulgated in Part 57 with editorial revisions in the proposed language. However, it will not be promulgated at this time in Parts 55 and 56 as proposed.

Section 8—Rotary Jet Piercing

§§ *55/56/57.8–1*

The proposal required that jet piercing drills have a system to pressurize the operator's cabs (when cabs are provided) and a protective cover over the oxygen flow indicator. The only comment received on this standard expressed a misunderstanding as to the standard's application. The standard does not require operators to use jet piercing drills, and need only be complied with when such drills are used. The standard is promulgated with editorial changes.

§§ *55/56/57.8–4*

The proposal provided that where equipment required refueling at locations other than fueling stations, a system for fueling from the ground without spill shall be provided. Several comments expressed confusion about the application of this standard. This standard has been revised to emphasize that it only applies when rotary jet piercing equipment is used. Additional comments expressed confusion regarding the phrase "from the ground." The phrase has been omitted to clarify that truck-mounted refueling tanks can be utilized provided refueling is accomplished without spill.

Section 9—Loading, Hauling, Dumping

§§ *55/56/57.9–10*

The proposal provided that cabs shall be constructed to permit the equipment operator to be reasonably comfortable and to see without straining. Comments objected to the ambiguity of the phrases "reasonably comfortable" and "see without straining." MSHA agrees with these comments. The final standard has been revised to require that cabs not be equipped, altered or otherwise modified in a manner which impairs operating visibility. The standard has been further revised, in response to comments, to clarify that it applies only to post-construction modifications of equipment operators' cabs, rather than to the cabs' original design and construction.

§§ *55/56/57.9–16*

The proposal provided that certain trackage elements of railroads must be designed, installed and maintained in a safe manner consistent with speed and type of haulage. Comments stated that railroad equipment is often owned and operated by railroad companies or other entities over which the operator has little or no control. In response to these comments, the standard is revised to apply only to roadbeds, rails, joints, switches, frogs, and other trackage elements on railroads "subject to the control of the operator." In other respects, the standard is promulgated as proposed.

§§ *55/56/57.9–63*

The proposal stated that ramps and dumping facilities must be of substantial construction having suitable width, clearance and headroom to accommodate the equipment serviced. The main comments received on this standard concerned the uncertainty of the terms "substantial construction" and "suitable." Both terms are defined in 30 CFR 55/56/57.2, "Definitions." Several comments objected to the use of the term "serviced", for which MSHA has substituted the phrase "using the facilities." Other revisions in the standard are editorial.

§§ *55/56/57.9–70*

The proposal provided that heavy equipment must be towed with a substantially constructed tow bar unless another means is advisable; and, in addition, a substantial safety chain or wire rope must be used. Several comments stated that the proposed standard was not clear regarding its application to the towage of different types and sizes of heavy equipment. Comments also indicated that the use of a tow bar would, in some instances, be more dangerous than a suitable alternative. For example, a tow bar adopted for a large dump truck may be so large and heavy that its mere handling and placement would expose a number of persons to danger. In response, the wording of the first sentence has been changed to allow, as an alternative to a tow bar, "other suitable means of control." The change allows flexibility, provided that the alternative means maintains the same degree of control over the towed vehicle as a tow bar. Comments inquired whether the standard was applicable to mine trains. The standard does not apply to couplers between cars of mine

trains. The second sentence of the standard was modified to shorten the phrase "tow bar or primary rigging" to merely "primary rigging."

§§ *55/56/57.9–74*

Proposed standard 55/56/57.5–4 stated that dust shall be suitably controlled at muck piles, haulage roads, rock transfer points, crushers, and other points where dust is produced in amounts sufficient to cause a health or safety hazard. The intent of this standard is to protect persons from injuries that may result from impaired visibility. The proposed standard has been changed to clarify this intent. This has been accomplished by substituting the phrase "where hazards to personnel may be created as a result of impaired visibility" for the proposed phrase "where dust is produced in amounts sufficient to cause a health or safety hazard." The final standard lists specific locations where the dust must be suitably controlled, namely, muck piles, material transfer points, crushers, and haulage roads. MSHA has deleted the proposed phrase "and other points" following the list of locations. The change results from MSHA's agreement with comments stating that the proposed phrase was too broad and uncertain.

Comments questioned whether "wetting down" is an acceptable method of controlling dust. "Wetting down" is one of the most effective means of complying with the standard and can be used at all locations designated. However, operators may choose to use other methods to protect personnel from hazards which can result from dust in addition to, or as an alternative to, "wetting down." For example, vehicles on haulage roads can be required to travel at slower speeds or with greater distances between the vehicles.

Several comments questioned whether the proposed standard was a health or safety standard, or both. The health hazards associated with dust are already covered by existing mandatory standards 55/56/57.5–1, 55/56/57.5–2, and 55/56/57.5–5. In response to these comments, and because the standard addresses muck piles, haulage roads, rock transfer points, and crushers, proposed standard 55/56/57.5–4 has been transferred to 30 CFR 55/56/57.9, "Loading, hauling, dumping," and renumbered 55/56/57.9–74. In its new location in the CFR, this standard replaces advisory standard 55/56/57.9–18, which was revoked based on the coverage provided by proposed standard 55/56/57.5–4.

§ *57.9–105*

The proposal stated that empty chutes must be properly guarded prior to filling or sufficient material must be left in the chute bottom to prevent rock from flying out when broken material is dumped into the chute. No comments were received on this standard. It is promulgated with editorial changes in the proposed language.

§ *57.9–115*

Under the proposal, covered man trip cars would be provided where there is danger of passengers contacting the trolley wire. The only comment on this standard suggested it be revoked because the proposed language "where there is danger" was undefined. Because of the severity of injury that can result from contact with trolley wires, it is imperative that man trips be covered if there is a possibility of persons coming into contact with the wires. The standard is promulgated with editorial changes in the proposed language.

Section 10—Aerial Tramways

§§ *55/56/57.10–1*

The proposal prohibited the overloading of buckets and required that feed be regulated to prevent spillage. A few comments indicated some confusion about the application of this standard. The standard applies only to buckets on aerial tramways and not to buckets on other systems. The standard is promulgated as proposed.

§§ *55/56/57.10–2*

The proposal provided that inspection and maintenance of carriers must be by competent persons following manufacturers' recommendations and as conditions warrant. Comments questioned the general application of this standard. The standard applies to aerial tramways only. The proposed standard is promulgated with an editorial revision.

§§ *55/56/57.10–4*, §§ *55/56/57.10–5 and* §§ *55/56/57.10–6*

Proposed standard 55/56/57.10–4 provided that aerial tramways must be equipped with automatic, positive-action-type brakes and devices which apply the brakes automatically in the event of power failure. Proposed standard 55/56/57.10–5 stated that track cable connections shall not obstruct the passage of carriage wheels. Proposed standard 55/56/57.10–6 provided that towers must be protected from swaying buckets. A few comments questioned the applicability of the standards to sand and gravel operations. These standards are applicable only to the extent that aerial tramways are used on mine property or in mining operations. The standards are promulgated as proposed.

Section 11—Travelways and Escapeways

§§ *55/56/57.11–4*

The proposal provided that portable rigid ladders must have suitable bases and be securely placed. A few comments requested examples of "suitable bases." MSHA would consider "suitable bases" to include non-slip ladder shoes or spikes or other devices that secure the ladder in position when work is performed from the ladder. The standard is promulgated with editorial revisions.

§§ *55/56/57.11–7*

The proposal would prohibit painting wooden members of ladders with anything except a transparent finish. The intent of this standard is to avoid the concealment of defects or damage. This standard is promulgated with editorial changes. Because the word "members" may cause confusion, the phrase "wooden members of ladders" has been changed to "wooden components of ladders."

§§ *55/56/57.11–10*

The proposal provided that stairs must have a vertical clearance of at least 7 feet, or a suitable warning must be provided. A request was made for additional time to comply with this standard. MSHA feels that the 90-day delayed effective date provided by this rulemaking for compliance will give operators ample time to meet this standard's requirements. One comment suggested that MSHA clarify the standard by adding the words "signs or devices" following "suitable warning." MSHA agrees and has incorporated the phrase "suitable warning signs and similar devices" in the final standard.

§§ *55/56/57.11–11*

The proposal would have required that persons climbing or descending ladders face the ladders and have both hands free for climbing. The final standard is clarified to require that persons using ladders face the ladders and have both hands free for climbing and descending. The fact that miners may be trained in the use of ladders does not eliminate the need for a standard requiring compliance with this important work practice.

§§ *55/56/57.11–17*

This standard, which prohibits fixed ladders from inclining backwards, is promulgated as proposed. Comments suggested that sufficient time be granted to comply with the standard. MSHA feels that the 90-day delayed effective date of this rulemaking provides sufficient time for compliance.

§§ *55/56/57.11–25*

The proposal listed detailed specifications for ladders used to ascend to heights exceeding 20 feet. Several comments were received requesting a "grandfather clause" since the proposal would have caused many existing and safe ladders to be considered as unacceptable. Additional comments stated that portions of the proposed standard were unclear. In response to these comments the proposed standard has been changed to conform more closely with the language of the original advisory standard. The final standard requires that fixed ladders, except on mobile equipment, shall be offset and have substantial railed landings at least every 30 feet. Backguards or equivalent protection, such as safety belts and safety lines, are acceptable in lieu of the substantial railed landings. MSHA believes that the final standard responds to the basic concerns of the comments, and therefore makes a "grandfather clause" unnecessary.

§§ *55/56/57.11–26*

The proposal provided detailed requirements and figures for the construction of cages and wells. Several comments expressed concern over the detailed requirements of the proposed standard. They noted that many operations have adequate cages or wells constructed in a manner which complies with the advisory standard, but which would not comply with the proposed standard. In consideration of these comments, the language of the original advisory standard is promulgated with editorial changes. MSHA will undertake a further study of cage and well design.

§ *57.11–37*

The proposal stated that ladderways constructed after the effective date of the standard must have a minimum unobstructed cross-sectional opening of 24 inches by 24 inches measured from the face of the ladder. Comments concerned the difficulty of maintaining the 24 inch by 24 inch minimum opening for a ladderway where high rock stresses distort or reduce the size of the opening and the difficulty of complying with the standard in veins less than 24 inches wide. MSHA has determined that injuries have unnecessarily occurred because inadequate ladderway openings prevented the safe and rapid passage of miners, rescue teams, or medical equipment during emergencies. Therefore, the standard is promulgated as proposed. MSHA notes that in situations involving mines with unusual physical configurations, a variance procedure is available for obtaining a modification of the application of a safety standard (30 CFR Part 44).

§ *57.11–38*

The proposal stated that before entering a manway in which persons are working, a warning must be given and acknowledged. A comment stated that the standard does not recognize the difficulties in transmitting warnings through long manways. However, MSHA believes that compliance with the requirements of this standard is essential in order to reduce unnecessary exposure to potential hazards.

The standard is promulgated with editorial changes for clarity.

§ *57.11–40*

The proposal provided that travelways steeper than 35 degrees be provided with ladders or stairways. A comment was received stating that 35 degrees should be changed to 45 degrees since ladders and stairs at 35 degrees are more difficult to travel than ground at the same slope. Stairways are used because they are easier to travel than a slope. A stairway normally does not exceed a 7-inch riser with a 10-inch tread, or an average slope of 35 degrees from the horizontal. Ladders are usually considered for slopes greater than 35 degrees. Therefore, the standard is promulgated as proposed.

§ *57.11–41*

The proposal stated that fixed ladders with an inclination of more than 70 degrees from the horizontal had to be offset with substantial landings at least every 30 feet or have landing gates at least every 30 feet. Comments cited difficulties in offsetting with substantial landings many fixed ladders currently in use. However, the only fixed ladders affected by this standard are those with an incline of more than 70 degrees from the horizontal. Furthermore, the standard provides operators with an alternative to the requirement that the affected ladders be offset with substantial landings at least every 30 feet. The standard allows operators to provide landing gates at least every 30 feet. The standard is promulgated with an editorial change.

§ *57.11–56*

The proposal stated that emergency hoists designated in any evacuation plan must be in compliance with the inspection and testing requirements of standard 57.19–120. Comments received on this standard suggested either that it be revoked or that the inspections be scheduled less frequently. Since it is essential that an emergency hoist function properly during a mine emergency, frequent inspection, testing and maintenance must be conducted. The standard is promulgated with an editorial change.

The advisory standard recommended that emergency hoists should conform, to the extent possible, to the safety requirements for man hoists, and that emergency hoists should be adequate to remove miners from the mine with a minimum of delay. In eliminating these directives from the new mandatory standard, it is not intended to imply that emergency hoists which are specifically designed, installed and used for the escape and evacuation of personnel be required to comply with the mandatory standards for personnel hoists in 30 CFR 57.19, "Man hoisting." Emergency hoists are intended to perform different functions than other hoists that are used daily over a long term to raise and lower personnel and materials. Emergency hoists are designed to provide simplicity of operation, are located in designated escape areas, and are maintained on a stand-by basis to evacuate personnel quickly in the event of an emergency. However, to continue MSHA's current policy and to clarify the application of the hoisting standards in 30 CFR 57.19, the introductory statement to 30 CFR 57.19 is amended by adding a new second paragraph which restates the former advisory standard directives. MSHA is currently developing new mandatory standards applicable to the particular needs for emergency escape facilities.

Section 12—Electricity

§§ *55/56/57.12–4*

The proposal stated that electrical conductors must be selected so that a normal rise in temperature would not damage the insulation. In addition, the proposal called for suitable protection from mechanical injury. Some objections were made to the use of the word "suitable." The word has been deleted in the final standard. A comment stated that the words "mechanical damage" are preferable to the proposed words "mechanical injury." These words have been substituted in the final standard.

§§ *55/56/57.12–19*

The proposal stated that suitable clearance had to be provided at stationary electrical equipment or switchgear where access is necessary. Some comments requested MSHA to consider including the applicable provisions of the National Electric Code in the standard. MSHA will study the need for such a change. Other comments requested a definition for "suitable clearance." The word "suitable" is defined in 30 CFR 55/56/57.2, "Definitions." The word is retained to provide operators with the flexibility required to meet their varying needs. The standard is promulgated as proposed.

§§ *55/56/57.12–22*

The proposal stated that areas containing major electrical installations can only be entered by authorized persons. Several comments asked for a definition of "major electrical installation," and one comment asked for a definition of "authorized." These terms are defined in 30 CFR 55/56/57.2 "Definitions." The standard is promulgated as proposed.

§§ *55/56/57.12–35*

The proposal stated that lamp sockets exposed to weather or wet conditions must be of a weatherproof type. The intention of the proposed standard is to protect miners from potential electrical shock and injuries that could occur when there is an unintentional failure of illumination in work areas exposed to weather or wet conditions. Comments stated that more effective devices for shock prevention such as circuit interrupters should be used. Circuit interrupters will protect miners from electrical shock, but are not an acceptable alternative to weatherproofing exposed lamp sockets because circuit interrupters will not provide the same degree of safety in locations where illumination is critical. Weatherproofing lamp sockets exposed to weather or wet conditions will protect miners because the lamp sockets are to be constructed or protected in such a way that exposure to these conditions will not interfere with their successful operation. The term "weatherproof" under this standard is to be applied in a manner consistent with the use of the term in the National Electrical Code. Accordingly, weatherproof type lamp sockets will protect the fixture when dust or temperature extremes will interfere with their successful operation. Furthermore, rainproof, raintight, or watertight sockets may be substituted for weatherproof type where wetness is the only factor affecting successful operation. Other comments stated that the standard should apply only where employees are exposed to a hazard. The proposed standard has been changed by adding the qualifying phrase "that may interfere with illumination or create a shock hazard" to clarify that the term "weatherproof" is to be applied in a manner consistent with the use of this term in the National Electrical Code. Comments also urged that inaccessible lamp sockets not be included in the standard. Inaccessible lamp sockets are subject to the standard to assure that the intended illumination is maintained in appropriate work areas.

§§ *55/56/57.12–38*

The proposal stated that trailing cables must be connected to machines in a suitable manner to protect the cable and to prevent strain on the electrical connections. No comments were received on this standard. It is promulgated as proposed.

§§ *55/56/57.12–39*

The proposal provided that the surplus trailing cables to shovels, cranes and similar equipment must be stored in cable boats or on reels mounted on the equipment or otherwise protected from mechanical damage. Several comments questioned whether operators were required to install cable boats or reels on all mobile equipment. This is not the intent of the standard. The procedures that may be used to protect cable from mechanical damage to the insulation and conductors are numerous.

Operators may protect cables by storing them in cable boats or on mounted reels, hanging them from supports on the roof or ribs, or storing them in areas where no mechanized activities take place. Editorial revisions have been made in the proposal.

§§ *55/56/57.12–50*

The proposal stated that trolley wires must be installed at least seven feet above the rails, where possible, and aligned and supported to control sway and sag. Comments requested that the standard be deleted from Part 56, which covers sand, gravel and crushed stone operations, asserting that trolley wires are not used in such mines. However, MSHA is retaining the standard in Part 56 to provide safety to the extent that trolley wires may be used in such surface facilities. One comment asked that a "grandfather clause" be added to the standard. MSHA believes immediate compliance with this standard is essential, considering the safety benefits it provides. The standard is promulgated as proposed.

§§ *55/56/57.12–53*

The proposal provided that ground wires for lighting circuits powered from trolley wires be connected securely to the ground-return circuit. There were no comments received on this standard and it is promulgated as proposed.

§ *57.12–86*

The proposal stated that trolley wire and trolley-feeder wire must be installed opposite the clearance side of haulageways, except if that is not feasible. No comments were received on this standard. However, the proposal has been revised for clarity. A second sentence in the final rule has been substituted for the proposed phrase "except where it is not feasible." MSHA recognizes that the configurations of some mines are such that physical limitations prevent the safe installation or use of trolley and trolley-feeder wire opposite the clearance side of the haulageways.

§§ *55/56/57.12–88*

The proposal stated that only a vulcanized splice or an equivalent splice can be made in trailing cables within 25 feet of the machine unless a cable reel is supplied; it also permitted a temporary splice to be made, if necessary, to move the equipment for repair. One comment suggested that there are means other than cable reels for the payout or retrieval of power feed cable, and that the standard should be modified to accommodate this technology. The standard has been revised to reflect this comment by the addition of the phrase "or other power feed cable payout-retrieval system." This standard is intended to protect the first 25 feet of cable where the maximum bending and wear occur, and to protect the machine operator or helper in the area where most work is performed.

Section 13—Compressed Air and Boilers

§§ *55/56/57.13–10*

The proposal stated that reciprocating-type air compressors rated over 10 horsepower must have automatic temperature-actuated shutoff mechanisms unless fusible plugs had been installed in the discharge lines. Comments requested that this standard apply only to unattended reciprocating-type air compressors. However, the danger of fire or explosion is inherent in almost all air compressor systems, whether attended or automatic. The compression of air creates high

temperatures which may result in the ignition of lubricating oil or the formation and ignition of carbon-type deposits. Another comment requested that air compressors located outside of buildings or structures be exempt from the requirements of the standard. Since fire or explosion may present a hazard to personnel wherever the reciprocating-type air compressor is located, MSHA will not limit the application of this standard to compressors located inside buildings. The standard has been reorganized and reworded for clarity. The final standard does not apply to reciprocating-type air compressors equipped with fusible plugs that were installed in the compressor discharge lines before the effective date. However, these plugs must be designed to melt at temperatures at least 50 degrees below the flash point of the compressor's lubricating oil.

§§ *55/56/57.13–11*

The proposal would have required that compressors and air receiver tanks be equipped with one or more automatic pressure-relief valves and that the total relieving capacity of such relief valves must prevent pressure from exceeding the maximum allowable working pressure in a receiver tank by no more than 10 percent. Under the proposed rule, air receiver tanks were to be equipped with: indicating pressure gages designed to accurately measure pressure within the air receiver tanks; drain valves installed at the lowest point of the receiver tanks; and traps to prevent oil, moisture and other contaminants from being expelled through the discharge lines. Based upon comments, the requirement that commpressors be equipped with pressure-relief valves is deleted. The standard now requires that only air receiver tanks be equipped with one or more automatic pressure-relief valves and indicating pressure gages. Several comments suggested the elimination of drain valves and traps from the standard. The requirement that drain valves and traps be installed has been deleted since MSHA recognizes that drain valves and traps are related primarily to the maintenance and longevity of equipment rather than to personnel safety.

§§ *55/56/57.13–12*

The proposal stated that compressor air intakes must be installed to ensure that only clean, uncontaminated air enters the compressor. Several comments requested that the phrase "clean, uncontaminated air" be defined. "Clean, uncontaminated air" is air meeting the air quality requirements in 30 CFR 55/56/57.5, "Air quality, ventilation, radiation and physical agents." Several comments stated that the standard relates only to maintenance practices. MSHA disagrees. This standard is intended to assure that personnel are not harmed by inhaling air that is contaminated with toxic gases or dusts or fumes containing carbon monoxide or oxides of nitrogen. The standard is also intended to lessen the possibility of an explosion resulting from the intake of oil or gasoline vapors into the compression chamber. It is promulgated as proposed.

§§ *55/56/57.13–15*

The proposed standard provided that compressed-air receivers and other unfired pressure vessels be inspected in accordance with the applicable chapters of the National Board Inspection Code, 1977, which was incorporated by reference in the standard. [2] A comment asked for the qualifications for an inspector of the air receiver tanks. In general, to qualify, a person must: hold a valid National Board Commission; have qualified by written examination under the laws, rules and regulations of a jurisdiction of a State; and be continuously employed as an inspector by a jurisdiction which has adopted and administers one or more sections of the ASME Boiler and Pressure Vessel Code as a legal requirement, and has a representative serving as a member of the ASME Conference Committee. The proposed standard has been changed to specify that inspections are to be conducted by an inspector who holds a valid National Board Commission. Several comments expressed concern with the inspection frequency for air receiver tanks. The frequency of inspection will vary according to the application: a visual external inspection once every 12 months and an internal inspection or hydrostatic pressure test once every 5 years. A comment suggested that air receiver tanks buried underground should be exempt from the standard. MSHA disagrees because pressure vessels must be inspected for exterior corrosion, required markings must be readily visible, and vessels must be examined for possible leaks during hydrostatic testing. All pressure vessels regardless of location must be subject to these (and other) uniform requirements. A comment requested clarification of the size and use of air receiver tanks subject to the standard. All air receiver tanks are covered by the standard, except those exempt under Part U–1, Division 1, Section VIII, of the ASME Boiler and Pressure Vessel Code (such as air tanks used on vehicle brake systems, flammable or combustible tanks, or fire protection equipment).

A comment objected to the incorporation by reference of the National Board Inspection Code, and requested that those persons who are regulated by the standard be furnished with a copy of the Code. The National Board Inspection Code is a document which is readily available. Both the proposed and final standards further provide that the Code may be examined at any Metal and Nonmetal Mine Safety and Health District Office, MSHA, and may be obtained from the publisher, the National Board or Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229.

The purpose for incorporating the National Board Inspection Code for the inspection of compressed-air receivers and other unfired pressure vessels is to maintain the integrity of those vessels after they have been placed into service by providing rules and guidelines for examination after installation, repair, alteration and re-rating.

The Advisory Committee considered and recommended that the Secretary adopt the 1977 publication of the National Board Inspection Code, a Manual for Boiler and Pressure Vessel Inspectors, approved by the National Board Executive Committee on January 27, 1977, and published by the National Board of Boiler and Pressure Vessel Inspectors. This publicaiton was proposed in the **Federal Register** on September 12, 1978. However, the National Board of Boiler and Pressure Vessel Inspectors has since published the 1979 edition. The publisher indicates that the 1979 edition is a reprint of the 1977 edition, with revisions which are primarily editorial in nature. Several paragraphs have been reworded for clarification and the National Board Inspection Code Committee has retained the basic concepts and provisions which were contained in the 1977 edition. Since the 1977 edition is difficult to obtain and has been updated by the publisher, standrd 55/56/57.13–15 incorporates the 1979 edition (the National Board Inspection Code, a Manual for Boiler and Pressure Vessel Inspectors, 1979, approved by the National Board Executive Committee on

[2] On March 28, 1979, 44 FR 18630 (corrected April 2, 1979, 44 FR 1981), the Office of the Federal Register amended its regulations (1 CFR 51.13) concerning approval of incorporations by reference in the Code of Federal Regulations. Approval for such incorporations by reference appearing in Title 30, CFR Parts 55, 56 and 57 are withdrawn effective July 1, 1980. MSHA is currently reviewing its regulations containing incorporated reference material, and intends to take whatever action may be necessary and appropriate to comply with the newly amended **Federal Register** procedure.

September 22, 1978). Editorial changes have also been made to the final standard, including a clarification that records shall be kept in accordance with the requirements specified in the Code, and that the records are to be made available to the Secretary or his authorized representative. During an inspection, an authorized representative will review these records and, if the records indicate that a boiler is not in compliance with the appropriate criteria and certifications required under the National Boiler Inspection Code, citations and orders will be issued, as appropriate.

§§ *55/56/57.13–17*

The proposal stated requirements for the maintenance of compressor discharge pipes in which carbon may accumulate. Several comments requested that the annual requirement for cleaning of carbon build-up in air compressors be deleted. Although the inspection requirement has not been deleted in the final rule, MSHA has extended the period between inspections to two years. Periodic cleaning of the discharge pipes at or near the compressor cylinders is necessary because high temperatures can result from dirt or carbon deposits. These high temperatures increase the likelihood of explosions, fires, or mechanical failures. One comment suggested that the standard be applied only to stationary compressors. Since fire or explosion hazards are present in both mobile and stationary compressors, the standard has not been revised as requested.

§§ *55/56/57.13–30*

The proposal stated that boilers must be equipped with certain safety devices to protect against specified hazards in accordance with listed sections of the ASME Boiler and Pressure Vessel Codes, 1977, and the National Board Inspection Code, 1977. Also under the proposal, competent persons must design, install, operate maintain, repair, alter, inspect, and test the devices in accordance with the codes. A comment objected to the proposal to incorporate by reference in the standard the listed sections of the ASME Boiler and Pressure Vessel Code, 1977, published by the American Society of Mechanical Engineers, and the listed chapters and appendices of the National Board Inspection Code, 1977, published by the National Board of Boiler and Pressure Vessel Inspectors. A similar objection also was raised relating to the incorporation of the National Boiler Inspection Code in proposed standard 55/56/57.13–15. Boiler and pressure vessels used in metal and nonmetal mining and milling operations must be constructed, installed, and maintained in accordance with the ASME Code under mandatory standard 55/56/57.13–1. Mine operators therefore are familiar with the ASME Code. The purpose of incorporating the ASME Code in proposed standard 55/56/57.13–30 is to protect boilers equipped with water level gages, pressure gages, automatic pressure-relief valves, blowdown piping, and other ASME approved safety devices against overpressure, flameouts, fuel interruptions, and low water levels.

Uncontrolled, excessive steam pressure in boilers is hazardous to persons in the vicinity of the boilers. Flameouts and fuel interruptions may lead to fuel explosions. Low water levels can cause damage to the boilers from overheating and can lead to steam explosions. Blowoff openings need to be located so that steam is discharged to the outside of buildings where it will not injure persons. Inspection is essential to the safe operation of boilers. Adoption of the ASME Boiler and Pressure Vessel Code and the National Board Inspection Code provides nationally recognized standards that can be uniformly applied to all metal and nonmetal mining and milling operations.

The Advisory Committee considered and recommended that the Secretary adopt the 1977 publication of the National Board Inspection Code, a Manual for Boiler and Pressure Vessel Inspectors, approved by the National Board Executive Committee on January 27, 1977, as an incorporation under standards 55/56/57.13–15 and 55/56/57.13–30. This edition was proposed in the **Federal Register** on September 12, 1978. However, as discussed in response to a comment on standard 55/56/57.13–15, the National Board of Boiler and Pressure Vessel Inspectors has published a 1979 edition and this edition has been incorporated by reference into the final standard.

Several comments questioned whether the records of inspection and repairs would be used by MSHA as the basis for issuing citations or orders. The standard requires that mine operators keep only those records that are required by the ASME Boiler and Pressure Vessel Code and the National Board Inspection Code, and that these records be made available to the Secretary or his authorized representatives. During an inspection, an authorized representative will review these records and, if the records indicate that a boiler is not in compliance with the appropriate criteria and certifications required under the ASME Code or the National Boiler Inspection Code, citations and orders will be issued as appropriate.

Certain editorial changes have been made in the proposed standard for clarity. These changes include clarification that gages, devices, and piping must be inspected by an inspector who holds a valid National Board Commission.

Section 14—Use of Equipment

§§ *55/56/57.14–3*

The proposal stated that guards at conveyor drive, head, and tail pulleys shall extend a sufficient distance to prevent a person from accidentally becoming caught between the belt and pulley. Several comments stated that the hazards addressed by this standard are covered by mandatory standard 55/56/57.14–1, which requires that the conveyor drive, head, and tail pulleys be guarded. Standard 55/56/57.14–3 provides additional protection by mandating that the guards, which are required by standard 55/56/57.14–1 at conveyor drive, head, and tail pulleys, extend a distance sufficient to prevent persons from inadvertently reaching behind the guard and becoming caught between the belt and pulley. The standard is promulgated as proposed.

§§ *55/56/57.14–7*

The proposal stated that guards must be substantially constructed and properly maintained. Comments stated that mandatory standard 55/56/57.14–1, which requires guards on exposed moving machine parts, provides the same protection as standard 55/56/57.14–7. Although standard 55/56/57.14–1 requires guards, it does not address their construction and maintenance. Standard 55/56/57.14–7 addresses these issues. Other comments requested a definition for "substantial construction." This term is defined in 30 CFR 55/56/57.2, "Definitions." This standard is promulgated with revisions for clarity.

§§ *55/56/57.14–11*

The proposal stated requirements for protection against flying or falling material. Some comments expressed the opinion that the coverage of this standard is too broad and suggested that its application be limited to crushing, screening and conveying operations. MSHA disagrees. The intent of this standard is to provide protection in all areas where flying or falling materials present a hazard to personnel. The standard is promulgated with an editorial change.

§§ *55/56/57.14–27*

The proposal stated that only competent persons may operate equipment or machinery. Several comments stated that the provision in the proposal permitting supervised trainees to operate machinery or equipment duplicated the requirements of MSHA's Training Regulations. As a result of these comments, MSHA has deleted the provision. MSHA's training and retraining regulations permit trainees to operate machinery or equipment while under direct and immediate supervision. In other respects the standard is promulgated as proposed.

§§ *55/56/57.14–36*

The proposal stated that tools and equipment must be used within the design capacity for which they are intended and designed. Comments received on this standard essentially stated that the standard was overly restrictive. The comments indicated that many kinds of tools and equipment are not specifically designed for use in the mining environment, and they must be modifed to perform mining tasks. Comments further stated that the actual capacity of a piece of equipment can change depending on variables in operating conditions. Comments requested that operators be allowed to use tools and equipment for other than "intended" uses, or to modify tools and equipment, so long as there is no compromise of personnel safety. In response to comments, MSHA has revised the proposed language. The final standard requires that tools and equipment shall not be used beyond the design capacity intended by the manufacturer where such use may create a hazard to personnel.

§ *57.14–55*

The proposal stated that welding operations must be shielded and well-ventilated. Comments suggested modifying the standard by adding the phrases "shielded by location or isolation" and "if employees in the area could be harmed by the flash." The adoption of these suggestions would remove the protection provided by the standard for persons who inadevertently enter a welding area. The standard is promulgated with the proposed language.

Section 16—Material Storage and Handling

§§ *55/56/57.16–1*

The proposal stated that stacked supplies shall not create a stumbling or fall-of-material hazard. No comments were received on this standard. It is promulgated with editorial revisions for clarity.

§§ *55/56/57.16–2*

The proposed standard stated that bins, hoppers, silos, tanks and surge piles in or on which loose, unconsolidated materials are stored, handled, or transferred must have: devices or means to protect persons from exposure to caving or sliding material; supply and discharge controls located so that their operation will not expose the operator to danger from spillage; suitable walkways where persons must walk over or around the facility; and ladders, platforms, or staging where persons are required to enter the facility. The proposal contained additional requirements regarding the use of safety belts and lifelines. A comment objected to the requirement in proposed paragraph (d) that the "second" person wear a safety belt or harness equipped with a lifeline while attending the lifeline of a person entering the material storage facility. The requirement is retained because a safety belt or harness equipped with a lifeline is necessary to protect the "second" person from being pulled into the facility. Another comment questioned the need for a suitable walkway around all surge piles. The standard only requires walkways or passageways around or over facilities that persons are required to move over or around. In further response to the comment, in most instances solid, unobstructed ground would be a suitable walkway around surge piles. Another comment recommended that "other suitable devices" be allowed in lieu of the safety belt or harness attached to a lifeline. MSHA disagrees. The safety belt or harness equipped with a lifeline is the minimum requirement for protecting persons in situations addressed by the standard. The standard is promulgated with editorial revisions for clarity.

§§ *55/56/57.16–7*

The proposal stated requirements for hitches and slings used to hoist materials, and taglines used to steady loads. One comment objected to the required use of taglines on loads suspended below eye level, suggesting the requirement is unsafe or unenforceable. MSHA disagrees. If taglines are not used, persons would be required to handguide loads below eye level, thereby placing persons in hazardous positions should the load drop or shift. The standard is promulgated with editorial revisions for clarity.

§§ *55/56/57.16–10*

The proposal stated that material must not be dropped from an elevated position until the drop area is cleared of persons, and then is guarded or a warning is given. Comments objected to the requirement that operators erect guards or give warnings in instances where personnel have already been cleared from drop areas. However, since many accidents have occurred after persons were supposedly cleared from drop areas or entered them undetected, the standard is necessary. In response to a comment regarding dump truck loading, MSHA does not intend the standard to cover the loading of dump trucks when provisions have been made for personnel safety, such as the installation of a shield over the cab of a truck to protect the driver. The standard is promulgated with editorial revisions.

§§ *55/56/57.16–12*

The proposal stated that concentrated acids and alkalies must be stored to prevent inadvertent mixing with each other or with other substances with which they will react violently or liberate dangerous fumes. A comment suggested that the hazards addressed by the standard are already covered by mandatory standard 55/56/57.16–3. MSHA disagrees. Standard 55/56/57.16–3 deals with the storage of materials which, due to their inherent nature could create hazards if liberated. Standard 55/56/57.16–12 deals with the storage of substances which could create hazards when contact is made with other substances. The standard is promulgated with revisions for clarity.

The intent of the advisory standard was to control the storage of substances which, when mixed react violently or liberate dangerous fumes. The proposal limited the substances to concentrated acids and alkalies. The proposal has been revised to cover "chemical substances, including concentrated acids and alkalies," so that the scope of the original advisory standard is retained.

§§ *55/56/57.16–13*

The proposal stated that before molten metal is poured or moved, a warning must be given. A comment was received stating that shop-type operations where small amounts of metal are poured should be excluded from the coverage of the standard. The standard was not altered because the hazards stemming from moving and pouring molten metal are the same

regardless of the amounts of metal involved. The standard is promulgated, however, with editorial revisions.

§§ *55/56/57.16–16*

The proposal stated that fork and other similar type lift trucks must be operated: with the uprights titled back; with the load in the upgrade positon when traveling on grades steeper than 10 percent; with the load not raised or lowered during travel, except for minor adjustments; and, if unloaded, with the load-engaging mechanism downgrade. One comment suggested modifying paragraph (d) of the proposed standard to require that unloaded trucks travel on all grades with the load-engaging mechanism upgrade to assist in slowing down the vehicle. The standard is not revised to reflect this comment, since forks are hinged forward and would not aid in slowing down the vehicle. However, certain editorial changes have been made in the final standard for clarity.

§ *57.16–17*

The proposal stated that where the stretching or contraction of a hoist rope could create a hazard while heavy equipment is loaded or unloaded, blocking must be utilized. The standard recognizes that some distortion of the hoist rope will occur whenever heavy material is loaded into, or unloaded from, the conveyance. In order to protect miners but not require blocking in every material loading or unloading operation, the standard states that blocking is required only where stretching or contraction of the rope could create a hazard. The proposed expansion into Parts 55 and 56 is withdrawn, and the final rule is promulgated only in Part 57. The standard is promulgated with an editorial change.

Section 18—Safety Programs

§§ *55/56/57.18–2*

The proposed standard would have required a supervisor or another competent person to: inspect each active working area and installation at least once each shift for hazardous conditions, including conditions that may present an imminent danger; uniformly record any hazardous conditions observed including the date, location and description of the conditions and action taken, and, make the record available for review by the Secretary or his authorized representative. Because of the importance of this standard and the extensive debate it generated before the Advisory Committee, interested persons were requested in the notice of proposed rulemaking to submit specific comments including recommended wording for the standard [43 FR 40766–40767]. Numerous comments and objections were received, raising several important issues. These included the proposal was beyond the scope of the advisory standard; the term "hazardous conditions" was vague; the recordkeeping requirements were burdensome and possibly self-incriminating; the proposal represented a "general duty" standard; and the standard could be used to cite operators for violations covered by existing standards that would result in multiple citations for a single violation.

Changes have been made in the final standard to reflect the concerns raised by public comments. The final standard requires competent persons who are designated by the operator to examine each working place at least once each shift for conditions which may adversely affect safety or health. ("Competent persons" and "working place" are defined in 30 CFR 55/56/57.2 "Definitions".) The operator must initiate prompt corrective action. If the competent person finds conditions which may present an imminent danger, the operator must withdraw all persons until abatement. The operator must keep a record that the examinations were conducted. The record is to be kept for one year and is to be made available to the Secretary or his authorized representative. In response to the comments regarding recordkeeping, the recordkeeping requirements have been significantly reduced to include those records which are essential and necessary to the enforcement of the standard. The agency believes that by requiring regular close examination of the total mining environment, the final standard will better promote safety and health of affected miners.

The final standard is consistent with the basic concept of the proposed rule and will supplement existing standards requiring examinations of specific areas, conditions, equipment and machinery. The intention of both the advisory and proposed standards was to require, as part of a continually functioning and effective safety program, that the operator perform a regular examination of working areas and installations for hazards. Through the conduct of such a program, miners will be assured of a safer, and more healthful mine environment.

§§ *55/56/57.18–9*

The proposal stated that for the purpose of taking charge in the event of an emergency, a supervisor or designated competent person must be on the property while persons are working. Some comments expressed concern about the application of this standard to smaller operations. "Competent person," is defined in 30 CFR 55/56/57.2, "Definitions." The objective of the standard is to provide for active leadership in the event of an emergency. As a comment pointed out, MSHA's Training Regulations provide for instruction of miners in emergency procedures, and should alleviate any need for additional personnel to comply with the standard. Competent persons could be designated from among current employees, assuming they have been properly trained. The standard is promulgated with editorial changes.

§§ *55/56/57.18–13*

The proposal required a communications system at the mine site to summon emergency assistance. Several comments requested examples of "a suitable communication system." The term "suitable" is used to provide the operator with flexibility in choosing a means of communication appropriate for its operation. For a majority of mines, a telephone or a citizens' band radio would suffice to obtain assistance in the event of an emergency. The standard is promulgated with editorial changes.

Section 19—Man Hoisting

§§ *55/56/57.19–12*

The proposal stated that grooved drums must have grooves and pitch suited to the rope used. There were no comments received on this standard. The standard is promulgated as proposed.

§§ *55/56/57.19–35*

The proposal stated that headframe, shall be of substantial construction. One comment suggested requiring headframes construction to meet a safety factor equivalent to that of the hoist ropes to be used, with a minimum safety factor of four. Since mandatory standard 55/56/57.19–21 may require hoist rope safety factors as high as eight, the suggested wording would require some headframes to be constructed far in excess of reasonable design criteria. MSHA has revised the standard to reflect design criteria which consider the breaking strength of the hoist rope, wind loads and other dynamic loads.

§§ *55/56/57.19–36*

The proposal stated that clearance of headframes must allow for overtravel and safe stopping of the conveyance. One comment requested that a "grandfather clause" be added for

presently installed headframes. However, because clearance for overtravel and safe stopping is directly related to safety, compliance is considered essential for all conveyances. The standard is promulgated with the proposed language.

§§ *55/56/57.19–37*

The proposed standard required that fleet angles not be greater than 1½ degrees for smooth drums, and 2 degrees for grooved drums. A comment indicated that various conditions, such as property lines or existing buildings, may limit hoist locations so that fleet angles cannot meet the requirements of the standard. However, headframe height can be adjusted in order to obtain the required fleet angle. Therefore, if the distance between the headframe and the hoist is restricted by physical factors, the height of the headframe may be increased to minimize fleet angles. MSHA has revised the proposal by making the standard applicable to fleet angles on hoists installed after the effective date. The final standard will also apply to existing hoists that are moved to new locations after the standard becomes effective.

§§ *55/56/57.19–39*

The proposed standard provided that all man hoists, except emergency escape hoists, installed after the effective date of the standard shall have drums and sheaves of diameters at least 60 times the rope diameter. Comments suggested that the restrictive choice of a drum/sheave diameter to rope diameter ratio of 60 would eliminate small slow speed hoists used for transportation between raises and other similar mine hoist applications. Comments also stated that the proposed standard would inhibit innovative designs. The intent of the proposed standard is to enhance hoisting safety by reducing the degree of repetitive stresses and temperatures and therefore premature failures in hoist ropes. This may also be accomplished by limiting the hoist rope speed.

A survey of equipment in use has been conducted, and it has been generally found that hoists with drum/sheave diameter to rope diameter ratios smaller than the proposed 60 ratio may operate with equivalent safety provided that rope speed is not excessive. Therefore, the proposed standard is modified to allow the use of smaller diameter drums and sheaves provided the rope speed is 200 feet per minute or less. The 200 feet per minute rope speed was selected from a study of current equipment design parameters as a prudent value to provide equivalent safety to the 60 ratio. Most of the equipment addressed by the comments will meet this rope speed requirement. The proposed standard has been further modified to require a ratio of at least 80 for hoist ropes one inch in diameter and greater, a ratio of at least 60 for hoist ropes under one inch in diameter, and a ratio of at least 100 for all locked coil ropes. This modification to the standard is in accordance with paragraphs 4.1.3.1.1, and 4.3.3.2 of the ANSI M11–1–1979 Wire Ropes for Mines standard approved March 14, 1979, which represents the latest technology of wire rope manufacture and use. The MSHA standard allows the continued use of present equipment, but requires that all future installations meet the ANSI D/d Ratios for drums and sheaves except for escape hoists and those installations with rope speeds of 200 feet per minute or less.

§§ *55/56/57.19–67*

The proposal stated that during shift changes, an authorized person must be in charge of each man trip. One comment suggested that "authorized person" be changed to "competent person." MSHA believes it is essential that only "authorized" persons (those approved or assigned by the mine management) be in charge of trips when persons are hoisted. Another comment suggested limiting the application of the standard to trips in which at least ten persons are hoisted. MSHA disagrees. The protection afforded by the standard must be available to all persons. The standard imposes a minimum burden on mine operators considering the potential hazards involved. The proposed standard is made final with an editorial change for clarity.

§§ *55/56/57.19–72*

The proposal stated that when combinations of cages and skips are used in the same compartment, cages must be totally enclosed and hoist speed reduced to man-speed as defined in standard 57.19–61 but not to exceed 1,000 feet per minute. Additionally, muck must not be hoisted with miners during shift changes. Several comments objected to the term "totally enclosed." One comment stated that it is not practical to provide a totally enclosed cage and that folding mesh doors provide the protection needed for miners riding the cage. Another comment stated that the term "totally enclosed" would preclude having even a small aperture in the side of the cage for access to the shaft signaling system. MSHA did not intend for the word "totally" to preclude the use of non-solid materials to enclose cages. However, comments clearly indicate that confusion has resulted from the use of the word. Consequently, "totally" has been deleted from the standard. Non-solid materials, such as mesh-type doors, are acceptable if they protect personnel from flying materials. In other respects, the standard is promulgated as proposed.

§§ *55/56/57.19–74*

The proposal stated that persons must not ride on certain portions of shaft conveyances except for inspection and maintenance purposes and then only with suitable protection. There were no comments received on this standard and it is promulgated with an editorial revision.

§§ *55/56/57.19–81*

The proposal stated that when not in use conveyances controlled by hoistmen must be suitably positioned to prevent persons from boarding or loading. There were no comments received on this standard. The standard is promulgated with editorial changes.

§§ *55/56/57.19–91*

The proposal stated that hoistmen must accept instructions only by the regular signaling system unless it is out of order and only from an authorized person in an emergency. Comments requested a definition for the term "authorized person." This term is defined in 30 CFR 55/56/57.2 "Definitions." The standard is promulgated with a revision clarifying that an emergency situation is considered to exist when the regular signaling system is out of order.

§§ *55/56/57.19–93*

The proposal stated that each mine must use a standard code of hoisting signals, and that movement of the conveyance on a "one bell" signal is prohibited. Some comments expressed concern that the standard requires a national hoisting signal code. Other comments suggested that a code be adopted for each shaft and that the standard only apply to manually controlled hoists. The standard does not require a national hoisting signal code, and does not apply to automatic hoists. However, different signaling systems for each shaft of a particular mine could lead to confusion and shaft accidents. Therefore, this standard is intended to assure a single uniform code of hoisting signals in every shaft at a particular mine. The standard is promulgated with the proposed language.

§§ *55/56/57.19–104*

The proposal stated that suitable clearance at shaft stations must be provided and maintained to allow for the safe movement of persons, equipment and materials. Comments requested a definition for the word "suitable." "Suitable" is defined in 30 CFR 55/56/57.2, "Definitions." Because the configuration of shaft stations, even in the same shaft, can vary widely, "suitable" is used to provide flexibility in the application of the standard. The standard is promulgated with editorial revisions.

§§ *55/56/57.19–124*

The proposed standard prescribed the frequency of and methods for destructive testing of hoist ropes at the conveyance end of the ropes. Comments stated that the standard duplicates standards 55/56/57.19–20, 55/56/57.19–21, and 55/56/57.19–126, and that the requirement that a minimum six foot section of the rope be cut off is unnecessary and expensive. Standard 55/56/57.19–20 has been revoked by this rulemaking; mandatory standard 55/56/57.19–21 establishes criteria for the proper selection of ropes; and new mandatory standard 55/56/57.19–126 requires certain non-destructive tests. New mandatory standard 55/56/57.19–124 prescribes destructive tests for hoist ropes that do not duplicate the other standards. Moreover, a six foot length of rope is necessary for destructive tensile test evaluation, and little expense is saved by cutting a shorter section. Editorial changes have been made to clarify the standards.

§§ *55/56/57.19–125*

The proposal stated criteria for removing a section of the hoist rope at the drum end to distribute wear and guard against rope failure at stress points. A comment stated that periodic cutting at the drum end of wire ropes does not contribute to the "integrity of hoist ropes," and that new mandatory standard 55/56/57.19–126 and existing mandatory standard 55/56/57.19–128 adequately ensure the safe condition of wire ropes. The phrase "and to preserve the integrity of the rope" has been deleted. New mandatory standard 55/56/57.19–126 requires examinations and non-destructive tests at specified rope locations, whereas mandatory standard 55/56/57.19–128 prohibits the use of hoisting ropes that are considered unsafe. These standards are not duplicative of new mandatory standard 55/56/57.19–125, which requires periodic removal of a section of hoist ropes in order to distribute wear.

§§ *55/56/57.19–126*

The proposal stated that hoist ropes must be examined over their entire active lengths at least every month to evaluate wear and possible damage. One comment suggested that this standard be revoked because mandatory standards 55/56/57.19–21, 55/56/57.19–120, and 55/56/57.19–121 effectively cover the same subject matter. MSHA disagrees. Standard 55/56/57.19–21 establishes static load safety factors to be used for hoist rope selection and for determining when the ropes are to be removed from man hoists. Standard 55/56/57.19–126 does not address static load safety factors. Standard 55/56/57.19–120 requires that a systematic procedure for inspection, testing, and maintenance of shaft and hoisting equipment be developed and followed, and standard 55/56/57.19–121 requires that records of the above be kept. New mandatory standard 55/56/57.19–126, on the other hand, establishes a specific procedure for examining hoist ropes and evaluating wear and damage. When examinations reveal that a rope is worn, caliper measurements or non-destructive tests must be made at specified locations. This procedure is only part of the overall inspection, testing, and maintenance requirements of standards 55/56/57.19–120 and 55/56/57.19–121. The final standard is promulgated with editorial revisions for clarity.

§§ *55/56/57.19–130*

The proposal stated requirements for determining the unobstructed operation of conveyances before persons are hoisted. A comment points out that the proposal inadvertently stated that advisory standard 55/56/57.19–127 was revised and advisory standard 55/56/57.19–130 was revoked. MSHA has corrected the error. Standard 55/56/57.19–130 is promulgated with editorial revisions in the proposed language.

§§ *55/56/57.19–131*

The proposal stated that hoist conveyance connections must be inspected at least once during any 24-hour period that the conveyance is used to hoist persons. One comment stated that daily inspection of multiple rope systems is not necessary. While MSHA recognizes the increased reliability of multiple rope systems, as compared with conventional rope configurations, incidents have occurred where multiple rope terminations have failed concurrently. Additionally, some multiple rope terminations and cage suspension devices have single points of failure. Another comment suggested that the inspections be conducted on a weekly rather than daily basis. The requirement that inspections be performed daily is retained because the burden on operators is justified by the degree of risk posed by an accident involving a conveyance hoisting persons. Therefore, the standard is promulgated as proposed.

§§ *55/56/57.19–132*

The proposal stated that a performance drop test of hoist conveyance safety catches must be made at the time of installation or prior to installation in a mock-up of the actual installation, and that testing of safety catches must be made prior to use. A comment objected to the proposed frequency of testing and inspection of safety catches on hoist conveyances. Regular testing and inspection of safety catches is essential to safe hoisting activities and will not constitute a significant burden on the operator. Editorial revisions have been made in response to comments requesting that the standard be clarified.

Section 20—Miscellaneous

§ *57.20–32*

The proposal stated that a two-way communications system between the surface and underground must be provided with instructions on the cover or adjacent to the system, and that persons working underground must be instructed in the use of the equipment. Comments suggested that two-way communication equipment is unnecessary in underground stone quarries where workers have access to motorized vehicles which can be driven to all parts of the mine. However, the intent of the standard is to insure rapid and reliable communication in the event of an emergency. An emergency in an underground mine may involve conditions which preclude the use of motorized vehicles. The proposed standard also provided that persons working underground be instructed as to the proper use of the equipment. This requirement has been deleted from the final standard as it is covered by MSHA's Training Regulations. In addition, editorial changes were made in the final standard.

Section 21—Gassy Mines

§ *57.21–49*

The proposal stated that brattice cloth must be flame-resistant. There were no comments received on this standard,

and it is promulgated with the proposed language.

§ *57.21–51*

The proposal stated the requirements for ventilation of abandoned workings in unsealed underground sections. There were no comments received on this standard, and it is promulgated with the proposed language.

§ *57.21–65*

The proposal stated that every seven days the foreman or his competent designee must perform a safety inspection, and test for methane and carbon monoxide at specified locations. One comment objected to testing for carbon monoxide and methane in underground hardrock mines since these gases are rarely present. MSHA feels that the magnitude of the hazards which may result from the presence of these gases in mines that are classified as "gassy mines" justifies the requirement of weekly tests. Consequently, the standard is promulgated with editorial changes.

C. Discussion and Summary of Revocations

Section 3—Ground Control

§§ *55/56/57.3–7*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The standard recommended that suitable barriers be provided where movement of materials into cuts constitutes a safety hazard. The hazards which can result from the movement of materials into cuts are covered by existing mandatory standards. Standard 55/56/57.3–2 states that loose, unconsolidated materials shall be stripped for a safe distance from the top of the pit or quarry walls, and the loose, unconsolidated material shall be sloped to the angle of repose. Standard 55/56/57.3–5 states that overhanging banks shall be taken down immediately and other unsafe ground conditions corrected promptly, or the areas shall be barricaded and posted. Additional protection from falling materials is provided by new mandatory standard 55/56/57.14–11, which requires protection against flying or falling materials, and standard 55/56/57.14–13, which requires that certain equipment be provided with canopies when necessary to protect the operator.

§§ *55/56/57.3–10*

The proposed rule is withdrawn and the advisory standard revoked. The proposal, based upon the advisory standard, stated that mine property which slopes into working areas must be examined whenever weather conditions could create a hazard; if dangerous ground is detected, persons must be evacuated from the affected area.

Comments stated that the proposed standard was vague and ambiguous and that other standards in 30 CFR 55/56/57.3, "Ground control," addressed the hazards which could result from loose ground caused by adverse weather conditions. MSHA agrees. Mandatory standard 55/56/57.3–1 provides that mining methods be selected which ensure pit wall and bank stability, and that standards for safe control of pit walls be established and followed by operators. Mandatory standards 55/56/57.3–8 and 55/56/57.3–9 require that supervisors or designated competent persons and miners examine working areas or faces for unsafe conditions, and that any unsafe condition found be corrected. In addition, training in ground control and hazard recognition is provided in MSHA's Training Regulations. Because coverage is afforded by other standards, including those mentioned above, advisory standard 55/56/57.3–10 is revoked.

§§ *55/56/57.3–13*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard suggested using rock-bolt installations recommended by MSHA or another competent agency. Standards 57.3–33 and 55/56/57.3–53 through 55/56/57.3–58 provide specific criteria for rock-bolt installations.

§ *57.3–21*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. This advisory standard recommended that miners be trained in the proper methods of testing for, taking down, and supporting loose ground. Training in roof and ground control is required by MSHA's Training Regulations.

§ *57.3–28*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. This standard recommended supporting ground near the bottom of a shaft during shaft sinking operations. Mandatory standard 57.3–20 requires that ground support be consistent with the nature of the ground and the mining method used. Consequently, appropriate ground support must be installed when necessary during shaft sinking to prevent falls of ground from the shaft's sides.

§ *57.3–30 and* § *57.3–31*

As recommended by the Advisory Committee and proposed by MSHA, these standards are revoked. They recommended that rock-bolt installations provide safe and effective ground support, and that rock-bolting materials comply with the standards of the United States of America Standards Institute. Standards 57.3–33 and 57.3–53 through 57.3–58 provide specific criteria for rock-bolt installations.

Section 4—Fire Prevention and Control

§§ *55/56/57.4–17*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard recommended covering floors around drip pans with suitable noncombustible material. New mandatory standard 55/56/57.4–16 covers the hazards addressed in this advisory standard by providing that floor areas where drip pans are used be cleaned immediately after spills.

§§ *55/56/57.4–30*

Proposed standard 55/56/57.4–30 stated that employees shall be trained in the use of fire extinguishers. MSHA agrees with comments that MSHA's Training Regulations, which require that miners be trained in fire fighting procedures, adequately provide for instruction in the use of fire extinguishers. Therefore, the standard is revoked.

§ *57.4–56*

It was proposed to revise and divide advisory standard 57.4–56 into two standards, 57.4–56A and 57.4–56B. Proposed standard 57.4–56A would have established detailed criteria for "permanent combustible liquid storage depots" while proposed standard 57.4–56B would have established detailed criteria for "temporary combustible liquid storage depots." The original advisory standard stated that oil or fuel storage areas should not be located in main ventilation airways. The advisory standard is revoked, and the proposed standards 57.4–56A and 57.4–56B are withdrawn.

The main objection in the numerous comments received on the proposed standards was that the terms "permanent combustible liquid storage depots" and "temporary combustible liquid storage depots" were not defined. MSHA is withdrawing the proposed standards for further study which will include development of definitions for the above terms as well as definitions for the terms "combustible liquid" and

"designated underground fire area." The latter two terms were used in the proposals. However, MSHA has withdrawn the proposed definitions for these terms.

In reviewing the proposed rule, MSHA considered the alternative of making the advisory standard mandatory by changing "should" to "shall." The resulting standard, however, would have been overly restrictive. MSHA recognizes that oil or fuel can be stored safely in main ventilation airways if proper precautionary procedures are followed. For instance, operators must comply with existing standards 57.4–4 and 57.4–54, two standards which regulate the storage of oil and fuel underground. Standard 57.4–4 states that flammable liquids shall be stored according to the standards of the NFPA or other approved agencies. Small quantities of flammable liquids drawn from storage shall be kept in appropriately labeled "safety cans" (defined in 30 CFR 57.2, "Definitions"). Standard 57.4–54 requires that oil, grease, or diesel fuel stored underground be kept in tightly sealed containers in fire-resistant areas, at safe distances from explosives' magazines, electrical installations, and shaft stations. MSHA intends to engage in the further study of the hazards related to the underground storage of combustible and flammable liquids and materials. This includes further study of the concepts contained in proposed standard 57.4–87 which was also withdrawn because of its relationship with proposed standards 57.4–56A and 57.4–56B. Proposed standard 57.4–87, applicable to underground installations, dealt with facilities in which less than 55 gallons of combustible liquids or flammable materials are stored.

§ *57.4–60*

The proposed standard stated that power conductors had to be deenergized on idle shifts or idle days. The proposed rule is withdrawn and the advisory standard revoked because the primary hazards addressed by the standard are adequately covered by mandatory standard 57.4–11, requiring that abandoned electrical circuits be deenergized; 57.12–16, requiring that electrical equipment be deenergized before work is done on the equipment; and 57.12–17, requiring that power circuits be deenergized before work is done.

§ *57.4–64*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard recommended that air lines in timbered mines should be readily convertible to water lines unless the air lines are parallel to water lines. MSHA recognizes that at times conversions can cause breaks in lines, can starve certain levels in the mine of air, and can jeopardize lives where compressed air is used in a refuge area or refuge chamber.

§ *57.4–68*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard provided that mines which do not maintain individual mine rescue stations should affiliate with central or cooperative mine rescue stations. Regulations covering the availability of mine rescue teams were proposed as 30 CFR Part 49 on January 5, 1979 (44 FR 1539). The advisory standard presented one of several mine rescue options under consideration by the agency.

§ *57.4–71*

The proposal stated that mine rescue crews must include supervisory and key personnel familiar with all mine installations. This standard is revoked. However, mine rescue team regulations being developed by the agency will contain provisions regarding the composition of mine rescue teams, the qualifications of their members, and the requirements for training.

Section 5—Air Quality, Ventilation, Radiation, and Physical Agents

§ *57.5–21*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard recommended that main fans be installed on the surface. If main fans must be located underground, the standard recommended that the fans be in fire-resistant areas and provided with remote controls. The standard is revoked because protection is afforded by standards such as: standard 57.5–18F, which requires that main fans be provided with remote controls; standard 57.5–22, which requires that fan housings and air ducts connecting main fans to underground openings be fire-resistant; and standards 57.4–42 and 57.5–18B, which place restrictions upon the types and amounts of combustible materials that are permitted within prescribed distances of main fans. There will be no requirement that main fans be installed on the surface because, in certain instances, it is necessary to locate main fans underground in order to protect them from harsh environmental surface conditions.

§ *57.5–23*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard stated that separate mine openings should be provided for main intake and return air currents. MSHA recognizes that separate mine openings for intake air and return air may be impossible during the early stages of development when sinking a single shaft, and that separation of intake air and return air may be provided in single shaft mines by partitioning the shaft with appropriate noncombustible material. MSHA will reexamine the issues raised by advisory standard 57.5–23.

§ *57.5–26*

As recommended by the Advisory Committee and proposed by MSHA this standard is revoked. The advisory standard recommended that instruments be provided to test the mine atmosphere for gases that occur in the mine, and that tests be conducted as often as necessary to maintain the required air quality. Mandatory standards 57.5–1 and 57.5–2 establish air quality criteria that must be complied with regardless of the method or frequency of testing.

Section 6—Explosives

§§ *55/56/57.6–3*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard provided that blasting agents could be stored with other explosives in the same magazine. Since blasting agents do not require the same measure of protection in storage as do explosives, it is not mandatory that they be stored in magazines. However, mandatory standard 55/56/57.6–8 requires that when ammonium nitrate fuel oil blasting agents are stored in the same magazine with other explosives, safety fuse, or detonating cord, they shall be physically separated from the other stored materials. In addition, they must be stored in such a manner that oil does not contaminate the other explosives, safety fuse, or detonating cord.

§§ *55/56/57.6–4*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard permitted safety fuse or detonating cord to be stored with explosives in the same magazine. MSHA has no objection to the storage of safety fuse or detonating cord in the same magazine with explosives. However,

when safety fuse or detonating cord is stored in the same magazine with ammonium nitrate fuel oil blasting agents, the requirement of mandatory standard 55/56/57.6–8 must be met.

§ *57.6–28*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard contained provisions regarding box-type underground distribution storage magazines. Mandatory standards, such as standards 57.6–1 and 57.6–27, already cover the storage of explosives and detonators.

§ *57.6–78*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard stated that cars containing explosives or detonators should be pulled, except when hand-trammed. MSHA recognizes that if the standard were made mandatory and cars containing explosives or detonators had to be "pulled" under all circumstances (except when hand-trammed), persons might be unnecessarily exposed to danger.

§ *57.6–181*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard recommended that where electric blasting is to be performed, electric circuits should be deenergized before explosives or detonators are brought into the area. The hazard of premature detonation of electric blasting devices by stray currents is addressed by mandatory standard 57.6–126 (formerly 57.6–170).

§§ *55/56/57.6–190*

This standard is revoked. The proposed standard would have required that ammonium nitrate blasting agents (ANFO) be mixed and stored in accordance with the Department of the Interior's Bureau of Mines Information Circular 8179, entitled "Safety Recommendations for Sensitized Ammonium Nitrate Blasting Agents" (1963). IC 8179 was incorporated by reference in the proposal.

Since the publication of IC 8179, MSHA has developed new mandatory standards for metal and nonmetal mines which are not in total accord with all of the material contained in the Bureau of Mines document. MSHA is currently working with the Bureau of Mines to study the hazards related to the mixing and storage of all blasting agents, and to develop appropriate guidelines governing this area.

In the interim, protection is provided by an interagency agreement with the Department of the Treasury's Bureau of Alcohol, Tobacco and Firearms (BATF), whereby MSHA performs inspections for BATF using that agency's explosive materials storage requirements.

§§ *55/56/57.6–192*

It was proposed to revoke this advisory standard which recommended that adequate priming should be used to safequard against misfires, toxic fumes and poor performance. Adequate priming depends upon factors that vary with each blasting operation. Some of these factors are the location of blasting, the pattern of blasting, the force of detonation, and the type and amount of explosives and blasting agents used. The type and amount of priming are decisions which are based on sound technical judgments and experience, and adapted to local conditions. Therefore, the advisory standard is revoked.

§§ *55/56/57.6–196*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard stated that reasonable precautions should be exercised to exclude water from blasting agents other than slurries. Current blasting technology, including dry-type blasting agents in waterproof containers and slurry-type blasting agents which include water, makes this standard obsolete.

Section 7—Drilling

§§ *55/56/57.7–1*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard recommended that equipment which is to be used during a shift should be inspected each shift and that equipment defects affecting safety should be reported. This protection is provided by other standards including the following: mandatory standard 55/56/57.7–2 requires that drilling equipment defects affecting safety must be corrected before the equipment is used; mandatory standard 55/56/57.14–26 requires the immediate removal from service of unsafe equipment or machinery; and new mandatory standard 55/56/57.18–2 requires that a competent person designated by the operator examine each working place at least once each shift for conditions which may adversely affect safety or health.

§§ *55/56/57.7–14*

The advisory standard is revoked. The proposed standard would have required that persons operating or working near drilling machines be instructed in the safe operation of jackhammers, jackleg drills, or other drilling machines, and the potential hazards involved in their use. Several comments indicated that this standard was duplicative of MSHA's Training Regulations. MSHA agrees and the standard is revoked.

§§ *55/56/57.7–16*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard stated that bit wrenches or bit knockers should be used to remove detachable bits from drill steel. New mandatory standard 55/56/57.14–36 covers the hazards addressed by the advisory standard in that it prohibits the use of tools and equipment beyond the design capacity intended by the manufacturer where such use may create a hazard to personnel. Standard 55/56/57.14–36 requires that only appropriate tools be used to remove detachable bits from drill steel.

§§ *55/56/57.7–17*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard stated that starter steels should be used when collaring holes with hand-held drills. MSHA recognizes that the length and size of steel needed to collar holes varies depending on the conditions encountered in a specific situation.

§ *57.7–25*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The Advisory Committee consolidated this standard with advisory standard 57.7–14. Standard 57.7–14 is revoked because its requirements are covered by MSHA's Training Regulations.

§ *57.7–26 and* § *57.7–27*

These advisory standards are revoked because their requirements are consolidated in new mandatory standard 55/56/57.7–52.

§ *57.7–29*

The advisory standard is revoked because its requirements are consolidated in new mandatory standard 55/56/57.7–53.

§ *57.7–30*

The advisory standard is revoked because its requirements are

consolidated in new mandatory standard 55/56/57.7–50.

Section 9—Loading, Hauling, Dumping

§§ *55/56/57.9–8*

As recommended by the Advisory Committee and propose by MSHA, this standard is revoked. The advisory standard recommended that adequate protection be provided at dumping locations. Protection is afforded by such standards as new mandatory standard 55/56/57.14–11, which requires the use of guards, shields, or other suitable protection where flying or falling materials present a hazard to personnel.

§§ *55/56/57.9–18*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard stated that dust control measures should be taken where dust significantly reduces the visibility of equipment operators. New mandatory standard 55/56/57.9–74 (formerly advisory standard 55/56/57.5–4) covers the hazards addressed by advisory standard 55/56/57.9–18 by requiring dust to be suitably controlled at muck piles, material transfer points, crushers, and on haulage roads where hazards to personnel may be created as a result of impaired visibility.

§§ *55/56/57.9–29*

The proposal would have required operators to sit facing the direction of travel while operating equipment with dual controls. The advisory standard is revoked. Comments stated that equipment design may require operators to sit sideways or to stand, both of which would be prohibited by the proposed standard. MSHA recognizes that it is not always possible or practical to sit facing the direction of travel while operating equipment with dual controls; however, it is essential for safety that operators be provided with a clear and unobstructed view of the path of travel. Mobile equipment operators are already required by mandatory standard 55/56/57.9–24 to have full control of equipment while it is in motion. In addition, mandatory standard 55/56/57.9–5 requires that operators shall be certain, by signal or other means, that all persons are clear before starting or moving equipment.

§§ *55/56/57.9–81*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard stated that trucks, shuttlecars, and front end loaders should be equipped with emergency brakes separate and independent of the regular braking system when generally available. Most emergency braking system utilize some part of the primary braking system. A second braking system that is totally independent of the primary braking system, which would have been required had the standard been made mandatory, is not "generally available."

§§ *55/56/57.9–82*

The proposal stated that persons working in enclosed production equipment cabs where extreme weather and environmental conditions exist shall be protected by air conditioning or a heater with defroster, or both. Comments expressed concern that since the phrase "extreme weather and environmental conditions" is vague and undefined, operators have no guidance as to when the standard applies to their mining operations. To further understand the precise nature and impact of the potential hazards covered by the proposed standard, MSHA intends to participate in the research now being conducted by other governmental agencies in this area. Together with the National Institute for Occupational Safety and Health and the Occupational Safety and Health Administration, MSHA believes that a meaningful program of protection can be developed to minimize injuries and illnesses caused by conditions which produce heat stress and other related medical problems. The proposed standard is withdrawn for further study.

Section 11—Travelways and Escapeways

§§ *55/56/57.11–8*

The proposal would have required ladderways, stairways, walkways, ramps and platforms to be kept free of material which could cause stumbling or slipping hazards. Several comments stated that it is impractical to keep all travel areas completely free of material. In addition, they stated that a number of mandatory standards address the hazards of stumbling or slipping which can result from loose rock and extraneous materials. MSHA agrees. For example, standard 55/56/57.9–34 requires that haulage equipment be loaded in a manner to minimize spillage during haulage. A safe means of access to all working places is required by standard 55/56/57.11–1. Standard 55/56/57.11–2 requires that crossovers, elevated walkways, elevated ramps, and stairways be maintained in good condition. Standard 55/56/57.11–16 requires that regularly used walkways and travelways be sanded, salted, or cleared of snow and ice as soon as practicable. Standard 55/56/57.20–3 requires that the floor of every working place and all passageways be kept clean and orderly, and that passageways be kept free from protruding nails, splinters, or loose boards. Based on the comments and the protection afforded by the above standards, advisory standard 55/56/57.11–8 is revoked.

§§ *55/56/57.11–15*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard recommended using cleats and handrails, or ropes, or both on slippery walkways. The hazards created by slippery walkways are already addressed by several standards. For example, standard 55/56/57.11–1 requires that a safe means of access be provided and maintained to all working places. Standard 55/56/57.11–2 requires that elevated walkways and ramps and stairways be provided with handrails, and, where necessary, toeboards. Standard 55/56/57.11–16 requires that regularly used walkways be sanded, salted, or cleared of snow or ice as soon as practicable.

§ *57.11–35*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard recommended using flexible ladders only where rigid ladders may be impractical. The advisory standard is revoked because 30 CFR 57.11, "Travelways and Escapeways," contains numerous standards relating to the construction of ladders and appropriate work practices.

§ *57.11–39*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard stated that working floors in square-set stopes should be lagged closely and securely, and open sets should be equipped with guardrails. The hazards inherent to working floors in square-set stopes are adequately covered by existing standards such as the following: standard 55/56/57.11–1, which requires that a safe means of access be provided and maintained to all working places; standard 55/56/57.11–2, which requires that crossovers, elevated walkways, elevated ramps and stairways be of substantial construction, provided with handrails, and maintained in good condition; and standard 55/56/57.11–12, which requires that openings above, below, or near

travelways through which material may fall be protected by railings, barriers or covers.

Section 12—Electricity

§§ *55/56/57.12–24*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard stated that reverse-current protection should be provided at storage-battery charging stations. Standard 55/56/57.12–2, which requires switches and controls of approved design and construction on electric equipment and circuits, provides reverse-current protection.

§§ *55/56/57.12–29*

The proposal would have required that electric equipment and wiring be inspected by a competent person as necessary to assure safe operating conditions. Many comments suggested this standard be revoked. They stated that the standard was unnecessary, vague, and redundant, and that unsafe conditions relating to electrical equipment were already addressed by the comprehensive standards of 30 CFR 55/56/57.12, "Electricity." Standard 55/56/57.12–30, for example, requires that potentially dangerous conditions be corrected before equipment or wiring is energized. In response to these comments, the advisory standard is revoked.

§§ *55/56/57.12–31*

The proposal would have required that electric circuits and equipment be designed, constructed, installed and maintained to prevent injury and safeguard personnel. It would have replaced an advisory standard recommending dust-tight and water-tight construction of electric motors, controls, and switches where the environment exposed the equipment to damaging dust and water. Both the advisory and proposed standards were intended to require that electric equipment be suited for the environment in which it operates. Comments suggested that the proposal would have been a general duty requirement, was too vague and too broad to be enforceable, and generally covered by existing agency standards. Upon review, MSHA believes that the hazards associated with electrical circuits and equipment are adequately covered by standards such as the following: standard 55/56/57.12–2, which requires switches or controls to be of approved design and construction and properly installed; standard 55/56/57.12–30, which requires potentially dangerous conditions to be corrected before equipment or wiring is energized; standard 55/56/57.12–40, which requires operating controls to be installed to operate without danger of contact with energized conductors; and standard 55/56/57.12–41, which requires switches and starting boxes to be of safe design and capacity. Therefore, the advisory standard is revoked.

§§ *55/56/57.12–44*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard recommended that lightning arrestor grounds be connected to earth at least 10 feet from the track or mine return circuit. Mandatory standards, such as standards 55/56/57.12–69 and 55/56/57.12–65, already provide for the proper grounding and use of lightning arrestors.

§§ *55/56/57.12–49*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard recommended that persons not stand the ground in the vicinity of an electrically powered shovel or similar heavy equipment during an electrical storm. The advisory standard is revoked because hazard recognition training is required by MSHA's Training Regulations.

§§ *55/56/57.12–51*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard recommended that trolley-wire hangers be spaced so that the wire would not sag dangerously and so that the wire could be detached from any hanger without creating a shock hazard. Prevention of trolley-wire sway and sag is required by new mandatory standard 55/56/57.12–50. Protection from the shock hazard of low hanging trolley wires is provided by new mandatory standard 55/56/57.12–50, and mandatory standards 55/56/57.12–16, 55/56/57.12–17 and 55/56/57.12–30.

§§ *55/56/57.12–52*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard recommended that trolley wires and trolley-feeder wires be provided with sectioning switches. Protection in this regard is provided by such mandatory standards as standard 55/56/57.12–2, which requires switches or other controls of approved design and construction on electrical equipment and circuits, including trolley wires and trolley-feeder wires.

§§ *55/56/57.12–54*

The proposed standard stated that persons shall be instructed to carry tools and supplies so they will not come in contact with bare power conductors. The advisory standard is revoked because of the coverage provided by MSHA's Training Regulations.

§ *57.12–87*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard stated that not more than five splices should be made in any trailing cable unless they were vulcanized. Proper splicing methods are set forth in such standards as mandatory standard 57.12–13 and new mandatory standard 57.12–88.

Section 13—Compressed Air and Boilers

§§ *55/56/57.13–13*

The proposal stated that accumulations of water and oil must be drained from compressed-air receivers at least once each day by the compressor operator. Several comments pointed out that although the periodic draining of water and oil required by the proposed standard is a good maintenance practice, it is unrelated to safety. MSHA concurs, and the advisory standard is revoked.

§§ *55/56/57.13–14*

The proposal provided that compressed-air receivers must have inspection openings, and that tanks over 36 inches in diameter must have inspection openings sufficient to permit entry by persons. MSHA agrees with comments that the size of inspection openings in compressed-air receiver tanks is an engineering design feature related to maintenance only. In response to these comments, the advisory standard is revoked.

§§ *55/56/57.13–16*

The proposal stated that compressors must be operated and lubricated in accordance with the manufacturer's recommendations. Comments pointed out that this standard relates primarily to maintenance and not to personnel safety. MSHA concurs, and the standard is therefore revoked.

§§ *55/56/57.13–18*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The standard recommended that safety devices on compressed air systems should be checked daily. Examination of these safety devices is required by the

inspection criteria of new mandatory standard 55/56/57.13–15.

§§ 55/56/57.13–31, 55/56/57.13–32, 55/56/57.13–33, and 55/56/57.13–34

As recommended by the Advisory Committee and proposed by MSHA, these standards are revoked. The advisory standards recommended that boilers should be: equipped with automatic pressure-relief valves (55/56/57.13–31); provided with safety devices to protect against hazards of flameouts, fuel interruptions, and low water level (55/56/57.13–32); equipped with blowoff valves piped outside the building with outlets so located that persons will not be scalded (55/56/57.13–33); and inspected internally at least once a year (55/56/57.13–34). All these items are contained within the ASME Boiler and Pressure Code, 1977, published by the American Society of Mechanical Engineers and the National Board Inspection Code, 1979, published by the National Board of Boiler and Pressure Vessel Inspectors, both of which are incorporated in new mandatory standard 55/56/57.13–30.

Section 14—Use of Equipment

§§ 55/56/57.14–4

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard recommended that openings where conveyors pass through walls or floors be guarded. Adequate protection in this regard is provided by existing standards. For example, mandatory standard 55/56/57.11–12 requires that openings above, below, or near travelways through which persons or materials may fall be protected by railings, barriers, or covers. Standard 55/56/57.11–12 further requires that where it is impractical to install such protective devices, adequate warning signals shall be installed.

§§ 55/56/57.14–5

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard recommended that protruding set screws of revolving parts should be guarded. The hazards created by protruding set screws on revolving parts are covered by such mandatory standards as standard 55/56/57.14–1, which requires guards on exposed moving machine parts.

§§ 55/56/57.14–25

The proposed standard would have required pre-shift inspections of "machinery or equipment" and the correction of defects before the machine or equipment could be used. Certain machinery and equipment (e.g., main fans and conveyor belts) may be located in remote areas, thereby making it impractical to inspect them at the beginning of each shift. Several comments stated that the proposed standard duplicates other standards. They noted that the repair requirements of the proposed standard are unnecessary since mandatory standard 55/56/57.14–26 already requires that unsafe equipment or machinery be removed from service immediately. MSHA concurs with these comments, and with additional comments indicating that specific inspection requirements already exist in a number of standards. For example, new mandatory standard 55/56/57.9–1 requires that self-propelled loading, hauling and dumping equipment that is to be used during a shift be inspected before being placed in operation. In response to comments and because of the protection afforded by new and existing standards, the advisory standard is revoked.

§§ 55/56/57.14–28

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard recommended that adequate clearance be provided at machine installations. Protection is afforded by mandatory standard 55/56/57.11–1, which requires a safe means of access to all working places, including machine installations.

Section 15—Personal Protection

§§ 55/56/57.15–8, 55/56/57.15–9, 55/56/57.15–10, 55/56/57.15–11 and 55/56/57.15–13

The five standards in this section concerning clothing, gloves, finger rings, and seat belts are revoked. MSHA intends to conduct a study of the injuries and associated hazards covered by these advisory standards. Where appropriate, the agency will propose new mandatory standards to address these areas of personal protection.

Section 16—Material Storage and Handling

§§ 55/56/57.16–8

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard, which recommended that taglines be attached to suspended materials, is revoked because its requirements have been consolidated with those of new mandatory standard 55/56/57.16–7.

Section 18—Safety Programs

§§ 55/56/57.18–1

The proposal stated that a definite, effective and functioning safety program shall be established and that personnel shall actively participate in the program. Several comments stated that this standard should be revoked because MSHA's Training Regulations respond to the need for effective safety programs at metal and nonmetal mines. The Training Regulations provide for specific safety instruction for both new and experienced miners in such areas as first aid, use of equipment, and hazard recognition. These regulations also require that training be periodic, thereby assuring that the training program will be "continually functioning." MSHA concurs with these comments, and the standard is revoked.

§§ 55/56/57.18–3

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard addressed the investigation of serious accidents and the keeping of records regarding the investigation. Existing regulations in 30 CFR Part 50, "Notification, Investigation, Reports and Records of Accidents, Injuries, Illnesses, Employment, and Coal Production in Mines," cover these areas.

§§ 55/56/57.18–4, §§ 55/56/57.18–5, and §§ 55/56/57.18–7

As recommended by the Advisory Committee and proposed by MSHA, these standards are revoked. The advisory standards contained recommendations regarding the education and training of miners. These issues are covered in MSHA's Training Regulations.

§§ 55/56/57.18–8

The proposal stated that each active working place shall be visited by a supervisor or other designated competent person. Comments indicated that the standard as proposed was vague and imposed upon operators a general duty "to assure that work is being done in a safe manner." The standard is revoked in response to these comments and because specific inspection requirements are contained in other standards, such as mandatory standard 55/56/57.3–8.

§§ 55/56/57.18–11

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard recommended training in accident prevention. MSHA's Training

Regulations provide for such instruction and training.

§ *57.18–26*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard dealt with the resumption of mining activities following an event which "caused or can cause widespread unsafe conditions." The standard is revoked because 30 CFR Part 50, "Notification, Investigation, Reports and Records of Accidents, Injuries, Illnesses, Employment, and Coal Production," and the enforcement provisions of the Mine Act provide for the closing of unsafe mining operations.

Section 19—Man Hoisting

§§ *55/56/57.19–20*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard recommended that the United States of America Standards Institute specifications cited in "Wire Ropes for Mines", M11.1–1960, be used as a guide in selection, installation, and maintenance of wire ropes used for hoisting. These issues are covered by existing or new mandatory standards. Existing mandatory standard 55/56/57.19–21 and new mandatory standard 55/56/57.19–39 provide criteria for the selection of the correct wire rope for use on man hoists. Mandatory standard 55/56/57.19–24 provides requirements for the proper connection of wire rope to the load. Mandatory standard 55/56/57.19–123 concerns maintenance of wire ropes. Mandatory standards 55/56/57.19–124, 55/56/57.19–125 and 55/56/57.19–126 contain inspection requirements for wire ropes.

§§ *55/56/57.19–25*

The proposed standard stated that wire ropes must be used and maintained in accordance with the manufacturer's recommendations or the equivalent. The advisory standard suggested that new ropes be broken-in accordance with the manufacturer's recommendations. This standard is revoked because of the coverage provided by other standards in 30 CFR 55/56/57.19, "Man hoisting." For example, mandatory standard 55/56/57.19–123 provides that wire ropes be lubricated or treated with dressing as recommended or approved by the rope manufacturer. New mandatory standards 55/56/57.19–124, 55/56/57.19–125 and 55/56/57.19–126 contain requirements for the periodic inspection and testing of wire ropes.

§§ *55/56/57.19–127*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard suggested that electromagnetic or other non-destructive rope testing systems be used only as supplements to recommended inspection and tests. The advisory standard is revoked because MSHA's current requirements and procedures for rope testing are already contained in existing or new mandatory standards.

Section 20—Miscellaneous

§§ *55/56/57.20–4*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard stated that men should not engage in horseplay. MSHA believes that miner education and training is the most effective method for encouraging and promoting safety through proper personal conduct. MSHA's Training Regulations provide for instruction concerning safe work practices.

§§ *55/56/57.20–6*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard recommended that protruding nails which may cause injury be removed or completely bent over. The hazard of protruding nails is covered by mandatory standard 55/56/57.20–3(c) which requires that every floor, working place, and passageway be kept free from protruding nails, splinters, holes, or loose boards.

§§ *55/56/57.20–7*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard stated that employees should constantly be alert to the potential of accidents on their jobs. Education and training of miners in hazard recognition and accident prevention are required by MSHA's Training Regulations.

Section 21—Gassy Mines

§ *57.21–37*

As recommended by the Advisory Committee and proposed by MSHA, this standard is revoked. The advisory standard recommended that electrically operated pumps, compressors, and portable substations be in intake air. The hazards associated with the operation of electrical equipment in air containing gases are addressed by existing mandatory standards. For example, mandatory standard 57.21–78 allows only permissible equipment maintained in permissible condition in places where dangerous quantities of flammable gases are present or may enter the air current.

Drafting Information

The principal persons responsible for drafting this rulemaking document are: Roy L. Bernard, Deputy Administrator for Metal and Nonmetal Mine Safety and Health, and Herbert P. LeVan and Richard Zeutenhorst, Office of Standards, Regulations and Variances, MSHA; and Bernard R. McGuire and Arlene Celotto, Attorney-Advisors, Division of Mine Safety and Health, Office of the Solicitor, Department of Labor.

Regulatory Analysis

It has been determined that a regulatory analysis is not required for this rule under the Department of Labor's final guidelines for implementing Executive Order 12044 (44 FR 5570, January 26, 1979).

It is estimated that the total cost of compliance with the standards contained in this rule for all metal and nonmetal mining industries will be approximately 92 million dollars during the first year. A full assessment of the economic effects of the final rule has been made by MSHA, and is available to the public.

Dated: August 8, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

PART 55—HEALTH AND SAFETY STANDARDS—METAL AND NONMETAL OPEN PIT MINES

Part 55, Subchapter N, Chapter I, Title 30, Code of Federal Regulations is amended and revised as follows:

§ 55.3 [Amended]

A. Section 55.3 "Ground control" is amended as follows:

1. Advisory standards 55.3–7, 55.3–10, and 55.3–13 are revoked, standard numbers 55.3–7, 55.3–10, and 55.3–13 are reserved, and reserved standard numbers 55.3–11 and 55.3–14 through 55.3–49 are revised as follows:

55.3–7 [Reserved]

* * * * *

55.3–10 and 55.3–11 [Reserved]

* * * * *

55.3–13 through 55.3–49 [Reserved]

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 55.4 [Amended]

B. Section 55.4 "Fire prevention and control" is amended as follows:

1. Advisory standard 55.4–3 is revised and made mandatory as follows:

55.4–3 *Mandatory.* Areas surrounding electric substations and unburied tanks used for the storage of flammable or combustible liquids shall be free of combustible materials (including dry vegetation) for a distance of at least 25 feet.

2. Advisory standard 55.4–5 is revised and made mandatory as follows:

55.4–5 *Mandatory.* Effective February 13, 1980, fixed unburied tanks used for the storage of flammable or combustible liquids shall be securely mounted on firm foundations. Where necessary to prevent leaks caused by tanks settling, piping shall be provided with flexible connections or other special fittings.

3. Advisory standard 55.4–7 is revised and made mandatory as follows:

55.4–7 *Mandatory.* Means shall be provided to remove or control spilled flammable or combustible liquids.

4. Advisory standard 55.4–49 is revised, renumbered, and made mandatory as follows:

55.4–12 *Mandatory.* All flammable and combustible waste materials, grease, lubricants or flammable liquids shall not be allowed to accumulate where they can create a fire hazard.

5. Advisory standard 55.4–13 is revised and made mandatory as follows:

55.4–13 *Mandatory.* In areas where materials such as oily waste or oily rags create a fire hazard, the materials shall be placed in covered metal containers until disposed of properly.

6. Advisory standard 55.4–16 is revised and made mandatory as follows:

55.4–16 *Mandatory.* Drip pans shall be provided to catch leakage or spillage whenever combustible or flammable liquids are dispensed in a place or manner which may create a fire hazard. Floor areas where drip pans are used shall be cleaned immediately after spills.

7. Advisory standard 55.4–17 is revoked and standard number 55.4–17 is reserved as follows:

55.4–17 [Reserved]

8. Advisory standard 55.4–25 is revised and made mandatory as follows:

55.4–25 *Mandatory.* Effective February 13, 1980, whenever fire hydrants are used, they shall be provided with—

(a) Uniform fittings;

(b) Readily available wrenches or keys to open the valves; and

(c) Readily available adapters that connect hydrant fittings to the hose equipment of local fire departments.

9. Advisory standard 55.4–26 is revised and made mandatory as follows:

55.4–26 *Mandatory.* Water pipes, valves, outlets, hydrants, and hoses designated for fire fighting purposes shall be inspected every 90 days and tested annually.

10. Advisory standard 55.4–39 is revised, renumbered, and made mandatory as follows:

55.4–27 *Mandatory.* Whenever self-propelled mobile equipment is used, such equipment shall be provided with a suitable fire extinguisher readily accessible to the equipment operator.

11. Advisory standard 55.4–30 is revoked.

12. Standard number 55.4–39 of action B(10) above is replaced with a series of numbers 55.4–39A through 55.4–39Z, and numbers 55.4–39C through 55.4–39Z are reserved as follows:

55.4–39C through 55.4–39Z [Reserved]

13. Advisory standard 55.4–6 is revised, renumbered, and made mandatory as follows:

55.4–39A *Mandatory.* Effective February 13, 1980, storage buildings or rooms in which flammable or combustible liquids or other flammable materials are stored and which are within 100 feet of where miners normally work shall be well-ventilated and constructed of materials having a fire-resistance rating of no less than one (1) hour as tested under the appropriate National Fire Protection Association (NFPA) fire-resistance test or under a test of another approved testing agency.

14. Advisory standard number 55.4–6 is reserved as follows:

55.4–6 [Reserved]

15. Advisory standard 55.4–31 is revised, renumbered, and made mandatory as follows:

55.4–39B *Mandatory.* Emergency fire fighting plans in combination with evacuation and rescue plans shall be established and coordinated with available fire fighting organizations. Emergency fire fighting drills shall be held for each shift at least once every six (6) months.

16. Standard numbers 55.4–30 of action B(11) and 55.4–31 of action B(15) above are reserved, and reserved standard number 55.4–32 is revised as follows:

55.4–30 through 55.4–32 [Reserved]

17. Advisory standard 55.4–41 is revised and made mandatory as follows:

55.4–41 *Mandatory.* Every building or structure where persons normally work shall be provided with exits sufficient to permit the prompt escape of persons in case of fire.

18. Advisory standard 55.4–34 is revised, renumbered, and made mandatory as follows:

55.4–47 *Mandatory.* Belt conveyors shall be equipped with a safety switch capable of automatically stopping the drive pulley in the event of excessive slippage of the belt, where ignition of the belt could create a hazard to personnel. When it is necessary to operate the conveyor while temporarily by-passing the safety switch or any automatic function of the switch, a person shall attend the belt at the drive pulley.

19. Standard numbers 55.4–34 and 55.4–49 are reserved as follows:

55.4–34 [Reserved]

* * * * *

55.4–49 [Reserved]

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 55.5 [Amended]

C. Section 55.5 "Air quality and physical agents" is amended as follows:

1. Advisory standard 55.5–4 is revised, transferred to Section 55.9 "Loading, hauling, dumping," renumbered 55.9–74, and standard number 55.5–4 is reserved as follows:

55.5–4 [Reserved]

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 55.6 [Amended]

D. Section 55.6 "Explosives" is amended as follows:

1. Advisory standards 55.6–3 and 55.6–4 are revoked, and standard numbers 55.6–3 and 55.6–4 are reserved as follows:

55.6–3 and 55.6–4 [Reserved]

2. Advisory standard 55.6–130 is revised and made mandatory as follows:

55.6–130 *Mandatory.* At least a 15-foot air gap shall be provided between the blasting circuit and the electric power source.

3. Advisory standards 55.6–190, 55.6–192 and 55.6–196 are revoked, standard numbers 55.6–190, 55.6–192 and 55.6–196 are reserved, and reserved standard numbers 55.6–191 and 55.6–197 are revised as follows:

55.6–190 through 55.6–192 [Reserved]

* * * * *

55.6–196 and 55.6–197 [Reserved]

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 55.7 [Amended]

E. Section 55.7 "Drilling" is amended as follows:

1. Advisory standard 55.7–1 is revoked, and standard number 55.7–1 is reserved as follows:

55.7–1 [Reserved]

2. Advisory standard 55.7–9 is revised and made mandatory as follows:

55.7–9 *Mandatory.* If a drill helper assists the drill operator during movement of a drill to a new location, the helper shall be in sight

of, or in communication with, the operator at all times.

3. Advisory standards 55.7–14, 55.7–16, and 55.7–17 are revoked.

4. Reserved standard numbers 55.7–20 through 55.7–24 are revised and standard numbers 55.7–25 through 55.7–49 are added and reserved as follows:

55.7–20 through 55.7–49 [Reserved]

5. Advisory standard 55.7–6 is revised, renumbered, and made mandatory as follows:

55.7–50 *Mandatory.* Receptacles or racks shall be provided for drill steel and tools stored or carried on drills.

6. Advisory standard 55.7–7 is revised, renumbered, and made mandatory as follows:

55.7–51 *Mandatory.* To prevent injury to personnel, tools and other objects shall not be left loose on the mast or drill platform.

7. Standard numbers 55.7–6 and 55.7–7 are reserved as follows:

55.7–6 and 55.7–7 [Reserved]

8. Advisory standard 55.7–15 is revised, renumbered, and made mandatory as follows:

55.7–52 *Mandatory.* Persons shall not drill from—

(a) Positions which hinder their access to the control levers;

(b) Insecure footing or insecure staging; or

(c) Atop equipment not suitable for drilling.

9. Standard numbers 55.7–14, 55.7–15, 55.7–16, and 55.7–17 are reserved as follows:

55.7–14 through 55.7–17 [Reserved]

10. Advisory standard 55.7–19 is revised, renumbered, and made mandatory as follows:

55.7–53 *Mandatory.* Before hand-held drills are moved from one working area to another, air shall be turned off and bled from the hose.

11. Standard number 55.7–19 is reserved as follows:

55.7–19 [Reserved]

12. A series of numbers 55.7–54 through 55.7–100 is added and reserved as follows:

55.7–54 through 55.7–100 [Reserved]

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 55.8 [Amended]

F. Section 55.8 "Rotary jet piercing" is amended as follows:

1. Advisory standard 55.8–1 is revised and made mandatory as follows:

55.8–1 *Mandatory.* Jet piercing drills shall be provided with—

(a) A system to pressurize the equipment operator's cab, when a cab is provided; and

(b) A protective cover over the oxygen flow indicator.

2. Advisory standard 55.8–4 is revised and made mandatory as follows:

55.8–4 *Mandatory.* When rotary jet piercing equipment requires refueling at locations other than fueling stations, a system for fueling without spillage shall be provided.

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 55.9 [Amended]

G. Section 55.9 "Loading, hauling, dumping" is amended as follows:

1. Advisory standard 55.9–8 is revoked, and standard number 55.9–8 is reserved as follows:

55.9–8 [Reserved]

2. Advisory standard 55.9–10 is revised and made mandatory as follows:

55.9–10 *Mandatory.* Equipment operators' cabs shall not be equipped, altered or otherwise modified in a manner which impairs operating visibility.

3. Advisory standard 55.9–16 is revised and made mandatory as follows:

55.9–16 *Mandatory.* Roadbeds, rails, joints, switches, frogs, and other trackage elements on railroads subject to the control of the operator shall be designed, installed and maintained in a safe manner consistent with the speed and type of haulage.

4. Advisory standards 55.9–18 and 55.9–29 are revoked, and standard numbers 55.9–18 and 55.9–29 are reserved as follows:

55.9–18 [Reserved]

* * * * *

55.9–29 [Reserved]

5. Advisory standard 55.9–63 is revised and made mandatory as follows:

55.9–63 *Mandatory.* Ramps and dumping facilities shall—

(a) Be of substantial construction; and

(b) Have suitable width, clearance, and headroom to accommodate the equipment using the facilities.

6. Advisory standard 55.9–70 is revised and made mandatory as follows:

55.9–70 *Mandatory.* A tow bar of substantial construction or other suitable means of control shall be used to tow heavy equipment. A substantial safety chain or wire rope shall be used in conjuction with any primary rigging.

7. New mandatory standard 55.9–74 (formerly advisory standard 55.5–4) is added as follows:

55.9–74 *Mandatory.* Dust shall be suitably controlled at muck piles, material transfer points, crushers, and on haulage roads where hazards to personnel may be created as a result of impaired visibility.

8. Advisory standards 55.9–81 and 55.9–82 are revoked, standard numbers 55.9–81 and 55.9–82 are reserved, and reserved standard numbers 55.9–75 through 55.9–80 are revised as follows:

55.9–75 through 55.9–82 [Reserved]

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§55.10 [Amended]

H. Section 55.10 "Aerial tramways" is amended as follows:

1. Advisory standard 55.10–1 is revised and made mandatory as follows:

55.10–1 *Mandatory.* Buckets shall not be overloaded, and feed shall be regulated to prevent spillage.

2. Advisory standard 55.10–2 is revised and made mandatory as follows:

55.10–2 *Mandatory.* Inspection and maintenance of carriers (including loading and unloading mechanisms), ropes and supports, and brakes shall be performed by competent persons according to the recommendations of the manufacturer.

3. Advisory standard 55.10–4 is revised and made mandatory as follows:

55.10–4 *Mandatory.* Positive-action-type brakes and devices which apply the brakes automatically in the event of a power failure shall be provided on aerial tramways.

4. Advisory standard 55.10–5 is revised and made mandatory as follows:

55.10–5 *Mandatory.* Track cable connections shall not obstruct the passage of carriage wheels.

5. Advisory standard 55.10–6 is revised and made mandatory as follows:

55.10–6 *Mandatory.* Towers shall be suitably protected from swaying buckets.

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 55.11 [Amended]

I. Section 55.11 "Travelways and escapeways" is amended as follows:

1. Advisory standard 55.11–4 is revised and made mandatory as follows:

55.11–4 *Mandatory.* Portable rigid ladders shall be provided with suitable bases and placed securely when used.

2. Advisory standard 55.11–7 is revised and made mandatory as follows:

55.11–7 *Mandatory.* Wooden components of ladders shall not be painted except with a transparent finish.

3. Advisory standard 55.11–8 is revoked, and standard number 55.11–8 is reserved as follows:

55.11–8 [Reserved]

4. Advisory standard 55.11–10 is revised and made mandatory as follows:

55.11–10 *Mandatory.* Vertical clearance above stair steps shall be a minimum of

seven (7) feet, or suitable warning signs or similar devices shall be provided to indicate an impaired clearance.

5. Advisory standard 55.11–11 is revised and made mandatory as follows:

55.11–11 *Mandatory.* Persons using ladders shall face the ladders and have both hands free for climbing and descending.

6. Advisory standard 55.11–15 is revoked, and standard number 55.11–15 is reserved as follows:

55.11–15 [Reserved]

7. Advisory standard 55.11–17 is revised and made mandatory as follows:

55.11–17 *Mandatory.* Fixed ladders shall not incline backwards.

8. Advisory standard 55.11–25 is revised and made mandatory as follows:

55.11–25 *Mandatory.* Fixed ladders, except on mobile equipment, shall be offset and have substantial railed landings at least every 30 feet unless backguards or equivalent protection, such as safety belts and safety lines, are provided.

9. Advisory standard 55.11–26 is revised and made mandatory as follows:

55.11–26 *Mandatory.* Fixed ladders 70 degrees to 90 degrees from the horizontal and 30 feet or more in length shall have backguards, cages or equivalent protection, starting at a point not more than seven (7) feet from the bottom of the ladders.

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 55.12 [Amended]

J. Section 55.12 "Electricity" is amended as follows:

1. Advisory standard 55.12–4 is revised and made mandatory as follows:

55.12–4 *Mandatory.* Electrical conductors shall be of a sufficient size and current-carrying capacity to ensure that a rise in temperature resulting from normal operations will not damage the insulating materials. Electrical conductors exposed to mechanical damage shall be protected.

2. Advisory standard 55.12–19 is revised and made mandatory as follows:

55.12–19 *Mandatory.* Where access is necessary, suitable clearance shall be provided at stationary electrical equipment or switchgear.

3. Advisory standard 55.12–22 is revised and made mandatory as follows:

55.12–22 *Mandatory.* Areas containing major electrical installations shall be entered only by authorized persons.

4. Advisory standards 55.12–24, 55.12–29, and 55.12–31 are revoked, and standard numbers 55.12–24, 55.12–29, and 55.12–31 are reserved as follows:

55.12–24 [Reserved]

* * * * *

55.12–29 [Reserved]

* * * * *

55.12–31 [Reserved]

5. Advisory standard 55.12–35 is revised and made mandatory as follows:

55.12–35 *Mandatory.* Lamp sockets shall be of a weatherproof type where they are exposed to weather or wet conditions that may interfere with illumination or create a shock hazard.

6. Advisory standard 55.12–38 is revised and made mandatory as follows:

55.12–38 *Mandatory.* Trailing cables shall be attached to machines in a suitable manner to protect the cable from damage and to prevent strain on the electrical connections.

7. Advisory standard 55.12–39 is revised and made mandatory as follows:

55.12–39 *Mandatory.* Surplus trailing cables to shovels, cranes and similar equipment shall be—

(a) Stored in cable boats;

(b) Stored on reels mounted on the equipment; or

(c) Otherwise protected from mechanical damage.

8. Advisory standards 55.12–44 and 55.12–49 are revoked, standard numbers 55.12–44 and 55.12–49 are reserved, and reserved standard number 55.12–43 is revised as follows:

55.12–43 and 55.12–44 [Reserved]

* * * * *

55.12–49 [Reserved]

9. Advisory standard 55.12–50 is revised and made mandatory as follows:

55.12–50 *Mandatory.* Trolley wires shall be installed at least seven (7) feet above rails where height permits, and aligned and supported to suitably control sway and sag.

10. Advisory standards 55.12–51 and 55.12–52 are revoked, and standard numbers 55.12–51 and 55.12–52 are reserved as follows:

55.12–51 and 55.12–52 [Reserved]

11. Advisory standard 55.12–53 is revised and made mandatory as follows:

55.12–53 *Mandatory.* Ground wires for lighting circuits powered from trolley wires shall be connected securely to the ground-return circuit.

12. Advisory standard 55.12–54 is revoked, standard number 55.12–54 is reserved and reserved standard numbers 55.12–55 through 55.12–64 are revised as follows:

55.12–54 through 55.12–64 [Reserved]

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 55.13 [Amended]

K. Section 55.13 "Compressed air and boilers" is amended as follows:

1. Advisory standard 55.13–10 is revised and made mandatory as follows:

55.13–10 *Mandatory.* (a) Reciprocating-type air compressors rated over 10 horsepower shall be equipped with automatic temperature-actuated shutoff mechanisms which shall be set or adjusted to the compressor when the normal operating temperature is exceeded by more than 25 percent.

(b) However, this standard does not apply to reciprocating-type air compressors rated over 10 horsepower if equipped with fusible plugs that were installed in the compressor discharge lines before November 15, 1979, and designed to melt at temperatures at least 50 degrees below the flash point of the compressors' lubricating oil.

2. Advisory standard 55.13–11 is revised and made mandatory as follows:

55.13–11 *Mandatory.* Air receiver tanks shall be equipped with one or more automatic pressure-relief valves. The total relieving capacity of the relief valves shall prevent pressure from exceeding the maximum allowable working pressure in a receiver tank by not more than 10 percent. Air receiver tanks also shall be equipped with indicating pressure gages which accurately measure the pressure within the air receiver tanks.

3. Advisory standard 55.13–12 is revised and made mandatory as follows:

55.13–12 *Mandatory.* Compressor air intakes shall be installed to insure that only clean, uncontaminated air enters the compressors.

4. Advisory standards 55.13–13 and 55.13–14 are revoked, and standard numbers 55.13–13 and 55.13–14 are reserved as follows:

55.13–13 and 55.13–14 [Reserved]

5. Advisory standard 55.13–15 is revised and made mandatory as follows:

55.13–15 *Mandatory.* (a) Compressed-air receivers and other unfired pressure vessels shall be inspected by inspectors holding a valid National Board Commission and in accordance with the applicable chapters of the National Board Inspection Code, a Manual for Boiler and Pressure Vessel Inspectors, 1979. This code is incorporated by reference and made a part of this standard, may be examined at any Metal and Nonmetal Mine Safety and Health District Office of the Mine Safety and Health Administration, and may be obtained from the publisher, the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229.

(b) Records of inspections shall be kept in accordance with requirements of the National Board Inspection Code, and the records shall be made available to the Secretary or his authorized representative.

6. Advisory standard 55.13–16 is revoked, and standard number 55.13–16 is reserved as follows:

55.13–16 [Reserved]

7. Advisory standard 55.13–17 is revised and made mandatory as follows:

55.13–17 *Mandatory.* Compressor discharge pipes where carbon build-up may occur shall be cleaned periodically as recommended by the manufacturer, but no less frequently than once every two (2) years.

8. Advisory standard 55.13–18 is revoked, and standard number 55.13–18 is reserved as follows:

55.13–18 [Reserved]

9. Advisory standard 55.13–30 is revised and made mandatory as follows:

55.13–30 *Mandatory.* (a) Fired pressure vessels (boilers) shall be equipped with water level gages, pressure gages, automatic pressure-relief valves, blowdown piping, and other safety devices approved by the American Society of Mechanical Engineers to protect against hazards from overpressure, flameouts, fuel interruptions and low water level, all as required by the appropriate sections, chapters and appendices listed in paragraph (b) (1) and (2) below.

(b) These gages, devices and piping shall be designed, installed, operated, maintained, repaired, altered, inspected, and tested by inspectors holding a valid National Board Commission and in accordance with the following listed sections, chapters and appendices:

(1) The ASME Boiler and Pressure Vessel Code, 1977, published by the American Society of Mechanical Engineers.

Section and Title

I Power Boilers.
II Material Specifications—Part A—Ferrous.
II Material Specifications—Part B—Nonferrous.
II Material Specifications—Part C—Welding Rods, Electrodes, and Filler Metals.
IV Heating Boilers.
V Nondestructive Examination.
VI Recommended Rules for Care and Operation of Heating Boilers.
VII Recommended Rules for Care of Power Boilers.

(2) The National Board Inspection Code, a Manual for Boiler and Pressure Vessel Inspectors, 1979, published by the National Board of Boiler and Pressure Vessel Inspectors.

Chapter and Title

I Glossary of Terms.
II Inspection of Boilers and Pressure Vessels.
III Repairs and Alterations to Boiler and Pressure Vessels by Welding.
IV Shop Inspection of Boilers and Pressure Vessels.
V Inservice Inspection of Pressure Vessels by Authorized Owner-User Inspection Agencies.

Appendix and Title

A Safety and Safety Relief Valves.
B Non-ASME Code Boilers and Pressure Vessels.
C Storage of Mild Steel Covered Arc Welding Electrodes.
D–R National Board "R" (Repair) Symbol Stamp.
D–VR National Board "VR" (Repair of Safety and Safety Relief Valve) Symbol Stamp.
D–VR1 Certificate of Authorization for Repair Symbol Stamp for Safety and Safety Relief Valves.
D–VR2 Outline of Basic Elements of Written Quality Control System for Repairers of ASME Safety and Safety Relief Valves.
D–VR3 Nameplate Stamping for "VR".
E Owner-user Inspection Agencies.
F Inspection Forms.

(c) Records of inspections and repairs shall be kept in accordance with the requirements of the ASME Boiler and Pressure Vessel Code and the National Board Inspection Code. The records shall be made available to the Secretary or his authorized representative.

(d) Sections of the ASME Boiler and Pressure Vessel Code, 1977, listed in paragraph (b)(1) above, and chapters and appendices of the National Board Inspection Code, 1979, listed in paragraph (b)(2) above, are incorporated by reference and made a part of this standard. These publications may be obtained from the publishers, the American Society of Mechanical Engineers, 345 East Forty-seventh Street, New York, N.Y. 10017, and the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229.

The publications may be examined at any Metal and Nonmetal Mine Safety and Health District Office of the Mine Safety and Health Administration.

10. Advisory standards 55.13–31, 55.13–32, 55.13–33, and 55.13–34 are revoked, and standard numbers 55.13–31, 55.13–32, 55.13–33, and 55.13–34 are reserved as follows:

55.13–31 through 55.13–34 [Reserved]

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 55.14 [Amended]

L. Section 55.14 "Use of equipment" is amended as follows:

1. Advisory standard 55.14–3 is revised and made mandatory as follows:

55.14–3 *Mandatory.* Guards at conveyor-drive, conveyor-head, and conveyor-tail pulleys shall extend a distance sufficient to prevent a person from accidentally reaching behing the guard and becoming caught between the belt and the pulley.

2. Advisory standards 55.14–4 and 55.14–5 are revoked, and standard numbers 55.14–4 and 55.14–5 are reserved as follows:

55.14–4 and 55.14–5 [Reserved]

3. Advisory standard 55.14–7 is revised and made mandatory as follows:

55.14–7 *Mandatory.* Guards shall be of substantial construction and properly maintained.

4. Advisory standard 55.14–11 is revised and made mandatory as follows:

55.14–11 *Mandatory.* Guards, shields, or other suitable protection shall be provided in areas where flying or falling materials present a hazard to personnel.

5. Advisory standard 55.14–25 is revoked, and standard number 55.14–25 is reserved as follows:

55.14–25 [Reserved].

6. Advisory standard 55.14–27 is revised and made mandatory as follows:

55.14–27 *Mandatory.* Operation of machinery or equipment shall be assigned only to competent persons.

7. Advisory standard 55.14–28 is revoked, and standard number 55.14–28 is reserved as follows:

55.14–28 [Reserved]

8. Advisory standard 55.14–36 is revised and made mandatory as follows:

55.14–36 *Mandatory.* Tools and equipment shall not be used beyond the design capacity intended by the manufacturer, where such use may create a hazard to personnel.

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 55.15 [Amended]

M. Section 55.15 "Personal protection" is amended as follows:

1. Advisory standards 55.15–8, 55.15–9, 55.15–10, 55.15–11, and 55.15–13 are revoked, standard numbers 55.15–8, 55.15–9, 55.15–10, 55.15–11, 55.15–12 (Revoked July 1, 1974, 39 FR 24317), and 55.15–13 are reserved, and reserved standard numbers 55.15–14 through 55.15–19 are revised as follows:

55.15–8 through 55.15–19 [Reserved]

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 55.16 [Amended]

N. Section 55.16 "Materials storage and handling" is amended as follows:

1. Advisory standard 55.16–1 is revised and made mandatory as follows:

55.16–1 *Mandatory.* Supplies shall not be stacked or stored in a manner which creates tripping or fall-of-material hazards.

2. Advisory standard 55.16–2 is revised and made mandatory as follows:

55.16–2 *Mandatory.* (a) Bins, hoppers, silos, tanks, and surge piles, where loose unconsolidated materials are stored, handled or transferred shall be—

(1) Equipped with mechanical devices or other effective means of handling materials so that during normal operations persons are not required to enter or work where they are exposed to entrapment by the caving or sliding of materials; and

(2) Equipped with supply and discharge operating controls. The controls shall be located so that spills or overruns will not endanger persons.

(b) Where persons are required to move around or over any facility listed in this standard, suitable walkways or passageways shall be provided.

(c) Where persons are required to enter any facility listed in this standard for maintenance or inspection purposes, ladders, platforms, or staging shall be provided. No person shall enter the facility until the supply and discharge of materials have ceased and the supply and discharge equipment is locked out. Persons entering the facility shall wear a safety belt or harness equipped with a lifeline suitably fastened. A second person, similarly equipped, shall be stationed near where the lifeline is fastened and shall constantly adjust it or keep it tight as needed, with minimum slack.

3. Advisory standard 55.16–7 is revised and made mandatory as follows:

55.16–7 *Mandatory.* (a) Taglines shall be attached to loads that may require steadying or guidance while suspended.

(b) Hitches and slings used to hoist materials shall be suitable for the particular material handled.

4. Advisory standard 55.16–8 is revoked, and standard number 55.16–8 is reserved as follows:

55.16–8 [Reserved]

5. Advisory standard 55.16–10 is revised and made mandatory as follows:

55.16–10 *Mandatory.* To protect personnel, material shall not be dropped from an overhead elevation until the drop area is first cleared of personnel and the area is then either guarded or a suitable warning is given.

6. Advisory standard 55.16–12 is revised and made mandatory as follows:

55.16–12 *Mandatory.* Chemical substances, including concentrated acids and alkalies, shall be stored to prevent inadvertent contact with each other or with other substances, where such contact could cause a violent reaction or the liberation of harmful fumes or gases.

7. Advisory standard 55.16–13 is revised and made mandatory as follows:

55.16–13 *Mandatory.* Suitable warning shall be given before molten metal is poured and before a container of molten metal is moved.

8. Advisory standard 55.16–16 is revised and made mandatory as follows:

55.16–16 *Mandatory.* Fork and other similar types of lift trucks shall be operated with the—

(a) Upright tilted back to steady and secure the load;

(b) Load in the upgrade position when ascending or descending grades in excess of 10 percent;

(c) Load not raised or lowered enroute except for minor adjustments; and

(d) Load-engaging device downgrade when traveling unloaded on all grades.

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 55.18 [Amended]

O. Section 55.18 "Safety programs" is amended as follows:

1. Advisory standard 55.18–1 is revoked, and standard number 55.18–1 is reserved as follows:

55.18–1 [Reserved]

2. Advisory standard 55.18–2 is revised and made mandatory as follows:

55.18–2 *Mandatory.* (a) A competent person designated by the operator shall examine each working place at least once each shift for conditions which may adversely affect safety or health. The operator shall promptly initiate appropriate action to correct such conditions.

(b) A record that such examinations were conducted shall be kept by the operator for a period of one (1) year, and shall be made available for review by the Secretary or his authorized representative.

(c) In addition, conditions that may present an imminent danger which are noted by the person conducting the examination shall be brought to the immediate attention of the operator who shall withdraw all persons from the area affectd (except persons referred to in section 104(c) of the Federal Mine Safety and Health Act of 1977) until the danger is abated.

3. Advisory standards 55.18–3, 55.18–4, 55.18–5, 55.18–7, and 55.18–8 are revoked, and standard numbers 55.18–3, 55.18–4, 55.18–5, 55.18–7 and 55.18–8 are reserved as follows:

55.18–3 through 55.18–5 [Reserved]

* * * * *

55.18–7 and 55.18–8 [Reserved]

4. Advisory standard 55.18–9 is revised and made mandatory as follows:

55.18–9 *Mandatory.* When persons are working at the mine, a competent person designated by the mine operator shall be in attendance to take charge in case of an emergency.

5. Advisory standard 55.18–11 is revoked, and standard number 55.18–11 is reserved as follows:

55.18–11 [Reserved]

6. Advisory standard 55.18–13 is revised and made mandatory as follows:

55.18–13 *Mandatory.* A suitable communication system shall be provided at the mine to obtain assistance in the event of an emergency.

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b) (2)).)

§ 55.19 [Amended]

P. Section 55.19 "Man hoisting" is amended as follows:

1. The paragraph immediately following the heading "§ 55.19 Man hoisting" is revised as follows:

The hoisting standards in this section apply to those hoists and appurtenances used for hoisting persons. However, where persons may be endangered by hoists and appurtenances used solely for handling ore, rock, and materials, the appropriate standards should be applied.

Emergency hoisting facilities should conform to the extent possible to safety requirements for other hoists, and should be adequate to remove the persons from the mine with a minimum of delay.

2. Advisory standard 55.19–12 is revised and made mandatory as follows:

55.19–12 *Mandatory.* Where grooved drums are used, the grooves shall be of suitable size and pitch for the ropes used.

3. Advisory standards 55.19–20 and 55.19–25 are revoked, and standard numbers 55.19–20 and 55.19–25 are reserved as follows:

55.19–20 [Reserved]

* * * * *

55.19–25 [Reserved]

4. Advisory standard 55.19–35 is revised and made mandatory as follows:

55.19–35 *Mandatory.* All headframes shall be constructed with suitable design considerations to allow for all dead loads, live loads, and wind loads.

5. Advisory standard 55.19–36 is revised and made mandatory as follows:

55.19–36 *Mandatory.* Headframes shall be high enough to provide clearance for overtravel and safe stopping of the conveyance.

6. Advisory standard 55.19–37 is revised and made mandatory as follows:

55.19–37 *Mandatory.* Fleet angles on hoists installed after November 15, 1979 shall not be greater than one and one-half degrees for smooth drums or two degrees for grooved drums.

7. Advisory standard 55.19–39 is revised and made mandatory as follows:

55.19–39 *Mandatory.* All personnel hoists, except emergency escape hoists and hoists with rope speeds of 200 feet per minute or less, installed after November 15, 1979, shall have drum and sheave tread diameters—

(1) Not less than 60 times the hoist rope diameter for slope or inclined shaft applications;

(2) Not less than 80 times the hoist rope diameter if the hoist ropes are one inch in diameter or greater, or not less than 60 times the hoist rope diameter if the hoist ropes are less than one inch in diameter for vertical shaft applications; or

(3) Not less than 100 times the hoist rope diameter for locked coil ropes.

8. Advisory standard 55.19–67 is revised and made mandatory as follows:

55.19–67 *Mandatory.* During shift changes, an authorized person shall be in charge of each trip in which persons are hoisted.

9. Advisory standard 55.19–72 is revised and made mandatory as follows:

55.19–72 *Mandatory.* When combinations of cages and skips are used in the same compartment, the cages shall be enclosed to protect personnel from flying material and the hoist speed reduced to man-speed as defined in standard 55.19–61, but not to exceed 1,000 feet per minute. Muck shall not be hoisted with personnel during shift changes.

10. Advisory standard 55.19–74 is revised and made mandatory as follows:

55.19–74 *Mandatory.* Persons shall not ride the bail, rim, bonnet, or crosshead of any shaft conveyance except when necessary for inspection and maintenance, and then only when suitable protection for persons is provided.

11. Advisory standard 55.19–81 is revised and made mandatory as follows:

55.19–81 *Mandatory.* When conveyances controlled by a hoist operator are not in use, they shall be released and the conveyances shall be raised or lowered a suitable distance to prevent persons from boarding or loading the conveyances.

12. Advisory standard 55.19–91 is revised and made mandatory as follows:

55.19–91 *Mandatory.* Hoist operators shall accept hoisting instructions only by the regular signaling system unless it is out of order. In such an event, and during other emergencies, the hoist operator shall accept instructions to direct movement of the conveyances only from authorized persons.

13. Advisory standard 55.19–93 is revised and made mandatory as follows:

55.19–93 *Mandatory.* A standard code of hoisting signals shall be adopted and used at each mine. The movement of a shaft conveyance on a "one bell" signal is prohibited.

14. Advisory standard 55.19–104 is revised and made mandatory as follows:

55.19–104 *Mandatory.* Suitable clearance at shaft stations shall be provided to allow safe movement of persons, equipment and materials.

15. Advisory standard 55.19–124 is revised and made mandatory as follows:

55.19–124 *Mandatory.* Hoist ropes other than those on friction hoists shall be cut off at least six (6) feet above the highest connection to the conveyance at time intervals not to exceed one (1) year unless a shorter time is required by standard 55.19–126, or by conditions of use. The portion of the rope that is cut off shall be examined and inspected by a competent person for damage, corrosion, wear and fatigue.

16. Advisory standard 55.19–125 is revised and made mandatory as follows:

55.19–125 *Mandatory.* Hoist ropes wound in multiple layers shall have a length cut off at the drum end at least three (3) times during the anticipated life of the rope and whenever necessary as required by standard 55.19–126 to distribute the wear at change-of-layer and crossover points. The length of rope cut off shall not be a whole number multiple of the circumference of the drum.

17. Advisory standard 55.19–126 is revised and made mandatory as follows:

55.19–126 *Mandatory.* Hoist ropes shall be examined over the entire active length at least every month to evaluate wear and possible damage. When such examinations or other inspections reveal that the rope is worn, and at least every six (6) months, caliper measurements or nondestructive tests shall be made at the following locations:

(a) Wherever wear is evident;

(b) Immediately above the socket or clips and above the safety connection;

(c) Where the rope rests on the sheaves;

(d) Where the ropes leave the drums when the conveyances are at the regular stopping point;

(e) Where a layer of rope begins to overlap another layer on the drum; and

(f) At 100 foot intervals (measurements shall be made midway between the last previously calipered points).

18. Advisory standard 55.19–127 is revoked, and standard number 55.19–127 is reserved as follows:

55.19–127 [Reserved]

19. Advisory standard 55.19–130 is revised and made mandatory as follows:

55.19–130 *Mandatory.* Before hoisting persons and to assure that the hoisting compartments are clear of obstructions, empty hoist conveyances shall be operated at least one round trip after—

(a) Any hoist or shaft repairs or related equipment repairs that might restrict or obstruct conveyance clearance;

(b) Any oversize or overweight material or equipment trips that might restrict or obstruct conveyance clearance;

(c) Blasting in or near the shaft that might restrict or obstruct conveyance clearance; or

(d) Remaining idle for one shift or longer.

20. Advisory standard 55.19–131 is revised and made mandatory as follows:

55.19–131 *Mandatory.* Hoist conveyance connections shall be inspected at least once during any 24-hour period that the conveyance is used for hoisting persons.

21. Advisory standard 55.19–132 is revised and made mandatory as follows:

55.19–132 *Mandatory.* (a) A performance drop test of hoist conveyance safety catches shall be made at the time of installation, or prior to installation, in a mockup of the actual installation. The test shall be certified to in writing by the manufacturer or by a registered professional engineer performing the test.

(b) After installation and before use, and at the beginning of any seven (7) day period during which the conveyance is to be used, the conveyance shall be suitably rested and the hoist rope slackened to test for the unrestricted functioning of the safety catches and their activating mechanisms.

(c) The safety catches shall be inspected by a competent person at the beginning of any 24-hour period that the conveyance is to be used.

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 55.20 [Amended]

Q. Section 55.20 "Miscellaneous" is amended as follows:

1. Advisory standards 55.20–4, 55.20–6, and 55.20–7 are revoked, and standard numbers 55.20–4, 55.20–6, and 55.20–7 are reserved as follows:

55.20–4 [Reserved]

* * * * *

55.20–6 and 55.20–7 [Reserved]

(301(b)(2), and Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

PART 56—HEALTH AND SAFETY STANDARDS—SAND, GRAVEL, AND CRUSHED STONE OPERATIONS

Part 56, Subchapter N, Chapter I, Title 30, Code of Federal Regulations is amended and revised as follows:

§ 56.3 [Amended]

R. Section 56.3 "Ground control" is amended as follows:

1. Advisory standards 56.3–7, 56.3–10, and 56.3–13 are revoked, standard numbers 56.3–7, 56.3–10, and 56.3–13 are reserved, and reserved standard numbers 56.3–11 and 56.3–14 through 56.3–49 are revised as follows:

56.3–7 [Reserved]

* * * * *

56.3–10 and 56.3–11 [Reserved]

* * * * *

56.3–13 through 56.3–49 [Reserved]

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 56.4 [Amended]

S. Section 56.4 "Fire prevention and control" is amended as follows:

1. Advisory standard 56.4–3 is revised and made mandatory as follows:

56.4–3 *Mandatory.* Areas surrounding electric substations and unburied tanks used for the storage of flammable or combustible liquids shall be free of combustible materials (including dry vegetation) for a distance of at least 25 feet.

2. Advisory standard 56.4–5 is revised and made mandatory as follows:

56.4–5 *Mandatory.* Effective February 13, 1980, fixed unburied tanks used for the storage of flammable or combustible liquids shall be securely mounted on firm foundations. Where necessary to prevent leaks caused by tanks settling, piping shall be provided with flexible connections or other special fittings.

3. Advisory standard 56.4–7 is revised and made mandatory as follows:

56.4–7 *Mandatory.* Means shall be provided to remove or control spilled flammable or combustible liquids.

4. Advisory standard 56.4–49 is revised, renumbered, and made mandatory as follows:

56.4–12 *Mandatory.* All flammable and combustible waste materials, grease, lubricants or flammable liquids shall not be allowed to accumulate where they can create a fire hazard.

5. Advisory standard 56.4–13 is revised and made mandatory as follows:

56.4–13 *Mandatory.* In areas where materials such as oily waste or oily rags create a fire hazard, the materials shall be placed in covered metal containers until disposed of properly.

6. Advisory standard 56.4–16 is revised and made mandatory as follows:

56.4–16 *Mandatory.* Drip pans shall be provided to catch leakage or spillage whenever combustible or flammable liquids are dispensed in a place or manner which may create a fire hazard. Floor areas where drip pans are used shall be cleaned immediately after spills.

7. Advisory standard 56.4–17 is revoked and standard number 56.4–17 is reserved as follows:

56.4–17 [Reserved]

8. Advisory standard 56.4–25 is revised and made mandatory as follows:

56.4–25 *Mandatory.* Effective February 13, 1980, whenever fire hydrants are used, they shall be provided with—

(a) Uniform fittings;

(b) Readily available wrenches or keys to open the valves; and

(c) Readily available adapters that connect hydrant fittings to the hose equipment of local fire departments.

9. Advisory standard 56.4–26 is revised and made mandatory as follows:

56.4–26 *Mandatory.* Water pipes, valves, outlets, hydrants, and hoses designated for fire fighting purposes shall be inspected every 90 days and tested annually.

10. Advisory standard 56.4–39 is revised, renumbered, and made mandatory as follows:

56.4–27 *Mandatory.* Whenever self-propelled mobile equipment is used, such equipment shall be provided with a suitable fire extinguisher readily accessible to the equipment operator.

11. Advisory standard 56.4–30 is revoked.

12. Standard number 56.4–39 of action B(10) above is replaced with a series of numbers 56.4–39A through 56.4–39Z, and numbers 56.4–39C through 56.4–39Z are reserved as follows:

56.4–39C through 56.4–39Z [Reserved]

13. Advisory standard 56.4–6 is revised, renumbered, and made mandatory as follows:

56.4–39A *Mandatory.* Effective February 13, 1980, storage buildings or rooms in which flammable or combustible liquids or other flammable materials are stored and which are within 100 feet of where miners normally work shall be well-ventilated and constructed of materials having a fire-resistance rating of no less than one (1) hour as tested under the appropriate National Fire Protection Association (NFPA) fire-resistance test or under a test of another approved testing agency.

14. Advisory standard number 56.4–6 is reserved as follows:

56.4–6 [Reserved]

15. Advisory standard 56.4–31 is revised, renumbered, and made mandatory as follows:

56.4–39B *Mandatory.* Emergency fire fighting plans in combination with evacuation and rescue plans shall be established and coordinated with available fire fighting organizations. Emergency fire fighting drills shall be held for each shift at least once every six (6) months.

16. Standard numbers 56.4–30 of action B(11) and 56.4–31 of action B(15) above are reserved, and reserved standard number 56.4–32 is revised as follows:

56.4–30 through 56.4–32 [Reserved]

17. Advisory standard 56.4–41 is revised and made mandatory as follows:

56.4–41 *Mandatory.* Every building or structure where persons normally work shall be provided with exits sufficient to permit the prompt escape of persons in case of fire.

18. Advisory standard 56.4–34 is revised, renumbered, and made mandatory as follows:

56.4–47 *Mandatory.* Belt conveyors shall be equipped with a safety switch capable of automatically stopping the drive pulley in the event of excessive slippage of the belt, where ignition of the belt could create a hazard to personnel. When it is necessary to operate the conveyor while temporarily by-passing the safety switch or any automatic function of the switch, a person shall attend the belt at the drive pulley.

19. Standard numbers 56.4–34 and 56.4–49 are reserved as follows:

56.4–34 [Reserved]

* * * * *

56.4–49 [Reserved]

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).

§ 56.5 [Amended]

T. Section 56.5 "Air quality and physical agents" is amended as follows:

1. Advisory standard 56.5–4 is revised, transferred to Section 56.9 "Loading, hauling, dumping," renumbered 56.9–74, and standard number 56.5–4 is reserved as follows:

56.5–4 [Reserved]

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).

§ 56.6 [Amended]

U. Section 56.6 "Explosives" is amended as follows:

1. Advisory standards 56.6–3 and 56.6–4 are revoked, and standard numbers 56.6–3 and 56.6–4 are reserved as follows:

56.6–3 and 56.6–4 [Reserved]

2. Advisory standard 56.6–130 is revised and made mandatory as follows:

56.6–130 *Mandatory.* At least a 15-foot air gap shall be provided between the blasting circuit and the electric power source.

3. Advisory standards 56.6–190, 56.6–192 and 56.6–196 are revoked, standard numbers 56.6–190, 56.6–192 and 56.6–196 are reserved, and reserved standard numbers 56.6–191 and 56.6–197 are revised as follows:

56.6–190 through 56.6–192 [Reserved]

* * * * *

56.6–196 and 56.6–197 [Reserved]

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).

§ 56.7 [Amended]

V. Section 56.7 "Drilling" is amended as follows:

1. Advisory standard 56.7–1 is revoked, and standard number 56.7–1 is reserved as follows:

56.7–1 [Reserved]

2. Advisory standard 56.7–9 is revised and made mandatory as follows:

56.7–9 *Mandatory.* If a drill helper assists the drill operator during movement of a drill to a new location, the helper shall be in sight of, or in communication with, the operator at all times.

3. Advisory standards 56.7–14, 56.7–16, and 56.7–17 are revoked.

4. Reserved standard numbers 56.7–20 through 56.7–24 are revised and standard numbers 56.7–25 through 56.7–49 are added and reserved as follows:

56.7–20 through 56.7–49 [Reserved]

5. Advisory standard 56.7–6 is revised, renumbered, and made mandatory as follows:

56.7–50 *Mandatory.* Receptacles or racks shall be provided for drill steel and tools stored or carried on drills.

6. Advisory standard 56.7–7 is revised, renumbered, and made mandatory as follows:

56.7–51 *Mandatory.* To prevent injury to personnel, tools and other objects shall not be left loose on the mast or drill platform.

7. Standard numbers 56.7–6 and 56.7–7 are reserved as follows:

56.7–6 and 56.7–7 [Reserved]

8. Advisory standard 56.7–15 is revised, renumbered, and made mandatory as follows:

56.7–52 *Mandatory.* Persons shall not drill from—
(a) Positions which hinder their access to the control levers;
(b) Insecure footing or insecure staging; or
(c) Atop equipment not suitable for drilling.

9. Standard numbers 56.7–14, 56.7–15, 56.7–16, and 56.7–17 are reserved as follows:

56.7–14 through 56.7–17 [Reserved]

10. Advisory standard 56.7–19 is revised, renumbered, and made mandatory as follows:

56.7–53 *Mandatory.* Before hand-held drills are moved from one working area to another, air shall be turned off and bled from the hose.

11. Standard number 56.7–19 is reserved as follows:

56.7–19 [Reserved]

12. A series of numbers 56.7–54 through 56.7–100 is added and reserved as follows:

56.7–54 through 56.7–100 [Reserved]

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 56.8 [Amended]

W. Section 56.8 "Rotary jet piercing" is amended as follows:

1. Advisory standard 56.8–1 is revised and made mandatory as follows:

56.8–1 *Mandatory.* Jet piercing drills shall be provided with—
(a) A system to pressurize the equipment operator's cab, when a cab is provided; and
(b) A protective cover over the oxygen flow indicator.

2. Advisory standard 56.8–4 is revised and made mandatory as follows:

56.8–4 *Mandatory.* When rotary jet piercing equipment requires refueling at locations other than fueling stations, a system for fueling without spillage shall be provided.

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 56.9 [Amended]

X. Section 56.9 "Loading, hauling, dumping" is amended as follows:

1. Advisory standard 56.9–8 is revoked, and standard number 56.9–8 is reserved as follows:

56.9–8 [Reserved]

2. Advisory standard 56.9–10 is revised and made mandatory as follows:

56.9–10 *Mandatory.* Equipment operators' cabs shall not be equipped, altered or otherwise modified in a manner which impairs operating visibility.

3. Advisory standard 56.9–16 is revised and made mandatory as follows:

56.9–16 *Mandatory.* Roadbeds, rails, joints, switches, frogs, and other trackage elements on railroads subject to the control of the operator shall be designed, installed and maintained in a safe manner consistent with the speed and type of haulage.

4. Advisory standards 56.9–18 and 56.9–29 are revoked and standard numbers 56.9–18 and 56.9–29 are reserved as follows:

56.9–18 [Reserved]

* * * * *

56.9–29 [Reserved]

5. Advisory standard 56.9–63 is revised and made mandatory as follows:

56.9–63 *Mandatory.* Ramps and dumping facilities shall—
(a) Be of substantial construction; and
(b) Have suitable width, clearance, and headroom to accommodate the equipment using the facilities.

6. Advisory standard 56.9–70 is revised and made mandatory as follows:

56.9–70 *Mandatory.* A tow bar of substantial construction or other suitable means of control shall be used to tow heavy equipment. A substantial safety chain or wire rope shall be used in conjunction with any primary rigging.

7. New mandatory standard 56.9–74 (formerly advisory standard 56.5–4) is added as follows:

56.9–74 *Mandatory.* Dust shall be suitably controlled at muck piles, material transfer points, crushers, and on haulage roads where hazards to personnel may be created as a result of impaired visibility.

8. Advisory standards 56.9–81 and 56.9–82 are revoked, standard numbers 56.9–81 and 56.9–82 are reserved, and reserved standard numbers 56.9–75 through 56.9–80 are revised as follows:

56.9–75 through 56.9–82 [Reserved]

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).

§ 56.10 [Amended]

Y. Section 56.10 "Aerial tramways" is amended as follows:

1. Advisory standard 56.10–1 is revised and made mandatory as follows:

56.10–1 *Mandatory.* Buckets shall not be overloaded, and feed shall be regulated to prevent spillage.

2. Advisory standard 56.10–2 is revised and made mandatory as follows:

56.10–2 *Mandatory.* Inspection and maintenance of carriers (including loading and unloading mechanisms), ropes and supports, and brakes shall be performed by competent persons according to the recommendations of the manufacturer.

3. Advisory standard 56.10–4 is revised and made mandatory as follows:

56.10–4 *Mandatory.* Positive-action-type brakes and devices which apply the brakes automatically in the event of a power failure shall be provided on aerial tramways.

4. Advisory standard 56.10–5 is revised and made mandatory as follows:

56.10–5 *Mandatory.* Track cable connections shall not obstruct the passage of carriage wheels.

5. Advisory standard 56.10–6 is revised and made mandatory as follows:

56.10–6 *Mandatory.* Towers shall be suitably protected from swaying buckets.

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).

§ 56.11 [Amended]

Z. Section 56.11 "Travelways and escapeways" is amended as follows:

1. Advisory standard 56.11–4 is revised and made mandatory as follows:

56.11–4 *Mandatory.* Portable rigid ladders shall be provided with suitable bases and placed securely when used.

2. Advisory standard 56.11–7 is revised and made mandatory as follows:

56.11–7 *Mandatory.* Wooden components of ladders shall not be painted except with a transparent finish.

3. Advisory standard 56.11–8 is revoked, and standard number 56.11–8 is reserved as follows:

56.11–8 [Reserved]

4. Advisory standard 56.11–10 is revised and made mandatory as follows:

56.11–10 *Mandatory.* Vertical clearance above stair steps shall be a minimum of seven (7) feet, or suitable warning signs or similar devices shall be provided to indicate an impaired clearance.

5. Advisory standard 56.11–11 is revised and made mandatory as follows:

56.11–11 *Mandatory.* Persons using ladders shall face the ladders and have both hands free for climbing and descending.

6. Advisory standard 56.11–15 is revoked, and standard number 56.11–15 is reserved as follows:

56.11–15 [Reserved]

7. Advisory standard 56.11–17 is revised and made mandatory as follows:

56.11–17 *Mandatory.* Fixed ladders shall not incline backwards.

8. Advisory standard 56.11–25 is revised and made mandatory as follows:

56.11–25 *Mandatory.* Fixed ladders, except on mobile equipment, shall be offset and have substantial railed landings at least every 30 feet unless backguards or equivalent protection, such as safety belts and safety lines, are provided.

9. Advisory standard 56.11–26 is revised and made mandatory as follows:

56.11–26 *Mandatory.* Fixed ladders 70 degrees to 90 degrees from the horizontal and 30 feet or more in length shall have backguards, cages or equivalent protection, starting at a point not more than seven (7) feet from the bottom of the ladders.

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).

§ 56.12 [Amended]

AA. Section 56.12 "Electricity" is amended as follows:

1. Advisory standard 56.12–4 is revised and made mandatory as follows:

56.12–4 *Mandatory.* Electrical conductors shall be of a sufficient size and current-carrying capacity to ensure that a rise in temperature resulting from normal operations will not damage the insulating materials. Electrical conductors exposed to mechanical damage shall be protected.

2. Advisory standard 56.12–19 is revised and made mandatory as follows:

56.12–19 *Mandatory.* Where access is necessary, suitable clearance shall be provided at stationary electrical equipment or switchgear.

3. Advisory standard 56.12–22 is revised and made mandatory as follows:

56.12–22 *Mandatory.* Areas containing major electrical installations shall be entered only by authorized persons.

4. Advisory standards 56.12–24, 56.12–29, and 56.12–31 are revoked, and standard numbers 56.12–24, 56.12–29, and 56.12–31 are reserved as follows:

56.12–24 [Reserved]

* * * * *

56.12–29 [Reserved]

* * * * *

56.12–31 [Reserved]

5. Advisory standard 56.12–35 is revised and made mandatory as follows:

56.12–35 *Mandatory.* Lamp sockets shall be of a weatherproof type where they are exposed to weather or wet conditions that may interfere with illumination or create a shock hazard.

6. Advisory standard 56.12–38 is revised and made mandatory as follows:

56.12–38 *Mandatory.* Trailing cables shall be attached to machines in a suitable manner to protect the cable from damage and to prevent strain on the electrical connections.

7. Advisory standard 56.12–39 is revised and made mandatory as follows:

56.12–39 *Mandatory.* Surplus trailing cables to shovels, cranes and similar equipment shall be—

(a) Stored in cable boats;

(b) Stored on reels mounted on the equipment; or

(c) Otherwise protected from mechanical damage.

8. Advisory standards 56.12–44 and 56.12–49 are revoked, standard numbers 56.12–44 and 56.12–49 are reserved, and reserved standard number 56.12–43 is revised as follows:

56.12–43 and 56.12–44 [Reserved]

* * * * *

56.12–49 [Reserved]

9. Advisory standard 56.12–50 is revised and made mandatory as follows:

56.12–50 *Mandatory.* Trolley wires shall be installed at least seven (7) feet above rails where height permits, and aligned and supported to suitably control sway and sag.

10. Advisory standards 56.12–51 and 56.12–52 are revoked, and standard numbers 56.12–51 and 56.12–52 are reserved as follows:

56.12–51 and 56.12–52 [Reserved]

11. Advisory standard 56.12–53 is revised and made mandatory as follows:

56.12–53 *Mandatory.* Ground wires for lighting circuits powered from trolley wires shall be connected securely to the ground-return circuit.

12. Advisory standard 56.12–54 is revoked, standard number 56.12–54 is reserved, and reserved standard numbers 56.12–55 through 56.12–64 are revised as follows:

56.12–54 through 56.12–64 [Reserved]

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 56.13 [Amended]

BB. Section 56.13 "Compressed air and boilers" is amended as follows:

1. Advisory standard 56.13–10 is revised and made mandatory as follows:

56.13–10 *Mandatory.* (a) Reciprocating-type air compressors rated over 10 horsepower shall be equipped with automatic temperature-actuated shutoff mechanisms which shall be set or adjusted to the compressor when the normal operating temperature is exceeded by more than 25 percent.

(b) However, this standard does not apply to reciprocating-type air compressors rated over 10 horsepower if equipped with fusible plugs that were installed in the compressor discharge lines before November 15, 1979 and designed to melt at temperatures at least 50 degrees below the flash point of the compressors' lubricating oil.

2. Advisory standard 56.13–11 is revised and made mandatory as follows:

56.13–11 *Mandatory.* Air receiver tanks shall be equipped with one or more automatic pressure-relief valves. The total relieving capacity of the relief valves shall prevent pressure from exceeding the maximum allowable working pressure in a receiver tank by not more than 10 percent. Air receiver tanks also shall be equipped with indicating pressure gages which accurately measure the pressure within the air receiver tanks.

3. Advisory standard 56.13–12 is revised and made mandatory as follows:

56.13–12 *Mandatory.* Compressor air intakes shall be installed to insure that only clean, uncontaminated air enters the compressors.

4. Advisory standards 56.13–13 and 56.13–14 are revoked, and standard numbers 56.13–13 and 56.13–14 are reserved as follows:

56.13–13 and 56.13–14 [Reserved]

5. Advisory standard 56.13–15 is revised and made mandatory as follows:

56.13–15 *Mandatory.* (a) Compressed-air receivers and other unfired pressure vessels shall be inspected by inspectors holding a valid National Board Commission and in accordance with the applicable chapters of the National Board Inspection Code, a Manual for Boiler and Pressure Vessel Inspectors, 1979. This code is incorporated by reference and made a part of this standard, may be examined at any Metal and Nonmetal Mine Safety and Health District Office of the Mine Safety and Health Administration, and may be obtained from the publisher, the National Board of Boiler and Pressure Vessel Inspector, 1055 Crupper Avenue, Columbus, Ohio 43229.

(b) Records of inspection shall be kept in accordance with requirements of the National Board Inspection Code, and the records shall be made available to the Secretary or his authorized representative.

6. Advisory standard 56.13–16 is revoked, and standard number 56.13–16 is reserved as follows:

56.13–16 [Reserved]

7. Advisory standard 56.13–17 is revised and made mandatory as follows:

56.13–17 *Mandatory.* Compressor discharge pipes where carbon build-up may occur shall be cleaned periodically as recommended by the manufacturer, but no less frequently than once every two (2) years.

8. Advisory standard 56.13–18 is revoked, and standard number 56.13–18 is reserved as follows:

56.13–18 [Reserved]

9. Advisory standard 56.13–30 is revised and made mandatory as follows:

56.13–30 *Mandatory.* (a) Fired pressure vessels (boilers) shall be equipped with water level gages, pressure gages, automatic pressure-relief valves, blowdown piping, and other safety devices approved by the American Society of Mechanical Engineers to

protect against hazards from overpressure, flameouts, fuel interruptions and low water level, all as required by the appropriate sections, chapters and appendices listed in paragraph (b) (1) and (2) below.

(b) These gages, devices and piping shall be designed, installed, operated, maintained, repaired, altered, inspected, and tested by inspectors holding a valid National Board Commission and in accordance with the following listed sections, chapters and appendices:

(1) The ASME Boiler and Pressure Vessel Code, 1977, published by the American Society of Mechanical Engineers.

Section and Title

I Power Boilers
II Material Specifications—Part A—Ferrous
II Material Specifications—Part B—Nonferrous
II Material Specifications—Part C—Welding Rods, Electrodes, and Filler Metals
IV Heating Boilers
V Nondestructive Examination
VI Recommended Rules for Care and Operation of Heating Boilers
VII Recommended Rules for Care of Power Boilers

(2) The National Board Inspection Code, a Manual for Boiler and Pressure Vessel Inspectors, 1979, published by the National Board of Boiler and Pressure Vessel Inspectors.

Chapter and Title

I Glossary of Terms
II Inspection of Boilers and Pressure Vessels
III Repairs and Alterations to Boiler and Pressure Vessels by Welding
IV Shop Inspection of Boilers and Pressure Vessels
V Inservice Inspection of Pressure Vessels by Authorized Owner-User Inspection Agencies

Appendix and Title

A Safety and Safety Relief Valves
B Non-ASME Code Boilers and Pressure Vessels
C Storage of Mild Steel Covered Arc Welding Electrodes
D-R National Board "R" (Repair) Symbol Stamp
D-VR National Board "VR" (Repair of Safety and Safety Relief Valve) Symbol Stamp
D-VR1 Certificate of Authorization for Repair Symbol Stamp for Safety and Safety Relief Valves
D-VR2 Outline of Basic Elements of Written Quality Control System for Repairers of ASME Safety and Safety Relief Valves
D-VR3 Nameplate Stamping for "VR"
E Owner-user Inspection Agencies
F Inspection Forms

(c) Records of inspections and repairs shall be kept in accordance with the requirements of the ASME Boiler and Pressure Vessel Code and the National Board Inspection Code. The records shall be made available to the Secretary or his authorized representative.

(d) Sections of the ASME Boiler and Pressure Vessel Code, 1977, listed in paragraph (b)(1) above, and chapters and appendices of the National Board Inspection Code, 1979, listed in paragraph (b)(2) above, are incorporated by reference and made a part of this standard. These publications may be obtained from the publishers, the American Society of Mechanical Engineers, 345 East Forty-seventh Street, New York, N.Y. 10017, and the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229.

The publications may be examined at any Metal and Nonmetal Mine Safety and Health District Office of the Mine Safety and Health Administration.

10. Advisory standards 56.13–31, 56.13–32, 56.13–33, and 56.13–34 are revoked, and standard numbers 56.13–31, 56.13–32, 56.13–33, and 56.13–34 are reserved as follows:

§ 56.13–31 through 56.13–34 [Reserved]

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 56.14 [Amended]

CC. Section 56.14 "Use of equipment" is amended as follows:

1. Advisory standard 56.14–3 is revised and made mandatory as follows:

56.14–3 *Mandatory.* Guards at conveyor-drive, conveyor-head, and conveyor-tail pulleys shall extend a distance sufficient to prevent a person from accidentally reaching behind the guard and becoming caught between the belt and the pulley.

2. Advisory standards 56.14–4, and 56.14–5 are revoked, and standard numbers 56.14–4 and 56.14–5 are reserved as follows:

§ 56.14–4 and 56.14–5 [Reserved]

3. Advisory standard 56.14–7 is revised and made mandatory as follows:

56.14–7 *Mandatory.* Guards shall be of substantial construction and properly maintained.

4. Advisory standard 56.14–11 is revised and made mandatory as follows:

56.14–11 *Mandatory.* Guards, shields, or other suitable protection shall be provided in areas where flying or falling materials present a hazard to personnel.

5. Advisory standard 56.14–25 is revoked, and standard number 56.14–25 is reserved as follows:

56.14–25 [Reserved]

6. Advisory standard 56.14–27 is revised and made mandatory as follows:

56.14–27 *Mandatory.* Operation of machinery or equipment shall be assigned only to competent persons.

7. Advisory standard 56.14–28 is revoked, and standard number 56.14–28 is reserved as follows:

56.14–28 [Reserved]

8. Advisory standard 56.14–36 is revised and made mandatory as follows:

56.14–36 *Mandatory.* Tools and equipment shall not be used beyond the design capacity intended by the manufacturer, where such use may create a hazard to personnel.

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 56.15 [Amended]

DD. Section 56.15 "Personal protection" is amended as follows:

1. Advisory standards 56.15–8, 56.15–9, 56.15–10, 56.15–11, and 56.15–13 are revoked, standard numbers 56.15–8, 56.15–9, 56.15–10, 56.15–11, 56.15–12 (Revoked July 1, 1974, 39 FR 24318), and 56.15–13 are reserved, and reserved standard numbers 56.15–14 through 56.15–19 are revised as follows:

56.15–8 through 56.15–19 [Reserved]

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 56.16 [Amended]

EE. Section 56.16 "Materials storage and handling" is amended as follows:

1. Advisory standard 56.16–1 is revised and made mandatory as follows:

56.16–1 *Mandatory.* Supplies shall not be stacked or stored in a manner which creates tripping or fall-of-material hazards.

2. Advisory standard 56.16–2 is revised and made mandatory as follows:

56.16–2 *Mandatory.* (a) Bins, hoppers, silos, tanks, and surge piles, where loose unconsolidated materials are stored, handled or transferred shall be—

(1) Equipped with mechanical devices or other effective means of handling materials so that during normal operations persons are not required to enter or work where they are exposed to entrapment by the caving or sliding of materials; and

(2) Equipped with supply and discharge operating controls. The controls shall be located so that spills or overruns will not endanger persons.

(b) Where persons are required to move around or over any facility listed in this standard, suitable walkways or passageways shall be provided.

(c) Where persons are required to enter any facility listed in this standard for maintenance or inspection purposes, ladders, platforms, or staging shall be provided. No person shall enter the facility until the supply and discharge of materials have ceased and the supply and discharge equipment is locked out. Persons entering the facility shall wear a safety belt or harness equipped with a lifeline

suitably fastened. A second person, similarly equipped, shall be stationed near where the lifeline is fastened and shall constantly adjust it or keep it tight as needed, with minimum slack.

3. Advisory standard 56.16–7 is revised and made mandatory as follows:

56.16–7 *Mandatory.* (a) Taglines shall be attached to loads that may require steadying or guidance while suspended.

(b) Hitches and slings used to hoist materials shall be suitable for the particular material handled.

4. Advisory standard 56.16–8 is revoked, and standard number 56.16–8 is reserved as follows:

56.16–8 [Reserved]

5. Advisory standard 56.16–10 is revised and made mandatory as follows:

56.16–10 *Mandatory.* To protect personnel, material shall not be dropped from an overhead elevation until the drop area is first cleared of personnel and the area is then either guarded or a suitable warning is given.

6. Advisory standard 56.16–12 is revised and made mandatory as follows:

56.16–12 *Mandatory.* Chemical substances, including concentrated acids and alkalies, shall be stored to prevent inadvertent contact with each other or with other substances, where such contact could cause a violent reaction or the liberation of harmful fumes or gases.

7. Advisory standard 56.16–13 is revised and made mandatory as follows:

56.16–13 *Mandatory.* Suitable warning shall be given before molten metal is poured and before a container of molten metal is moved.

8. Advisory standard 56.16–16 is revised and made mandatory as follows:

56.16–16 *Mandatory.* Fork and other similar types of lift trucks shall be operated with the—

(a) Upright tilted back to steady and secure the load;

(b) Load in the upgrade position when ascending or descending grades in excess of 10 percent;

(c) Load not raised or lowered enroute except for minor adjustments; and

(d) Load-engaging device downgrade when traveling unloaded on all grades.

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 56.18 [Amended]

FF. Section 56.18 "Safety programs" is amended as follows:

1. Advisory standard 56.18–1 is revoked, and standard number 56.18–1 is reserved as follows:

56.18–1 [Reserved]

2. Advisory standard 56.18–2 is revised and made mandatory as follows:

56.18–2 *Mandatory.* (a) A competent person designated by the operator shall examine each working place at least once each shift for conditions which may adversely affect safety or health. The operator shall promptly initiate appropriate action to correct such conditions.

(b) A record that such examinations were conducted shall be kept by the operator for a period of one (1) year, and shall be made available for review by the Secretary or his authorized representative.

(c) In addition, conditions that may present an imminent danger which are noted by the person conducting the examination shall be brought to the immediate attention of the operator who shall withdraw all persons from the area affected (except persons referred to in section 104(c) of the Federal Mine Safety and Health Act of 1977) until the danger is abated.

3. Advisory standards 56.18–3, 56.18–4, 56.18–5, 56.18–7, and 56.18–8 are revoked, and standard numbers 56.18–3, 56.18–4, 56.18–5, 56.18–7, and 56.18–8 are reserved as follows:

56.18–3 through 56.18–5 [Reserved]

* * * * *

56.18–7 and 56.18–8 [Reserved]

4. Advisory standard 56.18–9 is revised and made mandatory as follows:

56.18–9 *Mandatory.* When persons are working at the mine, a competent person designated by the mine operator shall be in attendance to take charge in case of an emergency.

5. Advisory standard 56.18–11 is revoked, and standard number 56.18–11 is reserved as follows:

56.18–11 [Reserved]

6. Advisory standard 56.18–13 is revised and made mandatory as follows:

56.18–13 *Mandatory.* A suitable communication system shall be provided at the mine to obtain assistance in the event of an emergency.

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 56.19 [Amended]

GG. Section 56.19 "Man hoisting" is amended as follows:

1. The paragraph immediately following the heading "§ 56.19 Man hoisting" is revised as follows:

The hoisting standards in this section apply to those hoists and appurtenances used for hoisting persons. However, where persons may be endangered by hoists and appurtenances used solely for handling ore, rock, and materials, the appropriate standards should be applied.

Emergency hoisting facilities should conform to the extent possible to safety requirements for other hoists, and should be adequate to remove the persons from the mine with a minimum of delay.

2. Advisory standard 56.19–12 is revised and made mandatory as follows:

56.19–12 *Mandatory.* Where grooved drums are used, the grooves shall be of suitable size and pitch for the ropes used.

3. Advisory standards 56.19–20 and 56.19–25 are revoked, and standard numbers 56.19–20 and 56.19–25 are reserved as follows:

56.19–20 [Reserved]

* * * * *

56.19–25 [Reserved]

4. Advisory standard 56.19–35 is revised and made mandatory as follows:

56.19–35 *Mandatory.* All headframes shall be constructed with suitable design considerations to allow for all dead loads, live loads, and wind loads.

5. Advisory standard 56.19–36 is revised and made mandatory as follows:

56.19–36 *Mandatory.* Headframes shall be high enough to provide clearance for overtravel and safe stopping of the conveyance.

6. Advisory standard 56.19–37 is revised and made mandatory as follows:

56.19–37 *Mandatory.* Fleet angles on hoists installed after February 13, 1980 shall not be greater than one and one-half degrees for smooth drums or two degrees for grooved drums.

7. Advisory standard 56.19–39 is revised and made mandatory as follows:

56.19–39 *Mandatory.* All personnel hoists, except emergency escape hoists and hoists with rope speeds of 200 feet per minute or less, installed after November 15, 1979, shall have drum and sheave tread diameters—

(1) Not less than 60 times the hoist rope diameter for slope or inclined shaft applications;

(2) Not less than 80 times the hoist rope diameter if the hoist ropes are one inch in diameter or greater, or not less than 60 times the hoist rope diameter if the hoist ropes are less than one inch in diameter for vertical shaft applications; or

(3) Not less than 100 times the hoist rope diameter for locked coil ropes.

8. Advisory standard 56.19–67 is revised and made mandatory as follows:

56.19–67 *Mandatory.* During shift changes, an authorized person shall be in charge of each trip in which persons are hoisted.

9. Advisory standard 56.19–72 is revised and made mandatory as follows:

56.19–72 *Mandatory.* When combinations of cages and skips are used in the same compartment, the cages shall be enclosed to protect personnel from flying material and the hoist speed reduced to man-speed as defined in standard 56.19–61, but not to exceed 1,000 feet per minute. Muck shall not be hoisted with personnel during shift changes.

10. Advisory standard 56.19–74 is revised and made mandatory as follows:

56.19–74 *Mandatory.* Persons shall not ride the bail, rim, bonnet, or crosshead of any shaft conveyance except when necessary for inspection and maintenance, and then only when suitable protection for persons is provided.

11. Advisory standard 56.19–81 is revised and made mandatory as follows:

56.19–81 *Mandatory.* When conveyances controlled by a hoist operator are not in use, they shall be released and the conveyances shall be raised or lowered a suitable distance to prevent persons from boarding or loading the conveyances.

12. Advisory standard 56.19–91 is revised and made mandatory as follows:

56.19–91 *Mandatory.* Hoist operators shall accept hoisting instructions only by the regular signaling system unless it is out of order. In such an event, and during other emergencies, the hoist operator shall accept instructions to direct movement of the conveyances only from authorized persons.

13. Advisory standard 56.19–93 is revised and made mandatory as follows:

56.19–93 *Mandatory.* A standard code of hoisting signals shall be adopted and used at each mine. The movement of a shaft conveyance on a "one bell" signal is prohibited.

14. Advisory standard 56.19–104 is revised and made mandatory as follows:

56.19–104 *Mandatory.* Suitable clearance at shaft stations shall be provided to allow safe movement of persons, equipment and materials.

15. Advisory standard 56.19–124 is revised and made mandatory as follows:

56.19–124 *Mandatory.* Hoist ropes other than those on friction hoists shall be cut off at least six (6) feet above the highest connection to the conveyance at time intervals not to exceed one (1) year unless a shorter time is required by standard 56.19–126, or by conditions of use. The portion of the rope that is cut off shall be examined and inspected by a competent person for damage, corrosion, wear and fatigue.

16. Advisory standard 56.19–125 is revised and made mandatory as follows:

56.19–125 *Mandatory.* Hoist ropes wound in multiple layers shall have a length cut off at the drum end at least three (3) times during the anticipated life of the rope and whenever necessary as required by standard 56.19–126 to distribute the wear at change-of-layer and crossover points. The length of rope cut off shall not be a whole number multiple of the circumference of the drum.

17. Advisory standard 56.19–126 is revised and made mandatory as follows:

56.19–126 *Mandatory.* Hoist ropes shall be examined over the entire active length at least every month to evaluate wear and possible damage. When such examinations or other inspections reveal that the rope is worn, and at least every six (6) months, caliper measurements or nondestructive tests shall be made at the following locations:

(a) Wherever wear is evident;

(b) Immediately above the socket or clips and above the safety connection;

(c) Where the rope rests on the sheaves;

(d) Where the ropes leave the drums when the conveyances are at the regular stopping point;

(e) Where a layer of rope begins to overlap another layer on the drum; and

(f) At 100 foot intervals (measurements shall be made midway between the last previously calipered points).

18. Advisory standard 56.19–127 is revoked, and standard number 56.19–127 is reserved as follows:

56.19–127 [Reserved]

19. Advisory standard 56.19–130 is revised and made mandatory as follows:

56.19–130 *Mandatory.* Before hoisting persons and to assure that the hoisting compartments are clear of obstructions, empty hoist conveyances shall be operated at least one round trip after—

(a) Any hoist or shaft repairs or related equipment repairs that might restrict or obstruct conveyance clearance;

(b) Any oversize or overweight material or equipment trips that might restrict or obstruct conveyance clearance;

(c) Blasting in or near the shaft that might restrict or obstruct coveyance clearance; or

(d) Remaining idle for one shift or longer.

20. Advisory standard 56.19–131 is revised and made mandatory as follows:

56.19–131 *Mandatory.* Hoist conveyance connections shall be inspected at least once during any 24-hour period that the conveyance is used for hoisting persons.

21. Advisory standard 56.19–132 is revised and made mandatory as follows:

56.19–132 *Mandatory.* (a) A performance drop test of hoist conveyance safety catches shall be made at the time of installation, or prior to installation, in a mockup of the actual installation. The test shall be certified to in writing by the manufacturer or by a registered professional engineer performing the test.

(b) After installation and before use, and at the beginning of any seven (7) day period during which the conveyance is to be used, the conveyance shall be suitably rested and the hoist rope slackened to test for the unrestricted functioning of the safety catches and their activating mechanisms.

(c) The safety catches shall be inspected by a competent person at the beginning of any 24-hour period that the conveyance is to be used.

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 [30 U.S.C. 961(b)(2)].)

§ 56.20 [Amended]

HH. Section 56.20 "Miscellaneous" is amended as follows:

1. Advisory standards 56.20–4, 56.20–6, and 56.20–7 are revoked, and standard numbers 56.20–4, 56.20–6, and 56.20–7 are reserved as follows:

56.20–4 [Reserved]

* * * * *

56.20–6 and 56.20–7 [Reserved]

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

PART 57—HEALTH AND SAFETY

Standards—Metal and Nonmetal Underground Mines

Part 57, Subchapter N, Chapter I, Title 30, Code of Federal Regulations is amended and revised as follows:

§ 57.3 [Amended]

II. Section 57.3 "Ground control" is amended as follows:

1. Advisory standards 57.3–7, 57.3–10, 57.3–13, 57.3–21, and 57.3–28 are revoked, standard numbers 57.3–7, 57.3–10, 57.3–13, 57.3–21, and 57.3–28 are reserved, and reserved standard numbers 57.3–11, 57.3–14 through 57.3–19, 57.3–23, 57.3–24, 57.3–25, and 57.3–27 are revised as follows:

57.3–7 [Reserved]

* * * * *

57.3–10 and 57.3–11 [Reserved]

* * * * *

57.3–13 through 57.3–19 [Reserved]

* * * * *

57.3–21 [Reserved]

* * * * *

57.3–23 through 57.3–25 [Reserved]

* * * * *

57.3–27 and 57.3–28 [Reserved]

2. Advisory standard 57.3–29, which is applicable to underground only, is revised and made mandatory as follows:

57.3–29 *Mandatory.* Shaft pillars or other support systems shall have sufficient strength to support operating shafts.

3. Advisory standards 57.3–30 and 57.3–31 are revoked, and standard numbers 57.3–30 and 57.3–31 are reserved as follows:

57.3–30 and 57.3–31 [Reserved]

4. Advisory standard 57.3–32, which is applicable to underground only, is revised, renumbered, and made mandatory and applicable to surface and underground as follows:

57.3–58 *Mandatory.* When rock bolts are needed for ground support, they shall be installed as soon as practicable after an area is exposed.

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 57.4 [Amended]

JJ. Section 57.4 "Fire Prevention and control is amended as follows:

1. Advisory standard 57.4–3, which is applicable to surface and underground, is revised and made mandatory as follows:

57.4–3 *Mandatory.* Areas surrounding electric substations and unburied tanks used for the storage of flammable or combustible liquids shall be free of combustible materials (including dry vegetation) for a distance of at least 25 feet.

2. Advisory standard 57.4–5, which is applicable to surface and underground, is revised and made mandatory as follows:

57.4–5 *Mandatory.* Effective February 13, 1980, fixed unburied tanks used for the storage of flammable or combustible liquids shall be securely mounted on firm foundations. Where necessary to prevent leaks caused by tanks settling, piping shall be provided with flexible connections or other special fittings.

3. Advisory standard 57.4–7, which is applicable to surface and underground, is revised and made mandatory as follows:

57.4–7 *Mandatory.* Means shall be provided to remove or control spilled flammable or combustible liquids.

4. Advisory standard 57.4–49, which is applicable to surface only, is revised, renumbered, and made mandatory and applicable to surface and underground as follows:

57.4–12 *Mandatory.* All flammable and combustible waste materials, grease, lubricants or flammable liquids shall not be allowed to accumulate where they can create a fire hazard.

5. Advisory standard 57.4–13, which is applicable to surface and underground, is revised and made mandatory as follows:

57.4–13 *Mandatory.* In areas where materials such as oily waste or oily rags create a fire hazard, the materials shall be placed in covered metal containers until disposed of properly.

6. Advisory standard 57.4–16, which is applicable to surface and underground, is revised and made mandatory as follows:

57.4–16 *Mandatory.* Drip pans shall be provided to catch leakage or spillage whenever combustible or flammable liquids are dispensed in a place or manner which may create a fire hazard. Floor areas where drip pans are used shall be cleaned immediately after spills.

7. Advisory standard 57.4–17 is revoked, and standard number 57.4–17 is reserved as follows:

57.4–17 [Reserved]

8. Advisory standard 57.4–25, which is applicable to surface and underground, is revised and made mandatory as follows:

57.4–25 *Mandatory.* Effective February 13, 1980, whenever fire hydrants are used, they shall be provided with—

(a) Uniform fittings;

(b) Readily available wrenches or keys to open the valves; and

(c) Readily available adapters that connect hydrant fittings to the hose equipment of local fire departments.

9. Advisory standard 57.4–26, which is applicable to surface and underground, is revised and made mandatory as follows:

57.4–26 *Mandatory.* Water pipes, valves, outlets, hydrants, and hoses designated for fire fighting purposes shall be inspected every 90 days and tested annually.

10. Advisory standard 57.4–39, which is applicable to surface only, is revised, renumbered, and made mandatory and applicable to surface and underground as follows:

57.4–27 *Mandatory.* Whenever self-propelled mobile equipment is used, such equipment shall be provided with a suitable fire extinguisher readily accessible to the equipment operator.

11. Advisory standard 57.4–30 is revoked.

12. Standard number 57.4–39 of action JJ(10) above is replaced with a series of numbers 57.4–39A through 57.4–39Z, and numbers 57.4–39C through 57.4–39Z are reserved as follows:

57.4–39C through 57.4–39Z [Reserved]

13. Advisory standard 57.4–6, which is applicable to surface and underground, is revised, renumbered, and made mandatory and applicable to surface only as follows:

57.4–39A *Mandatory.* Effective February 13, 1980, storage buildings or rooms in which flammable or combustible liquids or other flammable materials are stored and which are within 100 feet of where miners normally work shall be well-ventilated and constructed of materials having a fire-resistance rating of no less than one (1) hour as tested under the appropriate National Fire Protection Association (NFPA) fire-resistance test or under a test of another approved testing agency.

14. Standard number 57.4–6 is reserved as follows:

57.4–6 [Reserved]

15. Advisory standard 57.4–31, which is applicable to surface and underground, is revised, renumbered, and made mandatory and applicable to surface only as follows:

57.4–39B *Mandatory.* Emergency fire fighting plans in combination with evacuation and rescue plans shall be established and coordinated with available fire fighting organizations. Emergency fire fighting drills shall be held for each shift at least once every six (6) months.

16. Standard numbers 57.4–30 of action JJ(11) and 57.4–31 of action JJ(15) above are reserved, and reserved standard number 57.4–32 is revised as follows:

57.4–30 through 57.4–32 [Reserved]

17. Advisory standard 57.4–41, which is applicable to surface only, is revised and made mandatory as follows:

57.4–41 *Mandatory.* Every building or structure where persons normally work shall be provided with exits sufficient to permit the prompt excape of persons in case of fire.

18. Advisory standards 57.4–42 and 57.4–44, which are applicable to surface only, are combined, revised, and made mandatory as follows:

57.4–42 *Mandatory.* (a) No combustible materials shall be permitted within 100 feet of main and booster fans and mine openings, except for one day's requirements of mine materials or supplies. However, such supplies or materials shall not be permitted within 25 feet of mine openings.

(b) In this standard, the phrase "combustible materials" includes dry vegetation which is within 25 feet of mine openings but does not include installed wiring, ground support and track support, headframes, any materials in transit, or any buildings and other structures in compliance with standard 57.4–43.

19. Advisory standard 57.4–43, which is applicable to surface only, is revised and made mandatory as follows:

57.4–43 *Mandatory.* (a) Buildings and other similar structures, which are within 100 feet of mine openings used for intake air and mine openings that are designated escapeways in exhaust air, shall be constructed of materials having a fire-resistance rating of no less than one (1) hour as tested under the appropriate National Fire Protection Association (NFPA) fire-resistance test or under a test of another approved testing agency.

(b) An automatic fire suppression system may be substituted for the requirements of paragraph (a)—

(1) In buildings and structures occupied or in use on November 15, 1979, if the system is in operating condition by February 13, 1979; or

(2) In buildings and structures under construction on November 15, 1979, if the system is in operating condition prior to occupancy or use.

20. Standard number 57.4–44 of action JJ(18) above is reserved as follows:

§ 57.4–44 [Reserved]

21. Advisory standard 57.4–45, which is applicable to surface only, is revised and made mandatory as follows:

57.4–45 *Mandatory.* Blacksmith shops shall be—

(a) Well ventilated and equipped with exhaust vents over the forge;

(b) Inspected specifically for smoldering fires at the end of each shift;

(c) Constructed of materials having a fire-resistance rating of no less than one (1) hour as tested under the appropriate National Fire Protection Association (NFPA) fire-resistance test or under a test of another approved testing agency; and

(d) Located at least 100 feet from the mine openings or fan installations, and not in buildings or snowsheds adjoining mine openings or fan installations unless fire doors and walls, constructed according to the requirements of paragraph (c) of this standard, are provided between the blacksmith shop and the mine openings or fan installations.

22. Advisory standard 57.4–47, which is applicable to surface only, is revised and made mandatory as follows:

57.4–47 *Mandatory.* Belt conveyors shall be equipped with a safety switch capable of automatically stopping the drive pulley in the event of excessive slippage of the belt, where ignition of the belt could create a hazard to personnel. When it is necessary to operate the conveyor while temporarily by-passing the safety switch or any automatic function of the swtich, a person shall attend the belt at the drive pulley.

23. Standard number 57.4–49 of action JJ (4) is reserved as follows:

57.4–49 [Reserved]

24. Advisory standard 57.4–55, which is applicable to underground only, is revised and made mandatory as follows:

57.4–55 *Mandatory.* Transformer stations, pump rooms, compressor rooms and similar installations, which are located in timbered areas or in areas where exposed rock is combustible, shall be provided with suitable fire protection.

25. Advisory standard 57.4–56, is revoked, and standard number 57.4–56 is reserved as follows:

57.4–56 [Reserved]

26. Advisory standard 57.4–57, which is applicable to underground only, is revised and made mandatory as follows:

57.4–57 *Mandatory.* Effective November 12, 1980, trailing cables shall be flame-resistant in accordance with 30 CFR 18.64.

27. Advisory standard 57.4–60 is revoked, and standard number 57.4–59 is revised as follows:

57.4–59 and 57.4–60 [Reserved]

28. Advisory standard 57.4–61, which is applicable to underground only, is revised and divided into two standards numbered 57.4–61A and 57.4–61B. Both standards 57.4–61A and 57.4–61B are made mandatory and applicable to underground only as follows:

57.4–61A *Mandatory.* To prevent the spread of smoke or gas in the event of a fire, ventilation doors shall be installed at or near shaft stations of intake shafts and at any shaft designated as an escapeway under standard 57.11–53, or at other locations which provide equivalent protection. Effective February 13, 1980, the location (and relocation) of doors required by this standard shall be submitted to the District Manager for the district in which the mine is located, for review and approval by the Secretary.

Doors required by this standard shall be—

(a) Constructed and maintained in accordance with standard 57.5–31;

(b) Constructed according to the specifications within the definition of "fire door" in section 57.2, if located in a timbered area, in an area where the exposed rock is combustible, or in an area where a significant fire hazard is present;

(c) Provided with a means of remote closure unless other means of closing the door are assured;

(d) Constructed so that, once closed, they will not reopen as a result of a differential in air pressure;

(e) Constructed so that they can be opened from either side by one person, or provided with a man door that can be opened from either side; and

(f) Kept clear of obstructions and extraneous materials.

57.4–61B *Mandatory.* (a) To confine or prevent the spread of toxic gases from a fire originating in an underground shop, the mine operator shall install in each opening to the shop a fire door or bulkhead constructed in accordance with the definition of "fire door" contained in section 57.2

(b) Each fire door shall be—

(1) Constructed so that, once closed, it will not reopen as a result of a differential in air pressure;

(2) Constructed so that it can be opened from either side by one person or be provided with a man door that can be opened from either side;

(3) Suitably airtight; and

(4) Kept clear of obstructions and extraneous materials.

(c) This standard does not apply when mine shop exhaust air is routed directly to an exhaust system in such a manner that personnel would not be exposed to toxic gases in the event of a fire originating in the underground shop.

29. Advisory standard 57.4–62, which is applicable to underground only, is revised and made mandatory as follows:

57.4–62 *Mandatory.* Timber in mine entrances shall be fire-retardant to the extent that the flame spread rating shall be 25 or less for at least 200 feet inside the mine portal or collar, or the mine entrance shall be provided with fire protection capable of controlling a fire for at least 200 feet inside the mine portal or collar.

30. Advisory standard 57.4–63, which is applicable to underground only, is revised and made mandatory as follows:

57.4–63 *Mandatory.* Waterline outlets located at shaft stations shall have at least one fitting suitably located for, and capable of, immediate connection to fire fighting equipment.

31. Advisory standard 57.4–64 is revoked, and standard number 57.4–64 is reserved as follows:

57.4–64 [Reserved]

32. Advisory standard 57.4–66, which is applicable to underground only, is revised and made mandatory as follows:

57.4–66 *Mandatory.* Suitable fire protection shall be provided at the head, tail, drive, and takeup pulleys of belt conveyors and at intervals along the belt line.

33. Advisory standards 57.4–68 and 57.4–71 are revoked, and standard numbers 57.4–68 and 57.4–71 are reserved as follows:

57.4–68 [Reserved]

* * * * *

57.4–71 [Reserved]

34. Advisory standard 57.4–72, which is applicable to underground only, is revised and made mandatory as follows:

57.4–72 *Mandatory.* Only trained mine rescue team members shall participate in rescue and fire fighting operations in advance of the fresh air base.

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 57.5 [Amended]

KK. Section 57.5 "Air quality, ventilation, radiation, and physical agents" is amended as follows:

1. Advisory standard 57.5–4 is revised, transferred to Section 57.9 "Loading, hauling, dumping," renumbered 57.9–74, and standard number 57.5–4 is reserved as follows:

57.5–4 [Reserved]

2. Advisory standards 57.5–21 and 57.5–23 are revoked, standard numbers 57.5–21 and 57.5–23 are reserved, and reserved standard numbers 57.5–20 and 57.5–24 are revised as follows:

57.5–20 and 57.5–21 [Reserved]

* * * * *

57.5–23 and 57.5–24 [Reserved]

3. Advisory standard 57.5–25, which is applicable to underground only, is revised and made mandatory as follows:

57.5–25 *Mandatory.* Main fans shall be maintained according to either the manufacturer's recommendations or a written periodic schedule adopted by the operator which shall be available at the operation on request of the secretary or his authorized representative.

4. Advisory standard 57.5–26 is revoked, and standard number 57.5–26 is reserved as follows:.

57.5–26 [Reserved]

5. Advisory standard 57.5–27, which is applicable to underground only, is revised and made mandatory as follows:

57.5–27 *Mandatory.* Flame safety lamps or other suitable devices shall be used to test for acute oxygen deficiency.

6. Advisory standard 57.5–29, which is applicable to underground only, is revised and made mandatory as follows:

57.5–29 *Mandatory.* When auxiliary fan systems are used, such systems shall minimize recirculation and be maintained to provide ventilation air that effectively sweeps the working places.
(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 1961(b)(2)).)

§ 57.6 [Amended]

LL. Section 57.6 "Explosives" is amended as follows:

1. Advisory standards 57.6–3, 57.6–4, 57.6–28, and 57.6–78 are revoked, standard numbers 57.6–3, 57.6–4, 57.6–28, and 57.6–78 are reserved, and reserved standard numbers 57.6–79 through 57.6–89 are revised as follows:

57.6–3 and 57.6–4 [Reserved]
* * * * *
57.6–28 [Reserved]
* * * * *
57.6–78 through 57.6–89 [Reserved]

2. Advisory standard 57.6–130, which is applicable to surface and underground, is revised and made mandatory as follows:

57.6–130 *Mandatory.* At least a 15-foot air gap shall be provided between the blasting circuit and the electric power source.

3. Advisory standard 57.6–178, which is applicable to underground only, is revised, renumbered, and made mandatory and applicable to surface and underground as follows:

57.6–141 *Mandatory.* In secondary blasting, if more than one shot is to be fired at one time in a blasting area, the shots shall be initiated from one source.

4. Standard number 57.6–178 is reserved as follows:

57.6–178 [Reserved]

5. Advisory standard 57.6–181 is revoked, and standard number 57.6–181 is reserved as follows:

57.6–181 [Reserved]

6. Advisory standards 57.6–190, 57.6–192, and 57.6–196 are revoked, standard numbers 57.6–190, 57.6–192, and 57.6–196 are reserved, and reserved standard numbers 57.6–191 and 57.6–197 are revised as follows:

57.6–190 through 57.6–192 [Reserved]
* * * * *
57.6–196 and 57.6–197 [Reserved]
(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 57.7 [Amended]

MM. Section 57.7 "Drilling" is amended as follows:

1. Advisory standard 57.7–1 is revoked, and standard number 57.7–1 is reserved as follows:

57.7–1 [Reserved]

2. Advisory standard 57.7–9, which is applicable to surface only, is revised and made mandatory as follows:

57.7–9 *Mandatory.* If a drill helper assists the drill operator during movement of a drill to a new location, the helper shall be in sight of, or in communication with, the operator at all times.

3. Advisory standards 57.7–14, 57.7–16, 57.7–17, 57.7–25, 57.7–26, and 57.7–27 are revoked, and standard numbers 57.7–25, 57.7–26, and 57.7–27 are reserved as follows:

57.7–25 through 57.7–27 [Reserved]

4. Advisory standard 57.7–28, which is applicable to underground only, is revised and made mandatory as follows:

57.7–28 *Mandatory.* Persons shall not rest their hands on the chuck or centralizer while drilling.

5. Advisory standards 57.7–29 and 57.7–30 are revoked.

6. Advisory standard 57.7–32, which is applicable to underground only, is revised and made mandatory as follows:

57.7–32 *Mandatory.* Columns and the drills mounted on them shall be anchored firmly before and during drilling.

7. New standard numbers 57.7–33 through 57.7–49 are added and reserved, a new center subheading entitled "General Surface and Underground" is added immediately below the reserved standard numbers 57.7–33 through 57.7–49, and advisory standard 57.7–6, which is applicable to surface only, is revised, renumbered, made mandatory and applicable to surface and underground, and placed immediately below the center heading as follows:

57.7–33 through 57.7–49 [Reserved]

General—Surface and Underground

57.7–50 *Mandatory.* Receptacles or racks shall be provided for drill steel and tools stored or carried on drills.

8. Advisory standard 57.7–7, which is applicable to surface only, is revised, renumbered, and made mandatory and applicable to surface and underground as follows:

57.7–51 *Mandatory.* To prevent injury to personnel, tools and other objects shall not be left loose on the mast or drill platform.

9. Standard numbers 57.7–6 and 57.7–7 are reserved as follows:

57.7–6 and 57.7–7 [Reserved]

10. Advisory standard 57.7–15, which is applicable to surface only, is revised, renumbered, and made mandatory and applicable to surface and underground as follows:

57.7–52 *Mandatory.* Persons shall not drill from—
(a) Positions which hinder their access to the control levers;
(b) Insecure footing or insecure staging; or
(c) Atop equipment not suitable for drilling.

11. Standard number 57.7–15 and standard numbers 57.7–14, 57.7–16, and 57.7–17 of action LL (3) above are reserved as follows:

57.7–14 through 57.7–17 [Reserved]

12. Advisory standard 57.7–19, which is applicable to surface only, is revised, renumbered, and made mandatory and applicable to surface and underground as follows:

57.7–53 *Mandatory.* Before hand-held drills are moved from one working area to another, air shall be turned off and bled from the hose.

13. Standard number 57.7–19 is reserved, and reserved standard numbers 57.7–20 through 57.7–24 are revised as follows:

57.7–19 through 57.7–24 [Reserved]

14. Advisory standard 57.7–31, which is applicable to underground only, is revised, renumbered, and made mandatory and applicable to surface and underground as follows:

57.7–54 *Mandatory.* Drill operators shall not start or move drilling equipment unless all miners are in the clear.

15. Standard number 57.7–31 of action LL (14) above and standard numbers 57.7–29 and 57.7–30 of action LL (5) above are reserved as follows:

57.7–29 through 57.7–31 [Reserved]

16. A series of numbers 57.7–55 through 57.7–100 is added and reserved as follows:

57.7–55 through 57.7–100 [Reserved]
(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).

§ 57.8 [Amended]

MM. Section 57.8 "Rotary jet piercing" is amended as follows:

1. Advisory standard 57.8–1, which is applicable to surface only, is revised and made mandatory as follows:

57.8–1 *Mandatory.* Jet Piercing drills shall be provided with—
(a) A system to pressurize the equipment operator's cab, when a cab is provided; and

(b) A protective cover over the oxygen flow indicator.

2. Advisory standard 57.8–4, which is applicable to surface only, is revised and made mandatory as follows:

57.8–4 *Mandatory.* When rotary jet piercing equipment requires refueling at locations other than fueling stations, a system for fueling without spillage shall be provided. (301(b)(2), Pub. L. 96–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).

§ 57.9 [Amended]

NN. Section 57.9 "Loading, hauling, dumping" is amended as follows:

1. Advisory standard 57.9–8 is revoked, and standard number 57.9–8 is reserved as follows:

57.9–8 [Reserved]

2. Advisory standard 57.9–10, which is applicable to surface and underground, is revised and made mandatory as follows:

57.9–10 *Mandatory.* Equipment operators' cabs shall not be equipped, altered or otherwise modified in a manner which impairs operating visibility.

3. Advisory standard 57.9–16, which is applicable to surface and underground, is revised and made mandatory as follows:

57.9–16 *Mandatory.* Roadbeds, rails, joints, switches, frogs, and other trackage elements on railroads subject to the control of the operator shall be designed, installed and maintained in a safe manner consistent with the speed and type of haulage.

4. Advisory standards 57.9–18 and 57.9–29 are revoked, and standard numbers 57.9–18 and 57.9–29 are reserved as follows:

57.9–18 [Reserved]

* * * * *

57.9–29 [Reserved]

5. Advisory standard 57.9–63, which is applicable to surface and underground, is revised and made mandatory as follows:

57.9–63 *Mandatory.* Ramps and dumping facilities shall—

(a) Be of substantial construction; and

(b) Have suitable width, clearance, and headroom to accommodate the equipment using the facilities.

6. Advisory standard 57.9–70, which is applicable to surface and underground, is revised and made mandatory as follows:

57.9–70 *Mandatory.* A tow bar of substantial construction or other suitable means of control shall be used to tow heavy equipment. A substantial safety chain or wire rope shall be used in conjunction with any primary rigging.

7. New mandatory standard 57.9–74 (formerly advisory standard 57.5–4), which is applicable to surface and underground, is added as follows:

57.9–74 *Mandatory.* Dust shall be suitably controlled at muck piles, material transfer points, crushers, and on haulage roads where hazards to personnel may be created as a result of impaired visibility.

8. Reserved standard numbers 57.9–74 through 57.9–80 are revised as follows:

57.9–75 through 57.9–80 [Reserved]

9. Advisory standards 57.9–81 and 57.9–82 are revoked, and standard numbers 57.9–81 and 57.9–82 are reserved as follows:

57.9–81 and 57.9–82 [Reserved]

10. Advisory standard 57.9–105, which is applicable to underground only, is revised and made mandatory as follows:

57.9–105 *Mandatory.* To prevent rock from flying out when broken material is dumped into an empty chute—

(a) The chute shall be properly guarded prior to filling; or

(b) Sufficient material shall be left in the chute bottom.

11. Advisory standard 57.9–115, which is applicable to underground only, is revised and made mandatory as follows:

57.9–115 *Mandatory.* Man trips shall be covered if there is danger of passengers contacting the trolley wire. (301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 57.10 [Amended]

OO. Section 57.10 "Aerial tramways" is amended as follows:

1. Advisory standard 57.10–1, which is applicable to surface only, is revised and made mandatory as follows:

57.10–1 *Mandatory.* Buckets shall not be overloaded, and feed shall be regulated to prevent spillage.

2. Advisory standard 57.10–2, which is applicable to surface only, is revised and made mandatory as follows:

57.10–2 *Mandatory.* Inspection and maintenance of carriers (including loading and unloading mechanisms), ropes and supports, and brakes shall be performed by competent persons according to the recommendations of the manufacturer.

3. Advisory standard 57.10–4, which is applicable to surface only, is revised and made mandatory as follows:

57.10–4 *Mandatory.* Positive-action-type brakes and devices which apply the brakes automatically in the event of a power failure shall be provided on aerial tramways.

4. Advisory standard 57.10–5, which is applicable to surface only, is revised and made mandatory as follows:

57.10–5 *Mandatory.* Track cable connections shall not obstruct the passage of carriage wheels.

5. Advisory standard 57.10–6, which is applicable to surface only, is revised and made mandatory as follows:

57.10–6 *Mandatory.* Towers shall be suitably protected from swaying buckets. (301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 57.11 [Amended]

PP. Section 57.11 "Travelways and escapeways" is amended as follows:

1. Advisory standard 57.11–4, which is applicable to surface and underground, is revised and made mandatory as follows:

57.11–4 *Mandatory.* Portable rigid ladders shall be provided with suitable bases and placed securely when used.

2. Advisory standard 57.11–7, which is applicable to surface and underground, is revised and made mandatory as follows:

57.11–7 *Mandatory.* Wooden components of ladders shall not be painted except with a transparent finish.

3. Advisory standard 57.11–8 is revoked, and standard number 57.11–8 is reserved as follows:

57.11–8 [Reserved]

4. Advisory standard 57.11–10, which is applicable to surface and underground, is revised and made mandatory as follows:

57.11–10 *Mandatory.* Vertical clearance above stair steps shall be a minimum of seven (7) feet, or suitable warning signs or similar devices shall be provided to indicate an impaired clearance.

5. Advisory standard 57.11–11, which is applicable to surface and underground, is revised and made mandatory as follows:

57.11–11 *Mandatory.* Persons using ladders shall face the ladders and have both hands free for climbing and descending.

6. Advisory standard 57.11–15 is revoked, and standard number 57.11–15 is reserved as follows:

57.11–15 [Reserved]

7. Advisory standard 57.11–17, which is applicable to surface and underground, is revised and made mandatory as follows:

57.11–17 *Mandatory.* Fixed ladders shall not incline backwards.

8. Advisory standard 57.11–25, which is applicable to surface only, is revised and made mandatory as follows:

57.11–25 *Mandatory.* Fixed ladders, except on mobile equipment, shall be offset and have substantial railed landings at least

every 30 feet unless backguards or equivalent protection, such as safety belts and safety lines, are provided.

9. Advisory standard 57.11–26, which is applicable to surface only, is revised and made mandatory as follows:

57.11–26 *Mandatory.* Fixed ladders 70 degrees to 90 degrees from the horizontal and 30 feet or more in length shall have backguards, cages or equivalent protection, starting at a point not more than seven (7) feet from the bottom of the ladders.

10. Advisory standard 57.11–35 is revoked, and standard number 57.11–35 is reserved as follows:

57.11–35 [Reserved]

11. Advisory standard 57.11–37, which is applicable to underground only, is revised and made mandatory as follows:

57.11–37 *Mandatory.* Ladderways constructed after November 15, 1979 shall have a minimum unobstructed cross-sectional opening of 24 inches by 24 inches measured from the face of the ladder.

12. Advisory standard 57.11–38, which is applicable to underground only, is revised and made mandatory as follows:

57.11–38 *Mandatory.* Before entering a manway where persons may be working or traveling, a warning shall be given by the person entering the manway and acknowledged by any person present in the manway.

13. Advisory standard 57.11–39 is revoked, and standard number 57.11–39 is reserved as follows:

57.11–39 [Reserved]

14. Advisory standard 57.11–40, which is applicable to underground only, is revised and made mandatory as follows:

57.11–40 *Mandatory.* Travelways steeper than 35 degrees from the horizontal shall be provided with ladders or stairways.

15. Advisory standard 57.11–41, which is applicable to underground only, is revised and made mandatory as follows:

57.11–41 *Mandatory.* Fixed ladders with an inclination of more than 70 degrees from the horizontal shall be offset with substantial landings at least every 30 feet or have landing gates at least every 30 feet.

16. Advisory standard 57.11–56, which is applicable to underground only, is revised and made mandatory as follows:

57.11–56 *Mandatory.* The procedure for inspection, testing and maintenance required by standard 57.19–120 shall be utilized at least every 30 days for hoists designated as emergency hoists in any evacuation plan.

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 57.12 [Amended]

QQ. Section 57.12 "Electricity" is amended as follows:

1. Advisory standard 57.12–4, which is applicable to surface and underground, is revised and made mandatory as follows:

57.12–4 *Mandatory.* Electrical conductors shall be of a sufficient size and current-carrying capacity to ensure that a rise in temperature resulting from normal operations will not damage the insulating materials. Electrical conductors exposed to mechanical damage shall be protected.

2. Advisory standard 57.12–19, which is applicable to surface and underground, is revised and made mandatory as follows:

57.12–19 *Mandatory.* Where access is necessary, suitable clearance shall be provided at stationary electrical equipment or switchgear.

3. Advisory standard 57.12–22, which is applicable to surface and underground, is revised and made mandatory as follows:

57.12–22 *Mandatory.* Areas containing major electrical installations shall be entered only by authorized persons.

4. Advisory standards 57.12–24, 57.12–29, and 57.12–31 are revoked, and standard numbers 57.12–24, 57.12–29 and 57.12–31 are reserved as follows:

57.12–24 [Reserved]

* * * * *

57.12–29 [Reserved]

* * * * *

57.12–31 [Reserved]

5. Advisory standard 57.12–35, which is applicable to surface and underground, is revised and made mandatory as follows:

57.12–35 *Mandatory.* Lamp sockets shall be of a weatherproof type where they are exposed to weather or wet conditions that may interfere with illumination or create a shock hazard.

6. Advisory standard 57.12–38, which is applicable to surface and underground, is revised and made mandatory as follows:

57.12–38 *Mandatory.* Trailing cables shall be attached to machines in a suitable manner to protect the cable from damage and to prevent strain on the electrical connections.

7. Advisory standard 57.12–39, which is applicable to surface and underground, is revised and made mandatory as follows:

57.12–39 *Mandatory.* Surplus trailing cables to shovels, cranes and similar equipment shall be—

(a) Stored in cable boats;

(b) Stored on reels mounted on the equipment; or

(c) Otherwise protected from mechanical damage.

8. Advisory standards 57.12–44 and 57.12–49 are revoked, standards 57.12–44 and 57.12–49 are reserved, and reserved standard number 57.12–43 is revised as follows:

57.12–43 and 57.12–44 [Reserved]

* * * * *

57.12–49 [Reserved]

9. Advisory standard 57.12–50, which is applicable to surface and underground, is revised and made mandatory as follows:

57.12–50 *Mandatory.* Trolley wires shall be installed at least seven (7) feet above rails where height permits, and aligned and supported to suitably control sway and sag.

10. Advisory standards 57.12–51 and 57.12–52 are revoked, and standard numbers 57.12–51 and 57.12–52 are reserved as follows:

57.12–51 and 57.12–52 [Reserved]

11. Advisory standard 57.12–53, which is applicable to surface and underground, is revised and made mandatory as follows:

57.12–53 *Mandatory.* Ground wires for lighting circuits powered from trolley wires shall be connected securely to the ground-return circuit.

12. Advisory standard 57.12–54 is revoked, standard number 57.12–54 is reserved, and reserved standard numbers 57.12–55 through 57.12–64 are revised as follows:

57.12–54 through 57.12–64 [Reserved]

13. Advisory standard 57.12–86, which is applicable to underground only, is revised and made mandatory as follows:

57.12–86 *Mandatory.* Trolley and trolley feeder wire shall be installed opposite the clearance side of haulageways. However, this standard does not apply where physical limitations would prevent the safe installation or use of such trolley and trolley feeder wire.

14. Advisory standard 57.12–87 is revoked, and standard number 57.12–87 is reserved as follows:

57.12–87 [Reserved]

15. Advisory standard 57.12–88, which is applicable to underground only, is revised and made mandatory as follows:

57.12–88 *Mandatory.* No splice, except a vulcanized splice or its equivalent, shall be made in a trailing cable within 25 feet of the machine unless the machine is equipped with a cable reel or other power feed cable payout-retrieval system. However, a temporary splice may be made to move the equipment for repair.

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 57.13 [Amended]

RR. Section 57.13 "Compressed air and boilers" is amended as follows:

1. Advisory standard 57.13–10, which is applicable to surface and underground, is revised and made mandatory as follows:

57.13–10 *Mandatory.* (a) Reciprocating-type air compressors rated over 10 horsepower shall be equipped with automatic temperature-actuated shut off mechanisms which shall be set or adjusted to the compressor when the normal operating temperature is exceeded by more than 25 percent.

(b) However, this standard does not apply to reciprocating-type air compressors rated over 10 horsepower if equipped with fusible plugs that were installed in the compressor discharge lines before November 15, 1979 and designed to melt at temperatures at least 50 degrees below the flash point of the compressors' lubricating oil.

2. Advisory standard 57.13–11, which is applicable to surface and underground, is revised and made mandatory as follows:

57.13–11 *Mandatory.* Air receiver tanks shall be equipped with one or more automatic pressure-relief valves. The total relieving capacity of the relief valves shall prevent pressure from exceeding the maximum allowable working pressure in a receiver tank by not more than 10 percent. Air receiver tanks also shall be equipped with indicating pressure gages which accurately measure the pressure within the air receiver tanks.

3. Advisory standard 57.13–12, which is applicable to surface and underground, is revised and made mandatory as follows:

57.13–12 *Mandatory.* Compressor air intakes shall be installed to insure that only clean, uncontaminated air enters the compressors.

4. Advisory standards 57.13–13 and 57.13–14 are revoked, and standard numbers 57.13–13 and 57.13–14 are reserved as follows:

57.13–13 and 57.13–14 [Reserved]

5. Advisory standard 57.13–15, which is applicable to surface and underground, is revised and made mandatory as follows:

57.13–15 *Mandatory.* (a) Compressed-air receivers and other unfired pressure vessels shall be inspected by inspectors holding a valid National Board Commission and in accordance with the applicable chapters of the National Board Inspection Code, a Manual for Boiler and Pressure Vessel Inspectors, 1979. This code is incorporated by reference and made a part of this standard, may be examined at any Metal and Nonmetal Mine Safety and Health Distict Office of the Mine Safety and Health Administration, and may be obtained from the publisher, the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229.

(b) Records of inspections shall be kept in accordance with requirements of the National Board Inspection Code, and the records shall be made available to the Secretary or his authorized representative.

6. Advisory standard 57.13–16 is revoked, and standard number 57.13–16 is reserved as follows:

57.13–16 [Reserved]

7. Advisory standard 57.13–17, which is applicable to surface and underground, is revised and made mandatory as follows:

57.13–17 *Mandatory.* Compressor discharge pipes where carbon build-up may occur shall be cleaned periodically as recommended by the manufacturer, but no less frequently than once every two (2) years.

8. Advisory standard 57.13–18 is revoked, and standard number 57.13–18 is reserved as follows:

57.13–18 [Reserved]

9. Advisory standard 57.13–30, which is applicable to surface and underground, is revised and made mandatory as follows:

57.13–30 *Mandatory.* (a) Fired pressure vessels (boilers) shall be equipped with water level gages, pressure gages, automatic pressure-relief valves, blowdown piping, and other safety devices approved by the American Society of Mechanical Engineers to protect against hazards from overpressure, flameouts, fuel interruptions and low water level, all as required by the appropriate sections, chapters and appendices listed in paragraph (b)(1) and (2) below.

(b) These gages, devices and piping shall be designed, installed, operated, maintained, repaired, altered, inspected, and tested by inspectors holding a valid National Board Commission and in accordance with the following listed sections, chapters and appendices:

(1) The ASME Boiler and Pressure Vessel Code, 1977, published by the American Society of Mechanical Engineers.

Section and Title

I Power Boilers.
II Material Specifications—Part A—Ferrous.
II Material Specifications—Part B—Nonferrous.
II Material Specifications—Part C—Welding Rods, Electrodes, and Filler Metals.
IV Heating Boilers.
V Nondestructive Examination.
VI Recommended Rules for Care and Operation of Heating Boilers.
VII Recommended Rules for Care of Power Boilers.

(2) The National Board Inspection Code, a Manual for Boiler and Pressure Vessel Inspectors, 1979. Published by the National Board of Boiler and Pressure Vessel Inspectors.

Chapter and Title

I Glossary of Terms.
II Inspection of Boilers and Pressure Vessels.
III Repairs and Alterations to Boiler and Pressure Vessels by Welding.
IV Shop Inspection of Boilers and Pressure Vessels.
V Inservice Inspection of Pressure Vessels by Authorized Owner-User Inspection Agencies.

Appendix and Title

A Safety and Safety Relief Valves.
B Non-ASME Code Boilers and Pressure Vessels.
C Storage of Mild Steel Covered Arc Welding Electrodes.
D–R National board "R" (Repair) Symbol Stamp.
D–VR National Board "V" (Repair of Safety and Safety Relief Valve) Symbol Stamp.
D–VR1 Certificate of Authorization for Repair Symbol Stamp for Safety and Safety Relief Valves.
D–VR2 Outline of Basic Elements of Written Quality Control System for Repairers of ASME Safety and Safety Relief Valves.
D–VR3 Nameplate Stamping for "VR".
E Owner-user Inspection Agencies.
F Inspection Forms.

(c) Records of inspections and repairs shall be kept in accordance with the requirements of the ASME Boiler and Pressure Vessel Code and the National Board Inspection Code. The records shall be made available to the Secretary or his authorized representative.

(d) Sections of the ASME Boiler and Pressure Vessel Code, 1977, listed in paragraph (b)(1) above, and chapters and appendices of the National Board Inspection Code, 1979, listed in paragraph (b)(2) above, are incorporated by reference and made a part of this standard. These publications may be obtained from the publishers, the American Society of Mechanical Engineers, 345 East Forty-seventh Street, New York, N.Y. 10017, and the National Board of Boiler and Pressure Vesel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229. The publication may be examined at any Metal and Nonmetal Mine Safety and Health District Office of the Mine Safety and Health Administration.

10. Advisory standards 57.13–31, 57.13–32, 57.13–33, and 57.13–34 are revoked, and standard numbers 57.13–31, 57.13–32, 57.13–33, and 57.13–34 are reserved as follows:

57.13–31 through 57.13–34 [Reserved]

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 57.14 [Amended]

SS. Section 57.14 "Use of equipment" is amended as follows:

1. Advisory standard 57.14–3, which is applicable to surface and underground, is revised and made mandatory as follows:

57.14–3 *Mandatory.* Guards at conveyor-drive, conveyor-head, and conveyor-tail

pulleys shall extend a distance sufficient to prevent a person from accidentally reaching behind the guard and becoming caught between the belt and the pulley.

2. Advisory standards 57.14–4 and 57.14–5 are revoked, and standard numbers 57.14–4 and 57.14–5 are reserved as follows:

57.14–4 and 57.14–5 [Reserved]

3. Advisory standard 57.14–7, which is applicable to surface and underground, is revised and made mandatory as follows:

57.14–7 *Mandatory.* Guards shall be of substantial construction and properly maintained.

4. Advisory standard 57.14–11, which is applicable to surface and underground, is revised and made mandatory as follows:

57.14–11 *Mandatory.* Guards, shields, or other suitable protection shall be provided in areas where flying or falling materials present a hazard to personnel.

5. Advisory standard 57.14–25 is revoked, and standard number 57.14–25 is reserved as follows:

57.14–25 [Reserved]

6. Advisory standard 57.14–27, which is applicable to surface and underground, is revised and made mandatory as follows:

57.14–27 *Mandatory.* Operation of machinery or equipment shall be assigned only to competent persons.

7. Advisory standard 57.14–28 is revoked, and standard number 57.14–28 is reserved as follows:

57.14–28 [Reserved]

8. Advisory standard 57.14–36, which is applicable to surface and underground, is revised and made mandatory as follows:

57.14–36 *Mandatory.* Tools and equipment shall not be used beyond the design capacity intended by the manufacturer, where such use may create a hazard to personnel.

9. Advisory standared 57.14–55, which is applicable to underground only, is revised and made mandatory as follows:

57.14–55 *Mandatory.* Welding operations shall be shielded and well-ventilated.

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 57.15 [Amended]

TT. Section 57.15 "Personal protection" is amended as follows:

1. Advisory standards 57.15–8, 57.15–9, 57.15–10, 57.15–11, and 57.15–13 are revoked, standard numbers 57.15–8, 57.15–9, 57.15–10, 57.15–11, 57.15–12 (Revoked July 1, 1974, 39 FR 24320), and 57.15–13 are reserved, and reserved standard numbers 57.15–14 through 57.15–19 are revised as follows:

57.15–8 through 57.15–19 [Reserved]

(301 (b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C 961 (b)(2)).)

§ 57.16 [Amended]

UU. Section 57.16 "Materials storage and handling" is amended as follows:

1. Advisory standard 57.16–1, which is applicable to surface and underground, is revised and made mandatory as follows:

57.16–1 *Mandatory.* Supplies shall not be stacked or stored in a manner which creates tripping or fall-of-material hazards.

2. Advisory standard 57.16–2, which is applicable to surface and underground, is revised and made mandatory as follows:

57.16–2 *Mandatory.* (a) Bins, hoppers, silos, tanks and surge piles, where loose unconsolidated materials are stored, handled or transferred shall be—

(1) Equipped with mechanical devices or other effective means of handling materials so that during normal operations persons are not required to enter or work where they are exposed to entrapment by the caving or sliding of materials, and

(2) Equipped with supply and discharge operating controls. The controls shall be located so that spills or overruns will not endanger persons.

(b) Where persons are required to move around or over any facility listed in this standard, suitable walkways or passageways shall be provided.

(c) Where persons are required to enter any facility listed in this standard for maintenance or inspection purposes, ladders, platforms, or staging shall be provided. No person shall enter the facility until the supply and discharge of materials have ceased and the supply and discharge equipment is locked out. Persons entering the facility shall wear a safety belt or harness equipped with a lifeline suitably fastened. A second person, similarly equipped, shall be stationed near where the lifeline is fastened and shall constantly adjust it or keep it tight as needed, with minimum slack.

3. Advisory standard 57.16–7, which is applicable to surface and underground, is revised and made mandatory as follows:

57.16–7 *Mandatory.* (a) Taglines shall be attached to loads that may require steadying or guidance while suspended.

(b) Hitches and slings used to hoist materials shall be suitable for the particular material handled.

4. Advisory standard 57.16–8 is revoked, and standard number 57.16–8 is reserved as follows:

57.16–8 [Reserved]

5. Advisory standard 57.16–10, which is applicable to surface and underground, is revised and made mandatory as follows:

57.16–10 *Mandatory.* To protect personnel, material shall not be dropped from an overhead elevation until the drop area is first cleared of personnel and the area is then either guarded or a suitable warning is given.

6. Advisory standard 57.16–12, which is applicable to surface and underground, is revised and made mandatory as follows:

57.16–12 *Mandatory.* Chemical substances, including concentrated acids and alkalies, shall be stored to prevent inadvertent contact with each other or with other substances, where such contact could cause a violent reaction or the liberation of harmful fumes or gases.

7. Advisory standard 57.16–13, which is applicable to surface and underground, is revised and made mandatory as follows:

57.16–13 *Mandatory.* Suitable warning shall be given before molten metal is poured and before a container of molten metal is moved.

8. Advisory standard 57.16–16, which is applicable to surface and underground, is revised and made mandatory as follows:

57.16–16 *Mandatory.* Fork and other similar types of lift trucks shall be operated with the—

(a) Upright tilted back to steady and secure the load;

(b) Load in the upgrade position when ascending or descending grades in excess of 10 percent;

(c) Load not raised or lowered enroute except for minor adjustments; and

(d) Load-engaging device downgrade when traveling unloaded on all grades.

9. Advisory standard 57.16–35, which is applicable to underground only, is revised, renumbered, and made mandatory and applicable to surface and underground as follows:

57.16–17 *Mandatory.* Where the stretching or contraction of a hoist rope could create a hazard, chairs or other suitable blocking shall be used to support conveyances at shaft landings before heavy equipment or material is loaded or unloaded.

10. Standard number 57.16–35 is reserved as follows:

57.16–35 [Reserved]

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).

§ 57.18 [Amended]

VV. Section 57.18 "Safety programs" is amended as follows:

1. Advisory standard 57.18–1 is revoked, and standard number 57.18–1 is reserved as follows:

57.18–1 [Reserved]

2. Advisory standard 57.18–2, which is applicable to surface and underground, is revised and made mandatory as follows:

57.18–2 *Mandatory.* (a) A competent person designated by the operator shall examine each working place at least once each shift for conditions which may adversely affect safety or health. The operator shall promptly initiate appropriate action to correct such conditions.

(b) A record that such examinations were conducted shall be kept by the operator for a period of one (1) year, and shall be made available for review by the Secretary or his authorized representative.

(c) In addition, conditions that may present an imminent danger which are noted by the person conducting the examination shall be brought to the immediate attention of the operator who shall withdraw all persons from the area affected (except persons referred to in section 104(c) of the Federal Mine Safety and Health Act of 1977) until the danger is abated.

3. Advisory standards 57.18–3, 57.18–4, 57.18–5, 57.18–7, and 57.18–8 are revoked, and standard numbers 57.18–3, 57.18–4, 57.18–5, 57.18–7, and 57.18–8 are reserved as follows:

57.18–3 through 57.18–5 [Reserved]

* * * * *

57.18–7 and 57.18–8 [Reserved]

4. Advisory standard 57.18–9, which is applicable to surface and underground, is revised and made mandatory as follows:

57.18–9 *Mandatory.* When persons are working at the mine, a competent person designated by the mine operator shall be in attendance to take charge in case of an emergency.

5. Advisory standard 57.18–11 is revoked, and standard number 57.18–11 is reserved as follows:

57.18–11 [Reserved]

6. Advisory standard 57.18–13, which is applicable to surface and underground, is revised and made mandatory as follows:

57.18–13 *Mandatory.* A suitable communication system shall be provided at the mine to obtain assistance in the event of an emergency.

7. Advisory standard 57.18–26 is revoked, and standard number 57.18–26 is reserved as follows:

57.18–26 [Reserved]

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 57.19 [Amended]

WW. Section 57.19 "Man hoisting" is amended as follows:

1. The paragraph immediately following the heading "§ 57.19 Man hoisting" is revised as follows:

The hoisting standards in this section apply to those hoists and appurtenances used for hoisting persons. However, where persons may be endangered by hoists and appurtenances used solely for handling ore, rock, and materials, the appropriate standards should be applied.

Emergency hoisting facilities should conform to the extent possible to safety requirements for other hoists, and should be adequate to remove the persons from the mine with a minimum of delay.

2. Advisory standard 57.19–12 is revised and made mandatory as follows:

57.19–12 *Mandatory.* Where grooved drums are used, the grooves shall be of suitable size and pitch for the ropes used.

3. Advisory standards 57.19–20 and 57.19–25 are revoked, and standard numbers 57.19–20 and 57.19–25 are reserved as follows:

57.19–20 [Reserved]

* * * * *

57.19–25 [Reserved]

4. Advisory standard 57.19–35 is revised and made mandatory as follows:

57.19–35 *Mandatory.* All headframes shall be constructed with suitable design considerations to allow for all dead loads, live loads, and wind loads.

5. Advisory standard 57.19–36 is revised and made mandatory as follows:

57.19–36 *Mandatory.* Headframes shall be high enough to provide clearance for overtravel and safe stopping of the conveyance.

6. Advisory standard 57.19–37 is revised and made mandatory as follows:

57.19–37 *Mandatory.* Fleet angles on hoists installed after November 15, 1979 shall not be greater than one and one-half degrees for smooth drums or two degrees for grooved drums.

7. Advisory standard 57.19–39 is revised and made mandatory as follows:

57.19–39 *Mandatory.* All personnel hoists, except emergency escape hoists and hoists with rope speeds of 200 feet per minute or less, installed after November 15, 1979 shall have drum and sheave tread diameters—

(1) Not less than 60 times the hoist rope diameter for slope or inclined shaft applications;

(2) Not less than 80 times the hoist rope diameter if the hoist ropes are one inch in diameter or greater, or not less than 60 times the hoist rope diameter if the hoist ropes are less than one inch in diameter for vertical shaft applications; or

(3) Not less than 100 times the hoist rope diameter for locked coil ropes.

8. Advisory standard 57.19–67 is revised and made mandatory as follows:

57.19–67 *Mandatory.* During shift changes, an authorized person shall be in charge of each trip in which persons are hoisted.

9. Advisory standard 57.19–72 is revised and made mandatory as follows:

57.19–72 *Mandatory.* When combinations of cages and skips are used in the same compartment, the cages shall be enclosed to protect personnel from flying material and the hoist speed reduced to man-speed as defined in standard 57.19–61, but not to exceed 1,000 feet per minute. Muck shall not be hoisted with personnel during shift changes.

10. Advisory standard 57.19–74 is revised and made mandatory as follows:

57.19–74 *Mandatory.* Persons shall not ride the bail, rim, bonnet, or crosshead of any shaft conveyance except when necessary for inspection and maintenance, and then only when suitable protection for persons is provided.

11. Advisory standard 57.19–81 is revised and made mandatory as follows:

57.19–81 *Mandatory.* When conveyances controlled by a hoist operator are not in use, they shall be released and the conveyances shall be raised or lowered a suitable distance to prevent persons from boarding or loading the conveyances.

12. Advisory standard 57.19–91 is revised and made mandatory as follows:

57.19–91 *Mandatory.* Hoist operators shall accept hoisting instructions only by the regular signaling system unless it is out of order. In such an event, and during other emergencies, the hoist operator shall accept instructions to direct movement of the conveyances only from authorized persons.

13. Advisory standard 57.19–93 is revised and made mandatory as follows:

57.19–93 *Mandatory.* A standard code of hoisting signals shall be adopted and used at each mine. The movement of a shaft conveyance on a "one bell" signal is prohibited.

14. Advisory standard 57.19–104 is revised and made mandatory as follows:

57.19–104 *Mandatory.* Suitable clearance at shaft stations shall be provided to allow safe movement of persons, equipment and materials.

15. Advisory standard 57.19–124 is revised and made mandatory as follows:

57.19–124 *Mandatory.* Hoist ropes other than those on friction hoists shall be cut off at least six (6) feet above the highest connection to the conveyance at time intervals not to exceed one (1) year unless a shorter time is required by standard 57.19–126, or by conditions of use. The portion of the rope that is cut off shall be examined and inspected by a competent person for damage, corrosion, wear and fatique.

16. Advisory standard 57.19–125 is revised and made mandatory as follows:

57.19–125 *Mandatory.* Hoist ropes wound in multiple layers shall have a length cut off at the drum end at least three (3) times during the anticipated life of the rope and whenever

necessary as required by standard 57.19–126 to distribute the wear at change-of-layer and crossover points. The length of rope cut off shall not be a whole number multiple of the circumference of the drum.

17. Advisory standard 57.19–126 is revised and made mandatory as follows:

57.19–126 *Mandatory.* Hoist ropes shall be examined over the entire active length at least every month to evaluate wear and possible damage. When such examinations or other inspections reveal that the rope is worn, and at least every six (6) months, caliper measurements or nondestructive tests shall be made at the following locations:

(a) Wherever wear is evident;

(b) Immediately above the socket or clip and above the safety connection;

(c) Where the rope rests on the sheaves;

(d) Where the ropes leave the drums when the conveyances are at the regular stopping point;

(e) Where a layer of rope begins to overlap another layer on the drum; and

(f) At 100 foot intervals (measurements shall be made midway between the last previously calipered points).

18. Advisory standard 57.19–127 is revoked, and standard number 57.19–127 is reserved as follows:

57.19–127 [Reserved]

19. Advisory standard 57.19–130 is revised and made mandatory as follows:

57.19–130 *Mandatory.* Before hoisting persons and to assure that the hoisting compartments are clear of obstructions, empty hoist conveyances shall be operated at least one round trip after—

(a) Any hoist or shaft repairs or related equipment repairs that might restrict or obstruct conveyance clearance;

(b) Any oversize or overweight material or equipment trips that might restrict or obstruct conveyance clearance;

(c) Blasting in or near the shaft that might restrict or obstruct conveyance clearance; or

(d) Remaining idle for one shift or longer.

20. Advisory standard 57.19–131 is revised and made mandatory as follows:

57.19–131 *Mandatory.* Hoist conveyance connections shall be inspected at least once during any 24-hour period that the conveyance is used for hoisting persons.

21. Advisory standard 57.19–132 is revised and made mandatory as follows:

57.19–132 *Mandatory.* (a) A performance drop test of hoist conveyance safety catches shall be made at the time of installation, or prior to installation, in a mockup of the actual installation. The test shall be certified to in writing by the manufacturer or by a registered professional engineer performing the test.

(b) After installation and before use, and at the beginning of any seven (7) day period during which the conveyance is to be used, the conveyance shall be suitably rested and the hoist rope slackened to test for the unrestricted functioning of the safety catches and their activating mechanisms.

(c) The safety catches shall be inspected by a competent person at the beginning of any 24-hour period that the conveyance is to be used.

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 57.20 [Amended]

XX. Section 57.20 "Miscellaneous" is amended as follows:

1. Advisory standards 57.20–4, 57.20–6, and 57.20–7, are revoked, and standard numbers 57.20–4, 57.20–6, and 57.20–7 are reserved as follows:

57.20–4 [Reserved]

* * * * *

57.20–6 and 57.20–7 [Reserved]

2. Advisory standard 57.20–32, which is applicable to surface and underground, is revised and made mandatory as follows:

57.20–32 *Mandatory.* Telephones or other two-way communication equipment with instructions for their use shall be provided for communication from underground operations to the surface.

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2)).)

§ 57.21 [Amended]

YY. Section 57.21 "Gassy Mines" is amended as follows:

1. Advisory standard 57.21–37 is revoked, and standard number 57.21–37 is reserved as follows:

57.21–37 [Reserved]

2. Advisory standard 57.21–49 is revised and made mandatory as follows:

57.21–49 *Mandatory.* Brattice cloth shall be of flame-resistant material.

3. Advisory standard 57.21–51 is revised and made mandatory as follows:

57.21–51 *Mandatory.* Crosscuts shall be provided where practicable at or within eighteen (18) feet of the face of drifts, entries, and rooms before the workings are abandoned in any unsealed area of the mine. When crosscuts are not practicable, line brattice or other suitable means of ventilating shall be provided to the drifts, entries, or rooms.

4. Advisory standard 57.21–65 is revised and made mandatory as follows:

57.21–65 *Mandatory.* At intervals not greater than seven (7) days, the mine foreman (or other competent person designated by the mine foreman) shall examine for hazardous conditions and for compliance with health and safety standards, and shall test for methane and carbon monoxide. The tests shall be made with approved devices at the following locations:

(a) In the return of each split where it enters the main return;

(b) Adjacent to retreat areas, if accessible;

(c) At seals;

(d) In the main return;

(e) In at least one entry of each intake and return airway;

(f) In idle workings; and

(g) In unsealed abandoned workings, as conditions permit.

(301(b)(2), Pub. L. 95–164, 91 Stat. 1317 (30 U.S.C. 961(b)(2))

Parts 55, 56 and 57 [Amended]

ZZ. The authority in Parts 55, 56 and 57 is revised to read as follows:

Authority: Secs. 301(a), 301(b)(2), 301(c)(3) and 302(a) of the Federal Mine Safety and Health Amendments Act of 1977, Pub. L. 95–164, 91 Stat. 1317–1319 (30 USC 961(a), (b)(2), (c)(3) (Supp. I, 1977)), and 29 USC 557a (Supp. I, 1977); sec. 508 of the Federal Mine Safety and Health Act of 1977, Pub. L. 91–173 as amended by Pub. L. 95–164, 83 Stat. 803 (30 USC 957 (1976 ed.)); sec. 6 of the Federal Metal and Nonmetallic Mine Safety Act (repealed 1977), Pub. L. 89–577, 80 Stat. 774 (30 USC 725 (1976 ed.)), (repealed sec. 306(a), Pub. L. 95–164, 91 Stat. 1322, but see sec. 301(b)(1), Pub. L. 95–164, 91 Stat. 1317 (30 USC 961(b)(1) (Supp. I, 1977)).)

[FR Doc. 79–25130 Filed 8–14–79; 10:37 am]

BILLING CODE 4510–43–M

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30 CFR Parts 55, 56 and 57

Metal and Nonmetal Mine Safety; New and Revised Definitions and Safety and Health Standards For Explosives

AGENCY: Mine Safety and Health Administration, Department of Labor

ACTION: Final rule

SUMMARY: This final rule amends 30 CFR Parts 55, 56 and 57 by adding new definitions and mandatory standards, as well as revising certain existing mandatory standards and definitions. It also revises certain advisory standards and make them mandatory. The rule includes mandatory standards relating to the transportation, storage and use of explosives for metal and nonmetal mines and mills. New definitions have been added for the terms delay connector, magazine, non-electric delay blasting cap, and water gel or slurry (as applied to blasting).

In addition, definitions have been revised for the terms blasting agent, blasting cap, blasting circuit, booster, capped fuse, detonator, detonating cord, electric blasting cap, explosive, primer, and safety fuse. This final rule will afford miners additional protection from accidents and injuries which are related to the use of explosives in metal and nonmetal mines and mills.

EFFECTIVE DATE: These definitions and standards shall be effective November 15, 1979.

FOR FURTHER INFORMATION CONTACT: Frank Delimba, Chief, Division of Safety, Metal and Nonmetal Mine Safety

and Health, Mine Safety and Health Administration, Ballston Tower No. 3, Room 717, 4015 Wilson Boulevard, Arlington, Virginia 22203, (703) 235-8646.

SUPPLEMENTARY INFORMATION:

I. Background

When the Federal Mine Safety and Health Admendments Act of 1977 [the "Amendments Act"], Pub. L. 95-164, 91 Stat. 1290 *et seq.*, became effective on March 9, 1978, the Federal Metal and Nonmetallic Mine Safety Act of 1966 [the "Metal Act"], Pub. L. 89-577, 80 Stat. 772, 30 USC 721 *et seq.* (1976 ed.), was repealed. However, certain formal rulemaking proceedings relating to health and safety standards were pending before the Secretary of Interior and the Mining Enforcement and Safety Administration (MESA) at that time. Pursuant to section 301(c)(3) of the Amendments Act, 191 Stat. 1318, 30 USC 961(c)(3) (Supp. I, 1977), these rulemaking proceedings were transferred to, and continued before, the Secretary of Labor and the Mine Safety and Health Administration (MSHA). This final decision and rule is the result of a formal rulemaking proceeding initiated by the Secretary of Interior and MESA under section 6 of the Metal Act.

On September 25, 1975, a notice of proposed rulemaking setting forth proposed amendments to Parts 55, 56 and 57 of Title 30, Code of Federal Regulations, was published in the **Federal Register** [40 FR 44272]. The original comment period was extended from November 6, 1975 to December 5, 1975 [40 FR 51202] to encourage full public participation. A number of interested persons and organizations filed written comments, suggestions and objections with respect to the proposed safety standards and definitions and several objections contained specific requests for public hearings. The objections and the proposed standards, several of which were revised to reflect public comments, were published in the **Federal Register** on April 16, 1976 [41 FR 16163]. In the same publication, the Secretary of the Interior, under the authority of section 6 (d)(1) of the Metal Act, instructed that a public hearing be held before an Administrative Law Judge, who would be empowered to receive evidence relevant and material to the issues raised by the objections set forth in the **Federal Register.** The Administrative Law Judge was further authorized to consider all objections, and based upon the record, submit a recommended decision to the Secretary who would review the recommendations and issue a final decision. The formal public hearing, subject to the provisions of the Administrative Procedure Act, 5 USC 553-557 (1976 Ed.), was held in Salt Lake City, Utah from June 28, 1976 through July 2, 1976 and in Denver, Colorado on July 12 and 13, 1976.

During the public hearing phase of the rulemaking, many of the proposed standards were stipulated either without change or with modification by the unanimous consent of the participating parties. When the major participating parties reached agreement on the wording of certain standards, the agreed language was read before the presiding Administrative Law Judge, Harvey C. Sweitzer. If no objection was raised by any party, the stipulated provision was made part of the record without further testimony. There was general agreement or a stipulation of the following definitions and standards: blasting cap, blasting circuit, capped fuse, detonator, detonating cord, electric blasting cap, explosive, magazine, water gel or slurry (as applied to blasting), 55/56/57.6-250 (smoking and open flames, formerly 55/56/57.6-6),[1] 55/56/57.6-7 (storage of explosive materials), 55/56/57.6-11 (closed containers), 55/56/57.6-48 (transportation of explosive materials), 55/56/57.6-92 (damaged explosives), 55/56/57.6-106 (undetonated explosive materials), 55/56/57.6-118 (safety fuse timing), 55/56/57.6-121 (electrical testing of blasting circuits), 55/56/57.6-126 (de-energizing electric power distribution circuits, formerly 55/56/57.6-170), 55/56/57.6-138 (premature ignition, formerly 55/56/57.6-169), 55/56/57.6-139 (re-entering blast areas, formerly 55/56/57.6-176), and 55/56/57.6-140 (extraneous electricity, formerly 55/56/57.6-180).

However, the proposed definitions for the terms blasting agent, booster, primer, and charged hole, and proposed standards 55/56/57.6-97 (assembly of primers), 55/56/57.6-98 (connection of detonators), and 55/56/57.6-101 (tamping primers) were contested during the hearing.

At the conclusion of the hearing, the date for filing post-hearing arguments was fixed as November 16, 1976, and reply arguments by December 16, 1976. After consideration of the record, the Administrative Law Judge submitted his recommended decision to the Secretary of Interior on November 16, 1977.

Those who participated in the public hearing were then given an opportunity to file exceptions to the recommended decision on or before March 24, 1978. This date was later extended to April 14, 1978.

Eight exceptions to the recommended decision were received by the agency.

In this rule, the Secretary adopts the recommended decision of Administrative Law Judge Sweitzer dated November 16, 1977 as his final decision [2], except for the definitions for blasting agent, explosive, and primer which have been adopted with modifications. MSHA is also withdrawing for further study the proposed definitions for charged hole based on the recommendation of the Administrative Law Judge, and the "Table of Recommended Separation Distance of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents". In adopting the recommended decision of Judge Sweitzer, MSHA has made certain editorial changes to improve clarity or update incorporated references. Copies

[1] Standards uniformly applicable to 30 CFR Parts 55, 56, 57 are referred to in this document as 55/56/57. Standards applicable to Open Pit Mines are published in Part 55. Standards applicable to Sand, Gravel and Crushed Stone Operations are published in Part 56. Standards applicable to Underground Mines (including their surface operations) are published in Part 57.

[2] The Amendments Act was enacted on November 9, 1977, prior to the issuance of the recommended decision by the Administrative Law Judge. Although section 301(c)(3) of the Amendments Act authorized the Secretary of Labor to continue rulemakings begun by the Secretary of Interior, section 301(b)(2) of the Amendments Act also required the Secretary of Labor to establish within 60 days from enactment an advisory committee to: (1) review all existing safety and health standards promulgated as advisory under the Metal Act; and (2) recommend to the Secretary which of those standards should be upgraded or modifed as new mandatory standards. In executing this responsibility, the Secretary on January 5, 1978, appointed the membership of the "Advisory Committee to Review Advisory Metal and Nonmetallic Mine Safety Standards" (the Advisory Committee). Among the advisory standards considered by the Advisory Committee were certain of those standards which were also pending before the Administrative Law Judge in these proceedings: 55/56/57.6-7 (storage of explosive materials), 55/56/57.6-48 (transportation of explosive materials), 55/56/57.6-98 (connection of detonators), 55/56/57.6-106 (undetonated explosive materials), 55/56/57.6-118 (safety fuse timing), 55/56/57.6-121 (electrical testing of blasting circuits), 55/56/57.6-138 (premature ignition), 55/56/57.6-139 (re-entering blast areas), and 55/56/57.6-140 (extraneous electricity). After extensive deliberations involving public hearings and written comment, the Advisory Committee submitted its recommendations to the Secretary on July 5, 1978. The recommendations of the Advisory Committee were virtually identical to the findings of the Administrative Law Judge.

The recommendations of the Advisory Committee were then published as a proposed rule by MSHA on September 12, 1978 (43 FR 40766). Comments on this proposal, including those relating to advisory standards considered by the Administrative Law Judge, were submitted to MSHA by interested parties. While the deliberations of the Advisory Committee and the related public participation were not a formal part of the rulemaking proceedings before the Administrative Law Judge, the agency did take notice of both the substantive similarity of the Advisory Committee's recommendations and the absence of any issues of significane or other information which would have caused a modification of any standard being adopted here as a final rule.

of the Administrative Law Judge's recommended decision are available to the public and may be obtained by contacting the Office of Standards, Regulations and Variances, Department of Labor, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, VA 22203.

In addition, other definitions and standards relating to explosives which were proposed at the same time as those covered by the recommended decision of the Administrative Law Judge are also promulgated here as final rules. No consideration by the Administrative Law Judge was necessary for these standards because either no hearing had been requested, or they had been recommended by the Federal Metal and Nonmetal Mine Safety Advisory Committee and therefore were not subject to public hearing under the Metal Act. Rather than promulgate these proposals as final rules on an earlier date, the Secretary of the Interior elected to delay issuance until a final decision had been made on the related proposals which were subject to hearing and considered by the Administrative Law Judge. The following definitions and standards are now promulgated by the Secretary of Labor as final rules in this document: definitions of delay connector; nonelectric delay blasting cap; safety fuse; and standards 55/56/57.6–109 (damaged safety fuse, igniter cord, and detonating cord); 55/56/57.6–132 (delay connectors); and 55/56/57.6–115 (detonating cord connections to trucklines, formerly 55/56/57.6–166).

II. Discussion and Summary of the Final Rule

A. Definitions [55.2, 56.2, 57.2]

Blasting agent. The Administrative Law Judge's recommended definition for blasting agent is revised. The proposed and recommended definitions classified blasting agents as explosive materials not classified as an explosive by the Department of Transportation (DOT) and which cannot be detonated by a number 8 detonator when unconfined. The final rule continues the concept of reliance on the DOT classification system by specifically incorporating by reference [3] DOT's definition for blasting agent, 49 CFR § 173.114(a), as published in the **Federal Register** on May 31, 1979 [44 FR 31182].[4]

The DOT definition sets out six tests for the identification of blasting agents. In general, materials must react in accordance with the limits set by all of the tests, which deal with blasting cap sensitivity, differential thermal analysis, thermal stability, electrostatic sensitivity, impact sensitivity and fire. The reference in the MESA proposal to a number 8 detonator is no longer necessary since the DOT definition contains a similar test.

Under the DOT's definition which has been incorporated as MSHA's final rule, a material containing no ingredients other than prilled ammonium nitrate with fuel oil need only pass the blasting cap sensitivity test. Any material offered for transportation classed as a blasting agent under this exception must be described as "ammonium nitrate—fuel oil mixture". The DOT has set out tests to positively identify blasting agents and material which must be tested in its final form as mixed for shipment. If the final product conforms to the requirements of the six DOT tests, it is classified as a blasting agent even though an individual component might otherwise have been considered as an explosive. This addresses the concern of some commenters that the proposed definition of blasting agent might have caused certain non-cap sensitive material to be classified as an explosive merely because the material contained an ingredient classified as an explosive by DOT.

Some commenters noted that the recommended definition was in conflict with the definition enacted by Congress in the Organized Crime Control Act of 1970, 18 USC 841(e) (1976 Ed.), and also appeared to be contrary to the Memorandum of Understanding which was developed between the Department of Treasury's Bureau of Alcohol, Tobacco and Firearms (BATF) and MESA.

While the Memorandum encourages the development of uniform standards and delegates BATF inspection responsibility in mines to MSHA, the Memorandum also acknowledges the distinctly different statutory responsibilities and purposes of the two agencies.[5] Although MSHA is very much interested in avoiding the possibility of conflict among federal regulations, its primary concern remains the safety of the miners and the use of explosives within the mining industry. By adopting the DOT definition as its final rule, MSHA believes that these goals have been further advanced while bringing the various general definitions into closer harmony.

Blasting cap. The definition for the term blasting cap has been revised. Blasting cap is defined as a detonator which is initiated by a safety fuse, and is to be distinguished from electric blasting cap which is detonated by laying out lead wires and closing the blasting circuit.

Blasting circuit. The term blasting circuit has been revised and now means the electrical circuit used to fire one or more electric blasting caps. The revised definition provides technical accuracy and consistent terminology by deleting the phrases "to ignite an igniter cord by means of an electric starter" and "electric detonators" since blasting circuit refers only to the detonation of electric blasting caps.

Booster. A revised definition for the term booster has been added, meaning any unit of explosive or blasting agent which is used to perpetuate or intensify the initial detonation.

Objections were raised to the proposed definition for booster which restricted its location of use to a charged hole. For example, in operations which employ secondary blasting, bulk explosives are placed directly against rock and not into a charged hole. The final rule is in accord with these objections since the proposed definition for charged hole has been withdrawn.

Previously, booster had not been defined in MSHA's regulations as a separate term, but 30 CFR 55/56/57.2 "Definitions" contained a combined definition for "primer or booster." However, there is a distinction between booster and primer: primer initiates a charge, while a booster merely contributes to initiation. The combined term has now been deleted, and the new definitions for booster and primer substituted.

Capped fuse. The definition for the term capped fuse has been revised to mean a length of safety fuse to which a blasting cap has been attached.

Charged hole. The proposal would have defined a charged hole as any hole containing explosives or blasting agents

[3] On March 28, 1979, 44 FR 18630 (corrected April 2, 1979, 44 FR 19181), the Office of the Federal Register amended its regulations (1 CFR 51.13) concerning approval of incorporation by reference in the Code of Federal Regulations. Approvals for such incorporations by reference appearing in Title 30, CFR Parts 55, 56 and 57 are withdrawn effective July 1, 1980. MSHA is currently reviewing its regulations containing incorporated reference material, and intends to take whatever action may be necessary and appropriate to comply with the newly amended **Federal Register** procedure.

[4] During the hearing before the Administrative Law Judge, evidence was presented acknowledging DOT's intention to develop a definition for blasting agent. In promulgating this final rule, the Secretary of Labor has taken note of the DOT's public proceedings (41 FR 52083, November 26, 1976; 42 FR 43416, August 29, 1977; 43 FR 57902, December 11, 1978; and 44 FR 31180, May 31, 1979), the similarity of the participating parties, the impact on mine operations, and the harmony of purpose of the actions by the respective agencies regarding safety and health.

[5] The agreement (dated February 12, 1971) while remaining in effect is currently being revised by BATF and MSHA, as the successor agency to MESA.

with a primer. Exceptions which addressed the proposed language stated that the definition was too broad to serve any useful purpose. Other exceptions and comments suggested that implementation of this definition would diminish the protection afforded miners. All comments addressed the need for a more precise definition for charged hole to address the hazard of premature detonation. Evidence at the hearing showed that the hazard of premature detonation of blast holes containing explosives and a detonating cord is significantly less than for a blast hole containing explosives and an electric blasting cap. MSHA has withdrawn this proposal for further study.

Detonator. The term detonator has been revised to mean any device containing a detonating charge that is used to initiate an explosive. The definition includes, but is not limited to, blasting caps, electric blasting caps and non-electric instantaneous or delay blasting caps. The definition provides for the automatic inclusion of new detonators as they are developed.

Detonating cord. The term detonating cord, has been revised to mean a flexible cord containing a solid core of high explosives. The former definition uniformily defined both detonating cord and detonating fuse. The deletion of the term detonating fuse from the existing definition and the revised definition for safety fuse facilitates uniform terminology and avoids confusion between the terms detonating cord and safety fuse.

An exception to the recommended decision objected to the phrase "containing a solid core of high explosives" since the core consists of a powder rather than a solid. In this instance the word "solid" refers to a compacted continuous core of explosive powder, and not a rigid mass of explosive which forms a solid. It is also used to distinguish detonating cord from other material such as "shock tubing", a flexible tubing with a thin layer of explosive adhering to the inner wall. Therefore, the language as recommended by the Administrative Law Judge has been adopted.

Electric blasting cap. The definition of electric blasting cap has been revised. The term electric blasting cap is defined as a detonator designed for and capable of being initiated by an electric current. The revised definition changes the existing definition by substituting the term detonator for blasting cap. This change is consistent with the revised definition for detonator which includes but is not limited to blasting caps, electric blasting caps and non-electric instantaneous or delay blasting caps. Moreover, evidence presented at the hearing indicated that electric blasting caps are more prone to premature ignition than are blasting caps.

Neither this definition nor the definition for blasting cap includes the exploding bridge wire detonator, since this device is more stable and less susceptible to premature detonation by stray current or static electricity than either a blasting cap or an electric blasting cap. MSHA is currently studying the technology of exploding bridge wires and the need for developing standards on this subject.

Explosive. The recommended definition for explosive which was stipulated at the hearing has been modified to delete unnecessary words and phrases and update the incorporated reference.[6] However, the recommended definition and the final version both define explosive as any substance classified as an explosive in DOT regulations, 49 CFR 173.53, 173.88 and 173.100.

In adopting DOT's regulatory classification for both explosive and blasting agent, MSHA will enable the mining industry, which accounts for over three-fourths of the Nation's commercial use of explosives, to use a uniform system of classifying explosive materials according to their hazards.

Magazine. A new definition for the term magazine has been added which makes clear that any facility actually used for the storage of explosives, blasting agents, or detonators is considered a magazine.

Primer. The recommended definition for primer is modified. The modification adopts the Judge's decision, but deletes paragraph (b) which stated that a device containing a detonating cord becomes a primer when a detonator is attached at the time of use. The final rule now defines a primer as ". . . a unit, package, or cartridge of explosives used to initiate other explosives or blasting agents, and which contains a detonator." This change reflects evidence on the record which stated that a unit of explosive to which detonating cord is attached is no more senstive to premature detonation than is the unit of explosive itself. However, when a detonator is attached, the device is termed a primer since the hazard of premature detonation is increased.

The modified definition, in conjunction with standards 30 CFR 55/56/57.6–97, require that a detonator be attached to a unit of explosive (to make a primer) only at the time of use and close to the blasting area. However, a unit of explosive containing only detonating cord may be assembled without the time and place restrictions applicable to primers. MSHA concurs with commenters that this practice will not impose additional risks to miners, but will allow the use of such devices as "cast primers".

Table of Recommended Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents. The proposed definition for "Table of Recommended Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents" is withdrawn. The technical accuracy of the Table with respect to newly formulated blasting agents and its applicability to metal and nonmetal mines is being studied by the agency. In the interim, similar protection is provided by interagency agreement between MSHA and the BATF whereby MSHA performs inspections for BATF, using that agency's explosive materials storage requirements.

Water gel or Slurry (as applied to blasting). A new definition for water gel and slurry (as applied to blasting) was added to mean an explosive or blasting agent which contains substantial portions of water and other ingredients. A cross reference appears for the term slurry since the terms slurry and water gel are synonymous for the purposes of this regulation.

Mandatory Standards

55/56/57.6–6. Mandatory standards 30 CFR 55/56/57.6–6, applicable to the surface and underground in Part 57, are revised and renumbered 55/56/57.6–250. The stipulated standards require that smoking and open flames (except for suitable devices for igniting safety fuse or approved heating devices) must not be placed within 50 feet of explosives, blasting agents or detonators as measured by the line of sight. If the explosive materials are separated from the prohibited devices by permanent noncombustible barriers (in underground active workings), the

[6] During the public hearing, the parties and the Administrative Law Judge considered the incorporation by reference of the 1975 publication of Title 49 CFR sections 173.53, 173.88, and 173.100 within the definitions for blasting agent and explosive. Subsequently, amendments were made by the Secretary of Transportation to sections 173.53(f) and (t)(2), 173.88(e)(2)(ii), and 173.100 (m) and (p). These changes were either editorial or did not significantly change application of these sections to metal and nonmetal mining. In addition, other changes not of direct significance to mining activities were made on October 19, 1978. In section 173.53 paragraph (b) the reference to "§ 173.51(d)" was changed to read "§ 173.51(a)(3)", and in paragraph (h)(1) Note 4, the address of the Bureau of Explosives was changed.

relevant distance is reduced to 25 feet. The revised language requires that all explosive materials, whether or not in storage, be subject to the standard, adds the term blasting agents, allows for approved ignition and heating devices, increases the prohibited distance to 50 feet, and provides for lesser distances when permanent noncombustible barriers separate the subject activities in active underground workings.

55/56/57.6–7. Advisory standards 30 CFR 55/56/57.6–7, applicable to both surface and underground in Part 57, have been revised and made mandatory. The final standards provide that explosives, detonators and related materials such as safety fuse and detonating cord be: (1) stored in a manner to facilitate use of oldest stocks first; (2) stored according to brand and grade to facilitate identification; (3) stored with the top side up; and (4) stacked in a stable manner but not more than 8 feet high. Stipulated modifications of the proposed rule will limit deterioration of explosive material by using oldest stocks first, and prevent damage to, or spillage of, explosive material caused by crushing or toppling.

55/56/57.6–11. Mandatory standards 30 CFR 55/56/57.6–11, applicable to both surface and underground in Part 57, have been added. The stipulated standards provide that stored explosives, blasting agents, and detonators be in closed containers. The word "securely" was deleted from the phrase "securely closed while being stored" and the term "blasting agents" was inserted following the word "explosives" in the proposal to clarify that those materials are to be stored separately. An exception filed to the recommended decision stated that these standards could be burdensome if they require that partially used "boxes, rolls, etc." must be resealed. The requirements that containers must be closed while being stored means that lids are on, bags are tied, and boxes and cartons are closed. The standards do not require resealing of the containers. The recommendation of the Administrative Law Judge, therefore, is adopted as a final rule.

55/56/57.6–48. Advisory standards 30 CFR 55/56/57.6–48, applicable to both surface and underground in Part 57, are revised and made mandatory. The stipulated standards require that explosives and blasting agents be transported without undue delay, and over routes and at times which would expose a minimum number of persons to potential hazards. No distinction is made between explosives and blasting agents because, if detonated the hazards are similar. The standards will serve to protect not only miners, but other persons who could be exposed to danger when explosives and blasting agents are transported on mine property.

55/56/57.6–92. Mandatory standards 30 CFR 55/56/57.6–92, applicable to both surface and underground in Part 57, have been revised. The stipulated standards require that damaged or deteriorated explosives and blasting agents must be destroyed in a safe manner according to the recommendations of the manufacturers or their designated agents. Since the handling and disposal of damaged or deteriorated explosives and blasting agents are dangerous, and the use of damaged explosive materials can cause misfires, correct and immediate methods of disposal are essential. Rapid advances in technology and the increasing number and diversity of explosives make it imperative that manufacturers be consulted for information relative to the correct disposal of explosive materials.

55/56/57.6–97. Mandatory standards 30 CFR 55/56/57.6–97, applicable to both surface and underground in Part 57, have been revised. The standards require that primers be assembled only at the time of use and as close to the blasting area as conditions allow. Since "charging" is not a term uniformly defined, it was replaced by the word "use". The standards are in accordance with 30 CFR 55/56/57.6–40 which require that explosives and detonators be transported in separate vehicles unless the explosives and detonators are separated by a least four inches of hardwood or the equivalent.

55/56/57.6–98. Advisory standards 30 CFR 55/56/57.6–98, applicable to surface and underground in Part 57, are revised and made mandatory. The standards require that detonating cord and detonators be securely embedded within explosives and primers, respectively. Primers which contain a detonator must have the detonator contained securely and completely within the explosive or within a suitable tunnel or cap well. If detonating cord is used to initiate another explosive, the detonating cord must be threaded through, attached securely to, or otherwise in intimate contact with the explosive. These mandatory standards recognize new technology in the application of explosive products without compromising the safety of miners.

55/56/57.6–101. Mandatory standards 30 CFR 55/56/57.6–101, applicable to surface and underground in Part 57, have been revised. The standards provide that tamping (applying pressure to the cartridge of explosive with a wooden rod to tightly pack the explosive in the hole) must not be done directly on a primer. These mandatory standards will prevent misfires or accidental detonation which could result from tamping a primer.

55/56/57.6–106. Advisory standards 30 CFR 55/56/57.6–106, applicable to surface and underground in Part 57, have been revised and made mandatory. The standards require that faces and muck piles must be examined by a competent person for undetonated explosives or blasting agents. Any undetonated explosives or blasting agents found must be disposed of safely. The stipulated standards changed the proposed standards as follows: (1) the term "blasting agents" was added; (2) a "competent person" (defined in 30 CFR 55/56/57.2) now is required to examine for undetonated explosives or blasting agents; and (3) the phrase "after each blast" was deleted. The standards are intended to prevent the detonation of misfired explosives and blasting agents during mucking operations.

55/56/57.6–109. Advisory standards 30 CFR 55/56/57.6–109, applicable to surface and underground in Part 57, are made mandatory, and revised to combine the similar requirements for detonating cord under advisory standards 55/56/57.6–167. Standards 55/56/57.6–167 are revoked. Standards 55/56/57.6–109, promulgated as proposed, prohibit the use of safety fuse, igniter cord and detonating cord that have been kinked, bent sharply or otherwise damaged. These standards will reduce misfires resulting from defective safety fuse, igniter cord and detonating cord.

55/56/57.6–115. Mandatory standards 30 CFR 55/56/57.6–166 are renumbered 55/56/57.6–115, and made applicable to both surface and underground in Part 57. These standards also were not subject to a public hearing. The change expands this standard, which pertains to detonating cord knots, from surface only to all underground blasting operations.

55/56/57.6–118. Advisory standards 30 CFR 55/56/57.6–118, applicable to surface and underground in Part 57, have been revised and made mandatory. If fly rock may damage unlit or burning safety fuses, the stipulated standards require that the timing of the blast assures that each safety fuse is burning within its hole before any hole detonates. These standards minimize severing of fuses by flying material. The insertion of the phrase, "where fly rock might damage unlit or burning fuses," eliminates the timing requirement for blast configurations where fly rock could not damage unlit or burning fuses.

55/56/57.6–121. Advisory standards 30 CFR 55/56/57.6–121, applicable to surface and underground in Part 57, are revised and made mandatory. The stipulated standards distinguish between surface and underground electrical blasting. They require that when blasting electrically in surface operations, a blasting galvanometer or other similar testing apparatus must be used to test for: continuity of each electric blasting cap in the borehole prior to the addition of stemming; resistance of individual or multiple balanced series which are to be connected in parallel prior to their connection to the blasting line; continuity of blasting lines prior to the connection of electric blasting cap series; and total blasting circuit resistance prior to connection to the power source. In underground operations such devices shall be used to test for continuity of each electric blasting cap series, and continuity of blasting lines prior to the connection of electric blasting caps.

These standards reflect the distinctions that exist between surface and underground electrical blasting methods. Safety is improved by also limiting the devices acceptable for making certain continuity and resistance measurements. When stemming is utilized in blast holes on the surface, each blasting cap must be tested prior to the addition of stemming. In underground operations, stemming is usually not utilized. Therefore, testing of individual electric blasting caps is not required and testing of the electric blasting cap series is sufficient. As on the surface, testing for continuity of each blasting line prior to the connection of electric blasting caps is required.

55/56/57.6–126. Mandatory standards 30 CFR 55/56/57.6–170 are revised, renumbered 55/56/57.6–126, and made applicable to both surface and underground operations in Part 57. The stipulated standards provide that electric power distribution circuits must be de-energized within 50 feet of boreholes containing electric blasting caps which can be initiated by conventional power sources or extraneous electricity. However, circuits between 25 and 50 feet away from boreholes containing electric blasting caps need not be de-energized if stray current tests (conducted as frequently as necessary at the location of the electric blasting cap) measure a maximum stray current of less than 0.05 amperes through a 1-ohm resistor.

The standards will prevent premature detonation of electric blasting caps by stray current or static electricity. Also, electric power distribution circuits within 50 feet of boreholes which contain exploding bridge wire detonators need not be de-energized since they are not initiated by conventional power sources. Moreover, energized circuits that are located more than 25 feet from blastholes that provide power for essential operations such as lighting, need not be de-energized if tests measure a stray current of less than 0.05 amperes through a 1-ohm resistor.

55/56/57.6–132. Advisory standards 30 CFR 55/56/57.6–132 are revised and made mandatory. These standards were not subject to a public hearing. They are promulgated as proposed, and require delay connectors to be treated and handled with the same safety precautions as detonators. The proposals deleted the phrase "for firing detonating cord" from the advisory standard because it was redundant. Also, the term "detonator" was substituted for "blasting caps and electric detonators" since the new definition for detonator includes both blasting caps and electric detonators.

55/56/57.6–138. Advisory standards 30 CFR 55/56/57.6–169 are revised and made mandatory. They have been renumbered 55/56/57.6–138, and made applicable to surface and underground in Part 57. The stipulated standards provide that explosives or blasting agents must not be loaded into drilled or sprung holes if premature detonation from heat could result. By eliminating the word "hothole" contained in the advisory standard and revising the language the standard has been clarified. The mandatory standards are expanded to underground operations because premature detonation can occur whenever explosives or blasting agents contact heat.

55/56/57.6–139. Advisory standards 30 CFR 55/56/57.6–176 are revised and made mandatory. They also have been renumbered 55/56/57.6–138, and made applicable to surface and underground in Part 57.

The stipulated standards provide that after firing, blasting areas must not be re-entered until concentrations of smoke, dust, and fumes are below the limits allowed by 30 CFR 55/56/57.5–1 and measured according to 30 CFR 55/56/57.5–2.

These standards will prevent injuries by prohibiting premature entrance into blast areas. The hazardous conditions that can be obscured by smoke, dust and fumes if a miner prematurely enters a blast area include roof or wall hazards, falling rock, unexploded blasting materials, and stumbling hazards such as broken rock or timbers.

The reference in the proposal to standard 55/56/57.5–1 is expanded to include 55/56/57.5–2. Mandatory standard 55/56/57.5–1 sets the threshold values for exposures to airborne contaminants (permissible exposure levels), while mandatory standard 55/56/57.5–2 requires that air quality must be tested "as frequently as necessary to determine the adequacy of control measures." A visual examination must be conducted after each blast and air quality tests conducted whenever re-entry would expose miners to potentially dangerous conditions.

55/56/57.6–140. Advisory standards 30 CFR 55/56/57.6–180 have been revised and made mandatory. They have been renumbered 55/56/57.6–140, and made applicable to the surface and underground in Part 57.

The stipulated standards provide that all blasting circuits, and electric blasting caps which may be initiated by conventional power sources, must be protected from sources of extraneous electricity. These standards will reduce the possibility of premature detonation due to stray currents and static electricity.

Drafting Information

The principal persons responsible for drafting this rulemaking document are: Bernard R. McGuire and Mitchell M. Eskenazi, Attorney Advisors, Division of Mine Safety and Health, Office of the Solicitor, Department of Labor; and Herbert P. Levan, Office of Standards, Regulations and Variances, MSHA.

Regulatory Analysis

It has been determined that this document does not contain a major proposal requiring the preparation of a regulatory analysis under Executive Order No. 12044, or the Department of Labor's final guidelines for implementation of the Executive Order (44 FR 5570, January 26, 1979).

It is estimated that the total cost of compliance with the standards contained in this rule for all metal and nonmetal mines will be approximately 1.5 million dollars during the first year.

Dated: August 8, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

PART 55—HEALTH AND SAFETY STANDARDS—METAL AND NONMETAL OPEN PIT MINES

Part 55, Subchapter N, Chapter I, Title 30, Code of Federal Regulations is amended and revised as follows:

§ 55.2 [Amended]

A. Section 55.2 "Definitions" is amended as follows:

1. Definitions for the terms blasting agent, blasting cap, blasting circuit, capped fuse, detonator, detonating cord, electric blasting cap, explosive, and safety fuse are revised as follows:

"Blasting agent" means any substance classified as a blasting agent by the Department of Transportation in 49 CFR § 173.114a (44 FR 31182, May 31, 1979) which is incorporated by reference. This document is available for inspection at each Metal and Nonmetal Safety and Health Subdistrict Office of the Mine Safety and Health Administration, and may be obtained from the U.S. Government Printing Office, Washington, D.C. 20402.

* * * * *

"Blasting cap" means a detonator which is initiated by a safety fuse.

"Blasting circuit" means the electrical circuit used to fire one or more electric blasting caps.

"Capped fuse" means a length of safety fuse to which a blasting cap has been attached.

* * * * *

"Detonating cord" means a flexible cord containing a solid core of high explosives.

"Detonator" means any device containing a detonating charge that is used to initiate an explosive and includes but is not limited to blasting caps, electric blasting caps and non-electric instantaneous or delay blasting caps.

* * * * *

"Electric blasting cap" means a detonator designed for and capable of being initiated by means of an electric current.

* * * * *

"Explosive" means any substance classified as an explosive by the Department of Transportation in 49 CFR 173.53, 173.88 and 173.100 which are incorporated by reference. Title 49 CFR is available for inspection at each Metal and Nonmetal Safety and Health Subdistrict Office of the Mine Safety and Health Administration, and may be obtained from the U.S. Government Printing Office, Washington, D.C. 20402.

* * * * *

"Safety fuse" means a flexible cord containing an internal burning medium by which fire is conveyed at a continuous and uniform rate for the purpose of firing blasting caps or a black powder charge.

2. New definitions for the terms delay connector, magazine, non-electric delay blasting cap, and water gel or slurry are added as follows:

"Delay connector" means a non-electric short interval delay device for use in delaying blasts which are initiated by detonating cord.

* * * * *

"Magazine" means a facility for the storage of explosives, blasting agents, or detonators.

* * * * *

"Non-electric delay blasting cap" means a detonator with an integral delay element and capable of being initiated by miniaturized detonating cord.

* * * * *

"Slurry" (as applied to blasting). See "Water gel."

* * * * *

"Water gel" or "Slurry" (as applied to blasting) means an explosive or blasting agent containing substantial portions of water.

3. The definition for "Primer or Booster" is revised to read as follows:

"Booster" means any unit of explosive or blasting agent used for the purpose of perpetuating or intensifying an initial detonation.

"Primer" means a unit, package, or cartridge of explosives used to initiate other explosives or blasting agents, and which contains a detonator.

(Sec. 301(c)(3), Pub. L. 95-164, 91 Stat. 1318 (30 U.S.C. 961(c)(3)).)

§ 55.6 [Amended]

Section 55.6 "Explosives" is amended as follows:

1. New standard numbers are added and reserved as follows:

55.6-221 through 55.6-249 [Reserved]

2. A new center heading entitled "Miscellaneous" is added immediately below the standard number 55.6-249.

3. Mandatory standard 55.6-6 is renumbered 55.6-250 and revised as follows:

55.6-250 *Mandatory.* Smoking and open flames, except for the use of suitable devices for igniting safety fuse or the use of approved heating devices, shall not be permitted within 50 feet as measured by the line of sight of explosives, blasting agents, or detonators or within 25 feet when out of line of sight and separated by permanent noncombustible barriers in underground active workings.

4. Standard number 55.6-6 is reserved as follows:

55.6-6 [Reserved]

5. Advisory standard 55.6-7 is made mandatory and revised as follows:

55.6-7 *Mandatory.* Explosives, detonators, and related materials such as safety fuse and detonating cord shall be:

(a) Stored in a manner to facilitate use of oldest stocks first.

(b) Stored according to brand and grade in such a manner as to facilitate identification.

(c) Stored with their top sides up.

(d) Stacked in a stable manner but not more than eight (8) feet high.

6. Advisory standards 55.6-9 and 55.6-10 are revoked, and standard numbers 55.6-9 and 55.6-10 are reserved as follows:

55.6-9 [Reserved]

55.6-10 [Reserved]

7. New mandatory standard 55.6-11 is added as follows:

55.6-11 *Mandatory.* Containers of explosives, blasting agents, and detonators shall be closed while being stored.

8. Advisory standard 55.6-48 is revised and made mandatory as follows:

55.6-48 *Mandatory.* Explosives and blasting agents shall be transported without undue delay, and over routes and at times that expose a minimum number of persons.

9. Mandatory standard 55.6-52 is revoked, and standard number 55.6-52 is reserved as follows:

55.6-52 [Reserved]

10. Advisory standard 55.6-55 is revoked, and standard number 55.6-55 is reserved as follows:

55.6-55 [Reserved]

11. Mandatory standard 55.6-92 is revised as follows:

55.6-92 *Mandatory.* Damaged or deteriorated explosives and blasting agents shall be destroyed in a safe manner under the instructions of the explosives or blasting agent manufacturer or its designated agent.

12. Mandatory standard 55.6-95 is revoked, and standard number 55.6-95 is reserved as follows:

55.6-95 [Reserved]

13. Mandatory standard 55.6-97 is revised as follows:

55.6-97 *Mandatory.* Primers shall be made up only at the time of use and as close to the blasting area as conditions allow.

14. Advisory standard 55.6-98 is revised and made mandatory as follows:

55.6-98 *Mandatory.*

(a) Primers containing a detonator shall be prepared with the detonator contained securely and completely within the explosive charge or within a suitable tunnel or cap well.

(b) When using detonating cord to initiate another explosive, a connection shall be prepared with the detonating cord threaded through, attached securely to, or otherwise in intimate contact with the explosive charge.

15. Mandatory standard 55.6-101 is revised as follows:

55.6-101 *Mandatory.* Tamping shall not be done directly on a primer.

16. Advisory standard 55.6-106 is revised and made mandatory as follows:

55.6–106 *Mandatory.* Faces and muck piles shall be examined by a competent person for undetonated explosives or blasting agents and any undetonated explosives or blasting agents found shall be disposed of safely.

17. Advisory standard 55.6–109 is revised and made mandatory as follows:

55.6–109 *Mandatory.* Safety fuse, igniter cord, and detonating cord shall not be used if they have been kinked, bent sharply, or otherwise damaged.

18. Mandatory standard 55.6–166 is made applicable to surface and underground and renumbered as follows:

55.6–115 *Mandatory.* All detonating cord knots shall be tight and all connections shall be kept at right angles to the trunklines.

19. Advisory standard 55.6–118 is revised and made mandatory as follows:

55.6–118 *Mandatory.* When using safety fuse, where fly rock might damage unlit or burning fuses, timing shall be such that all fuses are burning within the holes before any hole detonates.

20. Advisory standard 55.6–121 is revised and made mandatory as follows:

55.6–121 *Mandatory.* When blasting electrically a blasting galvanometer, or other instrument that is specifically designed for testing blasting circuits, shall be used to test:

(a) In surface operations—

(1) Continuity of each electric blasting cap in the borehole prior to the addition of stemming.

(2) Resistance of individual series or the resistance of multiple balanced series to be connected in parallel prior to their connection to the blasting line.

(3) Continuity of blasting lines prior to the connection of electric blasting cap series.

(4) Total blasting circuit resistance prior to connection to the power source.

(b) In underground operations—

(1) Continuity of each electric blasting cap series.

(2) Continuity of blasting lines prior to the connection of electric blasting caps.

21. Mandatory standard 55.6–170 is renumbered 55.6–126, and revised as follows:

55.6–126 *Mandatory.* Electric power distribution circuits shall be de-energized within 50 feet of boreholes containing electric blasting caps which can be initiated by conventional power sources or extraneous electricity except that such circuits need not be de-energized between 25 and 50 feet of such boreholes when stray current tests, conducted as frequently as necessary, measure a maximum stray current less than 0.05 amperes through a one-ohm resistor measured at the location of the electric blasting cap.

22. Advisory standard 55.6–132 is revised and made mandatory as follows:

55.6–132 *Mandatory.* Delay connectors shall be treated and handled with the same safety precautions as detonators.

23. Advisory standard 55.6–169 is renumbered 55.6–138, revised, and made mandatory as follows:

55.6–138 *Mandatory.* Explosives or blasting agents shall not be loaded into drilled or sprung holes that could result in premature detonation from heat.

24. Advisory standard 55.6–176 is renumbered 55.6–139, revised, and made mandatory as follows:

55.6–139 *Mandatory.* Blasting areas shall not be re-entered after firing until concentrations of smoke, dust, and fumes have been reduced to safe limits as required in, and determined by, mandatory standards 55.5–1 and 55.5–2, respectively.

25. Advisory standard 55.6–180 is renumbered 55.6–140, revised, and made mandatory as follows:

55.6–140 *Mandatory.* Blasting circuits and electric blasting caps (which are capable of being initiated by conventional power sources) shall be protected from sources of extraneous electricity.

26. Standard number 55.6–166 is reserved as follows:

55.6–166 [Reserved]

27. Advisory standard 55.6–167 is revoked, and standard number 55.6–167 is reserved as follows:

55.6–167 [Reserved]

(Sec. 301(c)(3), Pub. L. 95–164, 91 Stat. 1318 (30 U.S.C. 961(c)(3)))

PART 56—HEALTH AND SAFETY STANDARDS—SAND, GRAVEL, AND CRUSHED STONE OPERATIONS

Part 56, Subchapter N, Chapter I, Title 30, Code of Federal Regulations is amended and revised as follows:

§ 56.2 [Amended]

C. Section 56.2 "Definitions" is amended as follows:

1. Definitions for the terms blasting agent, blasting cap, blasting circuit, capped fuse, detonator, detonating cord, electric blasting cap, explosive, and safety fuse are revised as follows:

"Blasting agent" means any substance classified as a blasting agent by the Department of Transportation in 49 CFR § 173.114a (44 FR 31182, May 31, 1979) which is incorporated by reference. This document is available for inspection at each Metal and Nonmetal Safety and Health Subdistrict Office of the Mine Safety and Health Administration, and may be obtained from the U.S. Government Printing Office, Washington, D.C. 20402.

* * * * *

"Blasting cap" means a detonator which is initiated by a safety fuse.

"Blasting circuit" means the electrical circuit used to fire one or more electric blasting caps.

"Capped fuse" means a length of safety fuse to which a blasting cap has been attached.

* * * * *

"Detonating cord" means a flexible cord containing a solid core of high explosives.

"Detonator" means any device containing a detonating charge that is used to initiate an explosive and includes but is not limited to blasting caps, electric blasting caps and non-electric instantaneous or delay blasting caps.

* * * * *

"Electric blasting cap" means a detonator designed for and capable of being initiated by means of an electric current.

* * * * *

"Explosive" means any substance classified as an explosive by the Department of Transportation in 49 CFR §§ 173.53, 173.88 and 173.100 which are incorporated by reference. Title 49 CFR is available for inspection at each Metal and Nonmetal Safety and Health Subdistrict Office of the Mine Safety and Health Administration, and may be obtained from the U.S. Government Printing Office, Washington, D.C. 20402.

* * * * *

"Safety fuse" means a flexible cord containing an internal burning medium by which fire is conveyed at a continuous and uniform rate for the purpose of firing blasting caps or a black powder charge.

2. New definitions for the terms delay connector, magazine, non-electric delay blasting cap, and water gel or slurry are added as follows:

"Delay connector" means a non-electric short interval delay device for use in delaying blasts which are initiated by detonating cord.

* * * * *

"Magazine" means a facility for the storage of explosives, blasting agents, or detonators.

* * * * *

"Non-electric delay blasting cap" means a detonator with an integral delay element and capable of being initiated by miniaturized detonating cord.

* * * * *

"Slurry" (as applied to blasting). See "Water gel."

* * * * *

"Water gel" or "Slurry" (as applied to blasting) means an explosive or blasting agent containing substantial portions of water.

3. The definition for "Primer or Booster" is revised to read as follows:

"Booster" means any unit of explosive or blasting agent used for the purpose of perpetuating or intensifying an initial detonation.

"Primer" means a unit, package, or cartridge of explosives used to initiate other explosives or blasting agents, and which contains a detonator.

(Sec. 301(c)(3), Pub. L. 95–164, 91 Stat. 1318 (30 U.S.C. 961(c)(3)).)

§ 56.6 [Amended]

Section 56.6 "Explosives" is amended as follows:

1. New standard numbers are added and reserved as follows:

56.6–221 through 56.6–249. [Reserved]

2. A new center heading entitled "Miscellaneous" is added immediately below the standard number 56.6–249.

3. Mandatory standard 56.6–6 is renumbered 56.6–250 and revised as follows:

56.6–250 *Mandatory.* Smoking and open flames, except for the use of suitable devices for igniting safety fuse or the use of approved heating devices, shall not be permitted within 50 feet as measured by the line of sight of explosives, blasting agents, or detonators or within 25 feet when out of line of sight and separated by permanent noncombustible barriers in underground active workings.

4. Standard number 56.6–6 is reserved as follows:

56.6–6 [Reserved]

5. Advisory standard 56.6–7 is made mandatory and revised as follows:

56.6–7 *Mandatory.* Explosives, detonators, and related materials such as safety fuse and detonating cord shall be:

(a) Stored in a manner to facilitate use of oldest stocks first.

(b) Stored according to brand and grade in such a manner as to facilitate identification.

(c) Stored with their top sides up.

(d) Stacked in a stable manner but not more than eight (8) feet high.

6. Advisory standards 56.6–9 and 56.6–10 are revoked, and standard numbers 56.6–9 and 56.6–10 are reserved as follows:

56.6–9 [Reserved]
56.6–10 [Reserved]

7. New mandatory standard 56.6–11 is added as follows:

56.6–11 *Mandatory.* Containers of explosives, blasting agents, and detonators shall be closed while being stored.

8. Advisory standard 56.6–48 is revised and made mandatory as follows:

56.6–48 *Mandatory.* Explosives and blasting agents shall be transported without undue delay, and over routes and at times that expose a minimum number of persons.

9. Mandatory standard 56.6–52 is revoked, and standard number 56.6–52 is reserved as follows:

56.6–52 [Reserved]

10. Advisory standard 56.6–55 is revoked, and standard number 56.6–55 is reserved as follows:

56.6–55 [Reserved]

11. Mandatory standard 56.6–92 is revised as follows:

56.6–92 *Mandatory.* Damaged or deteriorated explosives and blasting agents shall be destroyed in a safe manner under the instructions of the explosives or blasting agent manufacturer or its designated agent.

12. Mandatory standard 56.6–95 is revoked, and standard number 56.6–95 is reserved as follows:

56.6–95 [Reserved]

13. Mandatory standard 56.6–97 is revised as follows:

56.6–97 *Mandatory.* Primers shall be made up only at the time of use and as close to the blasting area as conditions allow.

14. Advisory standard 56.6–98 is revised and made mandatory as follows:

56.6–98 *Mandatory.*

(a) Primers containing a detonator shall be prepared with the detonator contained securely and completely within the explosive charge or within a suitable tunnel or cap well.

(b) When using detonating cord to initiate another explosive, a connection shall be prepared with the detonating cord threaded through, attached securely to, or otherwise in intimate contact with the explosive charge.

15. Mandatory standard 56.6–101 is revised as follows:

56.6–101 *Mandatory.* Tamping shall not be done directly on a primer.

16. Advisory standard 56.6–106 is revised and made mandatory as follows:

56.6–106 *Mandatory.* Faces and muck piles shall be examined by a competent person for undetonated explosives or blasting agents and any undetonated explosives or blasting agents found shall be disposed of safely.

17. Advisory standard 56.6–109 is revised and made mandatory as follows:

56.6–109 *Mandatory.* Safety fuse, igniter cord, and detonating cord shall not be used if they have been kinked, bent sharply, or otherwise damged.

18. Mandatory standard 56.6–166 is made applicable to surface and underground and renumbered as follows:

56.6–115 *Mandatory.* All detonating cord knots shall be tight and all connections shall be kept at right angles to the trunklines.

19. Advisory standard 56.6–118 is revised and made mandatory as follows:

56.6–118 *Mandatory.* When using safety fuse, where fly rock might damage unlit or burning fuses, timing shall be such that all fuses are burning within the holes before any hole detonates.

20. Advisory standard 56.6–121 is revised and made mandatory as follows:

56.6–121 *Mandatory.* When blasting electrically a blasting galvanometer, or other instrument that is specifically designed for testing blasting circuits, shall be used to test:

(a) In surface operations:

(1) Continuity of each electric blasting cap in the borehole prior to the addition of stemming.

(2) Resistance of individual series or the resistance of multiple balanced series to be connected in parallel prior to their connection to the blasting line.

(3) Continuity of blasting lines prior to the connection of electric blasting cap series.

(4) Total blasting circuit resistance prior to connection to the power source.

(b) In underground operations:

(1) Continuity of each electric blasting cap series.

(2) Continuity of blasting lines prior to the connection of electric blasting caps.

21. Mandatory standard 56.6–170 is renumbered 56.6–126, and revised as follows:

56.6–126 *Mandatory.* Electric power distribution circuits shall be de-energized within 50 feet of boreholes containing electric blasting caps which can be initiated by conventional power sources or extraneous electricity except that such circuits need not be de-energized between 25 and 50 feet of such boreholes when stray current tests, conducted as frequently as necessary, measure a maximum stray current less than 0.05 amperes through a one-ohm resistor measured at the location of the electric blasting cap.

22. Advisory standard 56.6–132 is revised and made mandatory as follows:

56.6–132 *Mandatory.* Delay connectors shall be treated and handled with the same safety precautions as detonators.

23. Advisory standard 56.6–169 is renumbered 56.6–138, revised, and made mandatory as follows:

56.6–138 *Mandatory.* Explosives or blasting agents shall not be loaded into drilled or sprung holes that could result in premature detonation from heat.

24. Advisory standard 56.6–176 is renumbered 56.6–139, revised, and made mandatory as follows:

56.6–139 *Mandatory.* Blasting areas shall not be re-entered after firing until concentrations of smoke, dust, and fumes have been reduced to safe limits as required in, and determined by, mandatory standards 56.5–1 and 56.5–2, respectively.

25. Advisory standard 56.6–180 is renumbered 56.6–140, revised, and made mandatory as follows:

56.6–140 *Mandatory.* Blasting circuits and electric blasting caps (which are capable of being initiated by conventional power sources) shall be protected from sources of extraneous electricity.

26. Standard number 56.6–166 is reserved as follows:

56.6–166 [Reserved]

27. Advisory standard 56.6–167 is revoked, and standard number 56.6–167 is reserved as follows:

56.6–167 [Reserved]

(Sec. 301(c)(3), Pub. L. 95–164, 91 Stat. 1318 (30 U.S.C. 961(c)(3).)

PART 57—HEALTH AND SAFETY STANDARDS—METAL AND NONMETALLIC UNDERGROUND MINES

Part 57, Subchapter N, Chapter I, Title 30, Code of Federal Regulations is amended and revised as follows:

§ 57.2 [Amended]

E. Section 57.2 "Definitions" is amended as follows:

1. Definitions for the terms blasting agent, blasting cap, blasting circuit, capped fuse, detonator, detonating cord, electric blasting cap, explosive, and safety fuse are revised as follows:

"Blasting agent" means any substance classified as blasting agent by the Department of Transportation in 49 CFR § 173.114(a) (44 FR 31182, May 31, 1979) which is incorporated by reference. This document is available for inspection at each Metal and Nonmetal Safety and Health Subdistrict Office of the Mine Safety and Health Administration, and may be obtained from the U.S. Government Printing Office, Washington, D.C. 20402.

* * * * *

"Blasting cap" means a detonator which is initiated by a safety fuse.

"Blasting circuit" means the electrical circuit used to fire one or more electric blasting caps.

"Capped fuse" means a length of safety fuse to which a blasting cap has been attached.

* * * * *

"Detonating cord" means a flexible cord containing a solid core of high explosives.

"Detonator" means any device containing a detonating charge that is used to initiate an explosive and includes but is not limited to blasting caps, electric blasting caps and non-electric instantaneous or delay blasting caps.

* * * * *

"Electric blasting cap" means a detonator designed for and capable of being initiated by means of an electric current.

* * * * *

"Explosive" means any substance classified as an explosive by the Department of Transportation in 49 CFR 173.53, 173.88 and 173.100 which are incorporated by reference. Title 49 CFR is available for inspection at each Metal and Nonmetal Safety and Health Subdistrict Office of the Mine Safety and Health Administration, and may be obtained from the U.S. Government Printing Office, Washington, D.C. 20402.

* * * * *

"Safety fuse" means a flexible cord containing an internal burning medium by which fire is conveyed at a continuous and uniform rate for the purpose of firing blasting caps or a black powder charge.

2. New definitions for the terms delay connector, magazine, non-electric delay blasting cap, and water gel or slurry are added as follows:

"Delay connector" means a non-electric short interval delay device for use in delaying blasts which are initiated by detonating cord.

* * * * *

"Magazine" means a facility for the storage of explosives, blasting agents, or detonators.

* * * * *

"Non-electric delay blasting cap" means a detonator with an integral delay element and capable of being initiated by miniaturized detonating cord.

* * * * *

"Slurry" (as applied to blasting). See "Water gel."

* * * * *

"Water gel" or "Slurry" (as applied to blasting) means an explosive or blasting agent containing substantial portions of water.

3. The definition for "Primer or Booster" is revised to read as follows:

"Booster" means any unit of explosive or blasting agent used for the purpose of perpetuating or intensifying an initial detonation.

"Primer" means a unit, package, or cartridge of explosives used to initiate other explosives or blasting agents, and which contains a detonator.

(Sec. 301(c)(3), Pub. L. 95–164, 91 Stat. 1318 (30 U.S.C. 961(c)(3)).)

§ 57.6 [Amended]

Section 57.6 "Explosives" is amended as follows:

1. New standard numbers are added and reserved as follows:

57.6–221 through 57.6–249 [Reserved]

2. A new center heading entitled "Miscellaneous" is added immediately below the standard number 57.6–249.

3. Mandatory standard 57.6–6 is renumbered 57.6–250 and revised as follows:

57.6–250 *Mandatory.* Smoking and open flames, except for the use of suitable devices for igniting safety fuse or the use of approved heating devices, shall not be permitted within 50 feet as measured by the line of sight of explosives, blasting agents, or detonators or within 25 feet when out of line of sight and separated by permanent noncombustible barriers in underground active workings.

4. Standard number 57.6–6 is reserved as follows:

57.6–6 [Reserved]

5. Advisory standard 57.6–7 which is applicable to surface and underground is made mandatory and revised as follows:

57.6–7 *Mandatory.* Explosives, detonators, and related materials such as safety fuse and detonating cord shall be:

(a) Stored in a manner to facilitate use of oldest stocks first.

(b) Stored according to brand and grade in such a manner as to facilitate identification.

(c) Stored with their top sides up.

(d) Stacked in a stable manner but not more than eight (8) feet high.

6. Advisory standards 57.6–9 and 57.6–10 are revoked, and standard numbers 57.6–9 and 57.6–10 are reserved as follows:

57.6–9 [Reserved]
57.6–10 [Reserved]

7. New mandatory standard 57.6–11 which is applicable to surface and underground is added as follows:

57.6–11 *Mandatory.* Containers of explosives, blasting agents, and detonators shall be closed while being stored.

8. Advisory standard 57.6–48 which is applicable to surface and underground is revised and made mandatory as follows:

57.6–48 *Mandatory.* Explosives and blasting agents shall be transported without undue delay, and over routes and at times that expose a minimum number of persons.

9. Mandatory standard 57.6–52 is revoked, and standard number 57.6–52 is reserved as follows:

57.6–52 [Reserved]

10. Advisory standard 57.6–55 is revoked, and standard number 57.6–55 is reserved as follows:

57.6–55 [Reserved]

11. Mandatory standard 57.6–92 which is applicable to surface and underground is revised as follows:

57.6–92 *Mandatory.* Damaged or deteriorated explosives and blasting agents shall be destroyed in a safe manner under the instructions of the explosives or blasting agent manufacturer or its designated agent.

12. Mandatory standard 57.6–95 is revoked, and standard number 57.6–95 is reserved as follows:

57.6–95 [Reserved]

13. Mandatory standard 57.6–97 which is applicable to surface and underground is revised as follows:

57.6–97 *Mandatory.* Primers shall be made up only at the time of use and as close to the blasting area as conditions allow.

14. Advisory standard 57.6–98 which is applicable to surface and underground is revised and made mandatory as follows:

57.6–98 *Mandatory.*

(a) Primers containing a detonator shall be prepared with the detonator contained securely and completely within the explosive charge or within a suitable tunnel or cap well.

(b) When using detonating cord to initiate another explosive, a connection shall be

prepared with the detonating cord threaded through, attached securely to, or otherwise in intimate contact with the explosive charge.

15. Mandatory standard 57.6–101 which is applicable to surface and underground is revised as follows:

57.6–101 *Mandatory.* Tamping shall not be done directly on a primer.

16. Advisory standard 57.6–106 which is applicable to surface and underground is revised and made mandatory as follows:

57.6–106 *Mandatory.* Faces and muck piles shall be examined by a competent person for undetonated explosives or blasting agents and any undetonated explosives or blasting agents found shall be disposed of safely.

17. Advisory standard 57.6–109 which is applicable to surface and underground is revised and made mandatory as follows:

57.6–109 *Mandatory.* Safety fuse, igniter cord, and detonating cord shall not be used if they have been kinked, bent sharply, or otherwise damaged.

18. Mandatory standard 57.6–166 which is applicable to surface only is made applicable to surface and underground and renumbered as follows:

57.6–115 *Mandatory.* All detonating cord knots shall be tight and all connections shall be kept at right angles to the trunklines.

19. Advisory standard 57.6–118 which is applicable to surface and underground is revised and made mandatory as follows:

57.6–118 *Mandatory.* When using safety fuse, where fly rock might damage unlit or burning fuses, timing shall be such that all fuses are burning within the holes before any hole detonates.

20. Advisory standard 57.6–121 which is applicable to surface and underground is revised and made mandatory as follows:

57.6–121 *Mandatory.* When blasting electrically a blasting galvanometer, or other instrument that is specifically designed for testing blasting circuits, shall be used to test:

(a) In surface operations:

(1) Continuity of each electric blasting cap in the borehole prior to the addition of stemming.

(2) Resistance of individual series or the resistance of multiple balanced series to be connected in parallel prior to their connection to the blasting line.

(3) Continuity of blasting lines prior to the connection of electric blasting cap series.

(4) Total blasting circuit resistance prior to connection to the power source.

(b) In underground operations:

(1) Continuity of each electric blasting cap series.

(2) Continuity of blasting lines prior to the connection of electric blasting caps.

21. Mandatory standard 57.6–170 which is applicable to surface only is made applicable to surface and underground, renumbered 57.6–126, and revised as follows:

57.6–126 *Mandatory.* Electric power distribution circuits shall be de-energized within 50 feet of boreholes containing electric blasting caps which can be initiated by conventional power sources or extraneous electricity except that such circuits need not be de-energized between 25 and 50 feet of such boreholes when stray current tests, conducted as frequently as necessary, measure a maximum stray current less than 0.05 amperes through a one-ohm resistor measured at the location of the electric blasting cap.

22. Advisory standard 57.6–132 which is applicable to surface and underground is revised and made mandatory as follows:

57.6–132 *Mandatory.* Delay connectors shall be treated and handled with the same safety precautions as detonators.

23. Advisory standard 57.6–169 which is applicable to surface only is made applicable to surface and underground, renumbered 57.6–138, revised, and made mandatory as follows.

57.6–138 *Mandatory.* Explosives or blasting agents shall not be loaded into drilled or sprung holes that could result in premature detonation from heat.

24. Advisory standard 57.6–176 which is applicable to underground only is made applicable to surface and underground, renumbered 57.6–139, revised, and made mandatory as follows:

57.6–139 *Mandatory.* Blasting areas shall not be reentered after firing until concentrations of smoke, dust, and fumes have been reduced to safe limits as required in, and determined by, Mandatory Standards 57.5–1 and 57.5–2 respectively.

25. Advisory standard 57.6–180 which is applicable to underground only is made applicable to surface and underground, renumbered 57.6–140, revised, and made mandatory as follows:

57.6–140 *Mandatory.* Blasting circuits and electric blasting caps (which are capable of being initiated by conventional power sources) shall be protected from sources of extraneous electricity.

26. Standard number 57.6–166 is reserved as follows:

57.6–166 [Reserved]

27. Advisory standard 57.6–167 is revoked, and standard number 57.6–167 is reserved as follows:

57.6–167 [Reserved]

(Sec. 301(c)(3). Pub. L. 95–164. 91 Stat. 1318 (30 U.S.C. 961(c)(3))

[FR Doc. 79–25131 Filed 8–14–79; 10:37am]

BILLING CODE 4510–43–M

federal register

Friday
August 17, 1979

Part III

Department of Labor

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be previling for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedures for Predetermination of Wage Rates, (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the application decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 26 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 224–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage & Hour Division, Office of Government Contract Wage Standards, Division of Construction Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination Decisions

Florida.—FL79–1116; FL79–1117.
Missouri.—MO79–4077.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Arkansas:	
AR79–4052; AR79–4055; AR79–4056	Mar. 30, 1979.
Florida:	
FL79–1019	Feb. 2, 1979.
Hawaii:	
HI79–5130	Nov. 24, 1979.
Idaho:	
ID79–5112	May 25, 1979.
Iowa:	
IA78–4100; IA78–4101; IA78–4102;	
IA78–4103; IA78–4104; IA78–4105;	
IA78–4106; IA78–4107; IA78–4108;	
IA78–4109; IA78–4110; IA78–4111;	
IA78–4112	Nov. 24, 1978.
IA79–4064	May 18, 1979.
Louisiana:	
LA79–4069	July 20, 1979.
New Jersey:	
NJ78–3009	Apr. 21, 1978.
NJ78–3047	June 16, 1978.
New York:	
NY78–3094	Nov. 24, 1978.
Oklahoma:	
OK78–4055; OK78–4056	June 9, 1978.
OK78–4058	June 16, 1978.
Texas:	
TX79–4005; TX79–4009	Jan. 5, 1979.
TX79–4031; TX79–4032; TX79–4033;	
TX79–4038; TX79–4039; TX79–4048;	
TX79–4050	Mar. 16, 1979.
TX79–4034	July 13, 1979.
TX79–4045	June 22, 1979.
TX79–4051	May 4, 1979.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas Decision numbers are in parentheses following the numbers of the decisions being superseded.

Alabama:	
AL79–1049(AL79–1120)	Mar. 23, 1979.
Florida:	
FL79–1113(FL79–1118)	July 20, 1979.
Louisiana:	
LA79–4002(LA79–4070)	Jan. 5, 1979.

Mississippi:	
MS78-1079(MS79-1119)	Sept. 15, 1978.
Montana:	
MT78-5119(MT79-5129)	Aug. 4, 1978.
North Carolina:	
NC77-1145(NC79-1107)	Nov. 15, 1977.
Oklahoma:	
OK78-4057(OK79-4076)	June 9, 1978.
Rhode Island:	
RI79-2039(RI79-2065)	May 5, 1979.
Texas:	
TX79-4003(TX79-4046); TX79-4011 (TX79-4036)	Jan. 5, 1979.

Cancellation of General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor intends to withdraw 30 days from the date of this notice the following General Wage Determination applicable to Residential Construction consisting of single family homes and garden type apartments up to and including 4 stories: DC76-3171—Washington, D.C., dated May 21, 1976 in 41 FR 21027.

Signed at Washington, D.C., this 10th day of August 1979.

Raymond G. Cordelli,

Acting Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-03-M

NEW DECISION

STATE: Florida COUNTIES: Escambia & Santa Rosa
DECISION NUMBER: FL79-1116 DATE: Date of Publication
DESCRIPTION OF WORK: Building Construction Projects (does not include single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air Conditioning Mechanic	6.11				
Bricklayers	9.40				.02
Carpenters	7.28				
Cement Masons	6.62				
Drywall Hangers	7.00				
Electricians	6.18				
Glaziers	6.95				
Insulation Installers	6.29				
Ironworkers	7.15				
Laborers	3.88				
Painters	4.99				
Plumbers; Pipefitters	8.80				
Roofers	4.99				
Sheet Metal Workers	8.15				
Soft Floor Layers	5.50				
Truck Drivers	3.88				
Welders - Rate for Craft.					
POWER EQUIPMENT OPERATORS:					
Backhoe	5.13				
Bulldozers	4.61				
Cranes	6.19				
Graders	4.70				

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)

NEW DECISION

FLORIDA: Florida COUNTIES: Okaloosa and Walton
DECISION NUMBER: FL79-1117 DATE: Date of Publication
DESCRIPTION OF WORK: Building Construction Projects (does not include single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air conditioning mechanic	8.97	.48	.35	.69	
Bricklayers	8.30				
Carpenters	7.06				
Cement Masons	6.62	.30	.30		
Drywall hangers	8.09				
Electricians	7.08	.40	3%		0.5%
Glaziers	4.50				
Insulation Installers	6.00				
Ironworkers	6.52				
Laborers	4.15				
Mason tenders	4.15				
Painters	5.57				
Plumbers; Pipefitters	12.09	.65	1.25	.50	.08
Roofers	4.75				
Sheet metal workers	8.54				
Soft floor layers	7.66				
Tile setters	8.60				
Welders - Rate for Craft.					
POWER EQUIPMENT OPERATORS:					
Bulldozers	9.04				
Front end loaders	9.02	.35	.35		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)

NEW DECISION

STATE: Missouri COUNTY: Pulaski
DECISION NO.: MO79-4077 DATE: Date of Publication
DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	11.97	.50	1.00		.04
BOILERMAKERS	12.15	1.15	1.00		.02
BRICKLAYERS, STONEMASONS & TILE LAYERS	10.60		.35		
CARPENTERS:					
Projects under $250,000.00	10.31	.70	.80	.50	.02
Projects $250,000.00 & over	10.81	.70	.80	.50	.02
ELECTRICIANS:					
Electricians	12.795	.47	3%+1.00	6%	.02
Cable splicers	13.195	.47	3%+1.00	6%	.02
IRONWORKERS, structural, ornamental, reinforcing	12.075	.55	1.05		.09
LABORERS:					
Laborers, general	9.25	.40	.40		.10
Plumber laborers, hod carriers, plaster tenders & mason tenders	9.60	.40	.40		.10
Powderman	10.25	.40	.40		.10
LATHERS	11.25				
PAINTERS:					
Brush & roller	10.25	.70	.35		
Taping, paperhanging & floor work	10.75	.70	.35		
Spray, structural steel & sandblasting	11.50	.70	.35		
PIPEFITTERS	12.95	2.165	1.51		
PLASTERERS	10.295	.48	.80		.03
PLUMBERS	11.755	.80	.80	.80	.20
ROOFERS	7.90	.46	.20		
SHEET METAL WORKERS	11.94	.56+3%	.76	.96	.04
TRUCK DRIVERS:					
GROUP 1	8.50	.50	.50		
GROUP 2	8.90	.50	.50		
GROUP 3	8.97	.50	.50		
GROUP 4	9.02	.50	.50		
GROUP 5	9.17	.50	.50		
GROUP 6	10.00	.50	.50		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS:					
Ft. Leonard Wood Only:					
GROUP 1	9.50	.50	.50		
GROUP 2	9.65	.50	.50		
GROUP 3	9.72	.50	.50		
GROUP 4	9.77	.50	.50		
GROUP 5	9.92	.50	.50		
GROUP 6	10.75	.50	.50		

TRUCK DRIVERS CLASSIFICATION DEFINITIONS

GROUP 1 - flat bed drivers; pick-ups and station wagons; tireman & station attendant; dump, single axle
GROUP 2 - Flat bed, tandem axle; dump, tandem; tank trucks, single axle
GROUP 3 - Agitator & transit-mix
GROUP 4 - Winch trucks; steel haulers, derrick & A-trucks; distributors drivers & operators; tank truck; tandem & semi-tractors; wheel tractors; oilers, greasers & mechanic helpers; heavy excavating & hauling euclids, dumpsters, etc.
GROUP 5 - Fork lifts & high lifts, etc., when unloading or carrying
GROUP 6 - Mechanics

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
GROUP 1	12.12	.75	1.00		
GROUP 2	12.12	.75	1.00		
GROUP 3	10.87	.75	1.00		
GROUP 4	10.27	.75	1.00		
GROUP 5:					
(a)	12.82	.75	1.00		
(b)	13.67	.75	1.00		
(c)	14.12	.75	1.00		
(d)	14.87	.75	1.00		
(e)	12.62	.75	1.00		
GROUP 6	13.12	.75	1.00		

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Backhoe; cableway; crane, crawler or truck; crane, hydraulic truck or cruiser mounted 16 tons & over; crane, locomotive, derrick, steam; derrick car & derrick boat; dragline; dredge; gradall, crawler or tire mounted; locomotive, gas, steam & other powers; piledriver, land or floating; scoop, skimmer; shovel, power (steam, gas, electric or other powers); switch boat; whirley

GROUP 2 - Air tugger w/air compressor; anchor placing barge; asphalt spreader; athey force feeder loader (self-propelled); backfilling machine; boat oper. push boat or tow boat (job site); boiler, high pressure breaking in period; boom truck, placing or erecting; boring machine, footing foundation; bullfloat; cherry picker; combination concrete hoist & mixer such as mixermobile; compressor (when operator runs throttle); compressors, two not more than 50' apart; compressor-generator combination; compressor pump combination; compressor welder combination; concrete breaker (truck or tractor mounted); concrete pump, such as pumpcrete machine; concrete spreader; conveyor, large (not self-propelled) hoisting or moving brick & concrete into, or into & on floor level, one or both; crane, hydraulic rough terrain, self-propelled; crane, hydraulic truck or cruiser mounted under 16 tons; drilling machines, self-powered, used for earth or rock drilling or boring (wagon drills & any hand drills obtaining power from other sources including concrete breakers, jackhammers & barco equipment no engineer required); elevating grader, engine man, dredge; excavator or powerbelt machine; finishing machine, self-propelled oscillating screed; fork lift; grader, road with power blade; highlift; hoist, concrete & brick (brick cages or concrete skips operating in or on tower, tower mobile, or similar equipment); hoist, stack; hydro hammer; lad-a-vator, hoisting brick or concrete; loading machine (such as Barber-Greene); mechanic, on job site; mixer, paving; mixer-mobile; mucking machine; pipe wrapping machine; plant, asphalt; plant, concrete producing or ready-mix job site; plant, heating job site; plant, mixing job site; plant, power, generating job site; pumps, two self-power over 2" through 6"; pumps, electric submersible, one through three, over 4"; quad-track; roller, asphalt, top or subgrade; scoop, tractor drawn; spreader box; subgrader; tie tamper; tractor-crawler, or wheel type with or without power unit, power take offs, & attachments regardless of size; trenching machine, tunnel boring machine, vibrating machine, automatic, propelled; welding machines (gasoline or diesel) more than one but not over four (regardless of size); well drilling machine

GROUP 3 - Air tugger w/plant air; boiler, for power or heating shell of buildings or temporary enclosures in connection with construction work; boiler, temporary; compressor, air one; compressor, air (mounted on truck); concrete saw, (self-propelled); conveyor, large (not self-propelled) conveyor, large (not self-propelled) moving brick & concrete (distributing) on floor level; curb finishing machine, ditch paving machine;elevator (building construction or alteration); endless chain hoist; fireman; form grader; generator, one over 30 KW or any number developing over 30

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS CONTD:

GROUP 3 CONTD:
KW; greaser; hoist, one drum regardless of size (except brick or concrete); lad-a-vator; manlift; mixer, asphalt, over 8 cu. ft. capacity; mixer, if two or more mixers of one bag capacity or less are used by one Employer on job, an operator is required; mixer, without side loader, 2 bag capacity or more; mixers, with side loader. 2 bag capacity or more; mixer,with side loader, regardless of size, not paver; oiler on dredge; oiler on truck crane; pug mill operator; pump, sump-self-powered, automatic controlled over 2" during use in connection with construction work; scissor lift (used for hoisting); sweeper, street; tractor small wheel type 50 h.p. & under with grader blade & similar equipment; welding machine, one over 400 amp.; winch operating from truck; mechanic in shop

GROUP 4 - Boat operator outboard motor (job site); conveyors, such as con-vay-it) regardless of how used; oiler; sweeper, floor

GROUP 5 (a) - Air pressure; oiler engineer operating under ten pounds
(b) - Air-pressure, oiler engineer operating over ten pounds
(c) - Air pressure engineer operating under ten pounds
(d) - Air pressure oiler engineer operating over ten pounds
(e) - Crane, climbing (such an linden); crane, pile driving & extracting; crane, using rock socket tool; derrick, diesel, gas or electric, hoisting material erecting steel (150" or more above ground); dragline, 7 cu. yds. & over; hoist, three or more drums in use; scoop, tandem; shovel, power 7 cu. yds. & over; tractor, tandem crawler, tunnel man assigned to work in tunnel or tunnel shaft; wrecking, when machine is working on second or higher; crane-booms (including jib) 100 ft. to 150 feet

GROUP 6 - Crane, boom (including jib) 150 feet to 300 feet

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(ii)."

DECISION #AR79-4052 - Mod. #2 (44 FR 19103 - March 30, 1979). Pulaski County, Arkansas	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Bricklayers-Stonemasons	9.60	.60	.35		.04
Asbestos workers	11.85	.50	1.00		.02
Marble, tile & terrazzo workers	8.75				
Plasterers	10.50				.02
Sprinkler fitters	11.44	.75	1.05		.02
DECISION NO. AR79-4055 - #1 (44 FR 19106 - March 30, 1979) Jefferson County, Arkansas					
CHANGE:					
Asbestos workers	11.85	.50	1.00		.02
Bricklayers	9.60	.60	.35		.04
Cement masons	8.67	.35			.03
Glaziers	8.20		.25		
Marble, terrazzo & tile workers	8.75				
Painters:					
Painters, paperhangers & steam cleaners, sheet-rock finishers and wall cover hangers	8.75		.40		.02
Spray gun operators and sand blasters	9.35		.40		.02
All skeleton steel and all work on stages, structural steel over 30 feet high	9.00		.40		.02
Plasterers	10.50				.02
Plumbers & Pipefitters:					
0 to 9 miles from Jefferson Co. Courthouse	10.85	.60	.55		.10
9 to 45 miles from Jefferson Co. Courthouse	11.50	.60	.55		.10
45 miles and over from Jefferson Co. Courthouse	12.05	.60	.55		.10
Sprinkler fitters	11.44	.75	1.05		.08

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #AR79-4056 - Mod. #1 (44 FR 19108 - March 30, 1979) Garland, Hot Spring and Clark Counties, Arkansas					
CHANGE:					
Asbestos workers	11.85	.50	1.00		.02
Bricklayers-Stonemasons:					
Garland & Clark Counties	9.65		.35		
Tile layers (Garland and Clark Counties)	9.45		.35		
ELECTRICIANS:					
Electricians	11.77		3%		1/4%
Cable splicers	11.895		3%		1/4%
Plasterers	10.50				.02
Plumbers-Pipefitters:					
Zone A	10.85	.60	.55		.10
Zone B	11.50	.60	.55		.10
Zone C	12.05	.60	.55		.10
Sprinkler fitters	11.44	.75	1.05		.08
Decision #FL79-1019 - Mod. # 5 (44 FR 6832 - February 2, 1979) Duval County, Florida					
Change:					
Electricians	10.15	.50	3%+.81	.81	.07

DECISION#HI78-5130 - Mod. #3
(43 FR 55143-November 24, 1978)
Statewide, Hawaii

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos Workers	$10.84	.65	$2.20	$1.00	.06
Bricklayers; Stonemasons	10.53	1.30	1.85	.60	.15
Cement Masons:					
Cement Masons	10.23	1.30	1.85	.60	.15
Trowel Machine Operators	10.38	1.30	1.85	.60	.15
Electricians:					
Electricians; Linemen	11.84	1.12	15%+1.74	11.2%	.50
Technicians	12.20	1.12	15%+1.74	11.2%	.50
Line Equipment Men	10.66	1.12	15%+1.74	11.2%	.50
Groundman	8.88	1.12	15%+1.74	11.2%	.50
Cable Splicers	13.02	1.12	15%+1.74	11.2%	.50
Line Construction Workers:					
Electricians; Linemen	11.84	1.12	15%+1.74	11.2%	.50
Technicians	12.20	1.12	15%+1.74	11.2%	.50
Line Equipment Men	10.66	1.12	15%+1.74	11.2%	.50
Groundman	8.88	1.12	15%+1.74	11.2%	.50
Cable Splicers	13.02	1.12	15%+1.74	11.2%	.50
Marble Setters	10.57	1.30	1.85	.60	.15
Painters:					
Brush	10.15	.79	3.00	.75	.10
Tapers	10.35	.79	3.00	.75	.10
Spray	10.65	.79	3.00	.75	.10
Plasterers	10.44	1.30	2.15	.60	.21
Roofers	11.65	1.05	1.25	.60	.10
Sprinkler Fitters	12.93	.75	1.05		.08
Terrazzo Workers and Tile Setters:					
Ceramic Tile Finisher	8.19	1.30	1.85	.48	.15
Terrazzo Base Finisher	9.30	1.30	1.85	.48	.15
Terrazzo Floor Grinder and Finisher	8.19	1.30	1.85	.48	.15
Terrazzo Workers and Tile Setters	10.57	1.30	1.85	.60	.15
Plumbers; Steamfitters	12.00	1.05	2.05	14.67%	.15

DECISION #ID79-5112 - Mod #2
(44 FR 30570-May 25, 1979)
Statewide, Idaho

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Boilermakers:					
Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties	$12.76	$1.175	$1.00	$1.00	.03
Remaining Counties	12.56	1.175	1.00	1.00	.03
Bricklayers; Stonemasons:					
Bingham County (North of City of Blackfoot), Bonneville, Butte, Clark, Custer, Fremont, Jefferson, Madison and Teton Cos.	11.95	.55	.45		
Clearwater, Idaho, Latah, Lewis and Nez Perce Counties	13.11	.80	1.00		.04
Electricians:					
Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce & Shoshone Cos.:					
Electricians	15.37	.83	3%+.40		.02
Cable Splicers	15.77	.83	3%+.40		.02
Remaining Counties:					
Electricians; Technicians	12.30	.75	3%+.75		1%
Cable Splicers	13.53	.75	3%+.75		1%
Glaziers:					
Bonner, Boundary, Kootenai and Shoshone Counties	11.99	.42	.30	4%	.02
Remaining Counties	9.11	.42	.10	b	
Ironworkers:					
Ornamental; Reinforcing; Structural:					
Benewah, Bonner, Boundary, Clearwater, Idaho County (north of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties	13.66	.93	1.70		.10

DECISION #ID79-5112 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Those portions of Adams, Idaho, Valley and Washington Cos. located south of the 46th Parallel and north of the Weiser-Gibbonsville Line	$13.35	.93	$1.70		.10
Marble Setters: Clearwater, Idaho, Latah, Lewis and Nez Perce Counties	13.11	.80	1.00		.04
Bingham County (north of the City of Blackfoot), Bonneville, Butte, Clark, Custer, Fremont, Jefferson, Lemhi, Madison and Teton Counties	11.95	.55	.45		
Plumbers: Benewah, Bonner, Boundary, Clearwater, Kootenai, Latah, Nez Perce and Shoshone Counties	16.73	.90	1.45		.12
Roofers: Bannock, Bear Lake, Bingham, Bonneville, Butte, Caribou, Clark, Franklin, Fremont, Jefferson, Madison, Oneida, Power and Teton Counties	10.30	.75	.40		
Sprinkler Fitters	12.79	.75	1.05		.08
Terrazzo Workers & Tile Setters: Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley and Washington Counties	12.15	.75	1.10		

DECISION #ID79-5112 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bingham County (north of the City of Blackfoot), Bonneville, Butte, Clark, Custer, Fremont, Jefferson, Lemhi, Madison and Teton Counties	$11.95	.55	.45		
Power Equipment Operators: (Area 1)					
Group 1:					
Zone 1	10.30	1.20	1.55		.03
Zone 2	11.00	1.20	1.55		.03
Zone 3	11.25	1.20	1.55		.03
Zone 4	11.70	1.20	1.55		.03
Zone 5	12.20	1.20	1.55		.03
Group 2:					
Zone 1	10.60	1.20	1.55		.03
Zone 2	11.30	1.20	1.55		.03
Zone 3	11.55	1.20	1.55		.03
Zone 4	12.00	1.20	1.55		.03
Zone 5	12.50	1.20	1.55		.03
Group 3:					
Zone 1	11.15	1.20	1.55		.03
Zone 2	11.85	1.20	1.55		.03
Zone 3	12.10	1.20	1.55		.03
Zone 4	12.55	1.20	1.55		.03
Zone 5	13.05	1.20	1.55		.03
Group 4:					
Zone 1	11.30	1.20	1.55		.03
Zone 2	12.00	1.20	1.55		.03
Zone 3	12.25	1.20	1.55		.03
Zone 4	12.70	1.20	1.55		.03
Zone 5	13.20	1.20	1.55		.03
Group 5:					
Zone 1	11.45	1.20	1.55		.03
Zone 2	12.15	1.20	1.55		.03
Zone 3	12.40	1.20	1.55		.03
Zone 4	12.85	1.20	1.55		.03
Zone 5	13.35	1.20	1.55		.03

MODIFICATIONS P. 7

DECISION #ID79-5112 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 6:					
Zone 1	$11.70	$1.20	$1.55		.03
Zone 2	12.40	1.20	1.55		.03
Zone 3	12.65	1.20	1.55		.03
Zone 4	13.10	1.20	1.55		.03
Zone 5	13.60	1.20	1.55		.03
Group 7:					
Zone 1	11.95	1.20	1.55		.03
Zone 2	12.65	1.20	1.55		.03
Zone 3	12.90	1.20	1.55		.03
Zone 4	13.35	1.20	1.55		.03
Zone 5	13.85	1.20	1.55		.03
Truck Drivers:					
Remaining Counties and Idaho County (south of the 46th Parallel):					
Group 13:					
Class B: Over 6 yards - including 14 yards					
Class C: Over 14 yards - including 20 yards					
Omit:					
Soft Floor Layers:					
Benewah, Bonner, Boundary, Clearwater, Idaho County (north of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties	10.52	.40	.60		
Add:					
Soft Floor Layers:					
Bonner, Boundary, Kootenai, Shoshone Counties	11.11	.47	.60		

MODIFICATIONS P. 8

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision NO. IA78-4100-Mod. #4 (43 FR 55161-November 24,1978) Building Black Hawk County, Iowa					
CHANGE:					
Cement Masons	$11.05	.45			
Sprinkler Fitters	12.90	.75	1.05		.08
Decision NO. IA78-4101-Mod. #3 (43 FR 55162-November 24,1978) Building Cerro Gordo County, Iowa					
CHANGE:					
Bricklayers & Stonemasons	11.72		.85		.02
Sprinkler Fitters	12.90	.75	1.05		.08
Decision NO. IA78-4102-Mod. #3 (43 FR 55164-November 24,1978) Building Clinton County, Iowa					
CHANGE:					
Electricians:					
Electricians	13.29	.70	7.5%		.03
Cable Splicer	14.29	.70	7.5%		.03
Laborers:					
Group 1	9.83	.40	.60		.05
Group 2	10.08	.40	.60		.05
Group 3	10.13	.40	.60		.05
Sprinkler Fitter	12.90	.75	1.05		.08
Plumbers and Steamfitters	12.80	.61	1.09		.15
Decision NO. IA78-4103-Mod. #3 (43 FR 55165-November 24,1978) Building Des Moines County, Iowa					
CHANGE:					
Plumbers and Pipefitters	13.30	.60	1.45		.05
Sprinkler Fitters	12.90	.75	1.05		.08

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision NO. IA78-4104-Mod. #3 (43 FR 55166-November 24,1978) Building Dubuque County, Iowa					
CHANGE:					
Painters:					
Brush or roller epoxy; paperhanging; tapers	$ 9.05	.70	.40		
High work & steel; spraying	9.60	.70	.40		
Plumbers & Steamfitters	12.17	.85	.80		.08
Sprinkler Fitters	12.90	.75	1.05		.08
Decision NO. IA78-4105-Mod. #3 (43 FR 55168-November 24,1978) Building Johnson County, Iowa					
CHANGE:					
Lathers	12.57				
Plasterers	12.57				
Sprinkler Fitters	12.90	.75	1.05		.08
Decision NO. IA78-4106-Mod. #3 (43 FR 55169-November 24,1978) Building Linn County, Iowa					
CHANGE:					
Lathers	12.57				
Plasterers	12.57				
Sprinkler Fitters	12.90	.75	1.05		.08
Decision NO. IA78-4107-Mod. #3 (43 FR 55171-November 24,1978) Building Polk County, Iowa					
CHANGE:					
Electricians	13.48	.40	3%+.80		3/4%
Lathers	12.46				
Sheet Metal Workers	12.12	1.00	.99		.14
Soft Floor Layers	10.75	.74	.81		.11
Sprinkler Fitters	12.90	.75	1.05		.08

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision NO. IA78-4108-Mod. #4 (43 FR 55173-November 24,1978) Building Pottawattamie County, IA					
CHANGE:					
Bricklayers & Stonemasons	$12.36	.82	.60		.05
Carpenters:					
Carpenters	10.98	.75	.60	1.00	.08
Piledrivermen	11.105	.75	.60	1.00	.08
Millwrights	11.23	.75	.60	1.00	.08
Sprinkler Fitters	12.90	.75	1.05		.08
Decision NO. IA78-4109-Mod. #4 (43 FR 55174-November 24,1978) Building Scott County, Iowa					
CHANGE:					
Electricians	13.29	.70	7.5%		.03
Cable Splicer	14.29	.70	7.5%		.03
Millwrights	13.40	.60	1.00		.25
Plumbers & Steamfitters	12.80	.61	1.09		.15
Sprinkler Fitters	12.90	.75	1.05		.08
Decision NO. IA78-4110-Mod. #3 (43 FR 55175-November 24,1978) Building Story County, Iowa					
CHANGE:					
Electricians	13.48	.40	3%+.80		3/4%
Lathers	12.46				
Sheet Metal Workers	12.12	1.00	.99		.14
Soft Floor Layers	10.75	.74	.81		.11
Sprinkler Fitters	12.90	.75	1.05		.08

MODIFICATIONS P. 11

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision NO. IA78-4111-Mod. #3 (43 FR 55177-November 24,1978) Building Webster County, Iowa					
CHANGE:					
Sheet Metal Workers	$12.12	1.00	.99		.14
Sprinkler Fitters	12.90	.75	1.05		.08
Decision NO. IA78-4112-Mod. #4 (43 FR 55178-November 24,1978) Building Woodbury County, Iowa					
CHANGE:					
Bricklayers and Stonemasons	12.31		.75		.02
Marble Setters	12.31		.75		.02
Terrazzo Workers	12.31		.75		.02
Carpenters:					
Carpenters	11.31	.72	.50		.04
Millwrights & Piledrivermen	11.81	.72	.50		.04
Ironworkers	11.77	.62	.50		.045
Plumbers and Steamfitters	12.72	.74	.80		.10
Power Equipment Operators:					
Group 1	11.61	.80	.80		.08
Group 2	11.385	.80	.80		.08
Group 3	10.17	.80	.80		.08
Group 4	9.455	.80	.80		.08
Sprinkler Fitters	12.90	.75	1.05		.08

MODIFICATIONS P. 12

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision NO.IA79-4064-Mod.1 (44 FR-29244-May 18,1979) Statewide Iowa Heavy & Highway					
CHANGE:					
Linn & Polk Counties and the cities of Ames and Dubuque; the cities of Burlington and Clinton and Burlington Ordinance Plant; the city of Iowa City and Black Hawk County.					
Laborers:					
Group 1	$8.51	.40	.40		.05
Group 2	8.26	.40	.40		.05
Group 3	8.01	.40	.40		.05
Group 4	7.86	.40	.40		.05
Group 5	7.76	.40	.40		.05
The cities of Fort Dodge and Mason City.					
Laborers:					
Group 1	$8.16	.40	.40		.05
Group 2	7.91	.40	.40		.05
Group 3	7.66	.40	.40		.05
Group 4	7.51	.40	.40		.05
Group 5	7.41	.40	.40		.05
DECISION NO. LA79-4069 - MOD. #1 (44 FR 42860 - July 20, 1979) Statewide Louisiana					
Change:					
Carpenters (Building Construction):					
Zone 1-Carpenters	$10.00	.50			
Millwrights	10.72	.50			
Piledrivermen	10.90	.50			
Glaziers - Zone 1	11.15				.02
Zone 3	10.625	.17	.30		.01
Laborers (Building Construction):					
Zone 1 - Group 1	7.00	.30			
Group 2	7.15	.30			
Group 3	7.25	.30			
Plumbers & pipefitters:					
Zone 3	11.65	.85	.90		.10
Sheet metal workers:					
Zone 1	12.25	.52	.55		.14
Zone 2	11.35	3%+.65	1.11		.14

MODIFICATIONS P. 13

DECISION NO. NJ78-3009 - MOD. #11
(42 FR 17223 - April 21, 1978)
Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union & Warren Counties, New Jersey

Omit:
Group 5 from Zone 4 for Painters

Change:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Area 1	$12.70	.90	1.20		.025
BOILERMAKERS	12.76	8%	20%+.25	10%	.02
BOILERMAKERS' HELPERS	12.23	8%	20%+.25	10%	.02
BRICKLAYERS, STONEMASONS, CEMENT MASONS AND PLASTERERS:					
Zone 4:					
Bricklayers & Stonemasons	12.96	.87	.75		
CARPENTERS, INSULATORS & MILLWRIGHTS:					
CARPENTERS & INSULATORS	12.13	8%	7%	5%	1/5%
Millwrights	12.38	8%	7%	5%	1/5%
PAINTERS:					
Zone 4:					
Group 1 - Interior industrial and commercial work, paperhangers, tapers, coverer spacklers, preparatory and cleaning work	10.80	.90	1.75	.50	
Group 2 - Extension ladder work (36' or over), scaffold work, and boatswain chair	11.95	.90	1.75	.50	
Group 3 - Structural steel, tanks, bridges, towers, smokestacks, radio towers, TV towers, flagpoles (steel or wood) fire escapes, cable work, and hazardous work	$11.95	;90	1.75	.50	
Group 4 - Sandblasting and spraying	12.50	.90	1.75	.50	
SHEET METAL WORKERS:					
Middlesex County	12.09	6%	8%+.11	8%	.04
PLUMBERS:					
Somerset County (excluding Clyde, Middlebush, South Bound Brook, South Branch, Voorhees, Warren Twp., West New Brunswick, Griggstown, Harlingen, Kingston, Skillman and Stoutsburg)	13.905	1.10	1.17		.25

MODIFICATIONS P. 14

DECISION NO. NJ78-3047 - MOD. #7
(43 FR 26235 - June 16, 1978)
Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean & Salem Counties, New Jersey

Change:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Area 1	13.27	.90	1.20		
Area 5	12.81	.90	1.20		.08
BRICKLAYERS, STONEMASONS, MARBLE MASONS, CEMENT MASONS, PLASTERERS, TILE LAYERS AND TERRAZZO WORKERS:					
Zone 3	11.70	.50	.60		
CARPENTERS, MILLWRIGHTS AND INSULATORS:					
Zone 3					
Carpenters & Insulators	12.13	8%	7%		½%
Millwrights	12.38	8%	7%		½%
ELECTRICIANS & CABLE SPLICERS:					
Zone 1	12.55	7%	3%+1.98		.01
Zone 5	12.73	7%	3%+.60		.02
LABORERS, BUILDING CONSTRUCTION:					
Zone 5					
Laborers	8.25	.80	1.05		.07
Jackhammers	8.50	.80	1.05		.07
Zone 6					
Laborers	8.70	.40	1.00		.07
Hod Carriers and Plasterers Tenders	8.80	.40	1.00		.07
LATHERS:					
Atlantic, Cape May and Cumberland Counties	12.35				

DECISION NO. NJ78-3047 (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
LINE CONSTRUCTION:					
Zone 1					
Linemen, Cable Splicers & Equipment Operators	12.55	7%	3%+1.98		3/4%
Groundmen	10.60	7%	3%+1.98		3/4%
PAINTERS:					
Zone 3					
Commercial brush, roller and paperhanging	10.75	.70	.70		.05
Commercial spray or dipping, or the use of any special material, brushing or rolling on steel or tanks, or working swing or chair	11.50	.70	.70		.05
Sandblasting or power tools, spraying or the use of any special material on steel or tanks	12.25	.70	.70		.05
Zone 4:					
New Construction:					
Brush or roller, paperhanging, & vinyl-wall covering	12.45	1.00	.90		.10
Work on all structural steel & iron, steeples, stacks, tanks, flagpoles, all swing work & window jack-work above 2 stories, spray painting & sandblasting & line striping by machinery, all power tools, & hazardous materials (ie. creosote, epoxy, acid, pitchmastic & urethanes	13.45	1.00	.90		.10

DECISION NO. NJ78-3047 (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Zone 4: (Cont'd)					
Repaint Construction					
Brush or roller, paperhanging & vinyl-wall covering	9.96	1.00	.90		.10
Work on all structural steel & iron, steeples, stacks, tanks, flagpoles, all swing work & window-jack work above 2 stories spray painting & sandblasting & line striping by machinery all power tools & hazardous materials (ie. creosote, epoxy, acid, pitchmastic & urethanes)	10.96	1.00	.90		.10
PLUMBERS & PIPEFITTERS:					
Zone 2	12.35	.77	1.45	1.00	.10
SHEET METAL WORKERS:					
Zone 1	13.14	1.14	.96		.04
Zone 2	12.39	6%	5%+.11	8%	.04
SOFT FLOOR LAYERS:					
Area 2	11.18	6%	5%+.50		
DECISION NO. NY78-3094 - MOD. #2 (43 FR 55180 - November 24, 1978) Onondaga County, New York					
Change:					
CARPENTERS (BUILDING)	$11.02	.85	1.20		.05
CARPENTERS (HEAVY AND HIGHWAY)	9.80	.85	1.20		.025
ELECTRICIANS:					
Elbridge and Skaneateles Twps	13.55	1.05	3%+.65		.15
Remainder of County:					
Electricians	13.30	.77	3%+1.10		.05
Cable Splicers	14.15	.77	3%+1.10		.05
MILLWRIGHTS AND PILEDRIVERS	10.95	1.23	1.15		.05
PAINTERS:					
Boatswain chair	11.32	.80	.88		.05
Bridge	11.77	.80	.88		.05
Swing	11.22	.80	.88		.05
Brush and roller, wall covering	10.57	.80	.88		.05
Structural steel	11.17	.80	.88		.05
Sandblasting	11.27	.80	.88		.05
Spray, epoxy application	11.07	.80	.88		.05
Taping	10.67	.80	.88		.05
PLUMBERS	11.93	1.17	1.07		.25
SOFT FLOOR LAYERS	11.02	.85	1.20		.05

DECISION #OK78-4055 - Mod. #6 (43 FR 25270 - June 9, 1978) Tulsa, Creek, Craig, Ottawa, Delaware, Mayes and Rogers Counties, Oklahoma.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Electricians:					
Electricians	$12.15	.59	3%+.58		.07
Cable splicers	12.40	.59	3%+.58		.07
Painters (Tulsa, Creek, Rogers, and Mayes Counties)					
Brush	10.90		.40		.10
Highwork and stage	11.30		.40		.10
Spray & sandblasting	11.55		.40		.10
Hot or bituminous	12.20		.40		.10
Sheetrock hand tools	10.90		.40		.10
Sheetrock power tools	11.30		.40		.10
Hazardous work	13.10		.40		.10
DECISION #OK78-4056 - Mod. #5 (43 FR 25273 - June 9, 1978) Muskogee, Adair, Cherokee and Okmulgee Counties, Oklahoma					
CHANGE:					
Bricklayers (Okmulgee County)	11.25	.60	.40		.05
Roofers	10.40	.60	.25		.04
Sprinkler fitters	12.54	.75	1.05		.08
DECISION #OK78-4058 - Mod. #7 (43 FR 26258 - June 16, 1978) McIntosh County, Oklahoma					
CHANGE:					
CARPENTERS Northern 1/2 of Co.:					
Carpenters	9.53	.55	.75		.08
Millwrights-Piledrivermen	10.03	.55	.75		.08

DECISION NO. TX79-4005 - MOD. #4 (44 FR 1675 - January 5, 1979) Bee, Kleberg & Nueces Cos., Texas	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Painters:					
Brush	8.45	.55	.25		2/10%
Sign	8.70	.55	.25		2/10%
Spray	8.85	.55	.25		2/10%
Sprinkler fitters	12.54	.75	1.05		.08
DECISION NO. TX79-4009 - MOD. #2 (44 FR 1681 - January 5, 1979) Cameron, Hidalgo, Starr & Willacy Cos., Texas					
Change:					
Sprinkler Fitters	12.54	.75	1.05		.08
DECISION NO. TX79-4031 - MOD. #5 (44 FR 16324 - March 16, 1979) Bexar County, Texas					
Change:					
Bricklayers & Stonemasons	10.80	.45	.30	.25	.05
Sprinkler Fitters	12.54	.75	1.05		.08
DECISION NO. TX79-4032 - MOD. #2 (44 FR 16325 - March 16, 1979) Harrison County , Texas					
Change:					
Sprinkler Fitters	12.54	.75	1.05		.08

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX79-4033 - MOD. #4 (44 FR 16326 - March 16, 1979) Jefferson & Orange Cos., Texas					
Change:					
Roofers - Composition	$10.48	.42	.45	.35	.06
Slate & tile	11.23	.42	.45	.35	.06
Kettlemen	9.74	.42	.45	.35	.06
Sprinkler fitters	12.54	.75	1.05		.08
DECISION NO. TX79-4034 - MOD. #1 (44 FR 41061 - July, 13, 1979) Bowie County, Texas					
Change:					
Sprinkler fitters	12.54	.75	1.05		.08
DECISION NO. TX79-4038 - MOD. #5 (44 FR 16328 - March 16, 1979) Travis County, Texas					
Change:					
Glaziers	9.66		.50		.01
Line construction:					
Lineman	12.40	.60	3%		½%
Groundman	6.82	.60	3%		½%
Soft floor layers	11.37	.50	.45		.14
Sprinkler fitters	12.54	.75	1.05		.08
Omit:					
Line construction:					
Groundman (1st year)	5.78	.60	3%		½%
DECISION NO. TX79-4039 - MOD. #2 (44 FR 16329 - March 16, 1979) Ector & Midland Cos., Texas					
Change:					
Carpenters	10.28				.07

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX79-4048 - MOD. #4 (44 FR 16330 - March 16, 1979) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos., Texas					
Change:					
Ironworkers - Zone 1	$10.40	.55	1.15		.10
Sprinkler fitters	12.54	.75	1.05		.08
DECISION NO. TX79-4050- MOD. #4 (44 FR 16334 - March 16, 1979) Bell, Bosque, Coryell, Falls, Hill & McLennan Cos., Texas					
Change:					
Building Construction:					
Bricklayers	10.90		.55		.03
Electricians:					
Zone 1-Electricians	10.75	.60	3%		¼%
Cable splicers	11.75	.60	3%		¼%
Sheet metal workers:					
Zone 1 - Within a radius of 20 miles from the McLennan Co. Courthouse	9.82	.45	.60		.09
Zone 2 - Over 20 miles up to & including 45	10.32	.45	.60		.09
Zone 3 - Over 45 miles	10.82	.45	.60		.09
Sprinkler fitters	12.54	.75	1.05		.08

MODIFICATIONS P. 21

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX79-4051 - MOD. #3 (44 FR 26535 - May 4, 1979) Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos., Texas					
Change: Sprinkler fitters	$12.54	.75	1.05		.08
DECISION NO. TX79-4045 MOD. #1 (44 FR 36694 - June 22, 1979) El Paso County, Texas					
Change: Sprinkler fitters	12.54	.75	1.05		.08

SUPERSEDEAS DECISION

STATE: Alabama COUNTIES: *See Below
DECISION NO.: AL79-1120 DATE: Date of Publications
Supersedes Decision No.: AL79-1049 dated March 23, 1979 in 44 FR-17881
DESCRIPTION OF WORK: Residential Construction Projects consisting of single family homes and apartments up to and including 4 stories

Counties: Bibb, Choctaw, Fayette, Greene, Hale, Lamar, Marengo, Perry, Pickens, Sumter and Tuscaloosa

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air conditioning mechanics	5.00				
Bricklayers	6.00				
Carpenters:					
Tuscaloosa	7.95				.015
Remaining Counties	6.00				
Cement masons	5.00				
Drywall finishers	6.13				
Electricians	4.50				
Ironworkers, structural and ornamental	5.50				
Insulators	4.05				
Laborers	3.44				
Painters, brush	5.00				
Plumbers & pipefitters	5.50				
Roofers	4.30				
Sheet metal workers	5.50				
Truck drivers	3.70				
Welders - Rate for Craft.					
POWER EQUIPMENT OPERATORS:					
Asphalt spreader	4.50				
Backhoe	5.20				
Dozer	5.25				
Loader	4.76				

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii))."

SUPERSEDEAS DECISION

STATE: Florida COUNTY: Pinellas
DECISION NO: FL79-1118 DATE: Date of Publication
Supersedeas Decision No.: FL79-1113 dated July 20, 1979 in 44 FR-42856
DESCRIPTION OF WORK: Building Construction Projects (does not include single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air Conditioning & Heating Mechanics	11.33	.60	1.00		.08
Bricklayers/Blocklayers	10.20	.45	.50		.10
Carpenters	6.56				
Cement Masons	6.30				
Electricians	6.27				
Elevator Constructors	9.785				
Glaziers	6.13				
Ironworkers	6.36				
Laborers	4.26				
Lathers	7.36				
Painters	5.26				
Plasterers	8.76				
Plumbers; Pipefitters	11.33	.60	1.00		.10
Roofers	4.32				
Sheet Metal Workers	5.81				
Soft Floor Layers	5.25				
Sprinkler Fitters	10.61	.75	1.05		.10
Tile Setters	6.79				
POWER EQUIPMENT OPERATORS:					
Backhoe	5.00				
Bulldozer	5.25				
Compactor	9.185	.625	.60		
Crane	10.89	.65	.60		.05
Grader	4.79				
Piledriver	7.00				

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Louisiana PARISHES: Bossier, Caddo & Calcasieu
DECISION NO. LA79-4070 DATE: Date of Publication
Supersedes Decision No. LA79-4002, dated January 5, 1979, in 44 FR 1650
DESCRIPTION OF WORK: Residential Projects consisting of single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Bossier & Caddo Parishes	11.13	.50	.76		.03
Calcasieu Parish	12.32	.525	.90		.04
BOILERMAKERS	11.05	.80	1.00		.02
BRICKLAYERS & STONEMASONS:					
Bossier & Caddo Parishes	10.50	.40	.55		
Calcasieu Parish	11.85	.53	.67		.05
CARPENTERS:					
Bossier & Caddo Parishes:					
Carpenters	10.15	.45	.40		.04
Millwrights	10.90	.45	.40		.04
Piledrivermen	10.40	.45	.40		.04
Calcasieu Parish:					
Carpenters & piledrivermen	10.75	.60	.33		.07
Millwrights	12.35				.07
CEMENT MASONS:					
Bossier & Caddo Parishes	9.65	.35			
Calcasieu Parish	9.45				
ELECTRICIANS:					
Bossier & Caddo Parishes:					
Electricians	12.65	1.45	3%		1%
Cable splicers	13.15	1.45	3%		1%
Calcasieu Parish:					
Electricians	14.00	.35	3%+.40		1/10%
Cable splicers	14.25	.35	3%+.40		1/10%
ELEVATOR CONSTRUCTORS:					
Bossier & Caddo Parishes:					
Mechanics	10.025	.895	.69	a+b	.035
Helpers	70%JR	.895	.69	a+b	.035
Helpers (Prob.)	50%JR				
Calcasieu Parish:					
Mechanics	10.27	.745	.56	a+b	.025
Helpers	70%JR	.745	.56	a+b	.025
Helpers (Prob.)	50%JR				
GLAZIERS:					
Bossier & Caddo Parishes	9.08		.30		.04
Calcasieu Parish	11.15				.02
IRONWORKERS:					
Bossier & Caddo Parishes	11.40	.45	.90		.06
Calcasieu Parish	11.35	.45	.65		.05

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Bossier & Caddo Parishes:					
GROUP 1					
Laborers	6.85	.25	.20		.05
GROUP 2					
Mason tenders, plasterer tenders; asphalt rakers, asphalt smoothers	6.95	.25	.20		.05
GROUP 3					
Mortar mixers	7.00	.25	.20		.05
GROUP 4					
Air jacks, vibrators; sewer pipe layers & wipers	7.05	.25	.20		.05
Calcasieu Parish:					
GROUP 1					
Building & general laborer; tenders (carpenter, plaster, cement finisher, mason); tank & vessel cleaners	8.20	.25	.20		.05
GROUP 2					
Air tool op. (except jack-hammer); interior of closed tanks & vessels power equipment	8.30	.25	.20		.05
GROUP 3					
Mortar mixers	8.35	.25	.20		.05
GROUP 4					
Jackhammer operators	8.45	.25	.20		.05
GROUP 5					
Blasterers	9.16	.25	.20		.05
GROUP 6					
Blaster tenders; concrete cutters behind paving machines & puddlers; form setters & lines asphalt worker	8.72	.25	.20		.05
GROUP 7					
Wipe joints, laying pipe & tile from pumpcrete	8.56	.25	.20		.05
GROUP 8					
Interior or closed tanks & vessels manually	8.25	.25	.20		.05

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS:					
Bossier & Caddo Parishes	11.65				
Calcasieu Parish	12.435	.55			.01
MARBLE SETTERS:					
Bossier & Caddo Parishes	9.35	.40			
Calcasieu Parish	11.85	.53	.67		.05
PAINTERS:					
Bossier & Caddo Parishes:					
Painters, tape & float, vinyl & paperhangers	9.90	.40	.30		.05
Calcasieu Parish:					
GROUP 1					
Brush, roller, buffer	11.285		.30		
GROUP 2					
Paperhangers, taping & floating	11.485		.30		
GROUP 3					
Spray, sandblasting	11.63		.30		
PLASTERERS:					
Bossier & Caddo Parishes	9.75			1.00	
Calcasieu Parish	10.07				
PLUMBERS & PIPEFITTERS:					
Bossier & Caddo Parishes	11.46	.55	.80	1.00	.09
Calcasieu Parish	11.97	.67	.72		.08
ROOFERS:					
Bossier & Caddo Parishes					
Roofers	9.60		.20		.04
Kettlemen	6.65		.20		.04
Calcasieu Parish:					
Roofers	10.78		.20		
SHEET METAL WORKERS:					
Bossier & Caddo Parishes	7.16	3%+.67			.15
Calcasieu Parish	12.25	.52	.55		.14
SOFT FLOOR LAYERS:					
Bossier & Caddo Parishes	10.15	.45	.40		.04
Calcasieu Parish	10.75	.60	.33		.07
SPRINKLER FITTERS	11.69	.75	1.05		.08
TERRAZZO WORKERS:					
Bossier & Caddo Parishes	9.35	.40			
Calcasieu Parish	11.85	.53	.67		.05

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TILE SETTERS:					
Bossier & Caddo Parishes	9.35	.40			
Calcasieu Parish	8.75	.48	.67		.02
TRUCK DRIVERS:					
Bossier & Caddo Parishes:					
GROUP 1					
Pick-ups, spotters & dumpers	7.47				
GROUP 2					
Stake bodies; flat beds (all sizes)	7.55				
GROUP 3					
Single axle dumps & water trucks; transit mix up to & including 3 yds.	7.80				
GROUP 4					
Tandem axle, dump, batch & water trucks over 3 tons, pick-ups with trailer	7.95				
GROUP 5					
Mississippi wagons, floats, tractor trailers; rubber tired tractors & wobble wheels	8.10				
GROUP 6					
Euclids, lowboys, Dempsey dumpsters, Koehring dumps, 5 axle trucks, transit mix over 3 yds.	8.30				
Calcasieu Parish:					
GROUP 1					
Pick-ups	9.31				
GROUP 2					
Stake bodies (all sizes)	9.79				
GROUP 3					
Trucks trailer & dump over 8 yds.; mixers on trucks over 3 yds.; Mississippi wagon & Koehring dumpsters & similar dirt moving equipment (up to & including 8 yds.)	10.02				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS CONT'D:					
Calcasieu Parish Contd:					
GROUP 4					
Mixers on trucks up to & including 3 yds.	9.81				
GROUP 5					
Winch trucks	9.91				
GROUP 6					
Dump trucks	9.83				
GROUP 7					
Mississippi wagons & Koehring dumpsters & similar dirt moving equipment over 8 yds.	10.25				
WELDERS-receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS FOR ELEVATOR CONSTRUCTORS:
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G-Christmas Day

FOOTNOTES FOR ELEVATOR CONSTRUCTORS:
a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 6%; over 5 yrs. - 8% of basic hourly rate
b - Paid Holidays - A thru G

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: Calcasieu Parish:					
GROUP 1	8.18	.65	.85		.05
GROUP 2	7.86	.65	.85		.05
GROUP 3	7.65	.65	.85		.05
GROUP 4	8.46	.65	.85		.05
GROUP 5	10.85	.65	.85		.05
GROUP 6	8.87	.65	.85		.05
GROUP 7	9.55	.65	.85		.05

POWER EQUIPMENT OPERATORS CLASSIFICATIONS DEFINITIONS

GROUP 1 - Scale Operators; oiler-driver on motor crane; batch plant operator

GROUP 2 - Pumps under 3 inch suction

GROUP 3 - Oiler

GROUP 4 - Fireman

GROUP 5 - Combination oiler-compressor; combination oiler-fireman; asphalt spreaders; backhoe (all types); bulldozers; cableways; cherry pickers (all types); concrete mixers (over 1 sack); cranes; deck winch (2 drums or over); derricks; ditching or trenching machines (riding type); draglines; dredges; fork lifts (other than farm type) outside warehouses; foundation drill; front end loaders (except farm type); grease serviceman; hoist-1 drum (4 stories or more on buildings); hoist-1 drum (over 40 ft. on structures other than buildings); hoist (2 drum or over); locomotive (all types); mechanic; mixer plant operator-central mix;motor patrols; pile-drivers; pull cat; pump crete-6" and over discharge; push cat; road pavers; rollers (plant mix asphalt); scrapers; shovels; side-booms; unit operator; welder, journeyman; well point system; whirleys; winch cats (cat D-4 & over); winch truck with A-frame (5 ton & over); work boats-requiring licensed operator

GROUP 6 - Bush hog; compressor; concrete pump-under 6" discharge; concrete saw; deck winch (1 drum); distributors; ditching or trenching machines (non-riding type); dowel bar machine; farm-type tractors (when used to pull discs, grass cutters, etc.); hoist-1 drum (under 4 stories on buildings); hoist-1 drum (40 ft. or under on structures other than buildings); Kolum Buff Machines; mixers (1 sack & under); motorized street sweepers self-propelled; pump (3" & over); test pump-internal combustion engine powered; water blast pumps

GROUP 7 - Asphalt plant operator; boom trucks; bull floats; concrete spreader; farm type front end loaders; finishing machines (roadway, riding type); roller (other than plant mix asphalt); straddle buggies; winch truck with A-frame (under 5 tons); work boats-not requiring licensed operator

SUPERSEDEAS DECISION

STATE: Mississippi COUNTIES: *See Below
DECISION NO.: MS79-1119 DATE: Date of Publication
Supersedes Decision No.: MS78-1079 dated September 15, 1978 in 43 FR-41348
DESCRIPTION OF WORK: Building Construction Projects (does not include single family homes and apartments up to and including 4 stories).

*Counties: Hancock, Harrison, Jackson, & Pearl River

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos workers (Pearl River and Hancock)	9.05	.50	1.10		.05
Asbestos workers (Jackson and Harrison)	10.95	.55	1.25	c	.02
Boilermakers	10.70	1.05	1.10		.02
Bricklayers:					
Bricklayers	9.95		.40		.01
Blockmasons	9.95		.40		.01
Caulkers & Pointers	9.95		.40		.01
Marble masons	9.95		.40		.01
Stonemasons	9.95		.40		.01
Plasterers	9.85		.40		.01
Terrazzo workers	10.15		.40		.01
Tile setters	9.85		.40		.01
Cement masons	9.35		.40		.01
Carpenters:					
Carpenters	9.00	.40	.25		.05
Soft floor layers	9.00	.40	.25		.05
Millwrights	9.50	.40	.25		.05
Electricians:					
Electricians	11.60	.5%	3%+2%		1/8 of 1%
Cable splicers	11.85	5%	3%+2%		1/8 of 1%
Elevator constructors	9.62	.895	.69	4%+a&b	.03
Ironworkers:					
Jackson Co. & Eastern 1/3 of Harrison Co. (incl. Biloxi, Keesler AFB, & towns of Howison & Success)					
Structural, Ornamental, & Reinforcing	10.38	.40	.50		
Ironworkers:					
Hancock & Pearl River Counties & western 2/3 of Harrison Co.					
Structural, Ornamental, & Reinforcing	11.36	.63	.35		.04

MS79-1119 - (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers:					
Laborers	5.35	.20	.20		.05
Asphalt rakers, masons tenders, mortar mixers, pipelayers, pipe wrappers, post hole digger, plasterers tenders	5.50	.20	.20		.05
Line Construction:					
Linemen	11.60	5%	3%+.2%		1/8of1%
Cable splicers	11.95	5%	3%+.2%		1/8of1%
Painters (Harrison & Jackson Counties:					
Commercial:					
Brush	7.40		.40		.12
Rollers	7.50		.40		.12
Spray	7.70		.40		.12
Industrial:					
Brush	8.20		.40		.12
Spray & Sandblasting	9.50		.40		.12
Painters (Hancock & Pearl River Counties:					
Commerical:					
Brush & Roller	5.55				.03
Spray	6.55				.03
Piledrivermen	8.84	.30	.35		
Piledrivermen on creosote material	9.09	.30	.35		
Plumbers & steamfitters	10.77	.56	.65		.05
Roofers:					
Roofers	9.65		.30		
Kettlemen	7.50		.30		
Sheet metal workers	11.35	3%+.65	1.11		.14
Sprinkler fitters	10.80	.75	1.05		.08

MS79-1119 - (Cont'd)

PAID HOLIDAYS:

A-New Year's Day B-Memorial Day C-Independence Day
D-Labor Day E-Thanksgiving Day F-Christmas Day

FOOTNOTES:

a. Holidays: A through F.

b. Employer contributes 6% of regular hourly rate to Vacation Pay Credit for employee who has worked in business more than 5 years. Employer contributes 4% of regular hourly rate to Vacation Pay Credit for employee who has worked in business less than 5 years.

c. Holidays: Labor Day and Thanksgiving Day; provided the employee works at least one out of 3 workdays prior to the paid holiday and the first work day after the paid holiday.

MS79-1119 - (Cont'd)

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	7.25	.40	.50		
GROUP II	7.84	.40	.50		
GROUP III	9.15	.40	.50		

GROUP I: Truck drivers on equipment up to but not including 1½ tons, station wagons, jeeps and automobiles, truck spotters,

GROUP II: Truck drivers on equipment 1½ tons and up to but not including 5 tons

GROUP III: Truck drivers on equipment rated 5 tons or 6 yards and over, including heavy equipment such as pole trucks, miss or corning wagons, dumpsters, semi-drivers, agitator, ross carriers, dempsey dumps, euclid trucks, fork-lift truck in warehouse and similar equipment, such as tractors, 10 wheelers, jeeps or dump trucks or pickup trucks pulling two or four wheel trailers hauling equipment.

MS79-1119 - (Cont'd)

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	9.63	.50	.30		.05
GROUP 2	8.68	.50	.30		.05
GROUP 3	8.48	.50	.30		.05
GROUP 4	7.68	.50	.30		.05
GROUP 5	6.53	.50	.30		.05
GROUP 6	6.53	.50	.30		.05

GROUP 1:
Engineer - operating under air pressure

GROUP 2:
Mechanic

GROUP 3:
Air tugger (2 drum), asphalt plant, backhoe, blacksmith, boom tractor, bulldozer, central mixing plant, cherry picker, clamshell, crane derrick, derrick boat, derrick car, dragline, dredge, elevating grader, excavator (power belt), forklift, hoist (2 drum) locomotive engineer, marine engineer (chief) master pilot, mixermobile, motor patrol & similar type equipment, paver (21 C.F. or larger), piledriver, recharger, roaming greaser (1st), scoop (skimmer), scraper, shovel, trenching machine (over 18" bucket line width), tournapull, DW-10 & similar pulltype scrapers, traxavator and similar endloaders, welder, welding machines or S/W pumps (2 to 6), well driller, well point pumps

GROUP 4:
Air tugger, asphalt spreader (bituminous distributor) asphalt spreader (bituminous mixer), backfilling machine, conveyor, drill (earth), finishing machine, fireman, heating plant, hoist, marine engineer (assistant), mixer, payloader, and similar endloaders, pilot, power generating plant, pump (concrete), roller, scoopmobile, tractor (with power take-off), trenching machine (18" or smaller bucket line width), tugboat, winch truck

GROUP 5:
Air compressor, form grader, locomotive hostler, oiler (truck crane), pump, roughneck, tractor (without attachments), welding machine

GROUP 6:
Batch scale, deckhand, motorboat (in or outboard), oiler scowman

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contracts clauses (29 CFR, 5.5 (a)(1)(ii))."

SUPERSEDEAS DECISION

STATE: Montana COUNTIES: Statewide
DECISION NUMBER: MT79-5129 DATE : Date of Publication
Supersedes Decision NO. MT78-5119 dated August 4, 1978, in 43 FR 34669
DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$13.75	.44	$1.20		
BOILERMAKERS	12.30	.85	1.00		.02
BRICKLAYERS:					
Beaverhead, Deer Lodge, Granite, Jefferson (except Northern Tip of County), Madison, Powell and Silver Bow Counties	12.40		.55		.05
Gallatin and Park Counties	11.20	.75	.55		.05
Big Horn, Carbon, Carter, Custer, Dawson, Fallon, McCone, Powder River, Prairie, Richland, Rosebud, Sweet Grass, Stillwater, Treasure, Wibaux, Yellowstone Counties	13.45		.55		
Broadwater, Lewis and Clark and Meagher Counties	11.60	.60	.30		.05
Cascade, Chouteau, Glacier, Pondera and Teton Counties	11.90	.70	.75		
Blaine, Daniels, Hill, Liberty, Phillips, Roosevelt, Sheridan, Toole and Valley Counties	11.95	.75	.75		
Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders Counties	11.55	.60	.55		.05
CARPENTERS:					
Cascade, Chouteau, Fergus, Glacier, Judith-Basin, Liberty, Meagher, Pondera, Teton and Toole Counties					
Carpenters	10.00	.55	.75		.02
Piledrivermen; Saw Filers; Sawmen	10.25	.55	.75		.02
Millwrights	10.50	.55	.75		.02
Blaine and Hill Counties					
Carpenters	9.68	.55	.75		.02
Millwrights	10.18	.55	.75		.02
Piledrivers	9.93	.55	.75		.02

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS: (Cont'd)					
Broadwater, Lewis and Clark and Jefferson Counties					
Carpenters	$ 9.79	.55	.75		.02
Piledrivermen	9.94	.55	.75		.02
Millwrights	10.04	.55	.75		.02
Deer Lodge, Granite (all area lying south of a line running due east from the N.W. corner of Granite County to the N.E. corner of Granite County) and Powell (area lying south of the N.E. corner of Granite County) Counties					
Carpenters	10.07	.55	.75		.02
Piledrivers	10.32	.55	.75		.02
Millwrights	10.32	.55	.75		.02
Granite (area lying north of a line running due east from the N.W. corner of Granite County to the N.E. corner of Granite County) Lake (southern area, south of and including the Town of Ravalli), Mineral (area southeast of Southeast City limits of the Town of Superior), Missoula, Powell (area lying north of the N.E. corner of Granite County), Ravalli and Sander (Southeastern portion) Counties					
Carpenters	9.88	.55	.75		.02
Millwrights; Piledriver	10.18	.55	.75		.02
Carter, Custer, Daniels, Dawson, Fallon, McCone, Phillips, Powder River, Prairie, Richland, Roosevelt, Sheridan, Valley and Wilbaux Counties					
Carpenters	9.30	.70	.75		.02
Piledrivermen	9.55	.70	.75		.02
Millwrights	9.80	.70	.75		.02

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS: (Cont'd)					
Flathead, Lincoln, Lake (Northern area including Town of Ravalli from a point where Hwy. #10A and Hwy. #93 intersect), Mineral (Northern area including the Town of Superior), Sanders (except S.E. corner portion) Counties					
Carpenters	$ 9.78	.55	.75		.02
Sawmen; Filers, Piledrivers; carpenters working burned, charred, creosoted or similary treated material	9.98	.55	.75		.02
Millwrights and Machine Erectors	10.13	.55	.75		.02
Big Horn, Carbon, Garfield, Golden Valley, Musselshell, Petroleum, Rosebud, Stillwater, Treasure, Wheatland and Yellowstone Counties					
Carpenters	9.58	.70	.75		.02
Floor Sander; Sawmen	9.73	.70	.75		.02
Piledrivermen	9.73	.70	.75		.02
Millwrights	10.33	.70	.75		.02
Beaverhead and Silver Bow Cos.					
Carpenters	9.40	.70	1.00	.75	.02
Millwrights and Piledrivermen	9.65	.70	1.00	.75	.02
Gallatin, Madison, Park and Sweetgrass Counties					
Carpenters	9.67	.55	.75		.02
Millwrights and Piledrivermen	9.92	.55	.75		.02
CEMENT MASONS:					
Granite (Northern half), Lake (Southern area, including the City of Pablo), Mineral, Missoula, Powell (Northern area including the City of Helmsville), Ravalli and Sanders (South portion including the City of Paradise) Counties	9.50	.75	.35		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS: (Cont'd)					
Beaverhead, Deer Lodge, Granite (Southern half), Jefferson (Southern area including Town of Wickes), Madison, Powell (South portion including the Town of Deer Lodge) and Silver Bow Counties	$8.95	.50	.50	$ 1.00	
Blaine, Cascade, Chouteau, Hill, Liberty, Pondera, Teton and Toole Counties	9.90				
ELECTRICIANS:					
Beaverhead, Deer Lodge, Granite, Jefferson, Madison, Silver Bow and Powell Counties	12.55	.65	3%+.50		1/2%
Big Horn, Carter, Carbon, Dawson, Fallon, Golden Valley, Musselshell, Powder River, Prairie, Rosebud, Stillwater, Treasure, Wilbaux and Yellowstone Counties					
Electricians	12.77	.50	3%+.50		1/2%
Cable Splicer	13.22	.50	3%+.50		1/2%
Blaine, Hill, Liberty and Phillips Counties					
Contracts over $150,000	12.95	.60	3%+.75		1/2%
Contracts under $150,000	12.10		3%+.75		1/2%
Broadwater, Lewis and Clark and Meagher Counties					
Electricians	12.10	.65	3%+.50		1/2%
Cascade, Chouteau, Glacier, Judith-Basin, Pondera, Teton and Toole Counties					
Electricians	12.95	.60	3%+.75		1/2%
Cable Splicers	13.20	.60	3%+.75		1/2%
Custer and Garfield Counties					
Electricians	9.40		3%	1/2%	

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS: (Cont'd)					
Daniels, McCone, Richland, Roosevelt, Sheridan and Valley Counties					
Electricians	$10.90	.60	3%+.75		1/2%
Cable Splicers	11.15	.60	3%+.75		1/2%
Fergus, Petroleum and Wheatland Counties					
Contracts over $30,000	10.85	.45	3%+.50		1/2%
Contracts under $30,000	9.25	.45	3%+.50		1/2%
Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders Counties					
Electricians	12.20	.65	3%+.50		1/2%
Cable Splicers	12.80	.65	3%+.50		1/2%
Gallatin County					
Electricians	12.00	.45	3%+.25		1/2%
Park and Sweetgrass Counties					
Electricians	10.45	.45	3%+.50		1/2%
ELEVATOR CONSTRUCTORS	10.84	.74$	.56		.025
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.74$	.56		.025
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				
IRONWORKERS:					
Beaverhead, Broadwater, Deer Lodge, Gallatin, Granite, Jefferson , Lewis and Clark, (Southern half including Wolf Creek), Madison, Park, Powell, Ravalli and Silver Bow Cos.	11.26	.70	1.25		.05
Flathead, Glacier, Lake, Lincoln, Mineral, Missoula and Sanders Counties	13.66	.93	1.70		.10
Remaining Counties (including Northern half of Lewis and Clark County)	11.26	.70	1.25		.05
MARBLE MASONS:					
Flathead, Lake, Lincoln, Mineral Missoula, Ravalli and Sanders Counties	11.55	.60	.55		.05

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE MASONS: (Cont'd)					
Big Horn, Carbon, Carter, Custer, Dawson, Fallon, McCone, Powder River, Prairie, Richland, Rosebud, Stillwater, Sweet Grass, Treasure, Wibaux and Yellowstone Counties	$11.20		.35		.02
Gallatin and Park Counties	11.20	.75	.55		.05
Broadwater, Lewis and Clark, Meagher and Jefferson (Northern area) Counties	11.60	.60	.30		.05
Cascade, Chouteau, Glacier, Pondera and Teton Counties	11.90	.70	.75		
Blaine, Daniels, Hill, Liberty, Phillips, Roosevelt, Sheridan, Toole and Valley Counties	11.95	.75	.75		
PAINTERS:					
Silver Bow County, South part of Jefferson County, from a line running due west from the south limits of Tosten, South part of Broadwater County, from a line running east and west through the north limits of Tosten, the west part of Madison County, from a line running north and south through the west limits of Harrison in Beaverhead County					
Painters	9.23	.42	.35		
Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Golden Valley, Musselshell, Powder River, Prairie, Rosebud, Stillwater, Sweet Grass, Treasure, Wibaux and Yellowstone Counties					
Brush or Roller	9.86	.56	.20		
Steel (brush or roller)	10.11	.56	.20		
Spray (not steel)	10.84	.56	.20		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (Cont'd)					
Cascade, Chouteau (south of a line running East and West through the Southern limits of Big Sandy), Daniels, Fergus, Glacier (excluding Glacier National Park), Garfield, Judith-Basin, Lewis and Clark, (Northern portion from a line running East and West through the northern limits of Craig), McCone, Phillips, Pondera, Petroleum, Richland, Roosevelt, Sheridan, Teton, Toole, Valley and Wheatland (Northern area from a line running East and West thru the southern limits of Harlowtown) Counties					
Brush, Preparatory work, Pot tender, Parking lot Striping and related work, Roller up to 9 inches	$10.62	.56	.40		1%
Paperhanger, Brush on steel	11.12	.56	.40		1%
Water and Sandblasting, Application of cold tar products, Epoxies Polyurethanes and acid resistant paints, Spraying and airless spray	12.87	.56	.40		1%
Roller over 9" long	14.22	.56	.40		1%
Taper	11.02	.56	.40		1%
Machine Taper	12.27	.56	.40		1%
Deer Lodge County and the Southern part of Granite County from a line east-west through the Southern limits of Phillipsburg					
Painters	9.02				
Perfataper	9.27				
Paint mitts	9.52				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (Cont'd)					
Application of cold tar products, epoxies, polyurethanes and acid resistant paints; Water sandblasting and steam cleaning; Stacks and steeples; Brushing of steel; Spraying and airless spraying; Work over 30 feet	$11.80				
Broadwater, Gallatin, Jefferson (Northern area from a line running east and west five miles south of the Southern City limits of Boulder), Lewis and Clark (Southern portion from a line running east and west thru the Southern limits of Craig), Meagher, Park, Powell (Southern area from a line running east and west through the Southern City limits of Helmsville)					
Brush, Preparatory work, Pot Tender, Parking Lot striping and related work	9.27	.56	.40		1%
Spraying & Airless Spray, Sandblasting, Waterblasting	11.52	.56	.40		1%
Blaine, Hill, Liberty and Chouteau (North of the Southern limits of the City of Big Sandy) Counties	8.40				
Flathead, Granite (Northern area north limits of Phillipsburg), Lake (Southern area including City of Ronan), Lincoln, Mineral, Missoula, Powell (Northern area through south limits of Helmsville), Ravalli and Sanders Cos.	10.20	.44	.40		.04

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLASTERERS:					
Granite, Lake (Southern area, including the City of Pablo), Mineral, Missoula, Powell (Northern area including the City of Helmsville), Ravalli and Sanders (south portion, including the City of Paradise), Counties	$ 9.50	.75	.35		
Beaverhead, Deer Lodge, Jefferson (Southern area, including the Town of Wickes), Madison, Powell (South of a line running E-W north of the Town of Deer Lodge) and Silver Bow Counties	8.95	.50	.25	1.00	
PLUMBERS:					
Flathead, Lake, Lincoln, Mineral, Missoula and Sanders Counties	12.93	.65	.70		.10
Blaine, Cascade, Chouteau, Fergus, Glacier, Hill, Judith-Basin, Liberty, McCone, Meagher, Phillips, Pondera, Roosevelt, Teton, Toole and Valley Cos.	13.85	.75	1.10		.15
Beaverhead, Broadwater, Deer Lodge, Gallatin, Granite, Jefferson, Lewis and Clark, Madison, Park, Powell, Silver Bow and Sweet Grass Counties	12.75	.70	.85		.10
Big Horn, Carbon, Carter, Custer, Daniels, Dawson, Fallon, Garfield, Golden Valley, Musselshell, Petroleum, Powder River, Prairie, Richland, Rosebud, Sheridan, Stillwater, Treasure, Wheatland, Wibaux and Yellowstone Counties	11.25	.40	.80		.10

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Golden Valley, Musselshell, Powder River, Prairie, Richland, Rosebud, Stillwater, Treasure, Wibaux and Yellowstone Counties	$ 8.79		.25		
Blaine, Cascade, Chouteau, Daniels, Fergus, Garfield, Glacier, Hill, Judith-Basin, Liberty, McCone, Petroleum, Phillips, Pondera, Roosevelt, Sheridan, Teton, Toole and Valley Counties	9.20				
Deer Lodge, Powell and Silver Bow Counties	8.85	.60	.60	.75	
Flathead, Granite, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders Counties	8.49	.60			.01
Broadwater, Gallatin, Meagher, Park, Sweet Grass, Lewis and Clark, Beaverhead, Jefferson, Madison and Wheatland Counties	9.25	.55			
SHEET METAL WORKERS:					
Broadwater, Jefferson (including North half of the City of Boulder), Lewis and Clark and Meagher Counties	10.31	.77	.25		.10
Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders Counties	10.23	.82	.25		.10
Big Horn, Carbon, Carter, Duster, Daniels, Dawson, Fallon, Fergus, Gallatin, Garfield, Golden Valley, McCone, Musselshell, Petroleum, Phillips, Powder River, Park, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, Treasure and Yellowstone Counties	10.805	.68	3%+.725		.23

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SHEET METAL WORKERS: (Cont'd)					
Blaine, Cascade, Chouteau, Glacier, Hill, Judith-Basin, Liberty, Pondera, Teton and Toole Counties	$ 11.43	.66	.25		.08
Beaverhead, Deer Lodge, Granite, Jefferson (S½), Madison, Powell, and Silver Bow Cos.	12.27	.44	.44		.03
SPRINKLER FITTERS	11.25	.65	.95		.08
TERRAZZO WORKERS & TILE SETTERS:					
Broadwater, Lewis and Clark, Meagher and Jefferson (Northern area north of Boulder Hill) Counties	11.60	.60	.30		.05
Big Horn, Carbon, Carter, Custer, Dawson, Fallon, McCone, Powder River, Prairie, Richland, Rosebud, Sweet Grass, Stillwater, Treasure, Wibaux and Yellowstone Counties	11.20		.35		.02
Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders Counties	11.55	.60	.55		.05
Gallatin and Park Counties	10.05				
Cascade, Chouteau, Glacier, Pondera and Teton Counties	9.85	.70	.75		

FOOTNOTE:

a. Employer contributes 8% of basic hourly rate for 5 years' service and 6% basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. Six Paid Holidays: A through F

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

LABORERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Beaverhead, Deer Lodge, Madison, Powell, Silver Bow and that portion of Jefferson County within the territorial limits of District No. 2					
Group 1	$8.21	.60	.50		.05
Group 2	8.96	.60	.50		.05
Group 3	8.12	.60	.50		.05
Group 4	8.46	.60	.50		.05
Group 5	8.06	.60	.50		.05
Group 6	8.18	.60	.50		.05
Group 7	8.26	.60	.50		.05
Group 8	8.56	.60	.50		.05
Group 9	8.08	.60	.50		.05
Broadwater, Lewis & Clark Meagher, North half of Jefferson County including the City of Boulder that portion of Powell County lying east of a north-south line at west edge of the Town of Elliston					
Group 1	8.64	.60	.50		.05
Group 2	8.39	.60	.50		.05
Group 3	8.55	.60	.50		.05
Group 4	8.89	.60	.50		.05
Group 5	8.49	.60	.50		.05
Group 6	8.61	.60	.50		.05
Group 7	8.68	.60	.50		.05
Group 8	8.99	.60	.50		.05
Broadwater (that portion lying south of an east-west line north of the City of Tosten), Gallatin, Madison (that portion lying east of the Gravely Mountain Range), Park, Sweetgrass & Wheatland Cos.					
Group 1	8.38	.60	.50		.05
Group 2	8.13	.60	.50		.05
Group 3	8.29	.60	.50		.05
Group 4	8.63	.60	.50		.05
Group 5	8.23	.60	.50		.05
Group 6	8.35	.60	.50		.05
Group 7	8.42	.60	.50		.05
Group 8	8.73	.60	.50		.05

LABORERS

Beaverhead, Deer Lodge, Madison, Powell, Silver Bow and that portion of Jefferson County within the Territorial limits of District No. 2

Group 1: Asphalt raker; Concrete laborers (wet or dry); Bucket men and signalmen; Drills, air-tract, self-propelled; Cat or truck mounted air operated drills; Drills, air-tract, self-propelled mustang type and similar; Grade setter; High scaler; High pressure machine nozzleman; Power saw (falling); Sandblaster

Group 2: Axeman; Carpenter tender; Caisson worker (free air); Chuck tender and nipper (above ground); Cosmolene applying and removing; Dumpman (spotter); Fence erector and installer (includes the installation and erection of fences, guard rails, median rails, reference post, right-of-way markers and guide post); Form stripper; Form setter; General laborer; Crusher and batch plant Heater tender - not covered by joint board decision such as the radiant type of butane fire, without blowers or fans; Landscape laborer; Sandblaster tail hoseman; Pot tender; Scaleman; Sod cutter, hand operated (general laborers); Stake jumper for equipment; Tool checker, toolhouseman

Group 3: Burning bar; Curb machine; Dumpman (grademan); Pipelayer (all types); Laser equipment; Spike driver, single or dual or hand; Switchmen

Group 4: Cement Mason tender and hod carriers; Powderman

Group 5: Cement handlers; Concrete or asphalt saws; Hand faller; Nozzleman - air water; Gunite and placo machine; Pipe wrapper; Post hole digger (power auger); Riprapper

Group 6: Choker setter; Jackhammer; Pavement breaker; Wagon driller; Concrete vibrator; Mechanical tamper; Vibrating roller, hand steered and other power tools; Power saw (bucking); Power driven wheelbarrow; Rigger; Grout, concrete pumps and nozzleman

Group 7: Concrete vibrator (3" and over); Drills, air-tract with dual masts

Group 8: Core drill operator, welder, air arc, cutting torch

Group 9: Tar pot operator

LABORERS (Cont'd)

Broadwater, Lewis & Clark, Meagher, North half of Jefferson County including the City of Boulder that portion of Powell County lying east of a North-south line at west edge of the Town of Elliston

Group 1: Asphalt raker; Drillers; Air-tract, self-propelled; Cat or truck mounted air operated drills; Drills, air-tract, self-propelled mustang type and similar; Grade setter; High scaler; High pressure machine; Nozzleman; power saw (falling); Sandblaster

Group 2: Axeman; Carpenter tender; Car and truck loaders; Scissorman; Caisson workers (free air); Chuck tender and nipper (above ground); Concrete laborers (wet or dry); Bucketmen and signalmen; Cosmolene (applying and removing; Dumpman (spotter); Fence erector and installer (includes the installation and erection of fences, guard rails, median rails, reference post, right-of-way markers and guide post); Flagman; Form stripper; Form setter; General laborer, crusher and batch plant laborers; Heater tender - not covered by joint board decision - such as the radiant type of butane fire, without blowers or fans; Landscape laborer; Sandblaster tail hoseman; Pot tender; Scaleman; Sod cutter, hand operated (general laborers); Stake jumper for equipment; Tool checker, toolhouseman

Group 3: Burning bar; Curb machine; Dumpman (grademan); Pipelayer (all types); Laser equipment; Spike driver, signle or dual or hand; Switchmen

Group 4: Cement mason tender and hod carriers; Powderman

Group 5: Cement handlers; Concrete or asphalt saws, hand faller; Nozzleman - air water; Gunite and placo machine; Pipe wrapper; Post hole digger (power auger); Riprapper

Group 6: Choker setter; Jackhammer; Pavement breaker; Wagon driller; Concrete vibrator; Mechanical tamper; Vibrating roller, hand steered and other power tools; Power saw (bucking); Power driven wheelbarrow; Rigger; Tar pot operator; Grout, concrete and nozzleman

Group 7: Concrete vibartor (3" and over), drills, air track with dual masts

Group 8: Core drill operator; Welder, air arc, cutting torch

LABORERS (Cont'd)

Broadwater (that portion lying south of an east-west line north of the City of Tosten), Gallatin, Madison (that portion lying east of the Gravely Mountain Range), Park and Wheatland County

Group 1: Asphalt raker; Drills, air-tract, self-propelled; Car or truck mounted air operated drills; Drills, air-tract, self-propelled mustang type and similar; Grade setter; High scaler; High pressure machine Nozzleman; Power saw (falling); Sandblaster

Group 2: Axeman; Carpenter tender; Car and truck loader; Scissorman; Caisson workers (free air); Chuck tender and nipper (above ground); Cosmolene applying and removing; Dumpman (spotter); Fence erector and installer (includes the installation and erection of fences, guard rails, median rails, reference post, right-of-way markers and guide post); Flagman; Form stripper; Form setter; General laborer; Crusher and batch plant laborers; Heater tender - not covered by joint board decision - such as the radiant type of butane fire, without blowers or fans; Landscape laborer; Sandblaster tail hoseman; Pot tender; Scaleman; Sod cutter, hand operated; Stake jumper for equipment; Tool checker, toolhouseman

Group 3: Burning bar; Curb machine; Dumpman (grademan); Pipelayer (all types); Laser equipment; Powderman helper; Spike driver, single or dual or hand; Switchmen

Group 4: Cement mason tender and hod carriers; Powderman

Group 5: Cement handlers; Concrete or asphalt saws, hand faller; Nozzleman - air water; Mixer operator, gunite and placo machine; Pipe wrapper; Post hole digger (power auger); Riprapper

Group 6: Choker setter; Jackhammer; Pavement breaker; Wagon driller; Concrete vibrator; Mechanical tamper; Vibrating roller, hand steered and other power tools; Power saw (bucking); Power driven wheelbarrow; Rigger; Tar pot operator; Grout; Concrete pump and nozzleman

Group 7: Concrete vibrator (3" and over), drill, air tract with dual masts

Group 8: Core drill operator; Welder, air arc, cutting torch

LABORERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Flathead, Glacier National Park, Lincoln and that area of Lake and Sanders Counties lying 5 miles north of the 5th Parallel					
Group 1	$8.62	.60	.50		.05
Group 2	8.79	.60	.50		.05
Group 3	8.96	.60	.50		.05
Carter, Custer, Dawson, Fallon, Powder River, Prairie and Wibaux Counties					
Group 1	7.55	.55	.45		.05
Group 2	7.77	.55	.45		.05
Group 3	7.80	.55	.45		.05
Big Horn, Carbon, Golden Valley, Musselshell, Rosebud, Stillwater, Treasure and Yellowstone Counties					
Group 1	7.70	.55	.45		.05
Group 2	7.92	.55	.45		.05
Group 3	7.95	.55	.45		.05
Granite, Lake (Southern area), Mineral, Missoula, Ravaili and Sanders (Southern area) Counties					
Group 1	8.565	.60	.50		.05
Group 2	8.815	.60	.50		.05
Group 3	8.965	.60	.50		.05

LABORERS (Cont'd)

Flathead, Glacier National Park, Lincoln, and that portion of Lake and Sanders Counties lying 5 miles north of the 5th Parallel

Group 1: General laborers; Scaleman; Form strippers; Car and truck loaders

Group 2: Concrete handlers, conveying and handling concrete; Nozzlemen (air or water); Sand blast tail hose man; Power driven Wheelbarrow; Rodder and spreader; Form setters (paving); Bucketman; Small air tool operators, including blow pipes and small power tool operators; Chuck tenders; Asphalt rakers; Dumpman; Rip rapping; Pipe wrapper; Pot tender; Concrete pumper hoseman; Jackhammer; Pavement breaker; Vibrator; Mechanical tamper and other air tools; Cement handlers (sack or bulk); Burning bar

Group 3: Pipe layers (non-metallic); Metal culvert pipe layers; Mason and plaster tenders; Cement finisher tender; Small concrete mixer operator; Shoring and lagging open ditches; Powderman; Drills, air-trac, wagon drill, cat or truck mounted air operated drills, Sand blaster (wet or dry); Gunite Nozzleman; Barco tamper

Carter, Custer, Dawson, Fallon, Powder River, Prairie and Wibaux Counties

Group 1: General laborers

Group 2: Jackhammer operator; Mechanical tampers; Pipelayers (all types); Pavement breakers; Pneumatic and electric tools operator; Pipewrappers

Group 3: Mason and plasterer's tenders

Big Horn, Carbon, Golden Valley, Musselshell, Rosebud, Stillwater, Treasure and Yellowstone Counties

Group 1: General laborers; Concrete laborers; Chuck tenders and nippers

Group 2: Cement handler (sack or bulk); Jackhammer operator; Mortarman; Pipelayer (all types); Pipewrapper; Primerhouseman

Group 3: Mason and Plasterer's tenders

Granite, Lake (southern area), Mineral, Missoula, Ravalli and Sanders (southern area) Counties

Group 1: Laborers

Group 2: All power tools; Creosote workers; Jackhammer; Marble and tile setters' tenders; Pipelayers; Pipewrappers; Pot tenders; Small concrete Mixers; Vibrators

Group 3: Cement masons and plasterer's tenders; Mason tenders; Pumpcrete, gunnite and plaster pump

LABORERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Cascade, Chouteau, Fergus, Glacier, Judith-Basin, Pondera, Teton and Toole Counties					
Group 1	$ 8.85	.60	.50		.05
Group 2	8.60	.60	.50		.05
Group 3	8.76	.60	.50		.05
Group 4	9.10	.60	.50		.05
Group 5	8.70	.60	.50		.05
Group 6	8.82	.60	.50		.05
Group 7	8.89	.60	.50		.05
Group 8	9.20				.05
Blaine, Daniels, Garfield, Hill, Liberty, McCone, Petroleum, Phillips, Richland, Roosevelt, Sheridan and Valley Cos.					
Group 1	8.60	.60	.50		.03
Group 2	8.70	.60	.50		.03
Group 3	8.85	.60	.50		.03
Group 4	9.00	.60	.50		.03
Group 5	9.10	.60	.50		.03
Group 6	9.35	.60	.50		.03

Cascade, Chouteau, Fergus, Glacier (excluding Glacier National Park, Judith-Basin, Pondera, Teton and Toole Counties

Group 1: General and building laborers' and Scale Men; Concrete Laborers (wet or dry breaking of concrete requiring sledge hammer); Dumpman (spotter) and Flagman; Fence Erectors and Installers, including the installation and erection of fences, guardrials, mediam rails, reference posts, guide posts and right-of-way markers; Vibrators, under 1½" in diameter; Small Air Tools such as Chippers, Clay Spades, etc.; Stake Setters; Stake Jumper, Rodder and Spreader; Form Stripper; Caisson Workers (free air); Vibrator 1½" to 2½" in diameter

Group 2: Concrete or Asphalt Saws; Creosote material handler; Curb Machine form setter (slab steel forms); Diamond drills up through 3 inches in diameter; Jackhammer, pavement breaker, Wagon driller, cat or truck mounted air operated drills, and other air tools; Diesel Tamper, Wacker, Jay, Turtle, Pogo Sticks, etc., Mechanical tampers; Nozzlemen, air and water, gunite and Placo, Machine (grout); Pipe layer (all types); Power saw (bucking and falling); Power driven wheelbarrow; Chuck Tenders, Muckers and Nippers, Primeman

Group 3: Sand Blaster

LABORERS (Cont'd)

Cascade, Chouteau, Fergus, Glacier (excluding Glacier National Park, Judith-Basin, Pondera, Teton and Toole Counties

Group 4: Vibrators, 2½" to 4" in diameter; Brick tenders; Dumpmen (grade); Small Concrete Mixers

Group 5: Diamond drills up through 6 inches in diameter; Hod Carriers and plaster tenders (1-one mixerman per crew); Asphalt raker and tamper; High scaler; Concrete nozzleman; Miners; Barco Tamper; Air-trac

Group 6: Diamond drill, over 6 inches in diameter; Self-propelled drills, with the exception of size differential, such as Mustang drills or twin stack drills; Core drill operator; Laser equipment and tools, excluding transit; Powderman

Group 7: Concrete Vibrator, 4" and over

Blaine, Daniels, Garfield, Hill, Liberty, McCone, Petroleum, Phillips, Richland, Roosevelt, Sheridan and Valley Counties

Group 1: General and building laborers' and scale men; Form stripper and Carpenter tender; Car and truck loaders; Concrete laborers (wet or dry breaking of concrete requiring sledge hammer); Dumpmen (spotter and flagman); Small power tools; Chippers, Clay Spaders, Pogo stick, etc.; Fence erectors and installers, installation and erection of fences, guard rails, median rails, reference posts, guide posts, and right-of-way markers

Group 2: Dumpmen (grade)

Group 3: Power driven concrete buggies or power driven wheelbarrows; Pipe layers (non-metallic); Sandblaster, Concrete nozzleman, Place operator, Jackhammer, Pavement breaker, Vibrator (2½ inches and over) Barco Tamper, Vibrator Turtle; Small concrete mixers, concrete saw; Nozzleman (air and water); Sandblaster, tailhoseman, pot tender, tar pot tender; Gunite nozzleman; Caisson workers (free air); Tunnels and shafts (free air); Bull gang, pot tender; Chuck tender, muckers and nippers, Primerhouseman

Group 4: Brick tenders handling bricks and blocks only)

Group 5: Hod carriers and plaster tenders (men carrying motor either by hod, pail or barrow); High scaler; Wagon driller, cat or truck mounted air operated drills; Asphalt rakers and tampers, Gunite, Form Setter (slab steel forms); Stake setter, Stake jumper, Rodder and spreader, Grademan; Concrete nozzleman; Miners

Group 6: Powdermen; Laser Tools and Equipment

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
A-Frame Truck Crane, Winch Truck and similar	11.30	.75	.65	.45	.07
Air Compressor, single	10.99	.75	.65	.45	.07
Air Compressor, two or more	11.16	.75	.65	.45	.07
Air Doctor	11.46	.75	.65	.45	.07
Asphalt Paving Machine	11.46	.75	.65	.45	.07
Asphalt Paving Machine Screed	11.46	.75	.65	.45	.07
Automatic Finegrader, Gurries and other similar types	11.59	.75	.65	.45	.07
Belt Finish Machine	11.16	.75	.65	.45	.07
Bit Grinder	11.46	.75	.65	.45	.07
Bituminous Mixer Paving, Travel Plant	11.46	.75	.65	.45	.07
Boring Machine (small), Jeep, Pickup or Farm Tractor mounted	11.05	.75	.65	.45	.07
Boring Machine (large)	11.46	.75	.65	.45	.07
Broom, Self-propelled	11.13	.75	.65	.45	.07
Cableway Highline	11.97	.75	.65	.45	.07
Cement Silo	11.25	.75	.65	.45	.07
Central Mixing Plants, Concrete dam and stationary	11.71	.75	.65	.45	.07
Chain Bucket Loader	11.18	.75	.65	.45	.07
Chip or Gravel Spreader, Self-propelled	11.18	.75	.65	.45	.07
Concrete Batch Plant, one and two mixers	11.46	.75	.65	.45	.07
Concrete Batch plant, three and four mixers	11.66	.75	.65	.45	.07
Concrete Batch Plant, five mixers and over	11.86	.75	.65	.45	.07
Concrete Batch Plant Oiler, up to and including two mixers	10.98	.75	.65	.45	.07
Concrete Batch Plant Oiler, three mixers and over	11.29	.75	.65	.45	.07
Concrete Bucket Dispatcher	11.46	.75	.65	.45	.07
Concrete Curing Machine	11.46	.75	.65	.45	.07
Concrete Finish Machine Paving	11.46	.75	.65	.45	.07
Concrete Float-Spreader	11.46	.75	.65	.45	.07
Concrete Mixer, three bags and under	11.05	.75	.65	.45	.07

POWER EQUIPMENT OPERATORS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Concrete Mixer, four bags and under	11.22	.75	.65	.45	.07
Concrete Power Saw, self-propelled	11.46	.75	.65	.45	.07
Concrete Travel Batcher	11.46	.75	.65	.45	.07
Concrete Conveyor under 40 ft.	11.04	.75	.65	.45	.07
Concrete Conveyor over 40 ft.	11.79	.75	.65	.45	.07
Concrete Pump	11.79	.75	.65	.45	.07
Conveyor Loader Operator, up to and including 42' belt	11.04	.75	.65	.45	.07
Conveyor Loader Operator over 42" belt	11.16	.75	.65	.45	.07
Crane, to and including 80' boom	11.62	.75	.65	.45	.07
Crane, 81' to 130' boom	11.77	.75	.65	.45	.07
Crane, 131' to 150' boom	11.82	.75	.65	.45	.07
Crane, 151' boom and over	11.87	.75	.65	.45	.07
Crane Oiler	11.03	.75	.65	.45	.07
Crane with jibs an additional $.15 per hour					
Crusher	11.46	.75	.65	.45	.07
Crusher Oiler	10.95	.75	.65	.45	.07
Crusher Conveyor, when required	10.92	.75	.65	.45	.07
Distributor	11.46	.75	.65	.45	.07
DW 10, 15, or 20 Tractor pulling Roller	11.18	.75	.65	.45	.07
Electric Overhead Cranes	11.64	.75	.65	.45	.07
Elevating Grader	11.46	.75	.65	.45	.07
Farm type Tractor, up to and including 50 HP engine	10.92	.75	.65	.45	.07
Farm type Tractor, over 50 HP engine	11.00	.75	.65	.45	.07
Field Equipment Serviceman	11.38	.75	.65	.45	.07
Fireman	11.05	.75	.65	.45	.07
Forklift, on construction job site	11.27	.75	.65	.45	.07
Form Grader	11.23	.75	.65	.45	.07
Gradall	11.46	.75	.65	.45	.07
Grade Setter	10.92	.75	.65	.45	.07

POWER EQUIPMENT OPERATORS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Heavy Duty Drill, all types	11.46	.75	.65	.45	.07
Herman-Nelson Heaters and similar type	11.00	.75	.65	.45	.07
Hoist, two or more drums	11.46	.75	.65	.45	.07
Helicopter Hoist	11.96	.75	.65	.45	.07
Hot Plant	11.46	.75	.65	.45	.07
Hot Plant Fireman, when in operation	11.46	.75	.65	.45	.07
Hot plant Oiler, 100 ton per hour or over	10.95	.75	.65	.45	.07
Hydra lift and similar types	11.36	.75	.65	.45	.07
Indsutrial Locomotive all classes	11.46	.75	.65	.45	.07
Mechanic and/or Welder on job	11.56	.75	.65	.45	.07
Mixermobile	11.54	.75	.65	.45	.07
Motor Patrol	11.59	.75	.65	.45	.07
Mountain Logger or similar type	11.46	.75	.65	.45	.07
Mucking Machine	11.46	.75	.65	.45	.07
Oiler-Driver, Rubber Tired Cranes	11.03	.75	.65	.45	.07
Oilers, other than shovels and cranes	10.95	.75	.65	.45	.07
Oiler, hoist house, dams	11.36	.75	.65	.45	.07
Pavement Breaker, Emsco and similar	11.46	.75	.65	.45	.07
Paving and Mixing Machine	11.59	.75	.65	.45	.07
Power Auger, Large Truck or Tractor mounted and Punch	11.46	.75	.65	.45	.07
Power Mixer, single or double drum	11.46	.75	.65	.45	.07
Power Saw, multiple cut, self-propelled	11.46	.75	.65	.45	.07
Pumpcrete or Grout Machine	11.46	.75	.65	.45	.07
Pumpman	10.99	.75	.65	.45	.07
Push Tractor	11.46	.75	.65	.45	.07

POWER EQUIPMENT OPERATORS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Quad Cat	11.76	.75	.65	.45	.07
Quad Loader and similar type	12.04	.75	.65	.45	.07
Radiator Repairman	11.27	.75	.65	.45	.07
Raygo Gaint	12.04	.75	.65	.45	.07
Refrigeration Plant	11.46	.75	.65	.45	.07
Retort	11.05	.75	.65	.45	.07
Roller, on blade or hot mix oil paving	11.46	.75	.65	.45	.07
Roller, on other blade or hot Mix paving	11.16	.75	.65	.45	.07
Roller, 25 ton or over	11.46	.75	.65	.45	.07
Ross and similar type carriers, on construction site	11.46	.75	.65	.45	.07
Rubber-tried Dozer	11.46	.75	.65	.45	.07
Rubber-tired Front End Loader, 1 yard and under	11.17	.75	.65	.45	.07
Rubber-tired Front End Loader, 1 yard to and including 3 yds.	11.46	.75	.65	.45	.07
Rubber-tired Front End Loader, over 3 yards to and including 5 yards	11.58	.75	.65	.45	.07
Rubber-tired Front End Loader, over 5 yards to and including 10 yards	11.68	.75	.65	.45	.07
Rubber-tired Front End Loader, over 10 yards to and including 15 yards	11.78	.75	.65	.45	.07
Rubber-tired Front End Loader, over 15 yards	11.88	.75	.65	.45	.07
Scraper, DW 15, 20, 21 and similar type if power unit is not used	11.46	.75	.65	.45	.07
Scraper, single or twin engine pulling belly dump trailer	11.84	.75	.65	.45	.07
Scraper, single engine	11.59	.75	.65	.45	.07
Scraper, twin engine	11.69	.75	.65	.45	.07
Scraper, tandem engine or 3 engine	11.95	.75	.65	.45	.07
Self-propelled Sheepfoot and similar type	11.46	.75	.65	.45	.07

POWER EQUIPMENT OPERATORS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Shovels, including all attachments, under 1 cu. yd.	11.46	.75	.65	.45	.07
Shovels, including all attachments, 1 cu. yd. to and including 3 cu. yds.	11.64	.75	.65	.45	.07
Shovels, including all attachments, over 3 cu. yds. to and including 5 cu. yds.	11.91	.75	.65	.45	.07
Shovels, including all attachments, over 5 cu. yds.	12.04	.75	.65	.45	.07
Shovel Oiler, 3 yards and under	10.95	.75	.65	.45	.07
Shovel Oiler, over 3 cu. yds.	11.36	.75	.65	.45	.07
Slip Form Paver	11.59	.75	.65	.45	.07
Stiff Leg Derrick and Guy Derrick	11.91	.75	.65	.45	.07
Track-type Front End Loaders, up to and including 5 cu. yds.	11.46	.75	.65	.45	.07
Track-type Front End Loaders, over 5 cu. yds. to and including 10 cu. yds.	11.69	.75	.65	.45	.07
Track-type Front End Loaders, over 10 cu. yds. to and including 15 cu. yds.	11.79	.75	.65	.45	.07
Track-type Front End Loaders, over 15 cu. yds.	11.89	.75	.65	.45	.07
Track-type Tractor w/wo attachments	11.46	.75	.65	.45	.07
Track-type Tractor, on Euclid Loader	11.64	.75	.65	.45	.07
Trenching Machine	11.46	.75	.65	.45	.07
Turnhead Conveyor, or Head Tower on Batch Plant	11.46	.75	.65	.45	.07
Wagner Roller and similar type	11.46	.75	.65	.45	.07
Whirley Crane	11.99	.75	.65	.45	.07
Whirley Crane Oiler	11.36	.75	.65	.45	.07
Water Pull when used for compaction	11.46	.75	.65	.45	.07
Washing and Screening Plant	11.46	.75	.65	.45	.07
Washing and Screening Plant Oiler	10.95	.75	.65	.45	.07
Yo-Yo Cat, both ends	11.66	.75	.65	.45	.07

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Statewide, except Gallatin, Park, Sweet Grass, Broadwater (south of U. S. Highway #12) Counties					
COMBINATION TRUCK; Concrete Mixer and Transit Mixer:					
To and including 4 cu. yds.	$10.34	.75	.77		
Over 4 cu. yds. to and including 6 cu. yds.	10.42	.75	.77		
Over 6 cu. yds. to and including 8 cu. yds.	10.47	.75	.77		
Over 8 cu. yds. to and including 10 cu. yds.	10.58	.75	.77		
Over 10 cu. yds. - additional $.08 per hour each additional 2 cu. yds. increment					
DISTRIBUTOR DRIVER	10.32	.75	.77		
DRY BATCH TRUCKS:					
3 Batch or under	10.09	.75	.77		
Over 3 Batch to and including 5 Batch	10.22	.75	.77		
Over 5 Batch to and including 10 Batch	10.35	.75	.77		
Over 10 Batch to and including 15 Batch	10.54	.75	.77		
Over 15 Batch - addtional $.15 per hour each additional 5 Batch increment					
PICKUP DRIVER, HAULING MATERIALS	10.19	.75	.77		
DUMPMAN, GRAVEL SPREADER BOX OPERATOR; Pilot Car Driver, Teamsters	10.09	.75	.77		

TRUCK DRIVERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DUMP TRUCKS AND SIMILAR EQUIPMENT, DW 20, DW 21, or EUCLID TRACTORS, Pulling P.R. 21 or similar Dump Wagons:					
Water Level Capacity, including Sideboards					
7 cu. yds. or less	10.09	.75	.77		
Over 7 cu. yds. to and including 10 cu. yds.	10.22	.75	.77		
Over 10 cu. yds. to and including 15 cu. yds.	10.40	.75	.77		
Over 15 cu. yds. to and including 20 cu. yds.	10.52	.75	.77		
Over 20 cu. yds. to and including 25 cu. yds.	10.58	.75	.77		
Over 25 cu. yds. to and including 30 cu. yds.	10.64	.75	.77		
Over 30 cu. yds. to and including 35 cu. yds.	10.70	.75	.77		
Over 35 cu. yds. to and including 40 cu. yds.	10.76	.75	.77		
Over 40 cu. yds. to and including 45 cu. yds.	10.82	.75	.77		
Over 45 cu. yds. - additional $.10 per hour each additional 5 cu. yds. increment					
DUMPSTERS	10.22	.75	.77		
SERVICEMEN	10.93	.75	.77		
POWER TRUCK DRIVER (bulk unloader type)	10.27	.75	.77		
FLAT TRUCKS:					
To and including 3 tons	10.24	.75	.77		
over 3 tons Factory rating	10.44	.75	.77		

TRUCK DRIVERS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
SERVICE TRUCK DRIVERS; FUEL TRUCK DRIVERS; TIREMEN	$10.68	.75	.77		
LOWBOYS, FOUR-WHEEL TRAILER, FLOAT SEMI-TRAILER	10.44	.75	.77		
LUMBER CARRIERS, LIFT TRUCKS AND FORK LIFTS	10.34	.75	.77		
POWER BROOM	10.18	.75	.77		
WATER TANK DRIVERS, PETROLEUM PRODUCTS DRIVERS:					
2,500 gallons and under	10.09	.75	.77		
Over 2,500 gallons to and including 4,500 gallons	10.38	.75	.77		
Over 4,500 gallons to and including 6,000 gallons	10.58	.75	.77		
Over 6,000 gallons to and including 8,000 gallons	10.64	.75	.77		
Over 8,000 gallons to and including 10,000 gallons	10.72	.75	.77		
Over 10,000 gallons - additional $.10 per hour each additional 2,000 gallons increment					
Winch, A-frame, Swedish Crane, Hydra-lift, Groutcrete, and Combination mulching, seeding and fertilizing	10.34	.75	.77		
TRUCK MECHANIC	11.08	.75	.77		

MONTANA LINE CONSTRUCTION

LINE CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Flathead, Lake and Lincoln Counties					
All construction of "H" fixtures and steel tower transmission lines with capacity of 69 K.V. voltages and over, Switch yard and substation rated at 5000 K.V.A. and all work not covered by schedule "B".					
SCHEDULE "B"					
Lineman	$11.11	.45	3%+.25		1/2%
Cable Splicer	12.36	.45	3%+.25		1/2%
Powderman, Jackhammer, Compressorman	8.21	.45	3%+.25		1/2%
Line Equipment Operators	9.46	.45	3%+.25		1/2%
Groundman	7.70	.45	3%+.25		1/2%
All work for power utilities except work covered under Schedule "A", all highway lighting, street lighting and motor traffic controlling					
SCHEDULE "B"					
Lineman	9.93	.45	3%+.25		1/2%
Cable Splicers	11.04	.45	3%+.25		1/2%
Pole Sprayer	9.81	.45	3%+.25		1/2%
Line Equipment Operators	8.61	.45	3%+.25		1/2%
Powderman, Jackhammer, Compressorman	7.50	.45	3%+.25		1/2%
Groundman	7.04	.45	3%+.25		1/2%
Tree Trimmer	10.20	.45	3%+.25		1/2%

DECISION NO. MT79-5129 Page 29

MONTANA LINE CONSTRUCTION

LINE CONSTRUCTION (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Remaining Counties					
Jobs over 69,000 volts:					
Lineman, Pole Sprayer	10.10	.45	3%+.25		1/2%
Cable Splicer	10.60	.45	3%+.25		1/2%
Line Equipment Operator; Powderman	9.05	.45	3%+.25		1/2%
Groundman	7.35	.45	3%+.25		1/2%
Jobs 69,000 volts or less:					

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

SUPERSEDEAS DECISION

STATE: North Carolina COUNTIES: *See below
DECISION NUMBER: NC79-1107 DATE: Date of Publication
Supersedes Decision No. NC77-1145 dated November 15, 1977 in 42 FR 59719.
DESCRIPTION OF WORK: Residential Construction Projects (does not include single family homes and garden type, apartments up to and including 4 stories)

*Counties: Bladen, Columbus, Richmond, Robeson, and Scotland Counties

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air conditioning mechanics	4.81				
Bricklayers	6.00				
Carpenters	4.73				
Cement masons	5.65				
Drywall finisher	4.00				
Drywall hanger	5.00				
Electricians	4.59				
Insulation installer	3.53				
Laborers:					
Laborers	3.22				
Mason tenders	3.30				
Pipelayers	3.25				
Asphalt raker	4.25				
Painters, brush	3.71				
Painters, spray	4.00				
Paperhangers	3.25				
Plumbers & fitters	4.93				
Roofers	5.00				
Sheet metal workers	4.55				
Soft floor layers	5.29				
Truck drivers	3.22				
POWER EQUIPMENT OPERATORS:					
Backhoe	4.69				
Bulldozer	5.16				
Grader	4.25				
Loader	4.33				
Paver	3.72				
Roller	3.42				
Screed	4.25				
Tractor	5.25				

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Oklahoma COUNTIES: Latimer, Leflore, Haskell, Sequoyah and Pushmataha

DECISION NO. OK79-4076 DATE: Date of Publication

Supersedes Decision No. OK78-4057 dated June 9, 1978 in 43 FR 25275

DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	11.90	.55	.85		.015
BOILERMAKERS	10.55	.80	1.00		.02
BRICKLAYERS-STONEMASONS	11.70	.60	.40		.05
CARPENTERS:					
AREA I					
Carpenters	8.00	.45	.40		
Millwrights & Piledrivermen	8.80	.45	.40		
AREA II					
Carpenters	8.52	.45	.35		.05
Millwrights & Piledrivermen	9.28	.45	.35		.05
AREA III					
Carpenters	9.53	.55	.75		.08
Millwrights & Piledrivermen	10.03	.55	.75		.08
AREA IV					
Carpenters	8.50		.10		-
Millwrights & Piledrivermen	9.17		.10		

CARPENTERS, MILLWRIGHTS & PILEDRIVERMEN AREA DEFINITIONS

AREA I
That portion of Leflore County south of the northern boundary of the Ouachita National Forest; Latimer County and that portion of Haskell County south of Highway 9

AREA II
That portion of Leflore County east of Highway 82 with the line extending south of the Highway 82 to Highway 9 and the northern portion of Leflore County north of the Ouachita National Forest; Sequoyah County east of Highway 82 excluding the city of Vivan.

AREA III
Remainder of Haskell and Sequoyah Counties

AREA IV
Pushmataha County

CEMENT MASONS:					
Leflore County	8.67	.25			
Pushmataha, Latimer & Haskell Co.	8.00				
Sequoyah County	9.90				
ELECTTRICIANS:					
AREA I					
Electricians	11.45	.35	3%+5.5%		½%
Cable splicers	11.70	.35	3%+5.5%		½%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS (CONT'D)					
AREA II					
Electricians	11.70	.60	3%		½%
Cable splicers	12.10	.60	3%		½%
AREA III					
Electricians	12.10	.60	3%		½%
Cable splicers	12.50	.60	3%		½%

ELECTRICIANS-CABLE SPLICERS AREA DEFINITIONS

AREA I
Braden, Pocola and Spiro Townships only in Leflore County; That part of Sequoyah County east of Brent, Prices, Chapel, Rocky Mount and Sallisaw.

AREA II
That part of Sequoyah County within a five mile radius of the Post Office in Sallesaw.

AREA III
Remainder of Leflore County; Remainder of Sequoyah County; All of Haskell, Pushmataha and Latimer Counties.

GLAZIERS	9.16	.50	.30		.01
IRONWORKERS	11.30	.75	.65		.12
LABORERS: (Haskell, Leflore and Sequoyah Counties):					
Area I	6.85	.25	.40		
Area II	7.15	.25	.40		
Area III	7.35	.25	.40		
Area IV	7.35	.25	.40		
LABORERS: (Latimer & Pushmataha Counties):					
Area I	6.45	.25	.40		
Area II	6.75	.25	.40		
Area III	6.95	.25	.40		
Area IV	6.95	.25	.40		

LABORERS CLASSIFICATION DEFINITION

AREA I - Unskilled laborers
AREA II - Semi-skilled laborers, mason tenders, mortar mixers, air tool operator, (jackhammer, vibrator), pipelayers, concrete and clay, sewer drain, and plasterer tenders.
AREA III - Wagon drill operator
AREA IV - Powderman or blasterers

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:					
Lineman	10.60		3%		½%
Cable splicers	11.29		3%		½%
Hole digger operator	9.62		3%		½%
Heavy equipment operator (or pole cat equivalent)	9.62		3%		½%
Line truck driver (winch op.)	8.71		3%		½%
Jackhammer man	7.93		3%		½%
Powderman	9.62		3%		½%
Groundman	7.07		3%		½%
Truck driver (flat bed, ton & half and under)	7.55		3%		½%
MARBLE SETTERS	10.97	.70	.40		
TILE & TERRAZZO WORKERS	10.97	.70	.40		
TILE & TERRAZZO FINISHERS:					
Experienced finishers	9.01	.70			-
Floor machine operator	9.14	.70			
Base machine operator	9.38	.70			
PAINTERS:					
Brush & roller	8.50		.40	.20	.07
Highwork and stage	8.90		.40	.20	.07
Sandblasting & spray painting	9.15		.40	.20	.07
Hot or bituminous	9.80		.40	.20	.07
Sheetrock power tools	8.85		.40	.20	.07
PLASTERERS:					
Leflore County	10.50				.02
Sequoyah County	10.15				.01
PLUMBERS & PIPEFITTERS:					
Pushmataha County	12.37	.60	.85		.10
Leflore, Sequoyah, Latimer & Haskell Counties	12.00	.55	.80		.15
ROOFERS	10.40	.60	.25		.04
SHEET METAL WORKERS	12.06	.60	.66		.10
SOFT FLOOR LAYERS	7.71		.45	.81+a	.03
SPRINKER FITTERS	12.54	.75	1.05		.08
TRUCK DRIVERS:					
Group 1	8.03				
Group 2	8.13				
Group 3	8.23				
Group 4	8.18				
Group 5	8.33				

TRUCK DRIVERS CLASSIFICATION DEFINITIONS

GROUP I - Pick-up 1½ tons, or 2½ yards and up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, stake bodies and buses

GROUP II - 3 tons or 4 yards and up to but not including 4 tons or 6 yards

GROUP III - 5 tons or 6 yards and over including heavy equipment such as pole trucks, winch trucks, euclids, Mississippi wagons, semi-dumps, turner pulls, or other heavy material moving equipment, tractor trailer drivers and similar equipment, such as tractors, ten wheelers

GROUP IV - Ready-mix concrete trucks up to but not including 3 yards

GROUP V - Ready-mix concrete trucks 3 yards and over

FOOTNOTES:

a. - PAID HOLIDAYS

A-New Years Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Group I	11.25	.45	.50		.12
Group II	11.00	.45	.50		.12
Group III	10.75	.45	.50		.12
Group IV	10.50	.45	.50		.12
Group V	10.25	.45	.50		.12
Group VI	10.00	.45	.50		.12
Group VII	9.75	.45	.50		.12
Group VIII	9.35	.45	.50		.12
Group IX	8.75	.45	.50		.12
Group X	8.75	.45	.50		.12
Group XI	8.75	.45	.50		.12

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP I - All crane type equipment with 250' of boom or over (including jib)

GROUP II - All crane type equipment with 200' of boom or over (including jib)

GROUP III - All crane type equipment with 150 - 200' of boom (including jib)

GROUP IV - All crane type equipment with 100 - 150' of boom (including jib), all tower cranes and all crane type equipment of 3 cu. yd. or more (as rated by mfg), sideboom (booms (30' & over), guy derrick

GROUP V - Heavy duty mechanic, welder, crane-hood & overhead monorail, whirley, panel board, batch plant operator, pile-driver engineer, dragline, shovel, clamshell, backhoe (3/4 yd & over); sideboom (under 30'), gradeall, hydro crane, cherry picker, hoist while operating 2 or more drums, hoists while doing stacks & chimney work (1 or 2 drums), power driven hole digger (with 30' and longer mast)

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS (CONT'D)

GROUP VI - Motor patrol (blade, fork lift (35' & over), dozer (engine h.p. 65 or over) fordson tractor or like equipment with hoe or loader equipment of ditcher, scraper type equipment, tournapull, DW 10, 15, 16, 20, 21 and similar rubber tired equipment, euclid, TS-24 and similar, loader operator or Hi-lift (engine h.p. 65 or over), asphalt lay machine, tail boom, conveyor-multiple, panel board control, powder driven hole digger with less than 30' mast, trenching machine, concrete pump-boom type - engineers for machine not listed under the above classifications shall receive the scale comparable to these classifications

GROUP VII - Locomotive engineer, boring machine, tug boat, mixer, 18 cu. ft. and over, sand barge, dredging machine, tugger, hoist - when operating one drum, welding machine, 3 to 6, air compressor, 3 to 5, 500 cu. ft. & under, air compressor, over 500 cu. ft. (1) pumps, battery, 3 to 6, fork-lift, bobcat and similar equipment, generator plant engineer, diesel elec., winch truck with A-frame, roller, all types, outside elevator or building type of personnel, hoist, concrete buster or tamper,

fireman, boiler operator, crushing plants, oiler distributor, pulvimixer, farmer tractor with or without attachments, batch plant operator (portable), conveyor-operator duel, continous or belt bulk handling, screed operator, concrete pump, form grader, screening plant, well poing pump operator, signal man on large whirleys when and if required, operator for rotary drilling machines when operated from console or machines -- Engineers for machines not listed under the above classifications shall receive the scale comparable to those classifications

GROUP VIII - Greaser, tilt top trailer operator

GROUP IX - Permanent elevator - building type (automatic), concrete mixer, with hopper less than 18 cu. ft., air compressor, 500 cu. ft., and under (1 or 2) welding machine (1 or 2) pump (1 or 2) fuelman, conveyor operator-single-continous belt bulk handling

GROUP X - Asphalt lay machine back end man, mechanic helper and welder helper

GROUP XI - Truck crane oiler driver or track crane oiler

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(ii)."

SUPERSEDEAS DECISION

STATE: RHODE ISLAND COUNTIES: STATEWIDE
DECISION NO. RI79-2065 DATE: Date of Publication
Supersedes Decision No. RI79-2039 dated May 5, 1979 in 44 FR 26529
DESCRIPTION OF WORK: Building (including Residential), Heavy, Highway, and Marine Construction Projects

BUILDING CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$11.38	1.25	1.33		
BOILERMAKERS	12.30	1.15	10%		.02
BRICKLAYERS; Stonemasons:					
Cities, Towns or Townships of Charlestown, Hopkinton, Peace Dale, Richmond, South Kingstown, Wakefield, & Westerly	10.35	1.10	1.15		.01
Remainder of State	10.35	1.10	1.15		.01
CARPENTERS; Millwrights; Piledrivermen; & Soft Floor Layers:					
Cities of Providence, Pawtucket, East Providence, Central Falls, Cranston, Warwick, Woonsocket; Towns of Barrington, Burrillville, Warren, Bristol, West Warwick, East Greenwich, West Greenwich, North Providence, Johnston, Cumberland, Lincoln, Smithfield, North Smithfield, Foster, Scituate, Gloucester, Coventry, North Kingstown, South Kingstown, Exeter, Narragansett, Westerly, & Charlestown:					
Building	11.35	.65	.90		.05
Residential	8.40	.65	.90		.05
Millwrights	10.75	.65	.90		.05
City of Newport; Towns of Middletown, Portsmouth, Jamestown, Tiverton, Little Compton, New Shoreham (Block Island), & Prudence Island:					
Carpenters; Soft Floor Layers	10.08	.65	.90		.03
Millwrights (except cities of Tiverton & Little Compton); Piledrivermen	10.68	.65	.90		.03

DECISION NO. RI79-2065

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS (CONT'D)					
Millwrights (Cities of Tiverton & Little Compton)	11.70	.95	1.00		.10
CEMENT MASONS; Plasterers:					
Woonsocket, N. Smithfield, Burrillville, Chepachet, Cumberland (N 1/3), & Lincoln	10.35	1.10	1.15		.01
Westerly, Hopkinton, South Kingstown, Charlestown, Richmond, Wakefield, & Peace Dale	10.35	1.10	1.15		.01
Remainder of State:					
Cement Masons	10.60	.90	.45		
Plasterers	9.80	.90	.45		
ELECTRICIANS:					
Tiverton & Little Compton	10.10	4%+.20	3%+1.00	4%+.20	½%
Westerly Township	11.30	1.50	3%+1.10		½%
Remainder of State	11.25	.73	3%+1.65		.02
ELEVATOR CONSTRUCTORS	10.715	.495	.32	a&b	.02
ELEVATOR CONSTRUCTORS' HELPERS	7.50	.495	.32	a&b	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	5.36				
GLAZIERS	9.65	.62	1.38		.01
IRONWORKERS:					
Ornamental; Reinforcing; & Structural	10.33	1.10	2.10		.05
LABORERS:					
Laborers; Carpenter Tenders; Cement Finisher Tenders; Mason Tenders; Scaffold Erectors & Wrecking Laborers	8.95	.70	1.00		.10
Asphalt Rakers; Adzemen; Pipe-Trench Bracers; Demolition Burners; Chain Saw Ops.; Fence & Guard Rail Erectors; Setters of Metal Forms for Roadways; Pipelayers; Riprap & Dry Stonewall Builders; Highway Stone Spreaders;					

DECISION NO. RI79-2065

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (CONT'D)					
Pneumatic Tool Ops.; Wagon Drill Ops.; Tree Trimmers; Barco Type Jumping Tampers; Mechanical Grinder Ops.; Plasterers' Tenders; Scaffold Builders; & Mortar Mixers	9.20	.70	1.00		.10
Pre-Cast Floor and Roof Plank Erectors	9.45	.70	1.00		.10
Pumping Machine Operator	9.55	.70	1.00		.10
Air Track Ops.; Block Pavers; Rammers; & Curb Setters	9.70	.70	1.00		.10
Blasters; Powderman	9.95	.70	1.00		.10
LATHERS:					
Newport Co. (Southern ½)	10.05	.65	.55		.01
Remainder of State	10.19	.65	.85		.01
MARBLE SETTERS; Terrazzo Workers; & Tile Setters	10.35	1.10	1.15		
PAINTERS:					
Adamsville, Compton, Little Compton, North Tiverton, Sakonnet, & Tiverton:					
Brush; Tapers:					
New Construction	11.51	.82	1.20		.04
Repaint	9.71	.82	1.20		.04
Sandblasting; Spray	12.51	.82	1.20		.04
Steel	13.63	.82	1.20		.04
Remainder of State:					
Brush; Roller; Tapers	10.65	.60	.95		
Structural Steel; Steamcleaning	10.90	.60	.95		
Air Power Brush	11.15	.60	.95		
Spray & Sand or Water Blasting	11.65	.60	.95		
PAINTERS, Sign:					
Bristol, Kent, & Providence Cos.	7.44	.26	.35	.53+c+d	
PLUMBERS	11.21	.90	2.15		.07
ROOFERS:					
Composition, Waterproofers	10.00	.65	.45		
Slate, Tile, Precast Concrete	10.20	.65	.45		
SHEET METAL WORKERS	10.28	.96	1.55		.11
SPRINKLER FITTERS	11.56	.75	1.05		.01
STEAMFITTERS	12.15	.83	1.28		.07

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

DECISION NO. RI79-2065

HEAVY AND HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS; Stonemasons; Catch Basins; Manhole Builders	10.55	1.00	1.00		.01
CARPENTERS; Piledrivermen: Bristol, Kent, Providence & Washington (excluding Block Island) Cos.	11.36	.65	.90		.05
CARPENTERS; Millwrights; Piledrivermen; & Wharf, Bridge & Dock Carpenters: Newport County & Block Island	10.68	.65	.90		.03
CEMENT MASONS & FINISHERS	8.50	.50	.35		
ELECTRICIANS:					
Little Compton & Tiverton	10.10	4%+.20	3%+1.00	4%+.20	½%
Westerly Township	11.30	1.50	3%+1.10		½%
Remainder of State	11.25	.73	3%+1.65		.02
IRONWORKERS:					
Ornamental; Reinforcing; & Structural	10.33	1.10	2.10		.05
LABORERS:					
Laborers; Carpenter & Cement Finisher Tenders & Wrecking Laborers	8.95	.70	1.00		.10
Adzeman; Asphalt Rakers; Barco-type Jumping Tampers; Chain Saw Ops.; Concrete & Power Buggy Ops.; Concrete Saw Ops.; Demolition Burners; Fence & Guard Rail Erectors; Highway Stone Spreaders; Mason Tenders; Mechanical Grinder Ops.; Mortar Mixers; Pipelayers; Pipe-Trench Bracers; Pneumatic Tool Ops.; Riprap & Dry Stonewall Builders; Scaffold Erectors; Setters of Metal Forms for Roadways; Wagon Drill Ops.; Wood Chipper Ops.	9.20	.70	1.00		.10

DECISION NO. RI79-2065

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air Track Drill Ops.; Brick Pavers; Block Pavers; Rammers; Curb Setters	9.70	.70	1.00		.10
Blasters & Powdermen	9.95	.70	1.00		.10
Open Air Caisson, Underpinning and Boring Crew:					
Bottom Man	9.75	.70	1.00		.10
Laborer, Top Man	9.00	.70	1.00		.10
Driller	9.87	.70	1.00		.10
LINE CONSTRUCTION:					
Linemen	11.48	.70	3%+.50	e	3/8%
Equipment Operators	10.36	.70	3%+.50	e	3/8%
Driver Groundman	9.70	.70	3%+.50	e	3/8%
Groundman	8.16	.70	3%+.50	e	3/8%
PAINTERS:					
Adamsville, Compton, Little Compton, North Tiverton, Sakonnet, & Tiverton:					
Brush; Tapers:					
New Construction	10.96	.82	1.20		.04
Repaint	9.26	.82	1.20		.04
Sandblasting; Spray:					
New Construction	11.96	.82	1.20		.04
Repaint	10.26	.82	1.20		.04
Steel	13.08	.82	1.20		.04
Remainder of State:					
Brush; Roller; Tapers	10.65	.60	.95		
Structural Steel; Steamcleaning	10.90	.60	.95		
Air Power Brush	11.15	.60	.95		
Spray & Sand or Water Blasting	11.65	.60	.95		
PAINTERS, Sign:					
Bristol, Kent & Providence Cos.	7.44	.26	.35	.53+c+d	
PLUMBERS	11.21	.90	2.15		.07
WELDERS receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. RI79-2065

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day;
D-Labor Day; E-Thanksgiving Day; & F-Christmas Day

FOOTNOTES:
a. 7 paid holidays: A through F, plus Day after Thanksgiving
b. Employer contributes 8% basic hourly rate for 5 years or more of service; 6% basic hourly rate for 6 months to 5 years of service as vacation pay credit.
c. 9 paid holidays: A through F, plus V. J. Day; Columbus Day; & Veterans Day
d. One year's seniority - one week's paid vacation; 2 years' seniority - 2 weeks' paid vacation
e. 7 paid holidays: A through F, plus Columbus Day provided employee has been employed 5 working days prior to the holiday and provided the employee works the scheduled work days immediately preceding and following the holiday.

DECISION NO. RI79-2065

POWER EQUIPMENT OPERATORS BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Digging Machines; Ross Carriers; Cranes; Pile Drivers; Lighters; Locomotives; Derricks; Hoists; Pavers; and Front End Loaders 3 yds. and over	11.765	.95	1.15		.10
Economobile type equipment	11.54	.95	1.15		.10
Fork Lift	11.34	.95	1.15		.10
Firemen and Oilers	9.04	.95	1.15		.10
Bulldozers; Graders; Spreaders; Tractors; Scrapers and Rollers	10.34	.95	1.15		.10
Front-end Loaders less than 3 yards	10.84	.95	1.15		.10
Pipping type backhoes	10.69	.95	1.15		.10
Maintenance Engineers	10.29	.95	1.15		.10
Well-point Installation	10.415	.95	1.15		.10
Gas or Electric Driven Pumps; Heaters; Concrete Mixers; Concrete Pumps; Stone Crushers; Air Compressors; Welding Machines and Generators for Light Plants	9.59	.95	1.15		.10

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

BRIDGES, CAISSONS, DOCKS, MARINES PIERS, SUB-BASEMENT SUBTERRANEAN, TUNNELS, and HEAVY CONSTRUCTION					
Digging Machines; Cranes; Pile drivers; Lighters; Locomotives; Derricks; Hoists; Pavers; & Front End Loaders, 3 yds. & over	12.49	.95	1.15		.10

DECISION NO. RI79-2065

POWER EQUIPMENT OPERATORS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Firemen and Oilers	9.615	.95	1.15		.10
Bulldozers; Graders; Spreaders; Scrapers; Rollers	11.04	.95	1.15		.10
Front-end Loaders, less than 3 yds.	11.54	.95	1.15		.10
Maintenance Engineers	11.19	.95	1.15		.10
Well-point Installation Crews	11.215	.95	1.15		.10
Gas or Electric Driven Pumps; Heaters; Concrete Mixers; Concrete Pumps; Stone Crushers; Air Compressors; Welding Machines; and Generators for light plants	10.04	.95	1.15		.10
Boat and Tug Operators	12.115	.95	1.15		.10
Deckhands	10.515	.95	1.15		.10

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

DECISION NO. RI79-2065

POWER EQUIPMENT OPERATORS WATER and SEWERLINE PROJECTS, HIGHWAY and BRIDGE INCIDENTAL TO HIGHWAY CONSTRUCTION PROJECTS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	11.595	.95	1.15		.10
CLASS 2	10.745	.95	1.15		.10
CLASS 3	10.125	.95	1.15		.10
CLASS 4	8.375	.95	1.15		.10
CLASS 5	10.075	.95	1.15		.10
CLASS 6	10.575	.95	1.15		.10
CLASS 7	10.195	.95	1.15		.10
CLASS 8	10.175	.95	1.15		.10
CLASS 9	9.825	.95	1.15		.10
CLASS 10	9.195	.95	1.15		.10
CLASS 11	9.175	.95	1.15		.10
CLASS 12	8.975	.95	1.15		.10
CLASS 13	9.645	.95	1.15		.10
CLASS 14	8.975	.95	1.15		.10
CLASS 15	10.025	.95	1.15		.10

DECISION NO. RI79-2065

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

CLASS 1 - Digging Machines; Cranes; Pile Drivers; Lighters; Locomotives; Derricks; Hoists; Pavers; Front End Loaders (3 to 4 yds.); Economobiles; and Ross Carriers

CLASS 2 - Forklifts

CLASS 3 - Firemen

CLASS 4 - Oilers

CLASS 5 - Bulldozers; Spreaders; Rollers; Tractors

CLASS 6 - Front End Loaders, less than 3 yards

CLASS 7 - Scrapers; Graders; Dozer Pusher Operators

CLASS 8 - Pipping type Backhoe Operators

CLASS 9 - Maintenance Engineers

CLASS 10 - Gas and Electric Driven Heaters; Pumps; Concrete Mixers; Stone Crushers; Air Compressors; Light Plants; Welding Machines; Concrete Pumps

CLASS 11 - Mechanic and Welders (Inside)

CLASS 12 - Bulldozers in Pits

CLASS 13 - Shovel Operators; Front End Loaders, 3 cu. yds. and over; Dragline and Crane Operators in Material yards

CLASS 14 - Test Boring Machine Operators

CLASS 15 - Well Point Installation Crews

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

DECISION NO. RI79-2065

TRUCK DRIVERS HEAVY AND HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	7.62	.7425	.80	a+b	
CLASS II	7.77	.7425	.80	a+b	
CLASS III	7.82	.7425	.80	a+b	
CLASS IV	7.92	.7425	.80	a+b	
CLASS V	8.02	.7425	.80	a+b	
CLASS VI	8.27	.7425	.80	a+b	
CLASS VII	8.52	.7425	.80	a+b	

CLASS I - Pick-up Trucks; Station Wagons and Panel Trucks
CLASS II - Two Axle, Helpers on Low Beds
CLASS III - Three Axle Equipment
CLASS IV - Four and Five Axle Equipment
CLASS V - Low Bed Trailers; Special Earth Moving Equipment under 35 Tons, Mechanics; Paving Restoration Vehicle and Vac Haul
CLASS VI - Special Earth Moving Equipment over 35 Tons
CLASS VII - Trailers when used on a Double Hook-up (pulling 2 Trailers)

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:
a. Holidays: A through F; Washington's Birthday, Columbus Day, Veteran's Day, V-J Day, providing Employee has worked at least One Day in the Calendar Week in which the Holiday falls.

b. Employee who has been on the Payroll for 1 Year or more but less than 5 Years and has worked 150 Days during the last Year of Employment shall receive 1 week's paid Vacation; 5 Years or more - 2 Weeks' paid Vacation

SUPERSEDEAS DECISION

STATE: Texas COUNTY: Brazos
DECISION NO.: TX79-4046 DATE: Date of Publication
Supersedes Decision No.TX79-4003, dated January 5, 1979, in 44 FR 1671.
DESCRIPTION OF WORK: Building Projects (does not include single family homes & apartments up to & including 4 stories). (Use current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	12.40	.90	1.08		.05
BOILERMAKERS	11.05	.80	1.00		.02
BRICKLAYERS & STONEMASONS	12.51	.63	.60		.06
CARPENTERS	10.80				
CEMENT MASONS	11.50	.68	.72		.08
ELECTRICIANS	11.925	.80	10%		.08
ELEVATOR CONSTRUCTORS:					
Mechanics	10.74	.895	.69	4%+a+b	.035
Helpers	70%JR	.895	.69	4%+a+b	.035
Helpers (Prob).	50%JR				
GLAZIERS	11.17	.60	.425		.01
IRONWORKERS	11.86	.55	1.45		.10
LABORERS:					
GROUP 1	5.03	.38	.27		.02
GROUP 2	5.13	.38	.27		.02
GROUP 3	5.23	.38	.27		.02
GROUP 4	5.18	.38	.27		.02
GROUP 5	5.28	.38	.27		.02
GROUP 6	5.43	.38	.27		.02

LABORERS CLASSIFICATION DEFINITIONS

GROUP 1 - Construction labor, including excavation, concrete work, reinforcing, mason handler & wheeler (stock pile), asphalt ironer & raker, water proofing tender, pipe layer (non-metallic), pump crete pipe (handling & laying) & all building construction labor excepting that hereinafter classified; window washer, carpenters tender, cement mason tender, vibrator operator, other mechanic tender (except as otherwise classified); dumper & spotter
GROUP 2 - Air tool operator
GROUP 3 - Well driller
GROUP 4 - Cutting torch man; mason tender; mason handler & wheelers handling from first stock pile; concrete pipe (handling & laying); sand blaster; power buggy operator; plasterer tender & hod carrier; lather tender; well driller tender
GROUP 5 - Tool room tender; mortar mixer (hoe or otherwise); blaster, powder man; gunnite worker
GROUP 6 - Gunnite nozzleman

LINE CONSTRUCTION:					
Lineman & cable splicer	12.30	.60	3%		½%
Groundman	7.13	.60	3%		½%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE MASONS	10.49	.63	.20		
PAINTERS:					
GROUP 1 - All brush painting, hand roller, steam cleaning, all pneumatic tools	11.705	.565	.55	.40	.04
GROUP 2 - All spray painting, sandblasting, waterblasting	12.08	.565	.55	.40	.04
GROUP 3 - Tape, float & dry-wall	11.83	.565	.55	.40	.04
GROUP 4 - Steeple jack work, hot materials	12.33	.565	.55	.40	.04
PIPEFITTERS	12.85	.60	.75		.06
PLASTERERS	11.30	.87	.30		.02
PLUMBERS	12.37	.75	.75		.12
SHEET METAL WORKERS	12.86	3%+.45	.74	.42	.10
SOFT FLOOR LAYERS	11.37	.50	.45		.14
TERRAZZO WORKERS	10.49	.63	.20		
TILE SETTERS	10.49	.63	.20		
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS FOR ELEVATOR CONSTRUCTORS
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G-Christmas Day

FOOTNOTES FOR ELEVATOR CONSTRUCTORS:
a - 1st 6 months - none; 6 months to 5 years - 2%; over 5 years - 4% of basic hourly rate
b - Paid Holidays A thru G

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii))

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	11.94	.75	1.00		.07
GROUP 2	10.08	.75	1.00		.07
GROUP 3	9.45	.75	1.00		.07
GROUP 4	9.24	.75	1.00		.07

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Heavy duty mechanic; blade grader, self-propelled; bull clam; back filler; derrick-power operated (all types); clam shell; draglines; push cat operator; bull dozer & all types cat tractors; cable-way; backhoe; shovel; power operated; crane, power operated (all types); elevating grader, self-propelled; hoist, motor-driven, two drums or more; mix mobile; water well drilling machines, used on construction; building elevator, used on construction; tug boat operator, assigned to construction; winch truck; locomotive crane; concrete mixer, 14 cubic feet or more; paving mixer (all types); pile driver; scraper, heavy type, over 3 cubic yards; trenching machine (all sizes); gradall; high-lift; foundation boring machine; gasoline or diesel-driven welding machines, 7 or more; pump-crete machine operator; turnapulls; DW-10 Caterpillar, S-18 euclid and similar tractors; asphalt plant mixer operator on job; crusher operator on job; scoopmobiles; forklift used on construction (not including warehousing); well point pump; concrete batch plant operator; pneumatic rollers, self-propelled;

GROUP 2 - Air compressors; blade grader, towed; flex plane; form grader; concrete mixer, less than 14 cubic feet; pumps; pulsometer; truck crane driver; gasoline or diesel driven welding machines (on 3 or more, up to 6 machines); hoist, single drum; scraper, 3 cubic yards or less; wagon drill operator; conveyor; generator, gasoline or diesel driven, over 1500 watts; rubber tired farm tractor with attachments; a light equipment operator may run 1 or 2 105 cfm compressors

GROUP 3 - Fireman
GROUP 4 - Oiler

SUPERSEDEAS DECISION

STATE: Texas COUNTIES: Galveston & Harris
DECISION NO.: TX79-4036 DATE: Date of Publication
Supersedes Decision No. TX79-4011, dated January 5, 1979 in 44 FR 1683.
DESCRIPTION OF WORK: Building Projects (does not include single family homes & apartments up to & including 4 stories). (Use current highway general wage determination for Paving & Utilities Incidental to Building Construction for Galveston (excluding Galveston Island) & Harris Counties).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	12.40	.90	1.08		.05
BOILERMAKERS	11.05	.80	1.00		.02
BRICKLAYERS & STONEMASONS	12.51	.63	.60		.06
CARPENTERS:					
Carpenters & piledrivermen	11.60	1.00	.85		.07
Millwrights	11.985	1.00	.85		.07
CEMENT MASONS:					
Galveston County	11.50	.68	.72		
Harris County	11.50	.68	.72		.08
ELECTRICIANS:					
Galveston County	12.29	.50	3%+1.40		.06
Harris County	13.25	.80	10%		.08
ELEVATOR CONSTRUCTORS:					
Mechanics	10.74	.895	.69	4%+a+b	.035
Helpers	70%JR	.895	.69	4%+a+b	.035
Helpers (Prob).	50%JR				
GLAZIERS	11.17	.60	.425		.01
IRONWORKERS	11.86	.55	1.45		.10
LABORERS:					
GROUP 1 - Common	8.57	.47	.80		.02
GROUP 2 - Air tool operator (jackhammer-vibrator); mason tenders; pipelayers (concrete & clay); sandblasterers; power buggy operator	8.755	.47	.80		.02
GROUP 3 - Lather tender; mortar mixers; plaster tenders & hod carriers	8.865	.47	.80		.02
GROUP 4 - Well driller	9.16	.47	.80		.02
GROUP 5 - Well driller tender	8.705	.47	.80		.02
GROUP 6 - Blaster, powderman	9.025	.47	.80		.02
LATHERS (Harris County only)	11.42	.70	.35		.02
LINE CONSTRUCTION:					
Lineman & cable splicer	12.30	.60	3%		½%
Groundmen	7.13	.60	3%		½%
MARBLE MASONS:					
Galveston County	10.95				
Harris County	10.49	.63	.20		
MARBLE MASONS' FINISHERS	8.75				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
East Harris County:					
GROUP 1 - All brush painting, hand rolling and all other work other than that below	12.13				
GROUP 2 - All pneumatic & electric tools & steam cleaning	12.485				
GROUP 3 - All tape and float on drywall	12.225				
GROUP 4 - All paper & vinyl hanging	12.38				
GROUP 5 - All spray painting, sandblasting & water blasting	12.525				
GROUP 6 - Steeple jack work, hot materials	12.79				
Remainder of Harris County:					
GROUP 1 - All brush painting, hand roller, steam cleaning, all pneumatic tools	11.705	.565	.55	.40	.04
GROUP 2 - All spray painting, sandblasting, waterblasting	12.08	.565	.55	.40	.04
GROUP 3 - Tape, float & drywall	11.83	.565	.55	.40	.04
GROUP 4 - Steeple jack work, hot materials	12.33	.565	.55	.40	.04
Galveston County:					
GROUP 1 - Painters on new work	11.01	.70	.55	1.00	.035
GROUP 2 - Painters on swinging stage work or using materials injurious to the skin	11.26	.70	.55	1.00	.035
GROUP 3 - Painters on rework & repaint	10.255	.70	.55	1.00	.035
PIPEFITTERS:					
That part of Galveston Co. east of the Trinity River	12.235	.645	.70		.11
That part of Galveston Co. west of the Trinity River & all of Harris Co.	12.85	.60	.75		.06

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLASTERERS	11.30	.87	.30		.02
PLUMBERS:					
Galveston County	12.235	.645	.70		.11
Harris County	12.37	.75	.75		.12
ROOFERS	10.48	.42	.45	.25	.06
SHEET METAL WORKERS:					
Galveston County	11.02	.80	.50	.75	.10
Harris County	12.86	3%+.45	.74	.42	.10
SOFT FLOOR LAYERS	11.37	.50	.45		.14
SPRINKLER FITTERS	12.54	.75	1.05		.08
TERRAZZO WORKERS:					
Galveston County	10.95				
Harris County	10.49	.63	.20		
TERRAZZO WORKERS' FINISHERS:					
Terrazzo workers' finishers	8.75				
Terrazzo floor machinemen	8.90				
Terrazzo base machinemen	9.05				
TILE SETTERS:					
Galveston County	10.95				
Harris County	10.49	.63	.20		
TILE SETTERS' FINISHERS	8.75				
TRUCK DRIVERS:					
GROUP 1 - Under 1½ tons; wash, grease, tireman, fuel pump operator when used on construction jobs	7.84				
GROUP 2 - 1½ thru 2½ tons; dump truck less than 7 yds.	8.23				
GROUP 3 - Over 2½ tons; farm tractors; fork lifts, floats	8.45				
GROUP 4 - Euclids (not self-loading	8.61				
GROUP 5 - Pickup drivers	9.14				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

PAID HOLIDAYS FOR ELEVATOR CONSTRUCTORS
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G-Christmas Day

FOOTNOTES FOR ELEVATOR CONSTRUCTORS:
a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 2%; over 5 yrs. - 4% of basic hourly rates
b - Paid Holidays A thru G

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
GROUP 1	11.94	.75	1.00		.07
GROUP 2	10.08	.75	1.00		.07
GROUP 3	9.45	.75	1.00		.07
GROUP 4	9.24	.75	1.00		.07

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Heavy duty mechanic; blade grader, self-propelled; bull clam; back filler; derrick-power operated (all types); clam shell; draglines; push cat operator; bull dozer & all types cat tractors; cable-way; backhoe; shovel; power operated; crane, power operated (all types); elevating grader, self-propelled; hoist, motor-driven, two drums or more; mix mobile; water well drilling machines, used on construction; building - elevator, used on construction; tug boat operator, assigned to construction; winch truck; locomotive crane; concrete mixer, 14 cubic feet or more; paving mixer (all types); pile driver; scraper, heavy type, over 3 cubic yards; trenching machine (all sizes); gradall; high-lift; foundation boring machine; gasoline or diesel-driven welding machines, 7 or more; pump-crete machine operator; turnapulls; DW-10 Caterpillar, S-18 euclid and similar tractors; asphalt plant mixer operator on job; crusher operator on job; scoopmobiles; forklift used on construction (not including warehousing); well point pump; concrete batch plant operator; pneumatic rollers, self-propelled;

GROUP 2 - Air compressors; blade grader, towed; flex plane; form grader; concrete mixer, less than 14 cubic feet; pumps; pulsometer; truck crane driver; gasoline or diesel driven welding machines (on 3 or more, up to 6 machines); hoist, single drum; scraper, 3 cubic yards or less; wagon drill operator; conveyor; generator, gasoline or diesel driven, over 1500 watts; rubber tired farm tractor with attachments; a light equipment operator may run 1 or 2 105 cfm compressors

GROUP 3 - Fireman
GROUP 4 - Oiler

[FR Doc. 79-25198 Filed 8-16-79; 8:45 am]

BILLING CODE 4510-27-C

federal register

Friday
August 17, 1979

Part IV

Department of Health, Education, and Welfare

Food and Drug Administration

Low-Acid Canned Foods; Current Good Manufacturing Practice

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food And Drug Administration

21 CFR Part 507

[Docket No. 75N-0333]

Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers; Current Good Manufacturing Practice

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document revises the current good manufacturing practices (CGMP's) for canning low-acid pet foods. As in the case of such foods processed for human consumption, the same potential exists with regard to the possibility of botulinal toxin formation in food for pets. These revised regulations ensure safe manufacturing, processing, and packing procedures for low-acid canned foods in hermetically sealed containers for pets.

EFFECTIVE DATE: September 17, 1979.

FOR FURTHER INFORMATION CONTACT: Jane Robens, Bureau of Veterinary Medicine (HFV-222), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5363.

SUPPLEMENTARY INFORMATION: The Federal Register of March 16, 1979 (44 FR 16209) included a final order revising the CGMP's in Part 113 (21 CFR Part 113) covering thermally processed low-acid foods packaged in hermetically sealed containers for human consumption. This action was based upon a proposal published in the Federal Register of July 23, 1976 (41 FR 30444) at which time the subject regulations covered both human and pet food. In the Federal Register of September 10, 1976 (41 FR 38618), a corresponding Part 507 (21 CFR Part 507) was established in Subchapter E as a part of the recodification of Title 21, Chapter I, of the Code of Federal Regulations. The recodification was to establish in Subchapter E all regulations that pertain to animal feed and pet food.

The amendments were clearly applicable to pet foods as well as human food because the proposal specifically provided that the definition of the term "commercial processor" include manufacturers of pet food. In response to the proposal, 24 letters were received, each including 1 or more comments from industry, trade associations, universities, a Federal government agency, members of Congress, and an individual. None of the comments addressed the applicability of the regulations to pet food. The final order published in the Federal Register of March 16, 1979 discussed all of the issues raised and the discussion is incorporated herein by reference.

This document amends Part 507 to incorporate the same revisions that were made in Part 113 in the March 16, 1979 Federal Register so that the CGMP regulations for human food and pet food are consistent.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 402(a) (3) and (4), 701(a), 52 Stat. 1046, 1055 (21 U.S.C. 342(a) (3) and (4), 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Chapter I of Title 21 of the Code of Federal Regulations is amended by revising Part 507 as follows:

PART 507—THERMALLY PROCESSED LOW-ACID FOODS PACKAGED IN HERMETICALLY SEALED CONTAINERS

Subpart A—General Provisions

Sec.

507.3 Definitions.
507.5 Current good manufacturing practice.
507.10 Personnel.

Subpart B—[Reserved]

Subpart C—Equipment

507.40 Equipment and procedures.

Subpart D—Control of Components, Food Product Containers, Closures, and In-Process Materials

507.60 Containers.

Subpart E—Production and Process Controls

507.81 Product preparation.
507.83 Establishing scheduled processes.
507.87 Operations in the thermal processing room.
507.89 Deviations in processing, venting, or control of critical factors.

Subpart F—Records and Reports

507.100 Processing and production records.

Authority: Secs. 402(a) (3) and (4), 701(a), 52 Stat. 1046, 1055 (21 U.S.C. 342(a) (3) and (4), 371(a)).

Subpart A—General Provisions

§ 507.3 Definitions.

For the purposes of this part, the following definitions apply:

(a) "Aseptic processing and packaging" means the filling of a commercially sterilized cooled product into presterilized containers, followed by aseptic hermetical sealing, with a presterilized closure, in an atmosphere free of microorganisms.

(b) "Bleeders" mean openings used to remove air that enters with steam from retorts and steam chambers and to promote circulation of steam in such retorts and steam chambers. Bleeders may serve as a means of removing condensate.

(c) "Come-up-time" means the time which elapses between the introduction of steam into the closed retort and the time when the retort reaches the required processing temperature.

(d) "Commercial processor" includes any person engaged in commercial, custom, or institutional (church, school, penal, or other organization) processing of food, including pet food. Persons engaged in the production of foods that are to be used in market or consumer tests are also included.

(e) "Commercial sterility": (1) "Commercial sterility" of thermally processed food means the condition achieved—

(i) By the application of heat which renders the food free of—

(*a*) Microorganisms capable of reproducing in the food under normal nonrefrigerated conditions of storage and distribution; and

(*b*) Viable microorganisms (including spores) of public health significance; or

(ii) By the control of water activity and the application of heat, which renders the food free of microorganisms capable of reproducing in the food under normal nonrefrigerated conditions of storage and distribution.

(2) "Commercial sterility" of equipment and containers used for aseptic processing and packaging of food means the condition achieved by application of heat, chemical sterilant(s), or other appropriate treatment that renders the equipment and containers free of viable microorganisms having public health significance, as well as microorganisms of nonhealth significance, capable of reproducing in the food under normal nonrefrigerated conditions of storage and distribution.

(f) "Critical factor" means any property, characteristic, condition, aspect, or other parameter, variation of which may affect the scheduled process and the attainment of commercial sterility.

(g) "Flame sterilizer" means an apparatus in which hermetically sealed containers are agitated at atmospheric pressure, by either continuous, discontinuous, or reciprocating movement, with impinging gas flames to achieve sterilization temperatures. A holding period in a heated section may follow the initial heating period.

(h) "Headspace, gross" is the vertical distance between the level of the

product (generally the liquid surface) in an upright rigid container and the top edge of the container (the top of the double seam of a can or the top edge of a glass jar).

(i) "Headspace, net" of a container is the vertical distance between the level of the product (generally the liquid surface) in the upright rigid container and the inside surface of the lid.

(j) "Hermetically sealed container" means a container that is designed and intended to be secure against the entry of microorganisms and thereby to maintain the commercial sterility of its contents after processing.

(k) "Incubation" means the holding of a sample(s) at a specified temperature for a specified period of time for the purpose of permitting or stimulating the growth of microorganisms.

(l) "Initial temperature" means the average temperature of the contents of the coldest container to be processed at the time the thermal processing cycle begins, as determined after thorough stirring or shaking of the filled and sealed container.

(m) "Lot" means that amount of a product produced during a period of time indicated by a specific code.

(n) "Low-acid foods" means any foods, other than alcoholic beverages, with a finished equilibrium pH greater than 4.6 and a water activity (a_w) greater than 0.85. Tomatoes and tomato products having a finished equilibrium pH less than 4.7 are not classed as low-acid foods.

(o) "Minimum thermal process" means the application of heat to food, either before or after sealing in a hermetically sealed container, for a period of time and at a temperature scientifically determined to be adequate to ensure destruction of microorganisms of public health significance.

(p) "Operating process" means the process selected by the processor that equals or exceeds the minimum requirements set forth in the scheduled process.

(q) "Retort" means any closed vessel or other equipment used for the thermal processing of foods.

(r) "Scheduled process" means the process selected by the processor as adequate under the conditions of manufacture for a given product to achieve commercial sterility. This process may be in excess of that necessary to ensure destruction of microorganisms of public health significance, and shall be at least equivalent to the process established by a competent processing authority to achieve commercial sterility.

(s) "Shall" is used to state mandatory requirements.

(t) "Should" is used to state recommended or advisory procedures or to identify recommended equipment.

(u) "Vacuum-packed products" means those products that are sealed in a container under the vacuum specified in the scheduled process, the maintenance of which vacuum is critical to the adequacy of the scheduled process.

(v) "Vents" means openings through the retort shell, controlled by gate, plug cock, or other adequate valves used for the elimination of air during the venting period.

(w) "Water activity" (a_w) is a measure of the free moisture in a product and is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.

§ 507.5 Current good manufacturing practice.

The criteria in §§ 507.10, 507.40, 507.60, 507.81, 507.83, 507.87, 507.89, and 507.100 shall apply in determining whether the facilities, methods, practices, and controls used by the commercial processor in the manufacture, processing, or packing of low-acid foods in hermetically sealed containers are operated or administered in a manner adequate to protect the public health.

§ 507.10 Personnel.

The operators of processing systems, retorts, aseptic processing and packaging systems and product formulating systems (including systems wherein water activity is used in conjunction with thermal processing) and container closure inspectors shall be under the operating supervision of a person who has attended a school approved by the Commissioner for giving instruction appropriate to the preservation technology involved and who has been identified by that school as having satisfactorily completed the prescribed course of instruction. This person shall supervise only in those areas for which a school approved by the Commissioner identifies the person as having satisfactorily completed training.

Subpart B—[Reserved]

Subpart C—Equipment

§ 507.40 Equipment and procedures.

(a) *Equipment and procedures for pressure processing in steam in still retorts*—(1) *Indicating mercury-in-glass thermometer.* Each retort shall be equipped with at least one mercury-in-glass thermometer whose divisions are easily readable to 1° F and whose temperature range does not exceed 17° F per inch of graduated scale. Thermometers shall be tested for accuracy against a known accurate standard thermometer upon installation and at least once a year thereafter, or more frequently if necessary, to ensure their accuracy. Records of thermometer accuracy checks that specify date, standard used, method used, and person performing the test should be maintained. Each thermometer should have a tag, seal, or other means of identity that includes the date on which it was last tested for accuracy. A thermometer that has a divided mercury column or that cannot be adjusted to the standard shall be repaired or replaced before further use of the retort. Thermometers shall be installed where they can be accurately and easily read. Bulbs of indicating thermometers shall be installed either within the retort shell or in external wells attached to the retort. External wells or pipes shall be connected to the retort through at least a ¾-inch diameter opening and equipped with a ⅛-inch or larger bleeder opening so located as to provide a full flow of steam past the length of the thermometer bulb. The bleeders for external wells shall emit steam continuously during the entire processing period. The mercury thermometer—not the recorder chart—shall be the reference instrument for indicating the processing temperature.

(2) *Temperature-recording device.* Each still retort shall have an accurate temperature-recording device. Graduations on the temperature-recording devices shall not exceed 2° F within a range of 10° F of the processing temperature. Each chart shall have a working scale of not more than 55° F per inch within a range of 20° F of the processing temperature. The temperature chart shall be adjusted to agree as nearly as possible with, but to be in no event higher than, the known accurate mercury-in-glass thermometer during the process time. A means of preventing unauthorized changes in adjustment shall be provided. A lock, or a notice from management posted at or near the recording device which provides a warning that only authorized persons are permitted to make adjustments, is a satisfactory means for preventing unauthorized changes. The recorder may be combined with the steam controller and may be a recording-controlling instrument. The temperature-recorder bulb shall be installed either within the retort shell or in a well attached to the shell. Each

temperature-recorder bulb well shall have a 1/16-inch or larger bleeder which emits steam continuously during the processing period. Air-operated temperature controllers should have adequate filter systems to ensure a supply of clean, dry air.

(3) *Pressure gages.* Each retort should be equipped with a pressure gage that should be graduated in divisions of 2 pounds or less.

(4) *Steam controller.* Each retort shall be equipped with an automatic steam controller to maintain the retort temperature. This may be a recording-controlling instrument when combined with a recording thermometer. The steam controller may be air-operated and actuated by a temperature sensor positioned near the mercury-in-glass thermometer in the retort; a steam controller activated by the steam pressure of the retort is acceptable if it is carefully maintained mechanically so that it operates satisfactorily.

(5) *Steam inlet.* The steam inlet to each still retort shall be large enough to provide sufficient steam for proper operation of the retort. Steam may enter either the top portion or the bottom portion of the retort but, in any case, shall enter the portion of the retort opposite the vent; for example, steam inlet in bottom portion and vent in top portion.

(6) *Crate supports.* A bottom crate support shall be used in vertical still retorts. Baffle plates shall not be used in the bottom of still retorts.

(7) *Steam spreaders.* Steam spreaders are continuations of the steam inlet line inside the retort. Horizontal still retorts shall be equipped with steam spreaders that extend the length of the retort. For steam spreaders along the bottom of the retort, the perforations should be along the top 90° of this pipe, that is, within 45° on either side of the top center. Horizontal still retorts over 30 feet long should have two steam inlets connected to the spreader. In vertical still retorts, the steam spreaders, if used, should be perforated along the center line of the pipe facing the interior of the retort or along the sides of the pipe. The number of perforations should be such that the total cross-sectional area of the perforations is equal to 1½ to 2 times the cross-sectional area of the smaller restriction in the steam inlet line.

(8) *Bleeders.* Bleeders, except those for thermometer wells, shall be one-eighth inch or larger and shall be wide open during the entire process, including the come-up-time. For horizontal still retorts, bleeders shall be located within approximately 1 foot of the outermost locations of containers at each end along the top of the retort; additional bleeders shall be located not more than 8 feet apart along the top. Bleeders may be installed at positions other than those specified above, as long as there is evidence in the form of heat distribution data that they accomplish adequate removal of air and circulation of steam within the retort. Vertical retorts shall have at least one bleeder opening located in that portion of the retort opposite the steam inlet. In retorts having top steam inlet and bottom venting, a bleeder shall be installed in the bottom of the retort to remove condensate. All bleeders shall be arranged so that the operator can observe that they are functioning properly.

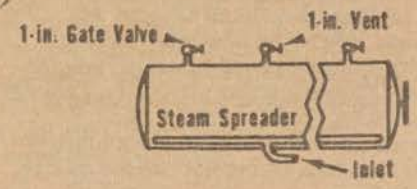
(9) *Stacking equipment and position of containers.* Crates, trays, gondolas, etc., for holding containers shall be made of strap iron, adequately perforated sheet metal, or other suitable material. When perforated sheet metal is used for the bottoms, the perforations should be approximately the equivalent of 1-inch holes on 2-inch centers. If dividers are used between the layers of containers, they should be perforated as above. The positioning of containers in the retort, when specified in the scheduled process, shall be in accordance with that process.

(10) *Air valves.* Retorts using air for pressure cooling shall be equipped with a suitable valve to prevent air leakage into the retort during processing.

(11) *Water valves.* Retorts using water for cooling shall be equipped with a suitable valve to prevent leakage of water into the retort during processing.

(12) *Vents.* Vents shall be installed in such a way that air is removed from the retort before timing of the process is started. Vents shall be controlled by gate, plug cock, or other adequate type valves which shall be fully open to permit rapid discharge of air from the retort during the venting period. Vents shall not be connected directly to a closed drain system. If the overflow is used as a vent, there shall be an atmospheric break in the line before it connects to a closed drain. The vent shall be located in that portion of the retort opposite the steam inlet; for example, steam inlet in bottom portion and vent in top portion. Where a retort manifold connects several vent pipes from a single still retort, it shall be controlled by a gate, plug cock, or other adequate type valve. The retort manifold shall be of a size that the cross-sectional area of the pipe is larger than the total cross-sectional area of all connecting vents. The discharge shall not be directly connected to a closed drain without an atmospheric break in the line. A manifold header connecting vents or manifolds from several still retorts shall lead to the atmosphere. The manifold header shall not be controlled by a valve and shall be of a size that the cross-sectional area is at least equal to the total cross-sectional area of all connecting retort manifold pipes from all retorts venting simultaneously. Timing of the process shall not begin until the retort has been properly vented and the processing temperature has been reached. Some typical installations and operating procedures reflecting the requirements of this section for venting still retorts are given in paragraph (a)(12)(i)(*a*) through (*d*) and (ii)(*a*) and (*b*) of this section.

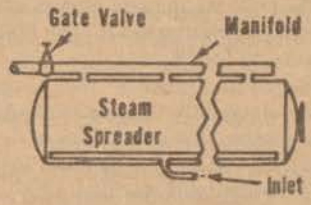
(i) *Venting horizontal retorts. (a)* Venting through multiple 1-inch vents discharging directly to atmosphere.



Specifications. One 1-inch vent for every 5 feet of retort length, equipped with a gate or plug cock valve and discharging to atmosphere; end vents not more than 2½ feet from ends of retort.

Venting method. Vent valves should be wide open for at least 5 minutes and to at least 225° F, or at least 7 minutes and to at least 220° F.

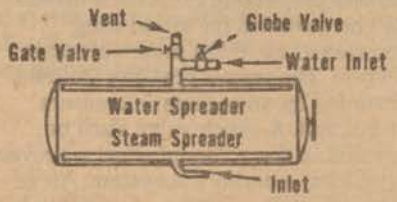
(b) Venting through multiple 1-inch vents discharging through a manifold to atmosphere.



Specifications. One 1-inch vent for every 5 feet of retort length; and vents not over 2½ feet from ends of retort: Size of manifold—for retorts less than 15 feet in length, 2½ inches; for retorts 15 feet and over in length, 3 inches.

Venting method. Manifold vent gate or plug cock valve should be wide open for at least 6 minutes and to at least 225° F, or for at least 8 minutes and to at least 220° F.

(*c*) Venting through water spreaders.

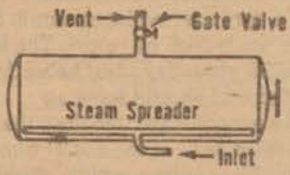


Size of vent and vent valve. For retorts less than 15 feet in length, 2 inches; for retorts 15 feet and over in length, 2½ inches.

Size of water spreader. For retorts less than 15 feet in length, 1½ inches; for retorts 15 feet and over in length, 2 inches. The number of holes should be such that their total cross-sectional areas is approximately equal to the cross-sectional area of the vent pipe inlet.

Venting method. Water spreader vent gate or plug cock valve should be wide open for at least 5 minutes and to at least 225° F, or for at least 7 minutes and to at least 220° F.

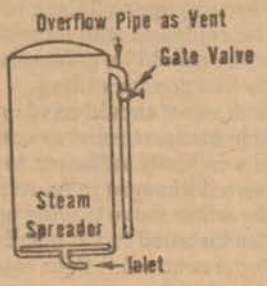
(*d*) Venting through a single 2½-inch top vent (for retorts not exceeding 15 feet in length).



Specifications: A 2½-inch vent equipped with a 2½-inch gate or plug cock valve and located within 2 feet of the center of the retort.

Venting method: Vent gate or plug cock valve should be wide open for at least 4 minutes and to at least 220° F.

(ii) *Venting vertical retorts. (a)* Venting through a 1½-inch overflow.



Specifications. A 1½-inch overflow pipe equipped with a 1½-inch gate or plug cock valve and with not more than 6 feet of 1½-inch pipe beyond the valve before break to the atmosphere or to a manifold header.

Venting method. Vent gate or plug cock valve should be wide open for at least 4 minutes and to at least 218° F, or for at least 5 minutes and to at least 215° F.

(*b*) Venting through a single 1-inch side or top vent.



Specifications. A 1-inch vent in lid or top side, equipped with a 1-inch gate or plug cock valve and discharging directly into the atmosphere or to a manifold header.

Venting method. Vent gate or plug cock valve should be wide open for at least 5 minutes and to at least 230° F, or for at least 7 minutes and to at least 220° F.

(iii) Other installations and operating procedures that deviate from the above specifications may be used if there is evidence in the form of heat distribution data, which shall be kept on file, that they accomplish adequate venting of air.

(13) *Critical factors.* Critical factors specified in the scheduled process shall be measured and recorded on the processing record at intervals of sufficient frequency to ensure that the factors are within the limits specified in the scheduled process.

(i) When maximum fill-in or drained weight is specified in the scheduled process, it shall be measured and recorded at intervals of sufficient frequency to ensure that the weight of the product does not exceed the maximum for the given container size specified in the scheduled process.

(ii) Closing machine vacuum in vacuum-packed products shall be observed and recorded at intervals of sufficient frequency to ensure that the vacuum is as specified in the scheduled process.

(iii) Such measurements and recordings should be made at intervals not to exceed 15 minutes.

(iv) When the product style results in stratification or layering of the primary product in the containers, the positioning of containers in the retort shall be according to the scheduled process.

(b) *Equipment and procedures for pressure processing in water in still retorts*—(1) *Indicating mercury-in-glass thermometer.* Each retort shall be equipped with at least one mercury-in-glass thermometer whose divisions are easily readable to 1° F and whose temperature range does not exceed 17° F per inch of graduated scale. Thermometers shall be tested for accuracy against a known accurate standard thermometer upon installation and at least once a year thereafter, or more frequently if necessary, to ensure their accuracy. Records of thermometer

accuracy checks which specify date, standard used, method used, and person performing the test should be maintained. Each thermometer should have a tag, seal, or other means of identity that includes the date when it was last tested for accuracy. A thermometer that has a divided mercury column or that cannot be adjusted to the standard shall be repaired or replaced before further use of the retort. Thermometers shall be installed where they can be accurately and easily read. Bulbs of indicating thermometers shall be located in such a position that they are beneath the surface of the water throughout the process. On horizontal retorts, this entry should be made in the side at the center, and the thermometer bulbs shall be inserted directly into the retort shell. In both vertical and horizontal retorts, the thermometer bulbs shall extend directly into the water a minimum of at least 2 inches without a separable well or sleeve. The mercury thermometer—not the recorder chart—shall be the reference instrument for indicating the processing temperature.

(2) *Temperature-recording device.* Each still retort shall have an accurate temperature-recording device. Graduations on the temperature-recording devices shall not exceed 2° F within a range of 10° F of the processing temperature. Each chart shall have a working scale of not more than 55° F per inch within a range of 20° F of the processing temperature. The temperature chart shall be adjusted to agree as nearly as possible with, but to be in no event higher than, the known accurate mercury-in-glass thermometer during the process time. A means of preventing unauthorized changes in adjustment shall be provided. A lock, or a notice from management posted at or near the recording device which provides a warning that only authorized persons are permitted to make adjustments, is a satisfactory means for preventing unauthorized changes. The recorder may be combined with the steam controller and may be a recording-controlling instrument. The recording-thermometer bulb should be located adjacent to the bulb of the mercury-in-glass thermometer, except in the case of a vertical retort equipped with a combination recorder-controller. In such vertical retorts, the temperature recorder-control bulb shall be located at the bottom of the retort below the lowest crate rest in such a position that the steam does not strike it directly. In horizontal retorts, the temperature recorder-control bulb shall be located between the water surface and the horizontal plane passing through the center of the retort so that there is no opportunity for direct steam impingement on the control bulb. Air-operated temperature controllers should have adequate filter systems to ensure a supply of clean, dry air.

(3) *Pressure gages.* (i) Each retort should be equipped with a pressure gage, which should be graduated in divisions of 2 pounds or less.

(ii) Each retort should have an adjustable pressure relief or control valve of a capacity sufficient to prevent an undesired increase in retort pressure when the water valve is wide open and should be installed in the overflow line.

(4) *Steam controller.* Each retort shall be equipped with an automatic steam controller to maintain the retort temperature. This may be a recording-controlling instrument when combined with a recording thermometer.

(5) *Steam introduction.* Steam shall be distributed in the bottom of the retort in a manner adequate to provide uniform heart distribution throughout the retort. In vertical retorts, uniform steam distribution can be achieved by any of several methods. In horizontal retorts, the steam distributor shall run the length of the bottom of the retort with perforations distributed uniformly along the upper part of the pipe.

(6) *Crate supports.* A bottom crate support shall be used in vertical still retorts. Baffle plates shall not be used in the bottom of the retort. Centering guides should be installed so as to ensure that there is about a 1½-inch clearance between the side wall of the crate and the retort wall.

(7) *Stacking equipment and position of containers.* Crates, trays, gondolas, etc., for holding containers shall be made of strap iron, adequately perforated sheet metal, or other suitable material. When perforated sheet metal is used for the bottoms, the perforations should be approximately the equivalent of 1-inch holes on 2-inch centers. If divider plates are used between the layers of containers, they should be perforated as above. The positioning of containers in the retort, when specified in the scheduled process, shall be in accordance with that process. Dividers racks, trays, or other means of positioning of flexible containers shall be designed and employed to ensure even circulation of heating medium around all containers in the retort.

(8) *Drain valve.* A nonclogging, water-tight valve shall be used. Screens should be installed over all drain openings.

(9) *Water level indicator.* There shall be a means of determining the water level in the retort during operation, e.g., by using a gage, water glass, or petcock(s). Water shall cover the top layer of containers during the entire come-up-time and processing periods and should cover the top layer of containers during the cooling periods. The operator shall check and record the water level at intervals sufficient to ensure its adequacy.

(10)(i) *Air supply and controls.* In both horizontal and vertical still retorts for pressure processing in water, a means shall be provided for introducing compressed air at the proper pressure and rate. The proper pressure shall be controlled by an automatic pressure control unit. A check valve shall be provided in the air supply line to prevent water from entering the system. Air or water circulation shall be maintained continuously during the come-up-time and during processing and cooling periods; the adequacy of the air or water circulation for uniform heat distribution within the retort shall be established in accordance with procedures recognized by a competent processing authority and records shall be kept on file; if air is used to promote circulation, it shall be introduced into the steam line at a point between the retort and the steam control valve at the bottom of the retort.

(ii) *Water circulation.* When a water circulating system is used for heat distribution, it shall be installed in such a manner that water will be drawn from the bottom of the retort through a suction manifold and discharged through a spreader which extends the length of the top of the retort. The holes in the water spreader shall be uniformly distributed and should have an aggregate area not greater than the cross-section area of the outlet line from the pump. The suction outlets should be protected with nonclogging screens to keep debris from entering the circulating system. The pump shall be equipped with a pilot light or other signaling device to warn the operator when it is not running, and with a bleeder to remove air when starting operations. Alternative methods for circulation of water in the retort may be used when established by a competent authority as adequate for even heat distribution.

(11) *Cooling water supply.* In vertical retorts the cooling water should be introduced at the top of the retort between the water and container levels; in horizontal retorts the cooling water should be introduced into the suction side of the pump. A check valve should be included in the cooling water line.

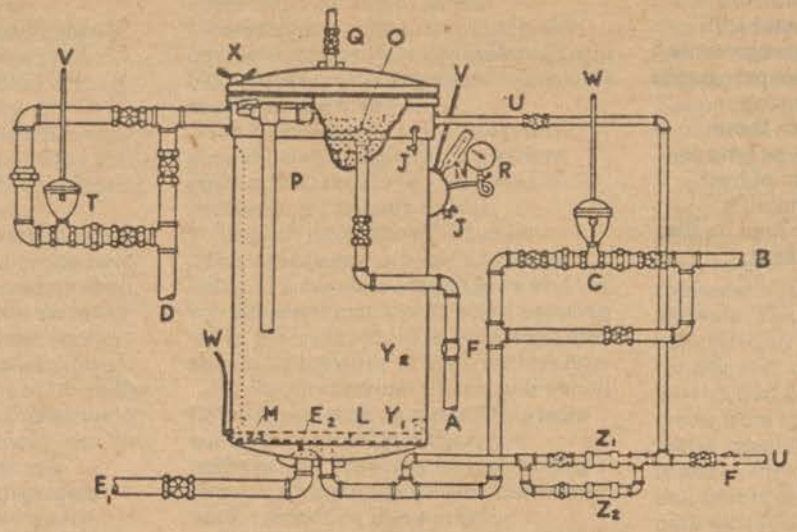
(12) *Retort headspace.* The headspace necessary to control the air pressure should be maintained between the

water level and the top of the retort shell.

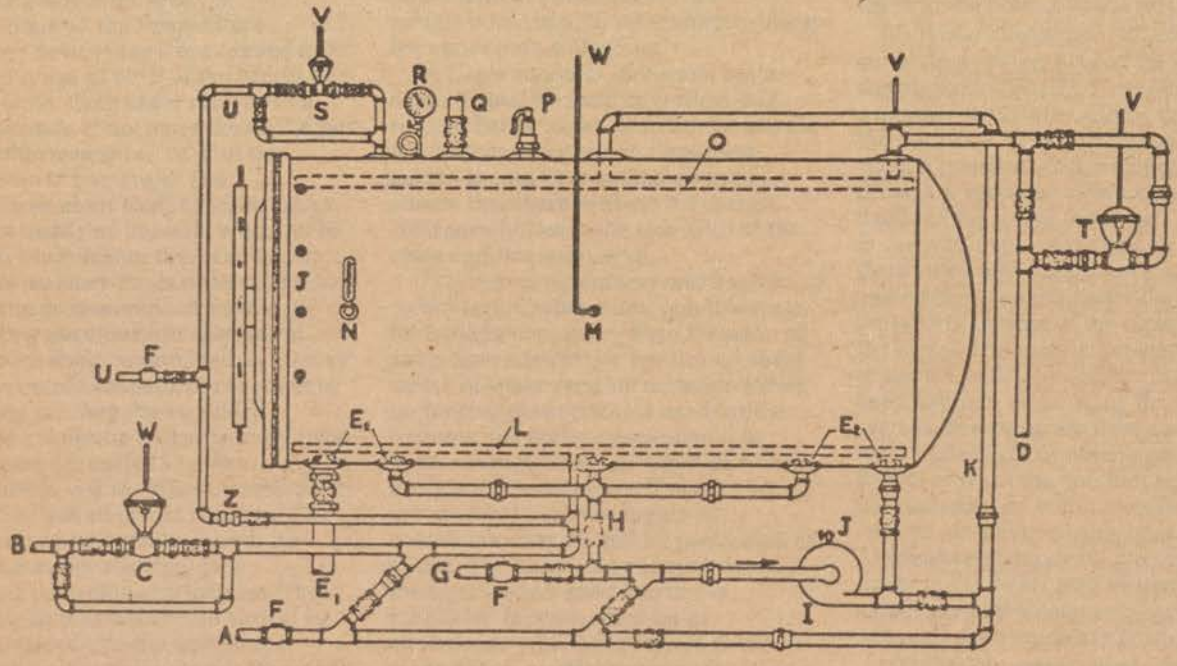
(13) *Vertical and horizontal still retorts.* Vertical and horizontal still retorts should follow the arrangements in the diagrams below in this paragraph. Other installation and operating procedures that deviate from these arrangements may be used, as long as there is evidence in the form of heat distribution data or other suitable information, which shall be kept on file, that demonstrates that the heat distribution is adequate.

BILLING CODE 4110-03-M

Vertical Retorts



Horizontal Retorts



BILLING CODE 4110-03-C

Legend For Vertical and Horizontal Still Retorts

A—Water line.
B—Steam line.
C—Temperature control.
D—Overflow line.
E_1—Drain line.
E_2—Screens.
F—Check valves.
G—Line from hot water storage.
H—Suction line and manifold.
I—Circulating pump.
J—Petcocks.
K—Recirculating line.
L—Steam distributor.
M—Temperature-controller bulb.
N—Thermometer.
O—Water spreader.
P—Safety valve.
Q—Vent valve for steam processing.
R—Pressure gage.
S—Inlet air control.
T—Pressure control.
U—Air line.
V—To pressure control instrument.
W—To temperature control instrument.
X—Wing nuts.
Y_1—Crate support.
Y_2—Crate guides.
Z—Constant flow orifice valve.
Z_1—Constant flow orifice valve used during come-up.
Z_2—Constant flow orifice valve used during cook.

(14) *Critical factors.* Critical factors specified in the scheduled process shall be measured and recorded on the processing record at intervals of sufficient frequency to ensure that the factors are within the limits specified in the scheduled process.

(i) When maximum fill-in or drained weight is specified in the scheduled process, it shall be measured and recorded at intervals of sufficient frequency to ensure that the weight of the product does not exceed the maximum for the given container size specified in the scheduled process.

(ii) Closing machine vacuum in vacuum-packed products shall be observed and recorded at intervals of sufficient frequency to ensure that the vacuum is as specified in the scheduled process.

(iii) Such measurements and recordings should be made at intervals not to exceed 15 minutes.

(iv) When the product style results in stratification or layering of the primary product in the containers, the positioning of containers in the retort shall be according to the scheduled process.

(c) *Equipment and procedures for pressure processing in steam in continuous agitating retorts*— (1) *Indicating mercury-in-glass thermometer.* Each retort shall be equipped with at least one mercury-in-glass thermometer whose divisions are easily readable to 1° F and whose temperature range does not exceed 17° F per inch of graduated scale. Thermometers shall be tested for accuracy against a known accurate standard thermometer upon installation and at least once a year thereafter, or more frequently if necessary, to ensure their accuracy. Records of thermometer accuracy checks which specify date, standard used, method used, and person performing the test should be maintained. Each thermometer should have a tag, seal, or other means of identity that includes the date on which it was last tested for accuracy. A thermometer that has a divided mercury column or that cannot be adjusted to the standard shall be repaired or replaced before further use of the retort. Thermometers shall be installed where they can be accurately and easily read. Bulbs in indicating thermometers shall be installed either within the retort shell or in external wells attached to the retort. External wells or pipes shall be connected to the retort through at least a ¾-inch diameter opening, and equipped with a 1/16-inch or larger bleeder opening so located as to provide a full flow of steam past the length of the thermometer bulb. The bleeders for external wells shall emit steam continuously during the entire processing period. The mercury thermometer—not the recorder chart—shall be the reference instrument for indicating the processing temperature.

(2) *Temperature-recording device.* Each retort shall have an accurate temperature-recording device. Graduations on the temperature-recording devices shall not exceed 2° F within a range of 10° F of the processing temperature. Each chart shall have a working scale of not more than 55° F per inch within a range of 20° F of the processing temperature. The temperature chart shall be adjusted to agree as nearly as possible with, but to be in no event higher than, the known accurate mercury-in-glass thermometer during the process time. A means of preventing unauthorized changes in adjustment shall be provided. A lock, or a notice from management posted at or near the recording device that provides a warning that only authorized persons are permitted to make adjustments, is a satisfactory means of preventing unauthorized changes. The recorder may be combined with the steam controller and may be a recording-controlling instrument. The temperature-recorder bulb shall be installed either within the retort shell or in a well attached to the shell. Each temperature-recorder bulb well shall have a 1/16-inch or larger bleeder opening emitting steam continuously during the processing period. Air-operated temperature controllers should have adequate filter systems to ensure a supply of clean, dry air.

(3) *Pressure gages.* Each retort should be equipped with a pressure gage that should be graduated in divisions of 2 pounds or less.

(4) *Steam controller.* Each retort shall be equipped with an automatic steam controller to maintain the retort temperature. This may be a recording-controlling instrument when combined with a recording thermometer. A steam controller activated by the steam pressure of the retort is acceptable if it is carefully maintained mechanically so that it operates satisfactorily.

(5) *Bleeders.* Bleeders, except those for thermometer wells, shall be one-eighth inch or larger and shall be wide open during the entire process, including the come-up-time. Bleeders shall be located within approximately 1 foot of the outermost location of containers at each end along the top of the retort; additional bleeders shall be located not more than 8 feet apart along the top of the retort. All bleeders shall be arranged so that the operator can observe that they are functioning properly. The condensate bleeder shall be checked with sufficient frequency to ensure adequate removal of condensate or shall be equipped with an automatic alarm system(s) that would serve as a continuous monitor of condensate-bleeder functioning. Visual checks should be done at intervals of not more than 15 minutes. A record of such checks should be kept to show that the bleeder is functioning properly.

(6) *Venting and condensate removal.* Vents shall be located in that portion of the retort opposite the steam inlet. Air shall be removed before processing is started. Heat distribution data or documentary proof from the manufacturer or from a competent processing authority, demonstrating that adequate venting is achieved, shall be kept on file. At the time steam is turned on, the drain should be opened for a time sufficient to remove steam condensate from the retort, and provision shall be made for continuing drainage of condensate during the retort operation. The condensate bleeder in the bottom of the shell serves as an indicator of continuous condensate removal.

(7) *Retort speed timing.* The rotational speed of the retort shall be specified in the scheduled process. The speed shall

be adjusted and recorded when the retort is started, at any time a speed change is made, and at intervals of sufficient frequency to ensure that the retort speed is maintained as specified in the scheduled process. These adjustments and recordings should be made every 4 hours or less. Alternatively, a recording tachometer may be used to provide a continuous record of the speed. A means of preventing unauthorized speed changes on retorts shall be provided. A lock, or a notice from management posted at or near the speed adjustment device that provides a warning that only authorized persons are permitted to make adjustments, is a satisfactory means of preventing unauthorized changes.

(8) *Emergency stops.* If a retort jams or breaks down during processing operations, necessitating cooling the retort for repairs, the retort shall be operated in such a way that ensures that the product is commercially sterile, or the retort is to be cooled promptly and all containers either reprocessed, repacked and reprocessed, or discarded. When operated as a still retort, all containers shall be given a full still retort process before the retort is cooled. If, in such an emergency, a scheduled still process or another process established to ensure commerical sterility is to be used, it shall be made readily available to the retort operator.

(i) Any containers in the retort intake valve or in transfer valves between cooker shells of a continuous retort at the time of breakdown shall either be reprocessed, repacked and reprocessed, or discarded.

(ii) Both the time at which the reel stopped and the time the retort was used for a still retort process, if so used, shall be marked on the recording chart and entered on the other production records required in this chapter. If the alternative procedure of prompt cooling is followed, the subsequent handling methods used for the containers in the retort at the time of stopping and cooling shall be entered on the production records.

(9) *Temperature drop.* If the temperature of the continuous retort drops below the temperature specified in the scheduled process while containers are in the retort, the retort reel shall be stopped promptly. An automatic device should be used to stop the reel when the temperature drops below the specified process temperature. Before the reel is restarted, all containers in the retort shall be given a complete scheduled still retort process if the temperature drop was 10° F or more below the specified temperature, or alternatively, container entry to the retort shall be stopped and the reel restarted to empty the retort. The discharged containers shall be either reprocessed, repacked and reprocessed, or discarded. Both the time at which the reel stopped and the time the retort was used for a still retort process, if so used, shall be marked on the recording chart and entered on the other production records required in this chapter. If the alternative procedure of emptying the retort is followed, the subsequent handling methods used for the containers in the retort at the time of the temperature drop shall be entered on the production records. If the temperature drop was less than 10° F, a scheduled authorized emergency still process approved by a qualified person(s) having expert knowledge of thermal processing requirements may be used before restarting the retort reel. Alternatively, container entry to the retort shall be stopped and an authorized emergency agitating process may be used before container entry to the retort is restarted. When emergency procedures are used, no containers may enter the retort and the process and procedures used shall be noted on the production records.

(10) *Critical factors.* Critical factors specified in the scheduled process shall be measured and recorded on the processing record at intervals of sufficient frequency to ensure that the factors are within the limits specified in the scheduled process. The minimum headspace of containers, if specified in the scheduled process, shall be measured and recorded at intervals of sufficient frequency to ensure that the headspace is as specified in the scheduled process. The headspace of solder-tipped, lap seam (vent hole) cans may be measured by net weight determinations. The headspace of double seamed cans may also be measured by net weight determinations for homogeneous liquids, taking into account the specific can end profile and other factors which affect the headspace, if proof of the accuracy of such measurements is maintained and the procedure and resultant headspace is in accordance with the scheduled process. When the product consistency is specified in the scheduled process, the consistency of the product shall be determined by objective measurements on the product taken from the filler before processing and recorded at intervals of sufficent frequency to ensure that the consistency is as specified in the scheduled process. Minimum closing machine vacuum in vacuum-packed products, maximum fill-in or drained weight, minimum net weight, and percent solids shall be as specified in the scheduled process for all products when deviations from such specifications may affect the scheduled process. All measurements and recordings of critical factors should be made at intervals not to exceed 15 minutes.

(d) *Equipment and procedures for pressure processing in steam in discontinuous agitating retorts*— (1) *Indicating mercury-in-glass thermometer.* Each retort shall be equipped with at least one mercury-in-glass thermometer whose divisions are easily readable to 1° F and whose temperature range does not exceed 17° F per inch of graduated scale. Thermometers shall be tested for accuracy against a known accurate standard thermometer upon installation and at least once a year thereafter, or more frequently if necessary, to ensure their accuracy. Records of thermometer accuracy checks which specify date, standard used, method used, and person performing the test should be maintained. Each thermometer should have a tag, seal, or other means of identity that includes the date on which it was last tested for accuracy. A thermometer that has a divided mercury column or that cannot be adjusted to the standard shall be repaired or replaced before further use of the retort. Thermometers shall be installed where they can be accurately and easily read. Bulbs of indicating thermometers shall be installed either within the retort shell or in extermal wells attached to the retort. External wells or pipes shall be connected to the retort through at least a ¾-inch-diameter opening, and equipped with a 1/16-inch or larger bleeder opening so located as to provide a full flow of steam past the length of the thermometer bulb. The bleeder for external wells shall emit steam continuously during the entire processing period. The mercury thermometer—not the recorder chart—shall be the reference instrument for indicating the processing temperature.

(2) *Temperature-recording device.* Each retort shall have an accurate temperature-recording device. Graduations on the temperature-recording devices shall not exceed 2° F within a range of 10° F of the processing temperature. Each chart shall have a working scale of not more than 55° F per inch within a range of 20° F of the processing temperature. The temperature chart shall be adjusted to agree as nearly as possible with, but to be in no event higher than, the known accurate mercury-in-glass thermometer

during the process time. A means of preventing unauthorized changes in adjustment shall be provided. A lock, or a notice from management posted at or near the recording device that provides a warning that only authorized persons are permitted to make adjustments, is a satisfactory means for preventing unauthorized changes. The recorder may be combined with the steam controller and may be a recording-controlling instrument. The temperature-recorder bulb shall be installed either within the retort shell or in a well attached to the shell. Each temperature-recorder bulb well shall have a 1/16-inch or larger bleeder opening emitting steam continuously during the processing period. Air-operated temperature controllers should have adequate filter systems to ensure a supply of clean, dry air.

(3) *Pressure gages.* Each retort should be equipped with a pressure gage, which should be graduated in divisions of 2 pounds or less.

(4) *Steam controller.* Each retort shall be equipped with an automatic steam controller to maintain the retort temperature. This may be a recording-controlling instrument when combined with a recording thermometer. A steam controller activated by the steam pressure of the retort is acceptable if it is mechanically maintained so that it operates satisfactorily.

(5) *Bleeders.* Bleeders, except those for thermometer wells, shall be one-eighth inch or larger and shall be wide open during the entire process, including the come-up-time. Bleeders shall be located within approximately 1 foot of the outermost location of containers at each end along the top of the retort; additional bleeders shall be located not more than 8 feet apart along the top. Bleeders may be installed at positions other than those specified above, as long as there is evidence in the form of heat distribution data that they accomplish adequate removal of air and circulation of heat within the retort. In retorts having top steam inlet and bottom venting, a bleeder shall be installed in the bottom of the retort to remove condensate. All bleeders shall be arranged in a way that enables the operator to observe that they are functioning properly.

(6) *Venting and condensate removal.* The air in each retort shall be removed before processing is started. Heat distribution data or documentary proof from the manufacturer or from a competent processing authority, demonstrating that adequate venting is achieved, shall be kept on file. At the time steam is turned on, the drain should be opened for a time sufficient to remove steam condensate from the retort and provision should be made for continuing drainage of condensate during the retort operation.

(7) *Retort speed timing.* The rotational speed of the retort shall be specified in the scheduled process. The speed shall be adjusted, as necessary, to ensure that the speed is as specified in the scheduled process. The rotational speed as well as the process time shall be recorded for each retort load processed. Alternatively, a recording tachometer may be used to provide a continuous record of the speed. A means of preventing unauthorized speed changes on retorts shall be provided. A lock, or a notice from management posted at or near the speed-adjustment device that provides a warning that only authorized persons are permitted to make adjustments, is a satisfactory means of preventing unauthorized changes.

(8) *Critical factors.* Critical factors specified in the scheduled process shall be measured and recorded on the processing record at intervals of sufficient frequency to ensure that the factors are within the limits specified in the scheduled process. The minimum headspace of containers in each retort load to be processed, if specified in the scheduled process, shall be measured and recorded at intervals of sufficient frequency to ensure that the headspace is as specified in the scheduled process. The headspace of solder-tipped, lap seam (vent hole) cans may be measured by net weight determinations. When the product consistency is specified in the scheduled process, the consistency of the product shall be determined by objective measurements on the product taken from the filler before processing and recorded at intervals of sufficient frequency to ensure that the consistency is as specified in the scheduled process. Minimum closing machine vacuum in vacuum-packed products, maximum fill-in or drained weight, minimum net weight, and percent solids shall be as specified in the scheduled process for all products for which deviations from such specifications may affect the scheduled process. All measurements and recordings of critical factors should be made at intervals not to exceed 15 minutes.

(e) *Equipment and procedures for pressure processing in water in discontinuous agitating retorts*—(1) *Indicating mercury-in-glass thermometer.* Each retort shall be equipped with at least one mercury-in-glass thermometer whose divisions are easily readable to 1° F and whose temperature range does not exceed 17° F per inch of graduated scale. Thermometers shall be tested for accuracy against a known accurate standard themometer upon installation and at least once a year thereafter, or more frequently if necessary, to ensure their accuracy. Records of thermometer accuracy checks which specify date, standard use, method used, and person performing the test should be maintained. Each thermometer should have a tag, seal, or other means of identity that includes the date on which it was last tested for accuracy. A thermometer that has a divided mercury column or that cannot be adjusted to the standard shall be repaired or replaced before further use of the retort. Thermometers shall be installed where they can be accurately and easily read. Bulbs of indicating thermometers shall be installed either within the retort shell or in external wells attached to the retort. The mercury thermometer—not the recorder chart—shall be the reference instrument for indicating the processing temperature.

(2) *Temperature-recording device.* Each retort shall have an accurate temperature-recording device. Graduations on the temperature-recording devices shall not exceed 2° F within a range of 10° F of the processing temperature. Each chart shall have a working scale of not more than 55° F per inch within a range of 20° F of the processing temperature. The temperature chart shall be adjusted to agree as nearly as possible with, but to be in no event higher than, the known accurate mercury-in-glass thermometer during the process time. A means of preventing unauthorized changes in adjustment shall be provided. A lock, or a notice from management posted at or near the recording device that provides a warning that only authorized persons are permitted to make adjustment, is a satisfactory means for preventing unauthorized changes. This recorder may be combined with the steam controller and may be a recording-controlling instrument. The temperature-recorder bulb shall be installed either within the retort shell or in a well attached to the shell. Air-operated temperature controllers should have adequate filter systems to ensure a supply of clean dry air.

(3) *Pressure gages.* Each retort should be equipped with a pressure gage which should be graduated in divisions of 2 pounds of less.

(4) *Steam controller.* Each retort shall be equipped with an automatic steam controller to maintain the retort temperature. This may be a recording-

controlling instrument when combined with a recording thermometer.

(5) *Retort speed timing.* The rotational speed of the retort shall be specified in the scheduled process. The speed shall be adjusted, as necessary, to ensure that the speed is as specified in the scheduled process. The rotational speed as well as the process time shall be recorded for each retort load processed. Alternatively, a recording tachometer may be used to provide a continuous record of the speed. A means of preventing unauthorized speed changes shall be provided. A lock, or a notice from management posted at or near the speed adjustment device that provides a warning that only authorized persons are permitted to make adjustment, is a satisfactory means of preventing unauthorized changes.

(6) *Air supply and controls.* Means shall be provided for introducing compressed air at the proper pressure and rate, which shall be controlled by an automatic pressure control unit. A check value shall be provided in the air supply line to prevent water from entering the system.

(7) *Critical factors.* Critical factors specified in the scheduled process shall be measured and recorded on the processing record at intervals of sufficient frequency to ensure that the factors are within the limits specified in the scheduled process. The minimum headspace of containers, if specified in the scheduled process, shall be measured and recorded at intervals of sufficient frequency to ensure that the headspace is as specified in the scheduled process. The headspace of solder-tipped, lap seam (vent hole) cans may be measured by net weight determinations. When the product consistency is specified in the scheduled process, the consistency of the product shall be determined by objective measurements on the product taken from the filler before processing and recorded at intervals of sufficient frequency to ensure that the consistency is as specified in the scheduled process. Minimum closing machine vaccum in vacuum-packed products, maximum fill-in or drained weight, minimum net weight, and percent solids shall be as specified in the scheduled process for all products when deviations from such specifications may affect the scheduled process. All measurements and recordings of critical factors should be made at intervals not to exceed 15 minutes.

(f) *Equipment and procedures for pressure processing in steam in hydrostatic retorts.*—(1) *Indicating mercury-in-glass thermometer.* Each retort shall be equipped with at least one mercury-in-glass thermometer whose divisions are easily readable to 1° F and whose temperature range does not exceed 17° F per inch of graduated scale. Thermometers shall be tested for accuracy against a known accurate standard thermometer upon installation and at least once a year thereafter, or more frequently if necessary, to ensure their accurancy. Records of thermometer accuracy checks which specify date, standard used, method used, and person performing the test should be maintained. Each thermometer should have a tag, seal, or other means of identity that includes the date on which it was last tested for accuracy. A thermometer that has a divided mercury column or that cannot be adjusted to the standard shall be repaired or replaced before further use of the retort. Thermometers shall be installed where they can be accurately and easily read. The thermometer shall be located in the steam dome near the steam-water interface. When the scheduled process specifies maintainance of particular temperatures in the hydrostatic water legs, a mercury-in-glass thermometer shall be located in each hydrostatic water leg in a position near the bottom automatic recorder. The mercury thermometer—not the recorder chart—shall be the reference instrument for indicating the processing temperature.

(2) *Temperature-recording device.* Each retort shall have an accurate temperature-recording device. Graduations on the temperature-recording devices shall not exceed 2° F within a range of 10° F of the processing temperature. Each chart shall have a working scale of not more than 55° F per inch within a range of 20° F of the processing temperature. The temperature chart shall be adjusted to agree as nearly as possible with, but to be in no event higher than, the known accurate mercury-in-glass thermometer during the process time. A means of preventing unauthorized changes in adjustment shall be provided. A lock, or a notice from management posted at or near the recording device that provides a warning that only authorized persons are permitted to make adjustments, is a satisfactory means for preventing unauthorized changes. The recorder may be combined with the steam controller and may be a recording-controlling instrument. The temperature-recorder bulb shall be installed either within the steam dome or in a well attached to the dome. Each temperature-recorder bulb well shall have a 1/16-inch or larger bleeder opening which emits steam continuously during the processing period. Additional temperature-recorder bulbs shall be installed in the hydrostatic water legs if the scheduled process specifies maintenance of particular temperatures in the hydrostatic water legs. Air-operated temperature controllers should have adequate filter systems to ensure a supply of clean dry air.

(3) *Pressure gages.* Each retort should be equipped with a pressure gage which should be graduated in divisions of 2 pounds or less.

(4) *Recording of temperatures.* Temperatures indicated by the mercury-in-glass thermometer or thermometers shall be entered on a suitable form during processing operations. Temperatures shall be recorded by an accurate automatic recorder or recorders at the following points:

(i) In the steam chamber between the steam-water interface and the lowest container position.

(ii) Near the top and the bottom of each hydrostatic water leg if the scheduled process specifies maintenance of particular temperatures in the legs.

(5) *Steam controller.* Each retort shall be equipped with an automatic steam controller to maintain the retort temperature. This may be a recording-controlling instrument when combined with a recording thermometer. A steam controller activated by the steam pressure of the retort is acceptable if it is carefully mechanically maintained so that it operates satisfactorily.

(6) *Venting.* Before the start of processing operations, the retort steam chamber or chambers shall be vented to ensure removal of air.

(7) *Bleeders.* Bleeder openings ¼-inch or larger shall be located at the top of the steam chamber or chambers opposite the point of steam entry. Bleeders shall be wide open and shall emit steam continuously during the entire process, including the come-up-time. All bleeders shall be arranged in such a way that the operator can observe that they are functioning properly.

(8) *Retort speed.* The speed of the container-conveyor chain shall be specified in the scheduled process and shall be determined and recorded at the start of processing and at intervals of sufficient frequency to ensure that the retort speed is maintained as specified. The speed should be determined and recorded every 4 hours. An automatic device should be used to stop the chain when the temperature drops below that specified in the scheduled process. A means of preventing unauthorized speed changes shall be provided. A lock, or a

notice from management posted at or near the speed-adjusting device that provides a warning that only authorized persons are permitted to make adjustments, is a satisfactory means of preventing unauthorized changes.

(9) *Critical factors.* Critical factors specified in the scheduled process shall be measured and recorded on the processing record at intervals of sufficient frequency to ensure that the factors are within the limits specified in the scheduled process.

(i) When maximum fill-in or drained weight is specified in the scheduled process, it shall be measured and recorded at intervals of sufficient frequency to ensure that the weight of the product does not exceed the maximum for the given container size specified in the scheduled process.

(ii) Closing machine vacuum in vacuum-packed products shall be observed and recorded at intervals of sufficient frequency to ensure that the vacuum is as specified in the scheduled process.

(iii) Such measurements and recordings should be made at intervals not to exceed 15 minutes.

(g) *Aseptic processing and packaging systems*—(1) *Product sterilizer*—(i) *Equipment*—(*a*) *Temperature-indicating device.* Each product sterilizer shall be equipped with at least one mercury-in-glass thermometer or an equivalent temperature-indicating device, such as a thermocouple-recorder. Mercury-in-glass thermometers shall have divisions that are easily readable to 1° F and whose temperature range does not exceed 17° F per inch of graduated scale. Thermometers and temperature-indicating devices shall be tested for accuracy against a known accurate standard thermometer upon installation and at least once a year thereafter, or more frequently if necessary, to ensure their accuracy. Records of accuracy checks which specify date, standard used, method used, and person performing the test should be maintained. Each thermometer and temperature-indicating device should have a tag, seal, or other means of identity that includes the date on which it was last tested for accuracy. A thermometer that has a divided mercury column or that cannot be adjusted to essential agreement with the standard shall be repaired or replaced. Thermometers and temperature-indicating devices shall be installed where they can be accurately and easily read. The temperature-indicating device shall be the reference instrument for indicating the processing temperature.

(*b*) *Temperature-recording device.* There shall be an accurate temperature recording device on each product sterilizer. The device shall be installed in the product at the holding-tube outlet between the holding tube and the inlet to the cooler. Temperature-recording devices shall have graduations that do not exceed 2° F within a range of 10° F of the processing temperature. Each chart shall have a working scale of not more than 55° F per inch within a range of 20° F of the desired product-sterilization temperature. The temperature chart shall be adjusted to agree as nearly as possible with, but to be in no event higher than, a known accurate mercury-in-glass thermometer. A means of preventing unauthorized changes in adjustment shall be provided. A lock, or a notice from management posted at or near the recording device that provides a warning that only authorized persons are permitted to make adjustments, is a satisfactory means for preventing unauthorized changes.

(*c*) *Temperature recorder-controller.* An accurate temperature recorder-controller shall be located in the product sterilizer at the final heater outlet. It shall be capable of ensuring that the desired product sterilization temperature is maintained. The chart graduations shall not exceed 2° F within a range of 10° F of the desired product sterilization temperature. Air-operated temperature controllers should have adequate filter systems to ensure a supply of clean, dry air.

(d) Product-to-product regenerators. When a product-to-product regenerator is used to heat the cold unsterilized product entering the sterilizer by means of a heat exchange system, it shall be designed, operated, and controlled so that the pressure of the sterilized product in the regenerator is greater than the pressure of any unsterilized product in the regenerator to ensure that any leakage in the regenerator is from the sterilized product into the unsterilized product.

(e) Differential pressure recorder-controller. When a product-to-product regenerator is used, there shall be an accurate differential pressure recorder-controller installed on the regenerator. The scale divisions shall not exceed 2 pounds per square inch on the working scale of not more than 20 pounds per square inch per inch. The controller shall be tested for accuracy against a known accurate standard pressure indicator upon installation and at least once every 3 months of operation thereafter, or more frequently if necessary, to ensure its accuracy. One pressure sensor shall be installed at the sterilized product regenerator outlet and the other pressure sensor shall be installed at the unsterilized product regenerator inlet.

(f) Metering pump. A metering pump shall be located upstream from the holding tube and shall be operated to maintain the required rate of product flow. A means of preventing unauthorized speed changes shall be provided. A lock, or a notice from management posted at or near the speed-adjusting device that provides a warning that only authorized persons are permitted to make adjustments, is a satisfactory means of preventing unauthorized changes.

(g) Product holding tube. The product-sterilizing holding tube shall be designed to give continuous holding of every particle of food for at least the minimum holding time specified in the scheduled process. The holding tube shall be designed so that no portion of the tube between the product inlet and the product outlet can be heated, and it must be sloped upward at least 0.25 inch per foot.

(h) Flow-diversion systems. If a processor elects to install a flow-diversion system, it should be installed in the product piping located between the product cooler and the product filler or aseptic surge tank and should be designed to divert flow away from the filler or aseptic surge tank automatically. Controls and/or warning systems should be designed and installed with necessary sensors and actuators to operate whenever the sterilizing temperature in the holding tube or pressure differential in the product regenerator drops below specified limits. Flow-diversion systems should be designed and operated in accordance with recommendations of an aseptic processing and packaging authority.

(i) Equipment downstream from the holding tube. Product coolers, aseptic surge tanks, or any other equipment downstream from the holding tube, with rotating or reciprocating shafts, valve stems, instrument connections, or other such points, are subject to potential entry of microorganisms into the product. Such locations in the system should be equipped with steam seals or other effective barriers at the potential access points. Appropriate means should be provided to permit the operator to monitor the performance of the seals or barriers during operation.

(ii) Operation—(a) Startup. Before the start of aseptic processing operations the product sterilizer and all product-contact surfaces downstream shall be

brought to a condition of commercial sterility.

(b) Temperature drop in product-sterilizing holding tube. When product temperature in the holding tube drops below the temperature specified in the scheduled process, product flow should be diverted away from the filler or aseptic surge tank by means of a flow-diversion system. If for any reason product subjected to a temperature drop below the scheduled process is filled into containers, the product shall be segregated from product that received the scheduled process. The processing deviation shall be handled in accordance with § 507.89. The product holding tube and any further system portions affected shall be returned to a condition of commercial sterility before product flow is resumed to the filler or to the aseptic surge tank.

(c) Loss of proper pressures in the regenerator. When a regenerator is used, the product may lose sterility whenever the pressure of sterilized product in the regenerator is less than 1 pound per square inch greater than the pressure of unsterilized product in the regenerator. In this case, product flow should be diverted away from the filler or aseptic surge tank by means of the flow-diversion system. If for any reason the product is filled into containers, the product shall be segregated from product that received the scheduled process and shall be reprocessed or destroyed. Product flow to the filler or to the aseptic surge tank shall not be resumed until the cause of the improper pressure relationships in the regenerator has been corrected and the affected system(s) has been returned to a condition of commercial sterility.

(d) Loss of sterile air pressure or other protection level in the aseptic surge tank. When an aseptic surge tank is used, conditions of commercial sterility may be lost when the sterile air overpressure or other means of protection drops below the scheduled process value. Product flow to and/or from the aseptic surge tank shall not be resumed until the potentially contaminated product in the tank is removed, and the aseptic surge tank has been returned to a condition of commercial sterility.

(e) Records. Readings at the following points shall be observed and recorded at the start of aseptic packaging operations and at intervals of sufficient frequency to ensure that these values are as specified in the scheduled process: Temperature-indicating device in holding tube outlet; temperature recorder in holding tube outlet; temperature recorder-controller at final heater outlet; differential pressure recorder-controller, if a product-to-product regenerator is used; product flow rate as established by the metering pump or as determined by filling and closing rates and, if an aseptic surge tank is used, sterile air pressure or other protection means; and proper performance of seam seals or other similar devices. The measurements and recordings should be made at intervals not to exceed 1 hour.

(2) *Container sterilizing, filling, and closing operation*—(i) *Equipment—(a) Recording device.* The container and closure sterilization system and product filling and closing system shall be instrumented to demonstrate that the required sterilization is being accomplished continuously. Automatic recording devices shall be used to record, when applicable, the sterilization media flow rates, temperature, concentration, or other factors. When a batch system is used for container sterilization, the sterilization conditions shall be recorded.

(*b*) *Timing method(s).* A method(s) shall be used either to give the retention time of containers, and closures if applicable, in the sterilizing environment specified in the scheduled process, or to control the sterilization cycle at the rate specified in the scheduled process. A means of preventing unauthorized speed changes must be provided. A lock, or a notice from management posted at or near the speed adjusting device that provides a warning that only authorized persons are permitted to make adjustments, is a satisfactory means of preventing unauthorized changes.

(ii) *Operation*—(*a*) *Startup.* Before the start of packaging operations, both the container and closure sterilizing system and the product filling and closing system shall be brought to a condition of commercial sterility.

(*b*) *Loss of sterility.* A system shall be provided to stop packaging operations, or alternatively to ensure segregation of any product packaged when the packaging conditions fall below scheduled processes. Compliance with this requirement may be accomplished by diverting product away from the filler, by preventing containers from entering the filler, or by other suitable means. In the event product is packaged under conditions below those specified in the scheduled process, all such product shall be segregated and handled in accordance with § 507.89. In the event of loss of sterility, the system(s) shall be returned to a condition of commercial sterility before resuming packaging operations.

(*c*) *Records.* Observations and measurements of operating conditions shall be made and recorded at intervals of sufficient frequency to ensure that commercial sterility of the food product is being achieved; such measurements shall include the sterilization media flow rates, temperatures, the container and closure rates (if applicable) through the sterilizing system, and the sterilization conditions if a batch system is used for container sterilization. The measurements and recordings should be made at intervals not to exceed 1 hour.

(3) *Incubation.* Incubation tests should be conducted on a representative sample of containers of product from each code; records of the test results should be maintained.

(4) *Critical factors.* Critical factors specified in the scheduled process shall be measured and recorded on the processing record at intervals of sufficient frequency to ensure that the factors are within the limits specified in the scheduled process. Such measurements and recordings should be done at intervals not to exceed 15 minutes.

(h) *Equipment and procedures for flame sterilizers.* The container conveyor speed shall be specified in the scheduled process. The container conveyor speed shall be measured and recorded at the start of operations and at intervals of sufficient frequency to ensure that the conveyor speed is as specified in the scheduled process. Such measurements and recordings should be done at 1-hour intervals. Alternatively, a recording tachometer may be used to provide a continuous record of the speed. A means of preventing changes in flame intensity and unauthorized speed changes on the conveyor shall be provided. A lock, or a notice from management posted at or near the speed adjusting device that provides a warning that only authorized persons are permitted to make adjustments, is a satisfactory means of preventing unauthorized changes. The surface temperature of at least one container from each conveyor channel shall be measured and recorded at the entry and at the end of the holding period at intervals of sufficient frequency to ensure that the temperatures specified in the scheduled process are maintained. Such measurements and recordings should be done at intervals not to exceed 15 minutes.

(1) *Process interruption.* In the event of process interruption wherein the temperature of the product may have dropped, an authorized, scheduled emergency plan approved by a qualified

person having expert knowledge of the process requirements may be used.

(2) *Critical factors.* Critical factors specified in the scheduled process shall be measured and recorded on the processing record at intervals of sufficient frequency to ensure that the factors are within the limits specified in the scheduled process.

(i) *Equipment and procedures for thermal processing of foods wherein critical factors such as water activity are used in conjunction with thermal processing.* The methods and controls used for the manufacture, processing, and packing of such foods shall be as established in the scheduled process and shall be operated or administered in a manner adequate to ensure that the product is safe. The time and temperature of processing and other critical factors specified in the scheduled process shall be measured with instruments having the accuracy and dependability adequate to ensure that the requirements of the scheduled process are met. All measurements shall be made and recorded at intervals of sufficient frequency to ensure that the critical factors are within the limits specified in the scheduled process.

(j) *Other systems.* All systems, whether or not specifically mentioned in this part, for the thermal processing of low-acid foods in hermetically sealed containers shall conform to the applicable requirements of this part and the methods and controls used for the manufacture, processing, and packing of these foods shall be as established in the scheduled process. These systems shall be operated or administered in a manner adequate to ensure that commercial sterility is achieved. Critical factors specified in the scheduled process shall be measured and recorded at intervals of sufficient frequency to ensure that the critical factors are within the limits specified in the scheduled process.

Subpart D—Control of Components, Food Product Containers, Closures, and In-Process Materials

§ 507.60 Containers.

(a) *Closures.* Regular observations shall be maintained during production runs for gross closure defects. Any such defects shall be recorded and corrective action taken and recorded. At intervals of sufficient frequency to ensure proper closure, the operator, closure supervisor, or other qualified container closure inspection person shall visually examine either the top seam of a can randomly selected from each seaming head or the closure of any other type of container being used and shall record the observations made. For double-seam cans, each can should be examined for cutover or sharpness, skidding or deadheading, false seam, droop at the crossover or lap, and condition of inside of countersink wall for evidence of broken chuck. Such measurements and recordings should be made at intervals not to exceed 30 minutes. Additional visual closure inspections shall be made immediately following a jam in a closing machine, after closing machine adjustment, or after startup of a machine following a prolonged shutdown. All pertinent observations shall be recorded. When irregularities are found, the corrective action shall be recorded.

(1) Teardown examinations for double-seam cans shall be performed by a qualified individual and the results therefrom shall be recorded at intervals of sufficient frequency on enough containers from each seaming station to ensure maintenance of seam integrity. Such examinations and recordings should be made at intervals not to exceed 4 hours. The results of the teardown examinations shall be recorded and the corrective action taken, if any, shall be noted.

(i) Required and optional can seam measurements:

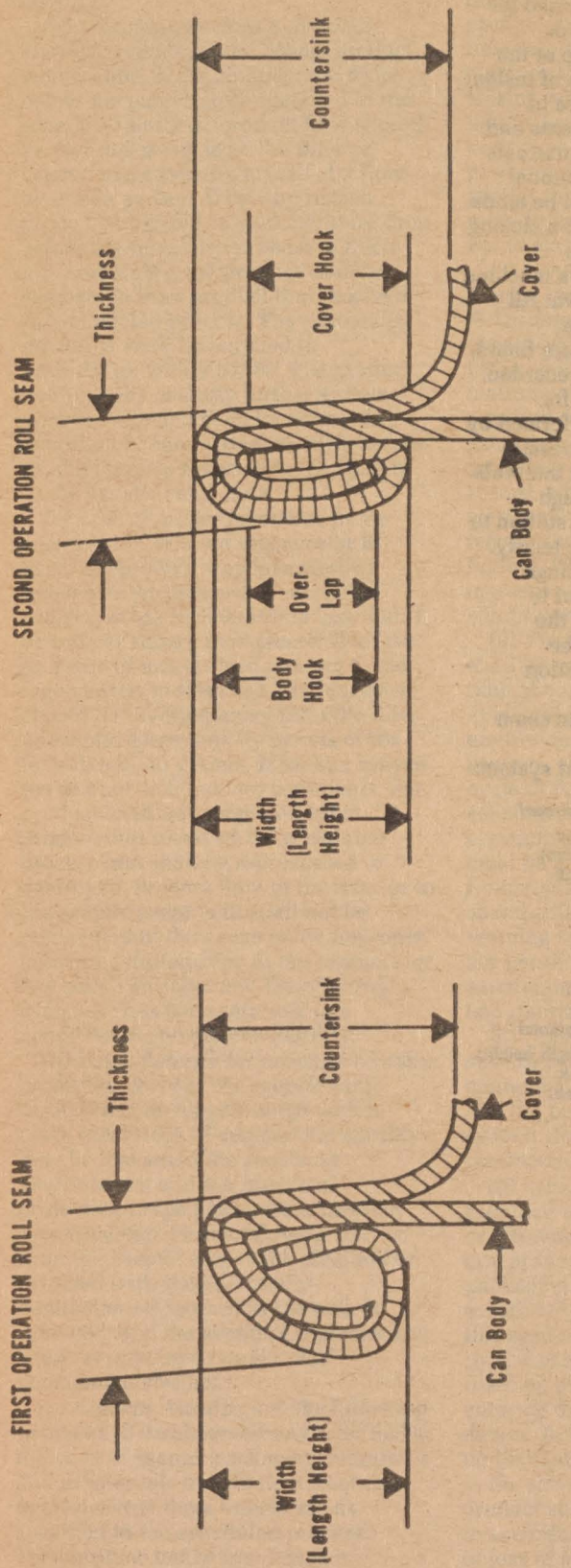
(*a*) Micrometer measurement system:

Required	*Optional*
Cover hook.	Overlap (by calculation).
Body hook.	Countersink.
Width (length, height).	
Tightness (observation for wrinkle).	
Thickness.	

(*b*) Seam scope or projector:

Required	*Optional*
Body hook.	Width (length, height).
Overlap.	Cover hook.
Tightness (observation for wrinkle).	Countersink.
Thickness by micrometer.	

BILLING CODE 4110-03-M



BILLING CODE 4110-03-C

(c) Can double seam terminology:

(1) "Crossover": The portion of a double seam at the lap.

(2) "Cutover": A fracture, sharp bend, or break in the metal at the top of the inside portion of the double seam.

(3) "Deadhead": A seam which is incomplete due to chuck spinning in the countersink.

(4) "Droop": Smooth projection of double seam below bottom of normal seam.

(5) "False seam": A small seam breakdown where the cover hook and the body hook are not overlapped.

(6) "Lap": Two thicknesses of material bonded together.

(ii) Two measurements at different locations, excluding the side seam, shall be made for each double seam characteristic if a seam scope or seam projector is used. When a micrometer is used, three measurements shall be made at points approximately 120° apart, excluding the side seam.

(iii) Overlap length can be calculated by the following formula:

The theoretical overlap length = CH + BH + T − W,

where

CH = cover hook
BH = body hook
T = cover thickness, and
W = seam width (height, length)

(2) For glass containers with vacuum closures, capper efficiency must be checked by a measurement of the cold water vacuum. This shall be done before actual filling operations, and the results shall be recorded.

(3) For closures other than double seams and glass containers, appropriate detailed inspections and tests shall be conducted by qualified personnel at intervals of sufficient frequency to ensure proper closing machine performance and consistently reliable hermetic seal production. Records of such tests shall be maintained.

(b) *Cooling water.* Container cooling water shall be chlorinated or otherwise sanitized as necessary for cooling canals and for recirculated water supplies. There should be a measurable residual of the sanitizer employed at the water discharge point of the container cooler.

(c) *Coding.* Each hermetically sealed container of low-acid processed food shall be marked with an identifying code that shall be permanently visible to the naked eye. When the container does not permit the code to be embossed or inked, the label may be legibly perforated or otherwise marked, if the label is securely affixed to the product container. The required identification shall identify in code the establishment where packed, the product contained therein, the year packed, the day packed, and the period during which packed. The packing period code shall be changed with sufficient frequency to enable ready identification of lots during their sale and distribution. Codes may be changed on the basis of one of the following: intervals of 4 to 5 hours; personnel shift changes; or batches, as long as the containers that constitute the batch do not extend over a period of more than one personnel shift.

(d) *Postprocess handling.* When cans are handled on belt conveyors, the conveyors should be so constructed as to minimize contact by the belt with the double seam, i.e., cans should not be rolled on the double seam. All worn and frayed belting, can retarders, cushions, etc. should be replaced with new nonporous material. All tracks and belts that come into contact with the can seams should be thoroughly scrubbed and sanitized at intervals of sufficient frequency to avoid product contamination. Automatic equipment used in handling filled containers should be so designed and operated as to preserve the can seam or other container closure integrity.

Subpart E—Production and Process Controls

§ 507.81 Product preparation.

(a) Before using raw materials and ingredients susceptible to microbiological contamination, the processor shall ensure that those materials and ingredients are suitable for use in processing low-acid food. Compliance with this requirement may be accomplished by receiving the raw materials and ingredients under a supplier's guarantee that they are suitable for use, by examining them for their microbiological condition, or by other acceptable means.

(b) Blanching by heat, when required in the preparation of food for canning, should be effected by heating the food to the required temperature, holding it at this temperature for the required time, and then either rapidly cooling the food or passing it to subsequent processing without delay. Thermophilic growth and contamination in blanchers should be minimized by the use of adequate operating temperatures and by cleaning. If the blanched food product is washed before filling, potable water should be used.

(c) The filling of containers, either mechanically or by hand, shall be controlled so as to ensure that the filling requirements specified in the scheduled process are met.

(d) The exhausting of containers for the removal of air shall be controlled so as to meet the conditions for which the process was designed. Compliance with the requirement may be accomplished by heat exhausting, mechanical exhausting, hot brining, or steam injection.

(e) When the maintenance of pH (above 4.6) of a normally low-acid food is a basis for a scheduled process, there shall be careful supervision to ensure that the equilibrium pH of the finished product meets that of the scheduled process. The methodology described in § 114.90 of this chapter should be used.

(f) When the scheduled process sets forth critical factors to prevent the growth of microorganisms not destroyed by the thermal process, the factors shall be carefully controlled to ensure that the limits established in the scheduled process are not exceeded. When normally low-acid foods require sufficient solute to permit safe processing at low temperatures, such as in boiling water, there shall be careful supervision to ensure that the equilibrium water activity (a_w) of the finished product meets that of the scheduled process. The scheduled thermal processes for foods having an a_w greater than 0.85 and less than the a_w that would allow the growth of spores of microorganisms of public health significance shall be sufficient to render the food free of microorganisms capable of reproducing in the food under normal nonrefrigerated conditions of storage and distribution.

§ 507.83 Establishing scheduled processes.

Scheduled processes for low-acid foods shall be established by qualified persons having expert knowledge of thermal processing requirements for low-acid foods in hermetically sealed containers and having adequate facilities for making such determinations. The type, range, and combination of variations encounted in commercial production shall be adequately provided for in establishing the scheduled process. Critical factors, e.g., minimum headspace, consistency, maximun fill-in or drained weight, a_w, etc., that may affect the scheduled process, shall be specified in the scheduled process. Acceptable scientific methods of establishing heat sterilization processes shall include, when necessary, but shall not be limited to, microbial thermal death time data, process calculations based on product heat penetration data, and inoculated packs. Calculation shall be performed according to procedures recognized by

competent processing authorities. If incubation tests are necessary for process confirmation, they shall include containers from test trials and from actual commercial production runs during the period of instituting the process. The incubation tests for confirmation of the scheduled processes should include the containers from the test trials and a number of containers from each of four or more actual commercial production runs. The number of containers from actual commercial production runs should be determined on the basis of recognized scientific methods to be of a size sufficient to ensure the adequacy of the process. Complete records covering all aspects of the establishment of the process and associated incubation tests shall be prepared and shall be permanently retained by the person or organization making the determination.

§ 507.87 Operations in the thermal processing room.

(a) Operating processes and retort venting procedures to be used for each product and container size being packed shall either be posted in a conspicuous place near the processing equipment or be made readily available to the retort or processing system operator and any duly authorized employee of the Food and Drug Administration. Scheduled processes must be made readily available to the supervisor and any duly authorized employee of the Food and Drug Administration.

(b) A system for product traffic control in the retort room shall be established to prevent unretorted product from bypassing the retort process. Each retort basket, truck, car, or crate used to hold containers in a retort, or one or more containers therein, shall, if it contains any retorted food product, be plainly and conspicuously marked with a heat-sensitive indicator, or by other effective means that will indicate visually, to thermal processing personnel, those units that have been retorted. A visual check shall be performed to determine whether or not the appropriate change has occurred in the heat-sensitive indicator as a result of retorting for all retort baskets, trucks, cars, or crates, to ensure that each unit of product has been retorted. A written record of these checks should be made.

(c) The initial temperature of the contents of the containers to be processed shall be determined and recorded with sufficient frequency to ensure that the temperature of the product is no lower than the minimum initial temperature specified in the scheduled process. For those operations that use water during the filling of the retort or during processing, provision shall be made to ensure that the water will not, before the start of each thermal process, lower the initial temperature of the product below that specified in the scheduled process.

(d) Timing devices used in recording thermal process time information shall be accurate to the extent needed to ensure that the processing time and venting time specified in the scheduled process are achieved. Pocket or wrist watches are not considered satisfactory for timing purposes. Digital clocks may be used if the operating process and the venting schedule have a 1-minute or greater safety factor over the scheduled process.

(e) Clock times on recording-temperature charts should reasonably correspond to the time of day on the written processing records to provide correlation of these records.

(f) The steam supply to the thermal processing system shall be adequate to the extent needed to ensure that sufficient steam pressure is maintained during thermal processing, regardless of other demands of steam by the plant.

(g) If mufflers are used on bleeders or vent systems, evidence that the bleeders or vents are operated in a manner that does not significantly impede the removal of air shall be kept on file. This evidence may be in the form of heat distribution data or other satisfactory evidence such as a letter from the manufacturer, the designer, or a competent processing authority.

§ 507.89 Deviations in processing, venting, or control of critical factors.

Whenever any process is less than the scheduled process or when critical factors are out of control for any low-acid food or container system as disclosed from records by processor check or otherwise, the commercial processor of that low-acid food shall either fully reprocess that portion of the production involved, keeping full records of the reprocessing conditions or, alternatively, shall set aside that portion of the product involved for further evaluation as to any potential public health significance. Such evaluation shall be made by a competent processing authority and shall be in accordance with procedures recognized by competent processing authorities as being adequate to detect any potential hazard to public health. Unless this evaluation demonstrates that the product had been given a thermal process that rendered it free of microorganisms of potential public health significance, the product set aside shall be either fully reprocessed to render it commercially sterile or destroyed. A record shall be made of the evaluation procedures used and the results. Either upon completion of full reprocessing and the attainment of commercial sterility or after the determination that no significant potential for public health hazard exists, that portion of the product involved may be shipped in normal distribution. Otherwise, the portion of the product involved shall be destroyed. All process deviations involving a failure to satisfy the minimum requirements of the scheduled process, including emergencies arising from a jam or breakdown of a continuous agitating retort necessitating cooling the retort for repairs, shall be recorded and made the subject of a separate file (or a log identifying the appropriate data) detailing those deviations and the actions taken.

Subpart F—Records and Reports

§ 507.100 Processing and production records.

(a) Processing and production information shall be entered at the time it is observed by the retort or processing system operator, or other designated person, on forms that include the product, the code number, the date, the retort or processing system number, the size of container, the approximate number of containers per coding interval, the initial temperature, the actual processing time, the mercury-in-glass and recording thermometer readings, and other appropriate processing data. Closing machine vacuum in vacuum-packed products, maximum fill-in or drained weight, or other critical factors specified in the scheduled process shall also be recorded. In addition, the following records shall be maintained:

(1) *Still retorts.* Time steam on; time temperature up to processing temperature; time steam off; venting time and temperature to which vented.

(2) *Agitating retorts.* Functioning of condensate bleeder; retort speed; and, when specified in the scheduled process, headspace, consistency, maximum drained weight, minimum net weight, and percent solids.

(3) *Hydrostatic retorts.* The temperature in the steam chamber between the steam-water interface and the lowest container position; speed of the container conveyor chain; and, when the scheduled process specifies maintenance of particular temperatures in the hydrostatic water legs, the

temperatures near the top and the bottom of each hydrostatic water leg.

(4) *Aseptic processing and packaging systems.* Product temperature in the holding tube outlet as indicated by the temperature-indicating device and the temperature recorder; product temperature in the final heater outlet as indicated by the temperature recorder-controller; differential pressure as indicated by the differential pressure recorder-controller, if a product-to-product regenerator is used; product flow rate, as determined by the metering pump or by filling and closing rates; sterilization media flow rate or temperature or both; retention time of containers, and closures when applicable, in the sterilizing environment; and, when a batch system is used for container and/or closure sterilization, sterilization cycle times and temperatures.

(5) *Flame sterilizers.* Container conveyor speed; surface temperature at the beginning and at the end of the holding period; nature of container.

(6) *Food preservation methods wherein critical factors such as water activity are used in conjunction with thermal processing.* Product formulation and scheduled processes used, including the thermal process, its associated critical factors, as well as other critical factors, and results of a_w determinations.

(7) *Other systems.* Critical factors specified in the formulation of the product or in the scheduled process.

(b) Recording thermometer charts shall be identified by date, retort number, and other data as necessary, so they can be correlated with the written record of lots processed. Each entry on the processing and production records shall be made by the retort or processing system operator, or other designated person, at the time the specific retort or processing system condition or operation occurs, and this retort or processing system operator or other designated person shall sign or initial each record form. Not later than 1 working day after the actual process, and before shipment or release for distribution, a representative of plant management who is qualified by suitable training or experience shall review all processing and production records for completeness and to ensure that the product received the scheduled process. The records, including the recording thermometer chart(s), shall be signed or initialed and dated by the reviewer.

(c) Written records of all container closure examinations shall specify the product code, the date and time of container closure inspections, the measurements obtained, and all corrective actions taken. Records shall be signed or initialed by the container closure inspector and reviewed by management with sufficient frequency to ensure that the containers are hermetically sealed.

(d) Records shall be maintained to identify the initial distribution of the finished product to facilitate, when necessary, the segregation of specific food lots that may have become contaminated or otherwise rendered unfit for their intended use.

(e) Copies of all records provided for in this part, except those required under § 507.83 establishing scheduled processes, shall be retained at the processing plant for a period of not less than 1 year from the date of manufacture, and at the processing plant or other reasonably accessible location for an additional 2 years. If, during the first year of the 3-year record-retention period, the processing plant is closed for a prolonged period between seasonal packs, the records may be transferred to some other reasonably accessible location at the end of the seasonal pack.

Effective date: September 17, 1979.

(Secs. 402(a)(3) and (4), 701(a), 52 Stat. 1046, 1055 (21 U.S.C. 342(a)(3) and (4), 371(a)))

Dated: August 9, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-25283 Filed 8-16-79; 8:45 am]

BILLING CODE 4110-03-M

federal register

Friday
August 17, 1979

Part V

Consumer Product Safety Commission

Development of Proposed Consumer Product Safety Standards

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1105

Development of Proposed Consumer Product Safety Standards

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission reorganizes and amends a portion of its regulation on developing proposed safety standards. This action is necessary to reflect changes in section 7 of the Consumer Product Safety Act resulting from the Consumer Product Safety Act Authorization Act of 1978. The changes to section 7 of the act include allowing the Commission to develop proposed consumer product safety standards itself and to publish as proposed standards certain types of existing standards without first soliciting offers to develop standards or soliciting the submission of existing standards; deleting the 150 day period for developing standards and the 60 day period for the Commission to review a recommended standard submitted by an offeror; requiring the Commission to provide for notice, public participation and recordkeeping when it develops standards itself; and allowing the Commission to fund participants when it develops standards itself.

DATES: The rule is effective on August 17.

FOR FURTHER INFORMATION CONTACT: Philip Bechtel, Office of the General Counsel, Consumer Product Safety Commission, 1111 18th Street NW., Washington, D.C. 20207 (202) 634–7770.

SUPPLEMENTARY INFORMATION: A major objective of the Consumer Product Safety Commission is to protect the public against unreasonable risks of injury associated with consumer products. One way in which the Commission may achieve this objective is by developing and issuing mandatory consumer product safety standards when the Commission believes they are necessary to eliminate or reduce an unreasonable risk of injury. These standards are authorized by section 7 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2056.

The CPSA, as originally enacted, (Pub. L. 92–573) provided a novel method for the development and issuance of consumer product safety standards. The act required the Commission to solicit from outside parties the submission of offers to develop recommended standards for the Commission or the submission of existing standards for consideration as proposed mandatory standards. The Commission could develop standards itself only under limited circumstances and, in any event, only after it had invited outside parties to offer to develop recommended standards for the Commission.

To implement its authority to develop and issue mandatory standards, the Commission on May 7, 1974, after providing an opportunity for public comment, issued a regulation covering (1) the submission of existing standards to the Commission, (2) the submission of offers to develop recommended consumer product safety standards, and (3) the actual development of recommended consumer product safety standards by parties outside the Commission (16 CFR Part 1105, 39 FR 16213). The regulation also included requirements for cost contributions by CPSC toward the development of standards.

The Commission amended the regulation on November 9, 1977 (42 FR 58400) to reflect changes in section 7 of the act contained in the Consumer Product Safety Commission Improvements Act of 1976 (Pub. L. 94–284). In November 1978, the Consumer Product Safety Act Authorization Act (Pub. L. 95–631) became law. It authorized appropriations for the Commission through 1981 and contained, among other things, changes and additions to the provisions of the Consumer Product Safety Act.

The amendments to the CPSA include a number of changes to section 7 of the CPSA which sets forth the procedures for the development of proposed consumer product safety standards. The changes include allowing the Commission to develop proposed standards without the necessity of first soliciting offers to develop recommended standards; allowing the Commission to propose certain types of existing standards without the necessity of soliciting offers to develop standards or the submission of existing standards; deleting the prescribed 150 day period for developing standards and the 60 day period for the Commission to review a recommended standard submitted by an offeror; allowing the Commission to fund participants when it develops standards itself; and requiring the Commission to prescribe regulations governing situations where it develops standards itself without using the offeror process.

In this document, the Commission amends its standard development regulation, 16 CFR Part 1105, to reflect the amendments to section 7 of the CPSA. In addition, because of the complexity of section 7 as amended and the need to include new provisions in the regulation to reflect the amendments, the Commission is reorganizing the regulation and reprinting the entire regulation in this document. The Commission believes it is necessary to reorganize the regulation to assure that, with the addition of new provisions, the regulation is clear and understandable. The Commission has also made serveral nonsubstantive editorial changes in the reorganized regulation to simplify and clarify the regulation.

The regulation as reorganized contains four subparts. Subpart A contains general purpose and policy provisions. Subpart B contains procedures for the development of recommended standards under the Consumer Product Safety Act by persons or groups outside the Commission. Subpart C contains procedures for Commission development of proposed standards, and Subpart D applies where the Commission proposes existing standards as mandatory standards.

On May 31, 1979, the Commission proposed the regulation in the **Federal Register** (44 FR 31208). The proposal solicited comments only on Subpart C, which contains provisions for Commission developed standards needed as a result of the amendments to section 7, and §§ 1105.5(a)(7) and 1105.11 of Subpart B, which describe the development period for offeror developed standards. Subparts A, B and D of the reorganized regulation are essentially the same as the existing regulation, and except for §§ 1105.5(a)(7) and 1105.11 of Subpart B, the Commission did not seek comment on them. Generally, the only changes the Commission has made to the provisions of those subparts from the existing regulation are minor editorial changes and changes specifically required by the recent amendments to section 7. The amendment to section 7 deleting the prescribed 150 day period for developing standards and requiring the Commission to specify a development period has been reflected in the regulation at § 1105.5(a)(7).

Similarly, the amendment requiring the Commission to publish a proposed standard within 45 days after the development period ends has been reflected in the regulation at section 1105.11. The amendment authorizing the Commission to publish an existing standard as a proposed standard without first soliciting offers to develop a standard or the submission of existing

standards is reflected in the regulation at § 1105.26. In addition, the Commission has made minor changes in the regulation at § 1105.25(a) to reflect the amendment to section 7 regarding the Commission's authority to publish an existing standard as a proposed standard in lieu of accepting an offer to develop a standard. Previously, the Commision could publish only certain types of existing standards. The amendment to section 7 has broadened this authority. The Commission has revised its standard development regulation to reflect these nondiscretionary changes.

The amendments to section 7 authorizing the Commission to develop proposed standards itself without using the offeror process also require that the Commission amend its existing regulation by adding new provisions for Commission development of proposed standards. These new provisions appear in Subpart C. The new provisions require the Commission, when developing proposed standards itself, to follow procedures similar to those in Subpart B applicable to offerors who develop standards.

The provisions of Subpart C also reflect requirements in the amended act that are unique to Commission developed standards. Under the amendments, the CPSC may develop a proposed standard without inviting offers whenever it determines that it is more expeditious for the Commission itself to develop a standard that would adequately protect the public from the identified risk of injury than to use the offeror process. In making this determination, the Commission must consider various factors. These include the nature of the risk of injury associated with the product; the CPSA's expertise with respect to the risk of injury; its expertise in developing consumer product safety standards; and its available resources and priorities. In considering these criteria, the Commission, in accordance with the legislative history of the amendments, must also consider the qualifications of persons or groups outside the Commission. In addition, in determining whether it is more expeditious for the Commission to develop standards itself rather than using the offeror process, the Commission must consider not only technical expertise but also the ability to translate technical results into understandable enforceable standards. These requirements are included in the regulation at Subpart C.

The amended act also requires the Commission to give interested persons 30 days in which to comment on the Commission's determination to develop a standard itself.

The regulation also provides that the Commission, in its discretion, may publish the determination that it intends to develop a standard itself before it publishes a notice beginning the standard development proceeding, or, it may combine the two notices. This provision is found in § 1105.16.

At section 1105.17(b)(5) the Commission has included in this final regulation a paragraph clarifying that the **Federal Register** notice beginning the proceeding for the CPSC to develop a proposed standard must include an invitation for interested persons to submit to the Commission an existing standard as the proposed consumer product safety standard. This paragraph is in accordance with the provisions of section 7(b)(2) of the act.

The amended act permits the Commission to make financial contributions to persons who participate with the Commission when it develops proposed standards itself in addition to being able to contribute to an offeror's cost in developing a standard. When the Commission develops standards itself, it may provide financial assistance directly to any interested persons or groups whose participation in the standard development process is likely to result in a more satisfactory standard. Subpart C reflects this authority and generally follows the provisions of the Commission's interim regulations on financial contributions, found at 16 CFR Part 1050 (43 FR 23560, May 31, 1978).

The financial contribution provision in Subpart C is intended to encourage and ensure representation of various viewpoints when the Commission develops standards itself. This provision does not affect the Commission's ability and authority to contract with persons or groups outside the Commission to aid in the development of Commission developed standards.

Response To Comments

In response to the proposal, the Commission received six comments, from an individual, a manufacturer, a voluntary standards organization, and several trade associations. These comments are available for inspection in the Office of the Secretary of the Commission. The Commission's response, to the relevant issues raised by the comments is given below:

Subpart B—Development of Recommended Standards by Offerors

One commentor recommended that in discussing the time alloted to the offeror during the development period at §§ 1105.5(a)(7) and 1105.11(a) the Commission refer to the offeror as the "offeror of an accepted offer" to eliminate confusion.

The Commission agrees with the suggestion of the commentor, and has changed §§ 1105.5(a)(7) and 1105.11(a) accordingly.

One commentor suggested that the Commission change § 1105.11(a) and § 1105.20(a) to specifically provide that on publication of a proposed standard, a 30 day comment period would be provided before issuance of a final standard.

The regulation issued here concerns the development of proposed consumer product safety standards, and does not deal with the procedure for issuing a final standard. The procedure for issuing standards is specified in section 9(a) of the CPSA (15 U.S.C. 2058(a)) and is beyond the scope of this regulation. Therefore, the Commission does not believe it is necessary to make the change suggested by the commentor.

One commentor opposed the deletion of the 150 day period for developing standards and the 60 day period for the Commission to review recommended standards.

The Commission has deleted the 150 day period for developing standards and the 60 day period for the Commission to review recommended standards since the act, as amended by Pub. L. 95–631, no longer includes these time provisions. Instead, section 7(b)(1)(E) of the act (15 U.S.C. 2056(b)(1)(E)) provides that the Commission will specify in the notice beginning the standard development proceeding the period of time in which the offeror and the Commission, or the Commission acting by itself is to develop the proposed standard. This provision is included in the regulation at § 1105.5(a)(7) and § 1105.17(a)(2). The Commission believes that the development period specified in individual proceedings will provide sufficient time for meaningful participation by interested persons. At section 7(f) (15 U.S.C. 2056(f)), the act anticipates that the Commission will publish a proposed standard within 45 days after the end of the development period. At § 1105.11(a) and § 1105.20 the regulation provides that the Commission will normally publish a proposed standard within 45 days after the development period ends.

Subpart C—Development of Proposed Standards by the Commission

One commentor opposed the inclusion of subpart C in its entirety; however the commentor did not state the reasons for his opposition.

Section 7(d)(4) of the act, as amended (15 U.S.C. 2056(d)(4)) requires the Commission to prescribe regulations governing the Commission's development of proposed consumer product safety rules. Subpart C of the regulation contains provisions concerning the development of proposed standards by the Commission and is issued under the authority provided in section 7(d)(4) of the act.

Several commentors encouraged the Commission to continue to use offerors in developing standards. One commentor recommended that the Commission liberally construe the criteria of § 1105.15(a) to permit offerors to develop recommended standards.

In issuing this regulation the Commission does not intend to foreclose the development of standards by offerors. Section 1105.15(a) specifies the five circumstances in which the CPSA authorizes the Commission to develop proposed consumer product safety standards. The Commission will carefully evaluate individual standard development conditions before deciding to develop a standard itself.

One commentor claimed that § 1105.15 of the proposed regulations gives the Commission complete freedom to decide when it will develop a proposed standard without the use of an offeror. The commentor also stated that the section would result in more frequent development of standards by the Commission rather than offerors, and would increase the Commission's workload and expenditure of resources.

The Commission does not agree with the commentor that the regulation provides the Commission with complete freedom in deciding to develop a proposed standard without using an offeror. The circumstances listed at § 1105.15 for the development of proposed standards by the Commission, rather than an offeror, are the circumstances provided by statute for the Commission development of proposed standards.

The Commission does not believe that these provisions will encourage the development of proposed standards by the Commission in circumstances where the standards could be feasibly and more expeditiously developed by an offeror. The Commission also does not have any information indicating that the regulation would in itself increase the Commission's workload and expenditure of resources in developing standards.

One commentor suggested that the Commission change the language at § 1105.15(a)(5) to avoid ambiguity by adding the phrase "by the consumer product safety standard" to the phrase "the consumer product proposed to be regulated."

The Commission does not believe that the additional phrase is necessary for clarity, and declines to make the change suggested by the commentor.

The same commentor recommended that in an instance where the Commission decides to develop a standard when the offeror is a manufacturer, distributor, or retailer of the product, the Commission should attempt to avoid unnecessary duplication of the work done by the offeror.

The Commission agrees with the commentor and intends to avoid unnecessary duplication of work in developing standards.

Several commentors recommended that the Commission include more specific provisions at § 1105.15(b)(3) to describe the procedures to be used by the Commission in situations where the Commission develops a standard after an offer has been accepted. According to the commentors the provision that the Commission will use procedures it deems reasonable and appropriate is vague and provides unnecessary latitude. According to one commentor, this statement could allow the Commission to proceed in a summary fashion to issue standards. The commentors suggested that the Commission use the procedures of Subpart C in such circumstances to ensure full and fair participation of all parties in standards development.

The Commission does not agree with the commentors that the regulation should include more specific provisions to describe the procedures to be used where the Commission develops a standard after an offer has been accepted. At § 1105.15(b)(3), the regulation provides that in these situations where the Commission develops a standard itself, the Commission will publish a notice in the **Federal Register** announcing its decision and stating the procedures it will use. The Commission believes that it is important to preserve procedural flexibility in developing standards under these circumstances, while being fair to interested persons. Since the circumstances described here for Commission development of standards are likely to involve unique conditions affecting the success of the standard development proceeding, the Commission does not believe that it is feasible to develop more specific provisions in this regulation. As an example, the Commission could encounter a situation where the offeror has substantially completed work on a recommended standard at the time the Commission found it necessary to complete the work itself. In a situation such as this, it would be wasteful and unnecessary for the Commission to follow the Subpart C procedures. Instead, as these situations arise, the Commission will publish a **Federal Register** notice stating reasonable and appropriate procedures to be used in the standard development proceeding.

One commentor questioned the adequacy of the 30 day period provided at § 1105.16 for interested persons to submit written comments on the Commission's determination to develop a proposed standard by itself. According to the commentor, at least sixty days should be allowed for the submission of comments.

The Commission believes that the period of time for submitting written comments should remain at 30 days. The act, at section 7(b)(2) provides a 30 day period for the submission of written comments and does not provide for an extension of this period of time.

One commentor stated that the Commission should respond to comments submitted concerning the Commission's determination to develop a proposed standard itself.

As indicated in the legislative history of Pub. L. 95–631, the Commission is not obligated to respond to these comments (H.R. Rep. No. 1164, 95th Cong. 2nd Sess. 11 (1978). However, the Commission will take these comments into consideration in determining whether to proceed with standard development itself. At § 1105.16(a), the regulation provides that the Commission will consider comments received before developing a proposed standard itself.

One commentor stated that § 1105.16(c) and § 1105.17(a) of the proposed regulation provide the Commission with great flexibility concerning publication of the notice of intent to develop a proposed standard and publication of the notice of the initiation of proceedings to develop proposed standards. According to the commentor, the Commission should never issue the notices at the same time and should make separate decisions concerning the issues to develop a proposed standard itself and to initiate proceedings to develop a proposed standard. The commentor suggested that the Commission solicit and consider comments on the notice initiating the proceeding to develop a proposed standard.

The Commission believes that it is important to preserve the Commission's discretion concerning the timing of the

publication of the notice of intent to develop a proposed standard and the notice beginning the proceeding to develop proposed standards. In fact, section 7(b)(1) of the act anticipates that the notice of determination be combined with the notice beginning a proceeding. At § 1105.16(c), the regulation specifically provides that the Commission may combine the two notices. As stated in § 1105.16(c) the Commission believes that the development proceeding should be begun as soon as practicable after the Commission decides to develop a proposed standard itself. The Commission does not believe that it is necessary to solicit and consider comments on the notice initiating the proceeding to develop a proposed standard. Under the procedures specified at § 1105.18(c) interested persons may submit comments on the information in the notice initiating the proceeding as well as on other aspects of the standard development proceeding before the Commission staff submits a draft proposed standard to the Commission. Interested persons may also submit comments on this information in response to the proposed standard. The act does not provide for a separate solicitation and consideration of comments in response to notices initiating standard development proceedings. The Commission believes that a separate solicitation and consideration of comments on this notice would create unnecessary delay and could be contrary to the Congressional intent that the Commission expeditiously develop proposed standards (H.R. Rep. No. 95–1164, 95th Cong., 2d Sess. 5–6 (1978); S. Rep. No. 95–889, 95th Cong., 2d Sess. 4 (1978)).

One commentor stated that the Commission should amend § 1105.17 of the regulation concerning the beginning of proceedings for the Commission to develop proposed standards to include the requirements that section 1105.8 imposes in the context of the offeror process. According to the commentor, the requirements of standard-development and public participation should be the same whether undertaken by the offeror or by the Commission. The commentor also suggested that the Commission include the provisions of § 1105.9, concerning requirements for recommended standards developed by offerors, in a new section 1105.21 concerning requirements for standards developed by the Commission, since the responsibilities of the offeror and the Commission in developing standards are the same.

The Commission does not agree with the commentor that the Commission should change proposed § 1105.17 to include the requirements of § 1105.8 or that the Commission should include the provisions of § 1105.9 in a new § 1105.21 concerning recommended standards developed by the Commission. Many of the provisions of § 1105.8 are inapplicable to the situation where the Commission develops its own standard, since these provisions (e.g. monthly progress reports, termination) are intended to ensure the accountability of an outside party, the offeror, in developing a standard for the Commission. In developing a standard itself, the Commission will keep written records throughout the development period as provided by § 1105.18(f). In addition § 1105.18(c) of the regulation provides for public participation during the development of the proposed standard. In accordance with the legislative history of Pub. L. 95–631 (H.R. Rep. No. 95–1164, 95th Cong., 2d Sess. 11 (1978); S. Rep. No. 95–889, 95th Cong., 2d. Sess. 4 (1978)), the Commission believes that these provisions concerning recordkeeping and public participation are of a quality similar to that found in the offeror process. The Commission intends to vigorously encourage public participation whenever an offeror is not utilized.

The Commission does not believe it is necessary to include the provisions of § 1105.9 in a new section concerning recommended standards developed by the Commission, since the provisions of § 1105.9 are intended to provide guidance to persons outside the Commission who are developing standards for the Commission. The provisions of § 1105.9 that reflect statutory requirements will be followed by the Commission in its standard development proceedings. For these reasons, the Commission does not believe it is necessary to include the provisions of § 1105.8 in § 1105.17, or include the provisions of § 1105.9 in a new § 1105.21.

One commentor stated that § 1105.18 of the regulation provides only for an opportunity to submit written comments concerning the standard. According to the commentor, this section should be changed to provide for hearings and an opportunity to be heard.

Section 1105.18(c) provides that, as a minimum, the Commission will provide an opportunity for written comment before the Commission staff submits a draft proposed standard to the Commission. The section also states that the procedures specified in the **Federal Register** notice beginning each proceeding may also provide an opportunity for oral participation. Where oral participation is appropriate, the Commission will provide for such participation.

One commentor claimed that § 1105.19(f)(2) of the Commission's regulation concerning CPSC contributions to costs of participants provide that persons with a very small financial stake in the outcome of the standards development are more likely to receive financial aid than those with a more substantial economic interest in the standard that is being developed. According to the commentor, persons with a small economic stake in the standard are unlikely to take into account economic problems caused by the standard and are less likely to aggressively pursue the development of a reasonable standard. The commentor also stated that the Commission should include expertise as one of the criteria for receiving financial aid, since persons with little technical background are of no practical use in developing a standard.

The Commission does not agree with the commentor that § 1105.19 of the regulation should be changed so that the Commission should make a financial contribution only to persons with a substantial economic interest in the standard. Section 1105.19 of the regulation does not preclude the Commission from making a financial contribution to persons with an economic interest in the standard. However, in deciding whether to make a financial contribution, the Commission believes it is important to evaluate, as one factor, the economic interest of the participant in comparison to the participant's costs of effective participation. If the economic interest of the participant is substantial in relation to the costs of effective participation, the Commission believes that the participant would be less likely to need financial support from the Commission. The Commission also does not agree with the commentor that the regulation should require expertise as one of the criteria for receiving financial aid. Section 1105.19(f)(2) provides that one of the criteria for authorizing contributions is that the participant represents an interest, expertise or point of view that can reasonably be expected to contribute substantially to a full and fair determination of the issues involved in the proceeding. The Commission believes that this provision will prevent frivolous participation. The Commission does not agree with the commentor that persons with little technical background are of no practical use in developing a

standard. In many instances persons without a technical background may provide substantial contributions to the general fairness of the proceeding and may also assist in ensuring that provisions of the standard, including labels, are clearly explained. Non-technical participants may also be valuable in assessing the effect of the standard on the product's utility and other similar factors.

One commentor claimed that § 1105.19 would result in uncontrollable expenses and would make it difficult to deny contributions.

The Commission believes that the criteria provided in § 1105.19 are sufficiently precise to ensure meaningful participation and avoid unnecessary contributions. Section 1105.19(f) provides that the Commission may make a contribution to participants who meet the criteria. The regulation does not require the Commission to make a contribution to participants who meet all of the criteria.

One commenter objected to the provisions of § 1105.19 for the Commission to contribute to the costs of participants when the Commission develops a standard itself. According to the commentor, Congress did not provide for such contributions.

Section 7(d)(2) of the act (15 U.S.C. 2056(d)(2)), as amended by Pub. L. 95–631, specifically provides that the Commission may agree to contribute to the costs of persons participating with the Commission in the development of the standard. The Commission believes that § 1105.19 of the regulation is clearly in accord with the intent of Congress expressed in this section.

Other Comments

One commentor stated that the Commission should include in the regulation a provision that would require the Commission to consider existing voluntary standards for a product to avoid a costly duplication of effort between the government and the private sector.

Section 1105.17(b)(3) of the regulation (based on section 7(b)(1) of the act (15 U.S.C. 2056(b)(1)) already requires the notice of proceeding to provide information on existing standards, including voluntary standards.

In addition, Subpart D of the regulation contains provisions concerning the use of existing standards as proposed standards. These provisions are intended to avoid the unnecessary development of a standard where there is an existing standard that contains safety related provisions that adequately prevent or reduce the identified unreasonable risks of injury associated with the product.

Effective Date

Subpart C and §§ 1105.5(a)(7) and 1105.11 are effective on publication in final form in the **Federal Register.** Because the regulation is a rule of agency practice or procedure, a delayed effective date is not necessary. Since the Commission may wish to implement this regulation with respect to a particular product in the near future, and since the Commission is not aware that any person would be prejudiced by not delaying the effective date of this regulation, the Commission, for good cause, finds that the regulation should take effect on publication in final form. The changes in Subparts A, B, and D required by the amendments will take effect at the same time as Subpart C.

Conclusion

Having considered the comments received concerning the proposal, the Consumer Product Safety Commission concludes that the regulation concerning the development of consumer product safety standards should be issued as set forth below.

Accordingly, pursuant to section 7 of the Consumer Product Safety Act, Pub. L. 92–573, 86 Stat. 1212–15, as amended, Pub. L. 94–284, 90 Stat. 505–506, as amended, Pub. L. 95–631, 92 Stat. 3742–45, 15 U.S.C. 2056, Part 1105 of Title 16 Chapter II, Subchapter B is amended to read as follows:

PART 1105—DEVELOPMENT OF PROPOSED CONSUMER PRODUCT SAFETY STANDARDS

Subpart A—General

Sec.

1105.1 Purpose.
1105.2 General policy considerations.

Subpart B—Development of Recommended Standards by Offerors

1105.5 Beginning of proceedings to develop recommended standards.
1105.6 Submisson of offers to develop recommended standards.
1105.7 CPSC acceptance of offers to develop recommended standards.
1105.8 Development of recommended standards.
1105.9 Requirements for recommended standards developed by offerors.
1105.10 CPSC contributions to the offeror's cost of developing recommended standards.
1105.11 CPSC publication of proposed standards based on recommended standards.

Subpart C—Development of Proposed Standards by the Commission

Sec.

1105.15 When CPSC may develop standards itself; procedures to be followed.
1105.16 Statement of Commission intent to develop a proposed standard.
1105.17 Beginning of proceedings for CPSC to develop proposed standards.
1105.18 CPSC development of proposed standards.
1105.19 CPSC contributions to costs of participants in the development of proposed standards.
1105.20 CPSC publication of proposed standards developed by the Commission.

Subpart D—Use of Existing Standards as Proposed Standards

1105.25 Submission of existing standards to CPSC as recommended standards.
1105.26 CPSC publication of proposed standards based on existing standards.

Authority: Sec. 7, Pub. L. 92–573, 86 Stat. 1212–15, as amended Pub. L. 94–284, 90 Stat. 505–506, as amended Pub. L. 95–631, 92 Stat. 3742–45, 15 U.S.C. 2056.

Supart A—General

§ 1105.1 Purpose.

(a) A major objective of the Consumer Product Safety Act ("act") is to reduce unreasonable risks of injury associated with consumer products. The Consumer Product Safety Commission ("Commission") may achieve this objective through the development and promulgation of mandatory consumer product safety standards where they are considered necessary to eliminate or reduce an unreasonable risk of injury. This Part sets forth the Commission's policy and procedures for developing proposed consumer product safety standards.

(b) Consumer product safety standards may originate in three ways:

(1) the Commission may accept an offer from a person or organization to develop a recommended standard (Subpart B);

(2) the Commission may itself develop a proposed standard (Subpart C);

(3) the Commission may publish an existing standard as a proposed standard (Subpart D). An existing standard may be published in whole, in part, or in combination with a recommended or proposed standard developed by an offeror or by the Commission.

§ 1105.2 General policy considerations.

(a) The general policy underlying this Part 1105 is that the interest and participation of the public are vital for carrying out the functions of the Consumer Product Safety Commission. Commission activities and deliberations are open to the public and afford any interested person the opportunity to

participate and be heard. Accordingly, standards development activities will be open to the public and will afford the opportunity for any interested person to participate in the development of standards.

(b) Since safety standards are intended to eliminate or reduce unreasonable risks of injury associated with consumer products, the Commission seeks the involvement of all interested persons, the general public, and especially consumers. Consumers and their representatives, as well as all other interested persons, are invited and encouraged to become involved by submitting offers to develop standards and by participating in the development of standards.

(c) Persons who are not members of an established organization may form a group for the express purpose of submitting offers and developing standards; such groups are referred to in these rules as "ad hoc associations."

(d) Public involvement in the development of standards by either an offeror or the Commission will be encouraged through the use of extensive public notice. In addition to providing notice in the **Federal Register**, the Commission will issue a press release at the beginning of a proceeding and at the time participants are sought.

(e) The Commission will maintain a list of all persons and organizations that have expressed an interest either in being offerors or in participating in the development of proposed standards. The Commission will send copies of the **Federal Register** notice of proceeding, press release, and other relevant documents to appropriate persons and organizations on the list that have expressed an interest in being offerors. The Commission will also send copies of the **Federal Register** notice of proceeding, the notice of acceptance of any offers, and other relevant notices to appropriate persons and organizations on the list that have expressed an interest in participating in the development of standards.

(f) The act enables the Commission to contribute to the offeror's cost or the cost of any person who participates with the Commission in developing a proposed standard in any case in which the Commission determines that a contribution is likely to result in a more satisfactory standard. The Commission views this provision of the act as a means by which a variety of persons and organizations will be able to develop standards and participate in the development of standards. The Commission also views this provision as a means by which the Commission can assist a cross section of interested persons, including consumers, to participate in the development of standards.

(g) The Commission will adopt a reasonable approach to determining the amount of time necessary to develop standards. The Commission believes that as a general rule the public interest is best served by the development of standards in the shortest possible time commensurate with the objectives of the act and in conformance with the requirements contained in the act and this Part 1105.

Subpart B—Development of Recommended Standards by Offerors

§ 1105.5 Beginning proceedings to develop recommended standards.

(a) The Commission will begin a proceeding for the development of a recommended consumer product safety standard by an offeror by publishing a "notice of proceeding" in the **Federal Register**. The "notice of proceeding" shall:

(1) Identify the product and clearly describe the nature of the risks of injury associated with the product;

(2) State the Commission's preliminary determination that a consumer product safety standard is necessary to eliminate or reduce the specified unreasonable risk(s) of injury associated with the product;

(3) Include information with respect to any existing domestic, foreign, or international standard known to the Commission which may be relevant to the proceeding, including information as to any deficiencies that the Commission recognizes in each identified standard that may make it not totally acceptable as a proposed rule;

(4) Provide information concerning the availability of Commission material relating to: (i) The specific nature of the risks of injury associated with the product, (ii) the basis for the Commission's determination concerning the need for a mandatory standard, and (iii) additional information relating to the development of a mandatory standard which may by helpful to potential offerors;

(5) Include an invitation for any standards-writing organization, trade association, consumer organization, technical or professional society, testing laboratory, university or college department, wholesale or retail organization, Federal, State, or local government agency, engineering or research and development establishment, ad hoc association, or any company or person within 30 days after the date of **Federal Register** publication of the notice:

(i) To submit to the Commission an existing standard as the proposed consumer product safety standard; or

(ii) To offer to develop a recommended consumer product safety standard;

(6) Include, to the extent known at the time the notice of proceeding is published, any requirement for additional information that is to be submitted to the Commission with either an existing standard or a standard to be developed by an offeror; and

(7) Specify the development period. The development period is the time the Commission allots for the offeror of an accepted offer to develop and submit to the Commission a recommended standard, and for the Commission staff to make any necessary revisions to the recommended standard and to prepare it for publication as a proposed standard.

(b) The Commission will, for the purpose of providing greater public awareness of its actions, issue a press release announcing the beginning of the proceeding. The press release will summarize the information contained in the **Federal Register** notice, including the invitation to any interested organization or person to submit an existing standard or to offer to develop a recommended standard.

(c) The Commission will send a copy of the **Federal Register** notice, press release, and other relevant documents to appropriate persons and organizations, on a list maintained by the Commission, that have expressed an interest in being offerors for one or more standards.

§ 1105.6 Submission of offers to develop recommended standards.

(a) Any standards-writing organization, trade association, consumer organization, technical or professional society, testing laboratory, university or college department, wholesale or retail organization, Federal, State, or local government agency, engineering or research and development establishment, ad hoc association, or any company or person may submit an offer to develop a recommended standard. Each offer shall include a detailed description of the procedure the offeror will use in developing the standard. Each offer shall also include:

(1) A description of the plan the offeror will use to give adequate and reasonable notice to interested persons (including individual consumers, manufacturers, distributors, retailers importers, trade associations,

professional and technical societies, testing laboratories, Federal and State agencies, educational institutions, and consumer organizations) of their right and opportunity to participate in the development of the recommended standard;

(2) A description of the method whereby interested persons who have responded to the notice may participate, either in person or through correspondence, in the development of the recommended standard; and

(3) A realistic estimate of the time required to develop the recommended standard, including a detailed schedule for each phase of the standard development process.

(b) Each offeror shall submit with the offer the following information to supplement the description of the standard development procedure:

(1) A statement listing the number and experience of the personnel, including volunteers, the offeror intends to utilize in developing the recommended standard. This list should distinguish between (i) persons directly employed by the offeror, (ii) persons who have made a commitment to participate, (iii) organizations that have made commitments to provide a specific number of personnel and (iv) other persons to be utilized, although unidentified and uncommitted at the time of the submission. The educational and experience qualifications of these personnel relevant to the development of the recommended standard should also be included in the statement. This list should include only those persons who will be directly involved, in person, in the development of the recommended standard; and

(2) A statement describing the type of facilities or equipment which the offeror plans to utilize in developing the recommended standard and how the offeror plans to gain access to the facilities or equipment.

(c) Persons who are not members of an established organization may form a group for the express purpose of submitting offers and developing recommended standards. These groups are referred to as "ad hoc associations." An offer by an ad hoc association may be submitted by an individual member if the offer states that it is submitted on behalf of the members of the association. The individual member submitting the offer shall submit to the Commission a notarized copy of a power of attorney from each member of the association authorizing the individual member to submit an offer on behalf of each other member.

§ 1105.7 CPSC acceptance of offers to develop recommended standards.

(a)(1) If the Commission (i) does not decide to publish an existing standard as a proposed consumer product safety standard or (ii) decides to publish an existing standard as a proposed consumer product safety standard which does not address all of the specified unreasonable risks of injury associated with the product, the Commission will, as soon as practicable, accept one or more offers to develop a recommended consumer product safety standard to address at least those risks of injury not addressed by an existing standard the Commission intends to propose.

(2) Acceptance of an offer will be based on a determination by the Commission that an offeror is technically competent, is likely to develop an appropriate standard within the period specified in the notice of proceeding or within the period determined by the Commission to be necessary and appropriate for the development of the recommended standard, and will comply with all of the requirements of the Commission for the development of the recommended standard.

(3) An offeror will be considered to have technical competence if the offer submitted indicates to the satisfaction of the Commission (i) that the offeror has demonstrated a thorough understanding of the problem, (ii) that the offeror has provided a rational approach to the solution of that problem, and (iii) that persons with appropriate technical expertise or experience will be utilized in the development of the recommended standard either as employees, consultants, or volunteers.

(b) Before accepting an offer to develop a recommended standard, the Commission may require minor modifications of the offer as a condition of acceptance.

(c) The Commission shall publish in the **Federal Register** the name, address, and organizational affiliation of each person whose offer it accepts and a summary of the terms of each accepted offer including the date established for the submission of the recommended standard and the date specified for the Commission to make any necessary changes and prepare the recommended standard as a proposed consumer product safety standard.

(d) The Commission, at or near the time of the **Federal Register** acceptance notice, will issue a press release which:

(1) Identifies each person (name, address, and organizational affiliation) whose offer has been accepted;

(2) Summarizes the terms of each accepted offer including the date established for the submission of the recommended standard; and

(3) Invites all interested persons to participate in the development of the recommended standard and informs them of how they may participate.

(e) The Commission will transmit to appropriate persons and organizations, on a list maintained by the Commission, that have expressed an interest in participating in the development of one or more standards a copy of the **Federal Register** notice of proceeding as well as the notice of the acceptance of any offers.

(f) All persons submitting offers to develop recommended standards whose offers have not been accepted will be notified in writing by the Commission. If requested by an offeror, the reasons for the nonacceptance of the offer will be supplied.

(g) If the Commission does not accept an offer to develop a recommended consumer product safety standard, the Commission may independently develop a proposed consumer product safety standard in accordance with Subpart C. Notice of this decision will be published in the **Federal Register.**

(h) If the Commission accepts an offer to develop a recommended consumer product safety standard, the Commission may not develop a proposed rule or publish such rule unless (1) the offeror's development time expires, or (2) the offeror whose offer was accepted is making unsatisfactory progress in the development of the recommended standard or, (3) the sole offeror whose offer is accepted is a manufacturer, distributor, or retailer of the consumer product proposed to be regulated by the consumer product safety standard.

§ 1105.8 Development of recommended standards.

(a) The offeror shall comply with all Commission requirements for the development of recommended standards and with all terms of the acceptance and shall cooperate with Commission liaison personnel assigned to monitor the development of the standard.

(b) In developing a recommended standard, the offeror shall use the method agreed upon for interested persons to participate in the development of the standard and shall fully consider all of the suggestions and contributions of the respective participants. The offeror, after considering all suggestions and contributions, shall draft a recommended standard. The draft

standard shall be sent to all participants for their review and concurrence or nonconcurrence. Unanimity among all participants shall not be a prerequisite to the submission by the offeror to the Commission of a recommended standard which, in the offeror's judgment, optimally meets the terms of the offer accepted by the Commission.

(c) The offeror shall maintain complete written records of the development of the recommended standard. These records shall include:

(1) The names, addresses, and titles, if any, of all persons contacting the offeror for the purpose of participating in the development of the recommended standard;

(2) All written comments and any other information submitted by any person in connection with the development of the recommended standard including the dissenting views of participants and comments and information with respect to the need for the standard;

(3) A discussion describing the bases for resolution by the offeror of all of the substantive issues raised during the development of the recommended standard;

(4) A statement of the economic and environmental factors considered during the development of the recommended standard; and

(5) Records of all other matters relevant to the development and evaluation of the recommended standard.

(d) The records required in subsection (c) shall be submitted to the Commission at the termination of the offeror's development time. The Commission will make these records available for public inspection and will supply copies upon request, subject to the provisions of its regulations relating to the availability of Commission records (16 CFR Part 1015).

(e) The offeror shall provide monthly progress reports containing a summary of progress made, the work underway, the significant problems encountered and the work remaining to be accomplished. These reports shall be transmitted to the Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207. The offeror shall cooperate fully with the Commission and permit the inspection of its facilities and development activities by duly authorized representatives of the Commission for the purpose of determining whether satisfactory progress is being made toward the completion of the recommended standard. The offeror shall be considered to be making satisfactory progress if the Commission concludes that the recommended standard may reasonably be expected to be completed in accordance with the provisions of the accepted offer by the end of the offeror's development time.

(f)(1) If it appears to the Commission that an offeror is not making satisfactory progress, the offeror will be given the opportunity (i) to demonstrate ability and willingness to complete the development of the recommended standard by the end of its development time or (ii) to justify the need for an extension of the development time.

(2) The Commission, after consideration and due notice, may (i) terminate the offeror's role in the development process and require the offeror to submit to the Commission all information, records, and documents which pertain to the development of the recommended standard or (ii) extend the development period and publish notice of such extension in the **Federal Register**, with the justification for the extension. If the Commission terminates the offeror's role in the development process, the offeror shall remit all funds contributed by the Commission which have not been expended.

(g) The offeror shall submit, with the recommended standard, test instruments or devices constructed or acquired to perform compliance tests if the Commission determines that these instruments or devices are necessary for the evaluation of the standard. In such a case, the instrument or device shall be sold to the Commission at the offeror's cost or loaned to the Commission for the evaluation of the recommended standard.

Further, the offeror shall in any circumstance submit detailed descriptions or plans and specifications for the acquisition or construction of these instruments or devices.

§ 1105.9 Requirements for recommended standards developed by offerors.

(a) Recommended standards must be suitable for proposal and eventual promulgation under the act. To be considered suitable, a recommended standard shall be written in a manner appropriate for use as a Federal mandatory standard as specified in the format established by the Commission. The format of each standard will be made available by the Commission on or before the acceptance of an offer. Recommended standards shall be supported by test data or other documents or materials which the Commission requires. Recommended standards, if the Commission considers it to be appropriate, shall also contain suitable test methods and be accompanied by reasonable testing programs, if the Commission requires. Test methods for the measurement of compliance with proposed standards shall be reasonably capable of being performed by the Commission and by persons subject to the act or by private testing facilities. Testing programs accompanying but not part of the recommended standard, if the Commission considers it to be appropriate and so states in the **Federal Register** notice of the acceptance of the offer, shall include sampling plans.

(b) Recommended standards shall consist of:

(1) Requirements as to performance, composition, contents, design, construction, finish, or packaging; or

(2) Requirements that a consumer product be marked with or accompanied by clear and adequate warnings or instructions or requirements respecting the form of warnings or instructions; or

(3) Any combination of (1) and (2).

(c) A recommended standard shall be supported by:

(1) An analysis demonstrating that each of the requirements is reasonably necessary to prevent or reduce the unreasonable risk of injury identified in the notice of proceedings;

(2) An analysis explaining why the recommended standard is in the public interest; and

(3) An analysis of the extent to which elderly and handicapped persons may be adversely affected by the recommended standard.

(d) Each requirement of a standard, other than requirements relating to labeling, warning, or instructions, shall whenever feasible be expressed in terms of performance. Whenever the requirements are not expressed in terms of performance, an explanation shall be provided to support the use of the nonperformance requirements.

(e) The offeror, in submitting a recommended standard, shall include data and information to demonstrate that compliance with the standard would be technologically practicable. The offeror shall also submit, to the extent that it can reasonably be obtained by the offeror, data and information on the potential economic effect of the standard, including the potential effect on small business and international trade. The economic information should include data indicating (1) the types and classes as well as the approximate number of consumer products which would be subject to the standard; (2) the probable effect of the standard on the utility, cost, and availability of the products; (3) any

potential adverse effects of the standard on competition; and (4) the standard's potential disruption or dislocation, if any, of manufacturing and other commercial practices. Further, the offeror shall include information, to the extent that it can reasonably be obtained by the offeror, concerning the potential environmental impact of the standard.

§ 1105.10 CPSC contributions to the offeror's cost of developing recommended standards.

(a) The Commission, in accepting an offer, may agree to contribute to the offeror's cost in developing a recommended consumer product safety standard in any case in which the Commission determines:

(1) That a contribution is likely to result in a more satisfactory standard than would be developed without a contribution; and

(2) That the offeror is financially responsible.

(b) In order to be eligible to receive a financial contribution, the offeror, in addition to furnishing the information required under § 1105.6, must submit:

(1) A request for a specific contribution with an explanation as to why the contribution is likely to result in a more satisfactory standard than would be developed without a contribution;

(2) A statement asserting that the offeror will employ an adequate accounting system (one in accordance with generally accepted accounting principles) to record standard development costs and expenditures; and

(3) A request for an advance payment of funds if necessary to enable the offeror to meet operating expenses during the development period.

(c) The Commission, in publishing the terms of the accepted offer, shall include a statement of the purpose and amount of the Commission's contribution.

(d) The offeror whose offer has been accepted shall, for a period of three years after final payment under the development agreement, maintain records which fully disclose the total cost and expenditures for the project and such other records which will facilitate an effective audit. The Commission and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records relevant to the development of the recommended standard or to the expenditure of any contribution of the Commission for the development of the recommended standard.

(e) The Commission, based upon a finding after an informal hearing that all or part of the Commission's contribution has been or is being misused, may seek reimbursement of that part of the contribution which has been or is being misused and shall have the right, after providing due notice, to terminate the development agreement and to discontinue payments towards the contribution. For the purpose of this Part 1105, "misuse of a contribution" means a use other than that agreed upon in writing by the parties.

(f) The items of cost toward which the Commission may contribute are those allowable direct and indirect costs allocable to the development project (as set forth in the applicable subparts of Part 1–15 of the Federal Procurement Regulations (41 CFR Part 1–15)). The Commission may contribute to the costs of assuring adequate consumer participation in the development of the standard. The Commission may make its contribution in advance and without regard to section 3648 of the Revised Statutes of the United States (31 U.S.C. 529).

(g) The items of cost toward which the Commission will not contribute include:

(1) Costs for the acquisition of any interest in land or buildings (however, the Commission may contribute toward the lease or rental of land or buildings);

(2) Costs for the payment of salaries in excess of the salaries paid by the offeror to individuals at the time immediately preceding the offer, except for longevity and other routine increases which may accrue during the development of the standard;

(3) Costs for the payment of items in excess of the offeror's actual cost;

(4) Costs for items having a usable lifespan in excess of the developmental period, except that a contribution may be made toward the proportionate value of the item during the development period determined by subtracting the item's estimated market value at the termination of the development period from the actual acquisition cost (the cost of items purchased by the Commission under § 1105.8(g) cannot be included in the Commission's contribution); and

(5) Costs determined not to be allowable under generally accepted accounting principles and practices or Part 1–15, Federal Procurement Regulations (41 CFR Part 1–15).

(h) Offerors who have received contributions from the Commission shall submit to the Commission a full accounting of these contributions and shall remit within 60 days after the offeror submits the recommended standard all amounts not expended during the development of the recommended standard.

§ 1105.11 CPSC publication of proposed standards based on recommended standards.

(a) The Commission will normally publish a proposed standard within 45 days after the development period ends. The development period is the time the Commission allots for the offeror of an accepted offer to develop and submit to the Commission a recommended standard, and for the Commission staff to make any necessary revisions to the recommended standard and to prepare it for publication as a proposed standard. The Commission will specify the time periods in the **Federal Register** notices beginning a proceeding and accepting an offer to develop a recommended standard. The Commission may extend the development period by publishing a notice in the **Federal Register** announcing the extension(s) and providing reasons for the extension(s).

(b) If the Commission does not publish a proposed standard within 45 days after the specified development period, the Commission shall either (1) publish a **Federal Register** notice ending the proceeding or (2) publish a **Federal Register** notice stating the reasons for not publishing the proposed standard and specifying the time period within which the Commission will publish the proposed standard or will publish a notice ending the proceeding. For any good reason, the Commission may extend the time within which it will publish a proposed standard or end the proceeding. The reasons may include that the Commission is considering other approaches (such as a voluntary safety standard) to eliminate or reduce the unreasonable risk of injury that is the subject of the proceeding.

Subpart C—Development of Proposed Standards by the Commission

§ 1105.15 When CPSC may develop standards itself; procedures to be followed.

(a) The Consumer Product Safety Act authorizes the Commission to develop a proposed consumer product safety standard itself in the following five circumstances:

(1) Whenever it determines that it is more expeditious to develop a proposed standard itself without inviting offers to develop a recommended standard;

(2) When the Commission has published a notice inviting offers and does not, within 30 days after the date of

publication of the notice, accept an offer;

(3) If the Commission has accepted an offer to develop a recommended standard and the recommended standard has not been submitted to the Commission during the specified period for developing the recommended standard;

(4) If no offeror whose offer was accepted is making satisfactory progress in the development of the recommended standard; or

(5) If the sole offer accepted is from a manufacturer, distributor, or retailer of the consumer product proposed to be regulated.

(b) The Commission will use the following procedures in developing a proposed standard itself for each of the five circumstances:

(1) In cases where the Commission decides to develop a proposed standard itself without using the offeror process (§ 1105.15(a)(1)) the Commission will use the procedures in this Subpart C.

(2) Whenever the Commission has begun the development process by inviting offers to develop a recommended standard but has not accepted an offer (§ 1105.15 (a)(2)) the Commission will use the procedures in this Subpart C. However, the Commission need not publish a **Federal Register** notice of intent to develop a standard or a notice beginning a proceeding to develop a standard, as required in §§ 1105.16 and 17. Instead, the Commission will publish a notice in the **Federal Register** announcing (i) that no offer was accepted, (ii) that the Commission will develop the proposed standard itself, and (iii) the timetable for the remainder of the development proceeding and the method for interested persons to participate with the Commission in the development effort.

(3) In the remaining three situations where the Commission develops a proposed standard itself only after an offeror process has been used (§ 1105.15(a)(3) and (a)(4)) or an offeror process is being used (§ 1105.15(a)(5)), the Commission will use procedures it deems reasonable and appropriate. The Commission will publish a notice in the **Federal Register** announcing its decision to develop the proposed standard and stating the procedures it will use.

§ 1105.16 Statement of Commission intent to develop a proposed standard.

(a) The Commission shall develop a proposed standard itself without first inviting offers to develop a recommended standard whenever it determines that it is more expeditious for the Commission to follow this procedure to develop a standard that adequately protects the public from the identified risks of injury than to use the offeror process. The Commission shall consult with any interested parties it deems necessary before it makes its determination and it shall publish in the **Federal Register** a notice of its intent to develop the standard in this way. The **Federal Register** notice shall give interested persons 30 days to submit written comments on the determination. The Commission shall consider those comments before developing a proposed standard itself.

(b) The **Federal Register** notice of intent shall:

(1) Include a statement that the Commission itself intends to develop a proposed consumer product safety standard and specify the period of time in which it intends to develop the standard; and

(2) Include a determination that it is more expeditious for the Commission itself to develop a proposed standard that adequately protects the public from the identified risk of injury than to use the offeror process. In making this determination, the Commission shall consider:

(i) The nature of the risk of injury associated with the product;

(ii) The expertise of the Commission with respect to the risk of injury;

(iii) The expertise of the Commission in developing consumer product safety standards as well as that of persons or groups outside the Commission, including the comparative ability of the Commission and those outside persons or groups to translate technical results into understandable, enforceable standards; and

(iv) The resources available to the Commission and the priorities established by the Commission.

(c) In its descretion, the Commission may publish a notice of intent to develop a proposed standard itself before any notice beginning the development proceeding is published, or, it may combine the two notices. If the notice of intent is published before the notice beginning the development proceeding, however, the Commission shall begin the development proceeding as soon as practicable, or publish a notice in the **Federal Register** stating the reasons for any delay and estimating the time in which the proceeding will begin.

§ 1105.17 Beginning the proceedings for CPSC to develop proposed standards.

(a) If the Commission determines to develop a proposed consumer product safety standard itself (instead of using the offeror process) it shall begin the proceeding by publishing a notice in the **Federal Register** that includes the following:

(1) A statement that the Commission itself intends to develop a proposed standard without using the offeror process. This statement shall be in accordance with § 1105.16 and need not be repeated in detail if it has been published separately before the notice beginning the proceeding has been published; and

(2) The Commission shall also specify the development period. The development period is the time the Commission allots to develop the provisions of a proposed standard and to prepare the standard for publication as a proposed standard.

(b) The **Federal Register** notice shall also:

(1) Identify the product and clearly describe the nature of the risk of injury associated with the product;

(2) State the Commission's preliminary determination that a consumer product safety standard is necessary to eliminate or reduce the specified unreasonable risk of injury;

(3) Include information with respect to any existing domestic, foreign or international standard known to the Commission which may be relevant to the proceeding, including information as to any deficiencies that the Commission recognizes in each identified standard that may make it not totally acceptable as a proposed standard;

(4) Provide information concerning the availability of Commission material relating to: (i) the specific nature of the risks of injury associated with the product, (ii) the basis for the Commission's determination concerning the need for a mandatory standard; and (iii) additional information relating to the development of the proposed standard by the Commission which may be helpful to potential participants;

(5) Include an invitation for any standards-writing organization, trade association, consumer organization, technical or professional society, testing laboratory, university or college department, wholesale or retail organization, Federal, State, or local government agency, engineering or research and development establishment, ad hoc association, or any company or person within 30 days after the date of **Federal Register** publication of the notices to submit to the Commission an existing standard as the proposed consumer product safety standard.

(6) Invite interested persons (including individual consumers, consumer

organizations, manufacturers, distributors, retailers, importers, trade associations, professional and technical societies, testing laboratories, Federal and State agencies, and educational institutions) to participate with the Commission in the development of the standard; and

(7) Describe the method whereby interested persons may participate in the development of the standard, either in person or through correspondence. This shall include an explanation of the availability of Commission financial contributions to participants.

(c) The Commission, for the purpose of providing greater public awareness of its actions, will issue a press release concerning the beginning of the proceeding during which it will itself develop the proposed standard. The press release will summarize the information contained in the **Federal Register** notice, including the invitation to any interested person or organization to participate with the Commission in the development of the proposed standard.

(d) The Commission will transmit a copy of the **Federal Register** notice, press release, and other relevant documents to appropriate persons and organizations, on a list maintained by the Commission, that have expressed an interest in participating with the Commission in the development of standards.

§ 1105.18 CPSC development of proposed standards.

(a) The Commission shall allow the public to participate with it in the development of a proposed standard.

(b) The Commission shall specify in detail in the **Federal Register** notice beginning each proceeding the method by which interested persons may participate with the Commission in developing the proposed standard.

(c) The procedures at a minimum, shall provide an opportunity for written comment from participants before the Commission staff submits a draft proposed standard to the Commission. The procedures may also provide participants with the opportunity to participate orally.

(d) The Commission staff shall fully consider all comments timely received and shall provide an analysis of the comments timely received and shall provide an analysis of the comments to the Commission with a recommended proposed standard.

(e) The Commission shall make the final decision on the provisions of any proposed standard.

(f) The Commission shall maintain complete written records of the development of the proposed standard. These records shall include.

(1) The names, addresses, and titles, if any, of all persons contacting the Commission and Commission staff for the purpose of participating in the development of the proposed standard;

(2) All written comments and any other information submitted by any person in connection with the development of the proposed standard, including the dissenting views of participants and comments and information with respect to the need for the standard;

(3) A discussion describing the bases for resolution by the Commission of all of the substantive issues raised during the development of the proposed standard;

(4) A statement of the economic and environmental factors considered during the development of the proposed standard; and

(5) Records of all other matters relevant to the development and evaluation of the proposed standard. The Commission will make these records available for public inspection and will supply copies upon request, subject to the provisions of its regulations relating to the availability of Commission records (16 CFR Part 1015).

(g) The Comptroller General of the United States or any of its duly authorized representatives shall have access, for the purpose of audit and examination to any books, documents, papers, and records relevant to the development of the proposed standard or to the expenditure of any contribution of the Commission for the development of such proposed standard.

§ 1105.19 CPSC contributions to costs of participants in the development of proposed standards.

(a) The purpose of this section is to encourage and insure representation of various viewpoints when the Commission develops a proposed standard itself by providing for Commission contributions to the cost of an individual, a group of individuals, a public or private organization or association, partnership or corporation (hereinafter "participant") who participates with the Commission in developing standards. The provisions of this section do not apply to and do not affect the Commission's ability and authority to contract with persons or groups outside the Commission to aid the commission in developing proposed standards.

(b) The Commission may, in developing a proposed standard itself, agree to contribute to the cost of a participant who participates with the Commission in developing a proposed standard in any case in which the Commission determines:

(1) That a contribution is likely to result in a more satisfactory standard than would be developed without a contribution; and

(2) That the participant to whom a contribution is made is financially responsible.

(c) In considering whether a contribution is likely to result in a more satisfactory standard, the Commission shall consider (i) the need for representation of one or more particular interests, expertise, or points of view in the development proceeding, and (ii) the extent to which particular interests, points of view, or expertise can reasonably be expected to be represented if the Commission does not provide any financial contribution.

(d) In order to be eligible to receive a financial contribution, a participant must request in advance a specific contribution with an explanation as to why the contribution is likely to result in a more satisfactory standard than would be developed without a contribution. The request for a contribution shall contain, to the fullest extent possible and appropriate, the following information:

(1) A description of the point of view, interest and/or expertise that the participant intends to bring to the proceeding;

(2) The reason(s) that representation of the participant's interest, point of view, or expertise can reasonably be expected to contribute substantially to a full and fair determination of the issues involved in the proceeding;

(3) An explanation of the economic interest, if any, that the participant has (and individuals or groups comprising the participant have) in any Commission determination related to the proceeding;

(4) A discussion, with supporting documentation, of the reason(s) a participant is unable to participate effectively in the proceeding without a financial contribution;

(5) A description of the participant's employment or organization, as appropriate; and

(6) A specific and itemized estimate of the costs for which the contribution is sought.

(e) Applications must be submitted to the Office of the Secretary, 1111 18th Street, NW., Washington, D.C. 20207, within the time specified by the Commission in its **Federal Register**

notice beginning the development proceeding.

(f) The Commission may authorize a financial contribution only for participants who meet all of the following criteria:

(1) The participant represents a particular interest, expertise or point of view that can reasonably be expected to contribute substantially to a full and fair determination of the issues involved in the proceeding;

(2) The economic interest of the participant in any Commission determination related to the proceeding is small in comparison to the participant's costs of effective participation in the proceeding. If the participant consists of more than one individual or group, the economic interest of each of the individuals or groups comprising the participant shall also be considered, if practicable and appropriate; and

(3) The participant does not have sufficient financial resources available for effective participation in the proceeding, in the absence of a financial contribution.

(g) The Commission may establish a limit on the total amount of financial compensation to be made to all participants in a particular proceeding and may establish a limit on the total amount of compensation to be made to any one participant in a particular proceeding.

(h) The Commission shall compensate participants only for costs that have been authorized and only for such costs actually incurred for participation in a proceeding.

(i) The participant shall be paid upon submission of an itemized voucher listing each item of expense. Each item of expense exceeding $15 must be substantiated by a copy of a receipt, invoice, or appropriate document evidencing the fact that the cost was incurred.

(j) The Commission shall compensate participants only for costs that it determines are reasonable. As guidelines in these determinations, the Commission shall consider market rates and rates normally paid by the Commission for comparable goods and services, as appropriate.

(k) The Commission may compensate participants for any or all of the following costs:

(1) Salaries for participants or employees of participants;

(2) Fees for consultants, experts, contractual services, and attorneys that are incurred by participants;

(3) Transportation costs;

(4) Travel-related costs such as lodging, meals, tipping, telephone calls; and

(5) All other reasonable costs incurred, such as document reproduction, postage, baby-sitting, and the like.

(l) The Commission may make its contribution in advance upon specific request, and the contribution may be made without regard to section 3648 of the Revised Statutes of the United States (31 U.S.C. 529).

(m) The items of cost toward which the Commission will not contribute include:

(1) Costs for the acquisition of any interest in land or buildings;

(2) Costs for the payment of items in excess of the participant's actual cost; and

(3) Costs determined not to be allowable under generally accepted accounting principles and practices or Part 1–15, Federal Procurement Regulations (41 CFR Part 1–15).

(n) The Commission and the Comptroller General of the United States, or their duly authorized representatives, shall have access for the purpose of audit and examination to any pertinent books, documents, papers and records of a participant receiving compensation under this section. The Commission may establish additional guidelines for accounting, recordkeeping, and other administrative procedures with which participants must comply as a condition of receiving a contribution.

§ 1105.20 CPSC publication of proposed standards developed by the Commission.

(a) The Commission will normally publish a proposed standard within 45 days after the development period ends. The development period is the time the Commission allots to develop the provisions of a proposed standard and to prepare the proposed standard for publication. The Commission will specify the time periods in the **Federal Register** notice beginning a proceeding for a Commission developed standard. The Commission may extend the development period by publishing a notice in the **Federal Register** announcing the extension(s) and providing reasons for the extension(s).

(b) If the Commission does not publish a proposed standard within 45 days after the specified development period, the Commission shall either (1) publish a **Federal Register** notice ending the proceeding, or (2) publish a **Federal Register** notice stating the reasons for not publishing the proposed standard and specifying the time period within which the Commission will publish the proposed standard or will publish a notice ending the proceeding. For good reason, the Commission may extend the time within which it will publish a proposed standard or end the proceeding. The reason may include the fact that the Commission is considering other approaches (such as a voluntary consumer product safety standard) to eliminate or reduce the unreasonable risk of injury that is the subject of the proceeding.

Subpart D—Use of Existing Standards as Proposed Standards

§ 1105.25 Submission of existing standards to CPSC as recommended standards.

(a) Whenever the Commission under section 1105.5(a)(3), has invited any person or organization to submit to the Commission an existing standard as either the proposed consumer product safety standard or an offer to develop a recommended standard, any standards-writing organization, trade association, consumer organization, professional or technical society, testing laboratory, university or college department, wholesale or retail organization, Federal, State, or local government agency, engineering or research and development establishment, ad hoc association, or any company or person may submit to the Commission an existing standard that contains safety-related requirements which the person or organization believes would be adequate to prevent or reduce the unreasonable risks of injury associated with the product identified by the Commission.

(b) Any submission of an existing standard should:

(1) To the extent possible, meet the requirements for standards developed by offerors contained in § 1105.9 as specified in each notice of proceeding;

(2) Identify the specific portions which are appropriate for inclusion in the proposed rule, and

(3) Be accompanied, to the extent that such information is available, by a description of the procedures used to develop the standard and a listing of the persons and organizations that participated in the development and approval of the standard.

§ 1105.26 CPSC publication of proposed standards based on existing standards.

(a) The Commission may publish as a proposed consumer product safety standard (i) an existing standard submitted under section 1105.25 in response to a Federal Register notice soliciting the submission of offers to

develop a standard or the submission of existing standards for use as a proposed standard or (ii) any standard issued, adopted, or proposed by any Federal department or agency (other than the Commission) or by any other qualified agency, organization, or institution.

(b) The Commission may publish standards described in (a)(ii) as a proposed standard without publishing a **Federal Register** notice soliciting the submission of existing standards.

(c) In order to publish a standard described in (a) as a proposed rule, the Commission must preliminarily determine that the standard, if issued in whole, in part, or in combination with the whole or part of another such standard, would eliminate or reduce the unreasonable risk(s) of injury associated with a consumer product.

(d) The Commission may publish a standard as a proposed rule under this section either in whole, in part, or in combination with the whole or part of another such standard. The Commission, in publishing such a standard as a proposed rule, may make any nonmaterial modifications it believes are necessary and appropriate.

(e) The Commission may publish a standard as a proposed rule under this section either (i) instead of accepting an offer to develop a standard submitted in response to the notice described in § 1105.5 or (ii) instead of beginning a proceeding described in Subparts B and C of this Part 1105 to develop a standard.

Dated: August 14, 1979.

Robert C. Blesdoe,

Acting Secretary Consumer Product Safety Commission.

[FR Doc. 79-25524 Filed 8-16-79; 8:45 am]

BILLING CODE 6355-01-M

federal register

Friday
August 17, 1979

Part VI

Council on Wage and Price Stability

Proposed Revision of Procedural Rules

COUNCIL ON WAGE AND PRICE STABILITY

[6 CFR Part 706]

Proposed Revision of Procedural Rules

AGENCY: Council on Wage and Price Stability.

ACTION: Proposed Procedural Rules.

SUMMARY: The Council is proposing to simplify and streamline its Part 706 procedural rules. Certain of the changes reflect our experience in administering the pay and price standards during the first program year. In addition, substantive provisions have been removed from the procedural rules; they will be incorporated into Part 705. Information requests previously included in the procedures will be consolidated into a new Part 707, specific references to which will be included when the rules are published in final form. The remaining changes are editorial efforts to condense existing procedures and make them clearer.

The Council is soliciting public comment, not only on these proposed procedural rules but on all aspects of the Council's administration of the voluntary pay and price standards. In particular, the Council seeks comments from those companies or other entities that filed materials, sought advice, submitted exception requests, were involved in noncompliance proceedings, or had any other experience with the Council during the first program year. The Council believes such public input will ensure that its procedures and practices are fair and efficient.

These proposed procedural rules are being published for public comment at the same time that the Council is seeking public comment on the substantive standards in Part 705. (See 44 FR 47231, August 10, 1979, Part III). Revisions of Part 705 may well require corresponding changes in these procedural rules.

DATES: Comments must be received on or before September 17, 1979.

ADDRESS: Comments should be addressed to: Barbara Hunter, Office of the General Counsel, Council on Wage & Price Stability, 600 17th Street, NW., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Barbara Hunter (202) 456–6210.

SUPPLEMENTARY INFORMATION: Subpart A of the proposed procedures, titled "General Provisions," contains definitions and general rules applicable to submissions to the Council and proceedings before the Council. The proposed revisions explicitly provide that when confidential material is submitted, the document containing the confidential material should be clearly marked to that effect and that a second copy, from which any confidential material has been deleted, be submitted to meet public disclosure requirements.

Subpart B, titled "Reports and Notifications," concerns the submission of data and materials to the Council. Dates referred to in these proposed regulations assume that the second program year will begin on October 1, 1979, although the Council has specifically requested public input on this issue and the dates in these rules may be adjusted accordingly.

Subpart C, titled "Requests for Approval of Exceptions," contains rules concerning requests to the Council for approval of exceptions to the pay and price standards. The specific exceptions will be listed when the second-year standards are published in a revised Part 705.

Subpart D, titled "Special Investigations," is essentially unchanged.

Subpart E, titled "Determination of Noncompliance," concerns how the Council will determine whether compliance units or employee units are out of compliance with the standards.

The proposed revisions make explicit the Council's practice of offering compliance units the opportunity of corrective action before a final decision is issued.

Subpart F, titled "The List of Noncompliers," concerns placement on and removal from the list of noncomplying entities. This section includes the process of listing, which previously appeared in Subpart E.

Subpart G, titled "Reconsideration," concerns reconsideration of exception decisions and determinations of noncompliance. The proposed rules provide for a conference on reconsideration of an exception decision, and either a conference or a hearing (if there is a disputed and material substantial question of fact), or both, for reconsideration of a determination of noncompliance.

Issued in Washington, D.C., August 14, 1979.

R. Robert Russell,

Acting Director, Council on Wage and Price Stability.

Accordingly, the Council proposes to amend Title 6 CFR by revising Part 706 to read as follows:

PART 706—PROCEDURAL RULES

Subpart A—General

Sec.

706.1 Purpose and scope.
706.2 Definitions.
706.3 Appearances before the Council.
706.4 Actions by the Council.
706.5 Submission of documents.
706.6 Confidential material.
706.7 Service of documents.
706.8 Computation of time.
706.9 Extension of time.
706.10 Consolidations.

Subpart B—Reports and Notifications

706.20 Purpose and scope.
706.21 Submissions on company organization for purposes of compliance.
706.22 Periodic submissions on compliance with the pay and price standards.
706.23 Submissions by government enterprises and Federal, State and local governments.

Subpart C—Requests for Approval of Exceptions

706.30 Purpose and scope.
706.31 Who should request approval.
706.32 Types of exceptions.
706.33 Contents of the request.
706.34 Notice to interested persons of requests for approval of exception.
706.35 Additional information.
706.36 Decision.

Subpart D—Special Investigations

706.40 Purpose and scope.
706.41 Investigational policy.
706.42 Requests for information.

Subpart E—Determination of Noncompliance

706.50 Purpose and scope.
706.51 General.
706.52 Notice and reply.
706.53 Decision.

Subpart F—The List of Noncompliers

706.60 Purpose and scope.
706.61 Listing of noncompliers.
706.62 Request for removal from list of noncompliers.
706.63 Decision.

Subpart G—Reconsideration

706.70 Purpose and scope.
706.71 General.
706.72 Who may request reconsideration.
706.73 Contents of the request.
706.74 Conference on reconsideration.
706.75 Hearing on reconsideration.
706.76 Decision.
706.77 Stays pending reconsideration.

Authority: Economic Stabilization Act, Pub. L. 91–379, 84 Stat. 387 (August 24, 1974), as amended by Pub. L. 94–78 (August 9, 1975) and Pub. L. 95–[illegible]ober 5, 1977), 12 U.S.C. 1904 note; as last amended by Pub. L. 96–10 (May 10, 1979) [illegible]2092.

Subpart A—General Provisions

§ 706.1 Purpose and scope.

This part establishes procedures to be used in proceedings before the Council relating to the pay and price standards set forth in Part 705 of this chapter.

(a) Subpart A concerns definitions and general procedural rules.

(b) Subpart B concerns the submission of reports and notifications.

(c) Subpart C concerns requests for approval of exceptions to the standards.

(d) Subpart D concerns special investigations regarding the standards.

(e) Subpart E concerns determinations of noncompliance with the standards.

(f) Subpart F concerns the placement on and removal from the list of noncompliers

(g) Subpart G concerns requests for reconsideration of Council actions under Subparts C and E.

§ 706.2 Definitions.

As used in this part the term:

(a) "Council," "company," "compliance unit," "employee unit," "net sales or revenues," "program year," "undue hardship," and "gross inequity" have the same meaning as in Part 705 of this chapter.

(b) "Hearing Officer" means a person designated by the Council to conduct a hearing.

(c) "Notice of Probable Noncompliance" means a written statement by the Council that a compliance unit or employee unit may be out of compliance with the standards.

(d) "Person" means any compliance unit, employee unit, company, union, individual, group or organization.

(e) "Standards" mean the voluntary pay and price standards set forth in Part 705 of this chapter.

§ 706.3 Appearances before the Council.

A person may take any action permitted by this part on his or her own behalf, or may be represented by any person whom he or she designates.

§ 706.4 Actions by the Council.

The Chairman of the Council, or his designee, is authorized to take actions for the Council under this part.

§ 706.5 Submission of documents.

(a) Submissions should be sent to the Council on Wage and Price Stability, The Winder Building, 600 17th Street, N.W., Washington, D.C. 20506.

(b) Submissions should be signed by the chief executive officer (or that officer's designee) of a company, compliance unit, union, or other organization.

(c) Each submission should be plainly marked at the top of the document indicating whether it is a "Report," "Request for Extension of Time," "Request for Exception—(Pay) or (Price)," "Response to Notice of Probable Noncompliance, "Request for Reconsideration," or "Request for Removal from List of Noncompliers."

§ 706.6 Confidential material.

Material for which confidentiality is sought should be submitted in accordance with Part 702 of this chapter and will be treated as there provided. When submissions (other than forms confidential in their entirely, such as PM–1 and Pay–1) contain confidential information, two copies should be submitted. One copy, containing the confidential information, is for the Council's use and should be clearly marked "Contains Confidential Information". The other copy, from which any confidential information should be deleted, is to meet public disclosure requirements.

§ 706.7 Service of documents.

All documents served under this part are to be served personally or by U.S. mail on the person specified in these regulations or his or her designated representative.

§ 706.8 Computation of time.

Except as otherwise provided, any period of time specified in this part is counted in business days (all days other than Saturdays, Sundays, and Federal holidays), beginning with the first business day after the Council takes any action. If the document setting forth the action is sent by mail, three additional days may be added.

§ 706.9 Extension of time.

If an action is required under this Part to be taken within a prescribed period of time, an extension of time will be granted only upon a showing of good cause. Requests for extenstion should be made in writing to the Council.

§ 706.10 Consolidations.

The Council may consolidate separate matters if consolidation will expedite the proceedings or otherwise assist the Council in carrying out its functions.

Subpart B—Reports and Notifications

§ 706.20 Purpose and scope.

(a) This subpart concerns the submission of reports and notifications requested by the Council.

(b) A company or compliance unit that has furnished the Council with data requested and retained by the Council need not furnish such data again, but should identify for the Council the document (including page references) containing such data and the date on which it was submitted.

§ 706.21 Submissions on company organization for purposes of compliance.

(a) *Company Organization for Price Compliance.* Any company that had net sales or revenues of $250 million or more in its last complete fiscal year before October 2, 1979, and any other company designated by the Council, should furnish the Council by November 15, 1979, a description of the company organization for purposes of compliance with the standards and, for each compliance unit, a contact person, total revenues, and revenues of major lines of business by four-digit S.I.C. Code.

(b) *Statement of Compliance with the Pay Standard.* Any company with 5,000 or more employees during any calendar quarter of its last complete fiscal year before October 2, 1979, and any other company designated by the Council, should furnish the Council by November 15, 1979, a statement of assurance that the company intends to comply with the pay standard and a description of the method of computation to be used in determining pay-rate changes.

§ 706.22 Periodic submissions on compliance with the pay and price standards.

(a) *Form PM–1.* A compliance unit that had, or is part of a company that had, consolidated net sales or revenues of $250 million or more in its last complete fiscal year before October 2, 1979, and any other compliance unit designated by the Council, should furnish the Council the data specified on Form PM–1. These submissions should be made not more than 30 days after the end of each quarter of the program year.

(b) *Form PAY-1.* A compliance unit that had, or is part of a company that had, 10,000 or more employees during any calendar quarter of the its last complete fiscal year before October 2, 1979, and any other compliance unit designated by the Council, should furnish the Council the data specified on Form PAY-1. These submissions should be made semiannually within 60 days after the midpoint and end of the program year.

§ 706.23 Submissions by Government enterprises and Federal, State and local governments.

(a) *The Price Standard.* Government enterprises as defined in Section 705—— should submit, by November 15, 1979, a description of organization for purposes of compliance with the

standards and, for each compliance unit, a contact person, total revenues, and revenues of major lines of business by four-digit S.I.C. Code. In addition, such enterprise should furnish the Council the data specified on Form PM–1 within 30 days after the end of each quarter of the program year.

(b) *The Pay Standard.* Federal, State, and local governments, as well as government enterprises as defined in Section 705——, with 5,000 or more employees should submit:

(1) By November 15, 1979, a statement of assurance that the government entity or government enterprise intends to comply with the pay standard and a description of the method of computation to be used in determining pay-rate changes; and

(2) Within 60 days after each program year, data relating to wages, benefits and pay-rate changes [to be more particularly specified at a later time].

Subpart C—Requests for Approval of Exceptions

§ 706.30 Purpose and scope.

This Subpart concerns requests by a compliance unit or employee unit for the Council's determination that an exception to the pay or price standard is warranted under Part 705 of this chapter.

§ 706.31 Who should request approval.

(a) Any compliance unit or employee unit that intends to apply one or more of the exceptions specified in § 706.32 should request a determination from the Council that the exception is warranted, if:

(1) The request relates to the price standard and the compliance unit had, or is part of a company that had, consolidated net sales or revenues of $250 million or more in its last complete fiscal year prior to October 2, 1979; or

(2) The request relates to the pay standard, and (i) The affected employee unit consists of 100 or more employees in a compliance unit with (or that is part of a company with) 1,000 or more employees; or (ii) The affected multi-employer collective bargaining agreement covers 1,000 or more employees regardless of the number of employees in an individual company's employee units.

(b) Any compliance unit or employee unit not covered by paragraph (a) of this section may request a determination that an exception to the pay or price standard is warranted if such unit shows that there is good cause for the Council to entertain such a request.

(c) A compliance unit or employee unit not covered by paragraph (a) or (b) of this section is expected to self-administer the exceptions in a manner consistent with the standards. A compliance unit or employee unit is expected to retain relevant documentation in the event that the Council has occasion to review such self-administered actions.

§ 706.32 Types of exceptions.

The Council will issue a determination that an exception to the pay or price standard is warranted if, (a) With respect to the pay standard, [to be supplied by the Council to conform to Part 705].

(b) With respect to the price standard, [to be supplied by the Council to conform to Part 705].

§ 706.33 Contents of the request.

(a) All requests for approval of exception should be in writing and include the data [to be supplied by the Council to conform to Part 705].

(b) The request for approval of exception should not exceed ten typewritten pages, exclusive of supporting documents.

(c) The applicant may request a conference regarding a pending request for approval of exception. If the Council determines that a conference is appropriate, it will contact the applicant to arrange a suitable time and location. At its discretion, the Council may invite other interested persons to attend portions of conferences at which confidential material will not be discussed.

(d) Completed requests for approval of exception should be submitted to the Council at least 20 days before any action is taken in anticipation of the grant of the request. If a decision by the Council within 20 days is required to avoid adverse effects, the nature of the adverse effects should be explained in the request.

§ 706.34 Notice to interested persons of requests for approval of exception.

(a) If the matter concerns a collective bargaining situation, the compliance unit (or employee unit) requesting approval of an exception to the pay standard should serve a copy of the complete request (or a copy from which confidential information has been deleted, provided that that information is adequately summarized) to the appropriate employee units (or pay compliance units) together with the statement that the Council will accept comments about the request from such persons within 10 days of the Council's receipt of the request. A request submitted to the Council should identify the persons served in accordance with this paragraph.

(b) The Council may notify other persons who could be significantly affected by granting the request for approval of exception that their written comments should be submitted within 10 days of such notice. Submission of comments to the Council does not make the person a party to the proceeding.

(c) Any person submiting written comments to the Council about a request submitted under this subpart should serve a copy of the comments (or a copy from which confidential information has been deleted, provided that it is adequately summarized) upon the compliance unit or employee unit making the request, and should certify to the Council that this requirement has been met. The Council may notify other interested persons of such comments and provide an opportunity to respond.

§ 706.35 Additional information.

(a) The Council may at any time request such additional information as it deems necessary to reach a determination, and may set a deadline for the submission of such information.

(b) A request for approval of exception may be denied if the information called for under § 706.33 and § 706.35(a) is not provided.

§ 706.36 Decision.

(a) The Council will issue a determination granting or denying a request for approval of exception as promptly as possible, giving consideration to any showing of urgency under § 706.33(d).

(b) When the Council grants a request for approval of an exception, it may condition its approval in any manner that it considers appropriate.

Subpart D—Special Investigations

§ 706.40 Purpose and scope.

This subpart concerns special investigations by the Council relating to the standards.

§ 706.41 Investigational policy.

(a) The Council may at its discretion conduct special investigations to examine significant pay and price increases and compliance with the standards. Such investigations shall be in addition to the procedures set forth is Part 704 of this chapter and in Subpart E of this part.

(b) A special investigation may be initiated when the Council's examination of publicly available pay or price indices or the receipt of other

information indicates the possibility of pay or price increases in excess of the respective standard for a compliance unit or in a sector of the economy.

§ 706.42 Requests for information.

The Council may request information relating to a compliance unit's specific price actions, its average price increases, its pay programs, or any other information relating to the standards.

Subpart E—Determination of Noncompliance

§ 706.50 Purpose and scope.

This Subpart concerns the determination of whether compliance units or employee units are in compliance with the standards.

§ 706.51 General.

When the Council has reason to believe that a compliance unit or employee unit may not be in compliance with the standards (including any approved or properly self-administered exceptions), the Council may conduct proceedings to determine the nature and extent of the noncompliance.

§ 706.52 Notice and reply.

(a) *Notice of Probable Noncompliance.* When the Council has reason to believe that a compliance unit or employee unit may not be in compliance with the standards, it will serve a Notice of Probable Noncompliance on the compliance unit and, if the alleged noncompliance relates to a collective bargaining situation, on any effected union. In other than a collective bargaining situation, when the alleged noncompliance relates to the pay standard, the compliance unit should, immediately upon receipt of the notice, serve a copy on any affected employee unit, stating that the employee unit may submit written comments to the Council within the 10 day period following the issuance of the Council's notice. In its written reply, the compliance unit should identify any employee unit on which it has served a copy of the notice.

(b) Reply. (1) Within 10 days after a Notice of Probable Noncompliance has been issued, the compliance unit and any union to which the notice is issued may file a written reply disputing information in that notice, presenting additional information relevant to the allegations in the notice, and raising any available defense.

(2) Available defenses are that any of the exceptions in Part 705—— are applicable or have been properly self-administered, that the standards do not properly apply, or that application of the standards would result in gross inequity or undue hardship.

(3) The reply may request a conference and, if so, indicate whether any confidential data may be discussed.

(c) If a compliance unit and any union to which the notice is issued does not timely reply, the Council may issue a determination of noncompliance.

(d) The Council may request comments from any person concerning the notice, but submitting such comments does not make that person a party to the proceeding.

(e) If a conference is requested, the Council will arrange a suitable time and location.

§ 706.53 Decision.

(a) After considering the record, which shall consist of relevant data developed by the Council and material submitted to the Council, the Council will inform the compliance unit, union and, in its discretion, any persons served in accordance with § 706.52(a) of the Council's conclusions and the reasons therefor.

(b) Whenever the Council has concluded there is noncompliance, it may consider any corrective action offered by the compliance unit or employee unit. If the Council is satisfied that appropriate corrective action will be initiated promptly, the Council will not find the compliance unit or employee unit out of compliance.

(c) After the Council has considered all relevant information, it will set forth in writing the reasons for its decision.

Subpart F—The List of Noncompliers.

§ 706.60 Purpose and scope.

This subpart concerns placement on and removal from the list of noncompliers.

§ 706.61 Listing of noncompliers.

(a) If the council issues a decision finding a compliance unit out of compliance in accordance with § 706.53(c), it will place the compliance unit's name on a list of noncompliers no sooner than eight days after its decision.

(b) If the listing of a compliance unit has been stayed pending reconsideration in accordance with § 706.77, and the compliance unit is found on reconsideration to be out of compliance, it will be listed no sooner than three days after the reconsideration decision.

§ 706.62 Request for removal from list of noncompliers.

(a) Any compliance unit that has been placed on the list of noncompliers may request, in writing, that the Council remove it from the list on grounds that the compliance unit has come into compliance with the standard. Any such request should be submitted to the Director. It should state the corrective action that the compliance unit has taken, explain how that action brings the compliance unit into compliance, and indicate whether a conference or hearing is requested.

(b) The Council will provide a conference and, if appropriate, a hearing in accordance with § 706.75(b) through (e).

§ 706.63 Decision.

The Council will advise the compliance unit as promptly as possible after receipt of any request under § 706.62 (or after the completion of any conference or hearing) as to whether the request has been granted or denied. If granted, removal from the list will be effective immediately, and a notice to that effect will be published promptly in the same manner as the publication of the list of nonmompliers. If denied, the compliance unit will have exhausted its administrative remedies, and no further reconsideration will be available under Subpart G of this part.

Subpart G—Reconsideration

§ 706.70 Purpose and scope.

This Subpart concerns reconsideration of Council actions taken under Subparts C or E of this part.

§ 706.71 General.

(a) A compliance unit or other entity that has participated or could have participated in a matter arising under Subpart C or E of this part will not have exhausted its administrative remedies until it has submitted a request for reconsideration under this subpart and final action on that request has been taken by the Council.

(b) A compliance unit or other entity may request only one reconsideration with respect to any action of the Council.

(c) A request for reconsideration should be filed with the Council within seven days of the Council's action.

§ 706.72 Who may request reconsideration.

(a) Any compliance unit or other entity that has or could have participated under Subpart C or E of this part may request reconsideration of the Council's action.

(b) Such a compliance unit or other entity may submit views and information regarding a request for reconsideration.

§ 706.73 Contents of the request.

A request for reconsideration should:

(a) Contain a concise statement of the requested relief and any factual, legal, or policy basis for such relief; and

(b) If the request concerns a collective bargaining situation, be served upon any affected union or employee unit if submitted by a compliance unit, or upon the compliance unit official if submitted by a union or employee unit, and identify the persons who have been served in accordance with this Subparagraph;

(c) Specify whether a conference or hearing as provided by §§ 706.74 and 706.75 is requested, and, if so, whether confidential data will be discussed; and

(d) If a hearing is requested, identify the substantial and material questions of fact presented.

§ 706.74 Conference on reconsideration.

(a) The Council will, if requested, provide a conference on reconsideration of an action under Subparts C and E of this part.

(b) The Council will notify the requesting party and, in the Council's discretion, other interested persons of the time and place for the conference.

(c) Any subject relevant to the exception or noncompliance decision may be discussed at the conference.

§ 706.75 Hearing on reconsideration.

(a) If a disputed substantial and material question of fact is presented, the Council will, if requested, provide a hearing on reconsideration of an action under Subpart E of this part.

(b) If the Council determines that a hearing is appropriate, it will notify the person requesting the hearing and, in the Council's discretion, other interested persons. Thereafter, the hearing will be promptly scheduled before a Hearing Officer at such time and place as the Council may direct.

(c) A hearing conducted in accordance with this section may include the submission of such additional evidence and arguments as the Hearing Officer permits.

(d) Within 20 days after the close of the hearing, the Hearing Officer will submit to the Council findings of fact on each substantial and material question of fact.

§ 706.76 Decision.

(a) Within 20 days of receipt of a request for reconsideration, or within 20 days after the conclusion of any conference under § 706.74, or within 20 days after receipt of a Hearing Officer's findings under § 706.75, the Council will issue a decision affirming, modifying or reversing its earlier action.

(b) The Council's decision will be in writing and set forth the reasons on which it is based. Copies of the decision will be served on the person requesting reconsideration.

§ 706.77 Stays pending reconsideration.

A request for reconsideration submitted within seven days of the Council's decision of noncompliance under § 706.53 will stay the placing of a compliance unit's name on a list of noncompliers pending the disposition of the request.

[FR Doc. 79-25576 Filed 8-16-79, 8:45 a.m.]

BILLING CODE 3175-01-M

federal register

Friday
August 17, 1979

Part VII

Office of Management and Budget

Federal Employee Parking Facilities

OFFICE OF MANAGEMENT AND BUDGET

Federal Employee Parking Facilities

This notice advises interested parties that the Office of Management and Budget (OMB) has issued Circular A–118: Federal Employee Parking Facilities. The Circular is reproduced below. The Circular establishes policy regarding fees to be charged for the use of certain Federal employee parking facilities and other ridesharing incentives to be used by Federal agencies.

On April 5, 1979, the President announced several actions he would be taking to reduce U.S. dependence on petroleum. Increased ridesharing is a highly cost-effective conservation technique. The OMB was directed to initiate the policy direction necessary to phase in fees for the use of parking now provided to Federal employees for free or at very low cost in our urban areas. A draft circular describing this policy was sent to Federal agencies and employee unions on April 6, 1979. Many of their comments are incorporated in Circular A–118.

It is estimated that about 120,000 to 130,000 Federal parking spaces will be covered by the parking fee requirements of this Circular. The fees should replace about $35 to $40 million of appropriated funds now paid annually by agencies for employee parking areas. A considerably larger number of employee parking spaces valued at less than $10 a month will be affected by the guidance to agencies to facilitate greater carpool use through carpool matching programs and rearrangement of parking priorities.

Comments on this Circular may be addressed to Ms. Joyce Walker, Deputy Associate Director for Transportation, Commerce and Housing, Office of Management and Budget, Washington, D.C. 20503. In addition, the General Services Administration (GSA) will soon be issuing implementing regulations on this subject. OMB contact: Nicholas S. Stoer (202) 395–4752.

David R. Leuthold,

Budget and Management Office.

August 13, 1979; Circular No. A–118.

To the Heads of Executive Departments and Establishments

Subject: Federal Employee Parking Facilities.

1. *Purpose.* This Circular establishes policy governing the acquisition and allocation of Federal parking facilities and the establishment and determination of charges to be paid for the use of such parking by Federal employees, contractor employees and other facility tenants.

2. *Coverage.* The provisions of this Circular apply to Federal parking facilities in the United States, its territories and possessions, the commonwealth of Puerto Rico and the Canal Zone under the jurisdiction of the executive branch, excluding those operated by the Government of the District of Columbia and the United States Postal Service. The Office of Management and Budget urges elements of the Government not covered by this Circular to adopt similar policies.

At facilities jointly shared by an agency covered in this Circular with a governmental agency not covered (e.g. a building jointly shared by GSA and the Postal Service), when the facility is operated by an agency covered by this Circular, this Circular shall apply to all users of the parking facility. When the parking facility is operated by an agency not covered by this Circular, it is strongly suggested an agreement be reached among the affected agencies to follow the policies in this Circular. Employees of governmental entities, including the judicial and legislative branches located in facilities operated by GSA or other executive branch agencies, are covered by the provisions of the Circular. In any case, a uniform system shall be established to provide equal treatment for all uses of the facility.

3. *Background.* There are many reasons for deciding to charge for parking at certain Federal installations and to further promote carpooling at all Federal installations. Several agencies (the Department of Transportation and Energy, and the Environmental Protection Agency) have policies which attempt to encourage more efficient automobile use through private employers and State and local government. It is difficult for those agencies to promote such policies when the Federal Government—as the nation's largest employer—does not have comparable in-house practices.

The energy constraints on our nation are already requiring changes in driving patterns. The home-to-work trip by car is the most routine and predictable component of all driving and accounts for over 40% of all household automobile mileage. Because the commuter's trip is so predictable, it is also the most adaptable to regular carpool or vanpool arrangements, and to mass transit use. Yet, over 75% of automobiles used for commuting have only one occupant.

Free or low-cost parking biases an employee's decision on whether to drive alone, carpool or use public transit for commuting. Therefore, a basis for charging for the use of parking facilities needs to be established which is equitable among employees and consistent with related policies regarding air quality, energy conservation and reduced traffic congestion.

In the Washington, D.C. metropolitan area, where the Federal Government is the dominant employer, the policy described in this Circular will contribute to that area's compliance with the timetables for improving ambient air quality set forth in the 1977 amendments to the Clean Air Act.

The policy of charging for parking is aimed at Federal installations and offices primarily in densely populated urban locations where commercial practice is to charge for the use of parking spaces. By offering free or low cost parking in those locations, the government has contributed to traffic congestion, energy consumption and air pollution. In addition, at many downtown locations only a few Federal employees have free or low-cost parking. Many Federal employees in urban locations already pay to park in commercial garages or pay mass transit fares every day.

This Circular also instructs agencies to institute more effective carpooling incentives. This aspect of the policy will be especially important at those large suburban and rural installations which have large parking facilities and would not have a parking fee. Where private sector employees work near a Federal office or installation, they too would be eligible members of a carpool comprised of Federal employees. The Federal Government will also be working with State and local governments and private employers to encourage more widespread carpooling practices.

4. *Policy.* It is the general policy of the executive branch to limit Federal installation parking facilities to the minimum necessary, to administer those facilities in full compliance with carpooling regulations, and to assess Federal employees, contractor employees and tenant employees who are provided parking in Government-controlled space a charge equivalent to the fair monthly rental value for the use of equivalent commercial space, subject to the terms, exemptions and conditions stated in this Circular.

5. *Exemptions from Fees.* At certain locations and under certain conditions employees and others using parking may

be exempted from a fee, as discussed below.

a. *Shift work and weekend duty.* Employees whose scheduled duty hours are established as a shift starting or ending outside of an agency's normal working hours may be exempted from the fee schedule. This definition would include, for example, employees on so-called "swing" or "midnight" shifts, but not include employees on flextime or overtime. This exemption would be most applicable at locations where insufficient numbers of employees are scheduled for the particular shift to make carpooling feasible.

b. *Exempt vehicles.* Two-wheeled vehicles shall be exempt from a fee schedule. As an incentive to encourage vanpooling, vanpools shall be exempt from a fee schedule through September 30, 1981. A vanpool must have 8 to 15 regular members to qualify for exemption from fees.

c. *Nonwork locations.* No fee schedules are required for the use of parking spaces by visitors or patrons at cemeteries, commissaries, post theaters, exchanges, chapels and similar service facilities. No fee schedules are required for the use of parking spaces at government furnished quarters.

d. *Hospitals.* Patients and patient visitors may be exempted from a fee for parking at Federal hospitals.

e. *Visitor parking.* Visitors may be exempted from a fee for parking in government-provided parking spaces.

f. *Shared facilities.* At locations where government agencies occupy a portion of a privately-owned facility where no specific parking areas are assigned to individual employers for their employees' use and where all employees are provided free parking, the government employees may be exempted from a requirement to pay for parking. Agency heads at such locations should be especially diligent to encourage carpooling. Efforts should be made to have building owners at such locations establish reserved parking areas for carpools. Under FPMR 101–10.117, appropriate agency contracting offices shall endeavor to amend lease contracts to accomplish the policies of this Circular.

g. *Government-owned vehicles.* No fees will be required for spaces used by government-owned or government-leased vehicles.

h. *Members of Congress and Judges.* No fee is required for parking spaces in executive branch facilities assigned for security purposes to Members of Congress and Judges appointed under Article III of the Constitution.

i. *Handicapped vehicles.* Handicapped employees who utilize a specially equipped vehicle for commuting shall be exempt from parking fees.

6. *Collective Bargaining Agreements.* This policy shall not be interpreted to render null and void any valid, negotiated agreement between management and a union covering any provision of employee parking in effect on the effective date of this Circular. Upon the expiration of agreements exempted hereunder, the provisions of this Circular shall apply.

7. *Acquisition of parking facilities.* Acquisition of parking facilities will be permitted consistent with limitations and conditions in this Circular. The amount of parking facilities to be provided, at either leased or federally constructed buildings, will be dependent upon an analysis of the public transportation and carpooling projected to be reasonably available or feasible at the given location or area. This analysis will be conducted by GSA upon request of an agency head, and will consider Executive Order 12072 and other applicable laws, regulations or policies concerning use of public transit, air quality control and energy conservation. This analysis will include the following factors:

a. Availability of existing or planned transit and other community sponsored transportation improvements;

b. Availability of agency or metropolitan vanpool and carpool matching programs;

c. Availability of existing or planned commercial or municipal off-street parking;

d. Impact of commuter parking on residential neighborhoods;

e. Locations of where an agency's employees live in relationship to transportation systems; and

f. Special or unusual requirements.

The analysis will assume strict enforcement of carpool regulations and increasing use of public transit. The application of this policy should result in periodic reductions in the total number of Government controlled spaces within a given area, particularly at leased locations.

8. *Allocation and assignment of parking facilities.* The General Services Administration (GSA) or other agency in control of parking facilities at Federal buildings and on other Federal property, including leased property, shall equitably allocate such parking facilities among agencies in accordance with FPMR 101–20.111. Agency heads shall be responsible for the allocation of parking spaces allocated for their control, including the allocation of spaces for employee parking.

To maximize the efficient utilization of available parking spaces, assignments of spaces to Federal employees shall be on the basis of the regulations promulgated by GSA (FPMR 101–20.11 and 101–20.117), as amended to comply with this Circular. At locations with large, outside parking facilities, each agency shall identify and reserve parking areas according to the following priorities based on the shortest walking distance to work areas: official vehicles used during the day, handicapped employees, vanpools, carpools with four or more occupants, other carpools, and, space permitting single occupant cars. Agencies may assign a limited number of convenient parking spaces to certain executive personnel and employees with unusual hours in accordance with FPMR 101–20.117. Personnel to whom individual parking permits are assigned are encouraged to form carpools when their work schedules would permit such arrangements. The establishment of parking areas should be designed to encourage vanpooling and carpooling to the maximum extent feasible. Agencies may establish parking areas for subcompact sedans and station wagons used for carpools.

In urban areas, where several federally controlled facilities exist within easy walking distance of one another, parking spaces may be pooled on a zonal allocation plan rather than on an agency by agency basis to assure an equitable number of spaces among all Federal employees and to maximize the carpooling opportunities. Such arrangements already exist at several locations. Such pooled allocations shall be administered by GSA or other agency in control of the parking facilities primarily on the basis of carpool membership without regard to agency quota and in accordance with FPMR 101–20.111 and 101–20.117.

9. *Charges for employee parking.* a. *Establishment of charges.* Charges for employee use of Government-owned or leased parking facilities shall be assessed at all locations except where the rate, as determined in c. below, would be less than $10.00 per month. For the initial period November 1, 1979, through September 30, 1981, the charges to be collected shall be 50 percent of the rate full scheduled to be collected. If the full rate is calculated to be between $10.00 and $19.99, the monthly charge between November 1, 1979 and September 30, 1981, shall be $10.00. The full charge shall be collected after October 1, 1981.

b. *Authority for charges.* Authority to establish charges for the use of parking spaces is contained in the Federal Property and Administrative Service Act, as amended (40 U.S.C. 490). Comptroller General file reference B–177610 dated March 17, 1976, reviews this matter (55 Comp. Gen. 897).

c. *Determination of rates.* (1) The Administrator of GSA shall determine the rate to be charged for Government furnished employee parking at each facility using generally accepted appraisal techniques. Agencies other than GSA which hold title to property and desire to arrange their own appraisals must advise GSA in writing of their intent, and shall conduct such appraisals in accordance with GSA guidelines. GSA shall review and approve all rates in accordance with 40 U.S.C. 490(k). The rates shall approximate the prevailing value of comparable commercial property in the vicinity. The rate basis will be the fair rental value of such property as used in calculating Standard Level User Charges. Fair rental value includes an allowance for the costs of parking facility management. The rates so established shall be adjusted annually by the Administrator to reflect increases of decreases in value.

(2) In instances where a parking management company is engaged to operate the facility, issue permits, provide attendants, collect fees, etc., the cost of such management services will be included in the base fees paid by individual users for the use of such parking facilities.

(3) Fees for employee parking spaces shall not include any share of the costs attributable to spaces exempted from the fees under Section 5 of this Circular. Such costs will continue to be handled under existing budget practices for SLUC charges.

10. *Responsibilities.* a. GSA shall: (1) issue regulations implementing the provisions of this Circular regarding the determination of commercially equivalent rates for Government parking and development of procedures for agency collection of fees from individual users;

(2) revise regulations and priorities, as necessary, for the assignment of parking spaces. Regulations shall be issued by August 20, 1979. All rates at GSA facilities shall be determined by September 1, 1979, and by October 1, 1979, for all non-GSA facilities.

(3) collect and credit to the Federal Buildings Fund parking fees paid by employees of the legislative and judicial branches who utilize parking space assignments in GSA-controlled facilities.

b. Heads of departments and agencies shall: (1) assess charges consistent with the provisions of this Circular and GSA regulations, and under 40 U.S.C. 490(k), collect and credit fees to agency appropriations charged for parking spaces and services. Fees collected for the use of parking facilities shall be applied toward parking management costs and the Standard Level User Charges paid by using agencies to GSA. Amounts recovered in excess of direct costs and SLUC charges shall be credited to the Treasury as miscellaneous receipts.

(2) immediately request the Administrator of GSA to determine the parking rates to be assessed at facilities occupied by the agency. Requests need to be made promptly to enable rate determinations to be completed prior to November 1, 1979. Late rate determinations shall be applied retroactively to November 1, 1979.

(3) give full cooperation to the GSA in connection with the determination of commercial value.

(4) request guidance from GSA on how to conduct appraisals if the agency prefers to conduct its own appraisals. Rates developed under this method shall be submitted to GSA for review and approval.

(5) issue such instructions as may be needed to maximize carpooling and implement the provisions of this Circular and regulations issued by GSA. (See Attachment)

(6) by October 1, 1979, appoint an employee transportation coordinator at each facility to operate or participate in a system for carpool and vanpool matching among employees, and to maintain current information about public transit service to the facility. (See Attachment)

(7) by November 1, 1979, implement an effective mechanism for deterring abuse of parking space assignments made to the handicapped, vanpools and carpools.

11. *Military installations.* This Circular recognizes the unique problems involved in administering and charging for the use of parking spaces at dispersed facilities on certain military installations. The Secretary of Defense shall establish regulations at non-GSA controlled military installations consistent with this circular and the GSA regulations issued in conformance with this circular. The Secretary of Defense may adjust fee schedules and regulations at those portions of installations where practical considerations of installation geography or conditions of military readiness require modifications, while preserving as much as possible the monetary and administrative incentives necessary to conserve energy through substantial reductions in the use of commuter automobiles, particularly those with only one occupant.

12. *Agency Administrative Workload.* Agencies should administer the provisions of this Circular within existing personnel resources to the maximum extent possible.

13. *Appropriated funds.* a. The policy in this Circular will reduce the need for appropriated funds to pay for parking spaces used by employees at some locations. For fiscal year 1980, agencies shall provide a report to their examining divisions at OMB by November 15, 1979, which estimates for each appropriation account the gross amount of parking fees to be collected during the fiscal year. Appropriated funds for parking which are in excess of the agency's parking costs net of parking fee receipts shall be applied toward supplemental appropriation requirements which the agency intends to submit to OMB for review under Circular A–11. Appropriated funds not so applied will be recommended to the Congress for rescission.

b. For fiscal year 1981 and future years, budget requests shall anticipate the collection of parking fees, thus reducing the need for appropriations.

14. *Report.* a. By March 31, 1980, each agency shall submit a report to OMB detailing the affects of this Federal employee parking policy at each facility with more than 100 employees. Information to be included shall address:

(1) the number of official, visitor, and employee parking spaces provided prior to October 1, 1979, and on January 1, 1980, and the total number of employees at the installation on those dates.

(2) the number of parking spaces allocated to single occupant cars and carpools/vanpools and the average carpool/vanpool occupancy of those so allocated prior to October 1, 1979, and on January 1, 1980.

(3) the distribution of employees mode of transportation to and from work prior to October 1, 1979, and on January 1, 1980. (A sampling technique and questionnaire will be distributed to reduce workload.)

(4) the type and extent of assistance provided to agency employees in availing themselves of carpool/vanpool/transit commuting alternatives.

b. OMB, in cooperation with DOT and GSA, will develop and furnish to agencies specific guidance relative to the type of information needed and suggested procedures to assess the

before and after effects of this employee parking policy. A similar report may be required in January 1982 after the full rate goes into effect. Instructions will be issued at a later date for any additional report.

c. Agencies with a large number of installations or office locations may satisfy the reporting requirements by providing information on the 25 largest employment centers of their agency.

d. Copies of agency reports will be made available to Federal and local agencies with responsibilities in the area of energy conservation, air quality, and transportation.

15. *Review and Comment.* The GSA shall publish its regulations in the **Federal Register** in draft for a 30-day comment period on August 20, 1979, and shall issue final regulations by October 1, 1979. Agencies should begin development of agency regulations and procedures upon receipt of this Circular and the draft GSA regulations. Final agency regulations should be issued prior to November 1, 1979.

This Circular was provided to Federal agencies and employee unions in draft on April 6, 1979. Many of their comments have been incorporated. OMB will continue to accept comments which may be addressed to Ms. Joyce Walker, Deputy Associate Director, Room 9202, Office of Management and Budget, Washington, D.C. 20503.

16. *Inquiries.* Agency officials who desire interpretation of GSA regulations issued pursuant to this Circular regarding special or unique circumstances should call the General Services Administration (566–1872).

James T. McIntyre,

Director.

Information on Carpooling and Vanpooling

The following organizations can provide information or technical assistance regarding the establishment of effective ridesharing programs:

Office of Public and Consumer Affairs (I–38), U.S. Department of Transportation, 202–426–2146, Washington, D.C. 20590 (information packets).

Ridesharing Branch (HHP–33), 202–426–0210, Federal Highway Administration, FTS 8–426–0210, U.S. Department of Transportation, Washington, D.C. 20590 (Information packets, training aids, technical assistance).

Office of Conservation and Solar Applications, Transportation Programs Division, 202–376–4435, U.S. Department of Energy (CS/TP), FTS 8–376–4435, Washington, D.C. 20585 (information packets, technical assistance).

Tennessee Valley Authority, 615–632–3152, Attn: Jack Hendrie, FTS 8–852–3152, 400 Commerce Avenue, Knoxville, Tennessee 37902 (report on organization and performance of TVA's fleet or over 375 vanpools).

State Energy Offices. Located in most states. Operated by State governments with financial and technical assistance from the Department of Energy.

Metropolitan or regional councils of government. Located in most metropolitan areas. Many have programs for transportation systems management, including metropolitan-wide carpool matching programs.

Federal Executive Boards. Located in many metropolitan areas. These existing groups comprised of representatives from most agencies can be of assistance in coordinating ridesharing programs among Federal agencies.

[FR Doc. 79–25683 Filed 8–16–79; 8:45 am]

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