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Tuesday
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Highlights

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Highlights

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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Appendix II; Appropriate Office for Filing Appeals

AGENCY: Merit Systems Protection Board.

ACTION: Final rules; change of address.

SUMMARY: This document amends Merit Systems Protection Board regulations relating to the appropriate field office for filing appeals. This amendment is necessary because of change of address.

EFFECTIVE DATE: February 4, 1980.

FOR FURTHER INFORMATION CONTACT: Charles J. Stanislav, Jr., Assistant to the Deputy Managing Director—202–632–4525.

SUPPLEMENTARY INFORMATION: 5 CFR, Part 1201, Appendix II, Appropriate Field Office for Filing Appeals is amended by revising Paragraph 1. to read as follows:

1. Atlanta Field Office

1776 Peachtree Street NW., North Wing, 3rd Floor, Atlanta, Georgia 30309

(Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

* * * * *

Merit Systems Protection Board.

Ruth T. Prokop,

Chairwoman.

[FR Doc. 80–2769 Filed 1–28–80; 8:45 am]

BILLING CODE 6325–20–M

COUNCIL ON WAGE AND PRICE STABILITY

6 CFR Part 705

Anti-inflationary Price Standards Change and Addition to Questions and Answers

AGENCY: Council on Wage and Price Stability.

ACTION: Final rule and additon to Questions and Answers.

SUMMARY: The Council is amending 6 CFR § 705.64 and issuing a Question and Answer to call attention to special provisions concerning company organization that apply to companies eligible for modified price standards, including specifically petroleum refiners. These clarifications are being issued because several petroleum companies have inquired whether the placement of the disaggregation requirement in the modified standard for refiners (§ 705.44), rather than under general provision, was intended to permit compliance units consisting of refining and nonrefining operations to comply with the price standards as a single compliance unit. As these changes make clear, petroleum-refinery operations should be treated separately from other operations of a parent company.

EFFECTIVE DATE: January 16, 1980.

FOR FURTHER INFORMATION CONTACT: Larry Forest (202) 456–7747.

Issued in Washington, D.C., January 24, 1980

R. Robert Russell,

Director.

Accordingly, § 705.64 is amended by adding a phrase at the beginning of paragraph (b). As amended, paragraph (b) reads as follows:

§ 705.64 Compliance units.

* * * * *

(b) Subject to the special provisions that apply to companies (or parts of companies) eligible for a modified price standard (even though that company (or a part of it) may not elect to comply with such a standard), one or more parts of a consolidated company may be treated as a separate unit for purposes of complying with the pay or price standards if

(1) Each part maintains accounting records that permit the Council to ascertain whether the prices and profits of each part accurately reflect the economic realities of its operations.

(2) Allocation of overhead among the parts is made in a consistent and reasonable manner, as if the parts were not commonly owned.

(3) Transfers between parts are valued as if they were arms length transactions, and

(4) Internal accounting procedures adhere to generally accepted accounting principles and procedures, consistently and historically applied.

* * * * *

In addition, the following Question and Answer, numbered 6, is hereby added to Part I, Section B of the Council's Questions and Answers to read as follows:

Q6. Can petroleum-refinery operations be combined with other portions of a company for purposes of complying with any of the price standards?

A. No.

[FR Doc. 80–2781 Filed 1–24–80; 4:03 pm]

BILLING CODE 3175–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 371, 373, 376, 385, and 399

Revisions To Reflect Identification and Continuation of Foreign Policy Export Controls

Correction

In FR Doc. 80–585 appearing at page 1595 in the issue for Tuesday, January 8, 1980, make the following corrections:

1. On page 1597, in the third column, the fifth line of paragraph (a)(1) of § 371.9 "exporting" should be corrected to read "exported".

2. On page 1600, in the fourth paragraph the entry "2606A" should be corrected to read "2406A".

3. Also on pages 1600 and 1601 in the tables under the heading "GLV dollar value limits" the lines of dots should be changed to dashes everywhere they appear.

BILLING CODE 1505–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Financial Early Warning System

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is amending § 1.12 of Part 1 of its General Regulations under the Commodity Exchange Act by redesignating current paragraph (f) as paragraph (g), and by adding a new paragraph (f) and paragraph (h) thereto.

The effect of the new paragraph is to require a clearing organization to give telegraphic notice to the Commission within 24 hours after making a determination that, due to the failure of a clearing member registered as a futures commission merchant ("FCM") to meet a call for margin or to make other required deposits, the positions it carriers in any account for such FCM must be liquidated or transferred immediately or that the trading in any of the accounts of such FCM must be confined to transactions for liquidation only. Such notice is also required to be given by FCMs that make such a determination with respect to any account carried for another FCM.

The principal purpose of the amendment is to insure that the Commission receives early warning when such a determination is made so that the appropriate protective or remedial action may be taken.

References to paragraph (f) in § 1.12 have been changed to refer to paragraph (g).

EFFECTIVE DATE: February 28, 1980.

FOR FURTHER INFORMATION CONTACT: Daniel A. Driscoll, Chief Accountant, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, D.C. 20581 (202) 254–8955.

SUPPLEMENTARY INFORMATION: On July 18, 1979, the Commission published a proposed amendment to the financial early warning system contained in § 1.12 of its General Regulations (44 FR 41830). Ten written comments were received in response to the proposed amendment. There were three comments each from FCMs, clearing organizations and commodity exchanges. The other comment was submitted by an industry trade association. The Commission has carefully considered each of the comments.

Most of the commentators supported the amendment in principle, but recommended certain changes or clarifications. The major objection to the proposal, cited by six of the commentators, concerned the phrase "for any other reason" used in the proposed new § 1.12(f).[1] The commentators felt that the phrase was too vague or too broad and that it would cover many situations unrelated to the financial difficulties of an FCM, and thus be inappropriate and outside of the proper scope of the financial early warning system.

The Commission has reconsidered the language used in the proposal, and has decided to change the wording in § 1.12 from the proposed "margin call or for any other reason" to "call for margin or to make other required deposits." The Commission believes that the latter language will make the amendment clearer, that it is consistent with the purpose of the financial early warning system, and that it will provide the Commission with information necessary to carry out its mandate to avoid financial loss to customers of an FCM, other members of the marketplace and the marketplace itself due to the financial failure of an FCM. This language is also consistent with that used in § 1.17(c)(5) (viii) and (ix) of the Commission's minimum financial requirements for FCMs[2] in connection with charges to be taken against net capital for undermargined accounts. The Commission wishes to emphasize, however, that the margin calls or other deposits referred to in § 1.12(f) include all those demanded by clearing organizations and carrying futures commission merchants. Section 1.12(f) will not be limited to those situations involving the failure to meet a margin call which places a firm below the minimum margin levels of a commodity exchange.

One commentator questioned the Commission's authority to adopt the proposed amendment to § 1.12. Sections 4d, 4f, 4g, and 5a of the Commodity Exchange Act, as amended ("Act") (7 U.S.C. 6d, 6f, 6g and 7a) grant the Commission authority to adopt minimum financial and related reporting requirements by FCMs. It is the judgment of the Commission that, consistent with Section 8a(5) of the Act (7 U.S.C. 12a(5)), the amendment to § 1.12 is reasonably necessary to effectuate Sections 4d, 4f, 4g and 5a of the Act and to accomplish one of the purposes of the Act, which is to prevent financial loss to customers of an FCM, other members of the marketplace and the marketplace itself due to the financial failure of an FCM. Section 8a(5) enables the Commission not only to adopt regulations to effectuate a particular statutory provision but also to impose requirements to accomplish the Act's purposes even in the absence of a specific statutory source.[3]

Another commentator opposed to the amendment stated his contention that the financial early warning system should remain as it is now, with the sole responsibility for giving the notices required by § 1.12 on the firm that is experiencing financial difficulties, since it is in the best position to know its own financial position, rather than the carrying FCM. While this may be the case, one of the Commission's purposes in amending § 1.12 is to require that another party besides the FCM experiencing financial difficulties have a reporting obligation. As the Commission stated in the release proposing the amendment to § 1.12:

> Section 1.12 requires FCMs to give notice of their inability, or failure, to meet the minimum capital requirements; however, there have been a number of instances of FCMs failing to give such notice. The circumstances which would cause a clearing organization or carrying FCM to require an FCM to transfer or liquidate positions or to trade for liquidation only can indicate that the firm may be in severe financial difficulty. The Commission, therefore, believes that the proposed notice would strengthen existing reporting requirements.[4]

One commodity exchange expressed the view that the amendment was unnecessary in light of that exchange's practice of informing the Commission of any forced liquidation due to the failure of an FCM to meet the exchange's margin requirements. The Commission, however, believes that the amendment is necessary to establish a uniform obligation that all clearing organizations and carrying FCMs notify the Commission under the circumstances enumerated in § 1.12(f).

Four commentators who generally supported the proposal suggested that the Commission insure that all clearing organizations of which an FCM in financial difficulty is a member are notified when a notice is received under § 1.12(f), and one commentator suggested that the Commission adopt a procedure for making available information received under § 1.12(f) which would be similar to that set forth in the Commission's proposed

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[1] 44 FR at 41832.

[2] 17 CFR 1.17(c)(5) (viii) and (ix).

[3] *See* Ames v. Merrill Lynch, Pierce, Fenner and Smith, 567 F. 2d 1174, 1177–8 (2d Cir. 1977). *See also* Board of Trade Clearing Corporation v. United States, 2 Comm. Fut. L. Rep. (CCH) ¶ 20,534, at 22,206–22,207 (D.D.C. Jan. 11, 1978), *aff'd*, No. 78–1263 (D.C. Cir. March 29, 1979).

[4] 44 FR at 41831.

delegation of authority to disclose market sensitive information (44 FR 21295, April 10, 1979). The Commission recognizes the sensitive nature of notices submitted under § 1.12, and has decided to adopt a new paragraph (h) which provides a delegation of authority by the Commission to the Director, Deputy Directors and Chief Accountant of the Division of Trading and Markets to disclose, under Section 8a(6) of the Act (7 U.S.C. 12a(6)), information contained in notices received pursuant to paragraph (f) of § 1.12 to the proper committee or officer of any contract market or its clearing organization. The Commission construes contract markets to include their clearing organizations for purposes of disclosure of this information under Section 8a(6), inasmuch as these organizations will be in a position to take corrective action against possible disruption of the market or harm to the best interests of producers and consumers which could result from an FCM's failing to meet a call for margin or to make other required deposits. The delegation of authority also permits such communication to the Securities and Exchange Commission ("SEC"), upon the request of that agency, if the information received involves a registered broker or dealer. The Commission wishes to emphasize that any such information disclosed to the SEC may not be further disclosed except as provided in Section 8(e) of the Act (7 U.S.C. 12(e)). In these circumstances, Section 8(e) prohibits the disclosure by the SEC of information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers except in an action or proceeding under the laws of the United States to which the SEC, the Commission or the United States is a party.

The Commission finds that the delegation of authority contained in § 1.12(h) relates solely to agency practice and procedure, and, therefore, with respect to that paragraph, it need not employ the procedures set forth in the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and other opportunity for public participation.

One commentator suggested that the Commission amend its regulations under the Freedom of Information Act ("FOIA") (5 U.S.C. 552) to provide for non-public treatment of notices received under § 1.12(f). The Commission recognizes the sensitive nature of a notice submitted under § 1.12(f), at least during the period of time immediately following receipt of such notice. The Commission does not believe, however, that any change in its regulations under the FOIA is needed, and that any particular requests for records which may arise can be considered on a case-by-case basis under the existing regulations and FOIA precedents.[5]

Two commentators stated that it should be made clear that the amendment to § 1.12 does not place any restriction on a clearing organization to prevent it from taking quick action in appropriate cases, presumably even if this meant delaying the sending of a § 1.12 notice beyond the twenty-four hour period set forth in the regulation. The Commission does not believe that this requirement will interfere with any action which must be taken by a clearing organization or a carrying FCM.

Another commentator suggested that the form of communication required under § 1.12(f) should be a telephone call with a written confirmation of such call, rather than a telegram. The Commission recognizes that a telephone call may have certain advantages cited by the commentator, and the Commission does not wish to discourage a telephone call in such a situation. However, the only requirement is that a telegram be sent to the Commission's headquarters in Washington, D.C. within twenty-four hours.

One commentator recommended that "foreign FCMs" should be excluded from the coverage of the rule, that is, if a carrying FCM placed trading restrictions on a "foreign FCM" for whom it was carrying positions, no notice would be required. In view of this comment, the Commission has amended § 1.12(f) to make clear that it applies only in cases of determinations involving registered FCMs.

Another commentator requested clarification of three terms used in the proposal. The commentator first asked when a "determination" as used in § 1.12(f) will be deemed to have been made. As an example, the following situation was presented: an FCM is directed to make additional margin deposits within seven days, and informed that if the additional deposits are not received within that time, the firm's positions will be liquidated immediately. In such a situation, the provisions of § 1.12(f) would not take effect until after the seven days had passed, and there had been a decision to liquidate immediately the positions of the FCM.

[5] Section 1.12 has been in effect since December 20, 1978, and to date no requests for records of § 1.12 notices have been received by the Commission.

The commentator also asked whether the word "immediately" modified both "liquidated" and "transferred" as used in § 1.12(f). This is the Commission's intent and the language in the final rule has been amended to make that intent clear.

The final clarification requested concerned the meaning of the term "any position." The commentator asked whether § 1.12(f) would apply in the case of an FCM holding 2,000 contracts who was ordered to reduce his position to 1,000 contracts. It is not the Commission's intent that an entire position would have to be liquidated for § 1.12(f) to come into play; therefore, the Section would apply in the above example.

In adopting this amendment the Commission is acting pursuant to the Administrative Procedure Act (5 U.S.C. 553) and the Commodity Exchange Act, as amended, and particularly Sections 2a(11), 4d, 4f, 4g, 5a, 8a and 15 thereunder (7 U.S.C. 4a(j), 6d, 6f, 6g, 7a, 12a and 19).

In consideration of the foregoing, Part 1 of Chapter I of Title 17 of the Code of Federal Regulations is amended, as set forth below:

Section 1.12 is amended as follows: (a) By adding a new paragraph (f); (b) By redesignating former paragraph (f) as paragraph (g), adding one phrase to paragraph (g), and changing the references to paragraph (g) in § 1.12 to conform to the redesignation of that paragraph; and (c) By adding a new paragraph (h).

The revised text reads as follows:

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants.

(a) Each person registered as a futures commission merchant, or who files an application for registration as a futures commission merchant, who knows or should have known that its adjusted net capital at any time is less than the minimum required by § 1.17 or by the capital rule or any self-regulatory organization to which such person is subject, if any, must:

(1) Give telegraphic notice as set forth in paragraph (g) * * *

(b) Each person registered as a futures commission merchant, or who files an application for registration as a futures commission merchant, who knows or should have known that its adjusted net capital at any time is less than (1) the greater of 150 percent of the appropriate minimum dollar amount required by § 1.17 or 8⅓ percent of aggregate indebtedness or (2) if the applicant or registrant is operating pursuant to § 1.17(g), the greatest of 150 percent of

the appropriate minimum dollar amount required by § 1.17(g), or 6 percent of the funds required to be segregated pursuant to section 4d(2) of the Act and these regulations, or for securities brokers or dealers, 6 percent of aggregate debit items computed in accordance with the formula for determination of reserve requirements (§ 240.15c3–3 of this title); such applicant or registrant must file written notice to that effect as set forth in paragraph (g) * * *

* * * * *

(e) Whenever any self-regulatory organization learns that a member registrant has failed to file a notice or written report as required by this § 1.12, such self-regulatory organization must immediately report such failure as provided in paragraph (g) of this section.

(f)(1) Whenever a clearing organization determines that any position it carries for one of its clearing members which is registered as a futures commission merchant must be liquidated immediately, transferred immediately or that the trading of any account of such futures commission merchant shall be only for the purposes of liquidation, because that clearing member has failed to meet a call for margin or to make other required deposits, the clearing organization must give telegraphic notice of such a determination to the principal office of the Commission at Washington, D.C. within 24 hours.

(2) Whenever a registered futures commission merchant determines that any position it carries for another registered futures commission merchant must be liquidated immediately, transferred immediately or that the trading of any account of such futures commission merchant shall be only for purposes of liquidation, because the other futures commission merchant has failed to meet a call for margin or to make other required deposits, the carrying futures commission merchant must give telegraphic notice of such a determination to the principal office of the Commission at Washington, D.C. within 24 hours.

(g) Every notice and written report required to be given or filed by this section (except for notices required by paragraph (f) of this section) must be filed with the regional office of the Commission for the region in which the applicant or registrant has its principal place of business, with the designated self-regulatory organization, if any, and with the Securities and Exchange Commission, if such applicant or registrant is a securities broker or dealer. In addition, every notice required to be given by this section must also be filed with the principal office of the Commission in Washington, D.C. Each statement of financial condition, each statement of the computation of the minimum capital requirements pursuant to § 1.17, and each schedule of segregation requirements and funds on deposit in segregation required by this section must be filed in accordance with the provisions of § 1.10(d) of these regulations, unless otherwise indicated.

(h) The Commission hereby delegates to the Director, each Deputy Director and the Chief Accountant of the Division of Trading and Markets, the authority, pursuant to Section 8a(6) of the Act, to communicate information obtained by the Commission pursuant to paragraph (f) of this section to the proper committee or officer of any contract market including, for purposes of this paragraph, the clearing organization of such contract market, when, in the judgment of the Director, a Deputy Director, or the Chief Accountant, the information concerns any transaction or market operation which would disrupt or tend to disrupt any market or is otherwise harmful or against the best interests of producers and consumers. The Commission also hereby delegates to the Director, each Deputy Director and the Chief Accountant of the Division of Trading and Markets, the authority, pursuant to Section 8(e) of the Act, to furnish information obtained by the Commission pursuant to paragraph (f) of this section, upon request, to the Securities and Exchange Commission, acting within the scope of its jurisdiction, if such information concerns a futures commission merchant registered with the Securities and Exchange Commission as a broker-dealer. This delegation shall not affect any other delegation which the Commission has made or may make, which authorizes any other officer or employee of the Commission to furnish information on the Commission's behalf. Notwithstanding this paragraph, in any case in which it is deemed appropriate, the Director, a Deputy Director or the Chief Accountant of the Division of Trading and Markets may submit the matter to the Commission for its consideration. In addition, the Commission reserves to itself the authority to determine whether to communicate such information or to grant a request for such information in any particular case.

Issued in Washington, D.C. on January 23, 1980, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 80-2746 Filed 1-28-80; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

20 CFR Part 404

[Reg. No. 4]

Federal Old-Age, Survivors, and Disability Insurance (1950-); Deductions; Reductions; and Nonpayment of Benefits; Reduction of Benefits to Maximum

Correction

In FR Doc. 80–554, appearing at page 1611 in the issue of Tuesday, January 8, 1980, the third line of § 404.403(d) in column one, page 1612, should read, "or dies after 1979, the monthly maximum."

BILLING CODE 1505-01-M

Food and Drug Administration

21 CFR Parts 175, 176, 177

Indirect Food Additives: Adhesive Coatings and Components, Paper and Paperboard Components, and Polymers; 2-Sulfoethyl Methacrylate, Sodium Salt

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the food additive regulations to correct the Chemical Abstracts Service (CAS) Registry Number for 2-Sulfoethyl Methacrylate, Sodium Salt.

EFFECTIVE DATE: January 29, 1980.

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.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) amends the food additive regulations to correct the CAS Registry Number for 2-sulfoethyl methacrylate, sodium salt, which was shown as "10595–80–9." The correct CAS Registry Number for 2-sulfoethyl methacrylate, sodium salt is "1804–87–1."

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 (21

U.S.C. 348, 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 as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVE COATINGS AND COMPONENTS

§ 175.300 [Amended]

1. In § 175.300 *Resinous and polymeric coatings,* paragraph (b)(3)(xxxiii) is amended by changing the CAS Registry Number "10595–80–9" for 2-sulfoethyl methacrylate, sodium salt to "1804–87–1."

§ 175.320 [Amended]

2. In § 175.320 *Resinous and polymeric coatings for polyolefin films,* paragraph (b)(3) is amended by changing the CAS Registry Number "10595–80–9" for 2-sulfoethyl methacrylate, sodium salt to "1804–87–1."

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

§ 176.170 [Amended]

3. In § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods,* paragraph (b)(2) is amended by changing the CAS Registry Number "10595–80–9" for 2-sulfoethyl methacrylate, sodium salt to "1804–87–1."

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

§ 177.1630 [Amended]

4. In § 177.1630 *Polyethylene phthalate polymers,* paragraph (e)(4)(iii) is amended by changing the CAS Registry Number "10595–80–9" for 2-sulfoethyl methacrylate, sodium salt to "1804–87–1."

Because the correction accomplished by these amendments is editorial in nature and in no way affects the substance of the regulations, the agency finds for good cause that prior notice and public procedure are unnecessary and impracticable for their promulgation. Therefore, these amendments will become effective on the date of their publication.

Effective date. This amendment shall be effective January 29, 1980.

(Sec. 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 (21 U.S.C. 348, 371(a)))

Dated: January 22, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-2745 Filed 1-28-80; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF JUSTICE

Attorney General

28 CFR Part 0

[Order No. 872-80]

Delegation of Powers of the Attorney General in Connection With Administration of Prisoner Transfer Treaties

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order delegates to the Assistant Attorney General in charge of the Criminal Division all of the powers conferred on the Attorney General under Section 4102 of Title 18, U.S. Code, not specifically delegated to the Director of the Bureau of Prisons under 28 CFR 0.96b (Order No. 758–77, December 15, 1977), including specifically the authority to find the transfer of offenders to or from a foreign country appropriate or inappropriate, as the case may be. This order also authorizes the Assistant Attorney General in charge of the Criminal Division to redelegate this authority to the Deputy Assistant Attorneys General, and to appropriate Office Directors and Section Chiefs of the Criminal Division.

EFFECTIVE DATE: January 21, 1980.

FOR FURTHER INFORMATION CONTACT: Philip T. White, Director, Office of Legal Support Services, Criminal Division, Department of Justice, Washington, D.C. 20530 (202–724–7042).

By virtue of the authority vested in me by 18 U.S.C. 4102 (Pub. L. 95–144, 91 Stat. 1214), Subpart K of Part O of Chapter I of Title 28, Code of Federal Regulations, is amended by adding the following new § 0.64–2 immediately after § 0.64–1:

§ 0.64–2 Delegation respecting transfer of offenders to or from foreign countries.

The Assistant Attorney General in charge of the Criminal Division is authorized to exercise all of the power and authority vested in the Attorney General under Section 4102 of Title 18, U.S. Code, which has not been delegated to the Director of the Bureau of Prisons under 28 CFR 0.96b, including specifically the authority to find the transfer of offenders to or from a foreign country under a treaty as referred to in Pub. L. 95–44 appropriate or inappropriate. The Assistant Attorney General in charge of the Criminal Division is authorized to redelegate this authority to his Deputy Assistant Attorneys General and appropriate Office Directors and Section Chiefs.

Dated: January 21, 1980.

Benjamin R. Civiletti,

Attorney General.

[FR Doc. 80-2824 Filed 1-28-80; 8:45 am]

BILLING CODE 4410-01-M

28 CFR Part 0

Redelegation of Authority to Deputy Assistant Attorneys General and Director of the Office of International Affairs Respecting Transfer of Offenders To and From Foreign Countries

AGENCY: Department of Justice, Criminal Division.

ACTION: Final rule.

SUMMARY: This directive redelegates to each of the Deputy Assistant Attorneys General and the Director of the Office of International Affairs of the Criminal Division the authority delegated to the Assistant Attorney General in charge of the Criminal Division under 28 CFR 0.64–2 to exercise all of the power and authority vested in the Attorney General under Section 4102 of Title 18, U.S. Code, which has not been delegated to the Director of the Bureau of Prisons, including specifically the authority to find the transfer of offenders to or from a foreign country under a treaty as referred to in Pub. L. 95–44 appropriate or inappropriate, as the case may be.

EFFECTIVE DATE: Upon signature.

FOR FURTHER INFORMATION CONTACT: Philip T. White, Director, Office of Legal Support Services, Criminal Division, Department of Justice, Washington, D.C. 20530 (202–724–7042).

In 28 CFR Part O, the appendix to Subpart K is amended by adding the following:

Criminal Division

(Directive No. 73) Redelegation of Authority to Deputy Assistant Attorneys General and Director of the Office of International Affairs Respecting Transfer of Offenders to and From Foreign Countries.

By virtue of the authority vested in me by § 0.64–2 of Title 28 of the Code of Federal Regulations, the authority delegated to me by that section to exercise all of the power and authority vested in the Attorney General under Section 4102 of Title 18, U.S. Code, which has not been delegated to the

Director of the Bureau of Prisons, including specifically the authority to find the transfer of offenders to or from a foreign country under a treaty as referred to in Pub. L. 95–44 appropriate or inappropriate, is hereby redelegated to each of the Deputy Assistant Attorneys General and the Director of the Office of International Affairs of the Criminal Division.

Dated: January 23, 1980.

Philip B. Heymann,

Assistant Attorney General, Criminal Division.

[FR Doc. 80–2825 Filed 1–28–80; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Approval of Supplements to Hawaii State Plan

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

ACTION: Final rule; approval of supplements.

SUMMARY: The State of Hawaii has submitted three plan supplements describing changes in its occupational safety and health program. These are: submission of a Hawaii Consultation Operations Manual, amendments to its enabling legislation, and an amendment to its proposed penalties regulation. This document announces that the Hawaii plan supplements are consistent with commitments in the State occupational health plan and are therefore approved.

EFFECTIVE DATE: January 29, 1980.

FOR FURTHER INFORMATION CONTACT: Marjorie N. Sauber, Project Officer, Office of State Programs, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 523–8045.

SUPPLEMENTARY INFORMATION:

Background

The Hawaii Occupational Safety and Health Plan was approved under Section 18(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(c)) (hereinafter called the Act) and Part 1902 of this Chapter on December 28, 1973 (39 FR 1010). Part 1953 of the Chapter provides procedures for the review and approval of State change supplements by the Assistant Secretary for Occupational Safety and Health (hereinafter called the Assistant Secretary).

Description of Supplements

A. *Hawaii Consultation Operations Manual.* Hawaii submitted a manual which is a text on policies and procedures regarding on-site consultation and which consultants are to follow. The manual became effective on October 3, 1977.

B. *Amendments to Statute.* Hawaii deleted its broad workplace exemption which excluded State coverage of workplaces subject to Federal regulatory jurisdiction, and added at the end of its OSH statute a provision that the law shall not apply to working conditions with respect to which any Federal agency exercises the authority to prescribe and enforce regulations affecting occupational safety and health.

Section 8 which prohibited an "employer" from discriminating against an employee for exercising rights under the Act, was amended to mirror the Federal Act by substituting "person" for "employer".

C. *Amendment to Proposed Penalties Regulation.* The Hawaii regulation for proposed penalties stated that the Director or the Administrator should determine the amount of any proposed penalty. The definition of Director was broadened to mean the Director of Labor and Industrial Relations or his designee. Therefore the words "or the Administrator" were deleted, and the section on proposed penalties conforms to the Federal regulation.

Location of the Plan and its Supplements for Inspection and Copying

A copy of the supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Technical Data Center, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Room N–2439, Washington, D.C. 20210, Regional Administrator, Occupational Safety and Health Administration, 450 Golden Gate Avenue, Room 11321, San Francisco, California 94102, and the Department of Labor and Industrial Relations, 825 Mililani Street, Room 308, Honolulu, Hawaii, 96813.

Public Participation

Under § 1953.2(c) of this Chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any good cause which may be consistent with applicable laws. The Assistant Secretary finds that the Hawaii plan supplements described above are consistent with commitments contained in the approved plan, which were previously made available for public comment. Good cause is therefore found for approval of the supplements without public comment and notice.

Decision

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

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

Signed at Washington, D.C. this 22nd day of January 1980.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 80–2953 Filed 1–28–80; 8:45 am]

BILLING CODE 4510–26–M

29 CFR Part 1952

Approval of Supplements to Washington State Plan

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

ACTION: Final rule; approval of Washington supplements.

SUMMARY: The State of Washington has submitted three plan supplements describing changes in its occupational safety and health program in response to Federal program changes. These are (1) Walkaround Pay for Employee Representatives, (2) De Minimis Violations, and (3) Employee Complaint Procedures. This document announces that the plan supplements are substantially identical to the comparable Federal provision and are therefore approved.

EFFECTIVE DATE: January 29, 1980.

FOR FURTHER INFORMATION CONTACT: Joseph Acton, Project Officer, Office of State Programs, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, D.C. 20210, (202) 523–6021.

SUPPLEMENTARY INFORMATION:

Background

The Washington Occupational Safety and Health plan was approved under Section 18(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(c)) (hereinafter referred to as the Act) and Part 1902 of this chapter on January 26, 1973 (38 FR 2421). Part 1953 of the Chapter provides procedures for the review and approval of State change supplements by the Assistant Secretary of Labor for Occupational Safety and

Health (hereinafter referred to as the Assistant Secretary).

A. *Walkaround Pay for Employee Representatives.* This plan change supplement, comparable to the Federal program change, provides guidelines for compliance personnel when the employee representative's participation in the inspection is influenced by the employer's refusal to pay the representative for the time involved. Based on the premise that the employee representative's participation should be uninhibited by wage loss, this supplement states that failure to pay is discriminatory.

B. *De Minimis Violations.* This plan change supplement, comparable to the Federal program change, concerns procedures for processing violations which have no direct or immediate relationship to safety and health. The new guidelines will ease the employer's concerns over violations which can be classified as "minor."

C. *Employee Complaint Procedures.* This plan change supplement, comparable to Federal program change, pertains to the procedures for processing employee complaints concerning alleged unsafe and unhealthful conditions at the workplace. Scheduling, review and investigation will be determined according to the type and seriousness of the complaint. Guidelines for these procedures are established in this supplement.

Location of the Plan Supplements for Inspection and Copying

A copy of the plan and its supplements may be inspected and copied during normal business hours at the following locations: Technical Data Center, Occupational Safety and Health Administration, Room N–2439, 200 Constitution Avenue NW., Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6048, 909 First Avenue, Seattle, Washington 98174 and the Department of Labor and Industries, General Administration Building, Olympia, Washington 98504.

Public Participation

Under § 1953.2(c) of this Chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the Washington plan supplements described above are substantially identical to the comparable Federal provision. Good cause is therefore found for approval of the supplement without public comment and notice.

Decision

After careful consideration, the Washington plan supplements described above are hereby approved under Subpart C of Part 1953 of this Chapter. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally. Accordingly, Subpart F of Part 1952 of this Chapter is amended by adding a new section outlining these and other changes as follows:

§ 1952.125 Changes to approved plans.

(a) In accordance with Subpart C of Part 1953 of this Chapter, the following Washington plan changes were approved by the Assistant Secretary on January 22, 1980.

(1) *Walkaround pay for employee representatives.* This supplement provides guidelines for compliance personnel when the employee representative's participation in the inspection is influenced by the employer's refusal to pay the representative for the time involved.

(2) *Employee complaint processing procedures.* This supplement provides guidelines for the scheduling, review, an investigation of employee complaints concerning alleged unsafe and unhealthful conditions at the workplace.

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

Signed at Washington, D.C. this 22nd day of January 1980.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 80–2954 Filed 1–28–80; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 536

[AR 27–20]

Claims Against the United States

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: The regulations in Part 536 set forth policies and procedures applicable to the processing and administrative settlement of noncontractual claims generated by Army activities. This revision contains very little that is new but is considered necessary in order to implement minor statutory amendments to reflect current policies and procedures and to remove obsolete material from the regulations. In addition, certain sections of Part 536 are transferred to other parts of Chapter V of this title as outlined in the Supplementary Information block.

EFFECTIVE DATE: February 1, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Philip M. Wilson, Deputy Chief (Claims Operations), U.S. Army Claims Service, Office of The Judge Advocate General, Fort Meade, Maryland 20755 (301–677–7960).

SUPPLEMENTARY INFORMATION: Section 536.26, Claims Arising in Foreign Countries, is deleted because prospective claimants do not have access to the Code of Federal Regulations and receive information concerning claims from their own government or from U.S. Military authorities in their country.

Section 536.27, Claims of Military Personnel and Civilian Employees for Property Lost or Damaged Incident to Service, is deleted because the substantive regulation (Chapter 11, AR 27–20) is directed at members and employees of the Army and the Department of Defense only. Since this revision merely updates statutory and regulatory material, and restates policies and procedures already in effect, notice of rulemaking and procedures relating thereto are considered unnecessary. Also, the substantive regulation (Chapter 4, AR 27–20) which implements the Federal Tort Claims Act (28 U.S.C. 2671–2680) is based upon the Attorney General's Regulations (28 CFR 14.1–14.11) and no deviation therefrom is permitted. Furthermore, the military services maintain effective liaison to insure substantial uniformity with regard to claims policies, procedures and awards, and any significant policy or procedural change would require coordination with the other services before implementation. Those sections in 32 CFR Part 536 being deleted and transferred are listed below:

Original Provisions and Amendment

536.4 Claims responsibilities—Deleted.
536.11b Small claims—Deleted.
536.23 Delegation of authority—Deleted.
536.26 Claims arising in foreign countries—Deleted.
536.27 Claims of military personnel and civilian employees for property lost or damaged incident to service—Deleted.
536.30 thru 536.35 Enlisted men absent without leave, deserters, and escaped military prisoners—Incorporated in new part 630 (elsewhere in this issue of the Federal Register).
536.40 Property and personal effects—Will be transferred to part 630.
536.70 thru 536.78 Mustering-out payments—Deleted.

536.79 thru 536.87 Military payment certificates—Transferred to part 538 at 44 FR 76784, December 28, 1979.
536.90 thru 536.97 Reimbursement to owners and tenants of land acquired by the Department of the Army pursuant to public law 155, 82d Congress—Deleted.
536.100 thru 536.107 Reimbursements to owners and tenants of land acquired by the Department of the Army pursuant to public law 534, 82d Congress—Deleted.
536.110 thru 536.129 Texas City disaster claims—Deleted.
536.146 Investigation—Deleted.
536.169 Delegation of authority—Deleted.
536.181 thru 536.184 Claims resulting from explosion at U.S. Army ordinance plant in Bowie County, Tex., July 8, 1963—Deleted.
536.191 thru 536.198 Relief for members and former members who lost interests on soldiers deposits—Deleted.

Dated: January 9, 1980.

James A. Mounts, Jr.,

Colonel, JAGC, Chief, U.S. Army Claims Service, Office of The Judge Advocate General.

Accordingly, 32 CFR is amended by revising Part 536 to read as follows:

PART 536—CLAIMS AGAINST THE UNITED STATES

General Provisions

Sec.
536.1 Purpose and scope.
536.2 Information and assistance.
536.3 Definitions and explanations.
536.5 Treaties and international agreements.
536.6 Claims.
536.7 Determination of liability.
536.8a Determination of compensation for damage to or loss or destruction of property.
536.8b Determination of compensation for personal injury or death.
536.9 Effect of award of other payments to claimant.
536.10 Settlement agreement.
536.11 Appeals and notification to claimant as to denial of claims.
536.11a Effect of payment.
536.11c Advance payments.

Claims Arising From Activities of Military or Civilian Personnel or Incident to Noncombat Activities

536.12 Statutory authority.
536.12a Definitions.
536.13 Scope.
536.14 Claims payable.
536.15 Claims not payable.
536.16 Claims under other laws.
536.17 Subrogation.
536.18 When claim must be presented.
536.19 Procedures.
536.20 Compensation for personal injury or death.
536.21 Law applicable.
536.22 Claimants excluded.
536.22a Settlement agreement.
536.24 Claims over $25,000.
536.24a Settlement procedures.
536.24b Reconsideration.
536.25 Claims under Article 139, Uniform Code of Military Justice.

Sec.
536.29 Claims based on negligence of military personnel or civilian employees under the Federal Tort Claims Act.
536.45 Maritime claims.

Claims Arising From Activities of National Guard Personnel While Engaged in Duty or Training

536.140 Statutory authority.
536.140a Definitions.
536.141 Scope.
536.142 Claims payable.
536.143 Claims not payable.
536.144 Subrogation.
536.145 Notification of incident.
536.147 Form of claim.
536.148 Procedures.
536.149 When claim must be presented.
536.150 Where claim must be presented.
536.151 Property lost or damaged incident to service.
536.151a Claimants excluded.
536.151b Claims over $25,000.00.
536.151c Settlement procedures.
536.151d Action on appeal.
536.152 Reconsideration.

Claims Incident To Use of Government Vehicles and Other Property of the United States Not Cognizable Under Other Law

536.161 Statutory authority.
536.162 Definitions.
536.163 Scope.
536.164 Claims payable.
536.165 Claims not payable.
536.166 When claim must be presented.
536.167 Procedures.
536.168 Settlement agreement.
536.170 Reconsideration.
536.171 Claims over $1,000.00.

Authority: 10 U.S.C. 939, 2733, 2735 through 2737, 3012, 4801 through 4804, and 4806; 28 U.S.C. 1346(b), 2401(b), 2402, 2671, 2672, 2674 through 2680; 32 U.S.C. 715, unless otherwise noted.

General Provisions

Authority: Sec. 3012, 70A Stat. 157; 10 U.S.C. 3012.

§ 536.1 Purpose and scope.

(a) *Purpose.* Part 536 prescribes policies and procedures to be followed in the filing, investigation, processing and administrative settlement of Army generated noncontractual claims. Sections 536.1–536.11 contain general instructions and guidance for the investigation and processing of claims and apply to all claims unless other laws or regulations specify other procedures. They are intended to insure that incidents that may result in claims are promptly and efficiently investigated under supervision adequate to insure a sound basis for official action and that all claims resulting from such incidents are expeditiously settled.

(b) *Scope—(1) Applicability.* (i) The provisions of §§ 536.12–536.24 apply in the settlement of claims under the Military Claims Act (10 U.S.C. 2733) for personal injury, death or property damage that was either caused by members or employees of the Army acting within the scope of their employment, or otherwise incident to noncombat activities of the Army.

(ii) Section 536.25 sets forth the procedures to be followed and the standards to be applied in the processing of claims cognizable under Article 139, Uniform Code of Military Justice (10 U.S.C. 939) for property willfully damaged of wrongfully taken or withheld by members of the Army.

(iii) Section 536.29 governs the administrative settlement of claims under the Federal Tort Claims Act (28 U.S.C. 1346(b), 2671, 2672, 2674–2680) for personal injury, death or property damage casued by the negligent act or omissions of members or employees of the Army while acting within the scope of their employment.

(iv) Section 536.45 provides the procedures to be followed in the settlement of claims under the Army Maritime Claims Settlement Act (10 U.S.C. 4801–4804, 4806) for damage caused by a vessel of or in the service of the Army.

(v) Sections 536.140–536.152 provide instructions for settlement of claims under the National Guard Claims Act (32 U.S.C. 715) for personal injury, death or property damage that was either caused by a member or employee of the Army National Guard while in training or duty under Federal law, and acting within the scope of their employment; or otherwise incident to noncombat activities of the Army National Guard not in active Federal service.

(vi) Sections 536.161–536.171 provide instructions for settlement of claims under title 10, United States Code, section 2737 for personal injury, death or property damage (not cognizable under any other law) incident to the use of Government property by members or employees of the Army.

(2) *Nonappropriated fund activities.* Claims arising from acts or omissions of employees of nonappropriated fund activities within the United States, its Territories, and possessions, are processed in the manner prescribed by §§ 536.1 to 536.11b. In oversea areas, such claims will be processed in accordance with treaties or agreements between the United States and foreign countries with respect to the settlement of claims arising from acts or omissions of military and civilian personnel of the United States in such countries, or in accordance with applicable regulations as appropriate.

(3) *Nonapplicability.* Sections 536.1 to 536.11 do not apply to:

(i) Contractual claims which are under the provisions of Pub. L. 85–804, 28 August 1958 (72 Stat. 972) and AR 37–

103, or other regulations including procurement regulations.

(ii) Maritime claims (536.45).

§ 536.2 Information and assistance.

(a) Government personnel are forbidden to represent any claimant or to receive any gratuity for services. They may not accept any interest in a claim or assist in its presentation (62 Stat. 697, as amended, 18 U.S.C. 283). They are prohibited from disclosing information which may be made the basis of a claim, or any evidence of record in any claim matter, except as prescribed in §§ 518.1 to 518.4 of this chapter or other pertinent regulations. A person lacking authority to approve or disapprove a claim may not advise a claimant or his representative as to the disposition recommended.

(b) The prohibitions against furnishing information and assistance do not apply to the performance of official duty. Any person who indicates a desire to file a claim will be instructed generally as to procedure. He will be furnished forms, as prescribed in appropriate regulations and, when necessary, assisted in preparing the form and assembling evidence. In the vicinity of a field exercise, maneuver, or disaster, information may be disseminated concerning the right to present claims, the procedure to be followed, and the names and locations of claims officers, engineer repair teams, etc. When the government of a foreign country in which the United States Armed Forces are stationed has assumed responsibility for the settlement of certain claims against the United States, officials of that country will be furnished pertinent information and evidence so far as security considerations permit.

§ 536.3 Definitions and explanations.

The words "he," "him," "his," or "himself" when used in this regulation are applicable to both masculine and feminine genders. The following terms as used in §§ 536.1 to 536.11 and the regulations referred to in § 536.1(b) will have the meanings here indicated:

(a) *Approving authority.* Any officer designated by the Secretary of the Army or his designee to approve, but not disapprove, claims against the United States in accordance with this regulation. For purposes of the Federal Tort Claims Act (28 U.S.C. 2671–2680), the Nonscope of Employment Claims Act (10 U.S.C. 2737), and the Military Personnel and Civilian Employees Claims Act (31 U.S.C. 240–243) the term approving authority may include a Department of the Army civilian attorney who has been so designated by The Judge Advocate General.

(a–1) *Army National Guard personnel.* A member of the Army National Guard engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32, United States Code, or any other provisions of law for which he is entitled to pay under section 301 of title 37, United States Code, or for which he has waived that pay, or who is employed under section 709 of title 32, United States Code.

(a–2) *Advance payment.* A payment not exceeding $1,000 made prior to settlement of a meritorious claim under §§ 536.12–536.24, §§ 536.140–435.152, and the Foreign Claims Act (10 U.S.C. 2734) where there exists an immediate need of the person who suffered the injury, damage, or loss, or of his family, or the family of a person who was killed, for food, clothing, shelter, medical or burial expenses or other necessities, and other resources for such expenses are not reasonably available.

(b) *Civilian employees.* For the purposes of creating liability against the Government under Part 536, civilian employee means a person whose activities the Government has the right to direct and control not only as to the result to be accomplished but also as to the details and means by which this result is accomplished. Such a person is usually but not necessarily compensated for his services and usually but not necessarily is hired by a contract, expressed or implied, for a fixed tenure of a period of time. The term should be distinguished from the term "independent contractor" for whose actions the Government generally is not liable, *Fesber* v. *US*, 356 F. 2d 706 (6th Cir. 1966); *US* v. *Becker*, 378 F. 2d 319 (9th Cir. 1967); *Powell* v. *US Cathridge Co.*, 339 US 497 (1950); Restatement (second) of Agency § 220. The term includes the term "officer." The determination of who is a civilian employee is a federal question determined under federal law and not under local law.

(c) *Claim.* Normally, a written demand for the payment of a specified sum of money, other than the ordinary obligations incurred for services, supplies, or equipment.

(d) *Small claim.* A claim which may be settled by payment of $500 or less.

(e) *Claimant.* An individual partnership, association, corporation, country, State, territory, or other political subdivision of such country. The term does not include the US Government or any of its instrumentalities, except as prescribed by statute, or Indian tribe claiming as an entity (28 U.S.C. 1505). Individual Indians are proper party claimants.

(f) *Claims officer.* A commissioned officer, warrant officer, or qualified civilian employee legally trained or experienced in the conduct of investigations and the processing of claims designated by the responsible commander.

(g) *Claim file.* The claim, report of claims officer, or other report of investigation, supporting papers, and pertinent correspondence.

(h) *Combat activities.* Activities resulting from action by the enemy, or by United States Armed Forces engaged in combat, or in immediate preparation for impending combat.

(i) *Disaster.* A sudden and extraordinary calamity occasioned by activities of the Army, other than combat, resulting in extensive civilian property damage or personal injuries and creating a large number of potential claims.

(j) *The Government.* The Government of the United States.

(k) *Investigator.* A commissioned officer, warrant officer, enlisted man, or civilian, designated to conduct the investigation.

(l) *Military personnel.* For the purposes of creating liability against the Government under §§ 536.12 to 536.24 and 536.29 and the Foreign Claims Act (10 U.S.C. 2734), military personnel means members of the Army on active duty for training, or inactive duty training as defined in AR 310–25 and 10 U.S.C. 101(22), 101(23), and 101(30) except for duty by Army National Guardsmen other than members of the DC National Guard performed under the authorizations listed in § 536.141. The determination of who are military personnel is a federal question determined under federal law and not under local law.

(m) *Negligence.* Failure to exercise the degree of care required or prescribed by law, or that which an ordinarily prudent person would exercise under the same or similar circumstances.

(n) *Noncombat activities.* Authorized activities essentially military in nature, having little parallel in civilian pursuits which historically have been considered as furnishing a proper basis for payment of claims, such as practice firing of missiles and weapons, training and field exercises, and maneuvers, including, in connection therewith, the operation of aircraft, and vehicles, and use and occupancy of real estate, and movement of combat or other vehicles designed especially for military use. Activities incident to combat, whether in time of war or not, and use of military personnel

in connection with civil disturbances are excluded.

(o) *Owner.* The person vested with ownership, custody, or title of property, and includes bailee, lessee, mortgagor, and conditional vendee, but does not include mortgagee, conditional vendor, nor another having title for purpose of security only.

(p) *Proximate cause.* An act or omission which in natural and continuous unbroken sequence produced the result and without which that result would not have occurred. An act or omission except for which an incident would not have occurred, but which cannot be said to have caused it, will not sustain liability or (if committed by the claimant) justify denial of the claim. Proximate cause will normally be determined in accordance with local law.

(q) *Settle.* Consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or by disallowance.

(r) *Scope of employment.* Expressly or impliedly directed or authorized by competent authority, or within the design, aim, purpose, or instructions of the unit's or organization's mission, or in the interest of the Government. Determination of scope of employment under the Federal Tort Claims Act is governed by local law.

(s) *Subrogation.* Substitution by operation of law of one person for another as owner of a right; for example, an insurer (subrogee) who, by paying a claim under a policy, succeeds to the rights of the insured (subrogor).

(t) *Settlement authority.* Any officer designated by the Secretary of the Army, or The Judge Advocate General, and any foreign claims commission appointed by the Secretary of the Army or his designee to settle (approve or disapprove) claims in accordance with this regulation.

(u) *Costs.* As used in § 536.14(g), costs include normal claims expenses, as approved by Chief, U.S. Army Claims Service, litigation expenses and interest taxed by a court against medical personnel listed in above reference, and attorney's fees. An allowance for attorney fees is authorized only when such medical personnel are authorized by The Judge Advocate General in accordance with paragraph 3–2, AR 27–40, to retain private counsel at Government expense.

(v) *Settlements.* As used in § 536.14(g), settlements include any compromise of a claim for damages which is approved by The Judge Advocate General, The Assistant Judge Advocate General or the Chief, U.S. Army Claims Service, and where a suit against individual medical personnel as listed in § 536.14(g) is being settled, with the additional approval of the Chief, Litigation Division, OTJAG, and Department of Justice.

§ 536.5 Treaties and international agreements.

(a) The governments of some foreign countries have by treaty or agreement waived or assumed, or may hereafter waive or assume, certain claims against the United States. In such instances claims will not be settled under laws or regulations of the United States.

(b) The prohibition stated in paragraph (a) of this section is not applicable to claims within the purview of Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty or similar type agreements which normally will be investigated and settled as therein provided.

§ 536.6 Claims.

(a) *Who may present.* (1) A claim may be presented by the owner of the property, or in his name by a duly authorized agent, or legal representative.

(2) A claim for personal injury may be presented by the injured person or his duly authorized agent or legal representative.

(3) A claim based on death may be presented by the executor or administrator of the deceased's estate, or by any person determined to be legally or beneficially entitled. Under most regulations, a death gives rise to but a single claim. The amount allowed will, to the extent practicable, be apportioned among the beneficiaries in accordance with the law of the place where the incident giving rise to the claim occurred.

(4) A claim for medical, hospital, or burial expenses may be presented by any person who by reason of family relationship has in fact incurred the expenses for which claim is made. With respect to claims cognizable under the provisions of the Federal Tort Claims Act, see § 536.29.

(5) A claim presented by an agent or legal representative will be made in the name of the claimant and signed by the agent or legal representative showing his title or capacity. Evidence of the authority of such person to act will not be required except when the laws of the State or country of claimant's residence or the exigencies of the situation, require such evidence. An agent or legal representative may be required to submit the DA Form 1627 (Notice of Appearance Before a Command or Agency of the Army Establishment), prescribed by 18 U.S.C. 284 and § 583.1 of this chapter.

(6) Where the same claimant has a claim for damage to or loss of property and a claim for personal injury or a claim based on death arising out of the same incident, they represent only parts of a single claim or cause of action. Accordingly, if applicable, when a claim is submitted it should include all damages alleged to have accrued to the claimant from the incident giving rise to the claim.

(7) A claim may be presented by a subrogee in his own name if authorized by the law of the place where the incident giving rise to the claim occurred provided subrogation is not barred by the regulation applicable to the type of claim involved.

(8) A claim normally will include all damages that accrue by reason of the incident. For example, if the same claimant has both a property damage and personal injury claim arising out of the same incident, only one claim will be permitted to be filed. Where local law permits the filing of split claims, a split filing may be permitted with consent of Chief, US Army Claims Service.

(b) Subrogation. (1) The claims of the subrogor (insured) and subrogee (insurer) for damages arising out of the same incident constitute separate claims and it is permissible for the aggregate of such claims to exceed the monetary jurisdiction of the approving or settlement authority

(2) A subrogor and a subrogee may file a claim jointly or individually. A fully subrogated claim will be paid only to the subrogee. Whether a claim is fully sobrogated is a matter to be determined by local law. Some jurisdictions permit the property owner to file for his property damage even though he has been compensated for his repairs by his insurer. In such instances a release should be obtained from both parties in interest or be released by both of them. The approved payment in a joint claim will be by joint check which will be sent to the subrogee unless both parties specify otherwise. If separate claims are filed, payment will be by check issued to each claimant to the extent of his undisputed interest.

(3) Where a claimant has made an election and accepted workmen's compensation benefits, both statutory and case law of the jurisdiction should be scrutinized to determine to what extent the claim of the injured party against third parties has been extinguished by his acceptance of compensation benefits. While it is infrequent that the claim is fully extinguished, it is true in some

jurisdictions and the only proper party claimant is the workmen's compensation carrier. Even where the injured party's claim has not been fully extinguished, most jurisdictions provide that the compensation insurance carrier has a lien on any recovery from the third party and no settlement should be reached without approval by the carrier where required by local law (19 A.L.R. 766, supplemented by 27 A.L.R. 493, 37 A.L.R. 838, 67 A.L.R. 249, 88 A.L.R. 665, and 106 A.L.R. 1040).

Further, if the United States has paid, directly or indirectly under a contract, the premiums for the workmen's compensation insurance, local law should be consulted to determine whether the United States is protected from suit on the same basis as the actual employer is protected by the workmen's compensation (*Stacey* v. *United States*, 270 F. Supp. 71 (E.D. La. 1967)). Additionally claims from the workmen's compensation carrier as subrogee or otherwise will not be considered payable where the United States has paid the premiums as above. Applicable contract provisions holding the United States harmless should be utilized.

(4) Every claimant will, as a part of his claim, make a written disclosure concerning insurance coverage as to:

(i) The name and address of every insurer;

(ii) The kind and amount of insurance;

(iii) Policy number;

(iv) Whether a claim has been or will be presented to an insurer, and, if so, the amount of such claims; and

(v) Whether the insurer has paid the claim in whole or in part, or has indicated payment will be made. Care will be exercised to require insurance disclosures consistent with the type of incident generating the claim.

(5) Each subrogee must substantiate his interest or right to file a claim by appropriate documentary evidence and should support his claim as to liability and measure of damages in the same manner as required of any other claimant. Documentary evidence of payment to a subrogor does not constitute evidence either of liability of the Government or the amount of damages. Approving authorities will make independent adjudications upon the evidence of record and the law.

(c) Transfer and assignments. (1) Except as they occur by operation of law, every purported transfer or assignment of a claim against the United States, or of any part of or interest in a claim, whether absolute or conditional; and every power of attorney or other purported authority to receive payment of all or part of any such claim, are null and void unless made after a voucher for the payment has been issued, or unless within the exceptions set forth by statute. See 31 U.S.C. 203 and AR 37–107.

(2) The purposes of this antiassignment statute are to eliminate multiple payment of claims to cause the United States to deal only with original parties and to prevent persons of influence from purchasing claims against the United States.

(3) In general, this statute prohibits voluntary assignments of claims with the exception of transfers or assignments made by operation of law. The operation of law exception has been held to apply to claims passing to assignees because of bankruptcy proceedings, assignments for the benefit of creditors, corporate liquidations, consolidations or reorganizations, and where title passes by operation of law to heirs or legatees. Subrogated claims which arise under statute are not barred by the antiassignment statute (*b* above). For example, subrogated workmen's compensation claims are cognizable when presented by the insurer.

(4) Subrogated claims which arise pursuant to contractual provisions may be paid to the subrogee if the subrogated claim is recognized by State statute or decision. For example, an insurer under an automobile insurance policy becomes subrogated to the rights of a claimant upon payment of a property damage claim. Generally, such subrogated claims are authorized by State law and are therefore not barred by the antiassignment statute.

(5) Whether medical payments paid by an insurer to its insured can be subrogated depends on local law. Many States prohibit the payment of these claims by an insurer notwithstanding a contractual provision providing for subrogation. Therefore local law should be researched prior to deciding the issue and claims forwarded to higher headquarters for adjudication should contain the results of such research. Such claims where prohibited by State law will also be barred by the antiassignment statute.

(6) Therefore, before claims are paid, it is necessary to determine whether there may be a valid subrogated claim under Federal or State statute or subrogation contract held valid by State law. If there may be a valid subrogated claim forthcoming, payment should be withheld for this portion of the claim. If it is determined that claimant is the only proper party, full settlement is authorized.

(d) Action by claimant—(1) *Form of claim.* The claimant will submit his claim using authorized official forms whenever practicable. Normally, a claim is filed only when the elements indicated in § 536.3(c) have been supplied in writing by a person authorized to present a claim. A claim may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a).

(2) *Signatures.* The claim and all other papers will be signed in ink by the claimant or by his duly authorized agent. Such signature will include the first name, middle initial, and surname. A married woman must sign her claim in her given name, e.g., "Mary A. Doe," rather than "Mrs. John Doe."

(3) *Presentation.* The claim should be presented to the commanding officer of the unit involved, or to the nearest Army post, camp, or station, or other military establishment convenient to the claimant. In a foreign country where no appropriate commander is stationed, the claim should be submitted to any attache of the United States Armed Forces.

Claims cognizable under Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty, Article XVIII of the Japanese Administrative Agreement or other similar treaty or agreement are filed with designated claims officials of the receiving State.

(e) *Evidence to be submitted by claimant.* The claimant should submit the evidence necessary to substantiate his claim. Only the original of such substantiating evidence need be submitted. It is essential that independent evidence be submitted which will substantiate the correctness of the amount claimed.

(f) *Statute of limitations.* (1) *General.* Each statute available to the Department of the Army for the administrative settlement of claims, except the Maritime Claims Settlement Act (10 U.S.C. 4802), specifies the time during which the right to file a claim must be exercised. These statutes of limitations, which are jurisdictional in nature, are not subject to waiver unless expressly so provided by the wording of the statute. *Crown Coat Front Co.* v. *United States*, 275 F. Supp. 10 (D.C.N.Y. 1967) aff'd, 395 F.2d 160 (2d Cir.) cert denied 393 U.S. 853 (1968); *United States* v. *Trower*, 267 F. Supp. 608 (D. Tenn. 1967). Specific information concerning the period for filing under each statute is contained in the appropriate implementing sections of this regulation.

(2) *When a claim accrues.* A claim accrues on the date on which the alleged wrongful act or omission results in an actionable injury or damage to the

claimant or his decedent. As a general rule, a claim will accrue at the time of the incident which caused the loss, damage, or injury. An exception to the general rule is found in the area of medical malpractice claims. In this area, the accrual of a claim is postponed until such time as the claimant, or someone acting on his behalf, discovers or should have discovered the acts or omissions which are alleged to have been wrongful. *Brown* v. *United States*, 353 F.2d 578 (C.A. Cal. 1965); *Hungerford* v. *United States*, 307 F.2d 99, 102 (9th Cir. 1962); *Quinton* v. *United States*, 304 F.2d 234 (5th Cir. 1962). In claims for indemnity or contribution against the United States, the accrual date is the time of the payment for which indemnity is sought or on which contribution is based. *Keleset X-ray Corp.* v. *United States*, 275 F.2d (D.C. Ct. Ap. 1960).

(3) *Effect of infancy, incompetency or the filing of suit.* The statute of limitations for administrative claims is not tolled by infancy or incompetency. *Jackson* v. *United States*, 234 F. Supp. 586 (D.C.S.C. 1964). Likewise, the statute of limitations is not tolled for purposes of filing an administrative claim by the filing of a suit based upon the same incident in a Federal, State, or local court against the United States or other parties.

(4) *Amendment of Claims.* A claim may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). A claim may be amended by changing the amount, the bases of liability, or elements of damages concerning the same incident. Parties may be added only if the additional party could have filed a joint claim initially.

If the additional party had a separate cause of action his claim may not be treated as an amendment but only as a separate claim and is thus barred if the statute of limitations has run. For example, if a claim is timely filed on behalf of a minor for personal injuries a subsequent claim by a parent for loss of services is considered a separate claim and is barred if it is not filed prior to the running of the statute of limitations. Another example is where a separate claim is filed for loss of services or consortium by a spouse arising out of injuries to the husband or wife of the claimant. On the other hand, if a claim is timely filed by an insured for his deductible portion of his property damage, a subsequent claim by the insurer based on payment of property damage to its insured may be filed as an amendment even though the statute of limitations has run unless final action has been taken on the insured's claim.

(g) *Disposition of claims.* When a claim is received, the date and the designation of the receiving command or office will be stamped or otherwise noted on all copies. If the receiving command or office is not responsible for the investigation, the claim will be transmitted to the command or installation concerned. The date of receipt stops the running of the statute. In computing this time to determine whether the period of limitation has expired, exclude the first day and include the last day, except when if falls on the nonworkday—such as Saturday, Sunday, or a legal holiday—in which case it is to be extended to the next workday. (*Prince* v. *U.S.* 185 F. Supp. 269 (E.D. Wisc. 1960); see also Fed. R. Civ. P. 6).)

(h) *By the Command concerned.* (1) *General.* If the claim is of a type and amount within the jurisdiction of the command concerned and the claim is meritorious in the amount claimed, it will be approved and paid. If a claim in an amount in excess of the monetary jurisdiction of the command is meritorious in a lesser amount within its jurisdiction, the claim may be approved for payment provided the amount offered is accepted by the claimant in settlement of the claim. If the claim is not of a type within the jurisdiction of the command, or if the claimant will not accept an amount within its jurisdiction, the claim with supporting papers and a recommendation for appropriate action will be forwarded to the next higher claims authority. Within the United States and its territories, this will be the Chief, US Army Claims Service, except as to engineer generated claims which will be forwarded only upon request of the Chief, US Army Claims Service. In overseas areas, the next higher claims authority is a claims settlement authority. Any claim forwarded to a higher authority for settlement will be accompanied by a seven-paragraph memorandum of opinion signed by the responsible claims authority. If the claim is determined to be not meritorious, it will be disapproved provided the command has settlement authority for claims of the type and amount involved. Prior to the disapproval of a claim under a particular statute, a careful review should be made to insure that the claim is not properly payable under a different statute or on another basis.

(2) *Claims within settlement authority of US Army Claims Service or the Attorney General.* A copy of each claim which appears to be of a type that must be brought to the attention of the Attorney General in accordance with his regulations (28 CFR 14.6) or one in which the demand exceeds $5,000 will be forwarded immediately to the Chief, US Army Claims Service. The US Army Claims Service is responsible for the monitoring and settlement of such claims and will be kept informed on the status of the investigation and processing thereof. Direct liaison and correspondence between the US Army Claims Service and the field claims authority or investigator is authorized on all claims matters, and assistance will be furnished as required.

(3) *Claims involving privately owned vehicles.* In areas where the Federal Tort Claims Act is applicable, any claim except those under 31 U.S.C. 240–243, arising out of an accident involving a privately owned vehicle driven by a member of the Army, or by Army National Guard personnel as defined in § 536.141, based on allegation that the privately owned vehicle travel was within the scope of employment, should be forwarded without adjudication directly to the Chief, US Army Claims Service, ATTN: Chief, General Claims Division, together with a seven-paragraph memorandum which includes a discussion of the issue of scope of employment under applicable law. Additional information is provided in chapters 4 and 5, and AR 27–40. (See Part 516 of this chapter)

(4) *Claims within the exclusive jurisdiction of US Army Claims Service.* Authority to settle the following claims has been delegated to the Chief, US Army Claims Service, only:

(i) Claims under Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty.

(ii) Claims under the Army Maritime Claims Settlement Act (10 U.S.C. 4801–04, 4806, as amended).

(iii) Industrial Security claims (Sect. X, para C, DOD Directive 5220.6, 7 Dec 1966).

(iv) Claims of the US Postal Service under AR 65–1.

Files of these claims will be forwarded directly to the Chief, US Army Claims Service, with the report of investigation and supporting papers, including a seven-paragraph memorandum.

(5) *Maritime claims.* A copy of a claim arising out of damage, loss, injury, or death which originates on navigable waters and is not considered cognizable under the Army Maritime Claims Settlement Act (10 U.S.C. 4802–4804) (e.g., a claim arising before 29 August 1972 which was not caused by a vessel of or in the service of the Army) will be forwarded immediately to the Chief, US

Army Claims Service, Fort Meade, MD 20755. A determination will be made as to whether the claim must be processed under the Suits in Admiralty Act or the Public Vessels Act or on the other hand may be considered administratively.

If a maritime claim cannot be settled administratively, the claimant will be advised that he must file a suit. If it is determined that both administrative and judicial remedies are available, the claim may be processed administratively and the claimant advised of the need to file a suit within 2 years of the date of occurrence if he chooses his judicial remedy. If the claim is for damage to property, or injury to person, consummated on land, a claimant who makes an oral inquiry or demand will be advised that no suit can be filed until there shall have expired a period of six months after a claim in writing is submitted. (46 U.S.C. 740; *Clark Terminals of Boston* v. *U.S.*, 100 F. Supp. 59 (D. Mass. 1951).) If it is determined by the Chief, US Army Claims Service, that a claim, apparently maritime in nature, is not within the maritime jurisdiction, the claimant will be so advised and the claim will be returned for processing under the appropriate section of this regulation.

(i) *By district or division engineer.* The district or division engineer has the same authority and will take the action of an initial approving authority as indicated above. Files of unpaid claims should be forwarded through engineer channels to the Chief, US Army Claims Service, Fort Meade, MD 20755, except where requested by the Chief, US Army Claims Service, to be forwarded directly to that Service, in which event an information copy will be sent to the next higher approving authority unless he waives such requirement.

(j) *By higher settlement authority.* A higher authority may take action with respect to a claim in the same manner as could the initial command. However, if it is determined that any further attempt to settle the claim would be unwarranted, the claim will be forwarded through the staff judge advocate of the command having claims supervisory authority to the Chief, US Army Claims Service, Fort Meade, MD 20755 with recommendations, except where requested by the Chief, US Army Claims Service, to be forwarded directly to that Service, in which event an information copy will be sent to the next higher approving or settlement authority unless he waives such requirement.

§ 536.7 Determination of liability.

In the adjudication of tort claims, the liability of the United States generally is determined in accordance with the law of the State or country where the act or omission occurred, except that any conflict between local law and the applicable United States statute will be resolved in favor of the latter. However, in claims by inhabitants of the United States arising in foreign countries, liability is determined in accordance with general principles of American law as stated in standard legal publications, except as it applies to absolute liability.

§ 536.8a Determination of compensation for damage to or loss or destruction of property.

(a) *General.* If the property can be economically repaired, the allowable compensation is the actual or estimated net cost of repairs necessary to restore the property to substantially the condition which existed immediately before the damage. An appropriate allowance may be made for any difference in the original value and the value after repair by adding an allowance for depreciation, or deducting an allowance for appreciation. In appropriate cases, e.g., where a late model automobile has sustained extensive damage and even if repaired would depreciate a certain amount based solely on the fact that it was extensively damaged, a depreciation factor not to exceed 10 percent of the cost of repairs, whether or not the repairs have been made, may be utilized in determining whether the property is economically repairable. Normally, depreciation will not be allowed except when repairs have actually been made and the determination of percentage of depreciation will be based on an expert opinion. If the property cannot be economically repaired, the measure of damages is the value of the property immediately before the incident less value thereof immediately after the incident. The measure of damages for lost or completely destroyed property is the value of the property immediately before the incident. No allowance will be made for attorney's fees, court costs, bail, interest, inconvenience, or expenses such as long distance telephone calls or transportation in connection with preparation of the claim. (*Laney Tank Lines, Inc.* v. *US* 237 F. Supp. 265 (E.D.S.C. 1965).) Compensation may be allowed for loss of profits when an interference with or interruption of business caused by an incident is determined to be the proximate cause of loss, e.g., an Army vehicle damages a retail store to the extent that it must close temporarily. Compensation is not allowable when an employee is injured and business loss results because of the employee's absence.

(b) *Special damages.* Loss of use of damaged property which is economically repairable, if authorized by the law of the situs, is a proper item of damages and should be allowed for a period reasonably necessary to effect repairs. A number of jurisdictions allow an award for loss of use without actually incurring an expense. This is especially true in cases involving vehicles where an award may be granted for this element of damage even though a substitute vehicle has not been rented or where the claimant has obtained a temporary substitute without charge. In jurisdictions which do not follow this rule, a claim for loss of use will be substantiated by proof of expenses actually incurred for necessary substitute property during the period required to effect repairs. Normally, a paid bill from a commercial dealer regularly engaged in rental of property of the type involved will be required. In a case where a vehicle is considered to be a total loss, the award may include compensation for the rental of a substitute vehicle for the period of time reasonably necessary to replace the damaged vehicle.

(c) *Examples:*

(1) *Registered or insured mail.* In the case of registered or insured mail, compensation may include postal fees and postage paid.

(2) *Annual crops.* The allowable compensation is based on the number of acres or other unit measure, the average yield per acre in the neighborhood, the degree of maturity of the crop, the price on the local market at maturity, reduced by the anticipated cost of cultivation, harvesting, storage, and marketing.

(3) *Perennial crops or pasture land.* The allowable compensation is ordinarily the amount of the damage to the growing crop plus the diminution in the value of the land.

(4) *Timberland.* Generally, the allowable compensation is the difference between the value of the land and the stand before the incident and the value afterwards.

(5) *Turf and soil.* The allowable compensation is generally the cost of reconditioning the soil to its former state, unless the damage is of a permanent nature, in which case the allowable compensation is the difference between the value of the land before the incident and the value afterwards.

(6) *Domestic animals and fowl.* The general rule, that the measure of damages for the loss or destruction of property is ordinarily its market value, applies in the case of animals and fowl. In determining the market value the particular qualities and capabilities of

an animal may be considered. When an animal has no market value damages may be based upon its actual or extrinsic value, or its value to the owner. The measure of damages for animals which have a special value for breeding purposes, or which have been bred, is generally based upon the market value only. Normally an allowance for the anticipated progeny is not authorized as it would constitute a double award, as the market value is presumably established and determined by the special value of the injured animals as breeders, i.e., the value of anticipated progeny is included in determining the market value of the animal. Allowable compensation in cases involving damage to agricultural ventures conducted for profit, e.g., dairy, poultry, and mink farming, is usually measured by determining the extent of loss profits and additional expenses resulting from the incident causing such damages. Property damage such as loss of milk base or Government subsidy payments are also compensable if definitely ascertainable. The fact of damages, both in nature and origin, must be clearly ascertainable, but once liability has been established, recovery cannot be denied because the extent of the damages is difficult to ascertain or impossible of precise measurement. The measure of damages in these cases can usually be determined by claimant's records from previous years (if an established business). Factual or opinion reports of dealers, veterinarians, and agricultural extension agents are likewise relevant in determining or verifying production statistics, normal mortality rates and similar data necessary to an informed computation of a claimant's net loss.

(d) *Proof of damage.* The cost of repairs may be established by a receipted bill or estimate signed by a reputable dealer or repairman. Value may be established by the written appraisal of a disinterested, licensed dealer or broker, by market quotations, commercial catalogs, or by other evidence of the price at which like property can be obtained in the community. The assistance of appraisers should be utilized in all claims where, in the opinion of the claims officer, an appraisal is reasonably necessary and useful in effectuating administrative settlement of the claim(s). Appraisals may not be economically feasible in some cases involving property damage of less than $100 per item and the extent of damage may be determined by the claims officer based on personal inspection and agreement with the claimant. This procedure should be employed only where it is deemed practical and feasible. Where an appraisal is considered necessary, whenever possible the claims officer and claimant should mutually agree upon a disinterested appraiser after determining the approximate cost of the appraisal. The method of payment should be agreed upon in advance. If the claimant pays the cost of the appraisal, and can substantiate payment thereof by a paid bill or canceled check, such cost is a reimbursable element of damage. If the Department of the Army is absorbing the cost of the appraisal, payment is made from Appropriations, Operation and Maintenance, Army (para 3–74, AR 37–108). If a single appraiser cannot be agreed upon, a joint appraisal can be conducted (i.e., one in which an appraiser chosen by claimant and an appraiser chosen by the Government both examine the property and submit their respective appraisals). Joint appraisals should be coordinated and monitored by the claims officer. The cost of a single or joint appraisal should be commensurate with the amount of damage allegedly sustained and the fee charged by other appraisers for similar work.

§ 536.8b Determination of compensation for personal injury or death.

In determining quantum and elements of damages, the law of the situs normally will be applied, except as to claims arising in foreign countries which are cognizable under the Military Claims Act (10 U.S.C. 2733), § 536.12 to 536.24.

(a) *General.* Allowable compensation includes reasonable medical, hospital, and burial expenses necessarily incurred. No allowance will be made for attorney's fees, court costs, bail, interest, inconvenience, or expenses such as long distance telephone calls or transportation in connection with preparation of the claim.

(b) *Special damages.* The allowable compensation for personal injury or death may include compensation for loss of earnings and services, diminution of earning capacity, anticipated medical expenses, physical disfigurement, and pain and suffering. For restrictions on allowable medical, hospital, and burial expenses under the act of 9 October 1962 (76 Stat. 767, 10 U.S.C. 2737). See § 536.164(b).

(c) *Proof of damage.* The allowable compensation normally will be established as to—

(1) Medical, hospital, or burial expenses, by itemized bills.

(2) Loss of time and earnings, by a written statement of claimant's employer stating claimant's age, occupation, wage or salary, time lost from work as a result of the incident, whether the person injured was a full-time employee, and his actual period of employment by dates. If the claimant is self-employed, written statement or other evidence showing the amount of earnings actually lost may be considered. Federal income tax returns are an excellent source of information with regard to prior earnings, provided claimant will voluntarily submit them. A written statement by the attending physician should set forth the nature and extent of the injury and the treatment, the duration and the extent of the disability involved, the prognosis, including diminution of earning capacity; and the period of hospitalization and anticipated future medical expenses.

(3) Loss of services, by a statement of the cost necessarily incurred to replace the services to which the claimant is entitled in accordance with the law of the place where the incident occurred.

(4) Physical disfigurement and pain and suffering, normally by a physician's statement indicating the extent and duration of either. A determination of compensation due on this basis normally should be supported by a written statement of applicable law and precedents.

(5) In claims involving serious personal injuries, i.e., normally those cases in which there is an allegation of temporary or permanent disability, the claimant should be examined by an independent physician, or other medical specialist, depending upon the nature and extent of the injuries. The necessity for, and the cost of, the examination should be commensurate with the severity of the injuries allegedly sustained and the fee charged by other examiners for similar work. To preclude duplication of effort and expense, both claimant and the claims officer must agree, in advance, upon the following:

(i) The examiner chosen to conduct the examination and the location of the medical facility (whether Governmental or civilian).

(ii) That the examiner's report constitutes the best evidence of the nature and extent of claimant's injuries.

(iii) The method of paying for the examination.

The necessity for conducting the medical examination must be approved by the claims authority having monetary jurisdiction over the largest claim, or potential claim, arising out of the incident. If a medical report is submitted in conjunction with the filing of a claim, such report should be included in the file. The forwarding of a file should not be delayed pending receipt of the independent examiner's report;

however, a copy of the report submitted by an independent examiner may be made available to claimant, if requested, and the claim should be evaluated on the basis of this report. Payment of a civilian examiner's fee can be accomplished in either of two ways; claimant can incur the cost of the examination and submit a paid receipt or canceled check, which constitutes a reimbursable element of damage in evaluating the claim, or the Department of the Army can absorb the cost of the examination (payment is made from Appropriations, Operation and Maintenance, para 3–74. AR 37–108). If the parties cannot agree upon an independent examiner, and if either the examiner chosen by claimant or the results of the examination are not acceptable, claimant may be required to be reexamined by an examiner acceptable to the Government. The costs of such dual examination normally will be borne by the respective parties and the claimant's expenditure should not constitute a reimbursable element of damage. However, any examinations following the injury solely for the purpose of determining the necessity for medical treatment are reimbursable.

§ 536.9 Effect on award of other payments to claimant.

The total award to which the claimant (and his subrogees) may be entitled normally will be computed as follows:

(a) Determine the total of the loss or damage suffered.

(b) Deduct from the total loss or damage suffered any payment the claimant has received from the following sources:

(1) The United States employee who caused the incident;

(2) The United States employee's insurer;

(3) Any person or agency in a surety relationship with the United States employee;

(4) Any joint tort-feasor or his insurer; or

(5) Any advance payment made pursuant to § 536.11c.

(c) No deduction will be made for any payment the claimant has received by way of voluntary contributions, such as donations of charitable organizations.

(d) Where a payment has been made to the claimant by his insurer or other subrogee, or under workmen's compensation insurance coverage, as to which subrogated interests are allowable, the award based on the total damages shall be apportioned as their separate interests shall appear (see §§ 536.6(b) and 536.15(q).

(e) *Claims where more than one potential source of recovery is available to the claimant.*

(1) Claimants frequently seek recovery from more than one potential source. The Government is interested in avoiding such multiple recovery and in minimizing the award it must make. The claims investigation should therefore identify other parties potentially liable to the claimant, and/or their insurance carriers and indicate the status of any claims made or include a statement that none has been made so that it can be assured that there is only one recovery and that the Government does not pay a disproportionate share thereof.

(2) If a demand by a claimant or an inquiry by a potential claimant is directed solely to the Army, in a situation where it appears that the responsible Army employee may have applicable insurance coverage, inquiry should be made of the employee as to whether he has liability insurance and, if so, whether his insurer has made or will make any payment to claimant. If the employee is reluctant to disclose the name of his insurance carrier, the point should not be pursued further. He should, however, be advised to comply with the notice requirements of his insurance policy and the case should be followed up to ascertain, prior to settlement of the claim against the Government, whether the employee's insurer has made or will make any payment to the claimant. Normally, the award, if any, to claimant will be reduced according to the payment by the employee's insurance carrier.

(3) If the employee is the sole target of the claim and Army claims authorities arrange to have the claim made against the Government, the member or employee should be required to notify his insurance carrier according to his policy and inform Army claims authorities as to the details of the insurance coverage, including the name of the insurance carrier. Except when the driver's statute is applicable, the insurance carrier is expected to participate in the negotiation of the claims settlement and to pay its fair share of any award to the claimant. Where the responsible Army employee is "on loan" to another employer other than the US e.g., civilian institution for ROTC instructor, performing duties for a foreign government, inquiry should be made to determine whether there is applicable statutory or insurance coverage concerning the acts of the responsible employee and contribution or indemnification sought as appropriate. In the case of foreign governments, applicable treaties or agreements are considered controlling.

(4) A great many claims cognizable under the Federal Tort Claims Act are now settled on a compromise basis. A major consideration in many such settlements is the identification of other sources of recovery. This is true not only in the three-car accident or where a State or municipality is felt to be liable because of failure to maintain proper traffic controls, but also in two-car accidents in which passengers have either sought or could seek recovery from their driver. Care should be taken to identify those cases in which the passengers are already seeking recovery from their driver. Likewise, even in juisdictions which do not permit contribution, a compromise settlement can usually be worked out with the other driver's insurance company paying a portion of the total amount of the passenger's claims. For these reasons, every effort should be made to identify the insurance of all drivers involved and the status of any claims made.

(5) Whenever a claim is filed against the Government under a statute which does not permit the payment of a subrogated interest, it is important to insure that full information is obtained from claimant regarding his insurance coverage, if any, since it is the clear legislative intent of the statutes that insurance coverage be fully utilized before using appropriated funds to pay the claims.

§ 536.10 Settlement agreement.

(a) *General.* If a claim is determined to be meritorious in an amount less than claimed, or if a claim involving personal injuries or death is approved in full, a settlement agreement will be obtained prior to payment. A settlement agreement may be required in other instances when, in the opinion of the adjudicating authority, good legal practice so dictates; e.g., where family, or other multiple interests may be involved. Acceptance by a claimant of an award constitues a release of any claims against the United States and against the military or civilian personnel whose act or omission gave rise to the claim.

(b) *Claims involving minors.* As a general rule, only a court-appointed guardian of the estate of a minor, or a person performing a similar function under the supervision of a court, can execute a binding settlement agreement relative to a minor's claim. It is therefore required that a guardian of the estate of the minor, or similar functionary, be appointed by a court of competent jursidiction and execute a settlement agreement before a claim is approved

and paid. This requirement can be eliminated and the settlement agreement can be signed by a parent, next-of-kin or next friend if the contemplated payment is small (i.e., not in excess of $1,000) and the cost of obtaining a court-appointed guardian would materially deplete the award. Where the amount agreed to exceeds $1,000, local law may be utilized as a basis for determining whether a court-appointed guardian should be required. The requirement to appoint a guardian should not be imposed until it is determined that a particular claim is meritorious in an amount which will probably require the appointment of a guardian. However, the requirement should be transmitted to the claimant well in advance of settlement negotiations so that the cost of establishing a guardianship can be considered by the claimant as a factor in evaluating the claim. The requirement, also, can be eliminated if local law authorizes or requires a claim, such as for death of a parent of the minor, to be presented on behalf of the estate of the decedent by an administrator, administratrix, or the like. In such cases, a settlement agreement signed by the administrator, administratrix, or the like will suffice if, under local law, such action is binding on the minor. The above stated principles may also be applied in appropriate cases involving imcompetents. Authority to waive the foregoing requirements in appropriate cases is delegated to the Chief, U.S. Army Claims Service. If it is felt that the foregoing requirements are materially impeding settlement of the claim, the matter should be brought to the attention of the Chief, U.S. Army Claims Service for appropriate resolution.

(c) *Claims involving workmen's compensation carriers.* The settlement of a claim involving a claimant who has elected to receive workmen's compensation benefits under local law may require the consent of the workmen's compensation carrier and in certain jurisdictions the State agency with authority over workmen's compensation awards. For example, in North Carolina, the injured party claimant forfeits any further workmen's compensation payments unless the workmen's compensation carrier joins in the settlement (N.C. Gen. Stat. § 97–10.2(h)). In California, an injured party claimant's settlement with a third party does not protect the third party from further claims by the workmen's compensation carrier or by the injured party unless the settlement is approved as adequate by the State agency administering workmen's compensation (Calif. Labor Code § 5001). Accordingly, claims approving and settlement authorities should be aware of and follow local requirements.

§ 536.11 Appeals and notification to claimant as to denial of claims.

(a) *General.* The nature and extent of the written notification to the claimant as to the denial of his/her claim should be based on whether the claimant has a judicial remedy following denial or whether he/she has an administrative recourse to appeal. In cases in which there is a judicial remedy, the written notification should be general in nature as the various defenses to be employed by the United States in any subsequent litigation is a matter finally for determination by the Attorney General or the appropriate US attorney. On the other hand, in cases in which an administrative appeal is provided, the basis for denial should be much more explicit and certain; only in this way can the claimant be required to completely particularize his grounds for appeal.

(b) *Denials under the Federal Tort Claims Act (28 U.S.C. 2671–2680), § 536.29.* If the adjudicating authority has information available which could possibly be a persuasive factor in the decision of the claimant as to whether to resort to litigation, such information may be verbally transmitted to the claimant and in appropriate cases released under normal procedures in accordance with AR 340–17. (See Part 518 of this Chapter). However, the written notification of the denial should be general in nature; e.g., denial on the weaker ground of contributory negligence should be avoided and the inclination should be to deny on the basis that the claimant was solely responsible for the incident. The claimant will be informed of his right to bring an action in the appropriate United States District Court not later than 6 months after the date of mailing of the notification.

(c) *Denials under the Military Claims Act (10 U.S.C. 2733) and the National Guard Claims Act (32 U.S.C. 715).* Claims disapproved under these statutes are subject to appeal and the claimant will be so informed. Additionally, the notice of disapproval will be sufficiently detailed to provide the claimant with an opportunity to know and attempt to overcome the basis for the disapproval. The claimant should not be afforded a valid basis for claiming surprise when an issue adverse to him is asserted as a basis for denying his appeal.

(d) *Denials on jurisdictional grounds.* Regardless of the nature of the claim presented or the statute under which it may be considered claims denied on jurisdictional grounds which are valid, certain, and not easily overcome and in which for this reason no detailed investigation as to the merits of the claim is conducted, should contain in the denial letter a general statement to the effect that the notification is not to be construed as an expression of opinion on the merits of the claim or an admission of liability. If sufficient factual information is available to make a tentative ruling on the merits of the claim, liability may be expressly denied.

(e) *Where claim may be considered under more than one statute.* In cases in which it is doubtful as to whether Military Claims Act or the National Guard Claims Act on one hand or the Federal Tort Claims Act on the other is the appropriate statute under which to consider the claim (e.g., an explosion case may be based on negligence or noncombat activities; likewise a tank on maneuvers may be negligently operated), the claimant will be advised in the alternative as to his right to sue as in paragraph *(b)* of this section and his right to appeal as in paragraph *(c)* of this section and that his course of action depends on his desires. Similarly, a claimant may be advised of his alternative remedies in a case in which the claimant is a military member and the issue of "incident to service" is not clear.

§ 536.11a Effect of payment.

Acceptance of an award by the claimant, except for the acceptance of an advance payment, constitutes for the the United States as well as the military personnel or civilian employee whose act or omission gave rise to the claim, a release from all liability to the claimant based on the act or omission.

§ 536.11c Advance payments.

(a) *Purpose.* This section implements the act of September 8, 1961 (75 Stat. 488, 10 U.S.C. 2736), as amended by Pub. L. 90–21, September 26, 1968 (82 Stat. 874), and authorizes an advance payment not in excess of $1,000 in claims resulting in immediate hardship which are payable under §§ 536.12–536.24b, 536.140–536.152, and the Foreign Claims Act (10 U.S.C. 2734). No new liability is created by title 10, United States Code, section 2736, which merely permits partial advance payments on meritorious claims as specified in this paragraph.

(b) *Conditions for advance payment.* An advance payment is authorized only under the following circumstances:

(1) The claim for death, personal injury, or damage to or loss of property must be determined to be cognizable and meritorious under the provisions of either §§ 536.12–536.24b, 536.140–

536.152, or the Foreign Claims Act (10 U.S.C. 2734).

(2) There exists an immediate need of the person who suffered the injury, damage, or loss, or of his family, for food, clothing, shelter, medical or burial expenses, or other necessities, and other resources for such expenses are not reasonably available.

(3) The payee, so far as can be determined, would be a proper claimant, or is the spouse or next of kin of a claimant who is incapacitated.

(4) The total damage sustained must exceed the amount of the advance payment.

(5) A properly executed advance payment acceptance agreement has been obtained.

Claims Arising From Activities of Military or Civilian Personnel or Incident to Noncombat Activities

§ 536.12 Statutory authority.

The statutory authority for §§ 536.12–536.24b is contained in the act of August 10, 1956 (70A Stat. 153, 10 U.S.C. 2733) commonly referred to as the Military Claims Act, as amended by Pub. L. 90–522, 26 September 1968 (82 Stat. 875), Pub. L. 90–525, 26 September 1968 (82 Stat. 877), Pub. L. 91–312, 8 July 1970 (84 Stat. 412) and Pub. L. 93–336, 8 July 1974; and the act of 8 September 1961 (75 Stat. 488, 10 U.S.C. 2736), as amended by Pub. L. 90–521, 26 September 1968 (82 Stat. 874).

§ 536.12a Definitions.

The definitions of terms set forth in § 536.3 are applicable to §§ 536.12–536.24b.

§ 536.13 Scope.

The regulations in §§ 536.12–536.24b are applicable in all places and prescribe the substantive bases and special procedural requirements for the settlement of claims against the United States for death, personal injury, or damage to or loss or destruction of property caused by military personnel of civilian employees of the Department of the Army acting within the scope of their employment, or otherwise incident to the noncombat activities of the Department of the Army.

§ 536.14 Claims payable.

(a) *General.* Unless otherwise prescribed, a claim for personal injury, death, or damage to or loss of real or personal property is payable under §§ 536.12–536.24b when—

(1) Caused by the act or omission, negligent, wrongful, or otherwise involving fault of military personnel or a civilian employee of the Army acting within the scope of his employment, or

(2) Incident to the noncombat activities of the Army.

(b) *Death or injury.* Only one claim arises. The amount allowed will, to the extent found practicable, be apportioned as prescribed by the law or custom of the place where the incident occurred.

(c) *Property.* Property for the loss or damage of which claims may be settled under §§ 536.12–536.24b includes—

(1) Real property used and occupied under a lease, express or implied, or otherwise, e.g., in connection with training, field exercises, or maneuvers. An allowance may be made for the use and occupancy of real property arising out of trespass or other tort, even though claimed as rent.

(2) Personal property bailed to the Government under an agreement, express or implied, unless the owner has expressly assumed the risk of damage or loss. All claims for loss of personal property while such property was bailed to a U.S. Army quartermaster laundry are within the scope of, and will be settled under, §§ 536.12–536.24b.

(3) Registered or insured mail in the possession of the Army, even though the loss was caused by criminal act.

(d) *Effect of negligence.* A claim predicated on negligence or wrongful act may be settled under §§ 536.12–536.24b only if the Federal Tort Claims Act (60 Stat. 842, 28 U.S.C. 2671–2680) has been judicially determined not to be applicable to like claims, or if the claim arose incident to noncombat activities.

(e) *Noncombat activities.* A claim may be settled under §§ 536.12–536.24b if it arises from authorized activities essentially military in nature, having little parallel in civilian pursuits and which historically have been considered as furnishing a proper basis for payment of claims, such as practice firing of missiles and weapons, training and field exercises, and maneuvers, including, in connection therewith, the operation of aircraft, and vehicles, and use and occupancy of real estate, and movement of combat or other vehicles designed especially for military use. Activities incident to combat, whether in time of war or not, and use of military personnel and civilian employees in connection with civil disturbances, are excluded.

(f) Advance payments. Advance payments pursuant to title 10, United States Code, section 2736, as amended, in partial payment of meritorious claims to alleviate immediate hardship are authorized.

(g) Payment of costs, settlements, and judgments related to certain medical malpractice claims. Costs, settlement, or judgments arising under 10 U.S.C. 1089[f] for personal injury or death caused by any physician, dentist, nurse, pharmacists, or paramedical or other supporting personnel (including medical and dental technicans, nurse assistants, and therapists) of the Army, the Office of the Secretary of Defense, or the Department of Defense components will be paid provided the alleged negligent or wrongful actions or omissions arose in performance of medical, dental or related health care functions (including clinical studies and investigations) within the scope of employment; and, provided further, that such personnel comply with the requirements set forth in paragraph 2–3a(4), AR 27–40, (part 516 of this chapter), regarding prompt notification and delivery of all process served or received, providing such other documents, information and assistance as requested, and cooperation in the defense of the action on the merits. All requests for indemnification under this subparagraph should be forwarded to the Chief, U.S. Army Claims Service, for payment.

§ 536.15 Claims not payable.

A claim is not allowable under §§ 536.12–536.24b which—

(a) Is based upon an act or omission of a member or employee of the Army, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid. However, this exception should not be utilized without prior approval of the Chief, US Army Claims Service.

(b) Is based upon the exercise or performance of or the failure to exercise or perform, a discretionary function or duty on the part of a Federal agency, or a member or employee of the Army whether or not the discretion involved is abused. However, this exception should not be utilized without prior approval of the Chief, US Army Claims Service.

(c) Arises in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law enforcement officer.

(d) Is cognizable under the Suits in Admiralty Act (41 Stat. 525, 46 U.S.C. 741–752) or the Public Vessels Act (43 Stat. 1112, 46 U.S.C. 781–790), or is cognizable under § 536.45.

(e) Arises out of an act or omission of any employee of the Government in administering the provisions of the Trading With the Enemy Act (40 Stat. 411, 50 U.S.C. App. 1–31).

(f) Is for damages caused by the imposition or establishment of a quarantine by the United States.

(g) Arises out of an assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit,

or interference with contract rights when committed by any military or civilian employee of the Department of the Army while in the scope of his employment occurring before 16 March 1974. However, as to those acts involving assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution occurring on or after 16 March 1974 when committed by an investigative or law enforcement officer of the United States who is empowered by law to execute searches, to seize evidence or to make arrests for violations of Federal law, this subparagraph is no longer applicable. All claims accruing after 15 March 1974 and sounding under this subparagraph should, following an investigation of the allegations, be forwarded to the Chief, US Army Claims Service for consideration and disposition.

(h) Is for damages caused by the fiscal operations of the Army, the Treasury, or by regulation of the monetary system.

(i) Results from action by an enemy or results directly or indirectly from an act of the Armed Forces of the United States in combat, except that a claim may be allowed if it arises from an accident or malfunction incident to the operation of an aircraft of the Armed Forces of the United States including its airborne ordnance, indirectly related to combat, and occurring while preparing for, going to, or returning from a combat mission.

(j) Arises in a foreign country and was considered by authorities of a foreign country and final action taken thereon under Article VIII of the NATO Status of Forces Agreement, Article XVIII of the Japanese Administrative Agreement, or other similar treaty or agreement, if reasonable disposition was made of the claim.

(k) Arises from the activities of the Tennessee Valley Authority.

(l) Arises from the activities of the Panama Canal Company.

(m) Arises from the activities of the Federal Land Bank, a Federal intermediate credit bank, or a bank for cooperatives.

(n) Is for the personal injury or death of a member of the Armed Forces of the United States incurred incident to service (Feres v. U.S., 340 U.S. 135 (1950)).

(o) Is for the personal injury or death of a Government employee for whom benefits are provided by the Federal Employees' Compensation Act (5 U.S.C. 8101–8150).

(p) Is for the personal injury or death of an employee, including nonappropriated fund employees, for whom benefits are provided by the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. 901).

(q) Is for the personal injury or death of an employee for whom benefits are provided under any workmen's compensation type laws or regulations, including local law or custom, in cases where contribution is made or insurance premiums paid directly or indirectly by the United States on behalf of the injured employee. If, in the opinion of an approving or settlement authority, the claim should be considered payable, e.g., the injuries did not result from a normal risk of employment or adequate compensation is not payable under workmen's compensation laws, the file will be forwarded with recommendations through claims channels to the chief, US Army Claims Service, who may authorize payment of an appropriate award. The Chief, US Army Claims Service, also may specify that all or any part of any compensation received by the claimant from workmen's compensation sources as above will be deducted from the award to claimant. The claim of an insurance carrier subrogee who has received premiums paid directly or indirectly by the United States on behalf of the injured employee, however, is not payable.

(r) Is for taking of property as by technical trepass, overflight of aircraft, is of a type contemplated by the Fifth Amendment to the United States Constitution, or otherwise constitutes a taking.

(s) Is for damage from or by floods or flood waters at any place. See 33 U.S.C. 702c.

(t) Is for damage to property or for any death or personal injury occurring directly or indirectly as a result of the exercise or performance of, or failure to exercise or perform, any function or duty, by any Federal agency or any agent, official or employee of the Government, in carrying out the provisions of the Federal Civil Defense Act of 1950, during the existence of a state of civil defense emergency (50 U.S.C. App. 2291–2297).

(u) Results wholly from the negligent or wrongful act of the claimant or his agent.

(v) Is for reimbursement for medical, hospital, or burial expenses furnished at the expense of the United States.

(w) Is purely contractual in nature.

(x) Arises from private as distinguished from Government transactions

(y) Is based solely on compassionate ground.

(z) Is for patent or copyright infringement. See AR 27–60.

(aa) Is for war trophies or articles intended directly or indirectly for persons other than the claimant or members of his immediate family, such as articles acquired to be disposed of as gifts or for sale to another, voluntarily bailed to the Army, or is for precious jewels or other articles of extraordinary value voluntarily bailed to the Army. The preceding sentence is not applicable to claims involving registered or insured mail. No allowance will be made for any item when the evidence indicates that the acquistion, possession, or tranportation thereof was in violation of Department of the Army directives.

(bb) Is for rent, damage, or other payments involving the acquisition, use, possession, or disposition of real property or interests therein by and for the Department of the Army, except as authorized by § 536.14. Real estate claims founded upon contract are generally processed under 4 C.F.R. 31.1–31.8.

(cc) Is not in the best interests of the United States, is contrary to public policy, or is otherwise contrary to basic intent of the governing statute (10 U.S.C. 2733); e.g., claims by inhabitants of unfriendly foreign countries or by or based on injury or death of individuals considered to be unfriendly to the United States. When a claim is considered to be not payable for the reasons stated in this subparagraph, it will be forwarded for appropriate action to the Chief, US Army Claims Service, together with the recommendations of the responsible claims authority.

§ 536.16 Claims under other laws.

(a) Claims within the scope of §§ 536.12–536.24b which are also cognizable under the Federal Tort Claims Act (28 U.S.C. 2671–2680), the Army Maritime Claims Settlement Act (10 U.S.C. 4801–04, 4806), the Foreign Claims Act (10 U.S.C. 2734), or the Military Personnel and Civilian Employees' Claims Act (31 U.S.C. 240–243) will be considered initially under the latter.

(b) Sections 536.12–536.24b do not apply to any claim which may be settled under AR 40–3 or other regulations providing for medical care at Government expense, including regulations of other governmental agencies such as Selective Service or Veterans Administration.

§ 536.17 Subrogation.

Subrogated claims will be processed as prescribed in § 536.6(b).

§ 536.18 When claim must be presented.

(a) A claim may be settled under §§ 536.12–536.24b only if presented in

writing within 2 years after it accrues, except that if it accrues in time of war or armed conflict, or if war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, the claim may be presented not later than 2 years after the war or armed conflict is terminated.

(b) As used in this section, a war or armed conflict is one in which an Armed Force of the United States is engaged. The dates of commencement and termination of an armed conflict shall be established by concurrent resolution of Congress or by determination of the President.

§ 536.19 Procedures.

So far as not inconsistent with §§ 536.12–536.24b, the procedures set forth in §§536.1–536.11c will be followed as to a claim under §§ 536.12–536.24b.

§ 536.20 Compensation for personal injury or death.

As to any claim, allowable compensation will not include reimbursement for medical or hospital services furnished at the expense of the United States nor the expense of burial otherwise paid by the United States.

§ 536.21 Law applicable.

(a) As to claims arising in the United States, its territories, commonwealths, and possessions, the law of the place where the act or omission occurred will be applied in determining liability and the effect of contributory negligence on claimant's right to recover damages. The principle of absolute liability is not applicable to claims cognizable under this statute and §§ 536.12–536.24b even though prescribed by local law. Furthermore, the meaning and construction of the Military Claims Act is a Federal question to be determined by Federal law.

(b) In claims arising in a foreign country, liability normally will be determined in accordance with general principles of American law as stated in standard legal publications, except as it applies to absolute liability. The law of the place where the act or omission occurred will be applied in determining the effect of claimant's negligence on his right to recover damages. Where applicable, rules of the road and similar locally prescribed standards of care will be followed in determining fault.

(c) In determining quantum and elements of damages, §§ 536.7 and 536.8 will be applied. Where there is no applicable rule established in §§ 536.1–536.11c, the law of the place where the act or omission occurred normally will be applied, except that in claims arising in foreign countries, quantum will generally be determined in accordance with general principles of American law as stated in standard legal publications.

§ 536.22 Claimants excluded.

A national, or a corporation controlled by a national, of a country at war or engaged in armed conflict with the United States, or of any country allied with such enemy country, is excluded as a claimant, unless the settlement authority of the command exercising claims supervisory authority of the area determines that the claimant is and, at the time of the incident, was friendly to the United States. A prisoner of war or an interned enemy alien is not excluded as to a claim for damage to or loss or destruction of personal property in the custody of the Government otherwise payable under §§ 536.12–536.24b.

§ 536.22a Settlement agreement.

If a claim is determined to be meritorious in amount less than claimed, or if a claim involving personal injuries or death is approved in full, a settlement agreement will be obtained prior to payment. A settlement agreement may be required in other instances when, in the opinion of the adjudicating authority, good legal practice so dictates, e.g., where family, or other multiple interests may be involved. Acceptance by a claimant of an award constitutes a release of any claims against the United States and against the military or civilian personnel whose act or omission gave rise to the claim.

§ 536.24 Claims over $25,000.

Claims cognizable under title 10, United States Code, section 2733 which are meritorious in amounts in excess of $25,000 will be forwarded to the Chief, US Army Claims Service, who will effectuate a tentative settlement subject to approval by the Secretary of the Army or require the claimant to state the minimal amount he will accept and to provide appropriate justification. Upon completion of the foregoing, the Chief, US Army Claims Service, will prepare a memorandum of law with his recommendations and forward the claim to the Secretary of the Army for final action. The Secretary will either disapprove the claim or approve it in whole or in part. If the claim is approved in an amount in excess of $25,000, the claimant may be paid $25,000 after the execution of a settlement agreement in full satisfaction of the claim. The excess will be reported to the Claims Division, General Accounting Office, 441 G Street NW., Washington, D.C. 20548 for payment.

§ 536.24a Settlement procedures.

(a) *General.* Approving and settlement authorities will follow the procedures set forth in §§ 536.1–536.11. As to disapprovals, the following is also applicable. The disapproval of a claim, in whole or in part, is final unless the claimant appeals in writing. If the claim is in excess of $5,000, the appeal is to the Secretary of the Army. Claims of $5,000 or less which are disapproved at the US Army Claims Service will be appealed to the Judge Advocate General or the Assistant Judge Advocate General. Claims of $5,000 or less which are disapproved by field settlement authorities will be appealed to the Chief, US Army Claims Service. Upon disapproval of a claim, in whole or in part, the settlement authority will notify the claimant by certified or registered mail of the action taken and reason therefor.

The letter of notification will inform the claimant that—

(1) He may appeal and it will indicate the authority to whom the appeal should be addressed.

(2) No form is prescribed for an appeal but it must be forwarded through the authority disapproving the claim.

(3) The ground for appeal should be set forth fully.

(4) The appeal must be submitted within 30 days of receipt by the claimant of notice of action on his claim. An appeal will be considered timely if postmarked within 30 days after receipt by the claimant of such notification. For good cause shown, the Chief, US Army Claims Service, may extend the time for appeal.

(b) *Action on appeal.*

(1) Upon receipt, the appeal will be examined by the settlement authority and after any action deemed necessary, it will be forwarded with the related file and a seven-paragraph memorandum of opinion to the Chief, US Army Claims Service, Fort Meade, MD 20755. If the evidence in the file, including information submitted by the claimant with the appeal, indicates that the appeal should be sustained, it may be treated as a request for reconsideration under § 536.24b, and the processing of the appeal may be delayed pending the outcome of further efforts by the settlement authority to settle the claim. The Judge Advocate General, the Assistant Judge Advocate General, or the Chief, US Army Claims Service, may take similar action in appropriate cases.

(2) As to an appeal which will be acted on by the Judge Advocate General, the Assistant Judge Advocate General, or the Secretary of the Army, the Chief, US Army Claims Service, will

forward the claim together with his recommendation for action. The appeal will be sustained or denied. All matters submitted by the claimant will be forwarded and considered.

(3) Since an appeal under this authority is not an adversary proceeding, no form of hearing is authorized; however, the Claimant should be afforded a reasonable period of time, upon request, to obtain and submit any additional evidence or written argument for consideration by the appellate authority.

§ 536.24b Reconsideration.

(a) An approving or settlement authority may reconsider a claim upon request of the claimant or someone acting in his behalf. In the absence of such a request, an approving or settlement authority may on his own initiative reconsider a claim. He may reconsider a claim which he previously disapproved in whole or in part (even though a settlement agreement has been executed) when it appears that his original action was incorrect in law or fact based on the evidence of record at the time of the action or subsequently received. If he determines that his original action was incorrect, he will modify the action and, if appropriate, make a supplemental payment. The basis for a change in action will be stated in a memorandum included in the file.

(b) A successor or supervisory approving or settlement authority may also reconsider the original action on a claim; but only on the basis of fraud or collusion, new and material evidence, or manifest error of fact, such as errors in calculation or factual misinterpretation of applicable law.

(c) A request for reconsideration should indicate fully the legal or factual basis asserted as grounds for relief. Following completion of any investigation or other action deemed necessary for an informed disposition of the request, the approving or settlement authority will reconsider the claim and attempt to settle it by granting such relief as may appear warranted. When further settlement efforts appear unwarranted, the entire file with a memorandum of opinion will be forwarded through claims channels to the responsible claims supervisory authority. If a claims supervisory authority is unable to grant the relief requested, he will forward the claim with his recommendation to the Chief, US Army Claims Service, Office of the Judge Advocate General, Fort Meade, MD 20755, and inform the claimant of such reference.

§ 536.25 Claims under Article 139, Uniform Code of Military Justice.

(a) *Statutory authority.* The authority for this section is Article 139, Uniform Code of Military Justice (10 U.S.C. 939) which provides for redress of damage to property willfully damaged or destroyed, or wrongfully taken by members of the Armed Forces of the United States.

(b) *Purpose.* This section sets forth the standards to be applied and the procedures to be followed in the processing of claims cognizable under Article 139, Uniform Code of Military Justice.

(c) *Scope.* This section applies to claims for damage to, or loss or destruction of, property owned or in the lawful possession of an individual, a business, a charity, a State or local government, or a service member, that has been willfully damaged or destroyed or wrongfully taken by military personnel of the Army.

(d) *Definitions*—(1) *Willful damage.* Damage which is inflicted intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from damage which is caused thoughtlessly or inadvertently as in simple negligence.

(2) *Wrongful taking.* Any unauthorized taking or withholding of property, not involving breach of contractual or fiduciary relationships, with intent to deprive the owner or person in lawful possession of his property temporarily, permanently, or for an indefinite period.

(3) *Board of officers.* The term "board of officers" as used in this section includes an investigating officer appointed under the provisions of §§ 519.1–519.5 of this chapter.

(e) *Claims payable.* Claims payable under Article 139, Uniform Code of Military Justice, and this section are limited to—

(1) Those for damage to or loss or destruction of property caused by riotous, violent, and disorderly conduct, or acts of depredation, by a member or members of the Army, acts showing such reckless and wanton disregard of the property rights of others that willful damage or destruction may reasonably be implied, and

(2) Claims for property wrongfully taken. A loss through larceny, forgery, embezzlement, fraud, misappropriation, and similar offense is compensable if a wrongful taking of property is involved.

(3) Claims for damage to or loss or destruction of property that result from an act that occurred outside the scope of a member's employment which are cognizable under other claims statutes may be processed under this regulation provided that property was willfully damaged or destroyed, or wrongfully taken.

(f) *Claims not payable.* The following claims are not compensable under this section:

(1) Claims resulting from simple negligence.

(2) Claims submitted by subrogees.

(3) Claims for personal injury or death.

(4) Any portion of a claim covered by insurance, regardless of whether claim is made against the insurer.

(5) Claims resulting from acts or omissions of military personnel while acting within the scope of their employment.

(6) Claims for damages or losses in which the negligence or fault of the claimant, his employee or his agent contributed to the damage or loss.

(g) *Limitations on application*—(1) *Time limitations.* In order for a claim to be considered under this section, a complaint must be submitted within 90 days of the date of the incident out of which the claim arose, unless the commander acting on the report determines that good cause has been shown for the delay in making complaint. The commander's determination that good cause has not been shown is final.

(2) *Limitation on amount of assessment.* No assessment in excess of $500 will be made against the pay of any one offender for a single act or incident, without approval of the Chief, U.S. Army Claims Service.

(3) *Only direct damages considered.* Assessment will be made only for direct damages. Indirect, remote, or inconsequential damages will not be considered under this section.

(h) *Procedure*—(1) *Action by claimant.* Any person who believes that his property has been willfully damaged or wrongfully taken by a member or members of the Armed Forces of the United States may complain, orally or in writing, to the military organization or unit of the offending member or members or the nearest Army installation. The complaint may be accompanied by a claim for damages. Such claim should be in writing, in triplicate, signed by the claimant or his authorized representative, and asserted in an amount certain. The claim may be regarded as the complaint.

(2) *Voluntary restitution.* In many instances, members of the military services who cause damage through their off-duty activities welcome an opportunity to make restitution without the complainant's demand for compensation becoming a matter of official concern. Nothing in Article 139 or this section prevents an offender from

making a mutually satisfactory arrangement with an injured party for restitution. Acceptance by the complainant of payment by the offender or offenders of an amount in full satisfaction and final settlement of the matter bars further recovery under this section. Any amount paid by an offender in partial satisfaction of the claim will be deducted from the amount approved by the commanding officer.

(i) *Conditions of payment.* Prior to payment of any claim within this section, each of the following conditions must be fulfilled:

(1) The claim is in writing and for a definite amount.

(2) The complaint to which the claim relates was presented within 90 days of the incident, or good cause for the delay is shown.

(3) The amount of the damage, loss, or destruction has been determined.

(4) The claim relates to property other than property of the Government.

(5) The claim did not result from simple negligence.

(6) The property was willfully damaged or destroyed, or wrongfully taken, by a member or members of the Army.

(7) Payment was recommended by the board of officers and was approved personally by the offender's commanding officer.

(8) The staff judge advocate determined that the proceedings of the board were legally sufficient.

(9) The commanding officer ordered a stoppage of pay.

(10) The assessment against each offender does not exceed $500.00 except as approved by the Chief US Army Claims Service.

§ 536.29 Claims based on negligence of military personnel or civilian employees under the Federal Tort Claims Act.

(a) *Authority.* The statutory authority for this chapter is the Federal Tort Claims Act (60 Stat. 842, 28 U.S.C. 2671–2680), as amended by the Act of 18 July 1966 (Pub. L. 89–506; 80 Stat. 306), and Pub. L. 93–253, 16 March 1974 (88 Stat. 50), and as implemented by the Attorney General's Regulations (28 CFR 14.1–14.11).

(b) *Definitions.* The definitions of terms set forth in §§ 536.1–536.11 are applicable to this section. In addition, for purposes of this section, the following definitions apply:

(1) *Compromise.* A mutually agreed equitable arrangement having regard to the uncertainties of the facts, the law, or the application of the law to the facts in the area of either liability or damages.

(2) *Settle.* To consider, ascertain, adjust, determine, compromise, and dispose of a claim whether by full or partial allowance, or by disallowance (disapproval).

(3) *Federal agency.* A Federal agency is defined to include the executive departments and independent establishments of the United States and corporations acting as instrumentalities or agencies of the United States but does not include any contractor with the United States.

(4) *Accrues.* Except in medical malpractice cases, a claim accrues on the date on which the alleged wrongful act or omission results in some actionable injury or damage to the claimant or his decedent. In medical malpractice cases, accrual is postponed until such time as the claimant or, if the claimant is a minor, some person acting for him discovers or reasonably should have discovered the acts or omissions which are alleged to be wrongful.

(c) *Scope.* This section prescribes the substantive basis and special procedural requirements for the administrative settlement of claims against the United States under the Federal Tort Claims Act based on death, personal injury, or damage to or loss of property which accrue on or after January 18, 1967. Claims accruing prior to January 18, 1967, will continue to be settled under this section as it existed prior to this revision. The Attorney General's regulations (28 CFR 14.1–14.11) are incorporated by reference and made a part of this section. Should there appear to be a conflict between the provisions of this section and the provisions of the Attorney General's regulations, the latter govern.

(d) *Claims payable.* Unless otherwise prescribed, claims for death, personal injury, or damage to or loss of property (real or personal) are payable under this section when the injury or damage is caused by negligent or wrongful acts or omissions of military personnel or civilian employees of the Department of the Army or civilian employees of the Department of Defense while acting within the scope of their employment under circumstances in which the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. The Federal Tort Claims Act, pursuant to which this regulation is promulgated, is a limited consent to liability without which the United States is immune. See *Bigby* v. *United States*, 188 U.S. 400 (1903). Similarly, there is no Federal cause of action created by the Constitution which would permit a damage recovery because of the Fifth Amendment or any other constitutional provision. Immunity must be expressly waived, as by the Federal Tort Claims Act, *supra.*

(e) "Employee of the Government" (28 U.S.C. 2671) includes the following (Federal status is a Federal question to be determined under Federal law):

(1) Military personnel (members of the Army), including but not limited to:

(i) Members on full time active duty in a pay status including but not limited to:

(A) Members assigned to units performing active service.

(B) Members serving as ROTC instructors. *La Bombard* v. *United States*, 122 F. Supp. 294 (D.C. Vt. 1954); *Bellview* v. *United States*, 122 F. Supp. 97 (D.C. Vt. 1954); *contra, Cobb* v. *United States*, 81 F. Supp. 9 (W.D. La. 1948).

(C) Members serving as National guard instructors or advisors.

(D) Members on duty or in training with other Federal agencies, e.g., Atomic Energy Commission, National Aeronautics and Space Administration, Departments of Defense, State, Navy, or Air Force.

(E) Members assigned as students or ordered into training at a non-Federal civilian educational institution, hospital, factory, or other industry. This does not include members on excess leave.

(F) Members on full time duty at nonappropriated fund activities. *Roger* v. *Elrod*, 125 F. Supp. 62 d. (Alaska 1954).

(G) National Guardsmen on active duty (excludes duty as defined in § 536.141)

(ii) Members of reserve units (other than members of the National Guard under § 536.141) during period of inactive duty training and active duty training, including ROTC cadets who are reservists while they are at summer camp.

(iii) District of Columbia and Canal Zone National Guardsmen on training of the type defined in chapter 6. See *O'Toole* v. *United States*, 206 F.2d 912 (3d Cir. 1953).

(2) Officers and employees of the Departments of Defense and the Army (there is no practical significance to the distinction between the terms "officer" and "employee") including but not limited to—

(i) Civil Service and other full-time employees of the Departments of Defense and the Army paid from appropriated funds.

(ii) Contract surgeons (para 33, AR 40–1) and consultants appointed under CPR A9.

(iii) Employees of nonappropriated funds if the particular fund is an instrumentality of the United States and thus a Federal agency. *United States* v. *Holcombe*, 277 F.2d 143 (4th Cir. 1960) (officers' open mess); *Daniels* v.

Chanute Air Force Base Exchange, 127 F.Supp. 920 (E.D. Ill. 1955); *Richardson* v. *United States*, 226 F. Supp. 49 (E.D. Va. 1964) (noncommissioned officers' open mess). In determining whether or not a particular fund is a "Federal agency," consider whether the fund is an integral part of the Army charged with an essential function in the operation of the Army, and the degree of control and supervision exercised by the Army. See *Scott* v. *United States*, 226 (F. Supp. 864 (M.D. Ga. 1963), *off'd*, 337 F.2d 471 (5th Cir. 1964), *cert. denied*, 380 U.S. 933 (1965), in which the hunt club in question was actually a private association.

Members or users, as distinguished from employees of nonappropriated funds, are not considered Government employees. *Brucker* v. *United States*, 338 F.2d 427 (9th Cir. 1964) (member of flying club); *United States* v. *Hainline*, 315 F.2d 153 (10th Cir. 1963) (member of flying club).

(iv) Prisoners of war and interned enemy aliens.

(v) Civilian employees of the District of Columbia National Guard, including those paid under "service contracts" from District of Columbia funds.

(vi) Civilians serving as ROTC instructors paid from Federal funds.

(vii) National Guard technicians employed under 32 U.S.C. 709(a) for claims accruing on or after 1 January 1969 (Pub. L. 90–486, 13 Aug. 1968; 82 Stat. 755). This includes both "caretakers" and missile site technicians.

(3) Persons acting in an official capacity for the Departments of Defense or Army whether temporarily or permanently in the service of the United States with or without compensation including but not limited to—

(i) "Dollar a year" men.

(ii) Members of advisory committees, commissions, boards or the like.

(iii) Volunteer workers in an official capacity in furtherance of business of the United States. See *McNicholas* v. *United States*, 226 F. Supp. 965 (N.D. Ill. 1964) (volunteer who donated and served cookies to patients in Veterans Administration hospital held covered by the Federal Employees' Compensation Act); but see *Sanchez* v. *United States*, 177 F.2d 452 (10th Cir. 1949) (government security guard who volunteered to help find lost girl held not within the scope of his employment); *Messig* v. *United States*, 129 F. Supp. 571 (D.C. Minn. 1955) (bystander directed by Government firefighters to help held not subject to Federal Employees' Compensation Act; *Hicks* v. *United States*, 98 F. Supp. 982 (N.D. Fla. 1951). Even though the worker is supplied by an organization which serves as a Government auxiliary, it is difficult to establish that the organization is a "Federal agency" and that its employees are Government tortfeasors for purposes of this section. See *Pearl* v. *United States*, 230 F.2d 243 (10th Cir. 1956) (Civil Air Patrol held not a "Federal agency").

(iv) "Loaned servants." *Delgado* v. *Akins*, 236 F. Supp. 202 (D. Ariz. 1964) (field reporter employed by county agricultural service paid from funds deposited by U.S. Treasurer held a Federal employee); *Martarano* v. *United States*, 231 F. Supp. 805 (D. Nev. 1964) (Nevada State employee, by virtue of a Federal-State agreement, was discharging a Federal program under Federal supervision); but see *Lavitt* v. *United States, 177 F.2d 627 (2d Cir. 1949) (inspectors appointed by local committee in connection with application for Federal potato loan held not Federal employees); Fries* v. *United States*, 170 F.2d 726 (6th Cir. 1948) (chauffeur hired by venereal disease survey, under control of county but funded in part by the United States and furnished with equipment and personnel by the United States, held not a Federal employee). Contractors with the United States are not Federal agencies (28 U.S.C. 2671) and their employees are not "employees of the Government" for purposes of this section. This exclusion includes contractors operating Government-owned (GOCO) plants and other independent contractors. See *e.g.*, *United States* v. *Page*, 350 F.2d 28 (10th Cir. 1965), *cert. denied*, 382 U.S. 979 (1966).

(f) "Scope of employment" means acting in "line of [military] duty" (28 U.S.C. 2671) and is determined in accordance with principles of respondeat superior under the law of the jurisdiction in which the act or omission occured. *Williams* v. *United States*, 350 U.S. 857 (1955). Determination as to whether a person is within a category listed in § 536.29(e)(1)(i) above will usually be made together with the scope determination. Ordinarily an employee is within the scope of employment if the requisites of the definition contained in § 536.3(r) are met. Local law should always be researched, but the novel aspects of the military relationship should be kept in mind in making a scope determination. "Line of duty" determinations under AR 600–33 are not determinative of scope of employment. "Joint venture" situations are likely to be frequent where the the Federal employee is performing federally assigned duties but is under actual direction and control of a non-Federal entity, *e.g.*, a Federal employee in training at a non-Federal entity or ROTC instructors at civilian institutions. This could also occur where the employee is working for another Federal agency. See § 536.25 and 536.167–536.171 for the handling of certain claims arising out of nonscope activities of members of the Army.

(g) *Law applicable.* The whole law of the place where the act or omission occurred including choice of law rules will be applied in the determination of liability and quantum. Where there is a conflict between the local law and an express provision of the Federal Tort Claims Act, the latter governs.

(h) *Subrogation.* Claims involving subrogation will be processed as prescribed in § 536.6(b), except where inconsistent with the provisions of this section or the Attorney General's regulations.

(i) *Indemnity or contribution.* (1) *Sought by the United States.* If the claim arises under circumstatnces in which the Government is entitled to contribution or indemnity under a contract or the applicable law governing joint tort-feasors, the third party will be notified of the claim, and will be requested to honor its obligation to the United States or to accept its share of joint liability. If the issue of indemnity or contribution is not satisfactorily adjusted, the claim will be compromised or settled only after consultation with the Department of Justice as provided in 28 CFR 14.6.

(2) *Claims for indemnity or contribution.* Claims for indemnity or contribution from the United States will be compromised or settled under this section, if liability exists under the applicable law, provided the incident giving rise to such claim is otherwise cognizable under this section. As to such claims where the exclusivity of the Federal employees' Compensation Act may be applicable see 5 U.S.C. 8101–8150.

(3) *Setoff.* Except to the extent that such factors are included in a compromise settlement, amounts otherwise to be awarded on account of injury to or death of military personnel, incurred as a result of activities not incident to service, will be reduced by the amount of benefits paid, and the present cash value of benefits to be paid, by the United States. (See *Brooks* v. *United States*, 337 U.S. 49 (1949).)

(j) *Claims not payable.* The exclusions contained in 28 U.S.C. 2680 are applicable to claims herein. Other claims are excluded by statute or court decisions.

(k) *Claims under other laws and sections.* This section does not apply to any claim which may be settled under—

(1) Sections 536.161–536.170, 536.45 or the Foreign Claims Act (10 U.S.C. 2734).

(2) AR 40–3, or other regulations providing for medical care at Government expense.

(l) *Procedures*—(1) *General.* Unless inconsistent with the provisions of this section, the procedures for the investigation and processing of claims set forth in §§ 536.1–536.11c will be followed.

(2) *Claim* (i) *Time prescribed for filing.* A claim may be settled under this section only if presented in writing within 2 years after it accrues.

(ii) *When presented.* For the purpose of the 2-year statute of limitations, a claim shall be deemed to have been presented when a Federal agency received from a claimant, his duly authorized agent or legal representative, an executed Standard Form 95 or written notification of an incident, together with a claim for money damages, in a sum certain, for damage to or loss of property or personal injury or death. If a claim is received by an official of the Army who is not an approval or settlement authority under this section, the claim will be transmitted without delay to the nearest approval or settlement authority.

(iii) A copy of each claim which appears to be of a type that must be brought to the attention of the Attorney General (28 CFR 14.7) or one in which settlement may exceed $5,000, will be forwarded immediately to the Chief, U.S. Army Claims Service. The U.S. Army Claims Service, which has settlement authority for such claims, is responsible for the monitoring and settlement of such claims and will be kept informed of the status of the investigation and processing thereof.

(3) *Non-Army claims.* Claims based on acts or omissions of employees of the United States other than military and civilian personnel of the Department of the Army, civilian personnel of the Department of Defense, and employees of nonappropriated fund activities of the Department of the Army will be transmitted forthwith to the nearest official of the employing agency, and the claimant will be advised of the referral.

(4) *Acknowledgment of claim.* The claimant and his attorney will be kept informed by personal contact, telephonic contact, or mail of the receipt of his claim and the status of the claim. Formal acknowledgment of the claim in writing is required only where the claim is likely to result in litigation. In this event, the letter of acknowledgment will state the date of receipt of the claim by the first agency of the Army receiving the claim. Litigation may be deemed likely in any claim in excess of $1,000 or in which the issues involved are such that litigation may ensue.

(5) *Investigation.* Claims cognizable under this section will be investigated and processed on a priority basis in order that settlement may be accomplished within the 6 months prescribed by statute.

(6) *Advice to claimant.* (i) A full explanation of claims procedures and of the rights of the claimant will be made to the extent necessitated by the amount and nature of the claim.

(ii) In a case where litigation is likely, or where this course of action is preferred by the claimant and which appears to be a proper case for administrative settlement, the claimant will be advised as to the advantages of administrative settlement. If the claim is within the jurisdiction of a higher settlement authority, the claim will be discussed with such authority prior to the furnishing of such advice. The claimant should be familarized with all aspects of administrative settlement procedures including the administrative channels through which his claim must be processed for approval. He may be advised that administrative process can result in more expeditious processing, whereas litigation may take considerable time, particularly in jurisdictions with crowded dockets. If appropriate, he may be informed that a tentative settlement can be reached for any amount above $25,000, subject to approval by the Attorney General. He should be advised that administrative filing of the claim protects him under the statute of limitations for purposes of litigation; suit can be filed within 6 months after the date of mailing of notice of final denial by the Department of the Army, thus potentially allowing negotiations to continue indefinitely. An attorney representating a claimant should be advised of the limitation on fees for purposes of administrative settlement (20 percent) and litigation (25 percent). The attorney may also be advised that there is no jury trial under the Federal Tort Claims Act.

(7) *Notification to claimant of action on claim.* (i) The filing of an administrative claim and its denial are prerequisite to filing suit. A suit may be filed within 6 months after notification by certified or registered mail of the denial of the administrative claim. Failure of a settlement authority to take final action on a claim within 6 months may be treated by the claimant as a final denial for the purposes of filing suit.

(ii) Upon final denial of a claim, or upon rejection by claimant of a partial allowance, the settlement authority will inform the claimant of the action on his claim by certified or registered mail. Notification of final denial may include a statement of reasons for the denial and will include a statement that, if the claimant does not accept or is dissatisfied with the action, suit may be instituted within 6 months after the date of mailing of notice of final denial. A copy of this notification will be furnished the Attorney General in each case in which the Department of Justice has opened a file.

(m) *Reconsideration.* (1) While there is no appeal from the action of an approving or settlement authority under the Federal Tort Claims Act and this section, an approving or settlement authority may reconsider a claim upon request of the claimant or someone acting in his behalf. Even in the absence of such a request, an approving or settlement authority may on his own initiative reconsider a claim. He may reconsider a claim which he previously disapproved in whole or in part (even where a settlement agreement has been executed) when it appears that his original action was incorrect in law or fact based on the evidence of record at the time of the action or subsequently received. If he determines that his original action was incorrect, he will modify the action and, if appropriate, make a supplemental payment. The basis for a change in action will be stated in a memorandum included in the file.

(2) A successor approving or settlement authority may also reconsider the original action on a claim but only on the basis of fraud or collusion, new and material evidence, or manifest error of fact such as errors in calculation or factual misinterpretation of applicable law.

(3) A request for reconsideration must be submitted prior to the commencement of suit and prior to the expiration of the 6-month period provided in 28 U.S.C 2401(b). Upon timely filing, the appropriate authority shall have 6 months from the date of filing in which to make a final disposition of the request and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of the request.

(4) A request for reconsideration should indicate fully the legal or factual basis asserted as grounds for relief. Following completion of any investigation or other action deemed necessary for an informed disposition of the request, the approving or settlement authority will reconsider the claim and

attempt to settle it by granting such relief as may appear warranted. When further settlement efforts appear unwarranted, the entire file with a memorandum of opinion will be referred through claims channels to the Chief, U.S. Army Claims Service, Fort Meade, MD 20755, and the claimant informed of such reference.

§ 536.45 Maritime claims.

(a) *Statutory authority.* Administrative settlement or compromise of admiralty and maritime claims in favor of and against the United States by the Secretary of the Army or his designee is authorized by the Army Maritime Claims Settlement Act (10 U.S.C. 4801–04, 4806, as amended, Public Law 92–417, 86 Stat. 654).

(b) *Related statutes.* This statute authorizes the administrative settlement or compromise of maritime claims and supplements the following statutes under which suits in admiralty may be brought: the Suits in Admiralty Act of 1920 (41 Stat. 525, 46 U.S.C. 741–752); the Public Vessels Act of 1925 (43 Stat. 1112, 46 U.S.C. 781–790); the Extension of the Admiralty Act of 1948 (62 Stat. 496, 46 U.S.C. 740). Similar maritime claims settlement authority is exercised by the Department of the Navy under title 10, United States Code, sections 7365, 7621–7623, and by the Department of the Air Force under title 10, United States Code, sections 9801–9804, 9806.

(c) *Scope* (1) *Claims arising before 29 August 1972.* Section 4802 of title 10, United States Code, provides for the settlement or compromise of claims for damage to or loss of property, or personal injury or death caused by vessels of, or in the service of, the Department of the Army, and compensation for towage and salvage services, including contract salvage.

(2) *Claims arising after 28 August 1972.* Section 4802 of title 10, United States Code, as amended, 29 August 1972, provides for the settlement or compromise of claims for—

(i) Damage caused by a vessel of, or in the service of, the Department of the Army or by other property under the jurisdiction of the Department of the Army;

(ii) Compensation for towage and salvage service, including contract salvage rendered to a vessel of, or in the service of, the Department of the Army or to other property under the jurisdiction of the Department of the Army; or

(iii) Damage caused by a maritime tort committed by any agent or employee of the Department of the Army or by property under the jurisdiction of the Department of the Army.

(d) *Amounts exceeding $500,000.* Claims against the United States, settled or compromised at a net amount exceeding $500,000 are not payable hereunder, but will be investigated and processed under the regulations of this section, and, if approved by the Secretary of the Army, will be certified by him to the Congress.

(e) *Claims not payable.* A claim is not allowable under this section which:

(1) Is for damage to, or loss or destruction of, property, or for personal injury or death, resulting from action by the enemy, or by United States Armed Forces engaged in combat, or in immediate preparation for impending combat.

(2) Is for personal injury or death of members of the Armed Forces of the United States incurred incident to their service.

(3) Is for personal injury or death of civilian employees of the United States to whom the Federal Employees' Compensation Act (5 U.S.C. 8101–8150), is applicable.

(4) Is for the personal injury or death of an employee, including nonappropriated fund employees, for whom benefits are provided by the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. 901).

(5) Has been made the subject of a suit by or against the United States, except as provided in paragraph (h)(2) of this section.

(6) Arises in a foreign country and was considered by the authorities of a foreign country and final action taken thereon under Article VIII of the NATO Status of Forces Agreement, Article XVIII of the Japanese Administrative Agreement, or other similar treaty or agreement, if reasonable disposition was made of the claim.

(f) *Claims under other laws and regulations.* (1) Claims of military personnel and civilian employees of the Department of Defense and the Department of the Army, including military and civilian officers and crews of Army vessels, for damage to or loss of personal property occurring incident to their service will be processed under the provisions of the Military Personnel and Civilian Employees Claims Act of 1964 (31 U.S.C. 240–243).

(2) Claims which are within the scope of this section and also within the scope of the Foreign Claims Act (10 U.S.C. 2734) may be processed under that statute when specific authority to do so has been obtained from the Chief, U.S. Army Claims Service, Fort Meade, Md. 20755. With the request for such authority will be a copy of the report of investigation of the marine casualty.

(g) *Subrogation.* (1) An insurance carrier will be recognized as a claimant under this section to the extent that it has become subrogated by payment to, or on behalf of its insured, pursuant to a contract of insurance in force at the time of the incident from which the claim arose. An insurance carrier and its insured may file a claim either jointly or separately. Joint claims must be asserted in the names of, and must be signed by, all parties; payment then will be made jointly. If separate claims are filed, payment to each party will be limited to the extent of such parties undisputed interest.

(2) For the purpose of determining authority to settle or compromise a claim, the payable interests of the insurance carrier (or carriers) and the insured represent merely separable interests, which interests in the aggregate must not exceed the amount authorized for administrative settlement or compromise.

(3) The policies set forth in paragraphs(g) (1) and (2) of this section with respect to subrogation arising from insurance contracts are applicable to all other types of subrogation.

(h) *Limitation of settlement.* (1) The period for effecting an administrative settlement under the Army Maritime Claims Settlement Act is subject to the same limitation as that for beginning an action under the Suits in Admiralty Act, that is, a 2-year period from the date of the origin of the cause of action. The claimant must have agreed to accept the settlement and it must be approved for payment by the Secretary of the Army or his designee prior to the end of such period: otherwise, thereafter the cause of action ceases to exist, except under the circumstances set forth in paragraph (h)(2) of this section. The presentation of a claim, or its consideration by the Department of the Army, neither waives nor extends the 2-year limitary period.

(2) In event that a libel has been filed in a U.S. district court before the end of the 2-year statutory period, an administrative settlement may be negotiated by the Chief, U.S. Army Claims Service, with the claimant, even though the 2-year period has elapsed since the cause of action occurred, provided the claimant obtains the written consent of the appropriate office of the Admiralty and Shipping Section, Department of Justice, charged with the defense of the libel. Payment may be made upon dismissal of the libel.

(3) When a claim under this section, notice of damage, invitation to a damage survey, or other written notice of an intention to hold the United States liable is received, the receiving installation, office, or person immediately will

forward such document to the US Army Claims Service, ATTN: Maritime Claims Branch, Foreign/Maritime Claims Division. The Chief, Maritime Claims Branch, promptly will advise the claimant or potential claimant in writing of the comprehensive application of the time limit.

(i) *Delegation of authority.* Where the amount to be paid is not more than $10,000, claims under this section may be settled or compromised by the Chief, U.S. Army Claims Service, or by the Chief, Maritime Claims Branch, Foreign/Maritime Claims Division, US Army Claims Service, subject to such limitations as may be imposed by the Chief, US Army Claims Service.

(j) *Form of claim.* A demand letter may initiate a claim. The submitting of a special form, in view of commercial practice, is not required. Formalization of a claim may be accomplished at any time before consummation of the settlement or compromise.

Claims Arising From Activities of National Guard Personnel While Engaged in Duty or Training

§ 536.140 Statutory authority.

The statutory authority for this chapter is contained in the act of 13 September 1960 (74 Stat. 878, 32 U.S.C. 715), commonly referred to as the National Guard Claims Act, as amended by Pub. L. 90–486, 13 August 1968, (82 Stat. 756) Pub. L. 90–525, 26 September 1968 (82 Stat. 877), Pub. L. 91–312, 8 July 1970 (84 Stat. 412), and Pub. L. 93–336, 8 July 1974, and the act of 8 September 1961 (75 Stat. 488, 10 U.S.C. 2736) as amended by Pub. L. 90–521, 26 September 1968 (82 Stat. 874).

§ 536.140a Definitions.

(a) The definitions of terms set forth in § 536.3 are applicable to §§ 536.140–536.152 unless otherwise defined herein.

(b) *Army National Guard personnel.* A member of the Army National Guard engaged in training or duty under title 32, United States Code, section 316, 502, 503, 504, 505, or 709.

(c) *Claimant.* An individual, partnership, association, corporation, country, State, Commonwealth, territory or a political subdivision thereof, or the District of Columbia, presenting a claim and meeting the conditions set forth in § 536.6. The term does not include the US Government, any of its instrumentalities, except as prescribed by statute, or a State or Commonwealth, or the District of Columbia which maintains the unit to which the Army National Guard personnel causing the injury or damage are assigned. This exclusion does not ordinarily apply to a unit of local government which does not control the Army National Guard organization involved. As a general rule, a claim by a unit of local government other than a State will be entertained unless the item claimed to be damaged or lost was procured or maintained by State funds.

§ 536.141 Scope.

(a) Sections 536.140–536.152 prescribe the substantive bases and special procedural requirements for the settlement of claims against the United States for death, personal injury, or damage to or loss or destruction of property caused by a member of or arising out of the activities of the Army National Guard when:

(1) Engaged in training or duty under title 32, United States Code, sections 316, 502, 503, 504, 505, or any other provision of law for which he is entitled to pay under title 37, United States Code, section 206, or for which he has waived that pay, and acting within the scope of his employment; or otherwise incident to noncombat activities of the Army National Guard under one of those sections. (The foregoing includes a person employed under title 32, United States Code, section 709 if he is engaged at the time in training or duty under the cited sections.)

(2) Caused by a person employed under title 32, United States Code, section 709, acting within the scope of his employment prior to 1 January 1969.

(b) A claimant dissatisfied with an administrative settlement under this chapter as the result of activities of the National Guard of a State or Puerto Rico is not entitled to judicial relief in an action against the United States. Whether he has a right of action against the State, Puerto Rico or the District of Columbia which maintains the Army National Guard unit of which the person who caused the injury or damage was a member depends upon local law. Since Army National Guard personnel of the various States and Puerto Rico are not Federal employees (but see (c), infra) this chapter provides an additional source of recovery (see Maryland for the use of *Levin, Johns, et al.* v. *United States,* 381 U.S.C. 41, 85 S. Ct. 1293, 14 L. Ed. 2d 205 (1965)).

(c) The status of members of the Army National Guard of the various States and Puerto Rico, while engaged in duty or training under Federal law, has been settled by law and by the Federal courts (see 32 U.S.C. 501; 10 U.S.C. 672(d), 3079, 3495, 3499, 3500; *Williams* v. *United States,* 189 F.2d 607 (10th Cir. 1951); Maryland for the use of *Levin, Johns, et al.* v. *United States* (supra)). These cases held that military members of the Army National Guard, not in active Federal service, were not U.S. employees within the meaning of the Federal Tort Claims Act (see 28 U.S.C. 2671–2680). The Levin case also held that civilian (technician) personnel of the Army National Guard, employed under 32 U.S.C. 709, *were not US employees.* However, the status of Army National Guard technicians employed under 32 U.S.C. 709 was changed by Public Law 90–486 (82 Stat. 755), effective *1 January 1969.* On that date they became United States civilian employees, but only as to claims accruing from their acts or omissions on or after the date (see 32 U.S.C. 715, as amended). However, when such employees are at the time performing duty as military members of the Army National Guard under the authority listed in (*a*) above, claims arising out of their acts or omissions are cognizable under this section only. A savings provision in the amendatory Act retained 32 U.S.C. 715 settlement authority with respect to claims arising out of acts or omissions of such a person before 1 January 1969. Use §§ 536.12 to 536.24, 536.29 or 536.161 to 536.171 as authority for the settlement of any claim that accrued after 31 December 1968, when an Army National Guard technician was performing civilian duties as an employee of the United States under 32 U.S.C. 709, and apply the provisions of this section to any claim that accrued when such a person was performing duty or training as a military member of the Army National Guard.

(d) Claims arising out of activities of the Army National Guard when performing duties at the call of the governor of a State or Puerto Rico maintaining the unit are not cognizable under this section or any other law, regulation or appropriation available to the Army for the payment of claims. Such claims should be returned or referred to the State authorities of the State or Puerto Rico for whatever action they choose to take and claimants should be informed of the return or referral. Care should be taken to determine the status of the unit and member at the time the claims incident occurred, particularly in civil emergencies as units called by the governor are sometimes "federalized" during the call-up. During the period the unit is under State control, the claim will be disposed of as above. However, if the unit was "federalized" at the time the claims incident occurred, the claim will be cognizable under §§ 536.12 to 536.24, 536.29 or 536.161 to 536.171 or other sections pertaining to the Active Army.

(e) Army National Guard personnel who are performing a Federal function, other than mere training duty, e.g., ferrying aircraft over foreign territory, are considered military personnel of the United States while in a foreign country and claims generated by the activities of such personnel may be settled under the provisions of the Foreign Claims Act (10 U.S.C. 2734) even though such personnel have not been called or ordered to active Federal service. While in the United States, such personnel are not Federal employees so long as not called or ordered to active Federal service. For example, a member of the Army National Guard who delivers military hardware to Canada, at the request and for the benefit of the United States, but who has not been ordered to active duty, is considered a State employee during the United States portion of his trip, but is considered a member of the Armed Forces of the United States for claims purposes while in Canada.

§ 536.142 Claims payable.

(a) *General.* Unless otherwise prescribed, a claim for personal injury, death, or damage to or loss of property, real or personal, as provided in § 536.141, which arose on or after September 13, 1960, is payable under §§ 536.140–536.152 when:

(1) Caused by the act or omission, negligent, wrongful or otherwise involving fault, of Army National Guard personnel acting within the scope of employment, or

(2) Incident to noncombat activities of the Army National Guard while engaged in duty or training under title 32, United States Code, section 316, 502, 503, 504, 505, or 709.

(b) *Death or injury.* Only one claim arises. The amount allowed will, to the extent found practicable, be apportioned as prescribed by the law of the place where the incident occurred.

(c) *Property.* The property for damage or loss of which claims may be settled under §§ 536.140–536.152 includes:

(1) Real property used and occupied: an allowance may be made for the use and occupancy of property arising out of a trespass or other tort, even though claimed as rent;

(2) Personal property bailed to the United States or to the Army National Guard, under an agreement, express or implied, when engaged in training or duty under sections 316, 502, 503, 504, or 505 of Title 32, United States Code, or to a person employed under section 709 of Title 32, United States Code, acting within the scope of his employment, unless the owner has expressly assumed the risk of damage or loss; and

(3) Registered or insured mail in the possession of authorized Army National Guard personnel, even though the loss was caused by a criminal act.

(d) *Noncombat activities.* A claim may be settled under §§ 536.140–536.152 if it arises from authorized activities essentially military in nature, having little parallel in civilian pursuits and which historically have been considered as furnishing a proper basis for payment of claim, such as practice firing of missiles and weapons, training and field exercises, and maneuvers, including, in connection therewith, the operation of aircraft, and vehicles, and use and occupancy of real estate, and movement of combat or other vehicles designed especially for military use. Activities incident to combat, whether in time of war or not, are excluded.

(e) *Advance payments.* Advance payments pursuant to title 10, United States Code, section 2736, in partial settlement of meritorious claims to alleviate immediate hardship are authorized.

§ 536.143 Claims not payable.

A claim is not allowable under §§ 536.140–536.152 which—

(a) Is based upon an act or omission of a member or employee of the Army, the Army National Guard, exercising due care, in the execution of a Federal statute or regulation, whether or not such statute or regulation is valid.

(b) Is based upon the exercise or performance of, or the failure to exercise or perform, a discretionary function or duty on the part of a Federal agency, or a unit of the Army National Guard, or a member or employee of the Army or the Army National Guard, or an employee of a State, whether or not the discretion involved is abused.

(c) Arises in respect of the assessment or collection of any State or Federal tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise, or any other law enforcement officer.

(d) Is cognizable under the Suits in Admiralty Act (41 Stat. 525, 46 U.S.C. 741–752), or the Public Vessels Act (43 Stat. 1112, 46 U.S.C. 781–790), or is cognizable under § 536.45.

(e) Arises out of an act or omission of any employee of the Government in administering the provisions of the Trading With the Enemy Act (40 Stat. 411, 50 U.S.C. App. 1–31).

(f) Is for damages caused by the imposition or establishment of a quarantine by the United States.

(g) Arises out of an assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights when committed by any military or civilian employee of the Army National Guard while in the scope of his employment occurring before 16 March 1974. However, as to those acts involving assault, battery, false imprisonment, false arrest, malicious prosecution, or abuse of process occurring on or after 16 March 1974 when committed by an investigative or law enforcement official empowered by law to execute searches, to seize evidence or to make arrests for violations of Federal law, this subparagraph is no longer applicable. All claims accruing after 15 March 1974 and sounding under this subparagraph should, following an investigation of the allegations be forwarded to the Chief, US Army Claims Service for consideration and disposition.

(h) Is for damages caused by the fiscal operations of the Army, the Treasury, or by regulation of the monetary system.

(i) Results from action by an enemy or results directly or indirectly from an act of the Armed Forces of the United States in combat, except that a claim may be allowed if it arises from an accident or malfunction incident to the operation of an aircraft of the Armed Forces of the United States including its airborne ordnance, indirectly related to combat, and occurring while preparing for, going to, or returning from a combat mission on or after 26 September 1968.

(j) Arises in a foreign country and was filed with and considered by the authorities of a foreign country and final action taken thereon under Article VIII of the NATO Status of Forces Agreement, Article XVIII of the Japanese Administrative Agreement, or other similar treaty or agreement, if reasonable disposition was made of the claim.

(k) Arises from the activities of the Tennessee Valley Authority.

(l) Arises from the activities of the Panama Canal Company.

(m) Arises from the activities of the Federal Land Bank, a Federal intermediate credit bank, or a bank for cooperatives.

(n) Is for the personal injury or death of a member of the Armed Forces of the United States incurred incident to service (See Feres v. United States, 340 U.S. 135 (1950)).

(o) Is for the personal injury or death of a Government employee for whom benefits are provided by the Federal Employees' Compensation Act (5 U.S.C. 8101–8150).

(p) Is for the personal injury or death of an employee, including nonappropriated fund employees, for whom benefits are provided by the

Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. 901).

(q) Is for the personal injury or death of an employee for whom benefits are provided under any Federal or State workmen's compensation type laws or regulations, including local law or custom, in cases where contribution is made or insurance premiums paid directly or indirectly by the United States on behalf of the injured employee. If, in the opinion of an approving or settlement authority the claim should be considered payable, e.g., the injuries did not result from a normal risk of employment, or adequate compensation is not payable under workmen's compensation laws, the file will be forwarded with recommendations through claims channels to the Chief, US Army Claims Service, who may authorize payment of an appropriate award. The Chief, US Army Claims Service, also may specify that all or any part of any compensation received by the claimant from workmen's compensation sources as above will be deducted from the award to claimant. The claim of an insurance carrier subrogee who has received premiums paid directly or indirectly by the United States on behalf of the injured employee, however, is not payable.

(r) Is for taking of property as by technical trespass, overflight of aircraft, is of a type contemplated by the Fifth Amendment to the United States Constitution, or otherwise constitutes a taking.

(s) Is for damage from or by floods or flood waters at any place. See 33 U.S.C. 702*c*.

(t) Is for damage to property or for any death or personal injury occurring directly or indirectly as a result of the exercise or performance of, or failure to exercise or perform, any function or duty, by any Federal agency or any agent, official, or employee of the Government, in carrying out the provisions of the Federal Civil Defense Act of 1950, during the existence of a state of civil defense emergency, 50 U.S.C. App. 2291–2297.

(u) Results wholly or partly from the negligence or wrongful act of the claimant, his agent, or his employee, or if so cause, allowed only to the extent that the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances. The law of comparative negligence applies where it is the law of the place of the occurrence.

(v) Is for reimbursement for medical, hospital, or burial expenses furnished at the expense of the States or of any State, territory, or the District of Columbia, the Canal Zone, or Puerto Rico.

(w) Is purely contractual in nature.

(x) Arises from private as distinguished from Government transactions.

(y) Is based solely on compassionate grounds.

(z) Is for patent or copyright infringement. See AR 27–60.

(aa) Is for war trophies or articles intended directly or indirectly for persons other than the claimant or members of his immediate family, such as articles acquired to be disposed of as gifts or for sale to another, voluntarily bailed to the Army National Guard, or is for previous jewels and other articles of extraordinary value voluntarily bailed to the Army National Guard. The preceding sentence is not applicable to claims involving registered or insured mail. No allowance will be made for any item when the evidence indicates that the acquisition, possession, or transportation thereof was in violation of Department of the Army or Army National Guard directives.

(ab) Is for rent, damage, or other payments involving the acquisition, use, possession, or disposition of real property or interests therein by and for the Department of the Army, except as authorized by § 536.142(c)(1). Real estate claims founded upon contract are processed under the provisions of § 552.16 of this chapter.

(ac) Is not in the best interests of the United States, is contrary to public policy, or otherwise contrary to basic intent of the governing statute (32 U.S.C. 715), e.g., claims by inhabitants of unfriendly foreign countries or by individuals considered to be unfriendly to the United States. When a claim is considered to be not payable for the reasons stated in this paragraph, it will be forwarded for appropriate action to the Chief, U.S. Army Claims Service, together with the recommendations of the settlement authority.

§ 536.144 Subrogation.

Subrogated claims will be payable and processed as prescribed in § 536.6.

§ 536.145 Notification of incident.

The adjutant general of the States, territories, the District of Columbia, and Puerto Rico will insure that each incident which may give rise to a claim cognizable under §§ 536.140–536.152 is reported immediately by the most expeditious means to the Army or comparable commander (Attention: Staff Judge Advocate) in whose geographical area the incident occurs, or to a subordinate commander (Attention: Staff Judge Advocate) having a judge advocate assigned to his staff. The report will contain the following information:

(a) Date of incident.

(b) Place of incident.

(c) Nature of incident.

(d) Names and organizations of Army National Guard personnel involved.

(e) Names of potential claimant(s).

(f) A brief description of any damage, loss, or destruction of private property, and any injuries or death of potential claimants.

§ 536.147 Form of claim.

All claims cognizable under §§ 536.140–536.152 will be submitted in triplicate on Standard Form 95 (Claim for Damage or Injury).

§ 536.148 Procedures.

(a) *General.* So far as not inconsistent with §§ 536.140–536.152, the procedures set forth in § 536.1–536.11 of this part will be followed as to a claim under § 536.140–536.152.

(b) *Claims in which there is a State source of recovery.* Where there is a remedy against the State or Puerto Rico as a result of either waiver of sovereign immunity or where there is liability insurance coverage, the following procedures are applicable:

(1) When a vehicle used by the Army National Guard, or a privately owned vehicle operated by a member or employee of the Army National Guard, is involved in an incident, under circumstances which make this chapter applicable to the disposition of administrative claims against the United States and results in personal injury, death, or property damage, and a remedy against the State or its insurer is indicated, the responsible claims supervisory authority will monitor the action against the State or its insurer and encourage direct settlement between the claimant and the State or its insurer. Where the State is insured, direct contact with State or Army National Guard officials rather than the insurer is desirable. Regular procedures will be established and followed wherever possible. Such procedures should be agreed on by both local authorities and the appropriate claims supervisory authorities subject to concurrence by Chief, U.S. Army Claims Service. Such procedures will be designed to insure that local authority and U.S. authorities do not issue conflicting instructions for processing claims and whenever possible and in accordance with governing local and Federal law a mutual arrangement for disposition of such claims as in (3)

below is worked out. Amounts recovered or recoverable by claimant from any insurer (other than claimant's insurer who has obtained no subrogated interest against the United States) will be deducted from the amount otherwise payable.

(2) If there is a remedy against the State or its insurer, advise the claimant to pursue the remedy against the State and/or the insurer. If the payment by the State or its insurer does not fully compensate claimant, an additional payment may be made under this chapter. If liability is clear and claimant settles with the State or its insurer for less than the maximum amount recoverable, the difference between the maximum amount recoverable from the State or its insurer and the settlement normally will be also deducted from the payment by the United States.

(3) If the State or its insurer desires to pay less than their maximum jurisdiction or policy limit on a basis of 50 percent or more of the actual value of the entire claim, any payment made by the United States must be made directly to the claimant. This can be accomplished by either having the United States pay the entire claim and have the State or its insurer reimburse its portion to the United States, or by having each party pay its agreed share directly to the claimant. If the State or its insurer desires to pay less than 50 percent of the actual value of the claim, the procedure set forth in (4) below will be followed.

(4) If there is a remedy against the State and the State refuses to make payment, or there is insurance coverage and the claimant has filed an administrative claim against the United States, forward file with seven-paragraph memorandum to the Chief, U.S. Army Claims Service, including information as to the status of any judicial or administrative action the claimant has taken against the State or its insurer. The Chief, U.S. Army Claims Service, will determine whether the claimant will be required to exhaust his remedy against the State or its insurer, or whether the claim against the United States can be settled without such requirement. If he determines to follow the latter course of action, he will also determine whether an assignment of the claim against the State or its insurer will be obtained and whether recovery action will be taken. The State or its insurer will be given appropriate notification in accordance with State law necessary to obtain contribution or indemnification.

(c) *Claims in which there is a demand by the claimant against the Army National Guard tortfeasor individually.* The procedures set forth in § 536.9(e) are applicable. However, as an Army National Guard driver acting under the authorities in § 536.141 is not within the provisions of the Driver's Act (28 U.S.C. 2679(b)), and it is thus possible to bring a successful action in a State court, such demands will be closely monitored. If possible, an early determination will be made as to whether any private insurance of the National Guard tortfeasor is applicable. Where such insurance is applicable and the claim against the United States is of doubtful validity, final action will be withheld pending resolution of the demand against the National Guard tortfeasor. If, in the opinion of the claims approving or settlement authority, such insurance is applicable and the claim against the United States is payable in full or in a reduced amount, settlement efforts will be made either together with the insurer or singly by the United States as in (b) above. Any settlement will not include amounts recovered or recoverable as in § 536.9. If the insurance is not applicable, settlement or disapproval action will proceed without further delay.

§ 536.149 When claim must be presented.

(a) A claim may be settled under §§ 536.140–536.152 only if the incident out of which the claim arose occurred on or after September 13, 1960, and is presented in writing within 2 years after it accrues, except that if the claim accrues in time of war or armed conflict or if such war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, the claim may be presented not later than 2 years after war or armed conflict is terminated.

(b) As used in this section, a war or armed conflict is one in which any armed force of the United States is engaged. The dates of commencement and termination of any armed conflict shall be established by concurrent resolution of Congress or by determination of the President.

§ 536.150 Where claim must be presented.

A claim must be presented to an agency or instrumentality of the Army. However, the statute of limitations is tolled if a claim is filed with another agency of the Government and is forwarded to the Army within 6 months, or if the claimant makes inquiry of the Army concerning his claim within 6 months. Further, the filing of a claim with authorities or personnel of the Army National Guard will not toll the statute of limitations unless the claim is specifically addressed to the US Army. If a claim is received by an official of the Army who is not a claims approving or settlement authority under this regulation, the claim will be transmitted without delay to the nearest approving or settlement authority.

§ 536.151 Property lost or damaged incident to service.

Claims of Army National Guard personnel for personal property lost or damaged incident to federally funded duty or training will be considered under §§ 536.139–536.152 only if they are not payable under title 31 United States Code 241, and are generated by tortfeasors defined in § 536.141, e.g., damage to POV's.

§ 536.151a Claimants excluded.

A national, or a corporation controlled by a national, of a country at war or engaged in armed conflict with the United States, or of any country allied with such enemy country, is excluded as a claimant, unless the settlement authority of the command exercising claims supervisory authority of the area determines that the claimant is and, at the time of the incident, was friendly to the United States. A prisoner of war or an interned enemy alien is not excluded as to a claim for damage to or loss or destruction of personal property in the custody of the Government otherwise payable under §§ 536.140–536.152.

§ 536.151b Claims over $25,000.

Claims cognizable under title 32, United States Code, section 715, and this chapter, which are meritorious in amounts in excess of $25,000 will be forwarded to the Chief US Army Claims Service, who will effectuate a tentative settlement subject to approval by the Secretary of the Army or require the claimant to state the minimum amount he will accept and to provide appropriate justification. Upon completion of the foregoing, the Chief US Army Claims Service, will prepare a memorandum of law with recommendations, and forward the claim to the Secretary of the Army for final action. The Secretary will either disapprove the claim or approve it in whole or in part. If the claim is approved in an amount in excess of $25,000 the claimant may be paid $25,000 after the execution of the settlement agreement in full satisfaction of the claim. The excess will be reported to the Claims Division, General Accounting Office, 441 S. Street N.W. Washington DC, 20548 for payment.

§ 536.151c Settlement procedures.

Approving and settlement authorities will follow the procedures set forth in § 536.7–536.11.

Disapproval of a claim. The disapproval of a claim, in whole or in part, is final unless the claimant appeals in writing. If the claim is in excess of $5,000 the appeal is to the Secretary of the Army. Claims of $5,000 or less which are disapproved at the US Army Claims Service will be appealed to The Judge Advocate General or the Assistant Judge Advocate General. Claims of $5,000 or less which are disapproved by field settlement authorities will be appealed to the Chief, US Army Claims Service. Upon disapproval of a claim, in whole or in part, the settlement authority will notify the claimant by certified or registered mail of the action taken and reason therefor. The letter of notification will inform the claimant that—

(1) He may appeal, and it will indicate the authority to whom the appeal should be addressed.

(2) No form is prescribed for an appeal but it must be forwarded through the authority disapproving the claim.

(3) The ground for appeal should be set forth fully.

(4) The appeal must be submitted within 30 days of receipt by the claimant of notice of action on his claim. An appeal will be considered timely if postmarked within 30 days after receipt by the claimant of such notification. For good cause shown, the Chief, US Army Claims Service, may extend the time for appeal.

§ 536.151d Action on appeal.

(a) Upon receipt, the appeal will be examined by the settlement authority and after any action deemed necessary it will be forwarded with the related file and a seven-paragraph memorandum of opinion to the Chief, US Army Claims Service, Fort Meade, MD 20755. If the evidence in the file, including information submitted by the claimant with the appeal, indicates that the appeal should be sustained, it may be treated as a request for reconsideration under § 536.152 and the processing of the appeal may be delayed pending the outcome of further efforts by the settlement authority to settle the claim. The Judge Advocate General, the Assistant Judge Advocate General, or the Chief, US Army Claims Service, may take similar action in appropriate cases.

(b) As to an appeal which will be acted on by The Judge Advocate General, the Assistant Judge Advocate General, or the Secretary of the Army, the Chief, US Army Claims Service, will forward the claim together with his recommendation for action. The appeal will be sustained or denied. All matters submitted by the claimant will be forwarded and considered.

(c) Since an appeal under this authority is not an adversary proceeding, no form of hearing is authorized; however, the Claimant should be afforded a reasonable period of time, upon request, to obtain and submit any additional evidence or written argument for consideration by the appellate authority.

§ 536.152 Reconsideration.

(a) An approving or settlement authority may reconsider a claim upon request of the claimant or someone acting in his behalf. In the absence of such a request, an approving or settlement authority may on his own initiative reconsider a claim. He may reconsider a claim which he previously disapproved in whole or in part (even though a settlement agreement has been executed), when it appears that his original action was incorrect in law or fact based on the evidence of record at the time of the action or subsequently received. If he determines that his original action was incorrect, he will modify the action and, if appropriate, make a supplemental payment. The basis for a change in action will be stated in a memorandum included in the file.

(b) A successor supervisory or settlement authority may also reconsider the original action on a claim but only on the basis of fraud or collusion, new and material evidence, or manifest error of fact such as errors in calculation or factual misinterpretation of applicable law.

(c) A request for reconsideration should indicate fully the legal or factual basis asserted as grounds for relief. Following completion of any investigation or other action deemed necessary for an informed disposition of the request, the approving or settlement authority will reconsider the claim and attempt to settle it by granting such relief as may appear warranted. When further settlement efforts appear unwarranted, the entire file with a memorandum of opinion will be forwarded through claims channels to the Chief, U.S. Army Claims Service, Office of The Judge Advocate General, Fort Meade, MD 20755, and the claimant informed of such reference.

Claims Incident to Use of Government Vehicles and Other Property of the United States Not Cognizable Under Other Law

§ 536.161 Statutory authority.

The statutory authority for §§ 536.161–536.171 is contained in the act of October 9, 1962 (76 Stat. 767, 10 U.S.C. 2737), commonly known as the "Non-Scope of Employment Claims Act."

§ 536.162 Definitions.

The definitions of terms set forth in § 536.3 of this part are applicable to §§ 536.161–536.171 unless otherwise defined herein:

(a) *Government installation.* A U.S. Government facility having fixed boundaries owned or controlled by the Government.

(b) *Vehicle.* Includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land (1 U.S.C. 4).

§ 536.163 Scope.

Sections 536.161–536.171 have been approved by the Secretary of Defense pursuant to title 10, United States Code, section 2737(h), and prescribes the substantive bases and special procedural requirements for the administrative settlement and payment, in an amount not more than $1,000, of any claim against the United States not cognizable under any other provision of law for damage to, or loss of, property, or for personal injury or death, caused by a member of the Army or a civilian official or employee of the Department of the Army, or of the Army, incident to the use of a vehicle of the United States at any place incident to the use of other property of the United States on a Government installation.

§ 536.164 Claims payable.

(a) *General.* A claim for personal injury, death, or damage to or loss of property, real or personal, is payable under §§ 536.161–536.171 when—

(1) Caused by the act or omission, negligent, wrongful, or otherwise involving fault, of a member of the Army, or the Army National Guard, or a civilian employee of the Department of the Army, the Army, or the Army National Guard—

(i) Incident to the use of a vehicle of the United States at any place.

(ii) Incident to the use of any other property of the United States on a Government installation.

(2) The claim may not be approved under any other claims statute and claims regulation available to the Department of the Army for the administrative settlement of claims.

(3) The claim has been determined to be meritorious, and the approving or settlement authority has obtained a settlement agreement in an amount not in excess of $1,000 in full satisfaction of the claim prior to approval of the claim for payment.

(b) *Personal injury or death.* A claim for personal injury or death is allowable only for the cost of reasonable medical, hospital, and burial expenses actually

incurred and not otherwise furnished or paid by the United States.

§ 536.165 Claims not payable.

A claim is not allowable under §§ 536.161–536.170 which:

(a) Is cognizable under any other provision of law administered by the military departments or regulations of the Department of the Army.

(b) Results wholly or partly from the negligent or wrongful act of the claimant, his agent, or his employee. The doctrine of comparative negligence is not applicable.

(c) Is for medical, hospital, and burial expenses furnished or paid by the United States.

(d) Is for any element or damage pertaining to personal injuries or death other than provided in § 536.164(b). All other items of damage, for example, compensation for loss of earnings and services, diminution of earning capacity, anticipated medical expenses, physical disfigurement, and pain and suffering are not payable.

(e) Is legally recoverable by the claimant under an indemnifying law or indemnity contract. If the claim is legally recoverable in part, that part recoverable by the claimant is not payable.

(f) Is a subrogated claim.

§ 536.166 When claim must be presented.

A claim may be settled under §§ 536.161–536.170 only if the claim is presented in writing within 2 years after it accrues.

§ 536.167 Procedures.

So far as not inconsistent with this regulation the procedures for the investigation and processing of claims contained in §§ 536.1–536.11 will be followed.

§ 536.168 Settlement agreement.

No claim is payable under §§ 536.161–536.170 unless a settlement agreement has been obtained from the claimant accepting the amount determined to be meritorious in full satisfaction of any claim against the United States arising out of the incident.

§ 536.170 Reconsideration.

The settlement of a claim under 10 U.S.C. 2737 is final and conclusive. However, a claimant who is dissatisfied with the decision on his claim may request that it be reconsidered. A request for reconsideration should be directed to the official who acted on the claim and should indicate fully the legal or factual basis asserted as grounds for relief.

§ 536.171 Claims over $1,000.

A claim presented in an amount over $1,000 which the claimant declines to settle for an amount not in excess of $1,000 under §§ 536.161–536.171 will be forwarded with the related file and a seven-paragraph memorandum of opinion to the Chief, U.S. Army Claims Service, Office of The Judge Advocate General, Fort Meade, MD 20755.

[FR Doc. 80–2599 Filed 1–28–80; 8:45 am]

BILLING CODE 3710–08–M

32 CFR Part 630

[AR 190–9]

Military Absentee and Deserter Apprehension

AGENCY: Department of the Army, DOD.

ACTION: Interim rule and request for comments.

SUMMARY: The Department of the Army provisions relating to enlisted men absent without leave, deserters, and escaped military prisoners have been revised and incorporated in a new Part 630. A review of the regulation (codified at 32 CFR 536.30 through 536.35 before the revision of Part 536 published elsewhere in this issue) revealed a need to update information to support approved parts of joint-service plan for a deserter apprehension program.

DATES: Effective date: February 1, 1980.

Comment date: Comments must be received on or before March 28, 1980.

ADDRESS: Send comments to HQDA (DAPE–HRE), Washington, DC 20310.

FOR FURTHER INFORMATION CONTACT: Colonel Thomas A. Mac Donnell, GS, Chief, Law Enforcement Division, HQDA (DAPE–HRE), Washington, DC 20310, (202) 695–5662.

SUPPLEMENTARY INFORMATION: The other military services have similar implementing directives for their absentees and deserters.

Dated: January 2, 1980.

Thomas A. Mac Donnell,

Colonel, GS, Chief, Law Enforcement Division.

Accordingly, the Army amends 32 CFR Chapter V by adding a new Part 630 to read as follows:

PART 630—MILITARY ABSENTEE AND DESERTER APPREHENSION

Sec.

Authority: 10 U.S.C. 801 through 940; Manual for Courts-Martial, U.S. 1969 (Revised Edition) as amended; (Sec. 709, Pub. L. 96–154, Defense Appropriation Act).

§ 630.1 Policy.

(a) Military law enforcement officials may communicate directly with other military or civilian law enforcement authorities to expedite returning deserters to military control under the provisions of (Chapter 3, Army Regulation (AR) 190–9) and to insure proper use of the National Crime Information Center (NCIC) in accordance with AR 190–27.

(b) *Authority to apprehend in the United States.* (1) Any civil officer having authority to apprehend offenders under the laws of the United States, or of a State, Territory, Commonwealth, possession, or the District of Columbia, may summarily apprehend deserters from the US Armed Forces and deliver them into the custody of military officials. Receipt of Department of Defense (DD) Form 553 (Absentee Wanted by the Armed Forces) and a corresponding Army entry in the Federal Bureau of Investigation's (FBI) NCIC Wanted Person File, an Army entry in NCIC standing alone, or oral notification from military or Federal law enforcement officials that the person to be apprehended has been declared a deserter and that his/her return to military control is desired, constitutes a request for civilian apprehension support.

(2) Civil law enforcement authorities may apprehend absentees (AWOL's—absent without leave) when requested to do so by military authorities.

(3) Any person authorized under regulations governing the armed forces to apprehend persons subject to the Uniform Code of Military Justice (UCMJ) or to trial thereunder may do so upon reasonable belief that an offense has been committed and that the person to be apprehended committed it. Authority to apprehend military absentees and deserters is not restricted to the confines of military installations or activities.

(c) *Apprehension of absentees and deserters who claim sanctuary.* (1) In cases where a number of offenders are involved, some of whom are absent without leave (AWOL) and some deserters (dropped from rolls—DFR), responsibility remains with the military services. However, maximum cooperation will be solicited from local or State civil law enforcement authorities. The FBI will not be requested to support the apprehension action. If local or State civil law enforcement authorities decline to support apprehension, all facts will be reported to HQDA (DAPE–HRE), Washington, DC 20310, via priority

message and acknowledged before apprehension is attempted by military personnel.

(2) In cases where all persons involved are deserters and FBI was furnished notice of desertion under aggravated circumstances by United States Army Deserter Information Point (USADIP) and/or the other military services, the FBI will assume jurisdiction and effect apprehension.

(3) Final responsibility for apprehension of military absentees and deserters rests with military authorities.

(d) Absentees and deserters normally may be delivered for processing to the nearest major military installation (excluding, under normal circumstances, separate medical installations) manned by active duty personnel.

(1) Commanders will accept custody and transfer such individuals to an organization or installation designated to administer returning absentees and deserters. Exception:

(i) Army personnel returned to military custody within Military District of Washington (MDW) (excluding MDW personnel) will be delivered to Fort George G. Meade, Maryland, for further administrative processing in accordance with AR 630–10.

(ii) Absentees and deserters from other services will be transferred to an installation of their service.

(2) Any further disposition of returned Army personnel to specific units will comply with AR 630–10 or AR 600–62 as directed by HQDA and/or in the best interests of the Army as judged by the installation commander.

(3) Personnel Control Facility (PCF) commanders are responsible for supervising and coordinating processing and disposition of Army members confined by civilian authorities. The commander, law enforcement activity, area provost marshal or security officer and PCF commanders will coordinate closely to ensure the status of Army members in hands of civilian authorities is monitored.

(e) Military police terminate ongoing military and civil police (including FBI) apprehension efforts in accordance with paragraph 3–3 of AR 190–9 when an Army member is returned to military custody or when located in civilian custody.

(f) Every practical effort will be made to apprehend absentees and deserters as expeditiously as possible. To achieve this:

(1) Commander, law enforcement activity, installation provost marshal, or security officer will vigorously investigate the facts and circumstances surrounding absences, initiate local apprehension actions, and expedite notification procedures.

(2) New information on the whereabouts of absentees or deserters will be given to the installation provost marshal. The provost marshal will notify military or civilian authorities requesting their assistance returning the member to military control.

(3) The commander, law enforcement activity, provost marshal or security officer will establish and maintain liaison and coordination with military and civil law enforcement authorities. Provost marshals will encourage active efforts by civil authorities returning absentees and deserters to military control.

(4) Commanders will publicize apprehension programs to deter potential absentees. Absentee prevention is discussed in Department of the Army (DA) Pamphlet 600–14.

(5) Headquarters, Department of the Army, will jointly evaluate results of the deserter apprehension program, with the other military services, Defense Investigative Service, Defense General Counsel, and Office Assistance Secretary of Defense (Manpower, Reserve Affairs and Logistics) and recommend necessary changes. Meetings will be held annually, hosted in order of service seniority, beginning calendar year (CY) 1980. The host service will keep minutes and provide them to agencies taking part.

(g) Joint-service cooperation returning absentees and deserters to service control is encouraged. If appropriate, Interservice Support Agreements (ISSA) may be developed at the local command level to facilitate joint-service efforts. These arrangements should coincide with existing operational functions of a military service. These arrangements should not create a new function (e.g., Armed Forces Police Detachments), requiring excessive overhead support. (Forward copies of ISSAs covering apprehension support to HQDA (DAPE–HRE), Washington, DC 20310.)

(h) Upon publication of AR 190–9, US Army will authorize use of the DD Form 553 (Absentee Wanted by the Armed Forces) and DD Form 616 (Report of Return of Absentee) when current supplies of the related DA Forms 3835 and 3836 are exhausted.

§ 630.2 Civil detention facilities.

(a) Use of civil detention facilities.

(1) When necessary, civil detention facilities may be temporarily used to detain absentees, deserters, or escaped military prisoners. Contracts providing for payment only of actual costs incident to detention may be made with State or county jails that have been approved by the Bureau of Prisons, Department of Justice. Obtain information about approved facilities from the nearest United States Marshal.

(2) The Defense Acquisition Regulation and the Army Procurement Procedures will govern these contracts.

(3) Contracts will contain the standards of treatment of military prisoners set forth in AR 190–47.

(4) Military detainees will receive the same standard of care that they would receive in a military or Federal institution. No cruel or unusual punishment will be permitted.

(5) If institution officials think that a military detainee cannot be restrained by reasonable methods, or if the detainee escapes, they should report this information promptly to military authorities with whom they have a contract.

(b) Costs of detention in civil detention facilities.

(1) Civil authorities may be reimbursed according to contracts for temporary detention after military authorities have assumed custody. This does not authorize payment for subsistence and detention for the same period for which the reward was authorized. It does authorize payment from the date further detention was requested. This does not preclude the payment of reward or reimbursement for reasonable expenses for periods before delivery to military custody. Detained officers receiving basic allowance for subsistence (BAS) will be charged the cost of subsistence.

(2) Costs incurred by Army authorities for detention under an Army contract will be paid to the civil detention facilities. Any reimbursement to Army by the other services will be by prior agreement between the commanders concerned.

§ 630.3 Payment of reward or reimbursement for actual expenses.

(a) *Payment.* Payment of a reward or reimbursement for actual expenses to officials or agencies taking part in the Army apprehension program is authorized as indicated below:

(1) Payment of a reward ($75) for apprehension or acceptance of surrender of a military offender and delivering him/her to a military installation which has facilities to receive and process offenders.

(2) Payment of a reward ($50) for apprehension or acceptance of surrender of a military offender and detaining him/her in civil custody until military officials assume custody.

(3) Reimbursement for actual expenses, not to exceed $75 in any one case, in lieu of reward, or when

conditions for payment of reward cannot be met.

(b) *Offer of reward.* Payment is authorized when a reward has been offered. Notification before apprehension or surrender, that individual is wanted by the Armed Forces, shall constitute an offer of reward. The notice may be oral or written, from a military or Federal law enforcement official, or it may be an NCIC check as described on DD Form 553.

(c) *Reimbursement option.* Reimbursement for actual expenses is authorized when:

(1) Reward has not been offered.

(2) Reimbursement is requested in lieu of reward.

(d) *To whom payable.* Payment of reward or reimbursement for actual expenses is payable to any eligible person or agency performing the service. Foreign nationals are eligible when participation is within the meaning and intent of Chapter 5 of AR 190–9.

(e) *To whom not payable.* A reward or reimbursement is not authorized to armed service members, salaried officers or employees of the Federal Government, or to lawyers on whose advice an offender surrenders.

(f) *Dual payment.* Dual payment (both reward and reimbursement) relating to one offense is prohibited.

(g) *Reward payment.* A reward will be made to one person or agency who detains or delivers the offender to military custody. The finance and accounting officer designating by the major Army commander concerned will pay the claimant. If two or more persons are entitled to reward, the payee may divide the payment among participants. Payment for apprehension effected jointly by an eligible and ineligible person or agency may be claimed by the eligible person/agency. Ineligible persons may not share in payments.

(h) *Reimbursement payment.* Reimbursement of actual expenses may be made to more than one eligible person or agency. However, total reimbursement for return to military control of an offender may not exceed $75 for each occurrence.

(i) *Official transportation/personal services.* Payment will not be made for:

(1) Transportation performed by official vehicle.

(2) Personal services of the claimant.

(3) Apprehension and detention not followed by return to military custody.

(j) *Documentation.* Payment of reward or reimbursement for expenses will be made by processing Standard Form 1034 (Public Voucher for Purchase and Services Other Than Personal). The following information and documentation will be shown on SF 1034 or supporting documents:

(1) Name, social security number, and station of military offender (DD Form 553 or 616).

(2) Date, place of arrest, and place of delivery to military custody (DD Form 616).

(3) Signed statement by claimant that he/she, or agency he/she represents, qualifies for payment of reward (SF1034 item).

(4) Signed statement by responsible military authority that:

(i) Delivery was made to a military installation with facilities to receive and process offenders (DA Form 4187).

(ii) Military custody was assumed away from a regular military installation.

(5) Reimbursement for expenses in lieu of reward will be made as above; except that statement in paragraph (j)(3) of this section is not required. An itemized list of actual expenses incurred by claimant is required. Items may include any reasonable expense deemed justifiable and reimbursable by certifying officer.

(6) Supporting Army forms referenced in paragraphs (j)(1), (2), (3) and (4) of this section will be furnished claimants to support payment.

§ 630.4 Detainer.

(a) *General.* (1) A detainer should be placed whenever an Army member is being held for further disposition by civilian authorities. Military police or other military authorities may initiate detainees. When a detainer was placed and the subject's return to military custody is no longer desired (e.g., discharged), the detainers must be removed promptly on behalf of the commander. The purpose of filing a detainer is to—

(i) Officially advise civil authorities that a member of the Army is in their custody, and that military authorities want to assume custody on his/her release.

(ii) Request that military authorities be kept advised of further disposition by civil authority.

(iii) Permit military authorities to monitor the member's military status while he/she remains in civil custody.

(2) When military police file a detainer with civil authorities, a copy of the detainer will be given immediately, to the appropriate installation coordinating agent. The coordinating agent will—

(i) Monitor the member's military status in accordance with AR 630–10 and AR 600–62.

(ii) Monitor subsequent movement and personnel actions of the detained person.

(iii) Advise military police, including USADIP, to cease all apprehension actions.

(iv) Designate a commander to monitor the detention. The commander will assume custody when the member is released by civil authorities; and will complete any necessary personnel actions while the member is in civil custody.

(v) Notify, in accordance with AR 630–10, the commander of the unit from which the member is absent.

(vi) Arrange return to a military installation when release by civil authorities is imminent.

(vii) Advise civil authorities in writing when the member's military status changes and/or when the member's return to military custody is no longer desired, stating the reasons.

(3) Detainers will be cancelled when the member is released to military custody; however, if civil authorities specifically request official notification, the installation coordinating agent will comply with paragraph (a)(2)(vii) of this section.

(b) *Detainer forms.* The detainer format (Figure 1) may be reproduced locally and completed in pen and ink when necessary. A copy must be furnished to the installation or area coordinating agent for appropriate action in accordance with AR 630–10.

Letterhead

Office Symbol
Subject: Army Member Detained by Civil Authorities.
To: Civil agency detaining the Army member.

1. This is to advise you that the individual identified below is a member of the U.S. Army and that military authorities desire to take custody on release from your jurisdiction.

Grade, Name, SSN _____
Unit _____

Appropriate military authorities were advised of subject's detention as follows:
Date Detained _____
Reason _____
Probable Release Date _____
Other _____

2. The military authority indicated below will coordinate the member's return to military custody; monitor military status while in your custody; and advise you of any change in military status which would negate the requirement for return to military custody.
Coordinating agent _____
Address _____
Telephone No. _____

Other military point of contact:
_____-phone _____.

3. Request notification of release sufficiently in advance to permit coordination

of military pick-up. Notification may be in writing or by telephone, collect if necessary. Phone number ———.

4. The Department of the Army gratefully acknowledges your cooperation in this matter.

Copies furnished:
Local Reproduction Authorized.

Figure 1

[FR Doc 80-2600 Filed 1-28-80; 8:45 am]
BILLING CODE 3710-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1398-2]

Approval and Promulgation of State Implementation Plans; Arkansas Plan for Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The purpose of this notice is to approve portions of the State Implementation Plan (SIP) revisions for Arkansas. These revisions were submitted by the Governor on April 18, 1979, pursuant to the requirements of Part D of Title I of the Clean Air Act, as amended in 1977, with regard to nonattainment areas. In addition, EPA is taking final action to conditionally approve certain elements of the Arkansas SIP revisions. These elements contain minor deficiencies which the State has agreed to correct by a specified deadline. This deadline has been changed from what was proposed in EPA's July 31, 1979 notice of proposed rulemaking on the Arkansas SIP (44 FR 44904). This deadline, by which conditions must be met, is being promulgated without prior notice and comment. EPA finds that for good cause, notice and comment on this deadline is unnecessary since the promulgated date differs by only 18 days from the proposed date.[1]

The State is the party responsible for meeting the deadline and the State has agreed to the deadline. In addition, the public has had an opportunity to comment generally on the concept of conditional approval and on what deadline should apply for these conditions (44 FR 38583, July 2, 1979). Further opportunity to comment, specifically for the Arkansas Plan for Nonattainment Areas, was invited in the proposed rulemaking (44 FR 44904, July 31, 1979).

In this notice, issues resulting in SIP approval and conditional approval are discussed. It should be noted that only the requirements with respect to Part D of the Act are addressed under this notice.

EFFECTIVE DATE: Effective January 29, 1980.

EPA finds that good cause exists for making this action immediately effective, for the following reasons: (1) Implementation plans are already in effect under State law and EPA approval imposes no additional regulatory burden; (2) EPA has a responsibility under the Act to take final action on the portion of the SIP which addresses Part D requirements by July 1, 1979, or as soon thereafter as possible.

FOR FURTHER INFORMATION: Jerry M. Stubberfield, Chief, Implementation Plan Section, Air and Hazardous Materials Division, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270, (214) 767-2742.

SUPPLEMENTARY INFORMATION:

Introduction

On July 31, 1979 (at 44 FR 44904), EPA published a notice of proposed rulemaking on revisions to the Arkansas State Implementation Plan (SIP). Under that notice the Agency discussed the SIP in detail and outlined the deficiencies of the SIP pursuant to Part D of the Act and the General Preamble, which was published in the April 4, 1979 issue of the **Federal Register** (at 44 FR 20372) and supplemented on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182).

In response to that notice, the State committed to correct the deficiencies.

EPA is taking final action to conditionally approve certain elements of the Arkansas plan. A discussion of conditional approval and its practical effect appears in supplements to the General Preamble, 44 FR 38583 (July 2, 1979) and 44 FR 67182 (November 23, 1979). The conditional approval requires the State to submit additional materials by the deadlines specified in today's notice. There will be no extensions of conditional approval deadlines which are being promulgated today. EPA will follow the procedures described below when determining if the State has satisfied the conditions.

1. If the State submits the required additional documentation according to schedule, EPA will publish a notice in the **Federal Register** announcing receipt of the material. The notice of receipt will also announce that the conditional approval is continued pending EPA's final action on the submission.

2. EPA will evaluate the State's submission to determine if the condition is fully met. After review is complete, a **Federal Register** notice will be published proposing or taking final action either to find the condition has been met and approve the plan, or to find the condition has not been met, withdraw the conditional approval and disapprove the plan. If the plan is disapproved the Section 110(a)(2)(I) restrictions on construction will be in effect; certain funds may also be withheld, conditioned or restricted if the plan is disapproved. See CAA § 316(b).

3. If the State fails to timely submit the required materials needed to meet a condition, EPA will publish a **Federal Register** notice shortly after the expiration of the time limit for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved and Section 110(a)(2)(I) restrictions on growth are in effect. The deadline for satisfying conditions is being promulgated today without prior notice and comment. EPA finds that for good cause notice and comment on this deadline is unnecessary due to the difference of only 18 days between the submission date proposed and that being promulgated today.

The remainder of today's notice briefly summarizes the actions proposed in EPA's July 31, 1979 notice, discusses the corrective action either taken or committed to by the State, and EPA's resulting action on the SIP. Where possible, the format of this notice follows that of the notice of proposed rulemaking, and reference is made to indicate such.

Background

In the March 3, 1978 **Federal Register** at 43 FR 8969, EPA identified Pulaski County, Arkansas as a nonattainment area for photochemical oxidants (ozone) in accordance with Section 107 of the Act. The Governor of Arkansas, after adequate notice and public hearing submitted revisions to Arkansas' SIP on April 4, 1979.

The Arkansas SIP predicts attainment of the ozone standard not later than December 31, 1982 with implementation of the Federal Motor Vehicle Control Program (FMVCP) and reductions achieved through the application of reasonably available control technology (RACT) to existing stationary sources covered by Control Technique Guidelines (CTGs) as published by EPA.

[1] See 5 U.S.C. Section 553(b)(B) of the Administrative Procedures Act.

The plan also commits to reasonable further progress (RFP) towards attainment.

The 1982 emissions projections provide a growth rate for area and mobile sources. The plan points out however, that for major sources (i.e., sources having potential emissions of volatile organic compounds greater than 100 tons per year) a growth rate of 1.0 is assumed. The State has committed to adopt additional VOC control measures for sources covered by CTGs published after January 1, 1978, and has also committed to adopt regulations for source categories not included on EPA's CTG lists, but for which Arkansas determines that RACT exist.

Since an extension of the attainment deadline beyond December 1982 is not required it is not mandatory for the ozone strategy to include provisions for the development of a vehicle emissions inspection and maintenance program. However, the State has acknowledged the potential for additional reductions due to an inspection and maintenance plan, and other transportation controls and has included a commitment in the SIP to perform a feasibility study of available transportation control measures.

Although EPA is not disapproving Regulation 4.2 because it exempts methyl chloroform (1,1,1 trichloroethane) and methylene chloride, the Agency is concerned about the environmental risks associated with their wide scale substitution and uncontrolled use as a means of compliance.

These VOCs, while not appreciably affecting ambient ozone levels, are potentially harmful. Both methyl chloroform and methylene chloride have been identified as mutagenic in bacterial and mammalian cell test systems, a circumstance which raises the possibility of human mutagenicity and/or carcinogenicity.

Furthermore, methyl chloroform is considered one of the slower reacting VOCs which eventually migrates to the stratosphere where it is suspected of contributing to the depletion of the ozone layer. Since stratosphere ozone is the principal absorber of ultraviolet light (UV), the depletion could lead to an increase of UV penetration resulting in a worldwide increase in skin cancer.

With the exemption of these compounds, some sources, particularly degreasers, will be encouraged to utilize methyl chloroform in place of other more photochemically reactive degreasing solvents. Such substitution has already resulted in the use of methyl chloroform in amounts far exceeding that of other solvents. Endorsing the use of methyl choloroform by exemption in the SIP can only further aggravate the problem by increasing the emissions produced by existing primary degreasers and other sources.

The Agency is concerned that the State has chosen this course of action without full consideration of the total environmental and health implications. The Agency does not intend to disapprove the State SIP submittal if, after due consideration, the State chooses to maintain these exemptions. However, we are concerned that this policy not be interpreted as encouraging the increased use of these compounds nor compliance by substitution. The Agency does not endorse such approaches. Further, State officials and sources should be advised that there is a strong possibility of future regulatory action to control these compounds. Sources which choose to comply by substitution may well be required to install control systems as a consequence of these future regulatory actions.

Public Comments on Proposal

There were no comments specific to the Arkansas SIP. Two commentors submitted extensive comments which they requested be considered as part of the record for each state plan. Although many of these comments are not relevant to the Arkansas plan, EPA has placed its response to those comments in the Regional Office docket and in the Public Information Reference Unit in Washington, D.C. This response also is included in EPA's final action on the Louisiana SIP, which is being published at approximately the same time as this action.

SIP Deficiencies/Conditional Approval

In the July 31, 1979 notice of proposed rulemaking, EPA identified certain deficiencies which the State has agreed to correct in the following manner:

1. The State did not submit regulations representing RACT for all source categories for which EPA had previously issued control technology guidelines (CTG). EPA proposed to approve this portion of the plan provided that the agency certify that those specific source categories of VOC to which CTG's apply do not exist in Pulaski County. On August 14, 1979, the Governor submitted certification that no major sources for the following source categories exist within Pulaski county: large appliance manufacture, magnet wire insulation, metal furniture manufacture, degreasing, petroleum refinery vacuum producing systems, waste water separators and process unit turnaround, surface coating of cans, coils, paper, fabric, automobiles and light-duty trucks. EPA considers the Arkansas "Regulations for the Control of Volatile Organic Compounds" and the Governor's certification to be sufficient in meeting the requirements of Section 172(b)(2) of the Act.

2. The State did not establish a final compliance date for all applicable stationary sources of VOC. EPA proposed to conditionally approve the Arkansas regulation provided that the regulation was amended to include a final compliance date which would demonstrate attainment as expeditiously as practicable and be submitted to EPA by November 27, 1979. On November 7, 1979 the Arkansas agency modified, through Public Hearing, the compliance schedule regulation. The State agency has however, requested an extension of the submission date until December 15, 1979. EPA considers the 18 day extension a reasonable request and is therefore promulgating the new date of December 15, 1979, for submission of a final compliance date.

3. Within the Arkansas permit requirements the definition of lowest achievable emission rate (LAER) is inconsistent with the definition of LAER contained in Section 171(3) of the Act. EPA proposed to conditionally approve the Arkansas permit regulations provided the State modify the definition of LAER to be consistent with that contained in the Act and submit the modification by November 27, 1979. The Arkansas agency modified the definition of LAER at the November 7, 1979 public hearing and has also requested an extension of the submission date until December 15, 1979 for submission of the revised definition for LAER. EPA considers this extension a reasonable request and is therefore promulgating the date of December 15, 1979 for submission of the revised definition for LAER.

On December 10, 1979, the Governor submitted revisions to these regulations in accordance with this schedule. EPA is presently reviewing this submission. The conditional approval of this portion of the SIP will continue in effect pending EPA's final action regarding this matter.

Attainment Dates

The 1978 edition of 40 CFR Part 52 lists in the subpart for Arkansas (Subpart E) the applicable deadlines for attaining ambient standards (attainment dates) required by Section 110(a)(2)(A) of the Act. For each nonattainment area where a revised plan provides for attainment by the deadlines required by Section 172(a) of the Act, the new deadlines are substituted on Arkansas attainment date chart in 40 CFR Part 52. The earlier attainment dates under Section 110(a)(2)(A) will be referenced

in a footnote to the chart. Sources subject to plan requirements and deadlines established under Section 110(a)(2)(A) prior to the 1977 Amendments remain obligated to comply with those requirements, as well as with the new Section 172 plan requirements.

Congress established new attainment dates under Section 172(a) to provide additional time for previously regulated sources to comply with new, more stringent requirements and to permit previously uncontrolled sources to comply with newly applicable emission limitations. These new deadlines were not intended to give sources that failed to comply with pre-1977 plan requirements by the earlier deadlines more time to comply with those requirements. As stated by Congressman Paul Rogers in discussing the 1977 Amendments:

> Section 110(a)(2) of the Act made clear that each source had to meet its emission limits "as expeditiously as practicable" but not later than three years after the approval of a plan. This provision was not changed by the 1977 Amendments. It would be a perversion of clear congressional intent to construe part D to authorize relaxation or delay of emission limits for particular sources. The added time for attainment of the national ambient air quality standards was provided, if necessary, because of the need to tighten emission limits or bring previously uncontrolled sources under control. Delays or relaxation of emission limits were not generally authorized or intended under part D.
>
> (123 Cong. Rec. H 11958, daily ed. November 1, 1977)

To implement Congress' intention that sources remain subject to pre-existing plan requirements, sources cannot be granted variances extending compliance dates beyond attainment dates established prior to the 1977 Amendments. EPA cannot approve such compliance date extensions even though a Section 172 plan revision with a later attainment date has been approved. However, a compliance date extension beyond a pre-existing attainment date may be granted if it will not contribute to a violation of an ambient standard or a PSD increment.[2]

In addition, sources subject to pre-existing plan requirements may be relieved of complying with such requirements only if a Section 172 plan imposes new, more stringent control requirements that are incompatible with controls required to meet the pre-existing regulations. Decisions on the incompatibility of requirements will be made on a case-by-case basis.

[2] See General Preamble for Proposed Rulemaking, 44 FR 20373–74 (April 4, 1979).

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

This Notice of final rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended.

Dated: January 17, 1980.

Douglas M. Costle,

Administrator.

Subpart E—Arkansas

1. In Section 52.170, paragraph (c) subparagraphs (7) and (8) are added as follows:

§ 52.170 Identification of plan.

* * * * *

(c) * * *

(7) On April 4, 1979, the Governor submitted the nonattainment area plan for the area designated nonattainment as of March 3, 1978.

(8) On August 14, 1979, the Governor submitted supplemental information clarifying the plan.

§ 52.171 [Amended]

2. Section 52.171 is amended by changing the heading "Photochemical oxidants (hydrocarbon)" to "ozone".

3. Section 52.172 is revised to read as follows:

§ 52.172 Approval status.

With the exceptions set forth in this subpart, the Administrator approves Arkansas' plan for the attainment and maintenance of the national standards under Section 110 of the Clean Air Act. Further, the Administrator finds that the plan satisfies all requirements of Part D of the Clean Air Act, as amended in 1977, except as noted below.

4. A new section, § 52.173 is added. This addition reads as follows:

§ 52.173 Extensions.

(a) The Administrator hereby extends to December 31, 1982, the attainment date for ozone in Pulaski county.

5. A new section, § 52.174 is added. This addition reads as follows:

§ 52.174 Compliance schedules.

(a) Part D Conditional Approval—The Arkansas Plan specific to attainment of the ozone standard in Pulaski county is conditionally approved until the following condition is satisfied:

(1) Regulation 4.5(a) of the "Regulations for the Control of Volatile Organic Compounds" is revised to include a final compliance date adequate to demonstrate attainment as expeditiously as practicable and such revision is submitted to EPA by December 15, 1979.

6. Section 52.176 is revised as follows:

§ 52.176 Attainment dates for national standards.

The following table presents the latest dates by which the national standards are to be attained. These dates reflect the information presented in Arkansas' plan, except where noted.

Air quality control region	Pollutant						
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Ozone
	Primary	Secondary	Primary	Secondary			
Central Arkansas Intrastate:							
a. Pulaski County	*a*	*a*	c	c	c	c	d
b. Remainder of AQCR	*a*	*a*	c	c	c	c	c
Metropolitan Fort Smith Interstate	b	*a*	c	c	c	c	c
Metropolitan Memphis Interstate	*a*	*a*	c	c	c	c	*a*
Monroe (Louisiana)-El Dorado (Arkansas) Interstate	b	*a*	c	c	c	c	c
Northeast Arkansas Intrastate	c	c	c	c	c	c	c
Northwest Arkansas Intrastate	c	c	c	c	c	c	c
Shreveport-Texarkana-Tyler Interstate	b	*a*	c	c	c	c	c

a. July 1975.
b. Air quality levels presently below primary standards.
c. Air quality levels presently below secondary standards.
d. December 31, 1982.

NOTE.—Dates or footnotes which are italicized are prescribed by the Administrator because the plan did not provide a specific date or the date provided was not acceptable.

NOTE.—Sources subject to plan requirements and attainment dates established under Section 110(a)(2)(A) of the Act prior to the 1977 Clean Air Act Amendments remain obligated to comply with those requirements by the earlier deadline. The earlier attainment dates are set out at 40 CFR 52.176 (1978).

7. In § 52.177 paragraphs (a) and (b) are revoked and a new paragraph (a) is added. As revised § 52.177 reads as follows:

§ 52.177 Review of new sources and modifications.

(a) *Part D Conditional Approval*—The Arkansas Plan, specific to attainment of the ozone standard in Pulaski county is conditionally approved until the following condition is satisfied:

(1) The State of Arkansas modify and submit to EPA a definition for lowest achievable emission rate (LAER) consistent with the definition contained in Section 171(3) of the Act by December 15, 1979.

[FR Doc. 80-2625 Filed 1-28-80; 8:45 am]
BILLING CODE 6560-01-M

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40 CFR Parts 52 and 81

[FRL 1400-5]

Air Programs, South Carolina: Approval of Plan Revisions; Redesignation of Rock Hill, S.C. Carbon Monoxide Nonattainment Area

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today announces its approval of portions of the implementation plan revisions which the South Carolina Department of Health and Environmental Control (DHEC), Bureau of Air Quality Control, submitted pursuant to the requirements of Part D of Title I of the Clean Air Act as amended in 1977 (CAA), with regard to nonattainment areas. Full approval is given to the Columbia carbon monoxide plan. Conditional approval is given to the plan to attain the ozone standards in the Charleston and Columbia areas, and York County, and the plans to attain the primary particulate standards in Charleston and Georgetown. Portions of the State's 1979 revisions for the remainder of the State are also given conditional approval, as described in the General Discussion part of this notice. In the July 13, 1979 (44 FR 40901) proposal notice EPA proposed to grant the State until October 16, 1979, to submit corrective changes for all deficiencies noted on page 40903 of that notice, which are also listed in the General Discussion section of this notice. The State submitted supplementary material designed to correct these deficiencies prior to the October 16 deadline. The material is currently under review and will be the subject of another notice of proposed rulemaking. In the July 13 **Federal Register** EPA also proposed to redesignate Rock Hill as unclassifiable for carbon monoxide (CO); EPA today designates Rock Hill, SC as unclassifiable for CO. The specific portions of the South Carolina implementation plan revisions that EPA is taking final action on are described below in detail in the General Discussion.

DATE: These actions are effective January 29, 1980.

ADDRESSES: Copies of the materials submitted by South Carolina and the comments received in response to the proposal notice of July 13, 1979 (44 FR 40901) may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M. Street, SW., Washington, DC 20460.

Environmental Protection Agency Library, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30308.

FOR FURTHER INFORMATION CONTACT: Melvin Russell, Region IV, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30308, 404/881-3286 (FTS 257-3286).

SUPPLEMENTAL INFORMATION:

Background

In the July 13, 1979, **Federal Register** (44 FR 40901) EPA proposed conditional approval of the South Carolina SIP revisions for the following designated nonattainment areas:

Total Suspended Particulate Matter (TSP)

A. That portion of Charleston County within the section of North Charleston just south of the U.S. Army Depot (secondary standard).

B. That portion of Charleston County within the section of Charleston just west of the south end of the U.S. Naval Station (primary standard).

C. That portion of Georgetown County within the southern section of Georgetown (primary standard).

Photochemical Oxidants (Ozone)

A. Charleston area—Charleston and Berkeley Counties.

B. Columbia Area Richland and Lexington Counties.

C. York County.

EPA also proposed complete approval of the SIP revision for that portion of Richland County within the city limits of Columbia for carbon monoxide and proposed redesignation of that portion of York County within the city limits of Rock Hill for carbon monoxide.

Implementation plan revisions under Part D of Title I of the Clean Air Act were developed by the State for all the foregoing areas. These revisions were submitted for EPA's approval on December 20, 1978; corrective material necessary to satisfy the deficiencies on which the conditional approval is based, was submitted on June 13, July 6, August 14, and August 22, 1979 (all prior to the October 16 deadline). As previously indicated, these supplementary submittals will be the subject of another notice of proposed rulemaking.

Receipt of the South Carolina revisions was first announced in the **Federal Register** of February 13, 1979 (44 FR 9424). The South Carolina revisions have been reviewed by EPA in light of the CAA, EPA regulations, and additional guidance materials. The criteria utilized in this review were detailed in the **Federal Register** on April 4, (44 FR 20372), July 2, (44 FR 38583), August 28, (44 FR 50371), September 17, (44 FR 53761), and November 23, 1979 (44 FR 67182) and need not be repeated in detail here.

General Discussion

The notice of proposed approval discussed each of the provisions of section 172(b) of the CAA. This notice discusses the substantive issues addressed in the proposal notice of July 13, 1979, and the public comments which were received as a result of the notice, and responses to comments made on a national basis.

In Charleston, secondary standard violations were recorded in the Ports Authority area (North Charleston south of the U.S. Army Depot). The State reported that the area was impacted by nontraditional dust sources and due to the complexity of the problem, requested an 18-month extension in order to develop the plan for attainment of the secondary standard. In the July 13, 1979 notice, EPA proposed to approve the State's request. Today, EPA is approving the 18-month extension (from January 1, 1979 to July 1, 1980) for South Carolina to submit a plan for attainment of the TSP secondary standard in the Ports Authority area of Charleston.

A second TSP nonattainment area exists in Charleston (west of the south end of the U.S. Naval Station) in the Pittsburg-Meeting Street area. The State has submitted a plan for attainment of the primary standard. The plan requires the control of fugitive emissions at Arco Alloys, the major industry believed to contribute significantly to the

nonattainment problem. Reasonably Available Control Technology is required on all segments of this source's production process and the plan demonstrates attainment by December 31, 1982, EPA is today conditionally approving the plan for attainment of the primary standard at the Pittsburg-Meeting Street Area. The deficiencies which must be corrected are listed later in this notice.

The State has requested an 18-month extension for submittal of the plan to attain the secondary standard in the Pittsburg-Meeting Street area. In the July 13, 1979 notice, EPA proposed to approve this extension and EPA is today approving the 18-month extension (from January 1, 1979 to July 1, 1980) for submittal of the secondary attainment plan.

In the Georgetown nonattainment area, recent monitoring data has shown attainment of the primary ambient standard. Therefore in the plan submitted by the State, emphasis was placed on the new source review program consistent with section 173 for nonattainment areas as being adequate to attain and maintain compliance with the National Ambient Air Quality Standards. EPA proposed to conditionally approve the plan submittal for attainment of the primary standard in the July 13, 1979 **Federal Register** notice. EPA is today conditionally approving the plan submittal based on the deficiencies identified later in this notice being corrected. The State also requested an 18-month extension for submittal of the plan for secondary standards. On July 13, 1979 EPA proposed to approve this extension. Today, EPA is approving the 18-month extension (from January 1, 1979 to July 1, 1980) for submittal of the plan to attain the secondary TSP standard in Georgetown.

In the Rock Hill area, carbon monoxide (CO) violations were recorded. As stated in the July 13, 1979 notice, EPA proposed to redesignate this area to unclassifiable until sufficient data can be gathered to redesignate the area as attainment or nonattainment. Review of the monitoring instrument and the recorded data by EPA Region IV's Air Surveillance Branch and the State revealed the data to be biased high due to the absence of the refrigeration unit attachment necessary for accurate measurement of CO. EPA is today approving the redesignation of the Rock Hill area to unclassifiable. This lifts the growth restrictions of Section 110(a)(2)(I) of the Act, and eliminates the need for a Part D SIP revision, for this area.

Columbia, South Carolina also recorded violations of the CO standard. The plan submitted by South Carolina calculated that a 17% reduction in CO emissions would be needed to meet the CO standard. The State plan indicates that a 24% reduction in emissions will occur through the Federal Motor Vehicle Control Program (which requires automotive vehicle manufacturers to meet progressively tighter emission standards for new vehicles produced each year). This reduction is adequate to demonstrate attainment by the end of December, 1982. In the July 13, 1979 notice EPA proposed approval of this plan as adequate to attain ambient standards as expeditiously as practicable, as required under the Clean Air Act. EPA is thus today approving the plan for attainment of the CO standard in Columbia.

Several areas (Charleston, Columbia and York County) were designated nonattainment for ozone. In Charleston, the State calculated that an 11% reduction in hydrocarbon emissions is needed to meet the ozone standard. Through the Federal Motor Vehicle Control Program (FMVCP) and the adoption of statewide regulations for volatile organic compounds (VOC) emitted from stationary sources, the State projects that a 24% reduction in hydrocarbon emissions will occur, thereby attaining the ozone ambient standard as expeditiously as practicable (before the end of December, 1982). EPA therefore approves this part of the plan.

For Columbia, the State calculated that a 20% reduction on hydrocarbon emissions is needed to meet the ozone standard. A 25% reduction is projected to occur in the area before the end of 1982 due to the FMVCP and statewide VOC regulations. Attainment of the ozone ambient standard is projected before December, 1982, and thus meets the "as expeditiously as practicable" requirement. EPA therefore approves this part of the plan.

York County is a non-urban area and a demostration of attainment of the ozone standard is not required. The State has adopted statewide regulations for the control of VOC emissions. EPA therefore approves the plan for attaining the ozone standard in York County.

As noted in the "General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas", 44 FR 20376 (April, 1979), ozone SIPs, such as South Carolina's, must include RACT requirements for VOC sources covered by CTGs EPA issued by January, 1978. The General Preamble also required such SIPs to contain schedules to adopt and submit by each future January additional requirements for sources covered by CTGs issued by the previous January. The submittal date for the first set of additional RACT requirements was revised from January 1, 1980, to July 1, 1980, by Federal Register notice of August 28, 1979 (44 FR 50371). Today's approval of the ozone portion of the South Carolina plan is contingent on the submittal of these additional RACT regulations by July 1, 1980 (for CTGs published between January beginning January, 1979). Also, by each subsequent January beginning January 1, 1981, RACT regulations for CTGs published by the preceding January must be included in the plan. The above requirements are set forth in the "Approval Status" section of this final rule. If the RACT requirements are not adopted and submitted to EPA according to the time frame set forth in the rule, EPA will issue a notice of deficiency and take other appropriate remedial actions.

As noted in the July 13, 1979 notice EPA proposed to conditionally approve the plan submitted for attainment of the ozone standard in the remainder of the State. Today, EPA is conditionally approving that part of the submitted plan, provided the deficiencies described below are corrected. All portions of the ozone, CO, and particulate control strategies submitted represent reasonable further progress toward attainment of the ambient standards.

Deficiencies in this part of the SIP submission concerning section 172(b) are:

(a) Particulate matter control strategy.

(1) The control strategies submitted pursuant to Part D of Title I for the Charleston and Georgetown TSP nonattainment areas are approved on condition that material submitted by the State prior to October 16, 1979 has resolved the following deficiencies:

i. Legal authority for implementing the schedules for requiring permit conditions reflecting reasonably available control technology for TSP is not included in the SIP. To ensure the application of RACT to industrial fugitive emissions, the RACT schedule should be supported by emissions limitations included as part of permit conditions, or other enforceable conditions that ensure RACT.

ii. The SIP does not clearly differentiate between allowable and actual emissions in the control strategy development and demonstration of attainment for TSP.

iii. Special provisions for soot blowing in State Regulation 62.5, Standard No. 1, Section I are not approvable. Violations of emissions limits due to soot blowing must be recorded as violations, and the

industries must be required to maintain a log of such activities and report same to the State.

iv. In the TSP demonstration of attainment for Charleston and Georgetown, the area modeled should be expanded in order to better represent actual air quality in the nonattainment areas.

v. State regulation 62.6 should clearly differentiate between fugitive dust and fugitive emissions so that the regulations can be interpreted and enforced with the necessary understanding.

(b) Photochemical oxidants (ozone) control strategy.

(1) Volatile Organic Compound (VOC) Regulations

i. The State's volatile organic compound (VOC) regulations must be altered to change the minimum capacity of petroleum liquid storage tanks regulated in Section II, Part B, to 40,000 gallons.

ii. The definition of VOC should include wording which ensures that where there is an issue as to what substances come under control, the test procedures would supersede the definition in the State's regulation.

iii. The State's VOC Regulation 62.5 Standard #5, Section I, Part F must be altered so that EPA approval will be required prior to any relaxation of emission limitations.

(c) Emissions offset policy.

The definition of "lowest achievable emission rate" (LAER) should be altered so that it is at least as stringent as the definition of LAER contained in Section 171(3) of the Clean Air Act Amendments of 1977.

(d) Economic, energy, and social effects of Part D revisions.

(1) The State must submit to EPA an analysis of the economic, energy, and social effects of the SIP revisions.

(2) The State must submit a summary of public comment received regarding air quality, health, welfare, economic, energy or social effects of the SIP revisions.

In the July 13, 1979 notice, EPA listed the absence of visible emission regulations on process sources as a deficiency. At the present time, EPA cannot require that the State adopt such regulations and the State has chosen not to, but EPA will continue to encourage the State to adopt a visible emissions regulation as an integral part of its particulate control program. The July 13, 1979 notice also listed that a continuity problem may exist with certain regulations. This problem was resolved without the State making further changes to their SIP revision. The SIP revisions, although conditionally approved are in addition to, and not in lieu of, existing SIP regulations. The present emission control regulations remain applicable and enforceable to prevent a source from operating without controls or under less stringent controls, while moving toward compliance with the new regulations (or, if it chooses, challenging the new regulations). Failure of a source to meet applicable pre-existing regulations will result in appropriate enforcement action, which may include assessment of noncompliance penalties. There are two main exceptions to this rule. First, if a pre-existing control requirement is incompatible with a new, more stringent requirement, the State may exempt sources from compliance with the pre-existing regulations during the period when compliance with the existing requirement conflicts with achieving compliance with the new requirement. Any exemption granted would be reviewed and acted on by EPA as a SIP revision. Second, an existing requirement can be relaxed or revoked if the revision will not interfere with attainment or maintenance of standards.

Another area addressed in the proposal notice was startup and shutdown. It is recommended that the violations resulting from startup and shutdown be reported. The State's Regulation 62.5, Standard No. 5, Section I does require the industry to maintain records of startup and shutdown activities, and make these records available to State authorities, upon their request. Therefore, EPA is removing this item as a deficiency in the SIP submittal.

Conditional Approval

EPA is taking final action to conditionally approve certain elements of South Carolina's plan. A discussion of conditional approval and its practical effect appears in a supplement to the General Preamble, 44 FR 38583 (July 2, 1979). The conditional approval requires the State to have submitted additional materials by the deadline (October 16, 1979) specified in today's notice. There will be no extensions of the conditional approval deadline which is being promulgated today. EPA will follow the procedures described below when determining if the State has satisfied the conditions.

1. Since the State has submitted the required additional documentation according to schedule, with this notice EPA announces receipt of the material. This notice of receipt also announces that the conditional approval is continued pending EPA's final action on the submission.

2. EPA is evaluating the State's submission to determine if the condition is fully met. After review is complete, a **Federal Register** notice will be published proposing or taking final action either to find the condition has been met and approve the plan, or to find the condition has not been met, withdraw the conditional approval and disapprove the plan. If the plan is disapproved the Section 110(a)(2)(I) restrictions on construction will be in effect.

Public Comments

EPA received no public comments on the specific South Carolina proposal notice (July 13, 1979, 44 FR 40901). The only comments received were those which were requested by the commenters to be applied to all State SIP submissions. The response to these comments for States in EPA Region IV may be reviewed in the November 26, 1979 issue of the **Federal Register** starting at page 67375.

Attainment Dates

The 1978 edition of 40 CFR 52.2128 lists the applicable South Carolina deadlines for attaining ambient standards (attainment dates) required by Section 110(a)(2)(A) of the Act. For each nonattainment area where a revised plan provides for attainment by the deadlines required by Section 172(a) of the Act, the new deadlines are substituted in the South Carolina attainment date table. The earlier attainment dates under Section 110(a)(2)(A) are referenced in a footnote to the table. Sources subject to plan requirements and deadlines established under Section 110(a)(2)(A) prior to the 1977 Amendments remain obligated to comply with those requirements, as well as with the new Section 172 plan requirements.

Congress established new attainment dates under Section 172(a) to provide additional time for previously regulated sources to comply with new, more stringent requirements and to permit previously uncontrolled sources to comply with newly applicable emission limitations. These new deadlines were not intended to give sources that failed to comply with pre-1977 plan requirements by the earlier deadlines more time to comply with those requirements. As stated by Congressman Paul Rogers in discussing the 1977 Amendments:

> Section 110(a)(2) of the Act made clear that each source had to meet its emission limits "as expeditiously as practicable" but not later than three years after the approval of a plan. This provision was not changed by the 1977 Amendments. It would be a perversion of clear congressional intent to construe part D to authorize relaxation or delay of emission limits for particular sources. The added time for attainment of the national ambient air

quality standards was provided, if necessary, because of the need to tighten emission limits or bring previously uncontrolled sources under control. Delays or relaxation of emission limits were not generally authorized or intended under part D.

(123 Cong. Rec. H 11958, daily ed. November 1, 1977)

To implement Congress' intention that souces remain subject to pre-existing plan requirements, sources cannot be granted variances extending compliance dates beyond attainment dates established prior to the 1977 Amendments. EPA cannot approve such compliance date extensions even though a Section 172 plan revision with a later attainment date has been approved. However, a compliance date extension beyond a pre-existing attainment date may be granted if it will not contribute to a violation of an ambient standard or a PSD increment.

In addition, sources subject to pre-existing plan requirements may be relieved of complying with such requirements if a Section 172 plan imposes new, more stringent control requirements that are incompatible with controls required to meet the pre-existing regulations. Decisions on the incompatibility of requirements will be made on a case-by-case basis.

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

Finally, good cause exists for making this notice immediately effective, because this will remove the CAA Sections 110(a)(2)(I) and 176 restrictions on construction and grants as soon as possible.

(Section 110 and 172 of the Clean Air Act (42 U.S.C. 7410 and 7502))

Dated: Janaury 22, 1980.

Douglas M. Costle,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart PP—South Carolina

1. In § 52.2120, paragraph (c) is amended by adding subparagraph (11) as follows:

§ 52.2120 Identification of plan.

* * * * *

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

* * * * *

(11) 1979 implementation plan revision for nonattainment areas, submitted on December 20, 1978, by the South Carolina Department of Health and Environmental Control.

2. Section 52.2122 is revised to read as follows:

§ 52.2122 Approval status.

With the exceptions set forth in this subpart, the Administrator approves South Carolina's plans for the attainment and maintenance of the national standards under § 110 of the Clean Air Act. Furthermore the Administrator finds the plans satisfy all requirements of Part D, Title I, of the Clean Air Act as amended in 1977, except as noted elsewhere in this subpart.

In addition, continued satisfaction of the requirements of Part D for the ozone portion of the SIP depends on the adoption and submittal of RACT requirements by July 1, 1980 for the sources covered by CTGs issued between January 1978 and January 1979 and adoption and submittal by each subsequent January of additional RACT requirements for sources covered by CTGs issued by the previous January.

3. A new § 52.2126 is added as follows:

§ 52.2126 Part D Conditional approvals.

(a) Particulate matter control strategy.—(1) The control strategies submitted pursuant to Part D of Title I for the Charleston and Georgetown TSP nonattainment areas are approved on condition that material submitted by the State prior to October 16, 1979, resolve the following deficiencies:

(i) Legal authority for enforcing the reasonably available control technology schedules for TSP is not included in the SIP. To ensure the application of RACT to industrial fugitive emissions, the RACT schedule should be supported by emissions limitations included as part of permit conditions, or other enforceable conditions that ensure RACT.

(ii) The SIP does not clearly differentiate between allowable and actual emissions in the control strategy development and demonstration of attainment for TSP.

(iii) Special provisions for soot blowing in State Regulation 62.5, Standard No. 1, Section I are not approvable. Violations of emissions limits due to soot blowing must be recorded as violations, and the industries must be required to maintain a log of such activities and report same to the State.

(iv) In the TSP demonstration of attainment for Charleston and Georgetown, the area modeled should be expanded in order to better represent actual air quality in the nonattainment areas.

(v) State regulation 62.6 should clearly differentiate between fugitive dust and fugitive emissions so that the regulations can be interpreted and enforced with the necessary understanding.

(b) Photochemical oxidants (ozone) control strategy.—(1) Volatile Organic Compound (VOC) Regulations

(i) The State's volatile organic compound (VOC) regulations must be altered to change the minimum capacity of petroleum liquid storage tanks regulated in Section II Part B to 40,000 gallons.

(ii) The definition of VOC should include wording which ensures that were there is an issue as to what substances come under control, the test procedures would supersede the definition in the State's regulation.

(iii) The State's VOC Regulation 62.5 Standard #5, Section I, Part F must be altered so that EPA approval will be required prior to any relaxation of emission limitations.

(c) Emissions offset policy.—The definition of lowest achievable emission rate (LAER) should be altered so that it is as at least as stringent as the definition of LAER contained in S 171(3) of the Clean Air Act Amendments of 1977.

(d) Economic, energy, and social effects of Part D revisions.

(1) The State must submit to EPA an analysis of the economic, energy, and social effects of the SIP revisions.

(2) The State must submit a summary of public comment received regarding air quality, health, welfare, economic, energy or social effects of the SIP revisions.

4. A new § 52.2127 is added as follows:

§ 52.2127 Extensions.

The Administrator hereby extends for 18 months (until July 1, 1980) the statutory timetable for submission of South Carolina's plan for attainment and maintenance of the secondary standards for particulate matter in the Georgetown and Charleston nonattainment areas identified in 81.341 of this chapter.

5. Section 52.2128 is revised as follows:

§ 52.2128 Attainment dates for national standards.

The following table represents the latest dates by which the national standards are to be attained. These dates reflect the information presented in South Carolina's plan.

Air quality control region	TSP		SO_x		NO	CO	O_x
	Primary	Secondary	Primary	Secondary			
Augusta (Georgia)-Aiken (South Carolina) Interstate	c	c	c	c	b	b	b
Metropolitan Charlotte Interstate:							
a. York County nonattainment area	b	b	b	b	b	b	e
b. Rest of AQCR	c	c	c	c	b	b	c
Camden-Sumter Intrastate	c	c	b	b	b	b	b
Charleston Intrastate:							
a. Charleston nonattainment area	e	f	c	d	b	b	e
b. Charleston and Berkeley Counties nonattainment area	c	c	c	d	b	b	e
c. Rest of AQCR	c	c	c	c	b	b	b
Columbia Intrastate:							
a. Columbia city limits nonattainment area	c	c	b	b	b	e	b
b. Columbia nonattainment area-Richland and Lexington Counties	c	c	b	b	b	b	e
c. Rest of AQCR	c	c	b	b	b	b	b
Florence Intrastate	b	b	b	b	b	b	b
Georgetown Intrastate:							
a. Georgetown nonattainment area	e	f	b	b	b	b	b
b. Rest of AQCR	c	c	b	b	b	b	b
Greenville-Spartanburg Intrastate	c	c	b	b	b	b	b
Greenwood Intrastate	b	b	b	b	b	b	b
Savannah (Georgia)-Beaufort (South Carolina) Interstate	c	c	c	c	b	b	b

a. Air quality levels presently below primary standards or area is unclassifiable.
b. Air quality levels presently below secondary standards or area is unclassifiable.
c. July 1975.
d. July 1979.
e. December 31, 1982.
f. 18-month extension.

NOTE.—Sources subject to plan requirements and attainment dates established under § 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with those requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR Part 52 (1978). Nonattainment areas designated under Section 107 of the Clean Air Act are listed in § 81.341 of this Chapter.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Part 81 of Chapter I, Title 40, Code of Federal Regulation is amended as follows:

Subpart C—Section 107 Attainment Status Designations

6. In § 81.341 the attainment status designation table for carbon monoxide (CO) is revised to read as follows:

§ 81.341 South Carolina.

* * * * *

South Carolina—CO

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
That portion of Richland County within city limits of Columbia	X	
Rest of State		X

[FR Doc. 80-2791 Filed 1-28-80; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA. 5762]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA

ACTION: Final rule.

SUMMARY: This rule lists commmunities participating in the National Flood Insurance Program (NFIP). These commmunities have applied to the program and have agreed to enact certain flood plain management measures. The commmunities' participation in the program authorizes the sale of flood insurance to owners of property located in the commmunities listed.

EFFECTIVE DATES: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the commmunities 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, 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, commmunities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the commmunities 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 commmunities 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 commmunities 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 unnecesary.

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
California	San Luis Obispo	Morro Bay, city of	060307B	Dec. 18, 1979, suspension withdrawal.	May 31, 1974 and Dec. 5, 1975.
Do	Los Angeles	Torrance, city of	060165B	do	Aug. 2, 1974 and Dec. 5, 1975.
Florida	Putnam	Crescent City, city of	120408A	do	Dec. 3, 1976.
Indiana	Lake	St. John, town of	180141B	do	Nov. 30, 1973 and April 9, 1976.
Idaho	Latah	Troy, city of	160091B	do	May 10, 1974 and Dec. 26, 1975.
Illinois	Cook	Northfield, village of	170133B	do	Mar. 29, 1974 and Mar. 21, 1975.
Kansas	Shawnee	Rossville, city of	200334B	do	Jan. 9, 1974 and June 4, 1976.
Louisiana	Ouachita	Monroe, city of	220136B	do	Sept. 6, 1974 and Oct. 8, 1976.
Maine	York	Parsonfield, town of	230154B	do	June 28, 1974 and May 17, 1977.
Massachusetts	Middlesex	Waltham, city of	250222B	do	June 28, 1974 and Apr. 15, 1977.
Michigan	Clinton	Dewitt, city of	260631B	do	June 17, 1977, March 8, 1974, and June 17, 1977.
Do	Allegan	Ganges, township of	260005B	do	June 28, 1974 and June 25, 1976.
Minnesota	Itasca	Grand Rapids, city of	270204B	do	Oct. 26, 1973 and June 4, 1976.
Do	Norman	Hendrum, city of	270325B	do	Aug. 9, 1974 and Mar. 26, 1979.
Do	Brown	New Ulm, city of	270036B	do	Nov. 2, 1973 and Apr. 2, 1976.
Missouri	Platte	Unincorporated areas	290475A	do	
New Jersey	Burlington	Maple Shade, township of	340101B	do	Mar. 15, 1974 and Apr. 16, 1976.
Do	Middlesex	Perth Amboy, city of	340272B	do	June 21, 1974 and June 4, 1976.
Do	Morris	Randolph, township of	340358C	do	Feb. 15, 1974.
Do	Middlesex	Spotswood, borough of	340282B	do	July 6, 1973 and Mar. 5, 1976.
Do	Union	Westfield, town of	340478B	do	Dec. 18, 1974 and Jan. 26, 1979.
Pennsylvania	Allegheny	Aspinwall, borough of	420005B	do	Dec. 28, 1973 and May 15, 1979.
Do	Berks	Birdsboro, borough of	420127B	do	Oct. 26, 1973 and Aug. 6, 1976.
Do	Clinton	Chapman, township of	420323B	do	Mar. 1, 1974 and June 10, 1977.
Do	Perry	Duncannon, borough of	420749B	do	July 20, 1973 and Sept. 24, 1976.
Do	Lancaster	Lancaster, township of	420553B	do	July 13, 1973 and Aug. 6, 1976.
Do	Bucks	Newtown, township of	421084B	do	Mar. 10, 1978.
Do	Allegheny	Ross, township of	420979B	do	June 7, 1974 and Oct. 3, 1975.
Do	Wyoming	Tunkhannock, borough of	420917B	do	Sept. 7, 1973 and Feb. 11, 1977.
Do	Perry	Wheatfield, township of	421035B	do	July 26, 1974 and June 18, 1976.
Do	York	Wrightsville, borough of	420943B	do	Sept. 14, 1973 and Jan. 14, 1977.
Washington	Cowlitz	Long View, city of	530034B	do	June 28, 1974 and Dec. 10, 1976.
West Virginia	Berkeley	Martinsburg, city of	540006B	do	June 7, 1974 and June 18, 1976.
Massachusetts	Franklin	Orange, town of	250125A	Dec. 14, 1979, emergency.	May 27, 1977.
Texas	Real	Unincorporated areas	480978	do	
New York	Orange	Greenwood Lake, village of	360616B	Jan. 23, 1974, emergency, June 15, 1979, regular, June 15, 1979, suspended, Dec. 14, 1979, reinstated.	May 3, 1974 and July 23, 1976.
Florida	Putnam	Interlachen, town of	120391A	July 24, 1975, emergency, Dec. 4, 1979, regular, Dec. 4, 1979, suspended, Dec. 14, 1979, reinstated.	Dec. 3, 1976.
Tennessee	Unicoi	Unincorporated areas	470238	Dec. 17 1979, emergency.	Sept. 16, 1977.
Texas	Fort Bend	Meadows Municipal Utility District	481563—New	Dec. 17, 1979, emergency, Dec. 17, 1979, regular.	
Indiana	Crawford	Unincorporated areas	180472	Dec. 18, 1979, emergency.	
Arizona	Pinal	Apache Junction, city of	040120	Dec. 20, 1979, emergency.	Jan. 10, 1975, Feb. 7, 1978 and June 26, 1979.
Pennsylvania	Lackawanna	Greenfield, township of	422456	Dec. 27, 1979, emergency.	Jan. 10, 1975.
Do	Clarion	Ashland, township of	422361	do	Jan. 10, 1975.
New York	Rensselaer	Schaghticoke, village of	361058	do	Dec. 20, 1974.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
California	Orange	San Clemente, city of	060230B	July 9, 1975, emergency, Dec. 4, 1979, regular, Dec. 4, 1979, suspended, Dec. 28, 1979, reinstated.	June 14, 1974 and Nov. 14, 1975.
Pennsylvania	Lehigh	Catasauqua, borough of	420586B	Dec. 3 1971, emergency, Nov. 1, 1979, regular, Nov. 1, 1979, suspended, Dec. 27, 1979, reinstated.	Nov. 30, 1973.
Illinois	Cook	Riverdale, village of	170150B	Jan. 9, 1973, emergency, Sept. 29, 1978, regular, Sept. 29, 1978, suspended, Dec. 31, 1979, reinstated.	June 21, 1974 and June 4, 1976.
Minnesota	Wright	Clearwater, city of	270536B	July 3, 1975, emergency, Nov. 1, 1979, regular, Nov. 1, 1979, suspended, Dec. 31, 1979, reinstated.	Aug. 23, 1974.
North Carolina	Dare	Southern Shores, town of	370430—New	May 13, 1972, regular	
Illinois	Rock Island	Coal Valley, village of	170585C	Sept. 26, 1974, emergency, Dec. 4, 1979, regular, Dec. 4, 1979, suspended, Jan. 7, 1980, reinstated.	Mar. 1, 1974 and Dec. 20, 1974.
Pennsylvania	Cumberland	Monroe, township of	420364B	Feb. 25, 1972, emergency, Dec. 4, 1979, regular, Dec. 4, 1979, suspended, Jan. 7, 1980, reinstated.	Nov. 28, 1973 and Nov. 12, 1976.
Georgia	Douglas	do	130306	Jan. 2, 1980, suspension withdrawn.	Mar. 5, 1976.
Illinois	Lake	Lindenhurst, village of	170379A	do	Mar. 4, 1974 and Feb. 20, 1976.
Do	do	Round Lake Heights, village of	170390A	do	Mar. 29, 1974 and June 18, 1976.
Do	Winnebago	South Beloit, city of	170725A	do	June 7, 1974 and July 9, 1976.
Indiana	Hamilton	Cicero, town of	180320	do	Feb. 1, 1974 and Oct. 21, 1977.
Do	Lake	New Chicago, town of	180140A	do	May 31, 1974 and May 21, 1976.
Kansas	Douglas	Baldwin City, city of	200088A	do	Feb. 15, 1974 and Nov. 7, 1975.
Do	Wyandotte	do	200562A	do	May 6, 1977.
Massachusetts	Hampshire	Granby, town of	250162A	do	Sept. 6, 1974 and Jan. 14, 1977.
Minnesota	Kittson	Hallock, city of	270226A	do	May 17, 1974 and May 14, 1976.
Mississippi	Madison	do	280228	do	Aug. 11, 1978.
Do	Newton	do	280231	do	Sept. 16, 1977.
New Jersey	Essex	Essex Fells, borough of	340575	do	Dec. 3, 1976.
Do	Camden	Runnemede, borough of	340144	do	Dec. 7, 1973 and June 24, 1977.
New York	Westchester	White Plains, city of	360935A	do	Mar. 16, 1973 and July 2, 1976.
North Carolina	Transylvania	do	370230	do	Jan. 20, 1978.
Ohio	Ashland	Ashland, city of	390007A	do	Apr. 12, 1974 and Aug. 6, 1976.
Oklahoma	Sequoyah	Sallisaw, city of	400199	do	Apr. 5, 1976 and June 18, 1976.
Pennsylvania	Delaware	Ridley Park, borough of	420430A	do	July 19, 1974 and June 4, 1976.
West Virginia	Mason	do	540112	do	Apr. 25, 1975.

(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: January 7, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-2638 Filed 1-28-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 64

[Docket No. FEMA 5770]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

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 fifth column of the table.

ADDRESSES: 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, 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. 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
California	Humboldt	Fortuna, city of	060063A	Jan. 3, 1980, emergency	July 19, 1977.
New York	Steuben	Rathbone, town of	360781A	do	Aug. 2, 1974 and Sept. 17, 1976.
North Dakota	Traill	Calendonia, township of	330638—New	do	
Idaho	Elmore	Unincorporated areas	160212A	Jan. 9, 1980, emergency	July 4, 1978.
Mississippi	Issaquena	Mayersville, town of	280329—New	do	
Pennsylvania	Carbon	Lausanne, township of	421454	do	Jan. 3, 1975.
Texas	Llano	Unincorporated areas	481234A	do	Nov. 22, 1977.
Do	Lamar	Reno, city of	481254	do	Aug. 13, 1976.
North Carolina	Northampton	Gaston, town of	370413	do	Dec. 15, 1978.
New York	Livingston	Lima, village of	361457A	Jan. 11, 1980, emergency	Jan. 16, 1976.
Pennsylvania	Susquehanna	Uniondale, borough of	422584	do	Jan. 24, 1975.
Do	KcKena	Wetmore, township of	421861	do	July 25, 1975.
Illinois	Cook	Bellwood, village of	170061B	Feb. 18, 1975, emergency, Dec. 4, 1979, regular, Dec. 4, 1979, suspended, Jan. 11, 1980, reinstated.	June 7, 1974 and Apr. 23, 1976.
North Carolina	Avery	Crossnore, town of	370287	Jan. 14, 1980, emergency	Aug. 5, 1977.
Pennsylvania	Venango	Pinegrove, township of	422538	do	Jan. 24, 1975 and July 6, 1979.
Do	Clarion	Washington, township of	422378	do	Jan. 17, 1975.

(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: January 17, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80–2636 Filed 1–28–80; 8:45 am]

BILLING CODE 6718–03–M

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44 CFR Part 64

[Docket No. FEMA 5772]

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

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 [1]
California	Napa	Unincorporated areas	060205A	Jan. 29, 1971, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Feb. 1, 1980	Feb. 1, 1980.
Idaho	Latah	Kendrick, city of	160089B	Jan. 6, 1976, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Oct. 18, 1974	Do.
Illinois	Du Page	Darien, city of	170750A	Sept. 6, 1974, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Nov. 29, 1974	Do.
Do	Rock Island	Moline, city of	170591B	Mar. 4, 1975, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	May 3, 1975 Sept. 24, 19761	Do.
Do	Peoria	Peoria, city of	170536B	Apr. 10, 1974, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	May 24, 1974 Oct. 10, 1975	Do.
Do	Lake	Third Lake, village of	170392B	Dec. 26, 1975, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Sept. 6, 1974 Mar. 19, 1976	Do.
Indiana	Porter	Chesterton, town of	180201B	Feb. 28, 1975, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Feb. 1, 1974	Do.
Do	Vanderburgh	Unincorporated areas	180256A	June 25, 1971, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Feb. 1, 1980	Do.
Kansas	Pottawatomie	St. Marys, city of	200275B	May 30, 1974, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Dec. 7, 1973 June 18, 1976	Do.
Maine	Oxford	Hiram, town of	230094A	July 30, 1975, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Jan 3, 1973	Do.
Massachusetts	Essex	Lynnfield, town of	250089B	Sept. 6, 1974 emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Sept. 6, 1974 Sept. 3, 1976	Do.
Do	Middlesex	Natick, town of	250207B	Mar. 26, 1975, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	July 26, 1974 April 9, 1976	Do.
Do	Norfolk	Norwood, town of	250248B	July 2, emergency, 1975, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Aug. 16, 1974 June 21, 1977	Do.
Do	Hampden	Springfield, city of	250150B	Feb. 9, 1973, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	July 26, 1974	Do.
Michigan	Allegan	Douglas, village of	260549A	Nov. 30, 1976, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Sept. 26, 1975	Do.
Do	Oakland	Farmington Hills, city of	260172B	Mar. 30, 1973, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Mar. 15, 1974 Aug. 27, 1976	Do.
Do	Allegan	Saugatuck, township of	260009B	Dec. 28, 1973, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	June 28, 1974 July 2, 1976	Do.
Do	....do	Saugatuck, village of	260305C	July 30, 1975, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Dec. 17, 1976	Do.
Minnesota	Wright	Clearwater, city of	270536B	July 30, 1975, emergency, Nov. 1, 1979, regular, Feb. 1, 1979, suspended.	Aug. 23, 1974	Do.
Do	St. Louis	Duluth, city of	270421B	Aug. 16, 1974, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Aug. 16, 1974	Do.
Mississippi	Coahoma	Unincorporated areas	280038A	Aug. 9, 1974, emergency, Feb. 1, 1979, regular, Feb. 1, 1979, suspended.	Oct. 21, 1977	Do.
Montana	Custer	Miles City, city of	300014B	May 29, 1975, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Jan. 23, 1974 Oct. 17, 1975	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]
New Jersey	Essex	Cedar Grove, township of	340180B	Mar. 15, 1974, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Nov. 5, 1976	Do.
North Carolina	Buncombe	Woodfin, town of	370380B	Feb. 18, 1975, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	July 25, 1975 Oct. 17, 1975	Do.
Ohio	Ashtabula	Ashtabula, city of	390011B	May 6, 1975, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Dec. 28, 1973	Do.
Do	....do	Geneva, city of	390013B	Aug. 16, 1974, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Nov. 23, 1974 July 30, 1976	Do.
Do	Lake	Kirtland, city of	390616A	Oct. 27, 1976, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Aug. 8, 1975	Do.
Oregon	Jackson	Talent, city of	410100B	Apr. 7, 1975, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	May 31, 1974 June 27, 1975	Do.
Pennsylvania	Huntingdon	Alexandria, borough of	420481B	June 1, 1973, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Sept. 14, 1973 Oct. 15, 1976	Do.
Do	Beaver	Aliquippa, borough of	420101B	Apr. 15, 1974, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	May 13, 1974 May 28, 1976	Do.
Do	....do	Ambridge, borough of	420102B	Jan. 14, 1975, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Feb. 22, 1974 May 28, 1976	Do.
Do	Washington	Chartiers, township of	422144B	Nov. 20, 1975, emergency, Feb. 20, 1980, regular, Feb. 20, 1980, suspended.	Nov. 1, 1974 July 2, 1976	Do.
Do	Wyoming	Exeter, township of	42091A	Jan. 19, 1973, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Oct. 12, 1973	Do.
Do	Allegheny	Forward, township of	421064B	Sept. 27, 1974, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	July 19, 1974 May 7, 1976	Do.
Do	Beaver	Freedom, borough of	420111C	May 12, 1975, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Feb. 1, 1974 Apr. 30, 1976	Do.
Do	Allegheny	Kilbuck, township of	421073B	Aug. 18, 1975, emergency, Feb. 1, 1980 regular, Feb. 1, 1980, suspended.	Sept. 13, 1974 July 16, 1976	Do.
Do	Lancaster	Marietta, borough of	420558B	July 5, 1973, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Oct. 12, 1973	Do.
Do	Schuylkill	Port Clinton, borough of	420784B	Dec. 15, 1972, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Mar. 9, 1973 Oct. 1, 1976	Do.
Do	Beaver	Rochester, borough of	420116B	Feb. 12, 1975, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Feb. 1, 1974 May 28, 1976	Do.
Do	Bucks	Tullytown, borough of	420206B	Aug. 15, 1974, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Dec. 28, 1973 Oct. 22, 1976	Do.
Do	Beaver	Vanport, township of	421320B	July 2, 1974, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Mar. 22, 1974 Sept. 24, 1976	Do.
South Carolina	Orangeburg	Branchville, town of	450162B	Aug. 4, 1975, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	June 7, 1974 June 18, 1976	Do.
Do	Greenville	Greenville, city of	450091A	Jan. 15, 1974, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	June 28, 1974	Do.
Do	Aiken	North Augusta, city of	450007C	Mar. 12, 1975, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	June 28, 1974 July 2, 1976	Do.
Texas	Rockwall	Heath, city of	480545A	Nov. 11, 1977, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Nov. 19, 1976	Do.
Vermont	Lamille	Stowe, village of	500067B	Aug. 7, 1975, emergency, Feb. 1, 1980, regular, Feb. 1, 1980, suspended.	Aug. 9, 1974 Oct. 22, 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: January 17, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-2637 Filed 1-28-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA 5771]

List of Communities With Special Hazard Areas Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities with areas of special flood, mudslide, or erosion hazards as authorized by the National Flood Insurance Program. The identification of such areas is to provide guidance to communities on the reduction of property losses by the adoption of appropriate flood plain management or other measures to minimize damage. It will enable communities to guide future construction, where practicable, away from locations which are threatened by flood or other hazards.

EFFECTIVE DATES: The effective date shown at the top right of the table or February 28, 1980, whichever is later.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program (202) 426–1460 or Toll Free Line 800–424–8872, Room 5150, 451 Seventh Street SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or federally related financial assistance for acquisition or construction purposes in an identified flood plain area having special flood hazards that is located within any community participating in the National Flood Insurance Program.

One year after the identification of the community as flood prone, the requirement applies to all identified special flood hazard areas within the United States, so that, after that date, no such financial assistance can legally be provided for acquisition and construction in these areas unless the community has entered the program. The prohibition, however, does not apply in respect to conventional mortgage loans by federally regulated, insured, supervised, or approved lending institutions.

This 30 day period does not supersede the statutory requirement that a communty, whether or not participating in the program, be given the opportunity for a period of six months to establish that it is not seriously flood prone or that such flood hazards as may have existed have been corrected by floodworks or other flood control methods. The six months period shall be considered to begin 30 days after the date of publication in the **Federal Register** or the effective date of the Flood Hazard Boundary Map, whichever is later. Similarly, the one year period a community has to enter the program under section 201(d) of the Flood Disaster Protection Act of 1973 shall be considered to begin 30 days after publication in the **Federal Register** or the effective date of the Flood Hazard Boundary Map, whichever is later.

This identification is made in accordance with Part 64 or Title 44 of the Code of Federal Regulations as authorized by the National Flood Insurance Program (42 U.S.C. 4001–4128).

Section 65.3 is amended by adding in alphabetical sequence a new entry to the table:

§ 65.3 List of communities with special hazard areas (FHBM's in effect).

State, county, community name, and number of panels	Community number and suffix	Program and change code	Inland or coastal	Hazard F/M/E	Identification date(s)	Effective date of this map action	Local map repository
Pennsylvania, Sullivan, township of Fox, 0003A only.	422063	E-11, 12, 14	I	F	Dec. 20, 1974	Feb. 1, 1980	Arthur Smith, Chairman, R.D. No. 3, Canton, PA 17724, Phone: (717) 924–3935.
Pennsylvania, Fayette, township of Henry Clay, 0002A and 0004A only.	421628	E-11, 12, 14	I	F	Dec. 6, 1974	Feb. 1, 1980	William E. Myers, Chairman, R.D. No. 1, Box 140, Markleysburg, PA 15454, Phone: (412) 329–5273.
Pennsylvania, Monroe, township of Jackson, 0001A–0003A.	421889	N-11, 12, 14	I	F	Jan. 3, 1975	Feb. 1, 1980	Arthur Korner, Chairman, R.D. No. 3, Stroudsburg, PA 18360, Phone: (717) 629–1938.
Pennsylvania, Bedford, township of Southampton, 0002A–0006A only.	421351	N-11, 12, 14	I	F	Feb. 7, 1975	Feb. 1, 1980	Charles R. Logue, Chairman, R.D. No. 2, Flinstone, MD 21530, Phone: (301) 767–9542.
Mississippi, Tallahatchie, city of Charlestown, 01.	280169B	E-11	I	F	June 7, 1974, June 25, 1976.	Feb. 1, 1980	Morris L. Pritchard, Mayor, Charlestown, MS 38921, (601) 647–5841.
Mississippi, Jasper, town of Heidelberg, 01, 02.	280068B	E-10	I	F	June 28, 1974, Jan. 7, 1977.	Feb. 1, 1980	F. G. Lewis, Town Hall, Heidelberg, MS 39439, (601) 787–3961.
North Carolina, Moore, town of Robbins, 0001.	370166A	E-11, 12	I	F	Nov. 22, 1974	Feb. 1, 1980	Roy Harris, Mayor's Assistant, P.O. Box 296, Robbins, NC 27325, (919) 948–2431.
Georgia, Pierce, city of Blackshear, 0001	130491A	E-5	I	F	Feb. 1, 1980	Feb. 1, 1980	Mr. Toby Schrock, City Superintendent, P.O. Box 268, Blackshear, GA 31516, (912) 449–6678.
Kentucky, Johnson, city of Paintsville, 0001	210127B	E-8, 12	I	F	Mar. 1, 1974, Feb. 13, 1976.	Feb. 1, 1980	James S. Trimble, Mayor, P.O. Box 71, Paintsville, KY 41240, (606) 789–3664.
Tennessee, Marshall, Marshall County, 0001–0007.	470119B	N-8, 11	I	F	Feb. 2, 1979	Feb. 1, 1980	Judge Carvan Norris, Route 3, Lewisburg, TN 37091, (615) 359–1279.
Montana, Petroleum, town of Winnett, 0001A.	300052A	N-11, 12	I	F	Dec. 27, 1974	Feb. 5, 1980	Ms. Lois Poulton, Town Clerk-Treasurer, Box 223, Winnett, MT 59087, (406) 429–5451.
Texas, unincorporated area, Culberson County, 0002A–0006A; 0008A–0011A; 0014A–0023A; 0025A–0044A.	480162A	E-5	I	F	Feb. 5, 1980	Feb. 5, 1980	Honorable John Conoly, County Judge, Culberson County Courthouse, Van Horn, TX 79855, (915) 283–2059.
Tennessee, Weakley, city of Martin, 0001	470202B	E-8, 11	I	F	Mar. 1, 1974, Nov. 19, 1976.	Feb. 8, 1980	Mr. H. B. Brundridge, Mayor, City of Martin, P.O. Box 290, Martin, TN 38237, (901) 587–3126.
Alabama, Russell, city of Phenix City, 0001	010184A	E-11, 12	I	F	Nov. 26, 1976	Feb. 8, 1980	Mr. George H. Chard, City of Phenix City, P.O. Box 1207, Phenix City, AL 36867, (205) 298–7878.

State, county, community name, and number of panels	Community number and suffix	Program and change code	Inland or coastal	Hazard F/M/E	Identification date(s)	Effective date of this map action	Local map repository
Mississippi, Quitman, town of Lambert, 01	280139B	E-11	I	F	June 7, 1974, June 18, 1976.	Feb. 8, 1980	Mr. Robert Phillips, Mayor, Town of Lambert, P.O. Drawer 198, Lambert, MS 38643, (601) 326-8018.
Mississippi, Sharkey, town of Cary, 01	280154B	E-11	I	F	June 14, 1974, June 25, 1976.	Feb. 8, 1980	Mr. Joe Brooks, Mayor, Town Hall, Town of Cary, P.O. Box 69, Cary, MS 39054, (601) 873-6679.
Mississippi, Sharkey, city of Rolling Fork, 01	280155B	E-11	I	F	May 24, 1974, July 23, 1976.	Feb. 8, 1980	Mr. John Pippin, Mayor, City of Rolling Fork, P.O. Box 310, Rolling Fork, MS 39159, (601) 873-2814.
Mississippi, Quitman, city of Marks, 01	280140B	E-11,12	I	F	June 7, 1974, June 18, 1976.	Feb. 8, 1980	Mr. L. J. Vincent, Mayor, City of Marks, 731 Myrtle Street, Marks, MS 38646, (601) 326-3161.
Mississippi, Bolivar, town of Merigold, 01	280019B	E-11, 12	I	F	June 7, 1974, June 18, 1976.	Feb. 8, 1980	Mr. M. L. Yarbrough, Building Inspector, Town of Merigold, Merigold, MS 38759, (601) 748-5211.
Mississippi, Rankin, town of Puckett, 01	280147B	N-11, 12	I	F	Aug. 23, 1974, July 2, 1976.	Feb. 8, 1980	Mr. Byron Forshee, Mayor, Town of Puckett, General Delivery, Puckett, MS 39151, (601) 825-2797.
Mississippi, Bolivar, town of Duncan, 01	280017A	N-11	I	F	Nov. 5, 1976	Feb. 8, 1980	Mr. P. M. Vochit, Mayor, Town of Duncan, Duncan, MS 38740, (601) 395-2341.
Mississippi, Itawamba, town of Mantachie, 01.	280082B	E-11, 12	I	F	June 21, 1974, Aug. 13, 1974.	Feb. 8, 1980	Mr. John Marvin Pierce, Mayor, Town of Mantachie, Mantachie, MS 38855, (601) 282-7267.
Mississippi, Simpson, village of Braxton, 01	280156B	N-8, 11	I	F	July 19, 1974, July 16, 1976.	Feb. 8, 1980	Mr. B. T. McCullough, Mayor, Village of Braxton, Route 1, Braxton, MS 39044, (601) 847-1126.
Pennsylvania, Crawford, township of Conneaut, 0001A-0004A.	422387	N-11, 12, 14	I	F	Jan. 10, 1975	Feb. 8, 1980	Steve Krem, Chairman, Route 2, Linesville, PA 16424, Phone: (814) 587-3933.
Pennsylvania, Pike, township of Westfall, 0001A-0003A.	421970	E-11, 12, 14	I	F	Mar. 21, 1975	Feb. 8, 1980	George O. Campbell, Chairman, 1005 Pennsylvania Avenue, Matamoras, PA 18336, Phone: (717) 421-4580.
Wisconsin, Richland and Vernon, village of Viola, 01.	550460B	E-11, 12, 14	I	F	Dec. 17, 1973, June 4, 1976.	Feb. 8, 1980	Eugene Gaybrysiak, Village President, P.O. Box 38, Viola, WI 54664, Phone: (608) 627-1559.
Arkansas, Izard, Sharp, and Fulton, city of Horseshoe Bend, 0001A-0004A.	050256A	E-8, 11, 12	I	F	July 11, 1975	Feb. 12, 1980	Honorable Freeling Truesdale, Mayor, 704 West Commerce Street, Horseshoe Bend, AR 72512, (501) 670-5113.
Kansas, unincorporated area, Decatur County, 0001A-0012A.	200574A	N-5	I	F	Feb. 12, 1980	Feb. 12, 1980	Mr. Dennis L. Sloan, Chairman, Board of County Commissioners, County of Decatur, P.O. Box 28, Oberlin, KS 67749, (913) 475-2132.
Texas, Willacy, city of Raymondville, 0001B	480666B	E-8, 11, 12, 15	I	F	June 14, 1974	Feb. 12, 1980	Mr. C. M. Crowell, City Secretary, 523 West Hidalgo Avenue, Raymondville, TX 78580, (512) 689-2443.
Illinois, Kane, village of North Aurora, 0001B	170329	E-8, 11, 12, 14	I	F	Mar. 1, 1974, July 9, 1976.	Feb. 15, 1980	Hon. Wayne E. Miller, Mayor, 25 East State Street, North Aurora, IL 60542, Phone: (312) 897-8228.
Pennsylvania, Clinton, township of Greene, 0001A-0003A.	421538	E-11, 12, 14	I	F	Nov. 15, 1974	Feb. 15, 1980	Ralph Brungart, Chairman, R.D. No. 1, Loganton, PA 17747, Phone: (717) 725-2355.
Pennsylvania, Beaver, borough of Ohioville, 0001A-0002A.	422324	E-8, 11, 12, 14	I	F	Jan. 24, 1975	Feb. 15, 1980	Hon. John Smyda, President, R.D. No. 1, Industry, PA 15052, Phone: (412) 643-1842.
Pennsylvania, Luzerne, township of Pittston, 0001A only.	421834	E-8, 11, 12, 14	I	F	Jan. 24, 1975	Feb. 15, 1980	Anthony Attardo, Chairman, 421 Broad Street, Pittston, PA 18640, Phone: (717) 654-0161.
Pennsylvania, Mercer, township of Sandy Lake, 0001A only.	421874	E-11, 12, 14	I	F	Dec. 13, 1974	Feb. 15, 1980	Leonard Anderson, Chairman, R.D. No. 2, Stoneboro, PA 16153, Phone: (412) 376-3375.
New Jersey, Sussex, township of Andover, 0001, 0002.	340527B	E-11	I	F	Dec. 20, 1974, July 2, 1976.	Feb. 15, 1980	Mr. Douglas A. MacNamara, Township Administrator, Township of Andover, 134 Newton Sparta Road, Newton, NJ 07860, (201) 383-6611.
Kansas, Franklin, city of Ottawa, 0001B-0002B.	200104B	E-8, 11	I	F	Jan. 9, 1974, Dec. 19, 1975.	Feb.19, 1980	Mr. Robert W. Mills, City Manager, Ottawa City Hall, Ottawa, KS 66067, (913) 242-2190.
Kansas, unincorporated area, Rawlins County, 0001A-0012A.	200279A	N-5	I	F	Feb. 19, 1980	Feb. 19, 1980	Mr. William H. Lewis, Chairman, Board of County Commissioners, Rawlins County Courthouse, Atwood, KS 67730, (913) 626-3351.
Pennsylvania, Warren, township of Conewango, 0001A-0003A.	422117	E-8, 11, 12, 14	I	F	Dec. 27, 1974	Feb. 22, 1980	Mr. Clinton R. Scott, Chairman, 20 North State Street, Warren, PA 16365, Phone: (814) 723-8182.
Pennsylvania, Cumberland, township of Southampton, 0001A, 0003A, 0004A.	421587	E-8, 11, 12, 14	I	F	Dec. 27, 1974	Feb. 22, 1980	Mr. William M. McCulloch, Chairman, R.D. No. 6, Shippensburg, PA 17257, (717) 532-4434.

State, county, community name, and number of panels	Community number and suffix	Program and change code	Inland or coastal	Hazard F/M/E	Identification date(s)	Effective date of this map action	Local map repository
Pennsylvania, Jefferson, township of Warsaw, 0001A–0004A.	422450	E–11, 12, 14	I	F	Jan. 17, 1975	Feb. 22, 1980	Mr. Alvin Beedeaux, Chairman, R.D. No. 1, Reynoldsville, PA 15851, (814) 328–2683.
Pennsylvania, Clinton, township of West Keating, 0001A–0003A.	421542	N–11, 12, 14	I	F	Dec. 6, 1974	Feb. 22, 1980	Mr. Jack Gaines, Chairman, General Delivery, Pottersdale, PA 16871, (814) 263–4229.
New Jersey, Bergen, borough of Paramus, 0001–0003.	340062A	E–12	I	F	Aug. 31, 1973	Feb. 22, 1980	Manu K. Patel, P.E., L.S. Borough Engineer, Jockish Square, Paramus, NJ 07652, (201) 265–2100.
Tennessee, Meigs, town of Decatur, 0001	470134D	E–12	I	F	June 14, 1974, Mar. 11, 1977, Jan. 13, 1978, June 30, 1978.	Feb. 22, 1980	Mr. Wm. Buchanan, Mayor, P.O. Box 83, Decatur, TN 37322.
Mississippi, Perry, town of Beaumont, 0001	280203B	E–11, 12	I	F	June 28, 1974, Jan. 16, 1976.	Feb. 22, 1980	Earl Alexander, Mayor, P.O. Box 489, Beaumont, MS 38827, (601) 454–3381.
Massachusetts, Plymouth, town of Hull, 0001, 0002.	250269A	E–11, 12	I	F	Dec. 10, 1976	Feb. 22, 1980	Mr. Bernard Duffy, Executive Secretary, Board of Selectmen, Municipal Building, Hull, MA 02045, (617) 925–2000.
Alabama, Jefferson, town of West Jefferson, 0001.	010402A	N–5	I	F	Feb. 22, 1980	Feb. 22, 1980	Kenneth E. McCarty, Mayor, Clinton, Route 2, West Jefferson, AL 35130, (205) 325–5142.
Oklahoma, Tulsa and Wagoner, city of Broken Arrow, 0001B–0006B.	400236B	E–8, 11, 12	I	F	Oct. 18, 1977	Feb. 26, 1980	Mr. Jim Whitlock, City Manager, P.O. Box 610, Broken Arrow, OK 74012, (918) 251–5311.
Wyoming, Sweetwater, town of Granger, 0001A.	560095A	N–5	I	F	Feb. 26, 1980	Feb. 26, 1980	Honorable Fred G. Plocher, Mayor, P.O. Box 42, Granger, WY 82934, (307) 875–5556.
Pennsylvania, Snyder, township of Adams, 0001A–0002A.	422031	E–11, 12, 14	I	F	Dec. 13, 1974	Feb. 29, 1980	Frederic B. Bingman, Chairman, R.D. No. 1, Beavertown, PA 17813, Phone: (717) 658–5186.
Pennsylvania, Lackawanna, township of Elmhurst, 0001B.	421752	E–11	I	F	Oct. 18, 1974, Apr. 30, 1976.	Feb. 29, 1980	Phillip Madison, Chairman, R.D. No. 2, Moscow, PA 18444, Phone: (717) 842–2316.
Pennsylvania, Dauphin, township of Jackson, 0002A and 0004A only.	421593	N–11, 12, 14	I	F	Jan. 31, 1975	Feb. 29, 1980	Charles A. Strum, Jr., Chairman, R.D. No. 1, Halifax, PA 17032, Phone: (717) 362–9221.
Pennsylvania, Juniata, township of Tuscorora, 0001A–0004A.	422452	E–11, 12, 14	I	F	Jan. 10, 1975	Feb. 29, 1980	Elton Clark, Chairman, R.D. No. 1, Box 280, East Waterford, PA 17021, Phone: (717) 734–3083.
Pensylvania, Cumberland, township of Upper Mifflin, 0003A and 0004A only.	421589	E–11, 12, 14	I	F	Nov. 15, 1974	Feb. 29, 1980	Junior Singer, Chairman, R.D. No. 2, Newville, PA 17241, Phone: (717) 423–5562.
Mississippi, Quitman, town of Sledge, 01	280141B	E–8, 11	I	F	June, 7, 1974, July 9, 1976.	Feb. 29, 1980	Mr. Luck Wing, Mayor, Town Hall, Town of Sledge, Sledge, MS 38670, (601) 382–7716.

(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: January 17, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80–2635 Filed 1–28–80; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 63, 64

[CC Docket No. 78–96]

Regulatory Policies Concerning the Provision of Domestic Public Message Services by Entities Other Than the Western Union Telegraph Co. and Proposed Amendments; Correction

AGENCY: Federal Communications Commission.

ACTION: Memorandum, opinion and order; correction.

SUMMARY: On January 16, 1980 (45 FR 3037) the FCC published a memorandum, opinion and order concerning the provision of domestic public message services by entities other than the Western Union Telegraph Co. The Appendix attached to that order was incomplete in that some rule changes were either omitted or incorrectly reported. This document shows the complete set of revised rule changes.

EFFECTIVE DATE: March 3, 1980.

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

FOR FURTHER INFORMATION CONTACT: Leonard Sawicki, Common Carrier Bureau, (202) 632–6363.

Released: January 21, 1980.

In the matter of regulatory policies Concerning the provision of Domestic Public Message Services by entities other than the Western Union Telegraph Company and proposed amendment to Parts 63 and 64 of the Commission's

rules, CC Docket No. 78–96, 45 FR 3037, January 16, 1980.

1. A Memorandum Opinion and Order (FCC 79–847) was released in this proceeding on January 7, 1980. The Appendix attached to that order was incomplete in that some rule changes were either omitted or incorrectly reported. In addition to the items listed in that Appendix, § 63.62(c) should have been deleted and amendments to §§ 63.62(f), 63.63(a) and 63.505 should have been included. The attached is a revised Appendix showing the complete set of rule changes.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Revised Appendix

PART 63—EXTENSION OF LINES AND DISCONTINUANCE OF SERVICE BY CARRIERS

1. In § 63.01 paragraph (h)(3) is amended to read as follows:

§ 63.01 Contents of applications.

* * * * *

(h) * * *

(3) The types of classes of toll telephone or telegraph offices to be established;

* * * * *

2. In § 63.60 paragraphs (a)(1), (a)(2), (a)(3) and (c) amended; paragraphs (d) through (h) deleted to read as follows:

§ 63.60 Definitions.

(a) * * *

(1) The closure by a carrier of a telephone exchange rendering interstate or foreign telephone toll service, a public toll station serving a community or part of a community, or a public coast station as defined in §81.3 of this chapter;

(2) The reduction in hours of service by a carrier at a telephone exchange rendering interstate or foreign telephone toll service, at any public toll station (except at a toll station at which the availability of service to the public during any specific hours is subject to the control of the agent or other persons controlling the premises on which such office or toll station is located and is not subject to the control of such carrier), or at a public coast station; the term "reduction in hours of service" does not include a shift in hours which does not result in any reduction in the number of hours of service.

(3) [Reserved]

* * * * *

(c) "Public toll station" means a public telephone station, located in a community, through which a carrier provides service to the public, and which is connected directly to a toll line operated by such carrier.

* * * * *

§ 63.62 [Amended]

3. Section 63.62(c) is deleted.

4. Section 63.62(f) is amended to read as follows:

* * * * *

(f) Any other type of discontinuance, reduction or impairment of telephone service not specifically provided for by other provisions of this part (for contents of application, see § 63.505);

* * * * *

5. Section 63.63(a) is amended to read:

§ 63.63 Emergency discontinuance, reduction or impairment of service.

(a) Application for authority for emergency discontinuance, reduction, or impairment of service shall be made by filing an informal request in quintuplicate as soon as practicable but not later than 15 days in the case of public coast stations; or 65 days in all other cases, after the occurrence of the conditions which have occasioned the discontinuance, reduction, or impairment. The request shall make reference to this section and show the following:

* * * * *

6. In § 63.64 the headnote is amended to read:

§ 63.64 Alternative procedure in certain specified cases involving public coast stations.

* * * * *

7. Section 63.66 headnote and text amended to read as follows:

§ 63.66 Closure of or reduction of hours of service at telephone exchanges at military establishments.

Where a carrier desires to close or reduce hours of service at a telephone exchange located at a military establishment because of the deactivation of such establishment, it may, in lieu of filing formal application, file in quintuplicate an informal request. Such request shall make reference to this section and shall set forth the class of office, address, date of proposed closure or reduction, description of service to remain or be substituted, statement as to any difference in charges to the public, and the reasons for the proposed closure or reduction. Authority for such closure or reduction shall be deemed to have been granted by the Commission, effective as of the 15th day following the date of filing of such request, unless, on or before the 15th day, the Commission shall notify the carrier to the contrary.

§§ 63.67, 63.68, 63.91, 63.502, 63.503, 63.506, 63.507 [Deleted]

8. Sections 63.67, 63.68, 63.91, 63.502, 63.503, 63.506 and 63.507 are deleted.

9. Section 63.90 is amended to read as follows:

§ 63.90 Publication and posting of notices.

(a) Immediately upon the filing of an application or informal request for authority to close or otherwise discontinue the operation, or reduce the hours of service at a telephone exchange (except an exchange located at a military establishment), or a public coast station, the applicant shall post a public notice at least 20 inches by 24 inches, with letters of commensurate size, in a conspicuous place in the exchange or public coast station affected, and also in the window of any such exchange or station having window space fronting on a public street at street level. If a public coast station is not ordinarily accessible to the general public for the purpose of filing or accepting delivery of messages, but an associated public office is provided by the applicant for that purpose, the public notice herein referred to shall be posted in the public office. Such notice shall be posted for at least 14 days and shall contain the following information, as may be applicable:

(1) Date of first posting of notice;

(2) Name of applicant;

(3) A statement that application has been made to the Federal Communications Commission;

(4) Date when application was filed in the Commission;

(5) A description of the discontinuance, reduction, or impairment of service for which authority is sought including the address or other appropriate identification of the exchange or station involved;

(6) If applicant proposes to reduce hours of service, a description of present and proposed hours of service;

(7) A complete description of the substitute service, if any, to be provided if the application is granted.

(8) A statement that any member of the public desiring to protest or support the application may communicate in writing with the Federal Communications Commission, Washington, D.C. 20554, on or before a specified date which shall be 20 days from the date of first posting of the notice.

(b) Immediately upon the filing of an application or informal request of the nature described in paragraph (a) of this section, the applicant shall also cause to be published a notice of not less than 4 column inches in size containing information similar to that specified in paragraph (a), at least once during each of 2 consecutive weeks, in some newspaper of general circulation in the community or part of the community affected.

(c) Immediately upon the filing of an application or informal request or upon the filing of a formal application to close a public toll station (except a toll station located at a military establishment), applicant shall post a public notice at least 11 inches by 17 inches as provided in paragraph (a) of this section or, in lieu thereof, applicant shall cause to be published a newspaper notice as provided in paragraph (b) of this section.

(d) Immediately upon the filing of any application or informal request for authority to discontinue, reduce, or impair service, or any notice of resumption of service under § 63.63(b), the applicant shall give written notice of the filing together with a copy of such application to the State Commission (as defined in section 3(t) of the Communications Act of 1934, as amended) of each State in which any discontinuance, reduction or impairment is proposed.

(e) When the posting, publication, and notification as required in paragraphs (a), (b), (c) and (d) of this section have been completed, applicant shall report such fact to the Commission, stating the name of the newspaper in which publication was made, the name of the Commissions notified, and the dates of posting, publication, and notification.

10. Section 63.505 is not deleted as earlier reported, but the headnote and text are amended to read:

§ 63.505 Contents of applications for any type of discontinuance, reduction, or impairment of telephone service not specifically provided for in this part.

The application shall contain: (a) The name and address of each applicant;

(b) The name, title, and post office address of the officer to whom correspondence concerning the application is to be addressed;

(c) Nature of proposed discontinuance, reduction, or impairment;

(d) Identification of community or part of community involved and date on which applicant desires to make proposed discontinuance, reduction or impairment effective, if for a temporary period only, indicate the approximate period for which authorization is desired;

(e) Proposed new tariff listing, if any, and difference, if any, between present charges to the public and charges for the service to be substituted;

(f) Description of the service area affected including population and general character of business of the community;

(g) Name of any other carrier or carriers providing telephone service to the community;

(h) Statement of the reasons for proposed discontinuance, reduction, or impairment;

(i) Statement of the factors showing that neither present nor future public convenience and necessity would be adversely affected by the granting of the application;

(j) Description of any previous discontinuance, reduction, or impairment of service to the community affected by the application, which has been made by the applicant during the 12 months preceding filing of application, and statement of any present plans for future discontinuance, reduction, or impairment of service to such community;

(k) Description of the service involved, including:

(1) Existing telephone service by the applicant available to the community or part thereof involved;

(2) Telephone service (available from applicant or others) which would remain in the community or part thereof involved in the event the application is granted;

(l) A statement of the number of toll messages sent-paid and received-collect and the revenues from such traffic in connection with the service proposed to be discontinued, reduced, or impaired for each of the past 6 months; and, if the volume of such traffic handled in the area has decreased during recent years, the reasons therefor.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

§§ 64.202—64.298 (Subpart B)—[Repealed]

11. Part 64, Subpart B, of the Rules, "Domestic Telegraph Speed of Service Studies" has been repealed and will be left blank.

[FR Doc. 80-2816 Filed 1-28-80; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 21142]

Private Land Mobile Radio Services; Replacing the Low-Pass Audio Filter Requirements With a Revised Emission Limitation Standard; Correction

AGENCY: Federal Communications Commission.

ACTION. Final rule, correction.

SUMMARY: In order to facilitate the utilization of digital voice modulation in the Police and Fire Radio Services, the Federal Communications Commission amended its rules, allowing the optional removal of the low-pass filtering requirement and revised emission limitation standards for analog and digital transmitters, in the Land and General Mobile Radio Services. The Commission's amended rules were published at 44 FR 70158, December 6, 1979. This document makes necessary corrections because of omissions and inaccuracies which occured in preparation and printing.

EFFECTIVE DATE: January 7, 1980.

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

FOR FUTHER INFORMATION CONTACT: William P. Berges, Rules Division, Private Radio Bureau, (202) 632-6497.

Released: January 23, 1980.

In the matter of amendment of Parts 89, 91, 93 and 95 (General Mobile Radio Service) of the Commission's rules and regulations to replace the low-pass audio filter requirements with a revised emission limitation standard, Docket No. 21142; 44 FR 70158, December 6, 1979.

In the Appendix to the Second Report and Order in this proceeding (FCC 79-756, 44 FR 70158), the following omissions and inaccuracies occurred which are the subject of this errata.

§ 90.209 [Amended]

1. Section 90.209(c) should have been included in the amendment to read as follows:

* * * * *

(c) Except as noted in paragraphs (d), (f) and (g), the mean power of emissions shall be attenuated below the mean output power of the transmitter in accordance with the following schedule:

* * * * *

§ 90.211 [Amended]

2. The amendment to § 90.211(h) should be corrected to read as follows:

* * * * *

(h) Transmitters subject to paragraphs (f) and (g) of § 90.209 will be exempt from the audio low-pass filter requirements of this section provided that transmitters used for digital emissions must be type accepted with the specific equipment that provide the digital modulating signal. The application for type acceptance shall contain such information as may be necessary to demonstrate that the transmitter complies with the emission limitations specified in paragraphs (f) and (g) of § 90.209.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-2788 Filed 1-28-80; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Subpart I—Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act

AGENCY: Office of the Secretary.

ACTION: Final rule.

SUMMARY: The rules of practice published hereafter apply to the conduct of cease and desist proceedings, under section 2 of the Capper-Volstead Act (42 Stat. 388, 7 U.S.C. 292). These rules are adopted after careful consideration of numerous comments filed with the Hearing Clerk following publication of proposed rules of practice in the Federal Register on July 6, 1979.

EFFECTIVE DATE: January 29, 1980.

FOR FURTHER INFORMATION CONTACT: John C. Chernauskas, Office of the General Counsel, U.S. Department of Agriculture, Washington, D.C. 20250; telephone (202) 447-5935.

SUPPLEMENTARY INFORMATION: The background for the rules of practice appears in the proposal published in the Federal Register at 44 FR 39409 (July 6, 1979).

In large measure the comments received did not deal directly with the proposed rules, but rather with the report titled "Undue Price Enhancement by Agricultural Cooperatives." Comments on the report will be given consideration in the development of a unit in the Department of Agriculture with delegated responsibilities under section 2 of the Capper-Volstead Act.

Many helpful comments were also received on the proposed rules of practice, resulting in some modification of the rules.

Under § 1.161, *Definitions*, the reference to the "Director" and the "Capper-Volstead Monitoring Office" have been deleted. The precise nature of the structure and duties of the unit or persons to which the Secretary may delegate Capper-Volstead enforcement responsibilities is still under consideration.

Under default proceedings, § 1.164(c), an addition has been made to provide for the presentation of a *prima facie* case by complainant. This change is consistent with complainant's ultimate burden of proof, and will provide for a more comprehensive record and factual findings in the event of *de novo* review or enforcement.

The sections on Prehearing Conference (§ 1.167) and Powers of the Judge (§ 1.173(d)) have been modified to clarify the important role of the Judge in developing procedures for the orderly presentation of highly complex economic and marketing evidence that may be involved in such proceedings.

The decision process has been modified (§§ 1.169 and 1.170) to provide for the issuance of an initial decision by the Administrative Law Judge which shall be final unless appealed to the Judicial Officer. This procedure is used in Administrative Procedure Act proceedings under the Department's uniform rules and will insure a final thorough review of the issues and facts prior to a possible review by a Court or enforcement at the request of the Secretary.

Several comments objected to the provision permitting limited intervention by persons with a substantial interest in the outcome of the proceeding. Since intervention is limited to briefs and arguments, it is not anticipated that intervention will delay the proceedings or expand the issues. Therefore, no change has been made in this section.

Many comments were concerned with maintaining the confidentiality of sensitive information received by the Department during the investigatory processes. The institution of a formal cease and desist proceeding will almost invariably risk making public certain data gathered during investigation. However, the general provision on motions (§ 1.172) is sufficiently broad to permit a protective order under compelling circumstances, and will allow for consideration of modification of the time for filing an answer, the time and place for hearing, as well as other potential problems raised in various comments to the proposed rules.

In consideration of the foregoing, 7 CFR Part 1 is amended by adding a new Subpart I to read as follows.

Bob Bergland,

Secretary of Agriculture.

January 22, 1980.

PART 1—ADMINISTRATIVE REGULATIONS

Subpart I—Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act

Sec.

Authority.— 42 Stat. 388, 7 U.S.C. 291, 292.

Subpart I—Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act

§ 1.160 Scope and applicability of rules in this part.

The rules of practice in this part shall be applicable to cease and desist proceedings, initiated upon complaint by the Secretary of Agriculture, pursuant to section 2 of the Capper-Volstead Act.

§ 1.161 Definitions.

As used in this part, words in the single form shall be deemed to import the plural, and vice versa, as the case may require. The following terms shall be construed, respectively, to mean:

(a) "Act" means the Capper-Volstead Act, approved February 18, 1922, 42 Stat. 388, 7 U.S.C. 291, 292.

(b) "Complaint" means a formal complaint instituted by the Secretary of Agriculture requiring respondent to show cause why an order should not be made directing it to cease and desist from acts of monopolization or restraint of trade, which result in undue price enhancement.

(c) "Complainant" or "Secretary" means the Secretary of Agriculture, United States Department of Agriculture, or any officer(s) or

employee(s) to whom authority has heretofore been delegated, or whom authority may hereafter he delegated, to act in his stead.

(d) "Respondent" means the cooperative associations, or association, against whom a complaint has been issued.

(e) "Hearing Clerk" means the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250.

(f) "Judge" means any Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 (the Administrative Procedure Act) and assigned to the proceeding involved.

(g) "Judicial Officer" means an official of the United States Department of Agriculture delegated authority by the Secretary, pursuant to the Act of April 4, 1940 (7 U.S.C. 450c–450g) and Reorganization Plan No. 2 of 1953 (5 U.S.G. 1976 ed., Appendix, p. 764), to perform the function involved (7 CFR 2.35), or the Secretary if he exercises the authority so delegated.

(h) "Decision" means: (1) the Judge's decision, and includes (i) findings and conclusions and the reasons or basis therefor on all material issues of fact, law, or discretion, (ii) order, and (iii) rulings on proposed findings, conclusions and order submitted by the parties, and (2) the decision and order by the Judicial Officer upon an appeal of the Judge's decision.

(i) "Hearing" means that part of the proceeding which involves the submission of evidence before the Judge for the record in the proceeding.

(j) "Association" means a cooperative association, a federation of cooperatives, or other association of agricultural producers, as defined in section 1 of the Act.

§ 1.162 Institution of proceedings.

(a) *Filing of Information.* Any person having information that any agricultural association, as defined in the Capper-Volstead Act, is engaged in any practice which monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, may submit such information to the Secretary. Such information shall be in writing and shall contain a complete statement of facts detailing the price enhancement and the practices alleged.

(b) *Consideration of Information.* The Secretary shall consider all information filed under part (a) of this section, and any other information which he may obtain relating to a violation of section 2 of the Act. If the Secretary finds that there is reason to believe that any association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced thereby he shall cause a complaint to be filed, requiring the association to show cause why an order should not be made directing the association to cease and desist from such monopolization or restraint of trade. The complaint shall be filed with the Hearing Clerk, who shall assign to the proceeding a docket number and effect service upon respondent.

§ 1.163 The complaint.

The complaint shall state briefly all allegations of fact which constitute a basis for the proceeding, and shall designate a time and place for the hearing in the matter, which shall be at least 30 days after the service of the complaint upon the respondent.

§ 1.164 Answer.

(a) *Filing and Service.* Within 20 days after service of the complaint, or such other time as may be specified therein, the respondent shall file with the Hearing Clerk, an answer, signed by the respondent or his attorney. The answer shall be served upon the complainant by the Hearing Clerk.

(b) *Contents.* The answer shall clearly admit, deny, or offer an explanation in response to each of the allegations of the complaint, and shall clearly set forth any affirmative defense.

(c) *Default.* Failure to file an answer shall constitute an admission of the allegations in the complaint, and may be the basis for a decision upon the presentation of a *prima facie* case by the complainant.

§ 1.165 Amendments.

Amendments to the complaint may be made prior to the filing of an answer in which case the time for filing the answer shall be extended 20 days or for other time agreed to by the parties. After the answer is filed, amendments to the complaint, or to the answer or other pleading, may be made by agreement of the parties or allowed at the discretion of the Judge. In case of an amendment which significantly changes the issues, the hearing shall, on the request of a party, be postponed or adjourned for a reasonable period, if the Judge determines that such action is necessary to avoid prejudice to the party.

§ 1.66 Consent order.

At any time, complainant and respondent may agree to the entry of a consent order. Such order shall be entered by the Judge (prior to a decision) or the Judicial Officer (after a decision by the Judge), and become effective on the date specified therein.

§ 1.167. Prehearing conference.

Upon motion of a party or upon the Judge's own motion, the Judge may direct the parties to attend a prehearing conference when the Judge finds the proceeding would be expedited by prehearing discussions on matters of procedure and/or possible stipulations, for the purpose of (a) simplifying the issues, (b) limitation of expert or other witnesses, (c) orderly presentation of complex evidence, and (d) such other matters as may expedite and aid in the disposition of the proceeding.

§ 1.168. Procedure for hearing.

(a) *Time and Place.* The oral hearing shall be held at such time and place as specified in the complaint, and not less than 30 days after service thereof. The time and place of the hearing may be changed for good cause, by the Judge, upon motion of either complainant or respondent.

(b) *Appearances.* The parties may appear in person or by counsel or by other representative. Persons who appear as counsel or in a representative capacity must conform to the standards of ethical conduct required of practitioners before the courts of the United States.

(c) *Order of Proceeding.* Except as otherwise may be agreed by the parties and approved by the Judge, the complainant shall proceed first at the hearing.

(d) *Failure to Appear.* If respondent, after being duly notified, fails to appear at the hearing, and no good cause for such failure is established, complainant shall present a *prime facie* case on the matters denied in the answer.

(e) *Evidence.* (1) The testimony of witnesses at the hearing shall be upon oath or affirmation, reported verbatim, and subject to cross-examination.

Evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely, shall be excluded insofar as practicable.

(2) *Objections.* If a party objects to the admission of any evidence or to the limitation of the scope of any examination or cross-examination, he shall briefly state the grounds of such objections, whereupon an automatic exception will follow if the objection is overruled by the Judge. The ruling of the Judge on any objection shall be part of the transcript.

Only objections made before the Judge may subsequently be relied upon in the proceeding.

(3) *Official Records or Documents.* An official record or document, if admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same, and shall be *prima facie* evidence of the relevant facts stated therein. Such record or document shall be evidenced by an official publication thereof, or by a copy certified by a person having legal authority to make such certification.

(4) *Exhibits.* Unless the Judge finds that the furnishing of multiple copies is impracticable, four copies of each exhibit shall be filed with the Judge unless the Judge finds that a greater or lesser number is desirable. A true copy of an exhibit may be substituted for the original.

(5) *Official Notice.* Official notice shall be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: *Provided,* That the opposing party shall be given adequate opportunity to show that such facts are erroneously noticed.

(6) *Offer of Proof.* Whenever evidence is deleted from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence excluded. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript and record if the Judicial Officer decides that the Judge's ruling in excluding the evidence was erroneous and prejudicial. The Judge shall not allow the insertion of such excluded evidence in toto if the taking of such evidence will consume considerable time at the hearing. In the latter event, if the Judicial Officer decides that the Judge's ruling excluding the evidence was both prejudicial and erroneous, the hearing may be reopened to permit the taking of such evidence.

(7) *Affidavits.* Affidavits may be submitted into evidence, in lieu of witness testimony, only to the extent, and in the manner agreed upon by the parties.

§ 1.169. Post-hearing procedure and decision.

(a) *Corrections to Transcript.* (1) At any time, but not later than the time fixed for filing proposed findings of fact, conclusions and order, or briefs, as the case may be, any party may file a motion proposing corrections to the transcript.

(2) Unless a party files such a motion in the manner prescribed, the transcript shall be presumed, except for obvious typographical errors, to be a true, correct, and complete transcript of the testimony given at the hearing and to contain an accurate description or reference to all exhibits received in evidence and made part of the hearing record.

(3) At any time prior to the filing of the Judge's decision and after consideration of any objections filed as to the transcript, the Judge may issue an order making any corrections in the transcript which the Judge finds are warranted, which corrections shall be entered onto the original transcript by the Hearing Clerk (without obscurring the original text).

(b) *Proposed Findings of Fact, Conclusions, Order and Briefs.* The parties may file with the Hearing Clerk proposed findings of fact, conclusions and orders based solely upon the record and on matters subject to official notice, and briefs in support thereof. The Judge shall announce at the hearing a definite period of time within which these documents may be filed.

(c) *Judge's Decision.* The Judge, within a reasonable time after the termination of the period allowed for the filing of proposed findings of fact, conclusions and order, and briefs in support thereof, shall prepare, upon the basis of the record and matters officially noticed, and shall file with the Hearing Clerk, the Judge's decision, a copy of which shall be served by the Hearing Clerk upon each of the parties. Such decision shall become final and effective without further proceedings 35 days after the date of service thereof upon the respondent, unless there is an appeal to the Judicial Officer by a party to the proceeding pursuant to § 1.170: *Provided,* That no decision shall be final for purposes of a request for Judicial Review, as provided in § 1.175(a) herein, except a final decision of the Judicial Officer on appeal.

§ 1.170 Appeal to the Judicial Officer.

(a) *Filing of Petition.* Within 30 days after receiving service of the Judge's decision, a party who disagrees with the decision, or any part thereof, or any ruling by the Judge or any alleged deprivation of rights, may appeal such decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.167(e)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the petition, and the arguments thereon, shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations or authorities being relied upon in support thereof. A brief may be filed in support of the appeal simultaneously with the petition.

(b) *Response to Appeal Petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of Record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a prehearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral Argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral arguments before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of Argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of Argument; Postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of Argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on Briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the Judicial Officer on Appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of a request for judicial review as provided in § 1.175(a) herein.

§ 1.171 Intervention.

Intervention under these rules shall not be allowed, except that, in the discretion of the Judicial Officer, or the Judge, any person showing a substantial interest in the outcome of the proceeding shall be permitted to participate in oral or written argument pursuant to sections 1.169 and 1.170 herein.

§ 1.172 Motions and requests.

(a) *General.* All motions and requests shall be filed with the Hearing Clerk, and shall be served upon the parties, except those made on record during the oral hearing. The Judge shall rule upon all motions and requests filed or made prior to the filing of the certification of the transcript. Thereafter, the Judicial Officer will rule on any motions or requests.

(b) *Motions Entertained.* Any motion will be entertained except a motion to dismiss on the pleadings. All motions and requests concerning the complaint must be made within the time allowed for filing an answer.

(c) *Contents.* All written motions and requests shall state the particular order, ruling, or action desired and the grounds therefor.

(d) *Response to Motions in Request.* Within ten days after service of any written motion or request, or within such shorter or longer period as may be fixed by the Judge or the Judicial Officer the opposing party may file a response to the motion or request.

(e) *Certification to the Judicial Officer.* The submission or certification of any motion, request, objection, or other question to the Judicial Officer prior to the time when the Judge's certification of the transcript is filed with the Hearing Clerk, shall be made by and in the discretion of the Judge. The Judge may either rule upon or certify the motion, request, objection, or other question to the Judicial Officer, but not both.

§ 1.173 Judges.

(a) *Assignment.* No Judge shall be assigned to serve in any proceeding who (1) has any pecuniary interest in any matter or business involved in the proceeding, (2) is related within the third degree by blood or marriage to any party to the proceeding, or (3) has participated in the investigation preceding the institution of the proceeding or in determination that it should be instituted or in the preparation of the moving paper or in the development of the evidence to be introduced therein.

(b) *Disqualification of Judge.*

(1) Any party to the proceeding may, by motion made to the Judge, request that the Judge disqualify himself and withdraw from the proceeding. Such motion shall set forth with particularity the alleged disqualification. The Judge may then either rule upon or certify the motion to the Judicial Officer, but not both.

(2) A Judge will withdraw from any proceeding in which he deems himself disqualified for any reason.

(c) *Conduct.* At no stage of the proceeding between its institution and the issuance of the final decision shall the Judicial Officer or the Judge discuss *ex parte* the merits of the proceeding with any person who is connected with the proceeding as an advocate or in an investigative capacity, or with any representative of such person: *Provided,* That procedural matters shall not be included within the limitation: and *Provided further,* That the Judicial Officer of Judge may discuss the merits of the case with such a person if all parties to the proceeding, or their representatives, have been given an opportunity to be present. Any memorandum or other communication addressed to the Judicial Officer or a Judge, during the pendency of the proceeding, and relating to the merits thereof, by or on behalf of any party or any interested person, shall be filed with the Hearing Clerk. A copy thereof shall be served upon the parties to the proceeding, and, in the discretion of the Judge or the Judicial Officer, opportunity may be given to file a reply thereto within a specified period.

(d) *Powers.* Subject to review by the Judicial Officer as provided elsewhere in this part, the Judge, in any proceeding assigned to him shall have power to:

(1) Rule upon motions and requests;

(2) Set the time and place of any requested formal pre-hearing conference, adjourn the hearing from time to time, and change the time and place of hearing;

(3) Administer oaths and affirmations;

(4) Examine witnesses and receive relevant evidence;

(5) Admit or exclude evidence;

(6) Hear oral argument on facts or law;

(7) Do all acts and take all measures necessary for the orderly presentation of evidence, maintenance of order, and the efficient conduct of the proceeding.

(e) *Who May Act in the Absence of the Judge.* In case of the absence of the Judge or upon his inability to act, the powers and duties to be performed by him under these Rules of Practice in connection with a proceeding assigned to him may, without abatement of the proceeding, be assigned to any other Judge.

§ 1.174 Filing; service; extensions of time; and computation of time.

(a) *Filing; Number of Copies.* Except as otherwise provided by the Judge or the Secretary, all documents or papers required or authorized by the rules in this part to be filed with the Hearing Clerk shall be filed in quadruplicate: *Provided,* That, where there are parties to the proceeding in addition to complainant and respondent, an additional copy shall be filed for each such additional party. Any document or paper, required or authorized under the rules in this part to be filed with the Hearing Clerk, shall, during the course of an oral hearing, be filed with the Judge.

(b) *Service; Proof of Service.* Copies of all such documents or papers required or authorized by the rules in this part to be filed with the Hearing Clerk, shall be served upon the parties by the Hearing Clerk, or by some other employee of the Department, or by a U.S. Marshal or his Deputy. Service shall be made either (1) by delivering a copy of the document or paper to the individual to be served or

to a member of the partnership to be served, or to the president, secretary, or other executive officer or any director of the corporation or association to be served, or to the attorney or agent of record of such individual, partnership, corporation, organization, or association; or (2) by leaving a copy of the document or paper at the principal office or place of business or residence of such individual, partnership, corporation, organization, or association, or of his or its attorney or agent of record and mailing by regular mail another copy to each person at such address; or (3) by registering or certifying and mailing a copy of the document or paper, addressed to such individual, partnership, corporation, organization, or association, or to his or its attorney or agent of record, at his or its last known residence or principal office or place of business: *Provided,* That if the registered or certified document or paper is returned undelivered because the addressee refused or failed to accept delivery, the document or paper shall be served by remailing it by regular mail. Proof of service hereunder shall be made by the certification of the person who actually made the service: *Provided,* That if the service be made by mail, as outlined in subparagraph (3) of this paragraph proof of service shall be made by the return post office receipt, in the case of registered or certified mail, or by the certificate of the person who mailed the matter by regular mail. The certificate and post office receipt contemplated herein shall be filed with the Hearing Clerk, and the fact of filing thereof shall be noted in the record of the proceeding.

(c) *Extension of Time.* The time for the filing of any document or paper required or authorized under the rules in this part to be filed may be extended by the Judge prior to the filing of the certification of the transcript if there is good reason for the extension. In all instances in which time permits, notice of the request for extension of the time shall be given to the other party with opportunity to submit views concerning the request.

(d) *Effective Date of Filing.* Any document or paper required or authorized under the rules in this part to be filed shall be deemed to be filed at the time when it reaches the Department of Agriculture in Washington, D.C.; or, if authorized to be filed with an officer or employee of the Department at any place outside the District of Columbia, it shall be deemed to be filed at the time when it reaches the office of such officer or employee.

(e) *Computation of Time.* Saturdays, Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided,* That when such time expires on a Saturday, Sunday or Federal holiday, such period shall be extended to include the next following business day.

§ 1.175 Procedure following entry of cease and desist order.

(a) *Request for Judicial Review.* An association subject to a cease and desist order may, within thirty days following the date of the order, request the Secretary to institute proceedings for judicial review of the order. Such request shall, to the extent practicable, identify findings of fact, conclusions of law, and any part of the order which the association claims are in error. The Secretary shall, thereupon, file in the district in the judicial district in which such association has its principal place of business, a certified copy of the order and of all records in the proceeding, including the request of the association, together with a petition asking that the order be affirmed and enforced.

(b) *Enforcement.* If an association subject to a cease and desist order fails or neglects, within thirty days of the date of the order, or at any time thereafter, to obey such order, and has not made a request for judicial review as provided above, the Secretary shall file in the district court in the judicial district in which such association has its principal place of business a certified copy of the order and of all records in the proceeding, together with a petition asking that the order be enforced.

(c) *Notice.* The Secretary shall give notice of the filing of a petition for enforcement or review to the Attorney General, and to the association, by service of a copy of the petition.

This action has been determined exempt from procedures under Executive Order 12044 because it is administrative in nature.

[FR Doc. 80-2922 Filed 1-28-80; 8:45 am]
BILLING CODE 3410-01-M

Agricultural Marketing Service

7 CFR Part 905

[Orange, Grapefruit, Tangerine, and Tangelo Regulation 3, Amdt. 6]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Amendment of Tangerine Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This amendment lowers the minimum diameter (size) requirements for Honey tangerines for domestic shipments from 2 1/16 inches to 2 9/16 inches for the period January 25, 1980, through October 12, 1980. This action recognizes current market demand for smaller sizes of this fruit and is consistent with the size composition of the available crop in the interest of growers and consumers.

EFFECTIVE DATE: January 25, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, (202) 447-5975.

SUPPLEMENTARY INFORMATION: *Findings.* (1) This regulation is issued under marketing agreement and Order No. 905, both as amended (7 CFR Part 905) regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendations of the committee established under the marketing agreement and order, and upon other available information. It is found that the regulation of shipments of Florida Honey tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The minimum size requirements, herein specified, for domestic shipments of Honey tangerines reflect the Department's appraisal of the need for the amendment of the current regulation to permit handling of smaller sizes of the designated fruit based on current supply and demand conditions. Relaxation of the minimum size requirements for Honey tangerines will tend to promote the orderly marketing of this fruit.

The Citrus Administrative Committee, at an open meeting on January 22, 1980, reported there is a good market demand for smaller size Honey tangerines. With the marketing of Dancy variety tangerines and tangelos nearly finished, the Honey tangerines will help fill demand.

(3) 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 amendment is based and the effective date necessary to effectuate the declared policy of the act. Growers, handlers, and other interested persons were given an opportunity to submit information and views on the amendment at an open meeting, and the

amendment relieves restrictions on the handling of Florida Honey tangerines. It is necessary to effectuate the declared purposes of the act to make the regulatory provisions effective as specified, and handliers have been apprised of such provisions and 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, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, Phone: (202) 447–5975.

Accordingly, it is found that the provisions of § 905.303 (Orange, Grapefruit, Tangerine, and Tangelo Regulation 3) (44 FR 59195; 65962; 66774; 69917; 74797), applicable to domestic shipments, should be and are amended by revising Table I, paragraph (a) to read as follows:

§ 905.303 Orange, Grapefruit, Tangerine, and Tangelo Regulation 3.

(a) * * *

Table I

Variety	Regulation period	Minimum grade	Minimum diameter (in.)
(1)	(2)	(3)	(4)
Tangerines: Honey.	Jan. 25, 1980, through Oct. 12, 1980.	Florida No. 1 .	2 2/32

* * * * *

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

Dated: January 24, 1980.

D. S. Kuryloski,

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

[FR Doc. 80-2763 Filed 1-28-80; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1701

Environmental Policies and Procedures; REA Bulletin 20-21:320-21

AGENCY: Rural Electrification Administration.

ACTION: Final rulemaking.

SUMMARY: The Rural Electrification Administration (REA) issuance of revised REA Bulletin 20–21:320–21, Environmental Policies and Procedures, Part One (hereinafter referred to as "Part One"), provides for compliance with the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations, 40 CFR Parts 1500–1508, implementing the procedural provisions of NEPA, as well as implementing compliance with other laws, regulations, Executive Orders, and Secretary's Memoranda regarding environmental protection. This document supplements CEQ regulations to adapt them to the REA program and provides the borrowers a single document to which to refer when dealing with the REA environmental review process.

The Part One of the revised Bulletin replaces the current REA Bulletin 20–21:320–21, National Environmental Policy Act, (last revised on May 20, 1974) except for Exhibits A, B, and C of the current Bulletin. Exhibits A, B, and C will be updated when Part Three of the revised Bulletin is issued. Appendix A to 7 CFR Part 1701 is hereby modified to reflect this revision to REA Bulletin 20–21:320–21.

EFFECTIVE DATE: January 21, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Binder, telephone number 202 447–5755.

SUPPLEMENTARY INFORMATION:

1. Format

REA Bulletin 20–21:320–21 (hereinafter referred to as the "Bulletin") consists of three parts, "Part One" being the only portion which is published herein today in final form. Part One contains REA's procedures to implement and supplement the CEQ regulations. It includes an Appendix which provides a graphic illustration of the REA EIS process.

Part One as published in bulletin form will contain a reprint of the CEQ regulations with REA's implementing or supplemental procedures following the pertinent CEQ section. This format was chosen to give borrowers a single document to which to refer when dealing with the REA environmental review process. Part One of the final Bulletin, in the form described above, is being mailed to all REA and Rural Telephone Bank borrowers. Others may secure a copy in person or by writing the Director, Environmental and Energy Requirements Division.

Because of the general availability of Part One of the final revised Bulletin and CEQ regulations, and in order to

avoid costly duplication in the Federal Register, REA is publishing herein only the text of its implementing procedures. The pertinent CEQ section is identified in brackets immediately above the REA section. Those who do not obtain the final Bulletin from REA may refer to 43 FR 55978 et seq. (November 29, 1978) for the full text of the CEQ regulations.

Part Two of the Bulletin is reserved for related environmental procedures. These procedures will be separately published, as appropriate, as draft and final rulemaking. One set of procedures, implementing the Executive Orders on Floodplains and Wetlands, was proposed in draft August 22, 1978, and will be published as a final rule shortly. Other procedures under preparation involve endangered species and historic preservation.

Part Three of the Bulletin will provide specific guidance to REA borrowers in such areas as preparation of technical support documents which REA may utilize in preparing an EIS and environmental reports which may be used by REA as its environmental assessment. Part Three represents informal guidance only and will not be published as a proposed or final rule. A draft of Part Three will be available upon request. Parts Two and Three will be distributed as they become available.

2. Background

On May 15, 1979, Part One of revised REA Bulletin 20–21:320–21 was proposed in draft form (44 FR 28383 et seq.). REA announced that the period for public review of and comment on the draft version of Part One would extend for sixty days (July 16, 1979). During this period, REA also published notice of and held public hearings on Part One in Denver, Colorado, Little Rock, Arkansas, and Washington, D.C. A total of over twenty parties made oral presentations at the public hearings. During the comment period over forty persons or groups submitted written comments on the draft of Part One. Most of the statements contained specific and detailed suggestions for improving the Bulletin and indicated detailed and thorough review. Comments were received from a broad spectrum of interests including REA borrowers, environmental groups, Federal and state agencies, consultants and consumer groups.

REA carefully reconsidered Part One in light of the hearing testimony and written comments. The REA staff evaluated each of the comments and developed recommendations for responding to them. When after discussion and review, REA determined that the comments raised valid concerns, Part One was altered accordingly. However, when the reasons for supporting language in the draft of Part One were more compelling than those for changing the text, Part One was left unchanged. Staff of the Council of Environmental Quality was provided copies of all written comments and consulted for input as to prospective changes of Part One of the Bulletin and compatibility with the CEQ regulations.

Segment 3 of this Preamble contains REA answers to general comments, responses to issues raised not within the scope of Bulletin 20–21:320–21, and clarification of misunderstandings reflected in certain comments. Segment 4 of the Preamble described section by section the more significant comments received, and how REA responded to them. Readers will note that certain response headings in Segment 4 cite a CEQ regulations section. These headings indicate reviewer comments which questioned REA's lack of Part One procedures to implement the relevant CEQ section. In referring to a section of the CEQ NEPA regulations, the Code of Federal Regulations designation is utilized in the Preamble (e.g. CEQ § 1501.4=40 CFR 1501.4).

Because of the volume and diversity of comments received, REA is unable to address in the Preamble all issues raised. REA staff will be available to discuss such matters with interested persons. It is possible that the final Part One and this Preamble still may leave some old questions unanswered and raise new ones. We are examining use of techniques such as seminars or periodic written guidance for interested parties to foster a smooth transition to operation under the revised Bulletin.

3. General Comments and REA's Reponse

As stated earlier, revised Bulletin 20–21:320–21 will provide for compliance with NEPA, the CEQ regulations and other laws, regulations, Executive Orders, and Secretary's Memoranda regarding environmental protection. However, the Rural Electrification Act, 7 U.S.C. 901 et seq., mandates and REA fully supports provision of electric and telephone service to rural consumers at

a reasonable price. Consequently, REA has endeavored in the revised Bulletin 20–21:320–21 and will continue to strive to develop and implement environmental procedures which are consistent with statutory requirements and yet place no undue cost or delay burdens on our borrowers.

Several hearing presentations and written comments indicated confusion or misunderstanding of the format and content of Part One. A number of parties questioned why the REA Bulletin was silent on a number of sections of the CEQ regulations. Section § 1507.3(a), 40 CFR 1507.3(a), of the CEQ regulations states in pertinent part "[Each agency's] procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures." REA, in revised Bulletin 20–21:320–21, has supplemented the CEQ regulations to make them work functionally in the REA program rather than merely restating them. The CEQ regulations have been incorporated into the new Bulletin and appear in the copies to be distributed. Where REA has not supplemented a particular CEQ section, the reason is that we believe no additional interpretation is necessary. Part One is consistent with the CEQ regulations. No provision is intended to change the letter or spirit of the CEQ regulations, but rather the new language adapts those regulations to the specific details of the REA program.

Quite frequently during the hearings, in discussion with interested parties and in some of the comment statements, persons referred to the "new CEQ guidelines." The new CEQ procedures, 40 CFR Parts 1500–1508 are *regulations* not guidelines. Since the procedures are regulations, they are legally binding on Federal agencies covered by them. Less latitude is available to Federal agencies in interpreting procedures necessary and sufficient for NEPA compliance than under the former CEQ guidelines.

Several commenters expressed grave concern that in many instances Federal agencies are not able to agree among themselves as to which if any of the alternatives provides an acceptable means of satisfying the need identified by the project proponent. REA borrowers feared that urgently needed projects could be stalled indefinitely because Federal agencies could not concur as to the best solution on environmental, economic, social or other grounds. It was recommended that a mechanism be set up to arbitrate these Federal interagency disputes.

REA sympathizes with the protracted delays that borrowers may have experienced in the past due to Federal agency disagreements. The CEQ NEPA regulations address many of the problems that have been responsible for these delays. See for example 40 CFR 1501.5, 40 CFR 1501.6, 40 CFR 1501.7, 40 CFR 1503.2, 40 CFR 1503.3, 40 CFR 1503.4. Beyond these reforms, neither REA nor CEQ has authority to establish the binding arbitration or appellate mechanisms suggested in the comments. REA will continue to work with other affected Federal agencies to insure that disagreements are resolved quickly.

Several parties believed that certain provisions (especially Part One, Subsection IV.C) of the revised Bulletin exempted some categories of projects from NEPA and the CEQ regulations. This interpretation is *wrong*. NEPA and the CEQ regulations apply to all REA proposed actions. However, NEPA and the CEQ regulations (esp. 40 CFR 1501.4, 1508.4, and 1508.9) provide some flexibility as to categories of projects that normally do not constitute major Federal actions which individually or cumulatively have a significant effect on the human environment. For such classifications more streamlined procedures involving less detailed analysis are permissible. However, 40 CFR 1508.4 clearly requires Federal agencies to develop procedures which will identify extraordinary circumstances where categorically excluded actions may require additional environmental review and analysis.

There were many comments concerning the interface between the Federal, state, and local environmental and siting review process. As pointed out by the reviewers, it is possible for state and Federal agencies to reach different conclusions as to the best alternative for meeting an applicant's demonstrated need. Such an interagency conflict might preclude construction of the proposed project. REA, through coordination with and interchange of information among Federal, state, and local agencies, will endeavor to minimize the prospect of such an outcome and mediate disputes. However, it must be recognized that different agencies may interpret the same information in various ways. There is no formal mechanism or body to require consistent conclusions. Some suggested that REA should defer to state and local determinations if such were made in good faith. The opinions of Federal, state, and local agencies are welcomed by REA and will be taken into consideration before reaching a conclusion. However, REA's environmental and other statutory concerns are not identical to those of state and local agencies. It would be inappropriate for REA to abrogate its Federal duty and rely upon satisfactory fulfillment of state and local requirements.

Readers should note that a new Section XXIV has been placed in the final Part One immediately following CEQ regulation, 40 CFR 1506.12. This new language was added to address situations where projects proposed by REA borrowers are partially through the NEPA process at the time Part One becomes effective. Section XXIV of the draft Part One, "*Use of Metric Units,*" has been designated as Section XXV in the final Part One.

As a result of comments received, over half of the original twenty-four sections of the draft have been modified. In addition, all three draft appendices have experienced changes. Appendices B and C of the draft version have been moved and will become Part Three, Exhibits F and G, respectively. Segment 4 of the Preamble describes section by section the more significant comments REA received, and how we responded to them. Where a provision of the revised Bulletin references another section without indicating which Part it is in, the referenced and referencing sections are in the same Part.

4. Specific Comments

Comments on Section II: Mandate—Trivial Violations

Through an inadvertent error in the process of placing the draft of Part One in the **Federal Register**, the language of Section II as presented in the **Federal Register** was incorrect. However, copies of Part One that were distributed to REA borrowers and others requesting copies contained the correct language. The first sentence of the Section that appeared in the **Federal Register** should have been deleted. The Final Part One uses the same language as the draft revised Bulletin that was distributed.

In answer to one comment, it would be exceedingly difficult to describe a representative list of situations to which this provisions would apply. This section's intent is to provide assurance that the overall integrity of REA's NEPA compliance for a specific project will not be fatally flawed due to a minor technical flaw in carrying out the process.

Comments on Section III: Apply NEPA Early in the Process

One of the Federal agencies that commented indicated that greater emphasis should be placed on early Federal, state, and local cooperation. REA has always strived for such early action, and this purpose is reflected in Appendix A to Part One where REA

instructs its borrowers to contact state, local, and other Federal agencies that may have jurisdiction or special expertise as early as is practicable. In parallel with that effort REA would begin establishing communications with those agencies. To reemphasize REA's commitment to early coordination, appropriate language has been added.

Comments on Section IV: Whether To Prepare an EIS—Administration Actions Requiring Environmental Review

This section received more comment and underwent more significant change than any other provision of Part One of the revised Bulletin. Several REA borrowers were concerned that the language of this section might routinely require EIS's for lien accommodations and approvals of the use of general funds. Others suggested that lien accommodations and approvals of the use of general funds be categorically excluded. The general theory supporting this view is that such REA actions involve no additional REA financial assistance but rather only commitment of borrower funds and security. After thorough review of the issue, REA has decided not to exempt lien accommodations or the approval of use of general funds from environmental review. Either of these REA actions permits borrowers to expend funds which would be unavailable for use absent REA approval. Thus REA's action may have an environmental effect.

However, it is not anticipated that the two above categories of REA actions will lead to additional burdens on borrowers. The great preponderance of uses of such actions will have negligible environmental impact, so little background work need be done.

Where lien accommodations or general funds approval are incident to early work for engineering, testing, environmental services, etc. or land purchases for proposals requiring an EIS or Environmental Assessment (EA), 40 CFR 1506.1(d) applies. No environmental document, including a BER, is required for such interim activities so long as Section XVII of Part One is complied with. More discussion of this issue may be found in *"Comments to 40 CFR 1502.20 and 1508.28."* Moreover, while Section IV states that "REA gives consideration to environmental effects of all of its proposed actions," it is not our intent that the required environmental documents place a substantial burden on REA borrowers if no commensurate benefit is likely.

In Paragraph IV.A.1, a few readers suggested raising the 25 megawatt lower limit on electric generating capacity normally requiring an EIS. After review, we have decided that the 25 megawatt limit remains an appropriate figure. Moreover, hydroelectric facilities involving dam construction and over 25 MW capacity have been added to this category. Power generation technologies where over 25 MW capacity often has no significant environmental effect (e.g. combustion turbines), have been placed under Paragraph IV.B.1.

Some reviewers suggested that Paragraphs IV.A.1, IV.A.2 and IV.A.3 be modified by adding "significant" as a modifier of "control." They argued that existing language would trigger an EIS if there is even the slightest amount of control exercisable by an REA borrower. It is not REA's intention that inconsequential borrower power over construction of a project will necessitate an EIS. By use of the words "has control," REA was focusing on REA borrower power, potential or actual, to change the effect of the project on the quality of the human environment. Such control embodies the power to abort the proposal as well as influence in the siting, planning, construction, operation and maintenance of the project. Failure to use such power does not constitute lack of control. Generally, where REA borrowers cumulatively will own more than 33⅓ percent of a project, REA will presume control. The burden will be on the borrower to demonstrate otherwise. To clarify REA's intent, we have added the word "effective" as a modifier of "control" in Paragraphs IV.A.1, IV.A.2, IV.A.3, IV.B.1, and IV.B.4.

One of the three issues most frequently raised involved Paragraph IV.A.2. Most commenters supported the 230 kilovolt lower limit. However, two statements advocated raising the lower limit to 345 kV while other parties wished the level to be lowered or eliminated so that EIS's would normally be prepared for bulk transmission facilities regardless of voltage level. Several organizations suggested removing short lines, regardless of voltage, from EIS requirements.

After balancing the arguments on both sides, REA has decided to retain the lower 230 kV limit subject to two conditions. For transmission facilities 230 kV or greater an EIS will normally be required if the transmission line is more than 25 kilometers (15.53 miles) in length or cumulative substation additions require more than 2 hectares (4.94 acres) of property. The Federal Power Commission (now Federal Energy Regulatory Commission) designated 230 kV as the lower limit for bulk transmission systems under its jurisdiction. Bulk transmission facilities are those which move power throughout regional areas and are most likely to have regional or national effects. In many areas 230 kV and above facilities now form the bulk transmission systems. Furthermore, a strong trend exists in other regions to increase such mass power transportation systems to at least 230 kV. 230 kV and above lines are more likely to be relatively long in length, require more massive support structures and demand more right-of-way than lower voltage facilities. However, relatively short 230 kV and above transmission lines minor substation construction, in REA's experience, do not normally have significant effects on the quality of the human environment. Any cases where significant environmental effects may occur can be readily identified through an Environmental Assessment (EA). Therefore, projects involving minor 230 kV or above facilities have been moved to Subsection IV.B.

In response to comments advocating a lower threshold for categorical exclusions concerning electric transmission lines, REA has reviewed its position on that issue. A substantial number of 69 kV and above transmission lines are of considerable length. While such lines typically have less environmental impact per kilometer of line, as length increases the total effects tend to grow larger. In addition, we recognized that Subsection XXI.C in the draft Part One calls for borrower notices for transmission line or substation construction designed for 69 kV and above. Consequently, proposals for 69 kV and above transmission facilities involving more than 25 kilometers of transmission line or 2 hectares for cumulative substation construction have been moved to the EA classification, Subsection IV.B. It should be noted that Section XXI has been amended to require borrower public notices only where an EA or EIS is prepared, since these are the proposals where the probability for effects on the quality of the human environment is greatest.

Some confusion may have arisen between the provisions of Paragraph IV.A.3 and Subparagraph IV.C.2.g of draft Part One if the facilities are used for fuel extraction. This apparent conflict highlighted the issue that there may be a need to distinguish new mining/drilling operations, expansion of existing mining/drilling operations, purchase of existing mining/drilling operations where operation (mine output) would remain unchanged, and contracts for fuel. In addition, draft Part

One was ambiguous as to situations where an REA borrower or borrowers did not have effective control.

Based on internal REA discussions and consultations with CEQ staff, mining/drilling operations for fuel and fuel contracts are covered in Paragraphs IV.A.3 and IV.B.4 and Subparagraphs IV.C.3.e and IV.C.3.g. Of particular importance is the language added in Subparagraph IV.C.3.g. An EA will be required if an existing facility is in violation of Federal, state or local law. In addition, REA may require the borrower to make a commitment to remedy the violations before REA makes its decision on the request for financial assistance.

REA recognizes that while existing electric generating or mining facilities may comply with all applicable laws, there are instances where practicable measures can be taken to mitigate adverse environmental effects. On the other hand, delay by an REA borrower to purchase existing generating facilities may foreclose its alternative to purchase the facilities and the opportunity to carry out mitigation procedures. Consequently, a two step process will be used for electric generating and mining facilities when operation (output) would remain unchanged. The purchase of the facility itself normally will be a categorical exclusion. However, subsequent to the purchase, REA will prepare an EA addressing practicable mitigation measures.

A minor change was made in Paragraph IV.A.3 by changing "exerts control" to "has . . . control." This alteration was made to assure that instances would be covered where an REA borrower has power to exert control but fails to do so. One commenter pointed out that this paragraph apparently would require an EIS for minor gas and oil production projects. It does apply to such projects, but a finding of no significant impact (FONSI) could be prepared in such instances.

Paragraph IV.B.1 has been amended to address instances where new electric generation technologies are proposed by REA borrowers. REA does not intend this subsection to address relatively minor evolutionary changes or new types of pollution control technology. For example, a new boiler design or method for removing SO_2 would not be covered. This subsection is designed to address basic emerging energy technologies such as biomass, woodchips and central station solar. For such projects, there is little experience with the environmental effects of these facilities. Consequently, it cannot be determined whether an EIS normally should be required. However, because of the lack of operational experience, more detailed analysis is required than is normally found in an environmental assessment and Borrower's Environmental Report (BER). The added language addresses this problem. An Environmental Analysis, Siting Study, and Alternative Evaluation will be required for new technology electric generation proposals exceeding 25 MW.

In the **Federal Register** notice of draft revised Bulletin 20–21:320–21, REA stated that it was considering the establishment of a presumption that total REA borrower participation up to a certain percentage of the project would fall within the categorical exclusion category defined in 40 CFR 1508.4 and not normally require preparation of an EIS or EA. Because of REA's experience with joint participation projects, we initially suggested that the presumption be set between 10 and 50 percent. Public comment was solicited as to whether there should be a presumption and if so, at what percentage figure.

The frequency with which this issue was addressed and the substantial effort devoted to it by commenters, indicated that this was the most controversial of Part One's provisions. Suggestions ranged from permitting categorical exclusions for total REA borrower participation of 49 percent or less to parties who advocated no presumption whatever. Persons advocating no presumption stated that EIS's should be prepared for major projects even if REA borrowers only proposed to own an insignificant share of the project.

After careful review of the conflicting arguments, discussions among REA staff and consultations with CEQ, REA has decided to change the categorization of joint projects (i.e. REA borrower participation with investor-owned or municipal utilities). We still believe that the "control" that REA borrowers may exert over a proposed project is an important test as to whether an EIS is required to carry out the intent and letter of NEPA and the CEQ regulations. This control may take many forms, including need for REA borrower participation to complete the project and REA borrower ability to dictate design, construction and operation of the project. Without such potential control, the project would proceed as planned regardless of REA borrower participation. Consequently, REA borrowers would independently be required to construct a second project (with its consequent environmental effects) or purchase power or transmission rights from the original project. If REA borrowers have no control, it may be impossible for REA to get sufficient data from the project leader to prepare an adequate EIS. There would be no way in which REA could require mitigation measures for such a proposal.

On the other hand, REA does not intend to permit REA borrowers to participate in projects with grievous environmental effects. In such cases, financing assistance will be denied where practicable alternatives exist. Several laws and regulations reflecting environmental concerns such as the Endangered Species Act and the National Historic Preservation Act apply to all Federal actions, not only major Federal actions significantly affecting the quality of the human environment.

After weighing the opposing considerations, REA determined that defining what constitutes control is very difficult and circumstances of individual situations may be pivotal. Consequently, REA has divided joint participation projects into three categories. Where the cumulative participation of all REA borrowers in a project exceeds 33⅓ percent, an EIS will normally be required. Above this limit, REA presumes that its borrowers could exert some control over a project. In cases where REA borrowers cumulatively would own 5 percent or less of a project, the REA action would normally be categorically excluded. Below this upper limit, REA borrower participation is so small that it would be very rare for these borrowers to be able to exert even the most minimal influence over the proposal. Under any criteria, control would be lacking based on REA's experience. In light of 40 CFR 1500.4(p), REA does not intend to create needless paperwork and require extensive studies where our experience indicates that only rare cases will require an EA or EIS. However, to protect against extraordinary circumstances, such REA borrowers will be required to submit a Borrower's Environmental Report (BER). For joint projects where aggregate REA borrower participation lies between 5 and 33⅓ percent, the determination of control and environmental effect becomes much more complex, and individual circumstances easily can influence whether an EIS should be prepared. Therefore, for cumulative REA borrower participation of 33⅓ percent or less but greater than 5 percent, a BER will be submitted and REA will prepare an environmental assessment. Paragraph IV.B.2 presents an illustrative set of factors which may influence borrower control over a project.

Where another Federal agency will require an EIS for a proposed project, Paragraph IV.B.2 will not affect the NEPA process to be followed. Only in the case of proposals where an EIS would not be prepared absent REA involvement, may these joint participation provisions create additional obligations. REA has retained the discretion to consult with CEQ on projects involving more than 5 but 33⅓ or less percent REA borrower participation.

One Federal agency believed that coal washing facilities should be moved from the categorical exclusion to environmental assessment category. While the effects of such facilities are normally local in nature and confined to the owner's property, there was enough merit in the suggestion for it to be adopted.

It was pointed out by two commenters that no formal criteria had been set by REA for placing certain groups of proposals in the categorical exclusion category. New Paragraph IV.C.1 presents the criteria which have been used by REA in declaring certain activities to be categorically excluded. REA has found that the types of activities listed in Paragraph IV.C.3 meet those requirements. These criteria will be used to judge future potential additions to Paragraph IV.C.3.

Paragraph IV.C.3 now contains all the categorically excluded activities listed under Subsection IV.C of the draft of Part One. Paragraph IV.C.2 is intended to clarify when a Borrower's Environmental Report (BER) is required for proposed actions to provide a brief, concise environmental review in order to satisfy other requirements such as the Historic Preservation Act Endangered Species Act, and Executive Orders 11988 and 11990 and to provide a means for identifying "extraordinary circumstances" in which a normally excluded action may have significant environmental effects. A number of reviewers suggested that a single programmatic or periodic (such as annual) BER would reduce paperwork and still meet the requirement. REA cannot agree with this viewpoint. For nonroutine activities BER's are needed to serve not only as the vehicle for compliance with NEPA but also other environmental laws. Compliance with such laws depends greatly on individual project circumstances. We must emphasize that a relatively brief report as outlined in Part Three, Exhibit E will satisfy the BER requirement. REA is continuing to work to streamline the process and reduce unnecessary burdens. Part Two, Exhibit A concerning floodplains and wetlands streamlines borower requirements for large numbers of projects while satisfying Executive Orders 11988 and 11990.

Subparagraph IV.C.3.b has been amended to include all communications facilities involving transmission via line or cable. This addition recognizes the increase use of broadband, fiber optics, and other techniques for information transmission. Subparagraphs IV.C.3.e and IV.C.3.f have experienced minor changes due to comments which expressed concern that language be made more explicit so that certain actions might not be inadvertently left out of the contemplated categories. It is REA's intent that such agreements as wheeling arrangements are covered as categorical exclusions under Subparagraph IV.C.3.f.

Subsection IV.D has been added to address public availability of findings of no significant impact. The draft of Part One was silent as to public availability of findings of no significant impact. The old Bulletin 20–21:320–21 discussed the availability of "negative determinations" (our term equivalent to FONSI) and specified a review period where a FONSI was available to the general public. In conformance with 40 CFR 1501.4(d)(2), REA will delay its final determination whether to prepare an EIS and will defer final action for 30 days after publication of the Federal Register notice where a Subsection IV.A or new technology activity (Paragraph IV.B.1) is involved.

Reviewers and users of Part One of the revised Bulletin should be acutely aware of the fact that Part One, Section IV sets up three groups of actions, each group *normally* requiring a certain set of procedures. The word "normally" was placed in the heading of Section IV.A, IV.B, and IV.C to emphasize that an action follows a certain set of procedures only so long as that action has the nature and magnitude of environmental impact as is normally expected of that type an action. For example, a short electric distribution line may require an EIS if it crosses a Wild and Scenic River, affects a listed historic site and/or modifies critical habitat. Similarly, forty percent participation in an electric generating facility that is nearly completed may not require an EIS.

Comments to Section V: Lead Agencies

A sentence has been added to the end of Subsection V.A reflecting REA's policy that it will volunteer to act as lead agency in the Federal NEPA effort if requested to do so by an REA borrower. This language, however, does not preclude REA from offering to be lead agency where an REA borrower does not so request, nor does it prevent another Federal agency from being named lead agency by the participating agencies. 40 CFR 1501.5 governs where there is a dispute as to whom should be declared lead agency. REA, however, will explore the feasibility of reaching formal agreements with other Federal agencies specifying which agency will act as lead agency under a given set of circumstances. As soon as practicable during the scoping process, REA will endeavor to assure that a lead agency is named. Normally, a lead agency will be designated at or soon after the Federal field investigation.

REA has added Subsection V.B as a result of our belief that Federal activities must be coordinated at an early stage of the NEPA process. Prompt designation of a lead agency is an important element in an effective scoping process and compliance with the letter and spirit of the CEQ regulations.

Subsection V.C has been added at the request of one of the commenting Federal agencies. REA agrees that agencies should actively explore the preparation of a single EIS to cover two or more projects where they are functionally interdependent or in close proximity.

Comments on Section VII: Scoping

A number of reviewers pointed out that, while CEQ regulations require a scoping process, 40 CFR 1501.7 does not require that a scoping *meeting* be held. These parties felt that REA was creating an unnecessary requirement exceeding the efforts mandated by CEQ. Our review of 40 CFR 1501.7 concurs with the commenters that those regulations do not demand that a scoping meeting be held. 40 CFR 1501.7(b)(4) merely states that a Federal agency may hold an early scoping meeting or meetings.

However, after considering the participation and coordination requirements presented in 40 CFR 1501.7(a), REA has determined that a scoping meeting or meetings when augmented by other activities generally provides the best technique to assure adequate input from Federal, state, and local authorities and other interested persons. However (as indicated in the last sentence of the introductory paragraph of Section VII), some variation may be permitted if the REA borrower can present good and substantial reasons for the modified procedures, and these changes are consistent with NEPA and CEQ regulations. In all instances, 40 CFR 1501.7 (especially 1501.7(a)) must be satisfied.

Several persons commented that in Subsection VII.B and elsewhere, REA had imposed an unnecessary and onerous burden on REA borrowers by requiring them to publish notices both as legal notices and as news articles and/or advertisements in newspapers. REA's experience indicates that merely publishing a legal notice may not give sufficient visibility to a project so as to permit timely public input. The legal notice section tends to be read by small specialized segments of the community rather than the general pubic. Consequently, in light of 40 CFR 1501.7, 40 CFR 1506.6 and other portions of the CEQ regulations, REA believes that public awareness of REA borrower proposals will be fostered by also requiring publication of a general news article or paid advertisement in a section of a newspaper read by greater segments of the general public. A number of comments stated that an REA borrower cannot force a newspaper to publish an article on a proposed project. REA agrees with that statement. For that reason, a paid advertisement is a permissible alternative to a news article. A few persons stated that CEQ does not require borrower notices per se. While this is true, REA's review of 40 CFR 1506.6 indicates that borrower notices in local newspapers are a very appropriate means of providing effective public notice and involvement.

One analysis of the draft of Part One suggested that newspaper notices be published for all REA borrower projects, including categorical exclusions. Part One provides for publication of notices for all projects requiring an EIS or an environmental assessment. We believe that extending notice requirements to other project categories will result in increased costs, generate little or no benefit and may be counterproductive. Categorical exclusions constitute projects which normally have no significant environmental impact, and thus little if anything would be gained from public input. Moreover, because of the great number of minor projects proposed by REA borrowers, notices of major proposals might become lost to readers in a mass of minor announcements.

There have been questions as to what constitutes a newspaper of general circulation for purposes of the revised Bulletin. No clear cut answer to this query can be given. In general, such a newspaper is one which has significant readership within the county or counties in which the project is proposed and the county containing the borrower's headquarters. REA recommends that where the local newspaper is of the weekly type, borrowers also place notices in a daily newspaper which is distributed within the pertinent counties.

Paragraph VII.B.3 has been amended to indicate that REA believes it is generally desirable for the borrower to hold its own public meetings and make presentations to civic groups in both the area preferred by the borrower for a proposed project and in the areas where reasonable alternatives are located. Such presentations may provide greater input as to the reasonableness of these alternatives and help assess their viability. In addition the words "as appropriate" have been added as a modifier to "reasonable alternatives." This phrase has been inserted to indicate that REA generally intends to limit the number of public scoping meetings for a single project. These meetings will be conducted in areas near the most promising site alternatives.

Comments on 40 CFR 1501.8: Time Limits

Many REA borrowers felt that REA should include a new section under 40 CFR 1501.8 in which REA commits itself to set time limits for the NEPA process on projects, especially those requiring an EIS. They persuasively argued that time limits are necessary so that borrowers can better plan for system improvements and assure that projects will be completed by the time needed. Some suggested that REA place a general timetable in the Bulletin as guidance.

REA agrees that in many instances timetables are desirable. 40 CFR 1501.8(a) provides that agencies shall set time limits if an applicant requests them and such limits are consistent with NEPA and other essential considerations of national policy. REA supports this philosophy and will provide a time schedule (if REA is lead agency) upon an REA borrower's request after consultation with the borrower and cooperating Federal, state, and local agencies. Generally, a time schedule will be available soon after the interagency meeting and field investigation.

However, we believe it is inappropriate to specify a general timetable in the Bulletin. Each project proposal has unique issues and factors and different Federal-State-local interactions. Any general timetable would have to be so broad to cover the great majority of projects that it would lose meaning as a planning tool. Borrower planning and setting a reasonable timetable at an early stage will be materially aided if the borrower informs REA as early as possible of an impending project proposal. Readers should note that in Appendix A to Part One, an "*" has been placed along each procedural segment where borrower or consultant's activities and level of effort plan a significant part in determining the time involved in that step.

Comments on Section XI: Alternatives Including the Proposed Action

Several commenters sought guidance as to what breadth of alternatives need to be studied to satisfy the requirements of 40 CFR 1502.14. Part Three, Exhibits A, B, and C give guidance as to alternatives that should normally be considered by an REA borrower who contemplates a need for added generating capacity and suggested procedures for analyzing site alternatives. To satisfy additional anticipated transmission needs, Part Three, Exhibits A, B, and D give guidance as to the alternatives to consider as an approach to studying alternative transmission corridors. REA borrowers should not treat the alternatives given in the above exhibits as an exhaustive list. The guidance should be considered in light of the borrower's individual situation and modified accordingly. For alternatives that are clearly unacceptable on environmental, technical or economic grounds, detailed analysis is not required to eliminate them. However, the borrower must at least briefly discuss the reasons for rejecting an option as a reasonable alternative. The early scoping process should aid in identifying alternatives that clearly have "fatal flows" or otherwise are not viable.

Comments on Section XIII: Circulation of the Environmental Impact Statement and Finding of No Significant Impact

One reviewer noted that the language of the second paragraph might be read to mean that the public would have access to all background information to the project. There was conern that this would provide unlimited access to even irrelevant information not used by Federal agencies in making their decisions or by the borrower's or consultant in providing background materials. REA has limited the second paragraph to all pertinent information.

Comments on 40 CFR 1502.20 and 1508.28: Tiering

The subject of tiering was raised in many of the comments. In REA's view, tiering can reflect two different concepts and purposes. Tiering can be used so that a single EIS or environmental assessment can be used to cover an item or issue that repeatedly occurs for

certain types of projects and where the resultant analysis invariably reaches the same conclusion as to environmental effects, economics and technical feasibility. For example, the discussion and analysis of the feasibility and environmental effects of fuel cells is likely to reach a similar conclusion in each EIS. To avoid unnecessary paperwork and delay, a single "programmatic" EIS on the issue can be published, referencing that EIS in future EIS's. The programmatic EIS would be periodically updated. REA strongly supports this concept and intends to pursue it as resources become available.

A second use of tiering is indicated in 40 CFR 1508.28(b). That language suggests that a succession of EIS's might be desirable for a project. REA does not believe that tiering for this purpose provides any benefit for projects typically proposed by REA borrowers. On the contrary, significant and costly delay would result from publication and comment of successive EIS's with negligible improvement in decision-making. The procedure outlined in Part One, Appendix A sufficiently enables REA to focus on the issues that are of particular importance at any given stage of the NEPA process. Environmental concerns will be brought out at an early stage of project planning. Consequently, REA intends that only one draft and final EIS be prepared for any proposed project unless a significant change in the proposal or surrounding conditions occur. Where significant changes occur, supplements will be issued.

Comments on Section XVII: Limitations on Actions During the NEPA Process—Minimal Expenditures Not Affecting the Environment

This provision was one of the major generators of significant comments to Part One of the draft revised Bulletin. The main issue involved definition of the work "minimal." A few reviewers argued that more than 10 percent of the project cost could be expended without compromising REA's objectivity. One the other hand, a couple of comments expressed the view that expending any funds whatever on alternative-specific resources tends to compromise objectivity. They argued in essence that 10 percent of a billion dollar project is 100 million dollars. Therefore, they recommend reducing the percentage figure drastically or not permitting any expenditures (other than for testing) prior to completion of the NEPA process. Balancing all of the arguments, REA has determined to retain section XVII in unchanged form.

Readers should note that the 10 percent figure is conditioned by the word "normally." Expenditures will not be automatically permitted (even to borrowers who can absorb the loss) merely because aggregate spending remains below 10 percent. Conversely, in certain instances, REA may determine that contractual commitments in excesss of 10 percent of the project cost before completion of the NEPA process will not compromise REA's objectivity.

Because of the unique problems faced in the planning and construction of electric generating and transmission projects and the long period between project inception and completion, it would be virtually impossible to construct these facilities without permitting certain expenditures prior to completion of the NEPA process. CEQ recognized this practical dilemma by adding language in 40 CFR 1506.1(d) which permits REA approval of minimal expenditures not affecting the environment, such as purchase options and contracts for long leadtime equipment.

Without purchase or optioning of land or water rights, it may be impossible to develop sufficient data for the EIS. Some states do not permit purchase of water rights for more than one alternative. If land, water, etc. are not reserved in a timely manner that may not be available at the end of the process or available only at exorbitant cost. Without negotiations or contracts for coal, air emissions and solid waste cannot be accurately predicted. Certain long leadtime item, such as boilers, must be contracted for before environmental effects can be accurately predicted. Delay in entering into contracts for long leadtime items will delay construction and operation of electric generating facilities. These delays can rapidly escalate the cost of a project, a burden which must be shouldered by the utility's customers.

Despite these pragmatic reasons for permitting minimal expenditures prior to completion of the NEPA process, REA recognizes he danger that permitting such expenditures, without proper precautionary measures, may lead to a compromise of REA's objectivity. There are two types of items which may require expenditures before completion of the NEPA process. Land, water rights, fuel contracts and similar resources are of the type which can generally be resold by a purchaser so as to recover approximately the purchase price (assuming the resource has been purchased at fair market value). Therefore, normally such expenditures should not compromise REA's objectivity since little of the funds utilized is at risk.

Long leadtime items such as boilers pose a different situation. Contracts for these items typically have a provision for cancellation charges if the project is terminated. Whereas the contractual cost of such items may be large, the cancellation charges are small in the early days of the contract but increase as planning and construction of the equipment proceeds. In other words, the amount at risk for long leadtime equipment increases over time. Thus, the potential danger of lost Federal objectivity due to long leadtime procurement varies according to the date of the contract and the time required for construction and delivery.

REA is committed to an early scoping process as shown in Part One of the Bulletin, especially Appendix A. It is anticipated that long leadtime items normally will not be under contract prior to the public scoping meeting. By that time Federal, state and local government and public input should have identified any major flaws or issues which may make the viability or desirability of an alternative suspect. In this manner, objectivity and substantial consideration of reasonable alternative can be obtained before site specific long leadtime commitments are made.

The 10 percent figure in Paragraph XVII.B.2 represents the percentage for which contractual commitments have been made prior to completion of the NEPA process. A number of reviewers suggested that the appropriate measure should be the amount of funds that the REA borrower would lose (at risk) should the proposal be rejected rather than contractual amounts. Indeed, in the above discussion, we suggested that the amount at risk is an important factor in determining both the loss which a borrower could absorb and whether or not REA's objectivity will be compromised. Unfortunately, the amount at risk is often subject to different interpretations by various parties. It offers a measure which is subject to argument. Consequently, the 10 percent figure will continue to refer to contractual commitments. However, the amount at risk will be an important factor in determining whether the 10 percent assumption will apply. For example, commitments of 12 percent with 1 percent of project cost at risk might be approved prior to completion of the NEPA process, whereas commitments of 8 percent with 7 percent of project cost at risk may be deemed to compromise REA's objectivity. In computing contractual commitments, the contract cost of fuel will be omitted so long as the REA borrower does not purchase mining/drilling facilities. Fuel

contracts normally equal or exceed 10 years in length. The contract cost of 10 years of fuel might easily take a major portion of the 10 percent figure which is aimed chiefly at capital costs of the proposed facility. However, the amount at risk in such fuel contracts will be considered by REA.

For purposes of approving borrower expenditures or granting lien accommodations prior to completion of the NEPA process, REA will be the agency that determines what constitutes minimal expenditures. We trust that other involved Federal agencies will abide by these determinations.

Some commenters suggested that funds expended for environmental studies and reports be excluded from the contractual items being counted under the 10 percent limit. REA cannot agree since many of these studies serve other purposes such as plant design and engineering. In addition, we do not believe including such expenditures will significantly impede the project schedule. The 10 percent figure also includes purchase of real property and water rights.

A number of writers suggested Paragraph XVII.A.1 be amended to permit interim activities so long as there is no "significant" adverse effect on the evironment. Such a change would violate 40 CFR 1506.1(a) (1). Moreover, allowing some adverse effect prior to completion of the NEPA process might affect REA's objectivity. However, 40 CFR 1506.1(a) (1) cannot be read as an absolute. Almost anything a person does has some miniscule effect on the environment. A contract for a boiler will require use of resources.

Similarly, testing work such as biological sampling and taking soil borings has a miniscule effect on the environment. However, this work is necessary to determine what the environmental effects are and whether an alternative is feasible. We must reject a reviewer's proposal that engineering work not be permitted until the NEPA process is finished for that reason. Surveying, engineering and environmental services, testing, acquisition of easements, contracts for long leadtime items, and other similar activities are not normally deemed by REA to have an adverse effect on the environment. So long as activities are limited to those of this or similar nature thay may proceed prior to completion of the NEPA process, provided that Paragraph XVII.B.2 is met.

A few parties asked whether purchase of property for a project would violate 40 CFR 1506.1(a)(2) by limiting the choice of reasonable alternatives. If such property is purchased at near fair market value, there is normally no potential problem. There are little or no funds at risk and thus alternatives remain viable. Often until land is purchased, much of the necessary environmental information cannot be gathered.

Comments on Section XVIII: Elimination of Duplication With State and Local Procedures

A new first paragraph has been added to Section XVIII. Several reviewers pointed out that laws in many states may be in conflict with the procedures provided in revised Bulletin 20–21:320–21. It is not REA's intention to place an applicant in a position where compliance with Federal procedures will violate state law and vice versa. Moreover, we do not desire to cause delay or duplication of effort merely to accomplish strict adherence to our procedures. Therefore, to the extent possible and consistent with NEPA and the CEQ regulations, REA may vary its procedures to make them more compatible with state and local procedures.

Comments on Section XX: Agency Responsibility—Borrowers' and Contractors'

Two relatively minor changes have been made in this section due to comments and concerns raised by some commenters. In Subparagraph XX.A.1.c., the word "direction" has been replaced by "guidance" to more accurately reflect REA's role in preparation of the Environmental Analysis. REA provides guidelines to its borrowers and the consultants (See Exhibits C and D of Part Three) concerning generally what issues need to be addressed and data needs to be provided. As the Environmental Analysis is being prepared and drafts issued, REA staff as well as cooperating agencies provide input to and comment on the adequacy of discussion of various issues and data presented. In some instances such comments may include directions that the Environmental Analysis will be considered inadequate unless certain tests are run or data provided. This role contrasts with that where REA contracts with a third party to prepare the EIS.

In such a case, REA would take an active role in guiding and directing the daily efforts of the contractor and take responsibility for the EIS's adequacy. In contrast, REA may or may not accept the final Environmental Analysis as presenting a complete and accurate description of the alternatives available and their environmental effects.

Several reviewers objected to the REA requirement for a new document called the Alternative Evaluation (AE) (Subparagraphs XX. A.1.b and XX.A.2.b). They argued that such data is already presented in the Environmental Analysis. In their view the AE represents unnecessary paperwork. REA cannot concur. The Environmental Analysis is prepared late in the NEPA process. REA and other Federal agencies must have information available at an early stage indicating that non-site specific alternatives such as different fuels, joint projects, and conservation have been explored and found to be inferior or impractical. Otherwise authorization for substantial detailed site-specific studies and activities may be premature.

REA seeks to avoid needless paperwork and delay. Consequently, Subsection XX.C has been amended by adding an additional sentence. Where a contractor prepares an EIS for REA, no Environmental Analysis is required from the borrower although the borrower may provide information to REA for use in the EIS.

Some confusion has arisen as to Subsection XX.C. An independent contractor will prepare the EIS only if REA and the REA borrower agree to this procedure. However, once the agreement is made, REA alone or with the advice of cooperating agencies shall select the contractor.

Comments on Section XXI: Public Involvement

Some reviewers pointed out that economic and technical comments and issues are inappropriate for public hearings on environmental issues. REA agrees and has deleted language from Subparagraph XXI.A.8.c. However, economic and technical comments may be considered if they have direct relevance to environmental issues.

Subsection XXI.C has been deleted to reflect changes in Section IV. Borrower public notice is not routinely required for categorically excluded activities presented in Subsection IV.C. However, readers should note that other Federal statutes and regulations may require public notice in individual situations where the activity is listed in Subsection IV.C. Executive Order 11988 and 11990 on floodplains and wetlands are examples of two such Federal provisions.

Comments on Section XXIV: Compliance

Questions were raised as to the applicability of the CEQ regulations and this revised Bulletin to projects where the NEPA process is already in progress on the effective dates of those two sets of procedures. In response, REA has

added a new Section XXIV to clarify the requirements for proposals caught in the transition period.

Comments on Section XXV: Miscellaneous Provisions

A few comments were received concerning REA's encouragement for using the metric system. The majority indicated that conversion to metric units was unnecessary, of little use and the cause of confusion. Despite this sentiment, REA has left this provision unchanged.

The United States, through Congressional action, is committed to a long-term program to convert all measurements to the metric system. It is recognized that such a change will cause difficulty and confusion for persons who have used the British system of measurement throughout their lives. For this reason, a gradual conversion strategy has been instituted.

REA recognizes the potential for confusion and has suggested that borrowers place the British system equivalents in parentheses. One commenter suggested this provision be placed in Part Three since compliance is not mandatory. While use of metric units is not a requirement rendering an environmental document or notice inadequate, use of metric units should be given emphasis by borrowers and incorporated where practicable. It is not REA's intent that documents already prepared without metric units be redone.

Comments on Appendix A

Language under A of "Discrete Events" has been amended to reflect the fact that the Power Requirements Study (PRS) may need to be updated during the NEPA process. The length of time required for the NEPA process may cause an existing PRS to become outdated.

One reviewer suggested that at times it may be necessary to option or purchase land or water rights before the agency field investigation to prevent rapid escalation of the property's market price or purchase by another utility. REA recognizes that these outcomes are possible. Appendix A states that normally such purchases are permitted to occur after the agency field investigation. However, Appendix A also permits some variance from the normal sequence of events in individual cases where good cause is shown. If purchase is made before the siting study is complete and the field investigation is held, there is a greater chance that a fatal flaw may be found later than if the purchase is delayed until after the field investigation. For approval of purchases before point D, REA will more strictly scrutinize whether the price was at or near fair market price for non-utility uses.

Some commented that REA should relate the timing of the Appendix A flow chart to other REA required activities incident to a project, such as feasibility studies. Such an overall interaction diagram will be published at a later date for guidance purposes.

Comments on Appendices B and C

At least one reviewer suggested that for projects not normally requiring an EIS, public involvement would be enhanced by providing notice that a BER has been prepared and is available for public review. REA concurs with this observation and has added implementing language. Appendices B and C have moved and will be Part Three, Exhibits F and G respectively. This change will place these items among the guidance material, where they most appropriately belong.

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 for inspection in the Office of the Director, Environmental and Energy Requirements Division, Rural Electrification Administration, Room 3859–S, U.S. Department of Agriculture, Washington, D.C. 20250.

Dated: January 21, 1980.

Robert W. Feragen,

Administrator.

[January 21, 1980, Supersedes 5/20/74]

REA Bulletin 20–21:320–21

Subject: Environmental Policies and Procedures.

Part One

[Editor's note.—The pertinent section of the CEQ Regulations is indicated above the REA provision which implements or supplements it. CEQ regulations are printed in italics.]

§ 1500.1 Purpose.

I. *Purpose*

Besides implementing NEPA and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), this Bulletin also implements REA's compliance with other laws, regulations, and Executive Orders having special relevance to NEPA, including, but not limited to the National Historic Preservation Act (16 U.S.C. § 470); Advisory Council on Historic Preservation Regulations, 36 CFR Part 800; Executive Order 11593, "Protection and Enhancement of the Cultural Environment"; Executive Order 11514, "Protection and Enhancement of Environmental Quality"; Clean Air Act, as amended (42 U.S.C. § 1857 et seq.); Federal Water Pollution Control Act (33 U.S.C. § 1151 et seq.); Wild and Scenic Rivers Act of 1973 (16 U.S.C. § 1271 et seq.) Endangered Species Act of 1973, as amended (16 U.S.C. §§ 1531–1543) and the related Interagency Cooperation Regulations, 50 CFR Part 402; Executive Orders 11900, "Protection of Wetlands," and 11988, "Floodplain Management"; and Secretary's Memorandum No. 1827, Revised, "Statement on Land Use Policy."

Besides the language in the CEQ regulations and in the body of this Bulletin, specific procedures for the protection of floodplains and wetlands can be found in Part Two of this Bulletin. Specific procedures to assist REA compliance with the Historic Preservation Act and associated regulations also will be found in Part Two in the future.

Additional guidance to borrowers on environmental procedures for specific types of projects can be found in Part Three of this Bulletin.

§ 1500.3 Mandate.

II. *Mandate—Trivial Violations*

It is the intent of REA that a trivial violation of this bulletin not give rise to any independent cause of action.

§ 1501.2 Apply NEPA early in the process.

III. *Apply NEPA Early in the Process*

Initial planning efforts and environmental evaluation for power related facilities (*i.e.* power plants, transmission lines, coal or other fuel development) are interrelated and to the extent practicable should take place simultaneously. The borrower should consult with REA at the earliest stages of planning. When REA becomes aware of such borrower proposals, as soon as practicable, REA will coordinate its efforts with those of other Federal, state and local agencies. The normal sequence of borrower and REA actions during the NEPA process can be found in Appendix A to this Part One of Bulletin 20–21:320–21.

§ 1501.4 Whether to prepare an environmental impact statement.

IV. *Whether To Prepare an EIS—Administrative Actions Requiring Environmental Review*

Examples of actions which might have an environmental effect include, but are not limited to, loans and loan guarantees, reclassifications of loan funds, lien accommodations, and approvals of the use of general funds. As used in this Bulletin, the terms loan and loan guarantee include all such actions required of REA.

A. Projects Normally Requiring an EIS

An EIS will normally be required in connection with the consideration of any REA loan or loan guarantee for the construction of the following type of facilities, and the applicant shall provide REA with the information outlined in Part Three of this Bulletin:

1. The addition of steam electric or hydroelectric (where new dam construction is involved) generating capacity of more than 25 megawatts (nameplate rating) when an REA borrower has effective control over construction of the project.

2. The addition of electric transmission lines and associated facilities designed for or capable of operation at a nominal voltage of 230 kilovolts (kV) or more (low side) where:

a. more than 25 kilometers (15.53 miles) of transmission line are involved or

b. more than 2 hectares (4.94 acres) of property are needed for substation construction or expansion

when the REA borrower has effective control over construction of the project.

3. A new mining/drilling operations for fuel when the REA borrower has effective control (*e.g.*, captive mine or purchase of a substantial portion of mining equipment).

B. Projects Normally Requiring an Environmental Assessment (EA) But Not Necessarily an EIS

REA will normally prepare an environmental assessment for all projects which are neither categorical exclusions as provided in Subsection IV.C nor normally require an EIS as provided in Subsection IV.A. Based upon the assessment REA will (a) make a finding of no significant impact or (b) proceed to prepare an EIS. The following are examples of specific actions which will normally require an EA but not necessarily an EIS:

1. The borrower's construction of electric generating facilities not included in Subsection IV.A (*e.g.*, combustion turbine). An Environmental Analysis, Siting Study, and Alternative Evaluation (see Part Three to this Bulletin 20–21:320–21, Exhibits A, B and C for guidance) shall be required for project proposals involving significant new technology (no or limited commercial experience) of more than 25 megawatts capacity when the REA borrower has effective control over construction of the project.

2. Participation in electric generation or transmission projects with cumulative REA borrower participation of 33⅓ percent or less not categorically excluded in Subsection IV.C below. Where cumulative REA borrower participation on a project exceeds five (5) percent, and no other Federal agency requires an EIS to be prepared for the project, REA may consult with CEQ prior to taking its final action. For this category, REA will include within the environmental assessment an evaluation of the extent to which the borrower may control the design, construction and operation of the project. In its evaluation, REA will consider such factors as:

(a) whether construction would be completed regardless of REA financed assistance

(b) the stage of project planning and construction

(c) cumulative REA borrower participation

(d) participation percentage of each utility in the project and

(e) managerial arrangements and contractual provisions.

3. Projects designed to reduce the amount of pollutants released into the environment (*e.g.*, precipitators, baghouse or scrubber installation, coal washing facilities).

4. The expansion of an existing mining/drilling operation for fuel when the REA borrower has effective control.

C. Projects Normally Requiring Neither an EIS nor an EA (Categorical Exclusions)

1. The following criteria shall be used to determine actions to be categorically excluded from the necessity to prepare an EIS or environmental assessment (EA):

a. The action or group of actions of such type will not have a significant effect on the quality of the human environment and

b. The action or group of actions of such type will not involve significant unresolved conflicts concerning alternative uses of available resources.

2. The categories of projects listed in Paragraph IV.C.3 have been determined by REA to meet the criteria for categorical exclusions set forth in Paragraph IV.C.1. REA has provided for extraordinary circumstances in which an action listed in Paragraph IV.C.3 may have a significant effect on the quality of the human environment through

a. its Borrower Environmental Report (BER) requirements (Part One, Subsection XX.B and Part Three, Exhibit E), or

b. if no BER is required, an REA finding that the criteria set forth in Section IV.C.1 have been satisfied.

Unless otherwise indicated, a BER will generally be required.

3. a. The addition of electric transmission lines and associated facilities designed for or capable of operation at a nominal voltage of either

(1) less than 69 kilovolts (low side) or

(2) less than 230 kilovolts (low side) if both

(a) no more than 25 kilometers (15.53 miles) of transmission line are involved and

(b) no more than 2 hectares (4.94 acres) of property are needed for substation construction.

b. Telephone and communications lines, cables and facilities.

c. Participation by REA borrowers in a generation or transmission project (of the types listed in Paragraphs IV.A.1 and IV.A.2) which is not to be constructed by an REA-financed system and for which REA has found cumulative borrower participation in the project will be five (5) percent or less.

d. Construction of other small structures or buildings such as microwave facilities, cooperative headquarters, maintenance facilities, etc.

e. Routine approvals made pursuant to loan and security documents (e.g., contracts for fuel, goods and services, capital credit retirements). No BER generally shall be required.

f. Agreements for power purchase from or sale to other utilities. No BER generally shall be required.

g. Purchase of existing facilities where use or operation will remain unchanged. If the existing facilities are in violation of Federal, state or local law, REA shall prepare an environmental assessment and may require REA borrower commitment to remedy the violations before REA takes its Federal action. Where an existing electric generating or mining facility is involved in the proposal, REA shall prepare an environmental assessment after the REA's borrower's purchase of the facilities. REA financial assistance for the purchase of such electric generating and mining facilities shall be contingent upon the REA borrower's commitment to implement all practicable mitigation measures identified in the REA.

h. Purchase of land where use would remain unchanged. No BER generally shall be required.

i. The reconductoring or upgrading of existing transmission lines where the same support structures are utilized. No BER generally shall be required.

j. Internal REA administrative actions (e.g., personnel actions, procurement, issuance of bulletins). Routine internal administrative actions generally shall not require the equivalent of a BER.

D. Issuance of a Finding of No Significant Impact

1. *REA Notice of Availability.* REA may determine that a project of the type described in Subsections IV.A and IV.B is not a major federal action significantly affecting the quality of the human environment and that no EIS is required. REA will prepare a finding of no significant impact (FONSI) and will publish notice in the Federal Register of the availability of the FONSI, giving a brief description of the nature and location of the alternatives to the project, including the preferred alternative. The notice shall state where copies of the FONSI are available for public inspection and to whom requests for copies should be addressed.

a. For projects covered by Subsection IV.A and projects involving significant new technology, REA will make the FONSI available for public review for 30 days before it makes a final determination whether to prepare an EIS and takes final action of the proposal. The 30 day period shall be measured from the date of publication in the Federal Register.

b. For projects covered by Subsection IV.B (except for projects involving significant new technology), REA may take its final action at any time after publication in the Federal Register.

2. *Borrower Notices.* Upon receipt of a FONSI or information from REA that the FONSI is available, in a timely manner the borrower shall publish a legal notice and a news article and/or advertisment to attract the attention of the geneal public announcing the availability of the FONSI for public review at its offices, REA, and selected local libraries in the proposed project area. These notices shall also state that copies may be obtained from the borrower and to whom requests should be addressed. The notices shall be published in a newspaper or newspapers of general circulation in the county in which the principal office of the borrower is located and in the counties in which the proposed construction will take place. Where a Subsection IV.A activity is proposed, distribution to local libraries and newspaper notice should be expanded to the areas of reasonable alternatives. See also Subsection XXI.B.

§ 1501.5 Lead agencies.

V. *Lead Agencies*

A. It is REA's policy to utilize the lead agency process whenever possible so that a single EIS will be prepared to cover all Federal agency actions and sufficient information will be provided to enable all

Federal agencies to assess their actions adequately for NEPA purposes.

Where REA borrowers are planning to participate in projects and there is uncertainty as to whether REA or some other Federal agency should be the "lead agency" for environmental purposes, the borrower should contact REA for advice. The Office of the Coordinator of Environmental Quality Activities in the Office of the Secretary will assist in resolving lead agency questions where REA and one or more other Federal agencies are involved. It is the policy of REA to volunteer to act as lead agency when the borrower so requests, and when REA would normally prepare an EIS for the project.

B. Where REA seeks to be named lead agency, REA shall notify other Federal agencies (that may be involved in the proposed project) in writing of its desire to be named lead agency. If no negative response is received within 30 days, REA shall presume that the other agencies acquiesce and will proceed accordingly.

C. Where two projects (one of which need not involve REA borrowers) are directly related to each other because of their functional interdependence or geographical proximity, REA will consult with other Federal agencies as to the practicability of preparing a single EIS covering both projects.

§ 1501.6 Cooperating agencies.

VI. *Cooperating Agencies*

Pursuant to the CEQ NEPA regulations, it is REA's policy to act as a cooperating agency, to the extent its resources allow, on any EIS for which its expertise would be useful.

§ 1501.7 Scoping.

VII. *Scoping*

REA has developed a general approach to the entire NEPA process, including scoping, which is described and presented graphically in Appendix A to this Part One of Bulletin 20-21:320-21. Some variation may be permitted if there are good reasons for the variance, and such variance is consistent with NEPA and the CEQ regulations. Generally, REA will hold a scoping meeting or meetings only if it appears an EIS will be prepared.

A. *Early Federal, State, and Local Involvement*—Prior to REA's commencing the formal scoping process, the borrower should periodically consult with expert and interested agencies as early planning takes place.

B. *Notice of Intent to Prepare an EIS*—1. *REA Notice(s)*—As soon as practicable, REA will publish its notice of intent (see § 1508.22) in the **Federal Register** in the form of notice shown in Exhibit F to Part Three of Bulletin 20-21:320-21. If the timing of the notice makes it difficult to project when the scoping meeting will be held, a second notice in the form given in Exhibit F to Part Three of this Bulletin will be published in the **Federal Register** no later than 30 days before the meeting.

2. *Borrower Notice(s)*—In addition to the REA notice(s), the borrower shall have published a legal notice and a news article and/or advertisement to attract the attention of the general public. This borrower legal notice and news article and/or advertisement shall be placed in a newspaper(s) of general circulation in the county in which the borrower's principal office is located and in the county or counties in which the proposed project and reasonable alternatives may be located. The legal notice should be substantially in the form given in Exhibit F to Part Three. If the first notice and article and/or advertisement are published before the scoping meeting is set, a second notice and article and/or advertisement giving the time and location of the meeting shall be published in a like manner no later than 15 days before the meeting.

3. *Scoping Meeting*—This meeting(s) will be held in the vicinity of the proposed project and, as appropriate, reasonable alternatives or such other place which REA determines will best afford an opportunity for public involvement.

The borrower is encouraged to hold additional public information meetings in the general location of the proposed project and, as appropriate, reasonable alternatives after the public announcement of the intent to prepare an EIS is published in local newspapers, when such borrower meetings will make the scoping process more meaningful. A summary of the comments made at such meetings should be submitted to REA.

§ 1502.4 Major Federal actions requiring the preparation of environmental impact statements.

VIII. *Major Federal Actions Requiring the Preparation of Environmental Impact Statements—Responsible Official*

The Assistant Administrators, Electric and Telephone, are responsible for determining the need for and the preparation of EIS's (see also Part One, Section IV). Final EIS's will be issued by the Administrator.

§ 1502.5 Timing.

IX. *Timing*

See Appendix A to this Part One of Bulleting 20-21; 320-21 for guidance as to timing of the EIS preparation.

§ 1502.9 Draft, final, and supplemental statements.

X. *Draft, Final and Supplemental Statements—Procedures for Supplements*

A. *Supplement to Draft EIS*—This supplement shall be circulated in the same manner as the Draft EIS, and then integrated into one Final EIS.

B. *Supplemlent to Final EIS*—This supplement shall be prepared and circulated in the same manner as a draft EIS (exclusive of scoping).

C. *Information Supplement to Final EIS*—There are instances where there are proposed certain changes in a project for which a final EIS already has been issued, but the conditions of neither § 1502.9(c)(1) (i) nor (ii) are met. In such a case, REA, at its discretion, may issue an information supplement to the final EIS where REA determines that the purposes of NEPA will be furthered by doing so. Notice of the availability of the information supplement will be placed in the **Federal Register** and in a local newspaper of general circulation covering the project area by the borrower. REA shall take not final action on any project modification discussed in the information supplement until 15 days after the notice of availability is published in the **Federal Register** by EPA.

§ 1502.14 Alternatives including the proposed action.

XI. *Alternatives Including the Proposed Action*

REA will consider a number of factors, including, but not limited to, state of technology, availability of resources and the timeframe in which the identified need must be fulfilled in determining what are reasonable alternatives. An example of an alternative which may be impractical and thus eliminated from detailed study would be use of windpower to meet near term needs for 1000 megawatts of electric generating capacity.

§ 1502.18 Appendix.

XII. *Appendix*

Where REA prepares the Federal EIS, the Environmental Analysis (see Section XX *infra*) which is prepared by the borrower under REA guidance will generally be attached as an appendix to the EIS or referenced by the EIS.

§ 1502.19 Circulation of the environmental impact statement.

XIII. *Circulation of the Environmental Impact Statement*

Draft and Final EIS's (or Summaries) shall also be circulated to the appropriate State, regional, and metropolitan clearinghouses and will be available upon request to any interested person. In addition, copies will be available for public examination in REA's offices in Washington, D.C., the principal office of the applicant, and selected libraries in the area(s) of reasonable alternatives, including the preferred alternative.

All pertinent background information will be available to the public as provided by the Freedom of Information Act (Pub. L. 89-487, 5 U.S.C. 552).

§ 1503.1 Inviting comments.

XIV. *Inviting Comments*

A. *REA Notice of Availability of Draft or Final EIS—REA will publish notice in the* **Federal Register** of the availability of the Draft EIS and Final EIS giving a brief description of the nature and location of the alternatives, including the preferred alternative; and stating where copies of the EIS are available for public inspection (see Section XIII *supra*) or to whom requests for copies should be addressed.

A list of REA administrative actions for which EIS's are being prepared or are contemplated, will be available for public inspection on request at REA's Washington, D.C. office.

B. *Borrower's Notices*—Upon receipt of a draft of final EIS or information from REA that the EIS is available, in a timely manner the borrower shall publish a legal notice and a news article and/or advertisement to attract the attention of the general public announcing the availability of the statement

for public review at its offices and selected local libraries in the proposed project area and the area of the reasonable alternatives. These notices shall be published in a newspaper or newspapers of general circulation in the county in which the principal office of the borrower is located and in the counties in which the proposed contruction including reasonable alternatives may take place. It is important that the people at the local level who may be most directly affected by the proposed construction be made aware of the EIS and have the opportunity to review and comment on it.

§ 1503.2 Duty to comment.

XV. *Duty to comment*

REA will comment, to the extent practicable, on all EIS's sent to it.

§ 1505.2 Record of decision in cases requiring environmental impact statements.

XVI. *Record of Decision in Cases Requiring EIS*

Normally the REA loan recommendation will contain or be accompanied by REA's record of decision.

REA will include, among its essential considerations of national policy, national economic development objectives and the National Energy Plan.

§ 1506.1 Limitations on actions during NEPA process.

XVII. *Limitations on Actions During the NEPA Process-Minimal Expenditures Not Affecting the Environment*

In determining which borrower activities related to a project normally requiring an EIS may be approved prior to completion of its NEPA process, REA will need to determine (in addition to non-NEPA matters) that:

A. The activity will not have an adverse environmental impact. For example, purchase of water rights, optioning or transfer of land title, or continued use of land as historically employed would not have an adverse environmental impact. However, site preparation or construction at or near the proposed site (*e.g.* rail spur) or development of a related facility (*e.g.* opening a captive mine) would normally have an adverse environmental impact.

B. The expenditure is "minimal". To be minimal the expenditure:

1. must not exceed the amount the loss of which the borrower could absorb without jeopardizing the government's security interest in the event the proposed project is not approved by the Administrator; and

2. must not compromise the objectivity of REA's environmental review.

Notwithstanding other considerations, normally expenditures up to 10% of the proposed project cost would not compromise REA's objectivity.

Nothing in this definition precludes approval of expenditures for testing work conducted by the borrower (§ 1506.1(d)).

§ 1506.2 Elimination of duplication with State and local procedures.

XVIII. *Elimination of Duplicaton With State and Local Procedures*

REA is committed to cooperation with state and local agencies pursuant to § 1506.2 of the CEQ regulations. To the extent possible and consistent with NEPA and the CEQ regulations, REA may vary procedures set out in this Bulletin at Part One, Appendix A so as to eliminate duplication and delay.

Where state law requires state agencies to control siting of plants or routing of transmission lines, REA will also coordinate with those state agencies in determining the siting options.

To the extent practicable, REA will combine any public meetings or hearings required by it with those held by other Federal and state agencies.

§ 1506.3 Adoption.

XIX. *Adoption*

A. *Policy*—REA borrowers sometimes participate in projects where other Federal agencies have already prepared an EIS. These projects include, but are not limited to nuclear or some coal-fired generating stations and coal mining facilities. REA will adopt the existing EIS if it can do so pursuant to § 1506.3.

B. *Adoption in Final*—1. If REA did act as a cooperating agency, and was adequately identified as such in the EIS, the statement may be adopted as a final EIS without circulation. The notice provisions in Subsection XIV.A *supra* may be satisfied by the lead agency notice if it mentions REA involvement.

2. If REA was not a cooperating agency but determines that another federal agency's EIS is adequate, it will adopt the EIS as its final EIS. The Administrator shall determine whether the adopted EIS is still generally available. This determination will be based on consultation with other agencies and consideration of such factors as project size and initial date of issuance of the adopted EIS.

a. If the adopted EIS is available, REA will:

(1) circulate, pursuant to Section XIII *supra*, its written finding that the adopted statement meets the standards for an adequate EIS;

(2) advise that copies of the EIS will be sent to any person or agency who so requests; and

(3) make the adopted statement available for public examination as described in Section XIII *supra*.

b. If the adopted EIS is not generally available REA will circulate its written finding that the adopted statement is an adequate EIS along with either (1) the adopted EIS or (2) a summary thereof, in accordance with § 1502.12.

C. *Adoption in Draft*—If REA wishes to adopt another agency's EIS in whole or in part, but determines that supplementary information is required to meet the standards of an adequate statement the Administrator will determine whether the adopted EIS is still generally available.

1. If the EIS is still available, REA will:

a. circulate only the REA Supplement as a draft and final—supplement (see Sections X and XIII, *supra*);

b. advise that copies of the adopted EIS will be sent to any person or agency who so requests; and

c. make the adopted statement available for public examination as described in Section XIII, *supra*.

2. If the EIS is not generally available, REA will circulate its supplement along with either (a) the adopted EIS or (b) a summary thereof pursuant to § 1502.12.

§ 1506.5 Agency responsibility.

XX. *Agency Responsibility—Borrower's and Contractor's Submission of Environmental Documents*

A. *Projects Requiring an EIS*—1. Electric Generation and Mining Facilities—REA shall require the borrower to submit three environmental studies:

a. Siting Study—See guidance for preparation in Part Three, Exhibit A to this Bulletin 20–21:320–21.

b. Alternate Evaluation—See Guidance for preparation in Part Three, Exhibit B.

c. Environmental Analysis—This document, prepared under the guidance of REA staff, and subject to REA's independent verification, shall provide the basis for preparation of the EIS. See guidance for preparation in Part Three, Exhibit C. The Analysis will normally become an Appendix to the REA EIS. Generally the borrower will be required to provide REA with 200 revised copies of the document after it has undergone REA evaluation.

2. Transmission Facilities—REA shall require the borrower to submit the three environmental studies:

a. Macro corridor study—See guidance for preparation in Part Three, Exhibit A.

b. Alternative Evaluation—See guidance for preparation in Part Three, Exhibit B.

c. Environmental Analysis—See explanation of Environmental Analysis in Subparagraph XX.A.1.c above. See guidance for preparation in Part Three, Exhibit D.

B. *Projects Not Normally Requiring an EIS*—for those projects which do not normally require an EIS, including any project covered under categorical exclusions (except where specifically indicated otherwise), the borrower shall submit a Borrower's Environmental Report. See Part Three, Exhibit E of this Bulletin 20–21:320–21 for guidance in preparation. The BER may serve as REA's environmental assessment for projects not categorically excluded. For projects within the categorical exclusion, the BER will assist REA in identifying the extraordinary circumstance in which a normally excluded action may have a significant environmental effect.

C. *Contractor—Prepared EIS*—In individual situations upon mutual agreement between REA and the borrower, the Environmental Impact Statement may be prepared by an independent contractor. If REA acts as lead agency, the contractor will be chosen by REA. Under this procedure, the borrower would not be required to submit an Environmental Analysis.

§ 1506.6 Public involvement.

XXI. *Public Involvement.*

A. *Actions Normally Requiring an EIS*—has provided for public involvement as follows:

1. Notice of Intent—(see Subsection VII.B *supra*)

2. Scoping Meeting—(see Subsection VII.C *supra*)

3. Notice of Availability of Draft and Final EIS—(see Section XIV *supra*)

4. Borrower Notices—(see Subsection VII.B and XIV.B *supra*)

5. Additional Public Information Meetings—(see Subsection VII.C *supra*)

6. Availability of Supporting Information—(see Section VIII *supra*)

7. Agency Contact Person—shall be the Assistant Administators—Electric or Telephone, U.S. Department of Agriculture, South Building, Washington, D.C. 20250.

8. Hearing(s):

a. Hearing(s) may be held anytime, but normally, if held, they will occur after the publication of either the draft or final EIS. Public hearing(s) will be held concerning environmental aspects of a proposed action for which an EIS is required under the provision of this Bulletin in all cases where, in the Administrator's opinion, the need for hearing(s) is indicated in order to bring out adequately significant environmental implications of the proposed action. In cases where hearing(s) are held, notice of the hearings will be published in the **Federal Register** at least thirty (30) days in advance of the hearings. The draft or final EIS as applicable will be made available to the public at least fifteen (15) days in advance of the hearing(s).

b. The borrower will also publish a notice similar to REA's and a news article and/or advertisement to attract the attention of the general public in a newspaper or newspapers of general circulation in the county in which the principal office of the borrower is located and in the counties in which the proposed construction may take place, announcing that hearing(s) will be held.

c. All persons desiring to make statements at the hearing(s) will be invited to submit a copy of their proposed statement, in writing, but such submission will not be required. The hearing(s) will normally be informal and will generally be confined to the environmental aspects of the proposed loan.

B. *Actions Requiring an Environmental Assessment*—in connection with such proposed projects, public involvement shall be as follows:

1. Borrower Notices—The borrower shall have published a legal notice and a news article and/or advertisement to attract the attention of the general public in a newspaper or newspapers of general circulation in the county in which the principal office of the borrower is located and in the counties in which the proposed construction will take place. This notice shall generally described the nature, location and extent of the proposed action and indicate the availability and location of additional information. The notice shall invite comments with respect to environmental effects of the proposed construction, to be submitted to the borrower or REA within thirty (30) days of publication of the notice. See Part Three, Exhibit G for an example of an appropriate legal notice.

2. Consideration of Comments—The borrower and REA shall give proper consideration to all comments received. A copy of the notice together with all comments received shall be forwarded to REA, together with the borrower's recommendations. If no comments are received, this should be so stated.

§ 1506.10 Timing of agency action.

XXII. *Timing of Agency Action*

A. Where an agency action requires an EIS, the action will not be approved or commitments executed before expiration of the thirty (30) day-period starting with notice in the **Federal Register** by EPA that the final EIS, together with comments on the draft EIS, is available.

B. For budgetary purposes some loans may be approved conditionally with a stipulation that no funds will be advanced to the borrower or contracts of guarantee executed until the NEPA process is completed. Except under emergency circumstances where waiver is secured from the Council on Environmental Quality, no funds will be advanced nor contracts of guarantee executed until the later of the following:

1. Ninety (90) days after notice of a draft EIS is published in the **Federal Register** by EPA, or

2. Thirty (30) days after notice of a final EIS is published in the **Federal Register** by EPA.

§ 1506.11 Emergencies.

XXIII. *Emergencies*

If there should be emergency circumstances which make it necessary for REA to take an action with significant environmental impact without observing the provisions of this bulletin concerning minimum periods for agency review and advance availability of EIS's, REA will consult with the Council on Environmental Quality before proceeding.

§ 1506.12 Effective date.

XXIV. *Compliance*

A. The effective date of Part One of this Bulletin is the date of signature by the Administrator. This Bulletin shall apply to the fullest extent practicable to ongoing activities and environmental documents began before the effective date.

B. No completed environmental documents need to be redone by reason of these regulations.

XXV. *Miscellaneous Provisions*

A. *Use of the Metric Units:* The United States is committed to a long-term program to convert all measurements to the metric system. Borrowers are urged to have environmental documents prepared using metric units with British system equivalents placed in parentheses.

Robert W. Feragen,

Administrator.

Attachments:

Appendix A—Procedure for Proposals which Normally Require an EIS.

Index:

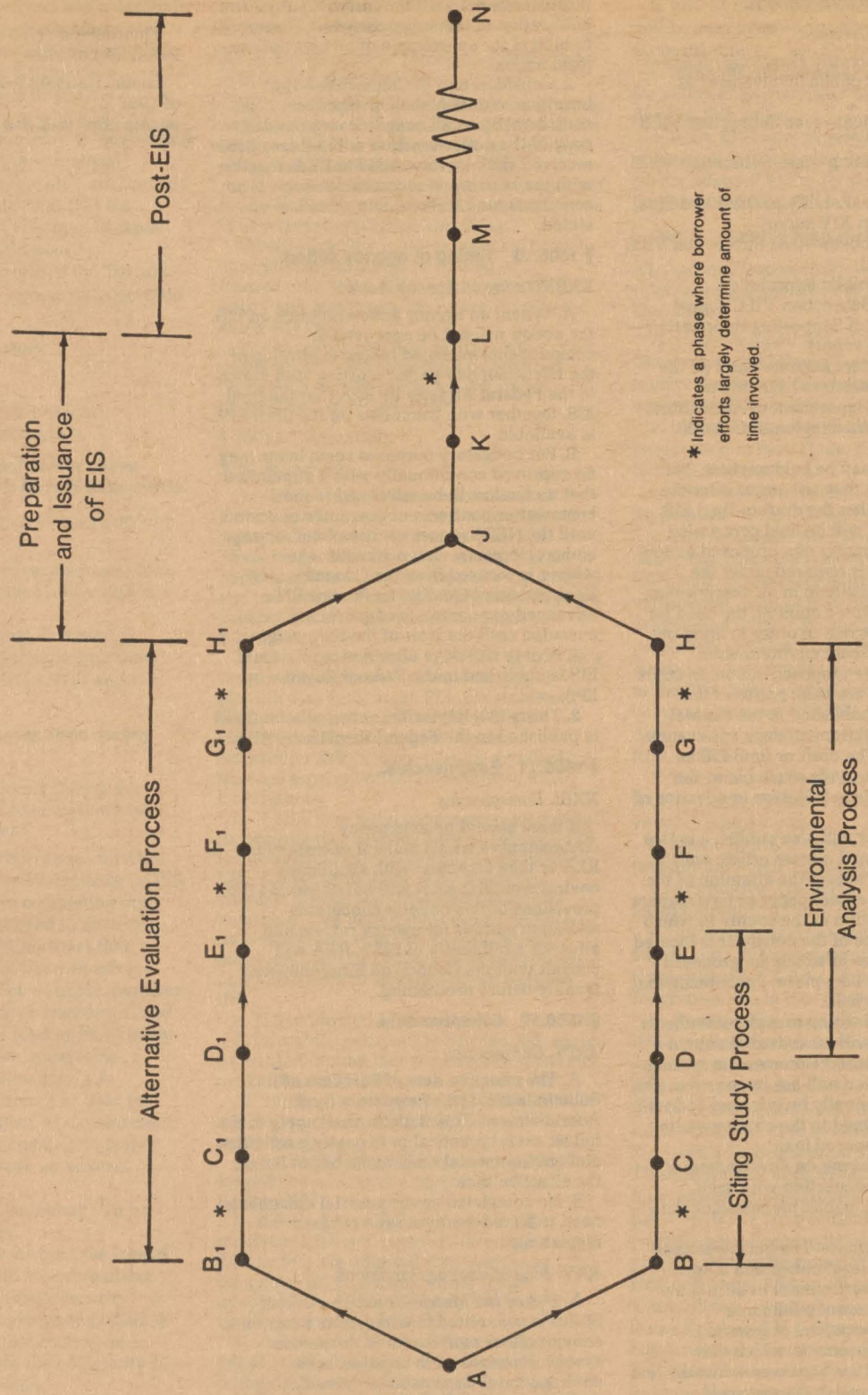
Environment: National Environmental Policy Act of 1969.

Loans: National Environmental Policy Act of 1969.

BILLING CODE 3410-15-M

Appendix A

Procedure for Proposals Which Normally Require an EIS



APPENDIX A

DIAGRAM LEGEND

——▶ On-going activity in the EIS process

B,C,D, Discrete events in the Siting Study and Environmental Analysis path

B_1, C_1 Discrete events in the Alternative Evaluation

As the diagram illustrates, there will be two separate but interrelated study processes leading to the preparation of the EIS. One process B_1 through H_1 will examine alternatives to building a generating (or transmission or new mining) facility. The other process, B through H will examine a range of potentially acceptable sites for a generating (or transmission or new mining) facility.

In order to facilitate long-range planning and reduce delays, a borrower may undertake preliminary evaluations of alternative means of providing power and begin the study of a range of potentially acceptable sites for a generation (or transmission or new mining) facility before demonstrating a need for power. The obligation to show a need for power would still remain, however, before REA financial assistance could be obtained.

Equal spacing between points on the diagram is not meant to suggest equal time intervals. Where two letters are the same (except for subscripts), generally the two indicated events should occur within the same time frame. For BD and B_1D_1 this is only true where the applicant initiates site selection at a time when there is a specific need to be filled. For major transmission projects, references to events occuring during the Macro Corridor Study are analogous to the generation Siting Study procedures.

The flow diagram is intended to indicate the normal sequence of events although some variance may be acceptable in individual cases if good cause is demonstrated. However, in all instances REA will assure that NEPA and CEQ NEPA regulations are complied with.

DISCRETE EVENTS

A: A valid power requirements study (PRS) (or similar document) which shows a need for generated or transmitted power is available. REA undertakes, when necessary, the update of the power requirements study utilizing REA procedures. This PRS should be available for approval by REA before the draft EIS is published. The PRS must be approved by REA before a loan guarantee is made.

B and B_1: The borrower consults with REA on the procedures and general parameters for the Siting Study and on potential alternative ways to meet the need, including guidance on preparing the Alternative Evaluation. Consultation may be initiated even if a specific need has not been identified.

$\overline{BC}$: Work is performed on Siting Study by borrower and/or consultant. This includes "macroanalysis" in which general criteria, literature search and consultation are used to identify a reasonable range of potentially acceptable sites. (See Part Three of this Bulletin for additional guidance.)

Borrower/consultant contact Soil Conservation Service (SCS), Environmental Protection Agency (EPA), Fish and Wildlife Service (FWS), Army Corps of Engineers (COE), Federal land use agencies and state agencies for early guidance and input.

As soon as practicable during this period, REA publishes its "Notice of Intent" in the Federal Register and the borrower publishes similar information in local newspapers. (See Part One Subsection VII.B)

$\overline{B_1C_1}$: Borrower does research and consultation, contacts other utilities, etc., to determine whether there are reasonable alternatives to a new generating (or transmission or mining facility).

The Alternative Evaluation should include discussion, as appropriate, of joint projects, alternate fuels, alternate energy sources, conservation, etc, (more guidance is in Part Three of this Bulletin.) Alternatives eliminated from detailed study should be identified and reasons given for the elimination. The borrower should also indicate which alternatives are reasonably available to it if its preferred alternative is not approved.

C and C_1: Borrower submits draft of Siting Study and Alternative Evaluation to REA for review. REA reviews each draft for major flaws. If such flaws are not present, REA submits draft Siting Study and Alternative Evaluation to EPA, SCS, COE, FWS and other potentially involved Federal and state agencies for review and comment.

D and D_1: REA invites other Federal and state agencies to make a field investigation of potentially acceptable siting areas discussed in the draft Siting Study, critique the study methodology, and point out potential problems with these alternative siting areas. Borrowers will at this time present non-site specific alternatives included in the Alternative Evaluation to these agencies for their comments. Participating agencies may critique alternative means of meeting the need. The agencies set up a strategy for conducting the scoping process and tentatively identify the lead agency for the EIS.

$\overline{DE}$: Federal agencies are given the opportunity to comment on the potentially acceptable alternatives to point out fatal flaws. During this stage the borrower may secure land, water or other

critical factors for potentially acceptable sites by option or other means (subject to the limitations in Section XVII of Part One of this Bulletin). If REA's notice of intent and the borrower's notice did not give the date and time of the scoping meeting, new, more specific notices are published now.

E and E_1: Scoping meeting(s) held to receive input from the public, interested parties, and Federal, state and local officials and agencies. Among the topics open to discussion are reasonable alternatives to meet the need, such as potentially acceptable sites, participation projects or conservation, significant issues to be addressed in the EIS, and the need for the project.

$\overline{EF}$: Borrower submits revised Siting Study to REA for review after revising it to reflect input from scoping meeting. Borrower prepares the draft Environmental Analysis which includes a fatal flaw study of potentially acceptable sites and a "microanalysis" in which detailed field work is conducted on the borrower's preferred site(s). The borrower continues consultation with REA and other interested Federal, state, and local agencies and the public and reflects their comments in the analysis.

$\overline{D_1F_1}$: Borrower updates and expands as necessary, the Alternative Evaluation on the basis of comments received from Federal, State and local officials and agencies, input from participants at the scoping meeting(s) and new developments (e.g. negotiations with other electric power utilities).

F and F_1: The borrower submits draft Environmental Analysis to REA for review and comment. REA distributes copies of the Environmental Analysis to cooperating agencies for review. Borrower also submits expanded Alternative Evaluation, which has been updated after the scoping meeting, and also includes any new alternatives if any, which have developed. REA submits updated Alternative Evaluation to requesting cooperating agencies.

$\overline{FG}$ and $\overline{F_1G_1}$: REA and cooperating agencies independently evaluate, for accuracy, scope and content, the information submitted to them. REA collates responses and transmits them to the borrower. REA may begin writing the draft EIS at this point.

H and H_1: Borrower submits, as appropriate, a final revised Environmental Analysis and Alternative Evaluation to REA.

$\overline{HJ}$ and $\overline{H_1J}$: REA independently evaluates the revised documents and verifies the information therein, before using it in the EIS. During this time, REA prepares the draft EIS, utilizing the borrower-supplied data, interagency expertise, and other information.

[FR Doc. 80-2975 Filed 1-28-80; 8:55 am]
BILLING CODE 3410-15-C

J: REA issues draft EIS for public review and comment, publishing notice of availability in the Federal Register.

K: Public comment period ends on draft EIS. This date may be extended in certain instances.

$\overline{KL}$: REA (and cooperating agencies, as appropriate) review comments received on draft EIS and respond, by modifying alternatives, developing alternatives not previously given serious consideration, supplementing, improving or modifying the analyses, etc. A final EIS or supplemental draft EIS is prepared, as appropriate, with cooperating agencies' assistance.

M: REA will take no final action on any loan, loan guarantee, etc. sooner than 30 days after issuance of the final Federal EIS.

$\overline{MN}$: Mitigation measures are checked by REA and other Federal, State, and local agencies during construction and operation of the project.

Proposed Rules

Federal Register
Vol. 45, No. 20
Tuesday, January 29, 1980

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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 111

Pollution Control, Proposed Amendment To Provide that History of Operations of Predecessor Concern May be Considered as Part of Applicant Concern's History

AGENCY: Small Business Administration.

ACTION: Withdrawal of proposed rule.

SUMMARY: On December 14, 1979, a document was published in the **Federal Register** (44 FR 72604) proposing an amendment to Part 111 for the purpose indicated. No comments were received. It has been determined, however, that the proposed amendment will not permit the flexibility needed to alleviate the complex problems being presented in applications of multiple or changing business entities. The withdrawal of the proposal will permit the early publication of a proposed rule with greater flexibility. The proposal is therefore withdrawn.

DATE: January 29, 1980.

FOR FURTHER INFORMATION CONTACT:
Vincent A. Fragnito, Chief, Pollution Control Guarantees, Office of Special Guarantees, Magazine Building, Rosslyn, Virginia 22209 (703–235–2902).

Dated: January 22, 1980.

(Catalog of Federal Domestic Assistance Programs No. 59.031, Small Business Pollution Control Financing Guarantee Program).

A. Vernon Weaver,
Administrator.

[FR Doc. 80-2750 Filed 1-28-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Part 135

[Docket No. 79N-0116]

Frozen Desserts; Ice Cream and Frozen Custard; Standard of Identity

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This document would amend the ice cream and frozen custard standards of identity to require label declaration of a color additive, FD&C Yellow No. 5. The agency is proposing this action because of reports of allergic-type responses.

DATES: Comments by February 28, 1980. Proposed compliance for affected products initially introduced into interstate commerce: July 1, 1981.

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

FOR FURTHER INFORMATION CONTACT:
Eugene T. McGarrahan, Bureau of Foods (HFF–215), 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 June 26, 1979 (44 FR 37212), the Food and Drug Administration (FDA) issued a final regulation to require the label declaration of FD&C Yellow No. 5 when used to color food and ingested drugs and to prohibit its use in certain drugs for human use. These measures were considered necessary because of mounting evidence of allergic-type reactions to FD&C Yellow No. 5. The regulation revises § 101.22(c) by adding the following sentence to complete the paragraph: "The specific artificial color used in food shall be identified on the labeling when so required by regulation in Part 74 of this chapter to assure safe conditions of use of the food additive." It also adds new § 74.705(d)(2) as follows: "Foods for human use that contain FD&C Yellow No. 5, including butter, cheese, and ice cream, shall specifically declare its presence by listing the name by which it is known, i.e., FD&C Yellow No. 5."

Persons who know they are intolerant to FD&C Yellow No. 5 are likely to be selective in the types of foods they use. With appropriate label declaration, they are able to avoid potential allergic reactions to the color in food. Accordingly, a label declaration of the presence of FD&C Yellow No. 5 in food for humans, whether added as the straight color, a mixture, or a lake, enables persons intolerant to FD&C Yellow No. 5 to minimize exposure.

The final regulation published on June 26, 1979 is based on section 706(b)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 376(b)(3)), which provides that regulations for the listing of a color additive shall "prescribe the conditions under which such additive may be safely employed for such use or uses (including, but not limited to * * * and directions or other labeling or packaging requirements for such additive)." FD&C Yellow No. 5 has clearly been shown to produce allergic-type responses in humans, so a requirement for the color's label declaration is necessary for its safe use. Under the regulations, foods containing colors other than FD&C Yellow No. 5 may continue to be labeled in accordance with the requirements concerning the label declaration of color additives prescribed by section 403(i) and (k) of the act (21 U.S.C. 343(i) and (k)), which permit declaration collectively as artificial color.

To implement revised §§ 101.22 and 74.705(d)(2) as they pertain to the standard of identity for ice cream and frozen custard, FDA is proposing to revise paragraph (f) of § 135.110 (21 CFR 135.110(f)) to require label declaration of FD&C Yellow No. 5 or other colors when required by § 101.22(c) (21 CFR 101.22(c)) when used to color the foods.

FDA proposes that all affected products initially introduced into interstate commerce on or after July 1, 1981, shall comply with the regulation.

FDA has considered the environmental effects of the issuance or amendment of food standards and has concluded in 21 CFR 25.1(d)(4) that food standards are not major agency actions significantly affecting the quality of the

human environment. Therefore, an environmental impact statement is not required for this amendment.

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 in § 135.110 by revising paragraph (f), to read as follows:

§ 135.110 Ice cream and frozen custard.

* * * * *

(f) *Label declaration.* Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that sources of milkfat or milk solids not fat may be declared in descending order of predominance either by the use of all the terms "milkfat and nonfat milk" when one or any combination of two or more of the ingredients listed in § 101.4(b) (3), (4), (8), and (9) of this chapter are used or alternatively as permitted in § 101.4 of this chapter. Under section 403(k) of the Federal Food, Drug, and Cosmetic Act artificial color need not be declared in ice cream, except as required by § 101.22(c) of this chapter. Voluntary declaration of all colors used in ice cream and frozen custard is recommended.

Interested persons may, on or before February 28, 1980 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Consistent with the Office of Planning and Evaluation Interim Guidelines for Regulatory Analysis dated August 8, 1978, food standards are exempt from regulatory analysis as required by Executive Order 12044.

Dated: January 18, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–2580 Filed 1–28–80; 8:45 am]

BILLING CODE 4110–03–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 570

[Docket No. R–80–759]

Pockets of Poverty

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of transmittal of interim rule to Congress under Section 7(o) of the Department of Housing and Urban Development Act.

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

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

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

Interim Rule—24 CFR Part 570—Pockets of Poverty

This rule modifies the requirements governing Urban Development Action Grants available to assist communities in revitalizing the economic base of their Pockets of Poverty. As such, it extends program eligibility to a group of cities and urban counties previously found to be ineligible. The rule implements the amendments made to Section 119 of the Housing and Community Development Act of 1974 as amended by Section 104(a) of the Housing and Community Development Act Amendments of 1979.

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

Issued at Washington, D.C., January 24, 1980.

Moon Landrieu,

Secretary, Department of Housing and Urban Development.

[FR Doc. 80–2790 Filed 1–28–80; 8:45 am]

BILLING CODE 4210–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 401

[FRL 1400–1]

Toxic Pollutant List; Addition of Ammonia

AGENCY: Environmental Protection Agency.

ACTION: Extension of public comment period.

SUMMARY: The Environmental Protection Agency proposed the addition of ammonia to its list of toxic pollutants in the January 3, 1980 Federal Register (45 FR 803). The due date of written comments on this proposal was stated as March 3, 1980. This comment period is hereby extended to May 2, 1980 in order to provide additional time for submission of comments.

DATES: Comments by May 2, 1980.

FOR FURTHER INFORMATION CONTACT: Joseph A. Krivak, Acting Director, Criteria and Standards Division [WH–585], Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street, S. W., Washington, D.C. 20460, telephone 202/755–0100.

Swep T. Davis,

Acting Assistant Administrator for Water and Waste Management.

January 22, 1980.

[FR Doc 80–2728 Filed 1–28–80; 8:45 am]

BILLING CODE 6560–01–M

40 CFR Part 774

OTS–48001B; FRL 1400–3]

Data Reimbursement Under Sections 4 and 5 of the Toxic Substances Control Act; Extension of Comment Period

AGENCY: U.S. Environmental Protection Agency [EPA].

ACTION: Extension of comment period.

This notice again extends the comment period for the advance notice of proposed rulemaking on data reimbursement under sections 4 and 5 of the Toxic Substances Control Act (TSCA), published September 18, 1979 (44 FR 54284). The comment period will close February 7, 1980 instead of January 17, 1980. The Chemical Manufacturers' Association (CMA) requested additional time to develop and submit a comprehensive scheme for cost-sharing and reimbursement. The extension of time has been granted in response to this request and to allow EPA to solicit comments from other interested parties.

DATE: Comments on the issues in this rulemaking must be submitted on or before February 7, 1980, in order to ensure their consideration in the development of the proposed rule.

ADDRESS: Written views and comments should bear the document control number OTS–48001B and should be addressed to the Document Control Officer, Office of Pesticides and Toxic Substances (TS–793), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 or submitted to the same office in Room 447, East Tower at the above address, Monday through Friday, 8:30 A.M. to 4:00 P.M. The rulemaking record for this docket is available for inspection in the room mentioned above.

FOR FURTHER INFORMATION CONTRACT: Industry Assistance Office, Office of Pesticides and Toxic Substances (TS–799), U.S. Environmental Protection Agency, 401 M Street, S.W. Washington, D.C. 20460, Telephone (toll-free) 800–424–9065 or in Washington, 554–1404.

Steven D. Jellinek,

Assistant Administrator for Pesticides and Toxic Substances.

FR Doc. 80–2727 Filed 1–28–80; 8:45 am]

BILLING CODE 6560–01–M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

42 CFR Part 405

Medicare Program; Cost Reporting Requirements for Home Health Agencies

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

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: We propose to amend the Medicare regulations on reimbursement of home health agencies (HHAs) to require: (1) HHAs that are not based in hospitals or skilled nursing facilities to use the "step-down" method of allocating costs to various cost centers; and (2) all HHAs to use a single method of apportioning costs between Medicare and non-Medicare patients, based on the cost per visit by type of service furnished. These changes will improve administration of the Medicare program by replacing the various cost-finding and cost apportionment methods that are currently used by HHAs with a single method of cost finding and cost apportionment and assist in the application of cost limits of HHAs by requiring the use of improved methods of determining the cost by type of service. The Department of Health, Education, and Welfare has classified the proposed regulations as policy significant.

FOR FURTHER INFORMATION, CONTACT: Fred Koenig, Health Care Financing Administration, Department of Health, Education, and Welfare, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–8612.

Dated: January 6, 1980.

Leonard D. Schaeffer,

Administrator, Health Care Financing Administration.

[FR Doc. 80–2810 Filed 1–28–80; 8:45 am]

BILLING CODE 4110–35–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 80–21; RM–3478]

FM Broadcast Station in Commerce, Tex.; Proposed changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: Action taken herein proposes the assignment of a first commercial FM assignment to Commerce, Texas, in response to a petition filed by FIRSTStation Radio. The proposed channel could be used to provide a first commercial local aural broadcast service to Commerce.

DATES: Comments must be filed on or before March 24, 1980, and reply comments must be filed on or before April 14, 1980.

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

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Adopted: January 18, 1980.

Released: January 25, 1980.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Commerce, Texas), BC Docket No. 80–21, RM–3478.

1. *Petitioner, Proposal, Comments.* (a) A petition for rule making [1] was filed by FIRSTSTation Radio ("petitioner"), proposing the assignment of channel 221A to Commerce, Texas, as its first FM assignment.

(b) The channel can be assigned in compliance with the minimum distance separation requirements provided the transmitter site is located approximately 9 kilometers (5.5 miles) northeast of Commerce.

(c) Petitioner states it will apply for the channel, if assigned.

2. *Community Data*—(a) *Location.* Commerce, in Hunt County, is located approximately 106 kilometers (66 miles) east northeast of Dallas, Texas.

(b) *Population.* Commerce—9,534,[2] Hunt County—46,564.

(c) *Local Aural Broadcast Service.* Commerce is served locally by noncommercial educational FM Station KETR (Channel 206), licensed to East Texas State University. Commerce has no local commercial service.

3. *Economic Considerations.* Petitioner states that Commerce is the second largest city in Hunt County. It has submitted information regarding Commerce which is sufficient to warrant considertion of its need for a first commercial FM assignment.

4. In view of the foregoing and the fact that the proposed FM channel assignment, if granted, would provide Commerce with its first commercial local aural broadcast service, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the rules, with regard to Commerce, Texas, as follows:

City	Channel No.	
	Present	Proposed
Commerce, Tex		221A

5. Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix below and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the attached Appendix below before a channel will be assigned.

6. Interested parties may file comments on or before March 24, 1980, and reply comments on or before April 14, 1980.

7. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632–7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are

[1] Public Notice of the petition was given on September 19, 1979, Report No. 1139.

[2] Population figures are taken from the 1970 U.S. Census.

prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleading, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 80-2787 Filed 1-28-80; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Chapter X

[Ex Parte No. MC-67 (Sub-No. 6)]

Elimination of Notification Procedure in the Processing of Emergency Temporary Authority Applications

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rules.

SUMMARY: In light of the decision in *Brown Express, (Inc.* v. *United States,* F. 2d ——, No. 79-1457 (5th Cir. Nov. 30, 1979), the Commission has instituted this rulemaking to consider whether to eliminate the Commission's informal practice of having its field staff notify competing carriers and other interested parties when a motor carrier files an application for Emergency Temporary Authority (ETA). This action is being taken because of the great rise in the number of ETA applications. The time saved by the Commission employees will enable them to handle these ETA applications more effectively and expeditiously, resulting in a substantial monetary saving to the Commission and improved transportation service to the public.

DATES: Written comments should be filed with the Commission on or before February 28, 1980.

ADDRESSES: Send an original and, if possible, 15 copies of comments to: Ex Parte No. MC-67 (Sub-No. 6), Room 5416, Office of Proceedings, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Donald J. Shaw, Jr., (202) 275-7292.

or

Jane Alspaugh Atkinson, (202) 275-7186.

SUPPLEMENTARY INFORMATION: Although there has never been a formal regualtion requiring that notice of the filing of Emergency Temporary Authority (ETA) applications be given to competing carriers or other interested parties, it has been an informal practice of the Commission to communicate by telephone with existing carriers who hold authority to serve the ETA area to provide them an opportunity to protest the application. Existing carriers were not otherwise notified by the Commission of the filing of ETA applications involving competing service. The procedure of notifying interested parties was eliminated by the Commission on January 2, 1979, after publication of a notice in the **Federal Register.** See *Notice of Elimination of Notification Procedure in the Processing of Emergency Temporary Authority Applications under 49 U.S.C. 10928,* 43 Fed. Reg. 58701 (December 15, 1978), hereinafter referred to as "Notice of Elimination." However, the United States Court of Appeals, Fifth Circuit on November 30, 1979, held that the Notice of Elimination was improperly adopted, because the Commission did not follow the notice and comment procedures of the Administrative Procedure Act, 5 U.S.C. 553. *Brown Express, Inc.* v. *United States, — F.2d —, No. 79-1457 (5th Cir. Nov. 30, 1979). To comply with the Court's decision, the Commission voted on December 18, 1979, to rescind the Notice of Elimination. The purpose of this rulemaking is to consider whether the informal practice of telephone notification should be continued. Notice and comment procedures are being followed to comply with the decision in Brown Express.*

The Commission need not give notice when it acts under 49 U.S.C. 10928. That section contains a clear exemption from the procedural requirements of the Interstate Commerce Act and the Administrative Procedure Act. This was recognized by the courts in *Brown Express, Inc., supra,* and in *Blue and Grey Transport, Inc.* v. *United States,* 606 F.2d 437, (4th Cir. 1979).

The notification of competing carriers and interested parties involves a substantial expenditure of time by the technical and clerical staff of each of the Commission's six regions. In fiscal year 1978, the Commission handled 13,088 ETA applications. Figures gathered from the field staff in September, 1978, indicate that an average of 1403 hours per week were being spent in the notification process. Extended for an entire year, this translates to a substantial number of staff years. (It should be noted that, despite the notification procedure, the vast majority of ETA applications were unopposed.) In fiscal year 1979 the number of ETA applications rose to 39,288. For the first

seven weeks of fiscal year 1980, 7,160 ETAs were handled, which, projected out for the entire fiscal year, would involve the handling of in excess of 50,000 ETA applications. This represents an approximately 400% increase over fiscal year 1978. This dramatic increase in ETA filings makes the notification process even more unwieldy. Furthermore, the contemplated shift of handling of Temporary Authority (TA) and ETA applications to six Regional Motor Carrier Boards [Ex Parte No. MC-67 (Sub-No. 5)] makes the conservation of field staff time a crucial goal.

When the notification procedure first began approximately 40 years ago, there were far fewer temporary authority filings, and the field staff could more easily familiarize itself with the carriers providing competing service. This is not the case today when the total number of carriers exceeds 18,000 and the number of ETA filings are expected to exceed 50,000. It is now virtually impossible for field personnel to determine all carriers which hold authority in conflict with that sought in an ETA application. It would be necessary to devote a significant expenditure of additional public resources to continue giving effective notification to all carriers potentially affected by the filing of an ETA application.

ETA's were created "to meet an immediate and urgent need for service due to emergencies, in which time or circumstances do not reasonably permit the filing and processing of an application for temporary authority." 49 CFR 1131.1(b)(1) (1978). Rapid handling of ETA applications is essential. The elimination of the need to notify competing carriers would enable the Commission to provide improved transportation service to the public by being more quickly responsive to transportation needs.

We believe that there is no compelling reason to continue the present notification practice. Applicants must show an immediate need for the proposed service. Shipper certifications under oath are required that state the circumstances which create an immediate and urgent need for the requested service and set out the efforts made to obtain service from existing carriers. If a carrier is actually providing service to the supporting shipper, it should quickly become aware of the presence of a new competing carrier without any notice by the Commission.

The field staff will continue to accept protests if a competing carrier becomes aware of the pendency of an ETA application. In addition, any interested person may appeal an ETA grant, anytime during the life of the ETA authority.[1] Any pleadings must be served on all parties of record.[2]

The Commission anticipates that a substantial saving in staff time, more equitable treatment of interested parties, and more expeditious response to the need for transportation service will result from the elimination of the notification practice, thus enabling the Commission better to serve the public.

We do not believe that the action proposed will have an adverse effect on either the quality of the human environment or conservation of energy resources. However, any person may comment on this aspect of the proposal.

Public Invited To Comment

Oral hearings do not appear to be necessary at this time, and none are contemplated. The views of interested parties are solicited.

This notice of proposed rulemaking is issued under authority of 49 U.S.C. 10321 and 10928, and 5 U.S.C. 553 (the Administrative Procedure Act).

Dated: December 28, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham, Clapp, Christian, Trantum, Gaskins, and Alexis. Chairman O'Neal absent and not participating. Vice Chairman Stafford dissenting. Commissioner Christian absent and not participating. Commissioner Trantum commenting.

Agatha L. Mergenovich,

Secretary.

Vice Chairman Stafford, dissenting: I am opposed to eliminating the notification practice. A check of existing services would prevent the granting of ETAs in other than true emergency situations.

Commissioner Trantum, commenting: A compelling reason for the elimination of notification is that no possible way exists for the ICC to notify all carriers that may be affected. We could give those carriers that are called an unfair advantage over those that are not. Unless equal and unbiased notification can be given no notification should be made. Further, if a carrier is going to be substantially harmed the situation will be quickly apparent and a protest can be filed.

[FR Doc. 80-2813 Filed 1-28-80; 8:45 am]

BILLING CODE 7035-01-M

[1] It should be noted that this is a change from the time period stated in the 1978 "Notice of Elimination" in which an adversely affected carrier could appeal anytime within 15 days after becoming aware of the ETA grant. It was felt that that requirement was too vague and that it is certainly in a carrier's best interest to file as soon as possible if it is actually being harmed. This is also a return to the policy that existed before the "Notice of Elimination." See 43 Fed. Reg. 3711 (January 27, 1978).

[2] Requirements of service of pleadings have been ambiguous in the past. We propose that the matter be settled here, so that a protestant will be on notice that it must serve the applicant with a copy of its petition for reconsideration and other pleadings. Applicant will have corresponding obligations to protestants once they become known to applicant as parties in opposition.

Notices

Federal Register
Vol. 45, No. 20
Tuesday, January 29, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Committee of State Foresters; Meeting

The Committee of State Foresters will meet in Albuquerque, New Mexico, on March 6, 1980. The meeting will convene at 9:00 a.m. on March 6th in the Civic Room of the Hilton Inn, 1901 University Blvd., N.E., Albuquerque, N.M.

The Committee, comprised of 7 members who are the Executive Committee of the National Association of State Foresters, consults with the Secretary of Agriculture and various agencies of the Department on the implementation of the Cooperative Forestry Assistance Act of 1978 (Pub. L. 95–313). Dr. M. Rupert Cutler, Assistant Secretary for Natural Resources of Environment, will chair the meeting. He and representatives of the Forest Service and other interested agencies will attend from the Department of Agriculture.

The meeting will be open to the public. Persons who wish to attend should notify the Committee's Executive Secretary, Einar L. Roget, Deputy Chief for State and Private Forestry, USDA—Forest Service, P.O. Box 2417, Washington, D.C. 20013, telephone (202) 447–6657. Written statements may be filed with the Committee before or after the meeting.

H. G. Beaver,
Acting Deputy Chief.
January 23, 1980.

[FR Doc. 80–2751 Filed 1–28–80; 8:45 am]
BILLING CODE 3410–11–M

Rural Electrification Administration

Colorado-Ute Electric Association, Inc., Montrose, Colo.; Final Supplement to the Yampa Project Final Environmental Statement

Notice is hereby given that the Rural Electrification Administration has prepared a Final Supplement to the Yampa Project Final Environmental Statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with a proposed financing application to the Rural Electrification Administration from Colorado-Ute Electric Association, Inc., P.O. Box 1149, Montrose, Colorado 81401, to finance the construction of a transmission line from Wolcott to Malta, Colorado, and associated terminal facilities. This Final Supplement examines the impacts of the proposed Wolcott-Basalt 230 kV transmission line, Basalt-Malta 345 kV transmission line, and related terminal facilities in Eagle, Pitkin and Lake Counties, Colorado.

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. Copies of the REA Final Supplement have been sent to various Federal, State and local agencies, as outlined in the Council on Evironmental Quality Regulations. The Final Supplement may be examined during regular business hours at the offices of REA in the South Agriculture Building, 12th Street and Independence Avenue, SW., Washington, D.C., Room 1268, or at the borrower's address indicated above.

Comments concerning the environmental impact of the proposed construction should be addressed to Mr. Zoller at the address given above. Comments must be received on or before February 28, 1980, to be considered in connection with the proposed action.

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 16th day of January 1980.

Susan T. Shepherd,
Acting Administrator, Rural Electrification Administration.

[FR Doc. 80–2752 Filed 1–28–80; 8:45 am]
BILLING CODE 3410–15–M

Plains Electric Generation & Transmission Cooperative, Inc.; Final Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration 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 an anticipated loan guarantee for Plains Electric Generation and Transmission Cooperative, Inc., 2401 Aztec Road, N.E., Alburquerque, New Mexico 87107.

The anticipated financing assistance would provide Plains with the financing required for the construction of one 233 MW (nominal) coal-fired generating plant (including its appurtenant water pipeline and railroad spur), together with approximately 37 miles of 115kV transmission line needed to tie the line into the area transmission grid. This proposed project will provide additional generation and transmission capacity to meet the projected future growth in the peak electric demand of Plains' member distribution cooperatives.

Additional information may be secured by 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 2868 or at Plains Electric Generation and Transmission Cooperative, Inc. 2401 Aztec Road, N.E., Albuquerque, New Mexico 87107.

Final REA action may be taken with respect to this matter after thirty (30) days.

Any loan which may be made pursuant to this application will be subject to, and release of funds thereunder will be contingent upon, REA's reaching satisfactory conclusions with respect to environmental effects and final action will be taken only after compliance with Environmental Statement procedures required by the National Environmental Policy Act of 1969, and by other environmentally related statutes, regulations, Executive Orders, and Secretary's Memoranda.

Dated at Washington, D.C., 8th day of January, 1980.

Robert W. Feragen,

Administrator, Rural Electrification Administration.

[FR Doc 80-2812 Filed 1-28-80; 8:45 am]

BILLING CODE 3410-15-M

CIVIL AERONAUTICS BOARD

[Docket 36767]

Miami/New Orleans-San Jose, Costa Rica, Case; Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on March 4, 1980, at 10:00 a.m. (local time) in Room C205, Hale Boggs Federal Building U.S. District Court, 500 Camp Street, New Orleans, LA 70130.

For details regarding the issues in this proceeding, interested persons are referred to the prehearing conference report, served on November 8, 1979, and other documents which are on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., January 25, 1980.

Alexander N. Argerakis,

Administrative Law Judge.

[FR Doc. 80-2792 Filed 1-28-80; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Gulf of Mexico and South Atlantic Fishery Management Council's Scientific and Statistical Committees; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Gulf of Mexico and South Atlantic Fishery Management Councils were established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), and the Councils have established Scientific and Statistical Committees (SSC's) which will meet to review a data collection system for the Gulf of Mexico.

DATES: The meeting will convene on Thursday, February 14, 1980, at 9 a.m. and will adjourn at 4 p.m. The meeting is open to the public.

ADDRESS: The meeting will take place in the Hacienda Room of the Landmark Motor Hotel, 2601 Severn Avenue, Metairie, Louisiana.

FOR FURTHER INFORMATION CONTACT: Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609, Telephone: (813) 228-2815.

Dated: January 24, 1980.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 80-2783 Filed 1-28-80; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council and Pelagic Fishery Resources Subpanel and Spiny Lobster Subpanel; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Western Pacific Fishery Management Council was established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), and the Council has established a Pelagic Fishery Resources Subpanel (AP) and a Spiny Lobster Subpanel (AP) to assist the Council in carrying out its responsibilities.

DATES: The Pelagic Fishery Resources Subpanel meeting will convene on Tuesday, February 12 and Wednesday, February 13, 1980, at 9 a.m. and will adjourn at 4 p.m. on both days to discuss progress on fishery management plans (FMP's) in the Council's area of concern. The Spiny Lobster Subpanel meeting will convene on Wednesday, February 13, 1980, at 9 a.m. and will adjourn at 4:30 p.m. to discuss progress on FMP's in the Council's area of concern. The AP's will meet at the NMFS Southwest Fisheries Center, Honolulu Laboratory, 2570 Dole Street, Honolulu Hawaii. The Council meeting will convene on Thursday, February 14, 1980, at 9 a.m. and will adjourn on Friday, February 15, 1980, at 4:30 p.m. to review the 6th Draft of the Billfish FMP, the 5th Draft of Environmental Impact Statement (EIS) and 7th Draft of Spiny Lobster FMP, Programmatic Work Schedule, status of the Northern Mariana Islands, and other Council related business. The Council meeting will take place at Lt. Governor's Conference Room, 5th Floor, State Capitol, Honolulu, Hawaii. The meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Western Pacific Fishery Management Council, Room 1608, 1164 Bishop Street, Honolulu, Hawaii 96813, Telephone: (808) 523-1368.

Dated: January 24, 1980.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 80-2784 Filed 1-28-80; 8:45 am]

BILLING CODE 3510-22-M

U.S. Travel Service

Travel Advisory Board; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel Advisory Board of the U.S. Department of Commerce will meet on March 27, 1980, at 9:00 a.m., in Room 1858 of the Main Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Established in July 1968, the Travel Advisory Board consists of senior representatives of 15 U.S. travel industry segments who are appointed by the Secretary of Commerce.

Members advise the Secretary of Commerce and Assistant Secretary of Commerce for Tourism on policies and programs designed to accomplish the purpose of the International Travel Act of 1961, as amended, and the Act of July 19, 1940, as amended. A detailed agenda for the meeting will be published in the Federal Register in advance of the meeting.

A limited number of seats will be available to observers from the public and the press. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation of oral statements is allowed.

Sue Barbour, Travel Advisory Board Liaison Officer, the United States Travel Service, Room 1858, U.S. Department of Commerce, Washington, D.C. 20230 (telephone 202/377-4752) will respond to public requests for information about the meeting.

Jeanne Westphal,

Acting Assistant Secretary for Tourism, U.S. Department of Commerce.

[FR Doc. 80-2724 Filed 1-28-80; 8:45 am]

BILLING CODE 3510-11-M

COUNCIL ON ENVIRONMENTAL QUALITY

Third Progress Report on Agency Procedures Implementing Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions"

January 4, 1979.

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Information Only: Publication of Third Progress Report on Agency Procedures Implementing Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions"

SUMMARY: On January 4, 1979, President Carter issued Executive Order 12114 entitled "Environmental Effects Abroad of Major Federal Actions." Executive Order 12114 requires all federal agencies taking major federal actions outside the U.S. which are encompassed by and not exempted from the Order, to have in effect procedures implementing the Order within 8 months after January 4, 1979 (i.e., by September 4, 1979). The Order requires agencies to consult with the Council on Environmental Quality and the Department of State before putting their implementing procedures in effect. The Council has previously published certain explanatory documents concerning implementation of E.O. 12114 (44 FR 18722, March 29, 1979). On September 26, 1979 the Council published its first progress report on agency procedures implementing the Executive Order (44 FR 55410), and on November 6, 1979 a second progress report (44 FR 64101). The purpose of this third progress report is to provide an update on where affected agencies stand in this process.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Yost, General Counsel, Council on Environmental Quality, 722 Jackson Place, N.W., Washington, D.C. 20006; (202) 395–5750.

Third Progress Report on Agency Procedures Implementing E.O. 12114

The progress report lists federal agencies in two categories. In Category 1 are agencies that have published proposed or final procedures implementing Executive Order 12114. Category 2 lists agencies that have prepared draft procedures or are in the process of developing such procedures, and contains an estimated time such procedures will be published in the **Federal Register.**

Category 1—Federal Agencies That Have Published Proposed or Final Procedures Implementing E.O. 12114

Department of Defense, Final Procedures issued April 12, 1979 (44 FR 21786)

Export-Import Bank of the United States, Final [1] Procedures issued August 20, 1979 (44 FR 50813)

Overseas Private Investment Corporation, Final [1] Procedures issued August 31, 1979 (44 FR 51385)

National Oceanic and Atmospheric Administration, Proposed Revised NOAA Directive Implementing NEPA and E.O. 12114, October 22, 1979 (44 FR 60779)

Department of Energy, Proposed Guidelines issued September 6, 1979 (44 FR 52146)

Department of State, (1) Foreign Affairs Manual Circular No. 807A, Procedures Implementing E.O. 12114 [1] (except nuclear actions) November 21, 1979 (44 FR 67004). (2) "Unified Procedures Applicable To Major Federal Actions Relating To Nuclear Activities Subject To Executive Order 12114," [1] November 13, 1979 (44 FR 65560)

Agency for International Development, Proposed Environmental Regulations, October 1, 1979 (44 FR 56378)

Department of Transportation, Contained in NEPA procedures (DOT Order 5610.1C) issued October 1, 1979 (44 FR 56420), Paragraph 16

National Aeronautics and Space Administration, Contained in NEPA procedures, Section 1216.321 issued July 30, 1979 (44 FR 44490–44491)

Department of Agriculture, Proposed amendments (containing procedures implementing E.O. 12114) to departmental NEPA procedures, November 15, 1979 (44 FR 65768)

Environmental Protection Agency, Proposed procedures implementing E.O. 12114, November 29, 1979 (44 FR 68776)

Category 2—Federal Agencies Scheduled To Publish Procedures Implementing E.O. 12114 in the Near Future

Department of Commerce, Proposed procedures implementing E.O. 12114 are awaiting final approval. (Publication anticipated by February 15, 1980).

Department of Treasury, Proposed procedures implementing E.O. 12114 are awaiting final approval. (Publication anticipated by February 15, 1980).

Department of Interior, Draft procedures implementing E.O. 12114 are under preparation. These procedures are expected to be published in the near future.

Dated: January 24, 1980.

Nicholas C. Yost,

General Counsel.

[FR Doc. 80-2819 Filed 1-28-80; 8:45 am]

BILLING CODE 3125-01-M

[1] Although not published in proposed form for public review and comment, the preamble provides an opportunity for public comment on final procedures.

Sixth Progress Report on Agency Implementing Procedures Under the National Environmental Policy Act

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Information Only: Publication of Sixth Progress Report on Agency Implementing Procedures Under the National Environmental Policy Act.

SUMMARY: In response to President Carter's Executive Order 11991, on November 29, 1978, the Council on Environmental Quality issued regulations implementing the procedural provisions of the National Environmental Policy Act ("NEPA"). 43 FR 55978–56007; 40 CFR 1500–08) § 1507.3 of the regulations provides that each agency of the Federal Government shall have adopted procedures to supplement the regulations by July 30, 1979. The Council has indicated to Federal agencies its intention to publish progress reports on agency efforts to develop implementing procedures under the NEPA regulations. The purpose of these progress reports, the sixth of which appears below, is to provide an update on where agencies stand in this process and to inform interested persons of when to expect the publication of proposed procedures for their review and comment.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Yost, General Counsel, Council on Environmental Quality, 722 Jackson Place, N.W., Washington, D.C. 20006; 202–395–5750.

Sixth Progress Report on Agency Implementing Procedures Under the National Environmental Policy Act

At the direction of President Carter (Executive Order 11991), on November 29, 1978, the Council on Environmental Quality issued regulations implementing the procedural provisions of the National Environmental Policy Act ("NEPA"). These regulations appear at Volume 43 of the **Federal Register,** pages 55978–56007 and in forthcoming revisions to Volume 40 of the Code of Federal Regulations, Sections 1500–1508. Their purpose is to reduce paperwork and delay associated with the environmental review process and to foster environmental quality through better decisions under NEPA.

Section 1507.3 of the NEPA regulations provides that each agency of the Federal government shall adopt procedures to supplement the regulations. The purpose of agency "implementing procedures," as they are called, is to translate the broad standards of the Council's regulations

into practical action in Federal planning and decisionmaking. Agency procedures will provide government personnel with additional, more specific direction for implementing the procedrual provisions of NEPA, and will inform the public and State and local officials of how the NEPA regulations will be applied to individual Federal programs and activities.

In the course of developing implementing procedures, agencies are required to consult with the Council and to publish proposed procedures in the **Federal Register** for public review and comment. Proposed procedures must be revised as necessary to respond to the ideas and suggestions made during the comment period. Thereafter, agencies are required to submit the proposed final version of their procedures for 30-day review by the Council for conformity with the Act and the NEPA regulations. After making such changes as are indicated by the Council's review, agencies are required to promulgate their final procedures. Although CEQ's regulations required agencies to publish their procedures by July 30, 1979 a number of Federal agencies did not meet this deadline. We stress, however, that the CEQ regulations are in effect now and are binding on all agencies of the Federal government now, whether or not the agencies are on time or laggard with their own procedures.

The Council published its first progress report on agency implementation procedures on May 7, 1979, its second report on July 23, 1979, its third report on September 26, 1979, its fourth report on November 2, 1979 and its fifth progress report on December 14, 1979. (44 FR 26781–82; 44 FR 43037–38; 44 FR 55408–55410; 44 FR 63132–63133; 44 FR 72622–72623.) The sixth progress report appears below. The Council hopes that concerned members of the public will review and comment upon agency procedures to insure that the reforms required by President Carter and by the Council's regulations are implemented. Agencies preparing implementing procedures are listed under one of the following four categories:

Category No. 1: Final Procedures Have Been Published

This category includes agencies whose final procedures have appeared in the **Federal Register.**

Central Intelligence Agency, 44 FR 45431 (Aug. 2, 1979)
Department of Agriculture, 44 FR 44802 (July 30, 1979)
Animal and Plant Health Inspection Service, 44 FR 50381 (Aug. 28, 1979) [correction: 44 FR 51272 (Aug. 31, 1979)]
Forest Service, 44 FR 44718 (July 30, 1979)
Soil Conservation Service, 44 FR 50576 (Aug. 29, 1979)
Rural Electrification Administration (at the **Federal Register**)
Department of Defense, 44 FR 46841 (Aug. 9, 1979)
Department of Transportation, 44 FR 56420 (Oct. 1, 1979)
Federal Aviation Administration, 45 FR 2244 (Jan. 10, 1980)
Department of the Treasury, 45 FR 1828 (Jan. 8, 1980)
Environmental Protection Agency, 44 FR 64174 (Nov. 6, 1979)
Export-Import Bank, 44 FR 50810 (Aug. 30, 1979)
General Services Administration, 45 FR 83 (Jan. 2, 1980)
Public Buildings Service (see 44 FR 65675, Nov. 14, 1979)
International Communications Agency, 44 FR 45489 (Aug. 2, 1979)
Marine Mammal Commission, 44 FR 52837 (Sept. 11, 1979)
National Aeronautics and Space Administration, 44 FR 44485 (July 30, 1979) [corrections: 44 FR 49650 (Aug. 24, 1979); 44 FR 69920 (Dec. 5, 1979)]
National Capitol Planning Commission, 44 FR 64923 (Nov. 8, 1979)
National Science Foundation, 45 FR 39 (Jan. 2, 1980)
Overseas Private Investment Corporation, 44 FR 51385 (Aug. 31, 1979) [NEPA Procedures are contained in this agency's procedures implementing Executive Order 12114 cited above.]
Postal Service, 44 FR 63524 (Nov. 5, 1979)
Water Resources Council, 44 FR 69921 (Dec. 5, 1979)

Category No. 2: Proposed Procedures Have Been Published

This category includes agencies whose proposed procedures have appeared in the **Federal Register.** Those agencies whose final procedures are expected within 30 days are marked with a single asterisk (*); those expected within 60 days by a double asterisk (**).

ACTION, 44 FR 60110 (Oct. 18, 1979)
Advisory Council on Historic Preservation, 44 FR 40653 (July 12, 1979)*
Agency for International Development, 44 FR 56378 (Oct. 1, 1979)
Civil Aeronautics Board, 44 FR 45637 (Aug. 3, 1979)*
Consumer Product Safety Commission, 44 FR 62526 (Oct. 31, 1979)
Department of Agriculture:
  Agriculture Stabilization and Conservation Service, 44 FR 44167 (July 27, 1979) [correction: 44 FR 45631 (Aug. 3, 1979)]*
Department of Defense:
  Department of the Air Force, 44 FR 44118 (July 26, 1979)*
  Department of the Army, Corps of Engineers, 44 FR 38292 (June 29, 1979)*
  Department of the Army, 45 FR 1086 (Jan. 4, 1980)
Department of Commerce:
  National Oceanic and Atmospheric Administration, 44 FR 60779 (Oct. 22, 1979)*
Department of Energy, 44 FR 42136 (July 18, 1979)*
  Federal Energy Regulatory Commission, 44 FR 50052 (Aug. 27, 1979)*
Department of Housing and Urban Development, 44 FR 67906 (Nov. 27, 1979)*
  Community Development Block Grant Program, 44 FR 45568 (Aug. 2, 1979)*
Department of the Interior, 44 FR 40436 (July 10, 1979)*
  Water and Power Resources Service, 44 FR 47627 (Aug. 14, 1979)*
  Heritage Conservation and Recreation Service, 44 FR 49523 (Aug. 23, 1979)*
  Fish and Wildlife Service, 44 FR 65822 (Nov. 15, 1979)**
Department of Labor, 44 FR 69675 (Dec. 4, 1979)
Department of Justice, 44 FR 43751 (July 26, 1979)*
  Drug Enforcement Agency, 44 FR 43754 (July 26, 1979)*
  Immigration and Naturalization Service, 44 FR 43754 (July 26, 1979)*
  Bureau of Prisons, 44 FR 43753 (July 26, 1979)*
Department of State, 44 FR 66838 (Nov. 21, 1979)*
Department of Transportation:
  Coast Guard, 44 FR 59306 (Oct. 15, 1979)*
  Federal Highway Administration, 44 FR 59438 (Oct. 15, 1979)*
  Federal Railroad Administration, 44 FR 40174 (July 9, 1979)*
  Urban Mass Transportation Administration, 44 FR 59438 (Oct. 15, 1979)*
Federal Communications Commission, 44 FR 38913 (July 3, 1979)**
Federal Emergency Management Agency, 44 FR 70197 (Dec. 6, 1979)
Federal Maritime Commission, 44 FR 29122 (May 18, 1979)*
Federal Trade Commission, 44 FR 42712 (July 20, 1979)
International Boundary and Water Commission (U.S. Section), 44 FR 61665 (Oct. 26, 1979)*
Pennsylvania Avenue Development Corporation, 44 FR 45925 (Aug. 6, 1979)
Small Business Administration, 44 FR 45002 (July 31, 1979)*
Tennessee Valley Authority, 44 FR 39679 (July 6, 1979)*
Veterans Administration, 44 FR 48281 (Aug. 17, 1979)*

Category No. 3: Anticipate Publication of Proposed Procedures by Mar. 1, 1980

This category includes agencies that are expected to publish proposed procedures in the **Federal Register** by Mar. 1, 1980.

Arms Control and Disarmament Agency
Bureau of Indian Affairs
Bureau of Land Management
Bureau of Mines
Department of Health, Education and Welfare
Federal Reserve System
Geological Survey
Law Enforcement Assistance Administration
National Credit Union Administration
National Park Service
Nuclear Regulatory Commission

Office of Surface Mining Reclamation and Control
Science and Education Administration (Department of Agriculture)

Category #4: Publication of Proposed Precedures Delayed Beyond March 1, 1980

This category includes agencies that are *not* expected to publish proposed procedures in the **Federal Register** by Mar. 1, 1980.

Appalachian Regional Commission
Community Services Administration
Department of the Navy
Defense Logistics Agency
Economic Development Administration
Farm Credit Administration
Farmers Home Administration
Federal Deposit Insurance Corporation
Federal Home Loan Bank Board
Federal Savings and Loan Insurance Corporation
Food and Drug Administration
Interstate Commerce Commission

Metro

National Highway Traffic Safety Administration
Saint Lawrence Seaway Corporation
Securities and Exchange Commission

The development of agency implementing procedures is a critical stage in Federal efforts to reform the NEPA process. These procedures must, of course, be consistent with the Council's regulations and provide the means for reducing paperwork and delay and producing better decisions in agency planning and decisionmaking.

Interested persons will have the opportunity to make their suggestions for improving agency procedures when they are published in the **Federal Register** in proposed form. Broad public participation at this crucial juncture could go a long way toward ensuring that the goals of the NEPA regulations are widely implemented in the day-to-day activities of government.

Nicholas C. Yost,

General Counsel.

January 24, 1980.

[FR Doc. 80-2820 Filed 1-28-80; 8:45 am]

BILLING CODE 3125-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Mission Realinement at Fort Indiantown Gap, Annville, Pa; Intent To Prepare an Environmental Impact Statement

Notice is hereby given of intent to prepare an Environmental Impact Statement (EIS) concerning the possible realignment of the ongoing mission of Fort Indiantown Gap, Annville, Pennsylvania.

The EIS will place special emphasis on socio-economic factors in the Fort Indiantown Gap area. The current mission of Fort Indiantown Gap is to provide garrison, administrative, training, and logistical support to Army units and activities at Fort Indiantown Gap and in its assigned geographic area. The proposed realignment of the US Army mission at Fort Indiantown Gap would reduce Army occupancy at Fort Indiantown Gap in an effort to improve Army combat capabilities through improved management of Army resources. Three alternatives will be considered; (1) terminating Army occupancy at Fort Indiantown Gap, with the Department of Military Affairs, Commonwealth of Pennsylvania supporting Army tenants and Reserve Components training at Fort Indiantown Gap, and Fort Meade assuming the area support mission; (2) retaining Fort Indiantown Gap as a subinstallation of Fort Meade with Fort Meade assuming the area support mission; and (3) retaining the status quo. The Army's preferred alternative, at present, is Alternative 1.

A meeting will be held at Fort Indiantown Gap, Building 1166 at 7:30 pm on 20 Feb 79 to consider the scope of issues to be addressed in the EIS and to identify the significant issues. Federal, state, and local agencies, private organizations, and interested persons are encouraged to attend and participate in the meeting. Comments as to the scope of issues and impact analysis to be included in the EIS also may be mailed to Headquarters, Department of the Army, ATTN: DAEN-ZCI, Washington, DC 20310. Further information concerning the proposed realignment and the EIS process may be obtained from MAJ Nataluk, (703) 694-3986.

Daniel R. Voss,

Acting Deputy for Environmental, Safety and Occupational Health OASA(IL&FM)

[FR Doc. 80-2735 Filed 1-28-80; 8:45 am]

BILLING CODE 3710-08-M

Office of the Secretary

Organization of the Joint Chiefs of Staff; Joint Strategic Target Planning Staff Scientific Advisory Group; Closed Meeting

Pursuant to the provisions of Section 10 of Pub. L. 92-463, effective January 5, 1973 as amended by Pub. L. 94-409, notice is hereby given that a meeting of the Joint Strategic Target Planning Staff Scientific Advisory Group will be held at Offutt Air Force Base, Nebraska, during the period: Tuesday, April 1, 1980 through Thursday, April 3, 1980.

The entire meeting is devoted to the discussion of classified information within the meaning of section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public.

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

January 23, 1980.

[FR Doc. 80-2741 Filed 1-28-80; 8:45 am]

BILLING CODE 3810-70-M

Task Force on Evaluation of Audit, Inspection, and Investigative Components of the Department of Defense; Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, as amended, section 10, 5 U.S.C. app. section 10 (1976), notice is hereby given that a meeting of the Task Force on Evaluation of Audit, Inspection and Investigative Components of the Department of Defense will be held on February 11 and 12, 1980 from 1000 to 1200 and 1330 to 1630 each day in Room 3D973, The Pentagon, Washington, D.C.

The mission of the Task Force is to advise Congress and the Secretary of Defense with respect to the effectiveness of the audit, inspection and investigative components of the Department of Defense.

The meeting will be open to the public.

H. E. Lofdahl,

Correspondence and Directives, Washington Headquarters Services, Department of Defense.

January 23, 1980.

[FR Doc. 80-2742 Filed 1-28-80; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

National Petroleum Council; Oil Supply, Demand and Logistics Task Group and the Coordinating Subcommittee of the Committee on Refinery Flexibility; Meetings

Notice is hereby given that the Oil Supply, Demand and Logistics Task Group and the Coordinating Subcommittee of the National Petroleum Council's Committee on Refinery Flexibility will meet on Friday, February 15, 1980 and Tuesday, February 19, 1980, respectively in the Standard Oil Company of California Building, 225 Bush Street, San Francisco, California, beginning at 10:00 a.m.

The National Petroleum Council provides technical advice and information to the Secretary of Energy

on matters relating to oil and gas or the oil and gas industries. Accordingly, the Committee or Refinery Flexibility has been requested by the Secretary to undertake an analysis of the factors affecting crude oil quality and availability and the ability of the refining industry to process such crudes into marketable products. This analysis will be based on information and data to be gathered by the Oil Supply, Demand, and Logistics Task Group and the Refinery Capability Task Group, whose efforts will be coordinated by the Coordinating Subcommittee. The tentative agendas and exact locations of the meetings are as follows:

Agenda for the Task Group Meeting, Room 310:

1. Review and discuss revised supply/demand aggregations.
2. Review and discuss crude quality data.
3. Review data requirements of the Refinery Capability Task Group.
4. Discuss assignments and schedule for completion of the Task Group's assignments.
5. Discuss any other matters pertinent to the overall assignment of the Task Group.

Agenda for the Subcommittee Meeting, Room 317:

1. Review and discuss the progress of the Refinery Capability Task Group.
2. Review and discuss the progress of the Oil Supply, Demand and Logistics Task Group.
3. Review the overall study outline.
4. Discuss assignments and schedule for completion of the Subcommittee's assignments.
5. Discuss any other matters pertinent to the overall assignment of the Coordinating Subcommittee.

All meetings are open to the public. The Chairmen of the Task Group and the Subcommittee are empowered to conduct the meetings in a fashion that will, in their judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with either Group will be permitted to do so, either before or after the meeting. Because of security procedures at the Standard Oil Building, members of the public who wish to attend the meeting or to make oral statements should inform Mr. Marshall Nichols, National Petroleum Council, (202) 393–6100, prior to the meeting, and provision will be made for their appearance on the respective agendas. Transcripts of the meetings will be available for public review at the Freedom of Information public Reading Room, Room GA–152, Department of Energy, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on January 22, 1980.

R. Dobie Langemkamp,

Deputy Assistant Secretary for Resource Development and Operations.

[FR Doc. 80-2815 Filed 1-28-80; 8:45 am]

BILLING CODE 6450-01-M

Availability of Environmental Development Plans and Environmental Readiness Documents

Environmental Development Plans (EDPs) and Environmental Readiness Documents (ERDs) are prepared by the Department of Energy (DOE) to help fulfill the Department's responsibility for the development of environmentally acceptable energy technologies.

The EDP provides a common basis for planning, managing, and reviewing all environmental aspects of the energy programs under DOE's jurisdiction. The EDP is prepared or revised periodically as the technology moves from the exploratory development stage to an engineering development or technology demonstration phase. To ensure that environmental, health, and safety (EH&S) considerations will be addressed adequately in the technology decisionmaking process, the EDP (1) identifies and evaluates EH&S concerns; (2) defines EH&S research and related assessments to examine or resolve the concerns; (3) provides a coordinated schedule with the technology program for required EH&S research and development; and (4) indicates the timing for Environmental Assessments, Environmental Impact Statements, Environmental Readiness Documents, and Safety Analysis Reports.

Environmental Readiness Documents (ERDs) are prepared periodically to review and evaluate the environmental status of an energy technology during the several phases of development of that technology. Through these documents, the Office of Environment within the Department of Energy provides an independent and objective assessment of the environmental risks and potential impacts associated with the extensive use of the technology. An effort has been made to identify potential environmental problems that may be encountered based upon current knowledge, proposed and possible new environmental regulations, and the uncertainties inherent in planned environmental research.

Both documents are prepared for DOE management and are available for public review. The EDPs and ERDs listed below are available from: National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Environmental Development Plans

[DOE/EDP]

Document number		Publication date
Solar:		
0029	Solar Heating and Cooling of Buildings.	September 1979.
0030	Wind Energy Conversion	July 1979.
0031	Photovoltaics	September 1979.
0032	Fuels from Biomass	September 1979.
0033	Solar Agriculture & Industrial Process Heat.	September 1979.
0034	Ocean Thermal Energy Conversion.	August 1979.
0035	Solar Thermal Power Systems.	August 1979.
Geothermal:		
0036	Geothermal Energy Systems	August 1979.
Conservation:		
0037	Transportation Programs	April 1979.
0038	Electric Energy Systems	August 1979.
0039	Industrial Programs	July 1979.
0040	Energy Storage Systems	September 1979.
0041	Buildings and Community Systems.	September 1979.
0042	Light-Duty Diesel	October 1979.
Fossil:		
0045	Magnetohydrodynamics	May 1979.
0046	Fossil Fuel Utilization Program.	April 1979.
0047	Underground Coal Gasification.	September 1979.
0048	Enhanced Oil Recovery	October 1979.
0049	Unconventional Gas Recovery.	October 1979.
0050	Coal Extraction and Preparation.	September 1979.
0051	Oil Shale	October 1979.
Nuclear:		
0052	Magnetic Fusion	September 1979.
0055	Decontamination and Decommissioning.	July 1979.
0057	Space Applications	September 1979.
0058	Uranium Mining, Milling and Conversion.	August 1979.
0059	Uranium Enrichment	September 1979.
0061	Advanced Isotope Separation.	May 1979.
Summary:		
0062	Environmental Development Plans for Energy Technology Programs Summary Report.	October 1979.

In addition the following Environmental Development Plans are in various stages of preparation:

0043 Coal Gasification
0044 Coal Liquefaction
0053 Commercial Waste Management
0054 Defense Waste Management
0056 Special Nuclear Materials Production
0060 Nuclear Fuel Transportation

Environmental Readiness Document

[DOE/ERD]

Document number		Publication date
Solar:		
0006	Large and Small Wind Systems.	September 1978.
0008	Photovoltaics	September 1978.
0010	Solar: Hot Water and Passive.	September 1978.
0018	Solar Heating and Cooling of Buildings.	September 1978.
0019	Solar Thermal Power Systems.	August 1979.
0020	Ocean Thermal Energy Conversion.	August 1979.
0021	Biomass Energy Systems	September 1979.

Environmental Readiness Document—Continued

[DOE/ERD]

Document number		Publication date
0025	Solar Agriculture and Industrial Process Heat.	August 1979.
0026	Wood Combustion	August 1979.
Geothermal:		
0005	Hydrothermal electric and Direct Heat.	September 1978.
0009	Small Scale Low Head Hydro.	September 1978.
Conservation:		
0001	Conservation Product Marketing.	September 1978.
0002	Urban Waste Energy Recovery.	September 1978.
0003	Cogeneration	September 1978.
0004	Electric and Hybrid Vehicles.	September 1978.
0017	Utility Transmission	August 1979.
Fossil:		
0007	Small Atmospheric Fluidized-Bed Combustion.	September 1978.
0011	Enhanced Gas Recovery	September 1978.
0012	Coal Gasification	September 1978.
0013	Enhanced Oil Recovery	September 1978.
0014	Advanced Electric Generation.	September 1978.
0015	Coal Liquefaction	September 1978.
0016	Oil Shale	September 1978.
0023	Coal/Oil Mixtures	June 1979.
0024	Coal Extraction and Preparation Technology.	July 1979.
Summary:		
0022	Status of Environmental Readiness of Emerging Energy Technologies (Summary Report).	January 1979.

In addition the following Environmental Readiness Documents are in various stages of preparation:

Transportation Programs
Buildings and Community Systems
Industrial Programs
Magnetic Fusion
Advanced Isotope Separation
Magnetohydrodynamics

Additional information regarding the EDPs and ERDs may be obtained from: Dario R. Monti, Director, Technology Assessments Division, Office of Technology Impacts, Office of the Assistant Secretary for Environment, U.S. Department of Energy, Washington, D.C. 20545.

Issued in Washington, D.C., January 24, 1980.

Lynda L. Brothers,

Acting Assistant Secretary for Environment.

[FR Doc. 80-2817 Filed 1-28-80; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Tom Miers (d.b.a. Milinda Oil Co.); Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on the Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of 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 a special account established pursuant to the Consent Order.

DATES: Effective date: October 30, 1979.

COMMENTS BY: February 28, 1980.

ADDRESS: Send comments to: Kenneth E. Merica, District Manager of Enforcement, Rocky Mountain District, Department of Energy, 1075 South Yukon Street, Lakewood, Colorado 80226.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Merica, District Manager of Enforcement, Rocky Mountain District, Department of Energy, 1075 South Yukon Street, Lakewood, Colorado 80226, telephone 303/234-3195.

SUPPLEMENTARY INFORMATION: On October 30, 1979, the Office of Enforcement of the ERA executed a Consent Order with Tom Miers, d.b.a. Milinda Oil Company (Milinda) of Sterling, Colorado. 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.

I. The Consent Order

Milinda, with its home office located in Sterling, Colorado, is engaged in the production of crude oil and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Milinda, the Office of Enforcement, ERA, and Milinda have entered into a Consent Order, the significant terms of which are as follows:

1. Milinda is a "producer" as defined by 6 CFR 150.352 and 10 CFR 212.31 and as an operator and working interest owner in crude oil producing property located in Logan County, Colorado.

2. The period covered by the audit was September 1, 1973, through December 31, 1976, and included all sales of crude oil from the Logan County property made during that period.

3. Milinda's pricing of crude oil sales was continuously controlled under CLC regulations (6 CFR, § 150.1 *et seq.*) and successor regulations (10 CFR § 212.1 *et seq.*) during the period of audit.

4. In order to expedite resolution of the disputes involved, the DOE and Milinda have agreed to a settlement in the amount of $80,000, in addition to a refund of $11,439.23 which Milinda has already made. The total alleged overcharge during the audit period was $109,847.68. The negotiated settlement was determined to be in the public interest as well as the best interest of the DOE and Milinda.

5. Refund of the agreed settlement amount is discussed in Section II below.

6. The provisions of 10 CFR § 205.199J, including publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, Milinda agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.2. above, the sum of $80,000, in addition to $11,439.23 already refunded. Milinda agrees to issue certified checks totaling $80,000 payable to the United States Department of Energy and delivered to the Assistant Administrator for Enforcement, ERA. These payments shall be made in equal monthly payments of $4,000 each over a period of twenty (20) months beginning with November 1979. The refunded amounts totaling $80,000 will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the 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.

B. *Other Comment:* 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 Kenneth E. Merica, District Manager of Enforcement, Rocky Mountain District, Department of Energy, 1075 South Yukon Street, Lakewood, Colorado 80226. You may obtain a free copy of this Consent Order by writing to the same address or by calling 303/234–3195.

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 Milinda Consent Order." We will consider all comments we receive by 4:30 p.m., local time, February 28, 1980. 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 Lakewood, Colorado, on the 18th day of January 1980.

Kenneth E. Merica,

District Manager of Enforcement.

Concurrence.

Charles F. Dewey,

Regional Counsel.

[FR Doc. 80–2818 Filed 1–28–80; 8:45 am]

BILLING CODE 6450–01–M

Order Authorizing Transmission of Electric Energy to Mexico and Superseding Prior Authorization

San Diego Gas & Electric (SDG&E), incorporated under the laws of the State of California and having its principal place of business at San Diego, California, filed an application on November 8, 1979 with the Economic Regulatory Administration (ERA) for authority to export electric energy to Mexico pursuant to section 202(e) of the Federal Power Act. SDG&E requests authority to export approximately 40–50 megawatts of electric energy to the Comision Federal de Electricidad (CFE) if emergencies occur on the CFE system; similarly, SDG&E also may receive up to 32 MW from CFE during an emergency on its system.

In either instance, the area receiving emergency service will be isolated from the remainder of the receiving party's system.

By Federal Power Commission (FPC) order issued December 29, 1970 in Docket E–7545, SDG&E was authorized to transmit electric energy from the United States to Mexico at a rate not to exceed 60 megawatts over facilities specified in an order issued in Docket No. E–7544, signed by the Chairman of the Federal Power Commission on December 29, 1970.

SDG&E states that under the new agreement with CFE, power may flow in either direction if emergency conditions require such assistance. The Applicant further states that the export of emergency power will not impair the sufficiency of electric supply to SDG&E's customers in the United States.

Notice of the application was given by publication in the **Federal Register** on December 4, 1979 (44 FR 69708), stating that any person desiring to be heard or to make any protest with reference to the application should on or before December 31, 1979, file with the ERA, Washington, D.C. 20461, petitions to intervene or protests in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No petition or protest or request to be heard in opposition to the granting of the application has been received.

ERA Finds: (1) The proposed transmission of electric energy from the United States to Mexico, as limited herein and as hereinafter authorized, will not impair the sufficiency of electric supply within the United States and will not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission.

(2) The period of public notice given in this matter is reasonable.

ERA Orders: (A) Applicants are hereby authorized to transmit electric energy from the United States to Mexico in accordance with the terms and conditions set forth in the application and subject to the provisions of this order.

(B) The electric energy which Applicants are hereby authorized to transmit from the United States to Mexico shall be transmitted at a rate not to exceed 50 MW, the energy to be transmitted over the facilities specified in the aforementioned Presidential Permit issued by the Federal Power Commission on December 29, 1970, Docket No. E–7544.

(C) The authorization herein granted may be modified from time to time or terminated by further order of ERA but in no event shall such authorization extend beyond the date of termination or expiration of the Presidential Permit, as amended, referred to in Paragraph (B) above.

(D) Applicants shall conduct all operations pursuant to the authorization herein granted in accordance with the provisions of the Federal Power Act and pertinent rules, regulations or orders issued or adopted by ERA.

(E) SDG&E shall provide for the installation and maintenance of adequate metering equipment to measure the flow of all electric energy transmitted from the United States to Mexico pursuant to the authority herein granted; shall make, keep and preserve full and complete records with respect to the movement of such energy and shall furnish, in triplicate to the ERA, with respect to such transmission of energy, reports annually on or before February 15, showing the kilowatts per hour delivered, the maximum kw rate of transmission, and the consideration received therefor during each month of the preceding calendar year.

(F) This authorization to transmit electric energy from the United States to Mexico shall not be transferable or assignable, but in the event of the involuntary transfer of the facilities used for such transmission by operation of law (including such transfers to receivers, trustees, or purchasers under foreclosure or judicial sale) said authorization shall continue in effect temporarily pending the making of an application for permanent authorization and decision thereon, provided notice is given in writing within 30 days following such event to ERA accompanied by a statement that the physical facts relating to sufficiency of supply, rates, and nature of use remain substantially the same as before the transfer.

(G) The authorization herein granted shall supersede that heretofore granted by the aforementioned order of the FPC issued December 29, 1970 in Docket No. E–7545.

Dated: January 21, 1980.

Jerry L. Pfeffer,

Assistant Administrator, Economic Regulatory Administration.

[FR Doc. 80–2769 Filed 1–28–80; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1400–2]

The City of Columbus, Ohio; Final Determination

In the matter of the proceedings under Title I, Part C of the Clean Air Act (Act),

as amended, 42 U.S.C. 7401 *et seq.*, and the Federal regulations promulgated thereunder at 40 CFR 52.21 (43 FR 26388, June 19, 1978) for Prevention of Significant Deterioration of Air Quality (PSD), to the City of Columbus, Ohio.

On August 3, 1978, the City of Columbus, Ohio submitted an application to the United States Environmental Protection Agency (U.S. EPA), Region V office, for an approval to construct a refuse and coal-fired electric plant in Franklin County, Ohio. The application was submitted pursuant to the regulations for PSD. On September 13, 1978, a deficiency notice was sent and subsequently, additional information was submitted.

On April 6, 1979, the City of Columbus, Ohio was notified that its application was complete and preliminary approval was granted.

On August 10, 1979, U.S. EPA and the Ohio Environmental Protection Agency (OEPA) published notice of its decision to grant preliminary approval to the City of Columbus, Ohio. Several comments were received and a public hearing was requested as a result of the preliminary approval. On September 18, 1979, OEPA conducted the hearing in Columbus, Ohio.

After review and analysis of all materials submitted by the City of Columbus, Ohio, the public record established at the hearing, and written comments, the City of Columbus, Ohio was notified on November 30, 1979, the U.S. EPA had determined that the proposed new construction in Franklin County, Ohio, would be utilizing the best available control technology and that emissions from the facility will not adversely impact air quality, as required by Section 165 of the Act.

The approval to construct does not relieve the City of Columbus, Ohio of the responsibility to comply with the control strategy and all local, State and Federal regulations which are part of the applicable State Implementation Plan, as well as all other applicable Federal, State and local requirements.

This determination may now be considered final agency action which is locally applicable under Section 307(b)(1) of the Act and therefore a petition for review may be filed in the U.S. Court of Appeals for the Seventh Circuit by any appropriate party. In accordance with Section 307(b)(1), petitions for review must be filed sixty days from the date of this notice.

For further information contact Eric Cohen, Chief, Compliance Section, Region V, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604. (312) 353–2082.

John McGuire,

Regional Administrator, Region V.

January 14, 1980.

Region V

The City of Columbus, Columbus, Ohio; Proceeding Pursuant to the Clean Air Act, as amended; Approval to Construct; EPA–5–A—80–3.

Authority

The approval to construct is issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*, (the Act), and the Federal regulations promulgated thereunder at 40 CFR 52.21 for the Prevention of Significant Deterioration of Air Quality (PSD).

Findings

1. The City of Columbus plans to construct a refuse and coal-fired electric plant in Franklin County, Ohio on State Route 104 approximately ½ mile south of Frank Road.

2. The section of Franklin County in which the plant will be situated is a Class II area as determined pursuant to the Act and has been designated as attainment for sulphur dioxide (SO_2) and non-attainment for total suspended particulates (TSP).

3. The proposed electric plant was determined to be subject to full PSD review for SO_2 and to a review for TSP under the Emission Offset Interpretative Ruling at 44 FR 3274, January 16, 1979. The proposed plant qualified under Section IV(B) of the Ruling as a "resource recovery facility burning municipal solid waste". Therefore, the proposed installation is exempt from conditions 3 and 4 of the State Implementation Plan to create the necessary SO_2 air quality growth cushion. Because of the added SO_2 concentration from the electric plant, certain other sources must further curtail SO_2 emissions to allow the electric plant to operate without creating an air quality standards violation.

4. The City of Columbus submitted a PSD application to the U.S. Environmental Protection Agency (U.S. EPA) on August 3, 1978. On September 13, 1978, a deficiency notice was sent and subsequently, additional information was submitted. On April 6, 1979, the application was determined to be complete and preliminary approval was issued.

5. On August 10, 1979, a joint Ohio Environmental Protection Agency (Ohio EPA) and U.S. EPA public notice appeared in the *Columbus Dispatch*. A public hearing was held on September 18, 1979, and public comments were reviewed prior to issuance of the final approval.

6. Stack emissions of TSP shall not exceed 0.10 pounds per million BTU of actual heat input.

7. Stack emissions of nitrogen oxides (NO_x) shall not exceed 0.5 pounds per million BTU of actual heat input.

8. SO_2 emissions shall not exceed: (a) .93 pounds per million BTU of actual heat input, with all six boilers operating; or (b) 1.44 pounds per million BTU of actual heat input, with no more than 4 of the 6 boilers operating.

9. After review of all the materials submitted by the City of Columbus, U.S. EPA has detemined that emissions from the operation of the municipal refuse and fossil fuel-fired steam electric generating plant will be controlled by the application of the best available control technology and the lowest achievable emission rate.

10. The air quality review has shown that the predicted SO_2, TSP, carbon monoxide and nitrogen dioxide concentrations from the proposed plant will not cause the PSD increments or the NAAQS to be exceeded subject to the constraints and conditions presented herein.

Conditions for Approval

11. (a) Stack emissions of particulate matter shall not exceed 0.10 pounds per million BTU actual heat input. (b) Opacity of stack exhaust gases shall not exceed 20% except for one 6-minute period per hour of not more than 27%.

12. (a) Stack emissions of nitrogen oxides shall not exceed 0.5 pounds per million BTU of actual heat input, except during emergency periods when refuse is temporarily unavailable. (b) During emergency periods when refuse is temporarily unavailable, stack emissions from the boilers firing coal exclusively shall not exceed 0.7 pounds per million BTU of actual heat input. The City of Columbus shall provide U.S. EPA and OPEA of prior notice of all such periods. If U.S. EPA and OEPA feel that the situation does not constitute an emergency, the emission limit contained in 12(a) shall apply. (c) If the performance test results per condition 15 indicate that a more stringent emission limit than 0.7 pounds per million BTU actual heat input can be achieved when coal is fired exclusively, then the emission limit contained in 12(b) will be revised accordingly, to ensure maintenance of NO_x controls.

13. All necessary revisions to the Ohio State Implementation Plan (SIP) to document that the State of Ohio and the City of Columbus are making best efforts to secure necessary offsets for

SO_2 and TSP must be finalized before start-up of the electric generating plant.

14. SO_2 emissions shall not exceed: (a) 0.93 pounds per million BTU of actual heat input, with all six boilers operating; or (b) 1.44 pounds per million BTU actual heat input, with no more than 4 of the 6 boilers operating.

15. All stack emissions must be demonstrated to be in compliance with conditions of this approval in accordance with requirements specified in 40 CFR 60.46. Notice of such tests shall be given to U.S. EPA 30 days prior to each scheduled test date and the results of the tests submitted not later than 30 days after each test is completed.

16. A continuous monitoring device shall be installed and maintained to determine compliance with 14(a) and (b).

17. The following measures shall be implemented to reduce fugitive emissions of particulates to the lowest achievable emission rate: (a) The coal shall be unloaded in an enclosed area. (b) The coal crushing operation shall be completely enclosed. (c) The coal storage pile shall be sprayed with a surfactant as needed to minimize fugitive dust. A telescoping chute shall be utilized to minimize free-fall of coal loaded onto the pile. (d) All transfer points for coal conveying shall be enclosed. (e) All plant roadways shall be paved and shall be swept and/or vacuumed or washed on a regular basis. (f) The trucks utilized for ash disposal shall be covered. (g) Refuse shall not be stockpiled at the facility.

18. There shall be no visible emissions, except for 2 minutes in an hour, from the following location: (a) Coal unloading, (b) Coal conveying, (c) Coal crushing, (d) Refuse unloading, (e) Ash handling, storage, and loadout.

Conditions 11 through 18 represent the application of the best available control technology as required by Section 165 of the Act.

19. (a) Refuse shall comprise at least 50% of the total heat input to the plant on an annual basis by the end of the first year of operation. (b) The applicant shall provide commitments or letters of intent from private operators of the quantities of solid waste to be burned at the proposed facility not collected by municipal vehicles. Such commitments shall be provided prior to operation of the facility. (c) Liquid solid waste and sludge shall not be burned at the facility.

20. Continuous monitoring devices shall be installed, maintained and operated for measuring both the opacity of emissions discharged to the atmosphere and SO_2 emissions discharged to the atmosphere.

21. Records from the monitoring devices must be maintained and available for examination at any time by the Ohio EPA and the U.S. EPA.

Conditions 19 through 21 are required in order to ensure that the City of Columbus' electric plant will be constructed and operated in accordance with the description presented in the application for approval to construct.

22. Any change in the City of Columbus' proposed electric plant might alter U.S. EPA's conclusion and therefore, any change must receive the prior written authorization of U.S. EPA.

Approval

23. Approval to construct the refuse and coal-fired municipal electric plant is hereby granted to the City of Columbus, subject to the conditions expressed herein and consistent with the materials and data included in the application filed by the City. Any departure from the conditions of this approval or the terms expressed in the application, must receive the prior written authorization of U.S. EPA.

24. The United States Court of Appeals for the D.C. Circuit has issued a ruling in the case of *Alabama Power Co.* vs. *Douglas M. Costle* (78–1006 and consolidated cases) which has significant impact on the U.S. EPA PSD program and approvals issued thereunder. Although the court has stayed its decision pending resolution of petitions for reconsideration, it is possible that the final decision will require modification of the PSD regulations and could affect approvals issued under the existing program. Examples of potential impact areas include the scope of best available control technology, source applicability, the amount of increment available (baseline definition), and the extent of preconstruction monitoring that a source may be required to perform. The applicant is hereby advised that this approval may be subject to reevaluation as a result of the final court decision and its ultimate effect.

25. This approval to construct does not relieve the City of Columbus of the responsibility to comply with the control strategy and all local, State and Federal regulations which are part of the applicable State Implementation Plan, as well as all other applicable Federal, State and local requirements.

26. This approval is effective immediately. This approval to construct shall become invalid, if construction or expansion is not commenced within 18 months after receipt of this approval or if construction is discontinued for a period of 18 months or more. The Administrator may extend such time period upon a satisfactory showing that an extension is justified. Notification shall be made to U.S. EPA 5 days after construction is commenced.

27. A copy of this approval has been forwarded to the Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 E. Broad St., 10th floor, Columbus, Ohio 43216.

Dated: November 30, 1979.

John McGuire,

Regional Administrator.

[FR Doc. 80–2725 Filed 1–28–80; 8:45 am]

BILLING CODE 6560–01–M

[OPTS–51007A; FRL 1400–8]

Extension of Premanufacture Notice Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of premanufacture notice review period under section 5(c) of the Toxic Substances Control Act (TSCA).

SUMMARY: On October 25, 1979 EPA received a premanufacture notice (PMN) from the Ferro Corporation regarding one new chemical substance, a flame retardant. Ferro submitted the PMN under section 5 of the Toxic Substances Control Act (TSCA). The PMN number is 5AHQ–1079–0019(A). The Agency's 90-day review period is scheduled to close on January 23, 1980. Because of (1) EPA's concerns regarding potential risks associated with the substance, (2) the need for more time and information to resolve these concerns, and (3) the need for time to decide whether regulatory controls are appropriate, EPA has concluded that there exists good cause under section 5(c) of TSCA to extend the notice period.

DATE: The review period is extended an additional 30 days and will close on February 22, 1980. To be most useful to EPA, comments regarding this PMN should be filed before February 8, 1980.

ADDRESS: Written comments should bear the PMN number 5AHQ–1079–0019(A) and should be submitted in triplicate to the Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

The PMN, summaries of correspondence between Ferro Corporation and EPA, and other written materials from which EPA has deleted data claimed confidential, are available in the public record and can be viewed in Room 447, East Tower, at the address above. The public record is open from 9

a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Kirk Maconaughey, Premanufacturing Review Division, Office of Pesticides and Toxic Substances (TS–794), U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 426–2601.

SUPPLEMENTARY INFORMATION:

Background

Under section 5 of TSCA, any person who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a premanufacture notice (PMN) to EPA at least 90 days before he begins such manufacture or import. On October 25, 1979 EPA received a PMN from the Ferro Corporation for benzene, ethenyl-, tribromo derivative, homopolymer. The common name is brominated polystyrene. In the PMN, Ferro stated that it will use the substance as a flame retardant in plastic products. Pursuant to section 5(d)(2) of TSCA, EPA published a summary of the PMN in the **Federal Register** (44 FR 65671, November 14, 1979). Ferro did not claim any of the information in its PMN to be confidential.

During the initial review of this substance, EPA staff reviewed the information in the PMN and held several telephone conversations with the company to obtain additional information and data. Ferro also sent the following to EPA: (1) information concerning the manufacturing process, which was claimed confidential; (2) further explanatory information concerning eye irritation test results; (3) information on the residuals contained in the PMN substance and (4) comparative information on other flame retardants. During the review period representatives of Ferro visited EPA, and on one occasion EPA staff visited Ferro's manufacturing site in Bedford, Ohio. During this visit EPA obtained additional information on the manufacturing and processing operations.

EPA initiated its own literature searches on the PMN substance, structural analogues, and use analogues. The Agency reviewed and evaluated all of the information with emphasis on seven major categories: process chemistry, use information, worker and consumer exposure, environmental release, health effects, environmental fate, ecological effects and non-risk (economic) factors. After the Initial Screen of the information, EPA determined that several important areas needed to be evaluated further before the Agency could adequately dispose of this notice. The PMN then entered Detailed Review and EPA spent more time investigating and evaluating the specific concerns identified later in this notice.

Summary of Information on the PMN Substance

The PMN substance once manufactured is a fine dust. Initial production is expected to be in the range of 100,000 lbs. per year, and Ferro predicts a volume of 8–10 million lbs. per year after five years. The dust is sold to processors who mix or compound it with plastics and other additives into "pellet" form. These pellets then are sold to other processors who either injection mold or extrude these pellets into the final products. When these final products eventually outlive their usefulness, they are sent to landfills or are incinerated.

EPA examined the types of exposures to be expected at each stage of the PMN substance's life cycle and potential risks that may be encountered. First, EPA believes there will be exposure to the PMN substance in the form of a fine dust during both manufacturing and processing operations. The dust is composed of the large molecular weight PMN substance and an unknown percentage of residual brominated styrene monomer, dimer, and trimer. There will be worker exposure both in "bagging" operations at the conclusion of manufacture, and when the dust is mixed or compounded during processing. Dermal, ingestion, and inhalation exposures to the dust are expected.

EPA does not believe that the dust presents a significant acute toxicity problem. The Agency recognizes that any dust with this same size distribution presents similar respiratory problems. However other than an Ames test (with negative results), no information is available with respect to the substance's potential chronic toxicity. To evaluate the chronic toxicity of the dust, EPA focused on its components. The major component is a high molecular weight polymer, and EPA has concluded that it will not be biologically available and will not be absorbed through the gastrointestinal tract or the skin. In addition, the chemical and biological effects of the polymer support the conclusion that the potential for risk to ecological populations is low. However, EPA has significant concerns about the health risk that may be presented by the residual monomer, dimer, and trimer in the dust. Substances analogous to the monomer indicate a potential for chronic toxicity, including mutagenic and carcinogenic effects.

The processing of the PMN substance and of the pellets that contain it occurs at elevated temperatures. At these temperatures, EPA expects that volatiles or thermal degradation products will be released. EPA estimates that approximately 20 processors will carry out the first stage of processing (from dust into pellets), and that more than 180 persons will be exposed at this stage. The pellets themselves will be sold to a number of firms for processing into final products. The number of persons exposed at this second stage is difficult to determine, but EPA estimates that it may be large.

In its review, EPA developed a prediction of the likely composition of the volatiles of thermal degradation products. When informed of EPA's assessment, Ferro agreed that the most likely components will be various brominated styrene monomers, that also are expected to be present in the dust. As mentioned above, structural analogues to the monomers indicate a potential for chronic toxicity.

EPA's investigation regarding the use of products containing the PMN substance has not identified any new or unusual problems. This polymeric flame retardant will be compatible with the plastic products in which it is contained and is not likely to "bloom" or leach out of final products. From this information EPA has concluded that although there may be substantial consumer exposure to materials containing this PMN substance, the potential risks associated with use are minimal.

Articles containing the PMN substance eventually will be disposed in landfills or through incineration. The proportions to be disposed in each manner are unknown. EPA expects that when the articles are disposed in landfills, the PMN substance will break down and leach out of the articles at a slow rate. The Agency investigated the environmental fate of the PMN substance and has concluded that it is likely to be highly persistent. EPA has inadequate information on the breakdown products, their concentrations, and effects.

When articles containing the PMN substance are incinerated, substantial amounts of brominated organic compounds will be released. EPA has no information on the exact identity of these compounds. However, we believe there is a potential for chronic toxicity based on analogy to similar brominated organic compounds.

Extension of Notice Review Period

In general, section 5 provides, that EPA must complete its review of a PMN within 90 days of receiving it. However,

under section 5(c) EPA may, for good cause, extend the notice period for additional periods, not to exceed an aggregate of 90 days. On January 10, 1979 (44 FR 2263) EPA published proposed rules to implement the premanufacture notification authority. Section 720.35 of the proposal addressed the section 5(c) extension authority, and provided examples of situations in which EPA believed there would be good cause to extend the notice period. Among the reasons cited were that "EPA has reviewed the notice, and determined that information on the substance is incomplete, and the Agency is seeking additional information," and that, as a result of review of the notice, EPA "determined that there is a significant possibility that the chemical will be regulated under section 5(e) or section 5(f), but the Agency is unable to initiate action within the initial 90-day period".

On the basis of the concerns raised by EPA's evaluation, and the necessity for the Agency to perform additional analyses to serve the purposes of section 5, EPA has determined that good cause exists to extend the notice period for this substance for 30 days, until February 22, 1980. EPA has significant concerns about three aspects of this substance's life-cycle: (1) exposure to the PMN substance in dust form, during the manufacturing and processing stages; (2) exposure to volatiles or thermal degradation products at processing stages; and (3) releases of various substances to the environment upon disposal of articles containing the PMN substance. Extension of the notice period will allow EPA to address these concerns.

First, extension would allow for evaluation of existing data. Overall, EPA's concerns about the PMN substance are complex. They relate to three different stages of the substance's life-cycle. At leat two of those stages—processing and disposal—are carried out using a large variety of methods, the exposures of which are difficult to characterize. Further, EPA's concerns relate not only to the possible risk presented by the PMN substance itself, but also to residuals and degradation products that may be present at different stages. Analysis of the risk potential thus depends on a two-step process of identifying substances to which there will be exposure, and then predicting their potential effects by analogy to other existing substances or classes of substances. Extension of the notice period will provide EPA the opportunity to complete its assessment of exposure at each stage, and of the chemicals present and their likely effects. Finally, with additional time EPA will be able to complete its analysis of the likely effects of products that are substitutes for the new substance.

Second, extension will allow EPA to evaluate possible control actions. Because of its concerns, EPA will evaluate the regulatory responses available to it under TSCA, particularly section 5. Possible actions include regulation under section 5(e) pending the development of further information on health and environmental effects, other requirements for the development of new information and referral to the Occupational Safety and Health Administration. In particular, extension of the notice period preserves EPA's authority to initiate an action under section 5 if this is appropriate.

At this time, EPA has not made any decision concerning the need to regulate the substance under TSCA. If EPA determines that action under section 5 is appropriate, the notice period will be extended to allow EPA sufficient time to initiate appropriate control actions.

(Sec. 5, Toxic Substances Control Act (90 Stat. 2012, 15 U.S.C. 2604).)

Dated: January 23, 1980.

Steven D. Jellinek,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 80-2767 Filed 1-28-80; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1400-6]

State of Utah Water Programs; Determination of Primary Enforcement Responsibility

This public notice is issued under section 1413 of the Safe Drinking Water Act of 1977, Pub. L. 95-190 (amending 42 U.S.C. 300f et seq.), and 40 CFR 142.10, National Interim Primary Drinking Water Regulations, published at 41 FR 2918 (January 20, 1976).

An application, dated October 30, 1979, has been received from Mr. James D. Clise, Director, Division of Environmental Health, Utah State Department of Health requesting that the Department of Health be granted primary enforcement responsibility for public water systems in Utah, in accordance with the provisions of the Safe Drinking Water Act. Supplementing the application there has also been received a letter dated January 7, 1980 from the Chairman and Executive Secretary clarifying certain provisions of the Utah regulations.

In response, I have determined as Regional Administrator of the U.S. Environmental Protection Agency, Region VIII, the Utah Division of Health has met all conditions of the Safe Drinking Water Act and subsequent regulations for the assumption of primary enforcement responsibility for public water systems in Utah. The State:

(1) Has adopted drinking water regulations which are no less stringent than the National Interim Primary Drinking Water Regulations;

(2) Has adopted and will implement adequate procedures for the enforcement of such regulations, including:

a. Maintenance of inventory of public water systems.

b. A systematic program for conducting sanitary surveys of public water systems.

c. Availability of laboratory facilities certified by EPA and capable of performing analytical measurements of all contaminants specified in the regulations.

d. Establishment and maintenance of an activity to assure that the design and construction of new or substantially modified facilities will be capable of compliance with the regulations.

e. Establishment and maintenance of a State program for the certification of laboratories conducting analytical measurements of drinking contaminants.

(3) Has adopted statutory or regulatory enforcement authority to compel compliance with the regulations;

(4) Will keep such records and make such reports as required;

(5) Will issue variances and exemptions in accordance with the provisions of the National Interim Primary Drinking Water Regulations;

(6) Has adopted and can implement an adequate plan for the provision of safe drinking water under emergency circumstances.

All documents relating to this determination are available for public inspection during normal business hours, Monday through Friday, at the following offices:

Bureau of Public Water Supplies, Division of Environmental Health, Utah State Department of Health, 150 West North Temple Street, Salt Lake City, Utah 84110.
Drinking Water Branch, U.S. Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295.

All interested parties are invited to submit written comments on this determination. Written comments must be received on or before February 28, 1980.

Further information may be obtained by writing the Drinking Water Branch of the U.S. Environmental Protection Agency, Region VIII or the Bureau of Public Water Supplies, Utah Division of

Health or by calling Jack W. Goffbuhr at (303) 837–2731 or Gayle Smith at (801) 533–4207.

A public hearing may be requested by any interested person. Frivolous or insubstantial requests for a public hearing may be denied; however, if a substantial request is received on or before February 28, 1980, a public hearing will be held and notice given in the **Federal Register** and newspapers of general circulation. Such requests shall be addressed to:

Mr. Roger L. Williams, Regional Administrator, U.S. Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295.

and shall include the following information:

(1) The name, address, and telephone number of the individual organization.

(2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing.

(3) The signature of the individual making the request; or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

If no timely request for a hearing is received, my determination shall become effective on February 28, 1980.

If there is a substantial request for a hearing this notice shall not become effective until after such hearing, at which time I shall issue an order affirming or rescinding my determination. If the determination is affirmed it shall become effective as of the date of that order.

Please bring this notice to the attention of any person known by you to have an interest in this determination.

Dated: January 23, 1980.

Roger L. Williams,

Regional Administrator, U.S. Environmental Protection Agency, Region VIII.

[FR Doc. 80–2786 Filed 1–28–80; 8:45 am]

BILLING CODE 6560–01–M

[OPP 00112; FRL 1402–4]

Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel; Open Meeting

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a one-day special subcommittee meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel from 9:00 a.m. to 5:00 p.m., on Friday, February 1, 1980. The meeting will be held in the Potomac Room of the Stouffer Hotel, 2399 Jefferson Davis Highway, Arlington, Virginia. The meeting will be open to the public up to the seating capacity of the room.

FOR FURTHER INFORMATION CONTACT:

Dr. H. Wade Fowler, Jr., Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS–766), Rm. 803, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, Va. 22202, Telephone: 703/557–7560.

SUPPLEMENTARY INFORMATION: In accordance with Section 25(d) of the amended FIFRA, EPA is soliciting the opinions of the members of the Scientific Advisory Panel and others as to the significance of aldicarb residues in drinking water. In addition, the Agency may present status reports on other ongoing programs of the Office of Pesticide Programs.

Any member of the public wishing to attend this meeting should contact Dr. H. Wade Fowler, Jr., at the address shown above. Interested persons should contact Dr. Fowler for special instructions regarding statements. Individuals who wish to file written statements are advised to contact the Executive Secretary in a timely manner to ensure appropriate consideration by the Advisory Panel. All statements will be made a part of the record and will be taken into consideration by the Scientific Advisory Panel in formulating comments.

All interested persons are further advised that the meeting announced in this notice is a subcommittee meeting of the Scientific Advisory Panel and others, and must be held prior to the normal 15-day notice in order to allow an appropriate decision by the Agency prior to spring use of aldicarb. Formal review of topics considered by the subcommittee will be conducted by the FIFRA Scientific Advisory Panel at a later date.

(Section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136) and section 10(a)(2) of the Federal Advisory Committee Act, Pub. L. 92–463; 86 Stat. 770.)

Dated: January 25, 1980.

James M. Conlon,

Associate Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80–2764 Filed 1–29–80; 8:45 am]

BILLING CODE 6560–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Joint Notice of Statement of Policy on Disclosure of Statutory Enforcement Actions on Behalf of the Agencies Represented on the Council

AGENCIES: The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration.

ACTION: Statement of Policy of Disclosure of Statutory Enforcement Actions.

SUMMARY: The five Federal financial institution regulatory agencies represented on the Federal Financial Institutions Examination Council have approved a Council recommended statement of policy with respect to public disclosure of final cease and desist, suspension, removal, civil money penalty, and insurance termination actions and to formal, written supervisory agreements issued pursuant to statute (collectively referred to as "statutory enforcement actions").

DATES: The joint policy became effective January 18, 1980.

FOR FURTHER INFORMATION CONTACT:

Stephen Siciliano, Federal Reserve Board (202) 452–3920; Andrew Levinson, Comptroller of the Currency (202) 447–1880; Gerald Lamberti, Federal Deposit Insurance Corporation (202) 389–4141; Larry Berkow, Federal Home Loan Bank Board (202) 377–6430; Robert Fenner, National Credit Union Administration (202) 357–1050.

SUPPLEMENTARY INFORMATION:

The Policy Statement

This statement is issued jointly by the Board of Governors of the Federal Reserve System ("FRB"), the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), the Federal Home Loan Bank Board ("FHLBB"), and the National Credit Union Administration ("NCUA") (Hereinafter referred to, collectively, as "the Agencies").

The Agencies have jointly adopted a policy defining the circumstances in which each will disclose to the public information concerning or relating to statutory enforcement proceedings brought against regulated institutions or other persons subject to the Agencies' enforcement authority. This policy statement applies to proceedings

commenced by written notice, to formal supervisory written agreements entered into pursuant to statute, and to proceedings which, though not commenced by a written notice, result in a final agency order.

The Agencies recognize it is in the public interest to make known the substantive standards used by the Agencies in taking statutory enforcement actions. At the same time, the Agencies are mindful of the need to preserve the confidentiality of information where disclosure might infringe upon the right of privacy, or impair the soundness of a financial institution or the ability of the Agencies to examine the institution efficiently and effectively. Both elements of the public interest have long been recognized and protected by Congress, the Agencies, and the courts.

In order to reconcile and implement those policies, the Agencies have determined that, effective January 1, 1980, each Agency will prepare, at least on a semi-annual basis, a written summary of every final cease and desist, suspension, removal, civil money penalty, and insurance termination order as well as every formal supervisory written agreement issued pursuant to statute after that date. Each summary will describe the essential facts pertinent to agency action in the case and will set forth in detail the action taken by the reporting Agency. Names of financial institutions, of other respondents, and of any other persons involved in the matter, and, to the extent feasible, consistent with the objective that a summary contain essential facts, any information that might lead to identification of any such persons or companies, shall not be disclosed in any summary. In addition, as soon as possible, each Agency shall cause all summaries to be indexed by subject matter for use by members of the public. All summaries prepared pursuant to this Joint Statement of Policy shall be made available by the Agencies to members of the public upon request.

This Joint Statement of Policy does not govern disclosures made pursuant to subpoena, or disclosures made by regulated institutions in compliance with Federal statutes regulating the issue, sale, underwriting or distribution of securities, or the conduct of securities exchanges; nor does it authorize or require disclosure of information where such disclosure is prohibited by law.

Dated: January 22, 1980.

Ms. Rosemary Brady,

Secretary of the Board, National Credit Union Administration.

Mr. J. J. Finn,

Secretary to the FHLBB, Federal Home Loan Bank Board.

Mr. Hoyle L. Robinson,

Executive Secretary, Federal Deposit Insurance Corporation.

Mr. Lewis G. Odom, Jr.,

Senior Deputy Comptroller, Office of the Comptroller of the Currency.

Mr. Theodore E. Allison,

Secretary, Board of Governors of the Federal Reserve System.

[FR Doc. 80-2728 Filed 1-28-80; 8:45 am]
BILLING CODE 6722-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than February 21, 1980.

A. *Federal Reserve Bank of Kansas City* (John F. Zoellner, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

Liberty National Corporation, Oklahoma City, Oklahoma (insurance activities: Oklahoma): to engage through its subsidiary Mid-America Insurance Agency, Inc. in acting as agent in the sale of property and casualty insurance directly related to extensions of credit or the provision of other financial services by subsidiaries of Liberty National Corporation. The activities would be conducted from the offices of Applicant's subsidiaries in Oklahoma City, Lawton, Tulsa, Broken Arrow, Edmond and Sand Springs, Oklahoma, serving Lawton, Tulsa, Broken Arrow, Edmond and Sand Springs, Oklahoma and their surrounding areas and the Oklahoma City metropolitan area.

B. *Federal Reserve Bank of San Francisco, (Harry Green, Vice President) 400 Sansome Street, San Francisso, California 94120:*

Bankamerica Corporation, San Francisco, California (financing and servicing loans; Nationwide): to engage through its subsidiary, BA Business Credit Corporation, in making or acquiring for its own account loans and other extensions of credit such as would be made or acquired by both a consumer finance company and a commercial finance company; and servicing loans and other extensions of credit. Such activities will include but not be limited to making consumer installment loans; making loans and other extensions of credit of a commercial nature to businesses; all said loans will be secured by personal assets and residential and commercial real estate. These activities would be conducted from offices in Allentown, Pennsylvania; Atlanta, Georgia; and Indianapolis, Indiana soliciting on a nationwide basis.

c. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, January 21, 1980.

William N. McDonough,

Assistant Secretary of the Board.

[FR Doc. 80-2733 Filed 1-28-80; 8:45 am]
BILLING CODE 6210-01-M

Heritage Banks, Inc.; Proposed Retention of a Branch of Rochester Savings Bank & Trust Co.

Heritage Banks, Inc., Rochester, New Hampshire, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain an office of Rochester Savings

Bank and Trust Company, Rochester, New Hampshire.

Applicant states that the proposed subsidiary would continue to engage in the activities of a guaranty savings bank, including: acceptance of time and savings deposits; the extension of consumer, real estate mortgage, VISA credit card, and commercial loans; trust and notarial services. These activities would be performed from the office of Applicant's subsidiary in Lilac Mall, Rochester, New Hampshire, and the geographic areas to be served are Rochester and communities on its northern border.

In 1975, the Board approved the acquisition by Heritage Banks, Inc. (formerly Profile Bankshares, Inc.), of Rochester Savings Bank and Trust Company, a guaranty savings bank. 61 Federal Reserve Bulletin 901 (1975). However, the operation of a guaranty savings bank has not been specified by the Board in § 225.4(a) of Regulation Y as permissible generally for bank holding companies.

Interested persons may express their views on the question whether the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Boston.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than February 21, 1980.

Board of Governors of the Federal Reserve System, January 21, 1980.

William N. McDonough,

Assistant Secretary of the Board.

[FR Doc. 80-2734 Filed 1-28-80; 8:45 am]

BILLING CODE 6210-01-M

Central Wisconsin Bankshares, Inc.; Acquisition of Bank

Central Wisconsin Bankshares, Inc., Wausau, Wisconsin, has applied for the Board's approval under section 3 (a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 per cent of the voting shares of New Lisbon State Bank, New Lisbon, Wisconsin. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 22, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 22, 1980.

William N. McDonough,

Assistant Secretary of the Board.

[FR Doc. 80-2786 Filed 1-28-80; 8:45 am]

BILLING CODE 6210-01-M

Lone Oak Financial Corp.; Formation of Bank Holding Company

Lone Oak Financial Corporation, Lone Oak, Texas, has applied for the Board's approval under section 3 (a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares (less directors' qualifying shares) in Lone Oak State Bank, Lone Oak, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than February 22, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 22, 1980.

William N. McDonough,

Assistant Secretary of the Board.

[FR Doc. 80-2785 Filed 1-28-80; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposals

The following request for clearance of reports intended for use in collecting information from the public was accepted by the Regulatory Reports Review Staff, GAO, on January 22, 1980. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the **Federal Register** is to inform the public of such receipt.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FMC request are invited from all interested pesons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before February 19, 1980, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Federal Maritime Commission

The FMC requests clearance for revision of 46 CFR Part 512, Financial Reports of Common Carriers By Water in the Domestic Offshore Trades. At present, 46 CFR Part 512 (Subparts A and B) is applicable to vessel operating common carriers and nonvessel operating common carriers in the domestic offshore trades. The revised 46 CFR Part 512 is applicable to vessel operating common carriers only; reporting requirements for nonvessel operating common carriers will be contained in 46 CFR Part 514, which has been submitted as a separate clearance request. 46 CFR Part 512 is applicable to all persons engaged in common carriage via cargo vessels in the domestic offshore trades (except persons engaged in intrastate operations in Alsaka and Hawaii) and required by the Intercoastal Shipping Act, 1933, to file

tariffs with the Commission. These carriers must file annually, in duplicate, Statements of Financial Operating Data (designated as FMC–377 for tug and barge operators and FMC–378 for self-propelled VOCCs) for each domestic offshore trade within 150 days after the close of the carrier's fiscal year, unless a waiver is requested and granted by FMC. Such persons must also file other financial information and related workpapers upon the occurrence of general rate changes. Financial data must also be furnished for initial tariff filings. The FMC estimates that respondents will number approximately 40 VOCCs (15 self-propelled and 25 tug and barge operators) and that reporting burden will average 172 hours for each. FMC estimates that approximately 14 respondents will file other financial data required by Part 512 annually, with a reporting burden of one-half hour for each application for extension under § 512.2(c), one-half hour for data filed under § 512.2(d)(1), and one-half hour for data filed under § 512.2(h).

The FMC requests clearance for a new 46 CFR Part 514, Financial Exhibits and Schedules Non-Vessel Operating Common Carriers in the Domestic Offshore Trades. Part 514 will replace reporting requirements for nonvessel operating common carriers contained in General Order 11 (46 CFR 512—Subpart B). Present Subpart A of 46 CFR 512 covering vessel operating common carriers will remain in that part, which has been revised and submitted for clearance as a separate request. 46 CFR 514 is applicable to all persons engaged as nonvessel operating common carriers (NVOCCs) who are required by a the Intercoastal Shipping Act, 1933, to file tariffs with the FMC. Under Part 514, NVOCCs will be required to submit standard format financial data, in duplicate, on Form FMC–379 within thirty days of notice in the **Federal Register** of the Commission instituting a formal investigation and hearing of a proposed rate change. NVOCCs must maintain records necessary to prepare this financial data for a minimum of three years. The FMC estimates respondents will number approximately 90 NVOCCs and that recordkeeping burden will average 1 hour annually for each. If the Commission requires a NVOCC to file Form 379 the burden will average 100 hours for such filing.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 80–2826 Filed 1–28–80; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food & Drug Administration

[Docket No. 79F–0452]

Rohm and Haas Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Rohm and Haas Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a preservative in adhesive emulsions used as components of food-contact articles.

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.

SUPPLEMENTARY 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 9B 3446) has been filed by the Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of a mixture containing 5-chloro-2-methyl-4-isothiazolin-3-one and 2-methyl-4-isothiazolin-3-one as a preservative for polymer latex emulsions in adhesives.

The environmental impact analysis report and other relevant material have been reviewed, and it has been determined that the proposed use of the additive will not have a significant environmental impact. Copies of the environmental impact analysis report and the environmental assessment report may be seen in the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 21, 1980.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 80–2737 Filed 1–28–80; 8:45 am]

BILLING CODE 4110–03–M

[Docket No. 79F–0479]

Shin-Etsu Chemical Co., Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Biddle Sawyer Corp., 2 Penn Plaza, New York, NY 10001, on behalf of the Shin-Etsu Chemical Co., Ltd., Tokyo, Japan, has filed a petition proposing that the food additive regulations be amended to provide for the use of low substituted hydroxypropyl cellulose as a formulation aid in foods.

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.

SUPPLEMENTARY 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 OA3489) has been filed by the Biddle Sawyer Corp., 2 Penn Plaza, New York, NY 10001, on behalf of the Shin-Etsu Chemical Co., Ltd., Tokyo, Japan, proposing that § 172.870 *Hydroxypropyl cellulose* (21 CFR 172.870) be amended to provide for the safe use of low substituted hydroxypropyl cellulose as a formulation aid in foods.

The potential environmental impact of this action is being reviewed. If this petition results in a regulation, and the agency concludes that an environmental impact statement is not required, the notice of availability of the environmental impact analysis report or statement of exemption, as applicable, and environmental assessment report, will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.25(b).

Dated: January 21, 1980.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 80–2738 Filed 1–28–80; 8:45 am]

BILLING CODE 4110–03–M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming consumer exchange meeting to be chaired by Loren Y. Johnson, District Director, Philadelphia District Office, Philadelphia, PA.

DATE: The meeting will be held 9 a.m., Thursday, February 14, 1980.

ADDRESS: The meeting will be held at the Holiday Inn, 18th and Market Streets, Philadelphia, PA.

FOR FURTHER INFORMATION CONTACT: Bob Lockett, Consumer Affairs Officer, Food and Drug Administration, Department of Health, Education, and Welfare, Rm. 900, U.S. Courthouse,

Second and Chestnut Streets, Philadelphia, PA 19106, 215–597–0837.

The purpose of this meeting is to provide a public forum for discussing and subsequently commenting on the proposed changes in the food labeling regulations, as indicated in the December 21, 1979 **Federal Register** announcement (44 FR 75990).

Dated: January 22, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–2739 Filed 1–28–80; 8:45 am]

BILLING CODE 4110–03–M

[Docket No. 79D–0483]

Peanuts and Peanut Products, and Other Foods and Feeds; Availability of Guidelines

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of revised administrative guidelines on the analytical methods used to confirm the presence of aflatoxin in peanuts and peanut products, and other foods and feeds.

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

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Bureau of Foods (HFF–312), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202–245–3092.

SUPPLEMENTARY INFORMATION: FDA's guidelines that set action levels for aflatoxin in peanuts and peanut products and whole cottonseeds have existed for several years. The action levels are a quantitative statement of the level of aflatoxin contamination that will trigger FDA regulatory action. These guidelines have required, as a prerequisite to regulatory action, that analyses for confirmation of the identity of aflatoxin be performed using two procedures, one consisting of a chemical derivatization of aflatoxin, the other a lengthy chicken embryo bioassay for aflatoxin B1 toxicity.

FDA has reviewed data developed since 1964 which show that confirmation of aflatoxin B1 by the chemical derivatization procedure has, without exception, been corroborated by the chicken embryo bioassay. Thus, the agency has concluded that the chemical test can stand alone as the confirmatory test for the identity of aflatoxin in peanuts and peanut products and cottonseed. The chicken embryo bioassay confirmation takes a little more than 3 weeks to perform, and, under the guideline, regulatory action would have to await the bioassay results. To avoid this unnecessary delay, the administrative guidelines have been revised to delete the requirement for the chicken embryo bioassay for peanuts, peanut products, and cottonseed as a prerequisite to regulatory action on samples found to be violative.

The level of aflatoxin permitted in peanuts and peanut products and other foods and feeds covered by these guidelines has not changed.

The revised guidelines and data supporting FDA's decision to revise them are on file in the office of the Hearing Clerk, Food and Drug Administration, under the docket number found in brackets in the heading of this document.

Interested persons may submit to the Hearing Clerk, Food and Drug Administration, written comments (preferably four copies and identified with the Hearing Clerk docket number found in brackets in the heading of this document) regarding these action levels. Received comments may be seen in the above-name office, from 9 a.m. to 4 p.m., Monday through Friday.

Dated: January 22, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–2746 Filed 1–28–80; 8:45 am]

BILLING CODE 4110–03–M

Office of Education

Biomedical Sciences Program

AGENCY: Office of Education, HEW.

ACTION: Extension of Closing Date for Transmittal of Applications.

SUMMARY: The closing date for the transmittal of applications for the Biomedical Sciences Program is extended from March 28, 1980 to approximately *60 days after publication of the final regulations.* Proposed regulations for the Biomedical Science Program were published in the **Federal Register** on June 25, 1979. The proposed regulations have been revised in light of public comment. The deadline is being extended to give applicants sufficient time to submit or amend their applications to take into account any changes in the regulations when they are published in final form. The new notice of closing date will be published together with the final regulations in the same issue of the **Federal Register.** That notice will include instructions for submitting applications and program information.

FOR INFORMATION CONTACT:

Dr. Melvin E. Engelhardt, Biomedical Sciences Program, U.S. Office of Education, 400 Maryland Avenue, S.W., (Room 3010, ROB–3), Washington, DC 20202, (202) 245–1990.

(Catalog of Federal Domestic Assistance Number 13.691, Biomedical Sciences Program)

Dated: January 23, 1980.

William L. Smith,

Commissioner of Education.

[FR Doc. 80–2218 Filed 1–28–80; 8:45 am]

BILLING CODE 4410–22–M

DEPARTMENT OF THE INTERIOR

Heritage Conservation and Recreation Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before January 18, 1980. Pursuant to § 60.13 of 36 CFR Part 60, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, DC 20243. Written comments or a request for additional time to prepare comments should be submitted by February 8, 1980.

Carol Shull,

Acting Keeper of the National Register.

ALABAMA

Chambers County

LaFayette, *Chambers County Courthouse Historic District,* Roughly bounded by Alabama and 2nd Aves., 1st., 1st St., SE., and 1st St., SW.

Morgan County

Decatur, *Bank Street Historic District,* Bank St.

Decatur, *Southern Railway Depot,* 701 Railroad St., NW.

CALIFORNIA

Orange County

Anaheim vicinity, *Weir Canyon Archeological District.*

DELAWARE

New Castle County

Hockessin and vicinity, *Wilmington and Western Railroad.*

IDAHO

Bannock County

Lava Hot Springs, *Whitestone Hotel*, 2nd. Ave. and Main St.

Latah County

Moscow, *Fort Russell Neighborhood Historic District*, Roughly bounded by Jefferson, Monroe, 2nd, and D Sts.

Lemhi County

Salmon vicinity, *Geertson, Lars, House*, SE of Salmon.

Nez Perce County

Lapwai, *First Lapwai Bank*, 302 W. 1st St.
Lapwai, *First Presbyterian Church*, Locust and 1st St. East.

MARYLAND

Caroline County

Denton vicinity, *Martinak Pungy*, Martinak State Park.

Carroll County

Linwood, *Linwood Historic District*, McKinstry's Mill Rd.

Cecil County

Zion vicinity, *England, Isaac, House*, 1 mi. W of Zion.

Harford County

Bel Air, *Harford National Bank*, Wall and Courtland Sts.

Montgomery County

Chevy Chase, *Woodend*, 8940 Jones Mill Rd.

NEW JERSEY

Camden County

Camden, *Cooper Library in Johnson Park*, 2nd and Cooper Sts.
Camden, *Sharp, Edward, House*, 200 Cooper St.

Hunterdon County

High Bridge vicinity, *Union-Exton Farm*, W of High Bridge on Van Syckles Rd.

Morris County

Morristown, *Delaware Lackawanna and Western Railroad Station*, 132 Morris St.

Passaic County

Haledon, *Kossuth Street School*, 47 Kossuth St.

Sussex County

Hamburg, *Bethany Chapel (Hamburg Presbyterian Church)* 103 Hamburg Tpke.
Newton, *First Presbyterian Church of Newton*, High St.

Union County

Fanwood, *Central Railroad of New Jersey—Fanwood Railroad Station Complex*, 238 North Ave.

Warren County

Belvidere, *Belvidere Historic District*, Off U.S. 46.
Vienna vicinity, *Mount Bethel Methodist Church*, S of Vienna on Mount Bethel Md.

NEW MEXICO

Sandoval County

Guadalupe vicinity, *Guadalupe Ruin*, SE of Guadalupe.

OREGON

Clackamas County

Oregon City, *Latourette, Charles David, House*, 503 High St.

Douglas County

Roseburg, *Lane, Gen. Joseph, Tomb*, Roseburg Memorial Gardens.

Jackson County

Ashland, *Ahlstrom, Nils, House*, 248 5th St.
Ashland, *Campbell, Richard Posey, House*, 94 Bush St.
Ashland, *Coolidge, Orlando, House*, 137 N. Main St.
Ashland, *First National Bank, Vaupel Store and Oregon Hotel Buildings*, 15 S. Pioneer St. and 70 E. Main St.
Ashland, *Perozzi, Domingo, House*, 88 Granite St.
Gold Hill, *Rock Point Hotel*, 40 N. River Rd.
Prospect, *Prospect Hotel*, 39 Mill Creek Dr.
Trail, *Rogue Elk Hotel*, 27390 OR 62

Lane County

Eugene, *First Congregational Church*, 492 E. 13th Ave.
Eugene, *Harlow, Elmer, House*, 2991 Harlow Rd.

Lincoln County

Lincoln City, *Dorchester House*, 2701 U.S. 101.

Linn County

Albany, *Albany Custom Mill*, 213 Water St.
Albany, *Chamberlain, George Earle, House*, 208 SE 7th St.
Albany, *Dawson, Alfred, House*, 731 SW. Broadalbin St.
Albany, *Straney and Moore Livery Stable*, 321—323 SW. 2nd Ave.

Marion County

St. Paul vicinity, *Zorn, Casper, Farmhouse*, NE of St. Paul at 8448 Champoeg Rd., NE.
Salem vicinity, *Geer, R. C., Farmhouse*, E of Salem at 12390 Sunnyview Rd.

Multnomah County

Portland, *Auditorium and Music Hall*, 920—928 SW. 3rd Ave.
Portland, *Buckler-Henry House*, 2324 SE. Ivon St.
Portland, *Campbell Townhouses*, 1705—1719 NW. Irving St. and 715—719 NW. 17th Ave.
Portland, *Couch Family Investment Development*, 1721—1735 NW. Irving St. and 718 NW. 18th St.
Portland, *Hexter, Levi, House*, 2326 SW. Park Pl.
Portland, *Jefferson Substation*, 37 SW. Jefferson St.
Portland, *Ladd Carriage House*, 1331 SW. Broadway.
Portland, *Mock, John, House*, 4333 N. Williamette Blvd.
Portland, *United Carriage Company Building*, 933 SW. Broadway St.

Polk County

Pedee vicinity, *Riley-Cutler House*, 11510 Pedee Creek Rd.

Union County

La Grande, *Administration Building*, Eastern Oregon State College campus.

TENNESSEE

Dickson County

Charlotte vicinity, *Nesbitt, John, House*, NW of Charlotte on TN 49.

UTAH

Garfield County

Escalante and vicinity, *Hole-in-the-Rock Trail* (also in Kane and San Juan Counties).

Salt Lake County

Salt Lake City, *Avenues Historic District*, Roughly bonded by 1st and 9th Aves., State and Virginia Sts.

VERMONT

Addison County

Panton, *District School No. 1*, Lake Dr.

Rutland County

Sudbury vicinity, *Hyde's Hotel*, S of Sudbury on VT 30.

Windham County

Brattleboro, *Estey Organ Company Factory*, Birge St.

[FR Doc. 80-2572 Filed 1-28-80; 8:45 am]
BILLING CODE 4310-03-M

Water and Power Resources Service

Contract Negotiations With the Westlands Water District; Availability of Proposed Contracts for Public Review and Comment and Public Hearing

The Department of the Interior, through the Water and Power Resources Service, has substantially completed the negotiation of two proposed contracts between the United States and the Westlands Water District, Fresno, California. The proposed contracts were prepared pursuant to the the Reclamation Project Act of 1939 (53 Stat. 1187), the authorizing act for San Luis Unit (SLU) (74 Stat. 156), and the Act of June 15, 1977 (91 Stat. 225). Execution of the proposed contracts is conditioned upon Congressional reauthorization of the SLU to clarify the authority of the Department to construct certain facilities, serve district lands, and other matters.

Two long-term contracts are presently in effect. Contract number 14–06–200–495A, providing for water service, was executed on June 5, 1963. Contract No 14–06–20–2020A, providing for construction of the distribution and drainage collector system, was executed on April 1, 1965. The water service

contract provides for a maximum of 900,000 acre-feet of water annually. However, no water has been delivered pursuant to that contract; rather, water service has been handled by a series of interim and temporary contracts. The distribution system contract provides for the repayment of $157,048,000 for the construction of facilities. Some facilities have been built, and the district began paying its semiannual installments during 1979. However, none of the long-term, interim, or temporary contracts are adequate to meet the current needs of the district.

The proposed long-term water service contract will provide for the delivery of 1,150,000 acre-feet of water annually, an increase of 250,000 acre-feet per year. The proposed distribution system repayment contract will provide for the expenditure of up to $256 million for the construction of distribution and drainage collector facilities. Further, the distribution system contract provides for the repayment of up to $48 million for the construction of the San Luis Drain from Laguna Avenue to and including Kesterson Reservoir. The contracts will set forth the terms and conditions of payment for water, repayment of funds expended for the construction of facilities, and cover other pertinent matters. The proposed water service contract contains special provisions for reductions in the delivery of water during dry or critically dry years.

Public hearings are scheduled to receive comments from interested parties on the proposed contracts. The hearing schedule follows:

February 25, 1980, Terrace Room, Fresno Hilton, 1055 Van Ness, Fresno, California, at 1:00 p.m.

February 27, 1980, Empire Room B, Woodlake Inn, 500 Leisure Lane, Sacramento, California, at 1 p.m.

Additonal hearings will be held if deemed necessary to assure adequate opportunity for the public to express their views on the proposed contracts.

For further information and copies of the proposed contracts, please contact Mr. John B. Budd, Division of Water and Power Resources Management, Water and Power Resources Service, 2800 Cottage Way, Sacramento, California 95825, telephone number (916) 484–4380.

The hearing record on the proposed contracts will remain open until March 5, 1980. All written correspondence concerning the proposed contracts is available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

Dated: January 22, 1980.

R. Keith Higginson,

Commissioner of Water and Power Resources.

[FR Doc. 80-2753 Filed 1-28-80; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice (49 CFR § 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the* **Federal Register.** Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected.* A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner, (b) the effect of the decision which may be rendered upon petitioner's interest, (c) the availability of other means by which the petitioner's interest might be protected, (d) the extent to which petitioner's interest will be represented by other parties, (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future convenience and necessity, and that each contract carrier appliant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. § 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulation. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. § 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. § 10930(a) [formerly section 210 of the Interstate Commerce Act.]

In the absence of legally sufficient petitions for intervention, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices within 30 days after publication, or the application shall stand denied.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

Volume No. 261

Decided: Jan. 7, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 14215 (Sub-54F), filed June 25, 1979. Applicant: SMITH TRUCK SERVICE, INC., P.O. Box 1329, Steubenville, OH 43952. Representative: John L. Alden, 1396 West Fifth Ave., P.O Box 12241, Columbus, OH 43212. Transporting *iron and steel articles,* and *materials, equipment, and supplies* used in the manufacture of iron and steel articles (except commodities in bulk, in tank vehicles), (1) between the facilities of United States Steel Corporation, at or near Cleveland, Lorain, and Youngstown, OH, on the one hand, and, on the other, points in IL, IN, and MI, and (2) between the facilities of United States Steel Corporation, at or near Braddock, Clairton, Dravosburg, Duquesne, Homestead, Irvine, Johnstown, McKeesport, McKees Rocks Pittsburgh, and Vandergrift, PA, on the one hand, and, on the other, points in IL, IN, MI, and OH. (Hearing site: Columbus, OH, or Washington, DC.)

MC 52465 (Sub-48F), filed June 25, 1979. Applicant: RICE TRUCK LINES, a Corporation, P.O. Box 2644, Great Falls, MT 59403. Representative: Ray F. Koby P.O Box 2567, Great Falls, MT 59403. Transporting *used bricks* from points in Cascade County, MT, to points in King, Pierce, Snohomish and Kitsap Counties, WA. (Hearing site: Great Falls, MT.)

MC 89684 (Sub-107F), filed April 24, 1979. Applicant: WYCOFF COMPANY, INCORPORATED, 560 South 300 West, Salt Lake City, UT 84110. Representative: John J. Morrell (same address as applicant). Transporting *such commodities* as are dealt in or used by book and card shops, between Brighman City and Payson, UT, on the one hand, and, on the other, points in Los Angeles County, CA. (Hearing site: Salt Lake City, UT.)

MC 105045 (Sub-112F), filed June 26, 1979. Applicant: R. L. JEFFRIES TRUCKING CO., INC., P.O. Box 3277, Evansville, IN 47701. Representative: Paul F. Sullivan, 711 Washington Bldg., Washington, DC 20005. Transporting (1) *pipe, fittings, valves, hydrants, castings,* and *firebrick,* and (2) *materials and supplies* used in connection with the commodities in (1) above, (except commodities in bulk), from the facilities of Clow Corporation, at (a) Columbia, MO, (b) Coshocton and Parral, OH, (c) Buckhannon, WV, (d) Birmingham, AL, and (e) Talladega County, AL, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Chicago IL.)

MC 106074 (Sub-120F), filed June 26, 1979. Applicant: B AND P MOTOR LINES, INC., Shiloh Rd. and U.S. Hwy. 221 South, Forest City, NC 28043. Representative: John J. Capo, P.O. Box 720434, Atlanta, GA 30328. Transporting *such commodities* as are dealt in by grocery and food business houses (except commodities in bulk, in tank vehicles), from the facilities of A. E. Staley Manufacturing Co., at (a) Cicero and Broadview, IL, to Atlanta, GA, and at (b) Chattanooga, TN, to points in NC and SC. (Hearing site: Atlanta, GA, or Washington, DC.)

MC 107295 (Sub-929F), filed June 26, 1979. Applicant: PRE-FAB TRANSIT CO., a Corporation, Farmer City, IL 61842. Representative: Mack Stephenson, 42 Fox Mill Lane, Springfield, IL 62707. Transporting (1) *insulation materials,* from Sanford, ME, to points in DE, KY, MD, NJ, NY, NC, OH, PA, VA, WV, and DC, and (2) *materials, equipment, and supplies* used in the installation, manufacture, and distribution of insulation materials (except commodities in bulk), in the reverse direction. (Hearing site: Boston, MA.)

MC 109094 (Sub-18F), filed June 26, 1979. Applicant: GAULT TRANSPORTATION, INC., 2381 Cranberry Highway, Wareham, MA 02571. Representative: Francis E. Barrett, Jr., 10 Industrial Park Road, Hingham, MA 02043. Transporting *odophos,* in bulk, from Sayreville, NJ, to points in MA, RI, CT, NY, NJ, PA, VA, MD, and VT. (Hearing site: Boston, MA, or Providence, RI.)

MC 112304 (Sub-196F), filed June 18, 1979. Applicant: ACE DORAN HAULING & RIGGING CO., a Corporation, 1601 Blue Rock St., Cincinnati, OH 45223. Representative: John D. Herbert (same address as applicant). Transporting (1) *iron and steel articles,* between the facilities of Acme Structural, Inc., at or near Springfield, MO, on the one hand, and, on the other, points in the United States (except AK and HI), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, from points in the United States (AK and HI), to Springfield, MO. (Hearing site: St. Louis, MO, or Washington, DC.)

MC 119744 (Sub-103F), filed June 26, 1979. Applicant: EAGLE TRUCKING COMPANY, a Corporation, P.O. Box 471, Kilgore, TX 75662. Representative: Bernard H. English, 6270 Firth Road, Fort Worth, TX 76116. Transporting (1) *material handling equipment,* and (2) *parts and accessories* for the material handling equipment, from the facilities of OTEK Equipment Manufacturing, at or near Longview, TX, to points in the United States (except AK and HI), and (3) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) above, in the reverse direction. (Hearing site: Dallas or Fort Worth, TX.)

MC 124154 (Sub-78F), filed June 25, 1979. Applicant: WINGATE TRUCKING COMPANY, INC., P.O. Box 645, Albany, GA 31702. Representative: W. Guy McKenzie, Jr., P.O. Box 1200, Tallahassee, FL 32302. Transporting *agricultural chemicals,* in containers, between the facilities of Monsanto Company, at points in the United States (except AK and HI), on the one hand, and, on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the named shipper facilities. (Hearing site: Atlanta, GA, or Washington, DC.)

MC 136605 (Sub-124F), filed June 25, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807.

Representative: Allen P. Felton (same address as applicant). Transporting *iron and steel articles,* from the facilites of Inland Steel at or near East Chicago, IN, to points in IA and NE. (Hearing site: Chicage, IL.)

MC 139495 (Sub-453F), filed May 18, 1979. previously published in the **Federal Register** issue of October 25, 1979. Applicant: NATIONAL CARRIERS, INC., 1501 East 8th Street, P.O. Box 1358, Liberal, KS 67901. Representative: HERBERT ALAN DUBIN, 1320 Fenwick Lane, Silver Spring, MD 20910. Transporting *floor coverings* and *materials, equipment, and supplies* used in the installation and maintenance of floor coverings (except commodities in bulk, in tank vehicles), from points in Los Angeles and Yolo Counties, CA, to points in AZ, CO, ID, MT, NV, NM, OR, TX, UT, and WA. (Hearing site: Washington, DC.)

Note.—This republication indicates the correct destination State of NM.

MC 140024 (Sub-154F), filed June 25, 1979. Applicant: J. B. MONTGOMERY, INC., 5565 East 52nd Ave., Commerce City, CO 80022. Representative: Don Bryce (same address as applicant). Transporting *such commodities* as are dealt in or used by manufacturers and distributors of alcoholic beverages and wine (except commodities in bulk, in tank vehicles), between the facilities of Heublein, Inc., at or near Hartford, CT, on the one hand, and, on the other, Chicago, IL, Detroit, MI, and Paducah, KY, points in OH, and those in the United States on and west of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the international boundary line between the United States and Canada, restricted to the transportation of traffic originating at or destined to the above-named facilities. (Hearing site: Denver, CO, or Hartford, CT.)

MC 140974 (Sub-5F), filed April 19, 1979. Applicant: LLOYD GARBER, d.b.a. GARBERS TRUCKING, 14th and K St., Fairbury, NE 68352. Representative: (Same as applicant). To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *brick* and *clay products,* from the facilities of Endicott Clay Products Co., at or near (a) Endicott, NE, (b) Anaheim and Santa Clara, CA, (c) Portland, OR, (d) Seattle, WA, and (e) Reno, NV, to points in TX, NM, AZ, NV, UT, CA, WA, and OR, under continuing contract(s) with Endicott Clay Products Co., of Fairbury, NE. (Hearing site: Omaha, NE, or Denver, CO.)

MC 141124 (Sub-44F), filed June 25, 1979. Applicant: EVANGELIST COMMERCIAL CORPORATION, P.O. Box 15000, Wilmington, DE 19850. Representative: Boyd B. Ferris, 50 West Broad Street, Columbus, OH 43215. Transporting *such commodities* as are dealt in or used by manufacturers or converters of paper or paper products (except commodities in bulk), from Chicago, IL to points in the United States in and east of MI, IN, KY, TN, and MS. (Hearing site: Columbus, OH, or Washington, DC.)

MC 141124 (Sub-45F), filed June 25, 1979. Applicant: EVANGELIST COMMERCIAL CORPORATION, P.O. Box 15000, Wilmington, DE 19850. Representative: Boyd B. Ferris, 50 West Broad Street, Columbus, OH 43215. Transporting *such commodities* as are dealt in or used by manufacturers or converters of paper and paper products (except commodities in bulk), from Rumford, ME, Beaver Falls, Brownsville, and Lowville, NY, and Brattleboro, VT, to points in CA, and those in the United States in and east of ND, SD, NE, KS, OK, and TX (Hearing site: Chicago, IL.)

MC 145734 (Sub-8F), filed June 25, 1979. Applicant: B D TRUCKING CO., a corporation, Ripon, CA 95366. Representative: J. H. Gulseth, 100 Bush St., 21st Floor, San Francisco, CA 94104. Transporting (1) *gypsum products,* from the facilities of National Gypsum Co., at or near Phoenix, AZ, to points in CA; and (2)(a) *gypsum board, gypsum board joint systems, gypsum board joints,* and (b) *materials and supplies* used in the installation of the commodities in (2)(a) above, from the facilities of National Gypsum Co., at or near Long Beach, CA, to Phoenix and Tucson, AZ. (Hearing site: San Francisco or Los Angeles, CA.)

MC 140024 (Sub-153F), filed June 25, 1979. Applicant: J. B. MONTGOMERY, INC., 5565 East 52nd Ave., Commerce City, CO. Representative: Don Bryce (same address as applicant). Transporting *such commodities* as are dealt in or used by manufacturers and distributors of alcoholic beverages and wine (except commodities in bulk, in tank vehicles), between the facilities of Heublein, Inc., at or near Paducah, KY, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the named shipper facilities. (Hearing site: Denver, CO, or Hartford, CT.)

Volume No. 269

Decided: Jan. 14, 1980.

By the Commission, Review Board Number 2, Members, Boyle, Eaton and Liberman.

MC 263 (Sub-228F), filed June 29, 1979. Applicant: GARRETT FREIGHTLINES, INC., 2055 Garrett Way, Pocatello, ID 83201. Representative: Wayne S. Green (same address as applicant). Transporting *sugar,* in packages, from points in ID to points in SD. (Hearing site: Pocatello, ID or Salt Lake City, UT.)

MC 11722 (Sub-62F), filed June 29, 1979. Applicant: BRADER HAULING SERVICE, INC., P.O. Box 655, Zillah, WA 98953. Representative: Philip G. Skofstad, P.O. Box 594, Gresham, OR 97030. Transporting (1) *containers, container closures,* and *container components,* and (2) *equipment, materials, supplies* used in the manufacture sales, and distribution of the commodities in (1) above, (except commodities in bulk, in tank vehicles), between points in AZ, CA, CO, ID, KS, MT, NE, ND, NM, NV, OK, OR, SD, TX, UT, WA, and WY. (Hearing site: Seattle, WA or Portland, OR.)

Note.—Dual operations may be involved.

MC 61403 (Sub-246F), filed June 27, 1979. Applicant: THE MASON AND DIXON TANK LINES, INC., Highway 11–W, P.O. Box 969, Kingsport, TN 37662. Representative: W. C. Mitchell, Suite 1201, 370 Lexington Ave., New York, NY 10017. Transporting *chemicals,* in bulk, in tank vehicles, from Doe Run, KY, to points in NC, SC, and VA. (Hearing site: Louisville, KY.)

MC 61592 (Sub-461F), filed June 27, 1979. Applicant: JENKINS TRUCK LINE, INC., P.O. Box 697, Jeffersonville, IN 47130. Representative: E. A. DeVine, P.O. Box 737, Moline, IL 61265. Transporting (1) *vinegar and sweet cider* (except commodities in bulk, in tank vehicles) from the facilities used by National Vinegar Company, at Olney and Alton, IL, to points in IA, NE, KS, MO, CO, AR, OH, IN, and KY; (2) *beverages* (except commodities in bulk, in tank vehicles), from Cold Spring, MN, to points in AZ, CA, CO, ID, OR, TX, UT, WA, MT, ND, AR, MO, IA, IL, IN, FL, NY, and MD; and (3) *apple juice,* in containers, from the facilities of Indian Summer, Inc., at (a) Evansville, IN, and (b) Belding, MI, to points in AR, IL, IA, KS, MO, NE, ND, OK, SD, IN, and KY. (Hearing site: Chicago, IL.)

MC 105813 (Sub-258F), filed June 25, 1979. Applicant: BELFORD TRUCKING CO., INC., 1759 S. W. 12th St., P.O. Box 2009, Ocala, FL 32670. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. Transporting *foodstuffs,* and *containers* used in the transportation of foodstuffs, between points in FL, restricted to the

transportation of traffic having an immediately prior or subsequent movement by water. (Hearing site: Tampa, or Orlando, FL.)

MC 105813 (Sub-260F), filed July 2, 1979. Applicant: BELFORD TRUCKING CO., INC., 1759 S. W. 12th St., P.O. Box 2009, Ocala, FL 32670. Representative: Arnold L. Burke, 180 North LaSalle St., Chicago, IL 60601. Transporting *pet food*, in packages, from the facilities of Kal Kan Foods, Inc., at or near (a) Columbus, OH, and (b) Mattoon, IL, to points in AL, FL, GA, NC, and SC. (Hearing site: Columbus, OH.)

MC 107012 (Sub-385F), filed June 14, 1979. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U. S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). Transporting *such commodities* (a) as are dealt in by restaurants, and (b) as are used in the construction and operation of restaurants, (except commodities in bulk and those requiring the use of special equipment), from the facilities of Paramount Fountain and Restaurant Supply Corporation, at or near Providence, RI, to points in the United States (except AK and HI). (Hearing site: Boston, MA or Washington, DC.)

MC 107012 (Sub-393F), filed June 29, 1979. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). Transporting *plastic containers*, from the facilities of Rheem Manufacturing Company, at or near Bryan, TX, to points in AL, AR, CA, CO, KS, LA, MO, MS, NM, OK, and TN. (Hearing site: Chicago, IL or Washington, DC.)

MC 107743 (Sub-58F), filed June 29, 1979. Applicant: SYSTEM TRANSPORT, INC., P.O. Box 3456, T. A., Spokane, WA 99220. Representative: J. Michael Alexander, First Continental Bank Bldg., #301, 5801 Marvin D. Love Freeway, Dallas, TX 75237. Transporting *cooling tower materials*, from Merced, CA, to points in PA, OH, KY, TN, AR, TX, MI, IN, WI, IL, MN, IA, MO, ND, SD, NE, KS, OK, MT, WY, CO, NM, ID, UT, AZ, WA, OR, NV, and CA. (Hearing site: San Francisco, CA.)

MC 107743 (Sub-59F), filed July 2, 1979. Applicant: SYSTEM TRANSPORT, INC., P.O. Box 3456, T. A., Spokane, WA 99220. Representative: J. Michael Alexander, First Continental Bank Bldg. #301, 5801 Marvin D. Love Freeway, Dallas, TX 75237. Transporting *iron and steel articles* (except commodities which because of size and weight require the use of special equipment, and oilfield and pipeline commodities as defined in *Mercer Extension—Oil Field Commodities*, 74 M.C.C. 459), from those points in IN within the Chicago, IL, commercial zone, to points in ID, MT, OR, and WA. (Hearing site: Chicago, IL.)

MC 109593 (Sub-9F), filed June 26, 1979. Applicant: H. R. HILL, Box 875, 2007 West Shawnee, Muskogee, OK 74401. Representative: Max G. Morgan, P.O. Box 1540, Edmond, OK 73034. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) such commodities as are dealt in by manufacturers of containers, and (2) materials, equipment, and supplies used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between Ada and Muskogee, OK, on the one hand, and, on the other, points in AR, KS, MO, and TX, under continuing contract(s) with Brockway Glass Company, Inc., of Brockway, PA. (Hearing site: Tulsa, OK, or Dallas, TX.)

MC 112123 (Sub-17F), filed June 29, 1979. Applicant: BEST-WAY TRANSPORTATION, a corporation, 5150 North 16th St., Phoenix, AZ 85016. Representative: Donald E. Fernaays, 4040 East McDowell Road, Suite 320, Phoenix, AZ 85008. To operate as a *common carrier* by motor vehicle, in interstate or foreign commerce, over *regular routes*, transporting *general commodities* (except those of unusual value, household goods as defined by the Commission, classes A and B explosives, commodities in bulk, and those requiring special equipment), (1) between Phoenix, AZ, and Santa Fe, NM: from Phoenix, AZ, over Interstate Hwy 17 to Flagstaff, AZ, then over Interstate Hwy 40 to Albuquerque, NM, then over Interstate Hwy 25 to Santa Fe, NM, and return over the same route, serving all intermediate points in NM, and serving the off-route point of Los Alamos, NM; (2) between Bawtry, NM and El Paso, TX; over Interstate Hwy 10 serving all intermediate points, and serving the Hidalgo Mine Site Lordsburg, NM as an off-route point; (3) between Albuquerque, MN, and El Paso, TX, over Interstate Hwy 25 and Interstate Hwy 10, serving no intermediate points, and serving the termini for purposes of joinder only, as an alternate route for operating convenience only in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Los Angeles, CA or Albuquerque, NM.)

Note.—Applicant intends to tack this authority with its existing authority.

MC 114632 (Sub-248F), filed June 29, 1979. Applicant: APPLE LINES, INC., P.O. Box 287, Madison, SD 57042. Representative: David E. Peterson (same address as applicant). Transporting *composition board*, from the facilities of Boise Cascade Corporation, at International Falls, MN, to points in IL, IN, IA, KS, KY, MI, MO, NE, ND, OH, and SD. (Hearing site: Minneapolis, MN or Chicago, IL.)

Note.—Dual operations may be involved.

MC 114632 (Sub-249F), filed June 29, 1979. Applicant: APPLE LINES, INC., P.O. Box 287, Madison, SD 57042. Representative: David E. Peterson (same address as applicant). Transporting *foodstuffs*, from the facilities of Libby, McNeil & Libby, Inc., at (a) Geneva, NY, to points in IL, IA, KS, MN, MO, and WI, (b) Chicago, IL, Kokomo, IN, and Leipsic, OH, to points in CT, MA, and NY, and (c) Rochester, MN, and Janesville, Jackson, and Hartford, WI, to points in NY, MA, CT, KS, MO, and IA. (Hearing site: Chicago, IL or Minneapolis, MN.)

Note.—Dual operations may be involved.

MC 116063 (Sub-159F), filed July 2, 1979. Applicant: WESTERN COMMERCIAL TRANSPORT, INC., 2929 W. Fifth Street, P.O. Box 270, Fort Worth, TX 76101. Representative: W. H. Cole (same address as applicant). Transporting *tallow*, in bulk, (1) from the facilities of Iowa Beef Processors, Inc., at or near (a) Amarillo, TX, (b) Dakota City and West Point, NE (c) Denison and Fort Dodge, IA, (d) Emporia, KS, and (e) Luverne, MN, to points in AR, CO, IL, IN, LA, MO, OK, TN and TX; and (2) from the facilities of Iowa Beef Processors, Inc., at or near (a) Amarillo, TX and (b) Emporia, KS, to points in IA, restricted in (1) and (2) to the transportation of traffic originating at the named origins and destined to the indicated destinations (except on traffic moving in foreign commerce). (Hearing site: Omaha, NE or Sioux City, IA.)

MC 116763 (Sub-523F), filed June 11, 1979. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, Ohio 45380. Representative: H. M. Richters (same address as applicant). *Transporting, petroleum, petroleum products, and grease* (except commodities in bulk, in tank vehicles), from Marcus Hook and Philadelphia, PA, to points in FL, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Philadelphia, PA.)

MC 116763 (Sub-541F), filed June 21, 1979. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: H. M. Richters (same address as applicant). Transporting *such commodities* as are dealt in by wholesale and retail grocery

and food business houses (except commodities in bulk, in tank vehicles), (1) between points in the United States in and east of MN, IA, NE, KS, OK, and TX, and (2) from points in CA to points in the United States in and east of MN, IA, NE, KS, OK, and TX, restricted in (1) and (2) above to the transportation of traffic originating at or destined to the facilities of Shurfine-Central Corporation or its dealers. (Hearing site: Chicago, IL.)

MC 116763 (Sub-554F), filed June 29, 1979. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380. Representative: H. M. Richters (same address as applicant). Transporting *materials, equipment, and supplies* used in the manufacture and distribution of paper and paper products (except commodities in bulk, in tank vehicles), from those points in the United States in and east of ND, SD, NE, CO, and NM, to facilities of Beveridge Paper Co., Inc., a subsidiary of Simkins Industries, Inc., at or near Indianapolis, IN, restricted to the transportation of traffic originating at the indicated origins and destined to the named destination. (Hearing site: Indianapolis, IN.)

MC 116763 (Sub-555F), filed June 29, 1979. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380. Representative: H. M. Richters (same address as applicant). Transporting (1) *paper and paper products, and plastic and plastic products,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk, in tank vehicles), between those points in the United States in and east of MN, IA, MO, OK, and TX, restricted to the transportation of traffic originating at or destined to the facilities of Continental Diversified Industries, Bondware Division. (Hearing site: Chicago, IL.)

MC 116763 (Sub-559F), filed June 29, 1979. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380. Representative: H. M. Richters (same address as applicant). Transporting *such commodities* as are dealt in by distributors or manufacturers of confectionary products (except commodities in bulk, in tank vehicles), between those points in the United States in and east of MN, IA, MO, OK, and TX, restricted to the transportation of traffic originating at or destined to the facilities of The Falcon Candy Co., Inc. (Hearing site: Philadelphia, PA.)

MC 119493 (Sub-308F), filed June 26, 1979. Applicant: MONKEM COMPANY, INC., P.O. Box 1196, Joplin, MO 64801. Representative: Thomas D. Boone (same address as applicant). Transporting (1) *minerals, animal and poultry mineral feed mixtures, and fertilizer* (except commodities in bulk), and (2) materials and supplies used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between Fairbury, NE, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Kansas City or Springfield, MO.)

MC 125023 (Sub-75F), filed June 28, 1979. Applicant: SIGMA-4 EXPRESS, INC., P.O. Box 9117, Erie, PA 16504. Representative: Paul F. Sullivan, 711 Washington Bldg., Washington, DC 20005. Transporting (1) *malt beverages,* in containers, from points in Onondaga and Oswego Counties, NY, to points in DE, MD, NJ, NY, PA, WV, IL, IN, KY, MI, OH, WI, and DC, and (2) *equipment, materials, and supplies* used in the manufacture, sale, and distribution of malt beverages (except commodities in bulk), in the reverse direction. (Hearing site: Chicago, IL.)

MC 125433 (Sub-289F), filed June 29, 1979. Applicant: F–B TRUCK LINE COMPANY, a corporation, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). Transporting (1) *extruded aluminum products,* from Phoenix, AZ, to points in the United States (except AK and HI), and (2) *equipment, materials, and supplies* used in the manufacture of the commodities in (1) above (except commodities in bulk), in the reverse direction, restricted to the transportation of traffic originating at or destined to the facilities of Arizona Aluminum Co., at or near Phoenix, AZ. (Hearing site: Phoenix, AZ or Salt Lake City, UT.)

MC 125433 (Sub-295F), filed July 2, 1979. Applicant: F–B TRUCK LINE COMPANY, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). Transporting *castings, forgings, casting pulleys, and sheaves* (except commodities in bulk) from the facilities of Electron Corporation at or near (a) Littleton, CO and (b) Blackwell, OK, to points in the United States (except AK and HI), restricted to the transportation of traffic originating at the named facilities. (Hearing site: Denver, CO or Salt Lake City, UT.)

MC 126822 (Sub-59F), filed June 27, 1979. Applicant: WESTPORT TRUCKING COMPANY, a corporation, 15580 South 169 Highway, Olathe, KS 66061. Representative: Kenneth E. Smith (same address as applicant). Transporting *air handling equipment,* and *materials and supplies* used in the installation of air handling equipment, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk, and those which because of size or weitht require the use of special equipment), between the facilities of Ruskin Manufacturing Co., at or near (a) Parsons, Great Bend, Paola, and Clearwater, KS, (b) Grandview, MO, (c) Los Angeles, CA, and (d) Minden, LA, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Kansas City, MO.)

MC 134922 (Sub-306F), filed June 27, 1979. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, AR 72118. Representative: Bob McAdams (same address as applicant). Transporting *plastic materials,* from the facilities of Allied Chemical Corporation at Orange, TX, to points in the United States (except AK and HI). (Hearing site: Philadelphia, PA or Washington, DC.)

Note.—Applicant states the purpose of this application is in part to replace interline service it is now providing in conjunction with other carriers. However, this application was not filed under the special rules of Ex Parte No. MC 109 which govern the filing and processing of applications for substitution of single-line service for existing joint-line service.

MC 134922 (Sub-307F), filed June 25, 1979. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, AR 72118. Representative: Bob McAdams (same address as applicant). Transporting *paper bags,* from Sibley, IA, and Crossett, AR, to points in WA, OR, CA, NV, ID, UT, AZ, NM, MT, and WY. (Hearing site: St. Louis, MO or Little Rock, AR.)

Note.—Applicant states the purpose of this application in part, is to replace interline service it is now providing in conjunction with other carriers. However, this application was not filed under the special rules of Ex Parte No. MC 109 which govern the filing and processing of applications for substitution of single-line service for existing joint-line service.

MC 134922 (Sub-308F), filed June 27, 1979. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, AR 72118. Representative: Bob McAdams (same address as applicant). Transporting *general commodities* (except article of unusual value, classes A and B explosives, household goods as defined by the commission, commodities in bulk, and those requiring special equipment), between the facilities of Gibson's Co-op Warehouse at or near Dallas, TX, on the one hand, and, on the

other, points in the United States (except AK and HI).

MC 134922 (Sub-312F), filed June 27, 1979. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, AR 72118. Representative: Bob McAdams (same address as applicant). Transporting *small arms ammunition* (except classes A and B explosives) and related parts and components, (1) between Bridgeport, CT, on the one hand, and, on the other, points in the United State (except AK, HI and Lonoke, AR) and (2) Between Lonoke, AR, on the one hand, and, on the other, points in the United States (except AK, HI, LA, TX, OK, KS, NE, MT, WY, CO, NM, AZ, UT, ID, WA, OR, NV, CA and Bridgeport, CT). (Hearing site: Little Rock, AR, or Washington, DC.)

Note.—Applicant states the purpose of this application is to replace interline service it is now providing in conjuction with other carriers. However, this application was not filed under the special rules of Ex Parte No. MC-109 which govern the filing and processing of applications for substitution of single-line service for existing joint-line service.

MC 136343 (Sub-168F), filed July 2, 1979. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 355, Milton, PA 17847. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting *printed matter,* from Dresden, TN, to points in IL, MA, MI, NJ, NY, OH, PA, and DC. (Hearing site: New York, NY or Washington, DC.)

MC 136343 (Sub-174F), filed July 2, 1979. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 355, Milton, PA 17847. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting *printed matter,* from Mattoon, IL, to points in CT, DE, FL, GA, IN, KY, ME, MD, MI, MN, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VA, VT, and WV. (Hearing site: New York, NY or Washington, DC.)

MC 136553 (Sub-78F), filed July 2, 1979. Applicant: ART PAPE TRANSFER, INC., 1080 East 12 Street, Dubuque, IA 52001. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Transporting *dry fertilizer materials,* from Humboldt, IA, to points in IA, IL, IN, KS, MI, MN, MO, NE, OH, and WI. (Hearing site: Chicago, IL.)

MC 139482 (Sub-137F), filed July 2, 1979. Applicant: NEW ULM FREIGHT LINES, INC., P.O. Box 877, New Ulm, MN 56073. Representative: Samuel Robenstein, 301 North Fifth Street, Minneapolis, MN 55403. Transporting *glass bottles,* from Terre Haute, IN, to Cold Spring, MN. (Hearing site: Minneapolis or St. Paul, MN.)

MC 140632 (Sub-3F), filed June 29, 1979. Applicant: CHARCOAL TRANSPORTS, INC., P.O. Box 340489, Dallas, TX 75234. Representative: J. Max Harding, P.O. Box 82028, Lincoln, NE 68501. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in by food business houses (except commodities in bulk, frozen foods, and packinghouse products), between Dallas and Jacksonville, TX, Paris, AR, and Nashville, TN, on the one hand, and, on the other, points in the United states (except AK and HI), under continuing contract(s) with Arrow Industries, Inc., Campfire Charcoal, Inc., and Arkansas Charcoal Company, Inc. (Hearing site: Dallas, TX.)

MC 140943 (Sub-8F), filed June 5, 1979. Applicant: CHEYENNE ROAD TRANSPORT, LTD., 232 38th Avenue Northeast, Calgary, Alberta, Canada T2E 2M2. Representative: Grant J. Merritt, 4444 IDS Center, Minneapolis, MN 55402. To operate as a *common carrier,* by motor vehicle, in foreign commerce only, over irregular routes, transporting (1) *lumber and lumber mill products,* from ports of entry on the international boundary line between the United States and Canada in WA, ID and MT, to points in AZ, CA, ID, NM, NV, OR and WA, and (2) *lumber, wood products, and fibreboard,* from points in MT and ID, to ports of entry on the international boundary line between the United States and Canada in MT, ID and WA. (Hearing site: Seattle, WA.)

MC 143713 (Sub-9F), filed June 14, 1979. Applicant: AGRICULTURAL TRANSPORTATION ASSOCIATION OF ILLINOIS, a corporation; R.F.D. 8, 37 Forest Ridge, Springfield, IL 62707. Representative: Marshall D. Becker, Suite 610, 7171 Mercy Road, Omaha, NE 68106. Transporting *stoneware products, and materials and supplies* used in the manufacture of stoneware products, between points in Dundee and Macomb, IL, on the one hand, and, on the other, points in OK. (Hearing site: Springfield or Chicago, IL.)

MC 145432 (Sub-2F), filed June 29, 1979. Applicant: GEORGE RICHARDS TRANSPORT LIMITED, Box 100, North Street, Arkona, Ontario, Canada N0M 1B0. Representative: Robert D. Schuler, 100 West Long Lake Road-Suite 102, Bloomfield Hills, MI 48013. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *soybean meal,* in bulk, in dump vehicles, from points in Ohio, to ports of entry on the international boundary line between the United States and Canada in MI and NY, under continuing contract(s) with Pillsbury Canada Limited, of London, Ontario, Canada. (Hearing site: Lansing or Detroit, MI.)

MC 146192 (Sub-1F), filed July 2, 1979. Applicant: SANDHILLS GRAIN, INC., 524 Augusta Street, Bassett, NE 68714. Representative: Robert A. Wichser, P.O. Box 417, Sioux City, IA 51102. To operate as a contract, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *home decorating products and accessories* for home decorating products, from Traverse City, MI, Grand Island, NE, and Big Spring, TX, to points in CA, IL, IN, MI, NE, OH, TX and WI, and (2) *materials, supplies, and equipment* used in the manufacture, sale and distribution of the commodities in (1) above, in the reverse direction, under continuing contract(s) with Burwood-Products Company, of Traverse City, MI. Conditions: (1) Applicant shall maintain separate accounts and records for its for-hire carrier operations as distinct from its other business activities, and (2) it shall not at the same time and in the same vehicle transport property both as a private carrier and as a for-hire carrier. (Hearing site: Chicago, IL or Omaha, NE.)

MC 146463 (Sub-2F), filed July 2, 1979. Applicant: SLACK TRANSPORT LIMITED, Box 579, Caledonia, Ontario, Canada NOA 1AO. Representative: William J. Hirsch, Suite 1125, 43 Court Street, Buffalo, NY 14202. To operate as a common carrier, by motor vehicle, in foreign commerce only, over irregular routes, transporting *lumber, and composition board,* between ports of entry on the international boundary line between the United States and Canada located in MI and NY, on the one hand, and, on the other, points in CT, DE, IN, ME, MD, MA, MI, NH, NJ, NY, OH, PA, and VT. (Hearing site: Buffalo NY.)

MC 146483 (Sub-2F), filed June 26, 1979. Applicant: JAMES G. POTTER, d.b.a. JIM POTTER & SONS, P.O. Box 216, Sheffield, AL 35660. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Decatur and Haleyville, AL, on the one hand, and, on the other, points in Colbert, Cullman, Franklin, Jackson, Lauderdale, Lawrence, Limestone, Madison, Marion, Marshall, Morgan, and Winston Counties, AL, restricted to the transportation of traffic in trailers

having a prior or subsequent movement by rail. (Hearing site: Atlanta, GA.)

MC 147152 (Sub-7F), filed June 26, 1979. Applicant: GENERAL CARRIERS CORPORATION, 12425 East Florence Avenue, Santa Fe Springs, CA 90670. Representative: Miles L. Kavaller, 315 So. Beverly Drive, Suite 315, Beverly Hills, CA 90212. Transporting *carpeting*, between the facilities of Ozite Division, Brunswick Corporation, at Anaheim and Culver City, CA, on the one hand, and, on the other, the facilities of Ozite Division, Brunswick Corporation, at Libertyville, IL. (Hearing site: Los Angeles, CA.)

MC 147603 (Sub-2F), filed June 29, 1979. Applicant: FROZEN XPRESS, INC., 18770 N. E. 6th Avenue, Miami, FL 33164. Representative: Richard B. Austin, Esq., Suite 214, Palm Coast II Bldg., 5255 N.W. 87th Avenue, Miami, FL 33178. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *frozen foods* in vehicles equipped with mechanical refrigeration between those points in the United States in and east of MN, IA, MO, AR, and LA, under continuing contract(s) with Florida Frozen Foods, Inc., and Southeast Frozen Foods, Inc., both of Miami, FL. (Hearing site: Miami, FL.)

MC 147713F, filed June 28, 1979. Applicant: LOUIS C. WILLOUGHBY, 6020 Belton, Garden City, MI 48135. Representative: Dennis J. Pheney, 412 Fisher Building, Detroit, MI 48202. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *liquid chemicals*, in buk, in tank vehicles, between the facilities of Metalworking Lubricants Co., at (a) Detroit, MI, (b) Indianapolis, IN, and (c) South Windsor, CT, on the one hand, and, on the other, points in AL, CT, GA, IL, IN, KY, MA, MI, MS, NJ, NY, OH, PA, TN, WV, and WI, under continuing contract(s) with Metalworking Lubricants Co. (Hearing site: Detroit, MI or Chicago, IL.)

MC 147733F, filed July 2, 1979. Applicant: IMPERIAL FABRICATING CO. OF TENN., INC., P.O. Box 70, Portland, TN 37148. Representative: Louis J. Amato, P.O. Box E, Bowling Green, KY 42101. Transporting *materials, equipment, and supplies* used in the manufacture and distribution of trucks, (except commodities in bulk), from points in CA, OR, WA, and TX, to the facilities of Peterbilt Motors Company, in Davidson County, TN. Conditions: (1) Applicant shall maintain separate accounts and records for its for-hire carrier operations as distinct from its other business activities, and (2) it shall not at the same time and in the same vehicle transport property both as a private carrier and as a for-hire carrier. (Hearing site: Nashville, TN.)

MC 147883F, filed July 2, 1979. Applicant: TRANSPORT IMPROVERS, INC., 7350 S. E. 87th Avenue, Portland, OR 97210. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Avenue, Portland, OR 97210. To operate as a contract carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *lubricating oil, grease, antifreeze, and undercoating*, between the facilities of Quaker State Oil Refining Corporation at Portland, OR, on the one hand, and, on the other, points in WA and ID, under continuing contract(s) with Quaker State Oil Refining Corporation. (Hearing site: Portland, OR.)

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Decided: January 9, 1980.

By the Commission, Review Board Number 2, Members Eaton and Liberman. Member Boyle not participating.

MC 200 (Sub-358F), filed June 18, 1979. Applicant: RISS INTERNATIONAL CORPORATION, 903 Grand Ave., Kansas City, MO 64106. Representative: Ivan E. Moody (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring the use of special equipment), serving the facilities of Pepsi Cola Bottling Company (Summit Cannery), at Princeton, WV, as an off-route point in connection with applicant's otherwise authorized regular-route operations. (Hearing site: Kansas City, MO.)

MC 200 (Sub-364F), filed June 25, 1979. Applicant: RISS INTERNATIONAL CORPORATION, a Delaware corporation, 903 Grand Ave., Kansas City, MO 64106. Representative: Ivan E. Moody (same address as applicant). Transporting *toys*, from Grafton, WV, to points in CO, IA, IL, IN, KS, MO, NE, OK, TX, and UT. (Hearing site: Kansas City, MO.)

MC 531 (Sub-412F), filed June 21, 1979. Applicant: YOUNGER BROTHERS, INC., 4904 Griggs Rd., P.O. Box 14048, Houston, TX 77021. Representative: Wray E. Hughes (same address as applicant). Transporting *vegetable oils*, in bulk, in tank vehicles, between Opelousas, LA, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: New Orleans, LA.)

MC 1380 (Sub-24F), filed June 14, 1979. Applicant: COLONIAL MOTOR FREIGHT LINE, INC., P.O. Box 7027, High Point, NC 27264. Representative: Max H. Towery (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in AL, GA, MD, NC, SC, TN, and DC. (Hearing site: High Point, NC, or Washington, DC.)

MC 5470 (Sub-196F), filed June 20, 1979. Applicant: TAJON, INC., R.D. 5, Mercer, PA 16137. Representative: Brian L. Troiano, 918 16th St. NW., Washington, DC 20006. Transporting *waste and scrap materials*, in dump vehicles, between Pittsburgh, PA, on the one hand, and, on the other, points in CT, DE, IL, IN, KY, MD, MA, MI, MO, NJ, NY, NC, OH, RI, SC, VA, and WV. (Hearing site: Washington, DC, or Pittsburgh, PA.)

MC 47171 (Sub-130F), filed June 21, 1979. Applicant: COOPER MOTOR LINES, INC., P.O. Box 2820, Greenville, SC 29602. Representative: Harris G. Andrews (same address as applicant). Transporting *lumber and fiberboard*, from the facilities of Holly Hill Lumber Company, at Holly Hill and Walterboro, SC, to those points in the United States east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the international boundary line between the United States and Canada. (Hearing site: Columbia, SC.)

MC 53841 (Sub-34F), filed June 26, 1979. Applicant: W. H. CHRISTIE & SONS, INC., Box 517, East State St., Knox, PA 16232. Representative: John A. Pillar, 1500 Bank Tower, 307 Fourth Ave., Pittsburgh, PA 15222. Transporting *transformers* and parts for transformers, from Zanesville, OH, to points in NJ, NY, and PA. (Hearing site: Pittsburgh, PA, or Washington DC.)

MC 67450 (Sub-92F), filed June 25, 1979. Applicant: PETERLIN CARTAGE CO., a Corporation, 9651 S. Ewing Ave., Chicago, IL 60617. Representative: Joseph Winter, 29 South LaSalle St., Chicago, IL 60603. Transporting *sugar*, from New York, NY, Philadelphia, PA, and Baltimore, MD, to points in IA, IL, IN, KY, MI, OH, and WI. (Hearing site: Chicago, IL.)

MC 73081 (Sub-1F), filed June 25, 1979. Applicant: ANYTIME DELIVERY SYSTEMS, INC., 375 Western Hwy.,

Tappan, NY 10983. Representative: Arthur J. Piken One Lefrak City Plaza, Flushing, NY 11368. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring the use of special equipment), between points in CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT, and DC. (Hearing site: New York, NY or Newark, NJ.)

MC 83850 (Sub-13F), filed June 27, 1979. Applicant: JOHNSON'S TRANSFER, INC., 6951 Norwitch Dr., Philadelphia, PA 19153. Representative: Harold P. Boss, 1100 Sevententh St. NW., Washington, DC 20036. Transporting (1) *pipe*, and *pipe fittings* and *couplings*, (2) *materials and supplies* used in the installation of the commodities in (1) above, and (3) *plastic building materials*, from the facilities of CertainTeed Corporation, at Williamsport, MD, to points in CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT, WV, and DC. (Hearing site: Philadelphia, PA, or Washington, DC.)

Note.—Dual operations may be involved.

MC 89021 (Sub-3F), filed June 27, 1979. Applicant: LEVINE'S EXPRESS & TRUCKING COMPANY, a corporation, P.O. Box 237, Carteret, NJ 07008. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904. Transporting *advertising materials*, between points in the United States (except AK and HI). (Hearing Site: Newark, NJ.)

MC 90870 (Sub-31F), filed June 21, 1979. Applicant: RIECHMANN ENTERPRISES, INC., Route 2, Box 137, Alhambra, IL 62001. Representative: Cecil L. Goettsch, 1100 Des Moines, Bldg., Des Moines, IA 50309. Transporting (1) *iron and steel railroad wheels*, and (2) *parts and accessories* for the commodities in (1) above, from Keokuk, IA, to points in IL and MO. (Hearing site: Chicago, IL, or Washington, DC.)

MC 108651 (Sub-24F), filed June 21, 1979. Applicant: ROY B. MOORE, INC., P.O. Box 628, Kingsport, TN 37662. Representative: Daniel H. Moore (same address as applicant). Transporting *such commodities* as are dealt in by grocery and food business houses (except commodities in bulk), from Alton, Leicester, Leroy, Oakfield, Phelps, Shortsville, and South Dayton, NY, to Charlotte, NC. (Hearing site: Kingsport, TN, or Washington, DC.)

Note.—Applicant may tack this authority with regular-route authority at Oakfield to serve points between and including Buffalo and Rochester, NY.

MC 109490 (Sub-17F), filed June 20, 1979. Applicant: HEDING TRUCK SERVICE, INC., P.O. Box 97, Union Center, WI 53962. Representative: Ronald E. Laitsch, 113 N. 3rd St., Watertown, WI 53094. Transporting (1) *wood burning furnaces and wood burning boilers*, from Elroy, WI, to points in the United States (except AK and HI), and (2) *materials and supplies* used in the manufacture of the commodities in (1) above, in the reverse direction. (Hearing site: Milwaukee, WI; Madison, WI.)

MC 110420 (Sub-826F), filed June 20, 1979. Applicant: QUALITY CARRIERS, INC., P.O. Box 186, Pleasant Prairie, WI 53158. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004. Transporting *liquid chemicals*, in bulk, from Houston, TX, to points in the United States (except AK and HI). (Hearing site: Washington, DC.)

MC 110420 (Sub-829F), filed June 27, 1979. Applicant: QUALITY CARRIERS, INC., P.O. Box 186, Pleasant Prairie, WI 53158. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004. Transporting *tallow*, in bulk, (1) from the facilities of Iowa Beef Processors, Inc., at or near (a) Amarillo, TX, (b) Dakota City and West Point, NE, (c) Denison and Ft. Dodge, IA, (d) Luverne, MN, and (e) Emporia, KS, to points in IL, IN, MA, MN, NJ, OH, and WI, (2) from the facilities of Iowa Beef Processors, Inc., at or near (a) Amarillo, TX, and (b) Emporia, KS, to points in IA, and MO, and (3) from the facilities of Iowa Beef Processors, Inc., at or near Amarillo, TX, to points in LA and TX, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations (except traffic moving in foreign commerce). (Hearing site: Chicago, IL, or Washington, DC.)

MC 115311 (Sub-361F), filed June 18, 1979. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. Transporting (1) *board, lumber, poles and posts*, and (2) *materials and supplies* used in the installation, manufacture, and distribution of the commodities in (1) above (except commodities in bulk, in tank vehicles), between those points in the United States in and east of ND, SD, NE, KS, OK, and TX, restricted to the transportation of traffic originating at or destined to the facilities used by Weyerhaeuser Company. (Hearing site: Chicago, IL, or Memphis, TN.)

MC 115311 (Sub-362F), filed June 19, 1979. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representative: Paul M. Daniell, P.O. Box 56387, Atlanta, GA 30343. Transporting (1) *paper and paper products*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between those points in the United States in and east of the States of ND, SD, NE, KS, OK, and TX, restricted to the transportation of traffic originating at or destined to the facilities of Champion International Corporation. (Hearing site: Cincinnati, OH, or Atlanta, GA.)

MC 116300 (Sub-53F), filed June 21, 1979. Applicant: NANCE AND COLLUMS, INC., P.O. Drawer J, Fernwood, MS 39635. Representative: Harold D. Miller, Jr., 17th Floor, Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205. Transporting *salt cake*, from Weeks Island, LA, to points in MS and TX. (Hearing site: New Orleans, LA.)

MC 116371 (Sub-16F), filed June 18, 1979. Applicant: LIQUID CARGO LINES LIMITED, P.O. Box 269, Clarkson, Ontario, Canada. Representative: John W. Ester, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48013. To operate as a *common carrier*, by motor vehicle in foreign commerce only, over irregular routes, transporting *liquid sugar*, in bulk, in tank vehicles, from ports of entry on the international boundary line between the United States and Canada, to points in IL, IN, and NJ. (Hearing site: Buffalo, NY, or Detroit, MI.)

Note.—Dual operations may be involved.

MC 118270 (Sub-13F), filed June 26, 1979. Applicant: PRODUCE TRANSPORT SERVICE, INC., 181 West Rampo St., Mahwah, NJ 07403. Representative: Joseph F. Hoary, 121 South Main St., Taylor, PA 18517. Transporting *dairy products*, from Arcade, NY, to points in ME, MA, NH, VT, RI, CT, NJ, NY, PA, MD, DE, NC, SC, VA, GA, FL, and WV. (Hearing site: New York, NY.)

MC 119741 (Sub-214F), filed June 21, 1979. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Ave. NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same address as applicant). Transporting *bakery goods*, (except frozen), from the facilities of Midwest Biscuit Company, at Burlington, IA, to points in AR, CA, CO, CT, IL, IN, KS, MA, MI, MN, MO, ND, NE, NJ, NM, OH, OK, PA, SD, TX, and WI, restricted to the transportation of traffic originating at the named origin and destined to the

indicated destinations. (Hearing site: Des Moines, IA.)

MC 127840 (Sub-118F), filed June 26, 1979. Applicant: MONTGOMERY TANK LINES, INC., 17550 Fritz Drive, Lansing, IL 60438. Representative: William H. Towle, 180 North LaSalle Street, Chicago, IL 60601. Transporting *liquid corn products*, from Denver, CO, to points in MT, WY, UT, NM, AZ, and CO. (Hearing site: Des Moines, IA.)

MC 129410 (Sub-14F), filed June 21, 1979. Applicant: ROBERT BONCOSKY, INC., 4811 Tile Line Rd., Crystal Lake, IL 60014. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *liquid corn products*, in tank vehicles, between the facilities of Clinton Corn Processing Co., at (a) Chicago, IL, and (b) Clinton, IA, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Clinton Corn Processing Company, of Clinton, IA. (Hearing site: Chicago, IL.)

MC 129410 (Sub-18F), filed June 21, 1979. Applicant: ROBERT BONCOSKY, INC., 4811 Tile Line Road, Crystal Lake, Illinois 60014. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, Illinois 60603. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *liquid sweeteners*, in bulk, in tank vehicles, between the facilities of Amstar Corporation, at Chicago, IL, on the one hand, and, on the other, points in IN, KY, MI, and OH, under continuing contract(s) with Amstar Corporation, of Chicago, IL. (Hearing site: Chicago IL.)

MC 133591 (Sub-75F), filed June 26, 1979. Applicant: WAYNE DANIEL TRUCK, INC., Post Office Box 303, Mount Vernon, MO 65712. Representative: Charles A. Daniel (same address as applicant). Transporting *cheese*, from the facilities used by the Stockton Cheese Company at Stockton, MO, to Salt Lake City, UT. (Hearing site: Kansas City, or St. Louis, MO.)

Note.—Dual operations may be involved.

MC 134501 (Sub-55F), filed June 21, 1979. Applicant: INCORPORATED CARRIERS, LTD., P.O. Box 3128, Irving, TX 75061. Representative: T. M. Brown, P.O. Box 1540, Edmond, OK 73034. Transporting *furniture, fixtures, and hospital equipment*, from Batesville, IN, to points in the United States (except AK and HI). (Hearing site: Cincinnati, OH, or Indianapolis, IN.)

MC 134821 (Sub-8F), filed June 20, 1979. Applicant: DONALD L. DROSTE, d.b.a., DON DROSTE TRUCKING, INC., 1004 West Carroll St., Portage, WI 53901. Representative: Richard A. Westley, 4506 Regent St., Suite 100, Madison, WI 53705. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, from the facilities of Armco, Inc., at or near South Bend, IN, to points in IA, IL, MN, WI, and the Upper Peninsula of MI, under continuing contract(s) with Armco, Inc., of Middletown, OH. (Hearing site: Chicago IL.)

MC 135410 (Sub-73F), filed June 20, 1979. Applicant: COURTNEY J. MUNSON, d.b.a. MUNSON TRUCKING, P.O. Box 266, Monmouth, IL 61462. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Ave., Park Ridge, IL 60068. Transporting (1) *paper and paper products*, and (2) *materials and supplies* used in the manufacture of the commodities in (1) above, between the facilities of International Paper Company at or near Ticonderoga, NY, on the one hand, and, on the other, points in IA, IN, IL, KS, KY, MA, MI, MN, MO, NE, OH, PA and WI restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: New York, NY or Washington, DC.)

MC 138841 (Sub-18F), filed June 18, 1979. Applicant: BLACK HILLS TRUCKING CO., a corporation, P.O. Box 2130, Rapid City, SD 57709. Representative: James W. Olson, P.O Box 1552, Rapid City, SD 57709. Transporting *meat and meat products*, from Worthington, MN, and Gibbon, NE, to points in OR and CA, (2) *packing house supplies* from points in CO, IA, IL, and MN, to Rapid City, SD, and (3) *meats, meat products and meat by-products, and articles distributed by meat-packing houses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except meat, hides, and commodities in bulk), from the facilities of Black Hills Packing Co., at Rapid City, SD, to points in AR, AZ, CT, DE, ID, IN, KS, ME, MD, MO, MT, ND, NE, NJ, NM, NV, OH, OK, PA, TN, TX, UT, VA, and WY. (Hearing site: Rapid City, SD.)

MC 138861 (Sub-14F), filed June 26, 1979. Applicant: C–LINE, INC., Tourtellot Hill Rd., Chepachet, RI 02814. Representative: Ronald N. Cobert, Suite 501, 1730 M Street NW., Washington, DC 20036. Transporting *lard, edible tallow, margarine, and vegetable oil*, from Bradley, IL, to points in CT, DE, MD, ME, MA, NH, NJ, NY, PA, RI, VT, VA, and DC. (Hearing site: Washington, DC, or Boston, MA.)

Note.—Dual operations may be involved.

MC 139571 (Sub-3F), filed June 20, 1979. Applicant: A. S. MASON, INC., 3110 Gibson St., Bakersfield, CA 93308. Representative: Michael J. Stecher, 256 Montgomery St., San Francisco, CA 94104. Transporting *oilfield materials, equipment, and supplies*, between points in CA, on the one hand, and, on the other, points in NV. (Hearing site: Bakersfield or Los Angeles, CA.)

MC 141811 (Sub-7F), filed June 26, 1979. Applicant: SCHEDULED TRANSPORT, INC., 9000 Keystone Crossing, Indianapolis, IN 46240. Representative: Donald W. Smith, P.O Box 40248, Indianapolis, IN 46240. Transporting *flour*, in bulk, in tank vehicles, from Lake Station, IN, to Massillon, OH. (Hearing site: Omaha, NE.)

MC 142291 (Sub-4F), filed June 26, 1979. Applicant: MDI, INC., 6202 Concord Blvd. East, Inver Grove Hts., MN 55075. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *beverages* (except commodities in bulk), from points in CA, CT, FL, IL, IN, KY, MA, MI, MO, NJ, NY, OH, and PA, to Hibbing, MN, under continuing contract(s) with Sunny Hill Distributors, Inc., of Hibbing, MN. (Hearing site: St. Paul, MN.)

MC 143621 (Sub-19F), filed June 21, 1979. Applicant: TENNESSEE STEEL HAULERS, INC., 901 5th Ave. North, P.O. Box 5748, Nashville, TN 37208. Representative: Sidney T. Stanley (same address as applicant). Transporting *iron and steel articles*, from the facilities of Republic Steel Corporation, at or near Gadsden, AL, to points in IN, KY, OH, and TN. (Hearing site: Nashville, TN, or Birmingham, AL.)

MC 145911 (Sub-1F), filed June 25, 1979. Applicant: TRECHO TRANSPORT, INC., 2756 Short St., New York, NY 14592. Representative: Robert D. Gunderman, 710 Statler Bldg., Buffalo, NY 14202. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in our used by manufacturers and distributors of dairy products, (1) from Friendship, NY, to New York, NY, Coatsville, PA, and points in FL, and (2) from New York, NY, and Ludlow, MA, to Friendship, NY. (Hearing site: Buffalo, NY.)

Note.—Dual operations may be involved.

MC 146021 (Sub-2F), filed June 21, 1979. Applicant: RALPH OWENS TRUCKING CO., INC., 311 Park Ave.,

P.O. Box 711, Hereford, TX 79045. Representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408. Transporting *corrugated fiberboard cartons and corrugated pulpboard cartons,* knocked down, from the facilities of Southwest Forest Industries, at El Paso, TX, to Portales, NM. (Hearing site: El Paso, TX, or Lubbock, TX.)

MC 147291 (Sub-4F), filed June 26, 1979. Applicant: OCCO TRANSPORT, INC., Industrial Park Boulevard, Cokato, MN 55321. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *wooden reels,* from Pine River, MN, to St. Joseph, MO, under continuing contract(s) with Durkee Manufacturing Company, of Pine River, MN. (Hearing site: St. Paul, MN.)

MC 147591F filed June 18, 1979. Applicant: UNITED LIMO, INC., "B" Terminal, Philadelphia International Airport, Philadelphia, PA 19153. Representative: Leonard A. Jaskiewicz, 1730 M Street NW., Suite 501, Washington, DC 20036. Transporting (1) *passengers and their baggage,* in charter operations, and (2) *baggage,* between Philadelphia, PA, on the one hand, and, on the other, points in DE, MD, NJ, NY, PA, VA, and DC, restricted in (2) above to the transportation of traffic having a prior or subsequent movement by air. (Hearing site: Philadelphia, PA.)

MC 147601F, filed June 27, 1979. Applicant: MARVIN C. VAN KAMPEN, d.b.a., M. C. VAN KAMPEN TRUCKING, 4495 Herman, SW, Wyoming, MI 49509. Representative: Donald L. Stern, Suite 610, 7171 Mercy Rd., Omaha, NE 68106. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *newspaper and magazine inserts, and lottery tickets,* from the facilities of George F. Valassis & Co., at Livonia, MI, to points in the United States (except AK and HI) under continuing contract(s) with George F. Valassis & Company, of Livonia, MI. (Hearing site: Detroit, MI.)

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-2777 Filed 1-28-80; 8:45 am]

BILLING CODE 7035-01-M

[No. FF-C-75]

Status of Forwarder-Affiliated Consolidators

AGENCY: Interstate Commerce Commission.

ACTION: Notice of declaratory order proceeding.

SUMMARY: By petition filed August 10, 1979, petitioner, the Freight Forwarders Institute, seeks a ruling as to whether a regulated freight forwarder may lawfully provide an exempt consolidation service under 49 U.S.C. 10562(4) through a subsidiary or affiliated company.

DATES: Comments on or before: March 14, 1980.

ADDRESSES: Send an original and 15 copies, if possible, of any comments to:

FF-C-75, Room 5416, Office of Proceedings, Interstate Commerce Commission, Washington, DC 20423.

Send one copy of comments to each of petitioner's representatives:

Lawrence Berman, 747 Third Avenue, New York, NY 10017.

S. S. Eisen, 370 Lexington Avenue, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT:

Mark S. Shaffer, (202) 275-7531.
or
Donald J. Shaw, Jr., (202) 275-7292.

SUPPLEMENTARY INFORMATION:

Petitioner states that small, privately owned companies have been performing consolidation services on small package shipments free from regulation pursuant to exemptions granted at 49 U.S.C. 10562. Section 10562(4) specifically provides that the Commission does not have jurisdiction over "the service of an agent of a shipper in consolidating or distributing pool cars when the service is provided for the shipper only in a terminal area in which the service is performed." Under this section, unregulated small package firms perform consolidation services to achieve for shippers lower rates than would apply on individual shipments of small lots.

Petitioner argues that regulated freight forwarders cannot compete for this business unless their independently operated affiliates are accorded exempt status under section 10562(4). As common carriers, freight forwarders must observe and apply the rates and charges contained in their published tariffs. These tariffs generally contain minimum charge provisions that result in higher rates on individual shipments than are available on consolidated shipments. In this regard, petitioner describes the involved type of freight forwarder affiliate operation as follows: (1) consignees notify their vendors to deliver their freight to the affiliate for consolidation; (2) vendors deliver the lading to the affiliate consolidator on a shipper's bill of lading; (3) the shipment is received and receipted by the consolidator; (4) the shipments are consolidated according to the instructions of the consignees (e.g., trailerloads, daily consolidations irrespective of type or weight of freight, holding freight until specific weights are achieved); (5) the consolidator prepares a manifest listing individual shipments in the consolidation; (6) a consolidated shipment on a single bill of lading is tendered to a line-haul carrier.

These consolidations move primarily under class or commodity rates. Class-rated consolidations result in the elimination of minimum charges and the need for combining several minimum charge shipments into a less-than-truckload (LTL) shipment meeting a tariff minimum weight. Commodity rated consolidations achieve weights that take advantage of lower truckload rates.

It is petitioner's contention that regulated freight forwarders through subsidiaries or affiliated companies may lawfully perform the above-type operation free from regulation under section 10562(4). Petitioner requests that the Commission declare this type of operation to be lawful so that freight forwarders may effectively compete with unregulated consolidators of small package lading. Petitioner states that the ruling requested will have no effect of any kind on the quality of the human environment. Because the Bureau of Investigations and Enforcement has expressed an interest in the described type of operation and is involved in enforcement actions concerning similar operations, it will be made a party of record in this proceeding.

No oral hearing is contemplated. Any person (including petitioner) desiring to participate in this proceeding shall file an original and fifteen (15) copies (wherever possible) of written representations, views, or arguments. A copy of each representation shall be served on petitioner's representatives.

Written material or suggestions submitted will be available for public inspection at the Office of the Interstate Commerce Commission, 12th Street and Constitution Ave., Washington, D.C., during regular business hours.

It is ordered: Pursuant to 5 U.S.C. 554(e) and in the sound exercise of the Commission's discretion, a declaratory order proceeding is instituted.

A copy of this order shall be served on the Commission's Bureau of Investigations and Enforcement, which is made a party to the proceeding.

Decided: January 21, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners

Stafford, Clapp, Trantum, and Alexis. Commissioner Stafford dissenting.

Agetha L. Mergenovich,

Secretary.

Commissioner Stafford (Dissenting)

I have serious reservations at to whether the relief sought can be granted by this Commission.

At the outset, it is important to recognize that under the statute, 49 U.S.C. § 10102(8), a freigh forwarder is a person which, among other criteria, assembles and consolidates shipments as part of its carrier obligations. See also, 49 U.S.C. § 10523. Petitioner would have us ignore this crucial element and find that an affiliate of the freight forwarder may perform the same type of service without any supervision by this agency. But we have frequently pierced the corporate veil where the operations of freight forwarders are concerned and have denied analogous relief. Cf., *Texas Package Car Co. F.F. Application,* 260 I.C.C. 325(1944); *Movers' & Warehousemen's Assn. of America, Inc., Petition,* 304 I.C.C. 517(1958). Petitioner's request for relief, if granted, would allow it to do indirectly what it cannot legally to directly under the statute. See my separate expression in *Clipper Express Co., Exempt Agric. Commodities,* 361 I.C.C. 301 (1979).

FR Doc. 80-2782 Filed 1-28-80; 8:45 am]

BILLING CODE 7035-01-M

Floyd D. Mooney, Jr., et al.; Decision on Applications

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed on or before February 18, 1980. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices on or before February 28, 1980, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

By the Commission, Review Board Number 5, The Motor Carrier Board, Members Krock, Pohost, and Taylor.

Agatha L. Mergenovich,

Secretary.

MC–FC–78353. By decision of January 17, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. Part 1132, the Motor Carrier Board approved the transfer to Floyd D. Mooney, Jr. d.b.a. Mooney Transportation of Fairview, KS, of Certificates No. MC–2098 and MC–2098 (Sub–No. 3), issued July 19, 1968, and August 18, 1977, respectively, to Merlin D. Brammer and Galen R. Brammer, a Partnership, d.b.a. Brammer Truck Line, of Sabetha, KS, authorizing the transportation of livestock, from Sabetha, KS, to St. Joseph, and Kansas City, Mo, serving all intermediate and off-route points within 10 miles of Sabetha, from Sabetha over U.S. Hwy 36 to St. Joseph; and From Sabetha over U.S. Hwy 36 to Hiawatha, then over U.S. Hwy 73, to Kansas City. *Feed, twine, farm machinery, and fencing materials,* from St. Joseph and Kansas City, MO, to Sabetha, KS, serving all intermediate and off-route points within 10 miles of Sabetha, from St. Joseph and Kansas City over the above specified routes to Sabetha. *Livestock, grain, feed, petroleum products in containers, and empty containers* for petroleum products, and *wool,* from Sabetha, KS, to St. Joseph, MO, serving the intermediate and off-route points in KS and NE within 10 miles of Sabetha, from Sabetha over U.S. Highway 36, to St. Joseph. *Farm machinery and implements and building materials,* from St. Joseph, MO, over U.S. Hwy 36 to Sabetha, KS, serving the intermediate and off-route points in KS and NE within 10 miles of Sabetha. *Agricultural implements and parts therefor, iron and steel tanks, fencing and building material, livestock, feed, machinery and machinery parts,* From Sabetha, KS to Kansas City, MO, serving the intermediate and off-route points of Kansas City, KS and points in KS and NE within 20 miles of Sabetha, KS and the off-route point of North Kansas City, MO, (a) from Sabetha over U.S. Hwy 36 to St. Joseph, MO, then over U.S. Hwy 71 to Kansas City, and return over the same route with no transportation for compensation except as otherwise authorized, and (b) from Sabetha over U.S. Hwy 36 to Hiawatha, KS, then over U.S. Hwy 73 to junction U.S. Hwy 24, then over U.S. Hwy 24 to Kansas City, and return over the same route with no transportation for compensation except as otherwise authorized. *Livestock and agricultural commodities,* over irregular routes, between Sabetha, KS and points in KS within 10 miles of Sabetha, KS including Sabetha. *Livestock,* over irregular routes, between Sabetha, KS and points in KS within 10 miles of Sabetha, on the one hand, and, on the other, Omaha, NE, and from Sabetha, KS, and points in KS within 10 miles of Sabetha, to Nebraska Cityh, NE, with no transportation for compensation on return except as otherwise authorized. *Dust pollution control equipment,* over irregular routes, from the facilities of MAC Processing Equipment, Inc. at or near Sabetha, KS, to points in the United States (Except AK and HI). Applicants' representative: Erle W. Francis, Suite 719, 700 Kansas Ave., Topeka, KS 66603.

MC–FC–78364. By decision of January 15, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, the Motor Carrier Board approved the transfer to C.A. Perry & Son, Inc., Hobbsville, NC, of Permit No. MC–143676 (Sub-No. 2), issued August 4, 1978, to DAS, Inc., Suffolk, VA, authorizing the transportation of *Pelletized peanut shells,* in bulk, in dump trailers, from Aulander, NC, to Chesapeake, Norfolk, Portsmouth, Suffolk, Virginia Beach, Newport News, and Hampton, VA, under contract(s) with Inter-Protein S.A., of Geneva, Switzerland. Applicants' representative is: Blair P. Wakefield, Suite 1001 First & Merchants National Bank Bldg., Norfolk, VA 23510.

MC–FC–78366. By decision of January 15, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, the Motor Carrier Board approved the transfer to Kermit Redig and Norma Redig, Stanberry, MO, of Certificate No. MC–125094, issued September 12, 1975, to Gary D. Maudlin, Grant City, MO, authorizing the transportation of Crushed Rock, from points in Worth County, MO, to points in Ringgold, Page and Taylor Counties, IA, Transferor's representative is Jerold L. Drake, Box 400, Grant City, MO 64456.

MC–FC–78367. By decision of January 17, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, the Motor Carrier Board approved the transfer to Taylorville Transit, Inc., Taylorville, IL of Certificates No. MC–30450 and MC–30450 (Sub-No. 3), issued March 18, 1942, and August 30, 1950,

respectively, to Illinois Highway Transportation Company, a Corporation, authorizing the transportation of *Passengers and their baggage, and express and newspapers,* in the same vehicle with passengers, over a regular route between Peoria, Ill., and Pekin, Ill.: From Peoria across the Illinois River to East Peoria, Ill., thence over Illinois Highway 29 to Pekin, and return over the same route. Service is authorized to or from the intermediate point of East Peoria, Ill., restricted to traffic moving to or from points other than Peoria, Ill.; all other intermediate points without restriction. *Passengers and their baggage, and express, mail, and newspapers,* in the same vehicle with passengers, over regular routes, between Pekin, Ill., and Decatur, Ill.: From Pekin over Illinois Highway 29 to junction Illinois Highway 122, thence over Illinois Highway 122 to junction Illinois Highway 121, and then over Illinois Highway 121 to Decatur. Between Decatur, Ill., and Bloomington, Ill.: From Decatur over U.S. Highway 51 to Bloomington. Between Eureka, Ill., and Peoria, Ill.: From Eureka over U.S. Highway 24 to Peoria. Return over these routes. Service is authorized to and from all intermediate points. Applicants' representatives are: Harold M. Olsen, 712 S. Second St., Springfield, IL 62704; and Robert B. Walker, 915 Pennslyvania Bldg., 425 13th St. NW, Washington, DC 20004.

MC–FC–78371. By decision of January 17, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, the Motor Carrier Board approved the transfer to J. C. Trucking Company, Incorporated, New Haven, CT, of Certificate No. MC–30180 issued May 19, 1954, to Marion D. Hansen and Carl V. Hansen, a Partnership, d.b.a. Dillon Transport, authorizing the transportation of *general commodities* (except those of unusual value, class A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requring special equipment, and those injurious or contaminating to other lading), over a regular route, between South Norwalk, CT and New York, NY: From South Norwalk over CT Highway 123 to Norwalk, CT, thence over U.S. Hwy 1 via Darien, CT to New York (also from South Norwalk over CT Hwy 136 to Darien, and then over U.S. Hwy 1 to New York), and return over the same route. Service is authorized to and from all intermediate points, *General commodities,* with exceptions as specified above, over irregular routes, from South Norwalk, CT to points and places in CT, with no transportation for compensation on return except as otherwise authorized. Transferee presently holds authority from the Interstate Commerce Commission in Certificate MC–3991 and subs, authorizing transportation of ladies suit and dress piece goods, cut goods and trimmings from New York, NY to New Haven, CT; finished ladies dressed and suits from New Haven, CT to New York, NY; piecegoods, finished and unfinished dress and finished and unfinished women's suits between New Haven, CT and New York, NY; women's and children's garments from New Haven, CT to Yonkers, NY; piece goods and materials from Yonkers, NY to New Haven, CT; women's and children's dresses and suits, on hangers, from Waterbury, CT to North Bergen, NJ and New York, NY; and materials used in the manufacture of women's and children's dresses from North Bergen, NJ and New York, NY to Waterbury, CT. Applicants' respresentative is Sidney L. Goldstein, 109 Church St., New Haven, CT 06510.

MC–FC–78373. By decision of January 17, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, The Motor Carrier Board approved the tranfer to Arthur Werner Moving & Storage, Inc., of Middle Village, NY, of Certificate No. MC–70691 issued May 5, 1977 to Interstate Van & Storage Co., Inc., of Staten Island, NY, authorizing the transportation of *Household goods as defined* by the Commission, between New York, NY, on the one hand, and, on the other, points in CT, MA, NJ, NY, PA, and RI. Applicants' representative is: Bruce J. Robbins, 118–21 Queens Blvd., Forest Hills, NY 11375.

MC–FC–78375. By decision of January 17, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, the Motor Carrier Board approved the transfer to Ball Motor Line, Inc., Plymouth, FL of Certificate Nos. MC–140003, and MC–140003 (Sub-Nos. 1, 2, 3, 4, 5, and 6), issued February 3, 1975, September 2, 1975, August 7, 1975, September 2, 1975, August 2, 1977, May 31, 1977, and September 12, 1977, respectively, to Ball Motor Line of Apopka, Inc., Plymouth, FL, authorizing the transportation of *Carpet padding,* from Morris, IL, to points in FL, under contract with Sponge Cushion, Inc., of Morris, IL. *Plastic products* (except in bulk), from Leominster, MA, to Albion, MI, and points in FL, under contract with Union Products, Inc., of Leominster, MA. *Electronic equipment* and *components* for electronic equipment, from Brownstown, IN, to De Leon Springs, FL, under contract with Sparton Indiana, Inc., of Brownstown, IN. *Plastic products, machine parts and molds, and materials and supplies* used in the manufacture and distribution of plastic products (except commodities in bulk), (1) from Chicago, IL, to Rockmart, GA, S. Rockwood, MI, and Kissimmee, FL; (2) from S. Rockwood, MI, to Kissimmee and Apopka, FL, Semmes, AL, Rockmart, GA, and Malvern, PA; (3) from Malvern, PA, to Kissimmee and Apopka, FL, Semmes, AL, and Rockmart, GA; (4) from Rockmart, GA, to Kissimmee and Apopka, FL, Malvern, PA; and S. Rockwood, MI; (5) from Kissimmee and Apopka, FL, to Semmes, AL, Rockmart, GA, S. Rockwood, MI, Malvern, PA, and Houston, TX; and (6) from Houston, TX, to Kissimmee and Apopka, FL, S. Rockwood, MI, Semmes, AL, and Rockmart, GA, all under contract with Better Plastics, Inc., of Kissimmee, FL. *Such commodities* as are dealt in by wholesale plumbing and electrical suppliers (except commodities in bulk and those which because of size or weight, require the use of special equipment), from points in AR, GA, IL, IN, KY, LA, MA, MI, MS, MO, NY, OH, PA, RI, TN, TX, VA, WV, and WI, to points in FL, under contract with Hughes Supply, Inc. *Plastic products, machine parts and molds,* and *materials and supplies* used in the manufacture and distribution of plastic products (except commodities in bulk), (1) between Apopka and Kissimmee, FL, Malvern, PA, and S. Rockwood, MI, on the one hand, and, on the other, Hatfield, PA, and Crosswicks, NJ; (2) from Highstown and Garfield, NJ, Sandusky, Tallmadge, and Akron, OH, Leominster, MA, Detroit, MI, Longview, GA, Baytown and Port Orange, TX, Covington, Conyers, and Atlanta, GA, and Travelers Post, SC, to Apopka and Kissimmee, FL, Malvern, PA, and S. Rockwood, MI, restricted in (1) and (2) immediately above, against service from Sandusky, Tallmadge and Akron, OH, to S. Rockwood, MI, under contract with Better Plastics, Inc., of Kissimmee, FL. *Electronic equipment and components,* from Jackson, MI, to Brownstown, IN and De Leon Springs, FL, under contract with Sparton Indiana, Inc. Applicants' representative is: Timothy C. Miller, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–2779 Filed 1–28–80; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 77–0202]

United States v. Jos. Schlitz Brewing Co.; Proposed Consent Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a Proposed Consent Judgment and a

competitive Impact Statement as set out below have been filed with the United States District Court for the District of Hawaii in Civil No. 77-0202, *United States* v. *Jos. Schlitz Brewing Company, et al.* Consenting to this judgment is the defendant Jos. Schlitz Brewing Company; the remaining four defendants have previously consented to a decree in this case which was filed with the Court on November 2, 1979.

The Complaint alleges that beginning at least as early as 1973 and continuing through December of 1974, the defendants and unnamed co-conspirators conspired to fix the price of beer sold to retailers and consumers in the State of Hawaii.

The proposed judgment would enjoin defendant Jos. Schlitz Brewing Company for a period of 10 years entering into any agreement to fix, raise or stabilize wholesale or retail prices of beer in Hawaii. Defendant Schlitz is also enjoined from fixing, reducing or eliminating discounts on beer sold in Hawaii. Defendant is further restrained from directly or indirectly recommending, suggesting or soliciting another person to participate in a conspiracy to fix beer prices and from requiring, compelling or coercing a beer wholesaler to establish any price for beer in Hawaii. The judgment also prohibits defendant from communicating information about Hawaii beer prices to other beer brewers. By the terms of the judgment, the defendant also agrees that, if it should sell all or substantially all of the assets of its beer business in Hawaii while the judgment is in effect, the purchaser will agree to be bound by the provisions of the judgment.

Public comment is invited within the statutory 60-day comment period. Such comment and response thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Anthony E. Desmond, Chief, San Francisco Office, Antitrust Division, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102.

Dated: January 21, 1980.

Joseph H. Widmar,

Director of Operations.

U.S. District Court; District of Hawaii

United States of America, Plaintiff, v. *Jos. Schlitz Brewing Co.; Muller & Phipps (Hawaii), Ltd.; Eagle Distributors, Inc.; Paradise Beverages, Inc.;* and Foremost-McKesson, Inc., Defendants.

Civil Action No. 77-0202.

Filed: January 21, 1980.

Entered:

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For the plaintiff:

John H. Shenefield,

Assistant Attorney General.

Joseph H. Widmar,

Director of Operations.

Charles F. B. McAleer,

Special Assistant for Judgment Negotiations.

Anthony E. Desmond.

Christopher S Crook.

Gary R. Spratling.

For the defendant:

James M. Clabault,

Executive Vice President—Administration for Jos. Schlitz Brewing Co.

U.S. District Court; District of Hawaii

United States of America, Plaintiff, v. *Jos. Schlitz Brewing Co.; Muller & Phipps (Hawaii), Ltd.; Eagle Distributors, Inc.; Paradise Beverages, Inc.; and Foremost-McKesson, Inc.,* Defendants.

Civil No. 77-0202, Final Judgment.

Filed: January 21, 1980.

Plaintiff, United States of America, having filed its complaint herein on June 8, 1977, and plaintiff and defendant Jos. Schlitz Brewing Company by their respective attorneys, having each consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue,

Now therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto,

It is hereby ordered, adjudged and decreed as follows:

I

This Court has jurisdiction of the subject matter of the action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against each defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

II

As used in this Final Judgment:

(A) "Person" means any individual, partnership, firm, corporation, association, or other business or legal entity;

(B) "Wholesale Price" means the price of beer charged by a beer wholesaler to a beer retailer; and

(C) "Consumer Price" means the price of beer charged by a beer retailer to consumers.

III

This Final Judgment applies to the defendant Jos. Schlitz Brewing Company and to its subsidiaries, successors, assigns, officers, directors, employees, and agents, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Defendant Jos. Schlitz Brewing Company shall require as a condition of the sale or other disposition of all, or substantially all, of the assets of its beer business or operations in Hawaii that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court, and serve upon the plaintiff, its consent to be bound by this Final Judgment. Nothing in this provision relieves defendant of its obligations under this Final Judgment if, upon selling its beer assets in Hawaii, defendant continues to sell or market its beer products in Hawaii.

V

Defendant Jos. Schlitz Brewing Company is enjoined and restrained from entering into or maintaining any agreement, understanding, plan or program with any other person:

(A) To fix, raise, stabilize or maintain the wholesale price or consumer price of beer in Hawaii;

(B) To fix, reduce or eliminate discounts on the sale of beer in Hawaii; and

(C) To fix the terms or conditions of sale of beer in Hawaii.

VI

Defendant Jos. Schlitz Brewing Company is enjoined and restrained from, directly or indirectly:

(A) Recommending, suggesting, soliciting or directing any person to participate in any agreement, understanding, plan or program that would violate Section V of this Final Judgment;

(B) Requiring, compelling or coercing any beer wholesaler to establish any price, discount or other term or condition of sale on the sale of beer in Hawaii; and

(C) Communicating or exchanging with any person who produces beer any information relating to price, discount, or terms and conditions of sale of beer in Hawaii.

VII

(A) Defendant Jos. Schlitz Brewing Co. shall:

(1) Serve within sixty (60) days after entry of this Final Judgment a copy of this Final Judgment upon each of its officers and directors and upon each of its employees and agents who have any responsibility for establishing prices, discounts or other terms or conditions of sale of beer in Hawaii; and

(2) Serve a copy of this Final Judgment upon each successor to an officer, director, employee or agent described in Paragraph (A)(1) of this Section VII within sixty (60) days after the succession occurs.

(B) Within ninety (90) days after entry of this Final Judgment, defendant shall file with this Court and serve upon plaintiff an affidavit concerning the fact and manner of compliance with Paragraph (A) of this

Section VII, such affidavit to include the names, addresses and, where applicable, job titles of all persons served with a copy of this Final Judgment.

VIII

The injunctions contained in this Final Judgment shall not apply to relations between defendant Jos. Schlitz Brewing Co. and a parent or subsidiary of, or corporations under common control with, defendant or between the officers, directors, agents and employees thereof.

IX

(A) For the purpose of determining or securing compliance with this Final Judgment:

(1) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant Jos. Schlitz Brewing Company made to its principal office, be permitted, subject to any legally recognized privilege:

(a) Access during the office hours of defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendant relating to any matters contained in this Final Judgment; and

(b) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers, directors, agents, servants or employees of the defendant, who may have counsel present, regarding any such matters.

(2) Defendant, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to its principal office, shall submit such reports in writing, under oath if requested, with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

(B) No information or documents obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If at the time information or documents are furnished by defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents which is of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to Claim of Protection under the Federal Rules of Civil Procedure," then twenty (20) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

X

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or the carrying out of this Final Judgment, for the modification of any of the provisions thereof, for the enforcement of compliance herewith, or for the punishment of violations hereof.

XI

This Final Judgment shall be in full force and effect for a period of ten (10) years from the date of entry.

XII

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge.

U.S. District Court, District of Hawaii

United States of America Plaintiff, v. *Jos. Schlitz Brewing Co.; Muller & Phipps (Hawaii), Ltd.; Eagle Distributors, Inc.; Paradise Beverages, Inc.; and Foremost-McKesson, Inc.*, Defendants.

Civil No. 77-0202, Competitive Impact Statement.

Filed: January 21, 1980.

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)), the United States hereby submits this Competitive Impact Statement relating to the proposed consent judgment submitted for entry in this civil antitrust proceeding.

I.

Nature of Proceeding

On June 8, 1977, a single count indictment was returned in the District of Hawaii against the five defendants named herein. The indictment charged a conspiracy to fix the retail and wholesale price of beer sold in Hawaii. On the day the indictment was filed, the Department of Justic also filed this companion civil case, *United States* v. *Jos. Schlitz Brewing Company, et al.*, Civ. No. 77-0202, against the same corporations named in the indictment alleging a conspiracy to fix the retail and wholesale price of beer sold in Hawaii.

The complaint asks the court to find that the defendants have violated Section 1 of the Sherman Act (15 U.S.C. §1) and further requests the court to enjoin the continuance of the conspiracy. Specifically, the complaint requests the court to enjoin the defendants from in any manner, directly or indirectly, conspiring to set the price of beer sold in Hawaii.

The criminal case and the companion civil case each named as defendants four wholesale beer distributors and one brewing company. The brewing company is Jos. Schlitz Brewing Company of Wisconsin. The wholesale beer distributors named were Muller & Phipps (Hawaii), Ltd., Eagle Distributors, Inc. of Hawaii, Paradise Beverages, Inc. of Hawaii, and Foremost McKesson, Inc. of Maryland.

In the criminal case, defendants Muller & Phipps (Hawaii), Ltd., Eagle Distributors, Inc., Paradise Beverages, Inc., and three of the four individual defendants pleaded *nolo contendere* on July 19, 1977, and the remaining three defendants including the Jos. Schlitz Brewing Company pleaded *nolo contendere* on September 10, 1977. On that day, the Jos. Schlitz Brewing Company was fined $50,000.

This proposed consent decree only includes defendant Jos. Schlitz Brewing Company. A consent decree has previously been entered between the United States and the four wholesaler defendants. That decree was filed with the court on November 2, 1979, and is awaiting final approval by the court. Although negotiated separately from the earlier judgment entered into with the wholesalers, the terms of the proposed judgment with Jos. Schlitz Brewing Company are similar insofar as appropriate. Defendant Jos. Schlitz Brewing Company now agrees to accept this proposed consent decree as originally submitted by the Government—that is, a decree containing the same provisions as that entered into by the four wholesaler defendants.

II.

Practices Giving Rise to the Alleged Violation

The wholesale distributor defendants sell or sold beer to retail outlets in the State of Hawaii. Defendant Jos. Schlitz Brewing Company operated a brewery in Honolulu, Hawaii. Muller & Phipps (Hawaii), Ltd. was the wholesale distributor of Schlitz beer products. The other wholesale defendants were distributors for the other major brands of beer sold in Hawaii. At the time of the alleged violation, the wholesaler defendants were the designated posting agents for the major brands of beer sold in Hawaii. As the designated agents, the defendants submitted to the respective county liquor commissions minimum consumer beer prices and their own wholesale prices to be charged to retailers. These prices were the prices at which the defendants were to sell their beer to retailers and the minimum prices at which retail outlets could sell beer to consumers pursuant to Hawaii State law.

The Government contends and was prepared to show at trial that beginning at least as early as 1973 and continuing through December of 1974 defendant Jos. Schlitz Brewing Company encouraged its wholesaler, Muller & Phipps (Hawaii), Ltd., to conspire with the other wholesaler defendants to fix the price of beer sold to retailers and sold to consumers in the State of Hawaii. The Government was also prepared to show that the wholesaler defendants met and agreed upon prices to be charged with the knowledge, advice and consent of defendant Jos. Schlitz Brewing Company. The Government was further prepared to show that the price fixing meetings and discussions occurred prior to filing prices with the county liquor commissions and that the defendants filed and posted prices in accord with their agreement.

III.

Explanation of the Proposed Consent Judgment

The United States and defendant Jos. Schlitz Brewing Company have agreed that the consent judgment in a form negotiated by the parties may be entered by the court at

any time after compliance with the Antitrust Procedures and Penalties Act. The proposed judgment provides that there has been no admission by anyone with respect to any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the consent judgment by the court is conditioned upon a determination of the court that the proposed judgment is in the public interest.

The proposed judgment will prohibit the Jos. Schlitz Brewing Company form entering into any agreement or arrangement with any other person to fix, raise, or stabilize wholesale or consumer prices of beer in Hawaii. The proposed judgment also enjoins the Jos. Schlitz Brewing Company from fixing, reducing or eliminating discounts on beer sold in Hawaii and from fixing the terms or conditions of sale of beer sold in Hawaii. The judgment also prohibits it from engaging in specified types of communications.

Section VI of the proposed judgment enjoins defendant from directly or indirectly recommending, suggesting, soliciting or directing any person to participate in any proscribed agreement as discussed in the preceding paragraph. Defendant Jos. Schlitz Brewing Company is further restrained from requiring, compelling or coercing any beer wholesaler to set or establish a specific price, discount or term of sale for beer in Hawaii. The judgment further prohibits defendant from communicating or exchanging information about the price of beer in Hawaii with any other brewer of beer.

By the terms of the proposed judgment, defendant agrees that if, during the ten-year period of the decree, it should sell all or substantially all of the assets of its beer operations in Hawaii, the purchaser will agree to be bound by the provisions of this judgment. The judgment further provides that, should defendant sell its Hawaiian assets and yet continue to distribute its beer products in Hawaii, the terms of the judgment shall continue to be applicable to defendant Jos. Schlitz Brewing Company.

The proposed judgment is designed to prevent any recurrence of the activities alleged in the complaint. The prohibitions in the judgment are intended to ensure that future price actions of the defendant will be independently determined without the restraining and artificial influences which result from communication and agreements among competitors.

The judgment provides methods for determining the defendant's compliance with the terms of the judgment. Officers, employees, and agents of the defendant may be interviewed by duly authorized representatives of the Department of Justice regarding the defendant's compliance with the judgment. The Government, on reasonable notice, is entitled to examine the records of the defendant for possible violations of the judgment. In addition, upon written request, the Government may require the defendant to submit reports on matters contained in the judgment. Finally, the defendant is required to serve a copy of the judgment upon successors of the officers, directors, and employees of defendant who have responsibility for making beer pricing decisions.

IV.

Exemptions or Modifications in the Decree

Section VIII provides that the prohibitions in the proposed judgment do not apply to relations between defendant Jos. Schlitz Brewing Company and its parent or subsidiary which are under common control. The Government did not object to this provision because the decree is not intended to limit communications between a parent and its subsidiary concerning prices to be charged by the parent or subsidiary but rather to limit communications among competitors concerning the prices to be charged for beer in Hawaii.

V.

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damage such person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed consent judgment in this proceeding will neither impair nor assist bringing of any such private antitrust action. Under the provisions of Section 5(a) (15 U.S.C. § 16(a)), this consent judgment has no *prima facie* effect in the lawsuits which have been or may be brought against these defendants.

VI.

Procedures Available for Modification of the Proposed Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed consent judgment should be modified may send written comments to Anthony E. Desmond, Department of Justice, Antitrust Division, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102, within sixty days. These comments and responses to them will be filed with the court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice which remains free to withdraw its consent to the proposed consent judgment at any time prior to entry if it should determine that some modification is necessary. The proposed judgment provides that the court retains jurisdiction. The parties may apply to the court for such orders as may be necessary or appropriate for modification of the judgment.

VII.

Alternatives to the Proposed Consent Judgment Considered by the United States

An alternative to the proposed judgment considered by the Department of Justice was a full trial on the merits. It was determined that such a trial involved substantial expense to the United States and was not warranted since the equitable remedies set forth in the proposed consent judgment will restore competition in the beer industry in Hawaii.

VIII.

Determinative Documents

There are no materials or documents which were determinative in formulating a proposal for a consent judgment and, therefore, none are being filed by the Government pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)).

Dated: January 21, 1980.

Christopher S. Crook,

Gary R. Spratling,

Attorneys, Department of Justice.

[FR Doc. 80-2814 Filed 1-28-80; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Occupational Exposure to Vinyl Chloride and Polyvinyl Chloride

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

ACTION: Extension of time for written comments.

SUMMARY: This notice extends the time period for submission of written comments in response to a request for information on vinyl chloride and polyvinyl chloride which was published on December 18, 1979 (44 FR 74928). The December 18 notice had requested the submission of written comments not later than February 10, 1980. Subsequently, several interested parties requested extension of the deadline by which their comments should be submitted. These requests were based on the need for additional time to coordinate efforts within the industrial groups to collect and collate the information requested in a manner that would be most beneficial to all parties concerned. OSHA finds validity in these requests and has granted an extension of time to submit written comments. Written submissions should be received by the OSHA Docket Officer, no later than May 9, 1980.

DATE: The period for submitting written comments is extended to May 9, 1980.

ADDRESS: The information requested on December 18, 1979 (44 FR 74928) should be submitted to the Docket Officer, Docket No. H-034, Room S6212, U.S. Department of Labor, OSHA, 200 Constitution Ave., N.W., Washington, D.C. 20210. (202) 523-7894.

FOR FURTHER INFORMATION CONTACT: Dr. Peter Infante, Office of Carcinogen Identification and Classification, Directorate of Health Standards Programs, Room N3718, U.S. Department of Labor, OSHA, 200 Constitution Ave., N.W., Washington, D.C. 20210, Telephone (202) 357-0325.

Signed at Washington, D.C. this 22nd day of January, 1980.

Eula Bingham,

Assistant Secretary, Occupational Safety and Health.

[FR Doc. 80-2569 Filed 1-28-80; 8:45 am]

BILLING CODE 4510-26-M

Approved State Plans for Enforcement of State Standards; Approval of Utah Plan Supplement

AGENCY: Occupational Safety and Health Administration.

ACTION: OSHA assumes authority for enforcement of standards at Hill Air Force Base in the State of Utah.

SUMMARY: This document approves a State-initiated change supplement which reflects the Utah State Attorney General's opinion that Utah does not have authority to enter Hill Air Force Base for the purpose of making general inspections under the Utah Occupational Safety and Health Act. The Occupational Safety and Health Administration assumed full authority for making inspections at the Hill Air Force Base on February 1, 1979.

EFFECTIVE DATE: January 29, 1980.

FOR FURTHER INFORMATION CONTACT: Charles Boyd, Project Officer, Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3613, Washington, D.C. 20210, (202) 523-8081.

SUPPLEMENTARY INFORMATION: By letter dated March 26, 1979, the State submitted a State-initiated plan change to OSHA's Denver Regional Office. The letter provided notice that the State does not have authority to enter the Hill Air Force Base for the purpose of making general inspections under the Utah Occupational Safety and Health Act, and that Federal OSHA will assume authority for the enforcement of standards at the base. This action was taken as a result of OSHA Instruction STP 2.14 which asked regional administrators to determine the application of State safety and health provisions to private employers in areas of "exclusive Federal Jurisdiction". The Directive also requested States with approved State plans to provide a State attorney general's ruling as to the status of Federal enclaves within the State and the intentions of the State to seek entry for the purpose of enforcing State occupational safety and health laws.

Description of the Supplement

Pursuant to Subpart E of 29 CFR Part 1953, the State submitted a State-initiated plan change which provides for Federal OSHA to assume full authority for the enforcement of safety and health standards at the Hill Air Force Base, effective February 1, 1979.

Location of the Plan and Its Supplement for Inspection and Copying

A copy of the State's plan and its supplement may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3613, 200 Constitution Avenue NW., Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, Room 1554, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; and the Utah Industrial Commission, UOSHA Offices at 448 South 400 East, Salt Lake City, Utah 84111.

Public Participation

Under § 1953.2(c) of this chapter the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the Utah supplement described above is consistent with the provisions in OSHA Instruction STP 2.14, Application of State Safety and Health Provisions to private Employers in Areas of "Exclusive Federal Jurisdiction". Accordingly, it is found that further public comment is unnecessary.

Decision

After careful consideration, the Utah plan supplement described above is hereby approved under Subpart E of 29 CFR Part 1953 of this Chapter. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally.

Signed at Washington, D.C., this 22nd day of January 1980.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 80-2808 1-28-80; 8:45 am]

BILLING CODE 4510-26-M

[V-80-1]

General Electric Co.; Application for Variance and Denial of Interim Order

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

ACTIONS: (1) Notice of application for variance and interim order; (2) Denial of interim order.

SUMMARY: This notice announces the application of General Electric Company for a variance and interim order pending a decision on the application for variance from the standard prescribed in 29 CFR 1910.22(c) concerning covers and/or guardrails for open pits. It also announces the denial of the interim order.

DATES: The last day for interested persons to submit comments is February 28, 1980. The last date for affected employers and employees to request a hearing on the application is February 28, 1980.

ADDRESSES: Send comments or requests for hearing to: Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N3662, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT:

Mr. James J. Concannon, Director, Office of Variance Determination, at the above address, telephone: (202) 523-7144.

or the following Regional and Area Offices:

U.S. Department of Labor, Occupational Safety and Health Administration, Gateway Building, Suite 2100, 3535 Market Street, Philadelphia, Pa. 19104.

U.S. Department of Labor, Occupational Safety and Health Administration, 147 W. 18th Street, Erie, Pa. 16501.

Notice of Application

Notice is hereby given that General Electric Company, Transportation Systems Business Division, 2901 East Lake Road, Erie, Pa. 16531 has made application pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for a variance, and an interim order pending a decision on the application for a variance, from the standards prescribed in 29 CFR 1910.22(c) which state that covers and/or guardrails shall be provided to protect personnel from the hazards of open pits, tanks, vats, ditches, etc.

The address of the place of employment that will be affected by the application is as follows: General Electric Company, Transportation Systems Business Division, 2901 East Lake Road, Erie, Pa. 16531.

The applicant certifies that employees who would be affected by the variance have been notified of the application by giving a copy of it to their authorized employee representative, and by posting a copy at all places where notices to employees are normally posted. Employees have also been informed of

their right to petition the Assistant Secretary for a hearing.

Regarding the merits of the application, the applicant contends that it is providing a place of employment as safe as that required by § 1910.22(c) which requires that all open pits be guarded by covers and/or guardrails.

The applicant states that it has several spray paint rooms in which locomotives and transit cars are painted. These rooms are completely enclosed and access is limited to authorized personnel only. Each paint spray room is approximately 100′ long and 20′ wide. Down the center of each room is a pit approximately 98′ long, 4′ wide and 5′ deep. Along the edge of the pit are rails on which locomotives and transit cars are rolled over the pit for painting. The pit is used to provide access for painting the undersides of the vehicles. The walls and floor of the pit are constructed of concrete. The area is well lighted with explosion proof batteries of 1000′ candle powered lights. When the rooms are not in use a 20′ candle powered light remains on at all times so that it is not necessary to enter a dark room to turn on lights. The pit is also well lighted from within.

The applicant states that the locomotives are 56′–72′ in length and 10′3″ wide, while the transit cars are 80′–85′ in length. Thus, when a vehicle is being painted, most of the pit is covered by the vehicle. A 30″ wide metal crossover plate is also at each end of the pit during the painting operation to permit the painters to cross to the other side.

Most of the painting (top, front, and rear of the vehicles) is done primarily by painters riding in "man carriers" or personnel carriers. Each carrier has a 3′7″ wide work platform enclosed on three sides by heavy steel guardrails. The carriers are mounted on a steel verticle column which runs horizontally along the edge of the room on rails located in the floor and ceiling. They were designed, manufactured and used by the applicant since 1968. According to the applicant, the carriers have made the painting of transportation vehicles safer and the use of scaffolds and ladders unnecessary.

After painting the vehicles, the applicant states that the painters use long handled industrial brooms, shovels, and scrapers to push paper and other debris into the pit. They then enter the pit to remove the debris. A steel ladder is permanently affixed at one end of each pit for entering and exiting the pit. During the sweeping operation, the painters do not come closer than 2′–3′ from the edge of the pit. According to the applicant, it requires three to seven 8-hour shifts for the two-man painter crews to paint the vehicles, and ½ to 1½ hours for two painters to complete the cleaning.

The applicant states that all employees are given a written job hazard analysis which specify each job step, any potential accident or hazard possibility (including warnings about the presence of the pit), and the required safe practices to follow and equipment to be used. The areas in and around the pit are kept free of oil and grease and all paint spills are cleaned-up immediately to avoid slipping hazards. Paint room employees are required to wear safety shoes with non-skid soles.

The applicant further states that the close proximity to the pit required to install guardrails will subject the painters to the pit hazard for a far greater period of time. In addition, the material handling hazards associated with guardrail installation present a greater hazard to employees during the cleanup operation than the presence of the unguarded pit. Therefore, the applicant states that its present procedures, including thorough training and long experience of its painters protect its employees better than would the covers and/or guardrails required by the standard.

A copy of the application for variance will be made available for inspection and copying upon request at the location listed above. All interested persons, including employers and employees, who believe they would be affected by the grant or denial of the application for variance are invited to submit written data, views, and arguments relating to the application no later than February 28, 1980. In addition, employers and employees who believe they would be affected by a grant or denial of the variance may request a hearing on the application no later than February 28, 1980, in conformity with the requirements of 29 CFR 1905.15. Submission of written comments and request for a hearing should be in quadruplicate, and must be addressed to the Office of Variance Determination at the above address.

Denial of Interim Order

The applicant argues that the time necessary to install guardrails and the material handling hazards associated with guardrail installation present a greater hazard to the employees during the cleanup operation than the presence of the unguarded pit. However, it appears from the application for variance and interim order and from a variance investigation at the facility to obtain additional information, that the applicant is providing adequate guarding in its open shop and general assembly areas that can be easily adaptable to the open pits in the spray rooms without creating potential material handling hazards. This guard—a link chain connected to stanchions located at appropriate intervals in the pit—can be installed and removed in a very brief period of time. Futhermore, the presence of a guard would eliminate the possibility of other employees falling into the pit if they should trespass into the danger area to gain access to other locations in the facility. Therefore, it does not appear that the applicant's procedures will provide to the affected employees a place of employment as safe as that which would be provided if the applicant complied with 29 CFR 1910.22(c).

Therefore, it is ordered, pursuant to the authority in 29 CFR 1905.11(c) and the Secretary of Labor's Order No. 8–76 (41 FR 25059), that the interim order requested by General Electric Company be, and is hereby denied. General Electric Company shall give notice of the denial of this interim order to employees affected thereby by the same means required to be used to inform them of the application for a variance.

Signed at Washington, D.C. this 17th day of January 1980.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 80-2809 Filed 1-28-80; 8:45 am]

BILLING CODE 4510-26-M

Office of the Secretary

[TA-W- 6388 and 6388A]

ADA Co., Inc.; 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 November 19, 1979 in response to a worker petition received on November 12, 1979 which ws filed on behalf of workers and former workers producing women's sportswear at Ada Manufacturing Company, East Flat Rock, North Carolina. The investigation revealed that the correct name of the company is Ada Company,

Incorporated. The investigation was expanded to include the New York, New York sales office of Ada Company, Incorporated. It is concluded that all of the requirements have been met.

U.S. imports of the following categories of women's, misses' and children's apparel increased both absolutely and relative to domestic production in 1978 compared to 1977: slacks and shorts, and suits.

The Department of Labor surveyed the customers of Ada Company, Incorporated. The survey revealed that customers representing a substantial portion of sales reduced their purchases from Ada in 1978 compared to 1977. These customers also increased their purchases of imported ladies' suits, slacks and shorts in the same time period.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's sportswear produced at Ada Company, Incorporated of East Flat Rock, North Carolina contributed importantly to the decline in sales of production and to the total or partial separation of workers of that plant and at the New York, New York sales office of Ada Company, Incorporated. In accordance with the provisions of the Act, I make the following certification:

All workers of the East Flat Rock, North Carolina plant and of the New York, New York sales office of Ada Company, Incorporated, who became totally or partially separated from employment on or after November 8, 1978 and before March 2, 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 18th day of January 1980.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 80-2803 Filed 1-28-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6510]

Angel Knitwear, Inc.; 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 December 3, 1979 in response to a worker petition received on November 26, 1979 which was filed by International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' sweaters at Angel Knitwear, Incorporated, No. 1, North Bergen, New Jersey. 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.

U.S. imports of women's, misses' and children's sweaters decline absolutely in 1978 compared with 1977 and in the first 11 months of 1979 compared with the first 11 months of 1978.

Production and employment at Angel Knitwear, Incorporated No. 1, North Bergen, New Jersey, increased in 1979 compared with 1978.

A survey conducted by the Department of Labor of the only customer of Angel Knitwear, Incorporated, No. 1, shows that this customer did not import ladies' sweaters and did not contract with foreign manufacturers for ladies' sweaters during 1977, 1978 and January-November 1979.

Conclusion

After careful review, I determine that all workers of Angel Knitwear, Incorporated, No. 1, North Bergen, 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 21st day of January 1980.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 80-2804 Filed 1-28-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6421]

Bleeker Street Division, Jonathan Logan, Inc.; 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 November 21, 1979 in response to a worker petition received on November 14, 1979 which was filed on behalf of workers and former workers producing misses' and petite dresses and suits at Bleeker Street, New York, New York. The investigation revealed that Bleeker Street is a division of Jonathan Logan, Incorporated, New York, New York and that it produces primarily women's dresses. The investigation revealed that the New York location houses showrooms and offices. 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.

U.S. imports of women's and misses' dresses decreased absolutely in the first three quarters of 1970 compared to the same period in 1978.

The Department of Labor conducted a survey of customers of Bleeker Street who reduced purchases of women's dresses from Bleeker Street in the first eleven months of 1979 compared to the same period in 1978. Most of the customers surveyed either reduced purchases of imported women's dresses or increased purchases of domestically-made dresses by a greater amount than they increased purchases of imports. The customers who reduced purchases of domestic dresses and increased purchases of imported dresses, in the first eleven month of 1979 compared to the same period in 1978, were not a significant proportion of Bleeker Street's decline in sales.

Conclusion

After careful review, I determine that all workers of the Bleeker Street Division of Jonathan Logan, Incorporated, New York, New York, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 21st day of January 1980.

James F. Taylor,

Director, Office of Management, Administration and Planning.

FR Doc. 80-2805 Filed 1-28-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6411]

Bomar Crystal Co.; 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 November 21, 1979 in response to a worker petition received on November 16, 1979 which was filed on behalf of workers and former workers producing quartz crystals for Bomar Crystal Company, Middlesex, New Jersey. It is concluded that all of the requirements have been met.

U.S. imports of quartz crystals increased absolutely during January through September of 1979 compared with the same period of 1978.

The Department of Labor conducted a survey of customers purchasing quartz crystals from Bomar Crystal Company. The survey revealed that some customers have increased reliance upon foreign sources of quartz crystals while decreasing their reliance upon Bomar Crystal Company.

Bomar Crystal Company was issued a certificate of eligibility by the U.S. Department of Commerce on May 3, 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 quartz crystals produced at Bomar Crystal Company, Middlesex, 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 certifications:

All Workers of Bomar Crystal Company, Middlesex, New Jersey engaged in employment related to the production of quartz crystals who became totally or partially separated from employment on or after November 13, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 20th day of January 1980.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 80-2799 Filed 1-28-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6463]

Delcor Fashions Co., Inc.; 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 November 28, 1979 in response to a worker petition received on November 26, 1979 which was filed on behalf of workers and former workers producing ladies' coats at Delcor Fashions Company, Incorporated, Jersey City, New Jersey. 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 both absolutely and relative to domestic production and consumption from 1977 to 1978.

A survey of manufacturers from whom Delcor Fashions did contract work revealed that although the manufacturers did not use foreign contractors nor increase purchases of imported women's coats, sales by the manufacturers declined. A survey of customers of the manufacturers (retail outlets) revealed that as a percentage of total purchases of women's coats by the retail outlets, imported coats increased from 1977 to 1978 and continued to increase during the first half of 1979 compared to the first half 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 women's coats produced at Delcor Fashions Company, Incorporated, Jersey City, 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 Delcor Fashions Company, Incorporated, Jersey City, New Jersey who became totally or partially separated from employment on or after November 20, 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 22nd day of January 1980.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 80-2798 Filed 1-28-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6519]

Grand Garment Co., Inc.; 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 December 3, 1979 in response to a worker petition received on November 26, 1979 which was filed by the International Ladies' Garment Workers Union on behalf of workers and former workers producing women's dresses at Grand Garment Company, Incorporated of Elizabeth, New Jersey. 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.

U.S. imports of women's and misses' dresses decreased in the January-September period of 1979 compared to the same period of 1978.

Grand Garment Company, Incorporated is a garment contractor producing women's dresses for manufacturers. A survey of manufacturers of the Grand Garment Company revealed that the manufacturers did not purchase imported women's dresses or use foreign contractors. A Departmental survey

revealed that customers of the manufacturers relied almost entirely on domestic sources for their purchases of women's dresses.

Conclusion

After careful review, I determine that all workers of Grand Garment Company, Incorporated in Elizabeth, 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 22nd day of January 1980.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 80-2797 Filed 1-28-80; 8:45 am]

BILLING CODE 4510-28-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 8, 1980.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 8, 1980.

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 NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 13th day of December 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Alman Frocks, Inc. (ILGWU)	Elizabeth, N.J	11/26/79	11/20/79	TA-W-6,624	Dresses.
G & H Decoy, Inc. (company)	Henryetta, Okla	12/12/79	12/6/79	TA-W-6,625	Hunting decoys.
General Tire & Rubber Co. (workers)	Wabash, Ind	12/10/79	11/29/79	TA-W-6,626	Auto assemble parts.
Genre, Inc. (workers)	New York, N.Y	10/30/79	10/26/79	TA-W-6,627	Ladies' sportswear and dresses.
K-D Tool Manufacturing Co. (USWA)	Lancaster, Pa	12/10/79	12/6/79	TA-W-6,628	Specialty handtools for auto repair.
Mercer Rubber Co. (Independent Rubber Workers Union).	Trenton, N.J	12/10/79	12/5/79	TA-W-6,629	Rubber expansion joints, and built hoses and conveyor belts.
Raybestos-Manhattan, Inc. (company)	Stratford, Conn	12/10/79	12/5/79	TA-W-6,630	Automatic transmission friction materials.
Smithtown Manufacturing Co., Inc. (workers)	Commack, N.Y	12/7/79	11/30/79	TA-W-6,631	Ladies' blouses and sportswear.
Thompson Tool Co., Inc. (company)	Norwalk, Conn	12/10/79	12/6/79	TA-W-6,632	Roto-stripper.

[FR Doc. 80-2795 Filed 1-28-80; 8:45 am]

BILLING CODE 4510-28-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below not later than February 8, 1980.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 8, 1980.

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 NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 22nd day of January 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Adams Electronics (AIW)	Bangor, Mich	1/10/80	1/7/80	TA-W-6,828	Coils and components for color TV circuit boards and pulse wiper and windshield wipers for automobiles.
American Can Co. (workers)	Hammond, Ind	1/9/80	1/2/80	TA-W-6,829	Process template for cans, also ends on cans.
Archer Rubber Company (ILGWU)	Milford, Mass	1/3/80	12/31/79	TA-W-6,830	Coated fabrics and rain apparel.
Braswell Shipyards, Inc. (workers)	Boston, Mass	1/14/80	1/8/80	TA-W-6,831	Ship repair yards.
Brown Shoe Co. (Teamsters)	St. Louis, Mo	1/15/80	1/9/80	TA-W-6,832	Warehousing of ladies' and children's shoes.
Crouse-Hinds Co., Arrow Hart Division (IBEW)	Lewiston, Maine	1/14/80	1/9/80	TA-W-6,833	Specialty switches.
Lampson & Sessions Company, Kent Division (AIW).	Kent, Ohio	1/16/80	1/8/80	TA-W-6,834	Nuts.
Loree Footwear Corp. (workers)	Freeport, Maine	1/18/80	1/14/80	TA-W-6,835	Manufacturing and selling of dresses and casual shoes for women.
Morris Levitz & Sons (ILGWU)	New York, N.Y	1/18/80	1/14/80	TA-W-6,836	Ladies' raincoats.
National Standard Co., Worcester Wire Division (workers).	Worcester, Mass	1/15/80	1/11/80	TA-W-6,837	Specialty wire.
Precision Components, Inc. (UAW)	Warren, Mich	1/14/80	1/9/80	TA-W-6,838	Stamping, machining, welding for door hinges, brake pedals, hood latches, and spring seats.
Reed City Tool & Die Corp. (workers)	Reed City, Mich	1/11/80	1/7/80	TA-W-6,839	Plastic injection and compression molds for automobiles.
U.S. Steel Corp., Universal Atlas Cement Division (United Cement, Lime & Gypsum Workers International Union).	Northampton, Pa	1/14/80	12/26/79	TA-W-6,840	Specialty white cement.

[FR Doc. 80-2802 Filed 1-28-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W- 6398 and 6398A]

Jumping Jacks Shoes; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on November 19, 1979 in response to a worker petition received on November 12, 1979 which was filed on behalf of workers and former workers producing infants' shoes and school shoes at the Ponce, Puerto Rico plant of Jumping Jacks Shoes. The investigation revealed thea Jumping Jacks Shoes operated two plants in Ponce, Puerto Rico: Bristol Shoe Company, and Foot-Mits. The Bristol Shoe Company plant (TA-W-6398) produced primarily boys' leather and athletic shoes. The Foot-Mits plant (TA-W-6398A) produces primarily infants' shoes. With respect to all workers at the Foot-Mits plant who were not Foot-Mits Branch support area workers, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Total production of all shoes at the Foot-Mits plant increased in quantity from 1977 to 1978 and from 1978 to 1979.

With respect to all workers at the Bristol Shoe Company engaged in employment related to the production of boys' athletic shoes, and to all Foot-Mits Branch support area workers at the Foot-Mits plant engaged in employment related to the production of boys' athletic shoes at the Bristol Shoe Company, it is concluded that all of the requirements have been met.

U.S. imports of athletic shoes increased in quantity relative to domestic production in the January-September period of 1979, compared with the same period of the previous year.

Company imports of boys' athletic shoes increased in quantity in the July-September period of 1979, compared with the same period of the previous year.

The Department of Labor conducted a survey of customers of Jumping Jacks. The survey revealed that several of the customers surveyed decreased purchases of boys' athletic shoes from Jumping Jacks and increased purchases of imported boys' athletic shoes in the January-November period of 1979, compared with the same period of the previous year.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with boys' athletic shoes produced at the Bristol Shoe Company, Ponce, Puerto Rico, of Jumping Jacks Shoes 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 at the Bristol Shoe Company, Ponce, Puerto Rico of Jumping Jacks Shoes engaged in employment related to the production of boys' athletic shoes, and all Foot-Mits Branch support area workers at the Foot-Mits plant, Ponce, Puerto Rico of Jumping Jacks Shoes engaged in employment related to the production of boys' athletic shoes at Bristol Shoe Company, who became totally or partially separated from employment on or after June 1, 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 18th day of January 1980.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 80-2801 Filed 1-28-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6127 and 6128]

National Standard Co.; Affirmative Determination Regarding Application for Reconsideration

On January 4, 1980, the United Steelworkers of American 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 the Columbiana and Childersburg, Alabama, plants of National Standard Company. This Determination was published in the Federal Register on December 14, 1979, (44 FR 72676).

The petitioners maintain that production and employment losses at the Columbiana and Childersburg, Alabama, plants of National Standard Company may have occurred as a result of a corporate transfer in the production of tire cord wire from the domestic production facilities of Columbiana and Childersburg to the foreign production operations of National Standard Company in the United Kingdom and Canada. Such information, if verifiable, would contradict information provided the Department in the course of its initial investigation.

After review of the application, I conclude that this claim of the petitioners is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. This application is, therefore, granted.

Signed at Washington, D.C., this 22d day of January 1980.

C. Michael Aho,

Director, Office of Foreign Economic Research.

FR Doc. 80-2800 Filed 1-28-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6484]

Satralloy, Inc.; 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 November 29, 1979 in response to a worker petition received on November 14, 1979 which was filed on behalf of workers and former workers producing ferro-alloys at Satralloy, Incorporated, Steubenville, Ohio. 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.

U.S. imports of low carbon ferrochrome declined both absolutely and relative to domestic production in the period 1976 to 1978 and in January–September 1979 compared to the same period in 1978. Imports of high carbon ferrochrome declined both absolutely and relative to domestic production in January–September 1979 compared to the same period in 1978.

In 1968 a new stainless steel refining process was introduced. This process, known as Argon-Oxygen-Decarburization (AOD), allows stainless steel producers to substitute lower cost high carbon ferrochrome for higher cost low carbon ferrochrome. Most major domestic stainless steel producers have installed AOD capacity. This has resulted in an overall decline in demand for low carbon ferrochrome and increased demand for high carbon ferrochrome.

Satralloy, Inc. discontinued production of low carbon ferrochrome in February 1979. Production of high carbon ferrochrome at Satralloy increased in 1978 compared to 1977 and during January–September 1979 compared to the same period in 1978. The increased production of high carbon ferrochrome more than offset the decline in production of low carbon ferrochrome.

Conclusion

After careful review, I determine that all workers of Satralloy, Incorporated, Steubenville, 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 22d day of January 1980

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 80-2796 Filed 1-28-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6538]

Steven Knitting Mills, Inc.; 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 December 4, 1979 in response to a worker petition received on November 29, 1979 which was filed on behalf of workers and former workers producing double knit fabrics at Steven Knitting Mills, Incorporated, Hialeah, Florida. The investigation revealed that the subject firm also produced single knit fabric. In the following determinations, 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 gray woven fabric decreased in the first nine months of 1979 compared to the same period in 1978. Gray knitted fabrics are competitive with gray woven fabrics. Imports of gray knits are negligible and present no threat to the domestic gray fabric industry.

All fabric knit at Steven Knitting was sold through its parent company. The parent company used one other domestic facility, in addition to Steven Knitting, as a source for knit fabric. Sales of fabric by the parent firm increased in FY (March–February) 1979 compared to FY 1978 and in the period March–November 1979 compared to the same period in 1978.

Steven Knitting was closed for production in November 1979. All production activities previously performed at Hialeah, Florida will be transferred to another commonly-owned facility in Spartanburg, South Carolina. The transfer is being made for reasons relating to efficiency rather than to lost business.

Conclusion

After careful review, I determine that all workers of Steven Knitting Mills, Incorporated, Hialeah, Florida are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of January 1980.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 80-2806 Filed 1-28-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6475]

Vinco Fashions Co., Inc.; 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 November 28, 1979 in response to a worker petition received on November 26, 1979 which was filed on behalf of workers and former workers producing ladies' coats at Vinco Fashions Company, Incorporated, Jersey City, New Jersey. 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 both absolutely and relative to domestic production and consumption from 1977 to 1978.

A survey of manufacturers for whom Vinco Fashions did contract work revealed that although manufacturers did not use foreign contractors nor increase purchases of imported women's coats, sales by the manufacturers declined. A survey of customers of the manufacturers (retail outlets) revealed that as a percentage of total demand for women's coats by the retail outlets, imports increased from 1977 to 1978 and continued to increase during the first half of 1979 compared to the first half 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 women's coats produced at Vinco Fashions Company, Incorporated, Jersey City, 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 Vinco Fashions Company, Incorporated, Jersey City, New Jersey who became totally or partially separated from employment on or after November 20, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of January 1980.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 80-2807 Filed 1-28-80; 8:45 am]

BILLING CODE 4510-28-M

MERIT SYSTEMS PROTECTION BOARD

Federal Employees: Review of Penalty in Agency Decisions Appealed Pursuant to 5 U.S.C. 7701: Opportunity to File Amicus Brief in Board Proceedings

AGENCY: Merit Systems Protection Board.

ACTION: Notice of opportunity to file amicus brief in Board proceedings.

SUMMARY: The Merit Systems Protection Board, on its own motion, has reopened the cases of *Curtis Douglas* v. *Veterans Administration, Douglas C. Jackson* v. *Department of the Air Force, John Dennis* v. *Department of the Navy, John B. Nocifore* v. *Department of the Navy, James K. Anderson* v. *Department of the Air Force, Luis A. Jiminez* v. *Department of the Army* and *Joseph F. Cicero* v. *The Veterans Administration.* These cases have been reopened to determine (1) whether under 5 U.S.C. 7701 the "preponderance of evidence" standard should be applied by presiding officials of the Board in determining whether the punishment imposed by an agency in an adverse action is sustained and (2) whether presiding officials of the Board may modify or reduce a penalty where it is determined that the penalty imposed by the agency does not promote the efficiency of the service. Amicus briefs will be considered by the Board, if received in the office of the Secretary at the address below on or before February 15, 1980.

ADDRESS: Office of the Secretary, 1717 H Street N.W., Room 226, Washington, D.C. 20419.

FOR FURTHER INFORMATION CONTACT: Donald L. Cox, Deputy General Counsel on (202) 653-7165.

By order of the Board.

Ruth T. Prokop,

Chairwoman.

January 22, 1980.

[FR Doc. 80-2593 Filed 1-28-80; 8:45 am]

BILLING CODE 6325-20-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-259, 50-260, and 50-296]

Tennessee Valley Authority; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 56 to Facility Operating License No. DPR-33, Amendment No. 51 to Facility Operating License No. DPR-52 and Amendment No. 29 to Facility Operating License No. DPR-68 issued to Tennessee Valley Authority (the licensee), which revised Technical Specifications for operation of the Browns Ferry Nuclear Plant, Units Nos. 1, 2 and 3, located in Limestone County, Alabama. The amendments are effective as of the date of issuance.

These amendments change the Technical Specifications to permit operation of Unit No. 3 while Unit No. 1 is down for refueling by providing a temporary second off-site power source to the Unit No. 3 4-KV shutdown boards through the 4-KV bus tie board.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated January 14, 1980, (2) Amendment No. 56 to License No. DPR-33, Amendment No. 51 to License No. DPR-52, and Amendment No. 29 to License No. DPR-68, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Athens Public Library, South and Forrest, Athens, Alabama 35611. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 14th day of January 1980.

For the Nuclear Regulatory Commission.

Vernon L. Rooney,

Acting Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 80-2776 Filed 1-28-80; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-16519; File No. 57-820]

American Stock Exchange, Inc., et al.; Notice of Receipt of Plan Filed Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Notice and request for comments.

SUMMARY: The Commission gives notice that the five national securities exchanges authorized by the Commission to trade standardized options contracts have filed with the Commission, under section 11A(a)(3)(B) of the Securities Exchange Act, a joint industry plan which, if approved by the Commission, would authorize joint action on their part in the development and operation of a system for the collection and dissemination of consolidated options last sale reports and quotation information.

DATES: Comments should be submitted on or before March 14, 1980.

ADDRESSES: Persons wishing to submit written views should file six copies thereof with George A. Fitzsimmons, Room 892, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to File No. S7-820 and will be available for public inspection at the Commission's Public Reference Room,

Room 6101, 1100 L Street, Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: William S. Muller, Division of Market Regulation, Securities and Exchange Commission, Room 351, 500 North Capitol Street, Washington, D.C. 20549, (202) 272–2415.

SUPPLEMENTARY INFORMATION: On October 24, 1979, the American Stock Exchange, Inc. ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Midwest Stock Exchange, Inc. ("MSE"), the Pacific Stock Exchange, Inc. ("PSE") and the Philadelphia Stock Exchange, Inc. ("Phlx") jointly filed with the Commission pursuant to section 11A(a)(3)(B) of the Securities Exchange Act of 1934 (the "Act") [1] a proposed plan for the collection and dissemination of options last sale and quotation information (the "Plan") to be administered by the Options Price Reporting Authority ("OPRA"). The above-named exchanges have asked the Commission to approve the proposed Plan under section 11A(a)(3)(B) of the Act, thereby authorizing joint action on their part in the development and operation of a consolidated options quotation and last sale reporting system pursuant to such Plan.

I. Background

On January 22, 1975, the Commission, by order,[2] granted registration as a securities information processor to OPRA, upon finding, inter alia, that OPRA was so organized and had the capacity to carry out its functions as a securities information processor. OPRA consists of a committee of representatives of those national securities exchanges authorized by the Commission to trade standardized options contracts (the OPRA "participants"). The functions which OPRA performed, and which necessitated its registration as a securities information processor, were set forth in a plan filed as part of OPRA's Form SIP registration statement.[3] Briefly, that plan called for OPRA to administer a consolidated system for the collection and dissemination of reports of all completed transactions in options occurring on the national securities exchanges authorized by the Commission to trade options.

On January 31, 1979, OPRA filed with the Commission an amendment to its Form SIP registration statement in which OPRA proposed to amend its plan for reporting consolidated options last sale reports to include authority for the collection and dissemination of consolidated options quotation information from the OPRA participants. In addition, OPRA requested that the Commission authorize joint action on the part of the OPRA participants in proceeding to develop consolidated options quotation system. OPRA stated that it would not begin the necessary negotiations to effectuate that system until such authorization had been received.[4]

After reviewing the substance of OPRA's request, the Division of Market Regulation informed OPRA that, in light of both the Commission's desire to begin developing a national market subsystem for options,[5] and OPRA's desire for Commission authorization for its participants to act jointly, it would be appropriate for the Commission to consider OPRA's entire Plan, including those provisions relating to the reporting of consolidated options last sale reports as well as quotation information, under Section 11A(a)(3)(B) of the Act.[6] Accordingly, the Division asked that the Amex, CBOE, MSE, PSE and Phlx refile the entire Plan as a joint industry plan under section 11A(a)(3)(B).[7]

II. Description of the Plan [8]

A. Administration

OPRA would be authorized to administer this Plan and to make all policy decisions under the Plan, in particular (1) setting standards governing the format for reporting last sale and quotation information, and (2) determining the level of fees to be paid by approved vendors, subscribers and news services. Action by OPRA under the Plan would require an affirmative vote of ⅔ of the total voting authority of the participants.

The voting rights of the parties under the Plan would be weighed; each participant's percentage of the total voting authority would correspond to such party's percentage of the total number of compared trades submitted for clearing to the Options Clearing Corporations during the previous year. No participant, however, would be entitled to more than 50 percent of the total voting authority. New participants in the Plan would be entitled to 10 percent of the voting authority, until an annual determination as to such party's percentage of the total options clearing volume could be made. Regular meetings of the parties would be held on not less than 10 days notice, and generally would be rotated among the locations of the principal offices of the parties.

B. Data Processing Functions

The Plan would authorize OPRA to perform some or all of the data processing functions under the Plan, or to enter into a contract with a data processing service organization to perform such functions.[9]

C. Options Last Sale Reports

The Plan would require each participant promptly to collect and transmit to OPRA, in a format prescribed by OPRA or its data processing service organization, reports of all sales of options contracts on the

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[1] Section 11A(a)(3)(B) of the Act authorizes the Commission, in furtherance of its directive to facilitate the establishment of a national market system, by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under this title in planning, developing, operating or regulating a national market system (or a subsystem thereof) or one or more facilities thereof. On December 7, 1979 the Commission issued a release proposing and seeking comments on Rule 11Aa3–2 under the Act. Securities Exchange Act Release No. 16410 (December 7, 1979), 18 SEC Docket 1306 (December 26, 1979). If adopted, proposed Rule 11Aa3–2 would require self-regulatory organizations requesting joint action under section 11A(a)(3)(B) to file a plan with the Commission, and would prescribe, among other matters, the information which must be included in such plans and certain standards with respect to their operation.

[2] Securities Exchange Act Release No. 12035 (January 22, 1975), 41 FR 4369.

[3] *See* Rule 11Ab2–1 under the Act, 17 CFR 240.11Ab2–1.

[4] *See* letter from Michael Meyer, counsel to OPRA, to Andrew M. Klein, Director, Division of Market Regulation (January 31, 1979).

[5] *See* Securities Exchange Act Release No. 15671 (March 22, 1979), 44 FR 20360.

[6] Letter from Andrew M. Klein to Michael L. Meyer (June 20, 1979).

[7] The Commission previously has dealt with requests by national securities exchanges for authorization to act jointly under section 11A(a)(3)(B) of the Act, by requiring the filing of a plan specifying the nature of the joint action to be undertaken. Two such plans have been temporarily approved by the Commission. The first, the Consolidated Quotation ("CQ") Plan, authorizes joint industry action in the development and operation of a consolidated quotation system for equity securities reported in the consolidated transaction reporting system. *See* Securities Exchange Act Release No. 15009 (July 28, 1978), 43 FR 34851. The second, the Intermarket Trading System ("ITS") Plan, authorizes joint action on the part of those national securities exchanges participating in the plan, in the development and operation of a system providing an intermarket communications linkage. *See* Securities Exchange Act Release No. 14661 (April 14, 1978), 43 FR 17419. As noted *supra* at n. 1, the Commission recently issued a proposed rule which, if adopted, would prescribe certain standards with respect to information which must be included in plans filed under section 11A(a)(3)(B).

[8] Although the Commission is at this time considering whether to approve the entire OPRA Plan, under section 11A(a)(3)(B) of the Act, OPRA currently is administering the options last sale reporting system pursuant to its registration as a securities information processor under section 11A(b)(2) of the Act.

[9] In discussions with the Commission's staff, OPRA has represented that the Securities Industry Automation Corporation ("SIAC"), which currently performs the data processing functions with respect to the options last sale reporting system, has been selected on the basis of competitive bidding to perform such functions for quotation reporting.

participant exchanges. The reports would include the options series, the number of contracts sold, the price at which the contracts were sold, the market of execution, and any late or out of sequence trades, cancels, spread transactions, opening ranges, trading halts and suspensions, or similar matters. The Plan states that current last sale reports would be disseminated through the OPRA system on a uniform, nondiscriminatory basis over a network to vendors,[10] subscribers,[11] and news services.[12]

D. Options Quotation Reports

Under the Plan, each exchange would be required to collect and transmit to the OPRA system bids and offers for each series of options traded on the exchange in a format specified by OPRA or its data processing service organization. The bids and offers would have to be sufficient in number and timeliness to reflect the current state of the market in such security, and would have to reflect the premium bid or offer, the options series, the market in which the quote was entered, and any information concerning cancels, corrections, trading halts and suspensions, market conditions or similar matters. Current quotation information would be disseminated by OPRA on a uniform, non-discriminatory basis to vendors, subscribers and news services.

D. Vendors, Subscribers and News Services

Under the Plan, only those vendors, subscribers and news services that have been approved by, and have entered into agreements with, OPRA would be entitled to receive last sale reports and quotation information. The Plan would authorize OPRA to disapprove or revoke its previous approval of any vendor, subscriber or news service, if such entity is found to have violated a provision of its contract with OPRA, or if such action is necessary or appropriate in the public interest or for the protection of investors. An entity which has been disapproved or has had a prior approval revoked could appeal such action to the Commission in accordance with its rules and regulations.[13]

The Plan would require that OPRA's agreements with vendors and subscribers in uniform, non-discriminatory, and designed to assure the timely, orderly and reliable dissemination of last sale reports and quotation information on a current basis. Such agreements could impose upon vendors and subscribers reasonable fees for the receipt of options information. The Plan also would permit OPRA to charge a fee, in addition to that charged for the right to receive options information, for the receipt of such information directly from the OPRA system rather than through an intermediary.

The Plan would require that OPRA's agreements with vendors provide, generally, that last sale reports and quotations information may be received by such persons only for the purpose of providing options information to approved subscribers. Vendor agreements would have to provide uniform specifications governing the format for the transmission of last sale reports and quotation information on behalf of OPRA. The Plan also would require that vendor agreements contain provisions prohibiting vendors from excluding reports or otherwise discriminating on the basis of the market in which a transmission or quotation took place.

With respect to agreements with news services, the Plan would require that such agreements prohibit news services from furnishing current options information to any persons other than the news media. Under the Plan, information furnished by a news service to the new media could not be published during the fifteen-minute period following transmission of the information to the news service.

E. Financial Matters

Each participant exchange would be responsible for its own costs in collecting and reporting to OPRA the last sale reports and quotation information prescribed by the Plan. The Plan would require each exchange to share equally in all start-up costs relating to the implementation and administration of the Plan, but administrative and operating costs would be apportioned at the end of each calendar quarter on the basis of the number of compared trades submitted by each party to the Options Clearing Corporation during that quarter. Net revenues from operation of the Plan would be shared by the participants on the same weighted basis.

F. Withdrawal; Nontransferability of Rights Under the Plan

The Plan would permit any exchange to withdraw from OPRA on six months notice, provided that withdrawal would not extinguish a withdrawing party's liability for its share of the start-up costs. A participant exchange could not transfer its rights under the Plan to have last sale reports and quotation information disseminated through the OPRA system.

G. Amendments to the Plan

The Plan provides that it could be amended by two-thirds vote of the total voting authority; but, under the Plan, such amendment would not be effective until approved by the Commission.

III. Request for Public Comment

In order to assist the Commission in determining whether to authorize joint action pursuant to the Plan on the part of the Amex, CBOE, MSE, PSE, and Phlx, interested persons are invited to submit written views, data and arguments with respect to the Plan, not later than March 14, 1980. The Commission believes, as a preliminary matter, that the terms of the Plan would not be in compliance with the standards for Section 11A(a)(3)(B) plans set forth in proposed Rule 11Aa3–2.[14] Thus, commentators may wish to address whether it is appropriate for the Commission to approve the Plan at this time. Particularly, the Commission seeks comments on three aspects of the Plan which the Commission believes may warrant additional consideration prior to approval.

First, the Commission requests comments on whether the OPRA Plan, like the other joint industry plans approved by the Commission, should specify the current level of those fees which the Plan authorizes OPRA to charge for its services or, at least, the manner in which OPRA would calculate these fees. Absent the inclusion of fees or the manner in which they would be

[10] The Plan defines a vendor as a person that receives current option last sale reports or quotation information provided by OPRA or provided by a vendor in connection with such person's business of distributing, publishing, or otherwise furnishing such information on a current basis to a subscriber, news service, or to another vendor.

[11] The Plan defines a subscriber as a person that receives current last sale reports or quotations information provided by OPRA or provided by a vendor for its own use or for distribution on a non-current basis, other than in connection with its activities as a vendor.

[12] The Plan defines a news service as a person that receives last sale reports or quotation information provided by OPRA or provided by a vendor on a current basis in connection with such person's business of furnishing such information to newspapers, radio and television stations and other news media, for publication that does not take place within the 15-minute period following the time when the information has been first published by OPRA.

[13] Section 11A(b)(5)(A) of the Act, among other matters, authorizes the Commission to review, on its own motion or upon application by any aggrieved person, an action by a registered securities information processor which prohibits or limits any person in respect of access to services offered by such processor.

[14] Securities Exchange Act Release No. 16410 (December 7, 1979), 18 SEC Docket 1306 (December 26, 1979).

calculated in the OPRA Plan, the level of such fees could be changed unilaterally by OPRA in its contracts with vendors, news services and subscribers.

OPRA maintains that inclusion of its fees in the Plan would require amendment thereof any time OPRA wished to change its fees, and would involve the Commission in a "burdensome rate-making preceeding that would be the consequence of requiring approval of specific rates." [15] It would seem anomalous, however, in light of the statutory requirement that self-regulatory organizaions, acting individually, file any proposed fee changes with the Commission,[16] for the Commission to permit such organizations, when acting jointly, to proceed on a unilateral basis. Furthermore, consideration of amendments to the OPRA Plan dealing solely with fees would not involve the Commission in rate-making, but could simply involve a determination, among other matters, of whether OPRA had a reasonable basis upon which to derive the fee schedule.[17] Therefore, the Commission believes, as a preliminary matter, that the current level of OPRA's fees, or the method by which such fees would be calculated, should be included as part of the Plan.

Second, the Commission requests comments on whether the Plan should define the time parameters within which quotations and reports of completed transactions must be entered into the system. Although the Plan requires that "late" transactions be identified and that quotations reflect the "current" market, it does not define what those terms means.

OPRA maintains that it is not practical in an active options market to keep track of the precise time that has elapsed since the execution of a trade, and that it would not be appropriate to specify the time within which quotations must be transmitted to OPRA because no Commission rule requires the collection and dissemination of options quotation information.[18] While the Commission does not feel it necessary, at this time, to prescribe the time parameters within which last sale reports and quotation information for options must be reported, the Commission does believe that OPRA should set some reasonable standards to assure that investors receive timely information and to provide some meaning to the terms of the Plan.

Finally, the Commission requests comments on whether the voting arrangements of the Plan provide for a reasonable allocation of authority among the participant exchanges. Under the Plan's voting provisions, the CBOE and the Amex, because of their respective trading volumes, together would control more than 70 percent of the voting authority and thus would be able to take any action they desired even if the other participants were opposed to such action. Furthermore, the CBOE, by virtue of its control of more than one-third of the voting authority, could veto any action proposed by the other participants.

The Commission notes that both the CQ and ITS Plans [19] contain provisions under which each participating self-regulatory organization is granted a single vote in the administration of the respective plans. Additionally, the Commission's staff has suggested that the Consolidated Tape Association consider amending its plan,[20] which contains weighted voting arrangements similar to those under the OPRA Plan, to provide a more equitable governing structure.[21] While the Commission understands that the weighted voting arrangements of the OPRA Plan reflect the wide disparity of trading volume and resulting system usage among the participant exchanges, the Commission is not convinced at this time that such arrangements are reasonable.[22]

Persons wishing to make written submissions should file six copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to File No. S7-807 and will be available for public inspection at the Commission's Public Reference Room, 1100 L Street, Washington, D.C.

For the Commission.

George A. Fitzsimmons,

Secretary.

January 22, 1980.

[FR Doc. 80-2761 Filed 1-28-80; 8:45 am]

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[15] *See* letter from Michael L. Meyer to William Muller of the Commission's staff (October 24, 1979) ("October 24 Letter").

[16] *See* Section 19(b)(3)(A) of the Act.

[17] *Cf.* Section 11A(c)(1)(D) of the Act.

[18] *See* October 24 Letter.

[19] *See* n. 7 *supra.*

[20] The Consolidated Tape Association Plan, declared effective by the Commission on May 10, 1974, involves joint action on the part of national securities exchanges in the operation of the consolidated transaction reporting system contemplated by Rule 17a-15 under the Act [17 CFR 240.17a-15]. *See* Securities Exchange Act Release No. 10787 (May 10, 1974), 39 FR 17799.

[21] *See* letter from Andrew M. Klein, Director of the Division of Market Regulation, to Robert C. Hall, Chairman of the CTA (November 17, 1978).

[22] The Commission has received letters from the PSE and Phlx claiming that the present weighted voting arrangements under the Plan are unfair. Letter from Charles J. Henry, President of the PSE, to Andrew M. Klein (May 24, 1979); letter from Nicholas A. Giordano, Executive Vice President of the Phlx, to Andrew M. Klein (July 13, 1979). These letters are available for inspection in the public file referenced above. Recently, a proposal by the PSE to amend the Plan to provide each participant with one vote failed by a weighted vote of two against (Amex and CBOE), and three in favor (MSE, PSE and Phlx).

[File No. 81-580]

Hycel, Inc.; Application and Opportunity for Hearing

January 18, 1980.

Notice is hereby given that Hycel, Inc. ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an ordering exempting the Applicant from the obligation to file all reports required to be filed pursuant to sections 13 and 15(d) of the 1934 Act.

The Application states in part that:

1. On June 12, 1979 pursuant to shareholder authorization, Hycel was merged with Hyco Tendering Corporation. The surviving corporation was subsequently merged with Hyco Holding Corporation and became known as Hycel Inc. There exists neither public investors nor any public trading market for Hycel securities.

2. The merger of June 12, 1979 as well as the activities of Hycel and its financial condition were thoroughly disclosed in Hycel's proxy statement which was sent to stockholders on or about May 21, 1979.

3. Effective June 26, 1979 the Applicant ceased to be registered under section 12(b) of the 1934 Act pursuant to a Form 25 filed by the American Stock Exchange.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person no later than February 12, 1980 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capital Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after

said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-2762 Filed 1-28-80; 8:45 am]

BILLING CODE 8010-01-M

Boston Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

January 18, 1980.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 2(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following common stocks:

APL Corporation, $.10 Par Value (File No. 7-5135); AZL Resources, Inc., No Par Value, (File No. 7-5136); Alaska Airlines, Inc., $1 Par Value (File No. 7-5137); Amrep Corporation, $.10 Par Value (File No. 7-5138); Bancal Tri-State Corporation, $15 Par Value (File No. 7-5139); Bandag, Inc., $1 Par Value (File No. 7-5140); Bangor Punta Corporation, $1 Par Value (File No. 7-5141); Craig Corporation, $.25 Par Value (File No. 7-5142); DWG Corporation, $1 Par Value (File No. 7-5143); Deltona Corporation; $1 Par Value (File No. 7-5144; Mobil Corporation, $7.50 Par Value (File No. 7-5145); and Moore McCormack Resources, Inc., $2.50 Par Value (File No. 7-5146).

These securities are listed and registered on one or more other national securities exchanges.

Interested persons are invited to submit on or before February 11, 1980, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-2759 Filed 1-28-80; 8:45 am]

BILLING CODE 8010-01-M

Pacific Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

January 18, 1980.

The above named national securities exchange has filed applications 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 trading privileges in:

Resorts International, Inc., Class A common stock, $1 Par Value (File No. 7-5150) and Class B common stock, $1 Par Value (File No. 7-5151).

These securities are listed and registered on one or more other national securities exchanges.

Interested persons are invited to submit on or before February 11, 1980, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-2758 Filed 1-28-80; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-10227]

Shell Oil Co.; Application and Opportunity for Hearing

January 18, 1980.

Notice is hereby given that Shell Oil Company, a Delaware corporation, (the "Applicant") has filed an application pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act"), for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeships of Bankers Trust Company, a New York corporation ("Bankers"), under

(i) An indenture qualified under the Trust Indenture Act, dated as of April 15, 1977 (the "1977 Indenture"), between Bankers and the Applicant, and

(ii) An indenture of trust and first preferred ship mortgage not so qualified, dated as of December 7, 1979 (the "New Indenture"), between Bankers and United States Trust Company of New York, a New York corporation (the "Owner Trustee"), not in its individual capacity but solely as trustee under a trust agreement, dated as of October 15, 1979 (the "Trust Agreement"), between the Owner Trustee and General Electric Credit Corporation of Delaware, a Delaware corporation,

are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Bankers from acting as trustee under the 1977 Indenture or the New Indenture.

Section 310(b) of the Act provides, in part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall, within ninety days after ascertaining, that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, in effect (with certain exceptions), that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), such other indenture may be excluded from the operation of this provision if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as such under one of such indentures.

The Applicant alleges the following:

1. The 1977 Indenture relates to the issuance by the Applicant of its 8% Debentures Due 2007 (the "1977 Debentures"), which were issued in an aggregate principal amount of $300,000,000. A copy of the 1977 Indenture was filed as an exhibit to the Applicant's Registration Statement No. 2-58580 under the Securities Act of 1933, as amended (the "Securities Act"), and is incorporated herein by reference. The 1977 Debentures issued under the 1977 Indenture are subject to redemption, in part, on April 15 or October 15, 1988, and on each April 15 or October 15

thereafter, to and including October 15, 2006, at 100% of the principal amount thereof together with accrued interest to the date fixed for redemption, pursuant to the terms of the mandatory sinking fund provided in the 1977 Indenture.

2. The 1977 Debentures constitute "indenture securities" and the Applicant is the "obligor" thereon, as such terms are defined in Section 303 of the Trust Indenture Act.

3. The Owner Trustee intends to finance a part of the acquisition cost of a steam screw oil tanker (Shipbuilder's Hull No. 614) built at Newport News, Virginia, to be documented under the laws of the United States and to be named the U.S.T. PACIFIC (the "Vessel"), through the placement with institutional investors of approximately $58,194,691 principal amount of 10.125% Secured Ship Financing Notes (the "1979 Notes"), issued pursuant to the New Indenture and payable in 46 consecutive semiannual installments commencing on the date six months after the Delivery Date of the Vessel. The Delivery Date, as defined in the New Indenture, means the date on which the Vessel is simultaneously (i) delivered to the Owner Trustee by the shipbuilder, (ii) demise chartered by the Owner Trustee to VLCC II Corporation, a Delaware corporation (the "Demise Charterer"), under the demise charter dated as of the date of the New Indenture (the "Demise Charter"), and (iii) time chartered by the Demise Charterer to the Applicant under the time charter dated as of the date of the New Indenture (the "Time Charter"). The 1979 Notes will be secured by the Vessel and by all right, title and interest of the Owner Trustee in and to (i) the Demise Charter (excluding the fees, expenses and disbursements of the Owner Trustee, after the Delivery Date, payable pursuant to the Trust Agreement), (ii) the guaranty agreement from the Applicant to the Owner Trustee dated as of the date of the New Indenture (the "Guaranty") guaranteeing the due and punctual payment of all sums specified in the Demise Charter as payable by the Demise Charterer to the Owner Trustee, (iii) the assignment from the Demise Charterer to the Owner Trustee of certain of its rights, title and interest in and to the Time Charter, and (iv) other documents and income more fully described in the granting clause of the New Indenture, all as provided in the New Indenture. Copies of a proof of the participation agreement and other documents (combined as a single document) setting forth the terms and provisions governing the Notes which are to be issued under the New Indenture are annexed to the Applicant's application as Exhibit A. It is anticipated that the New Indenture will be executed and the initial issuance of the 1979 Notes thereunder will occur in December 1979.

4. Section 2(4) of the Securities Act states that "with respect to equipment-trust certificates or like securities, the term 'issuer' means the person by whom the equipment or property is or is to be used * * *." As the 1979 Notes to be issued under the New Indenture will be secured, *inter alia*, by the Vessel, and as the proceeds of the sale of the 1979 Notes will be used to finance a part of the acquisition cost of the Vessel, such notes may arguably be "equipment-trust certificates of like securities" within the meaning of Section 2(4). Since the Applicant will be the time charter of the Vessel under the Time Charter, the Vessel may arguably be said to be "equipment or property * * * to be used" by the Applicant, and the Applicant thus may arguably be construed to be (considering also the Guaranty) the "issuer" of the 1979 Notes for purposes of the Securities Act. Under this anaylsis, upon the issuance of the 1979 Notes, a conflict conceivably may exist under Section 310 (b) of the Trust Indenture Act with respect to Bankers' trusteeship under the 1977 Indenture due to such Section's statement that "an indenture trustee shall be deemed to have conflicting interest if * * * such trustee is trustee under another indenture under which any other securities * * * of any obligor upon the indenture securities are outstanding * * *."

5. The Applicant's obligations under the 1977 Indenture and its obligations under the Time Charter and under the Guaranty are wholly unsecured and rank equally *pari passu* and therefore there is no material likelihood of a conflict of interest should Bankers be obligated to proceed against the Applicant under the 1977 Indenture and the New Indenture. The Commission has made a similar finding with respect to the trusteeship of Bankers under an indenture by order of the Commission in April, 1979 (administrative proceeding file number 3–5682, in the matter of Shell Oil Company).

6. The Applicant is not in default under the 1977 Indenture or the New Indenture.

The applicant has waived (i) notice of hearing, (ii) hearing on the issues raised by its application, and (iii) all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice in connection with this matter.

For a further statement of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person may, not later than February 12, 1980, request that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–2760 Filed 1–28–80; 8:45 am]

BILLING CODE 8010–01–M

[File No. 81–579]

Econetics, Inc.; Notice of Application and Opportunity for Hearing

January 18, 1980.

Notice is hereby given that Econetics, Inc. (the "Applicant"), has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting it from certain requirements of sections 13 and 15(d) of the 1934 Act, specifically, the requirement to file quarterly reports on Form 10–Q, and the requirement to include audited financial statements in its annual reports on Form 10–K.

The Applicant states, in part:

(1) That it has ceased all manufacturing activities and is presently selling only products previously manufactured by it, as a distributor for another.

(2) That operations have not reflected net income in any of the past five fiscal years.

(3) The unaudited financial report for the six month period ended June 30, 1979, indicated Econetics sustained a loss of $29,648.

(4) Based on the transfer records there is presently little or no activity in the common stock.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 1100 L Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person no later than February 12, 1980 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-2756 Filed 1-28-80; 8:45 am]

BILLING CODE 8010-01-M

Midwest Stock Exchange, Inc.; Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

January 18, 1980.

The above named national securities exchange has filed applications 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 trading privileges in the following common stocks:

Valero Energy Corporation (formerly Coastal States Gas Producing Co.), $1 Par Value (File No. 7-5147); Gelco Corporation, $.50 Par Value (File No. 7-5148); and Modern Merchandising, Inc., $.01 Par Value (File No. 7-5149).

These securities are listed and registered on one or more other national securities exchanges.

Interested persons are invited to submit on or before February 11, 1980, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-2757 Filed 1-28-80; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-528]

Missouri Acceleration Corp.; Application and Opportunity for Hearing

January 18, 1980.

Notice is hereby given that Missouri Acceleration Corporation ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order exempting the Applicant from the obligation to file an annual report on Form 10-K for the year ended December 31, 1978.

The Application states in part that:

1. The Applicant is a Missouri corporation which sold securities pursuant to a registration statement which became effective on December 14, 1977.

2. As of January 1, 1978 (the beginning of Applicant's year) the approximate number of holders of securities to which the Applicant's registration statement related was fourteen.

3. On January 15, 1979 the Applicant filed with the Commission a Notice pursuant to Rule 15d-6.

4. There is no public trading in the securities of the Applicant which related to the registration statement which triggered reporting requirements under section 15(d) and section 13 of the 1934 Act.

In the absence of an exemption, Applicant would be required to file certain periodic reports with the Commission pursuant to sections 13 and 15(d) of the 1934 Act, including the Annual Report on Form 10-K for the fiscal year ended December 31, 1977. The Applicant argues that no useful purpose would be served in filing the required periodic reports.

Notice is further given that any interested person no later than February 12, 1980 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-2754 Filed 1-28-80; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-597]

Wentworth Manufacturing Co.; Application and Opportunity for Hearing

January 18, 1980.

Notice is hereby given that Wentworth Manufacturing Company ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act") for an order exempting Applicant from the provisions of sections 13 and 15(d) of the 1934 Act.

The Applicant states in part:

(1) In December 1976, Applicant ceased its normal business operations except for the completion of orders then on hand, the disposition of inventory, collection of accounts receivable and liquidation of accounts payable.

(2) The Applicant sold its only remaining asset on September 21, 1979, and is currently engaged in liquidation and dissolution. An initial distribution of $.85 per share has commenced and is expected to be completed in the near future.

(3) To satisfy any contingent liabilities which may occur during the next year, the Applicant has retained approximately $.05 per share, or about $20,000. Applicant undertakes to report any final distribution on Form 8-K.

(4) The Applicant has no ongoing business, no operations and there is no trading in its securities.

In the absence of an exemption Applicant will be required to file certain reports with the Commission. The Applicant contends that no useful purpose would be served in filing the required reports because it has no business or operations and there is no longer a trading interest in its securities.

For a more detailed statement of the information presented all persons are

referred to said application which is on file in the Office of the Commission at 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person, not later than February 12, 1980 may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

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. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-2755 Filed 1-28-80; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 80-3]

Advisory Committee on Explosives Tagging; Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I 10(a)(2)), notice is hereby given that a closed meeting of the Advisory Committee on Explosives Tagging will be held on February 13, 1980, at the Federal Building, 1200 Pennsylvania Avenue, NW, Washington, DC, room 5041, beginning at 9:30 a.m. (EST).

The Advisory Committee will discuss detailed proprietary, scientific, and technical data concerning various candidate explosive tagging systems that can be used in the detection and identification of explosives. The information which will be presented and discussed during the meeting will constitute trade secrets and commercial or financial information obtained from a person and privileged or confidential within the ambit of 5 U.S.C. 552b(c)(4). Accordingly, the meeting of the Advisory Committee will, under authority of section 10(d) of the Federal Advisory Committee Act (5 U.S.C. App. I 10(d)), not be open to the public.

All communications regarding this meeting of the Advisory Committee should be addressed to the Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Attention: Mr. James K. Syverson, Committee Manager, room 4211.

Signed: January 15, 1980.

G. R. Dickerson,

Director.

[FR Doc. 80-2780 Filed 1-28-80; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE TREASURY CUSTOMS SERVICE

[T.D. 80-44; FIS-9-05-AAO]

Reimbursable Services, Excess Cost of Preclearance Operations

January 24, 1980.

Notice is hereby given that pursuant to § 24.18(d), Customs Regulations (19 CFR 24.18(d)), the biweekly reimbursable excess costs for each preclearance installation are determined to be as set forth below and will be effective with pay period beginning February 10, 1980.

Installation:	*Biweekly excess cost*
Montreal, Canada	$14,599
Toronto, Canada	24,574
Kindley Field, Bermuda	7,363
Nassau, Bahama Islands	13,519
Vancouver, Canada	13,341
Winnipeg, Canada	1,982
Freeport, Bahama Islands	11,394
Calgary, Canada	9,655
Edmonton, Canada	2,763

Mitchell A. Levine,

Acting Comptroller.

[FR Doc. 80-2794 Filed 1-28-80; 8:45 am]

BILLING CODE 4810-22-M

[Supplement to Department Circular Public Debt Series No. 4-80]

Series N-1982 Notes; Interest Rate

January 24, 1980.

The Secretary announced on January 23, 1980, that the interest rate on the notes designated Series N-1982, described in Department Circular—Public Debt Series—No. 4-80, dated January 17, 1980, will be 11½ percent. Interest on the notes will be payable at the rate of 11½ percent per annum.

Supplementary Statement

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 80-2793 Filed 1-28-80; 8:45 am]

BILLING CODE 4810-40-M

NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION

Meeting

The Twenty-First meeting of the National Commission on Unemployment Compensation is scheduled to be held at the Hilton Inn, Greensboro, North Carolina. The meeting will begin at 9:00 a.m. on Thursday, February 7, and conclude at 2:00 p.m. on Saturday, February 9. The full agenda follows:

Thursday, February 7

1. 9:00 a.m.–12:30 p.m. Commission discussion: Report on Recent Developments. Continuation of discussion on Reinsurance.

Break 12:30

2. 2:00 p.m.–5:30 p.m. Commission Discussion: Reinsurance. Commission Discussion: FUTA Taxable Wage Base and Rate for 1981 and 1982.

Break (5:30 p.m.)

Friday, February 8

3. 8:30 a.m.–12:30 p.m. Commission discussion: Consideration of Federal Requirements Relating to Experience Rating.

Break (12:30 p.m.)

4. 2:00 p.m.–5:30 p.m. Commission discussion: Preliminary Discussion of Administration of Unemployment Insurance and Employment Service. Presentation of draft of *Report on Administrative Financing*—Robert Goodwin.

Break (5:30 p.m.)

Saturday, February 9

5. 8:30 a.m.–12:30 p.m. Commission Discussion: Completion of Agenda Items.

Adjourn (2:00 p.m.)

Telephone inquiries and communications concerning this meeting should be directed to: James M. Rosbrow, Executive Director, National Commission on Unemployment Compensation, 1815 Lynn Street, Room 440, Rosslyn, Virginia 22209 (703) 235-2782.

Signed at Washington, D.C. this 25th day of January, 1980.

James M. Rosbrow,

Executive Director, National Commission on Unemployment Compensation.

[FR Doc. 80-685 Filed 1-28-80; 10:00 am]

BILLING CODE 4510-30-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 27872 (Sub-6)]

Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)—Reorganization Plan

AGENCY: Interstate Commerce Commission.

ACTION: Postponement of hearing and vacation of prior notice.

SUMMARY: The Commission is postponing the hearings on the Reorganization Plan in this proceeding scheduled to commence on January 28, 1980, pursuant to an order of the Honorable Ralph McGarr of the United States District Court for the Northern District of Illinois, Eastern Division. The Commission is also vacating the notice setting forth procedures in this proceeding.

DATE: This notice is effective January 29, 1980.

FOR FURTHER INFORMATION CONTACT: Michael Erenberg (202) 275-7245.

SUPPLEMENTARY INFORMATION: On January 7, 1980, we published a notice in the **Federal Register** establishing expedited procedures for considering the Reorganization Plan of Chicago, Rock Island & Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) (Rock Island) under Section 77(d) of the Federal Bankruptcy Act (11 U.S.C. Section 205(d)), 45 FR 1151.

On January 8, 1980, the Honorable Ralph McGarr of the United States District Court for the Northern District of Illinois, Eastern Division (Bankruptcy Court) entered Order No. 221, which requires the Commission not to commence proceedings on Rock Island's Reorganization Plan until the Brankruptcy Court had transmitted the Plan to the Commission on or before February 5, 1980. Furthermore, the Court has also ordered the Commission not to publish procedures for considering the plan until after transmittal of the plan.

In light of Order No. 221, we will vacate our Notice of January 7, 1980 (44 FR 1511) and postpone the beginning of hearings on the Rock Island Reorganization Plan until after transmittal of the Plan by the Court. Those parties who have indicated an intent to participate need not renotify the Commission when a new schedule is published. A service list will be disseminated.

The Rock Island commenced the present reorganization proceeding on March 17, 1975. A reorganization Plan was finally filed with the Bankruptch Court almost 5 years later on December 28, 1979. In developing our procedures for hearing the Rock Island Reorganization Plan we intended to: (1) expedite the lengthy Rock Island reorganization process; (2) provide for continued essential service over Rock Island's lines by private industry after March 2, 1980; and (3) eliminate the drain on the Federal Treasury caused by directed service.

When the Bankruptcy Court finally submits the reorganization plan to us, we will again attempt to devise an expedited, yet fair, process for consideraiton of this matter.

It is ordered:

1. Our Notice of January 7, 1980 (45 FR 1511) directing hearings on the Rock Islands Reorganization Plan is vacated. The hearings described in the Notice are postponed until further notice.

Decided: January 21, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantum and Alexis.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-3022 Filed 1-28-80; 11:49 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 20
Tuesday, January 29, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL DEPOSIT INSURANCE CORPORATION.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:15 p.m. on Wednesday, January 23, 1980, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, to consider the following matters.

Application of Hongkong and Shanghai Banking Corporation, Hong Kong, for Federal deposit insurance for its branches located at 5 World Trade Center, New York, New York, and 50 Bowery, New York, New York.

Application of Korea First Bank, Seoul, Korea, for Federal deposit insurance for its branch located at 11 East Adams Street, Chicago, Illinois.

Applications of National Bank of Pakistan, Karachi, Pakistan, for Federal deposit insurance for its branches located at 39 South LaSalle Street, Chicago, Illinois, and One United Nations Plaza, New York, New York.

Application of Maize State Bank, Maize, Kansas, a proposed new bank, to be located at 400 East Sedgwick, Maize, Kansas, for Federal deposit insurance.

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

In calling the meeting, the Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), concurred in by Mr. Lewis G. Odom, Jr., acting in the place and stead of Director John G. Heimann (Comptroller of the Currency), that Corporation business required its consideration of these matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: January 24, 1980.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-172-80 Filed 1-24-80; 4:30 pm]

BILLING CODE 6714-01-M

2

January 23, 1980.

FEDERAL ENERGY REGULATORY COMMISSION.

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: 10 A.M., January 30, 1980.

PLACE: Room 9306, 825 North Capitol Street, NE., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary. Telephone (202) 357-8400

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Office of Public Information.

Power Agenda—437th Meeting, January 30, 1980, Regular Meeting (10 a.m.)

CAP-1. Docket No. ER78-80, Central Illinois Public Service Co.
CAP-2. Docket No. ER77-89, Central Illinois Public Service Co.
CAP-3. Docket No. ER78-494, Pennsylvania Electric Co.
CAP-4. Docket No. ER79-112, Jersey Central Power & Light Co.
CAP-5. Project No. 2820 and 2855, Town of Windsor, Vt., Electric Cooperative Inc.
CAP-6. Docket No. E-8308 and E-7206, Detroit Edison Co.

Miscellaneous Agenda—437th Meeting, January 30, 1980, Regular Meeting

CAM-1. Docket No. RA80-6, Gold Oil Co.
CAM-2. Docket No. GP80- State of Ohio, well category determination, Jerry Moore, Inc., JD80-4312.
CAM-3. Letter from Mssrs. Figley and Dannhauser concerning applicability of § 105 of the NGPA.

Gas Agenda—437th Meeting, January 30, 1980, Regular Meeting

CAG-1. Docket No. TA80-1-16 (PGA 80-2, IPR 80-2), National Fuel Gas Supply Corp.
CAG-2. Docket No. TA80-1-14 (PGA No. 80-2), (IPR No. 80-2), Lawrenceburg Gas Transmission Corp.
CAG-3. Docket No. TA80-1-17, (PGA, DCA, LaFUT, AP, IPR80-1-17), Texas Eastern Transmission Corp.
CAG-4. Docket No. TA80-1-15, (PGA80-2), (IPR80-2), (DCA80-1), (AP80-1), and (LaFUT80-1), Mid-Louisiana Gas Co.
CAG-5. Docket No. TA80-1-18, (PGA80-2), (IPR80-2), (DCA80-1), (AP80-1), and (LaFUT80-1), Texas Gas Transmission Corp.
CAG-6. Docket No. RP80-64, National Fuel Gas Supply Corp.
CAG-7. Docket Nos. RP77-108 and TA80-1-29 (PGA80-1 and IPR80-1), Transcontinental Gas Pipe Line Corp.
CAG-8. Docket No. RP71-16, Midwestern Gas Transmission Co.
CAG-9. Docket Nos. RP79-16 and RP79-64, Florida Gas Transmission Co.
CAG-10. FERC gas rate schedule No. 239, Pennzoil Producing Co.
CAG-11. Docket No. CI63-538 et al., Atlantic Richfield Co. et al.; Docket No. CI80-21, Louisiana Land Offshore Exploration Co., Inc.; Docket No. CI80-57, Transco Exploration Co.; Docket No. G-14396 et al., Southland Royalty Corp. et al.; Docket Nos. CI79-529, CI79-680, CI80-7, and CI80-35, Gulf Oil Corp.; Docket No. CI62-1525 et al., CRA, Inc. (operator) et al.; Docket Nos. CI69-912 and CI69-913, Dixilyn Corp. et al.; Docket No. CI73-938, Continental Oil Co., Docket No. CI75-605, Cities Service Co.
CAG-12. Docket No. CI80-55, Exxon Corp.
CAG-13. Docket No. CI79-41, Texas Oil and Gas Corp.
CAG-14. Docket No. CS71-383, Texasgulf Inc.
CAG-15. Docket No. CP79-240, Seagull Pipeline Corp.
CAG-16. Docket No. CP76-285, Mountain Fuel Resources, Inc; Docket No. CP76-388, Mountain Fuel Supply Co.; Docket No. CP76-389, Northwest Pipeline Corp.; Docket No. CP77-289, El Paso Natural Gas Co.; Docket No. CP77-511, Northwest Pipeline Corp.; Docket No. CP77-512, Clay Basin Storage Co.; Docket No. CP76-87 (Rhodes Reservoir) and CP78-172 (Barker Creek Dome), El Paso Natural Gas Co.; Docket No. CP78-257 (Barker Creek Dome), Western Gas Interstate Co.; Docket No. CI78-506, Supron Energy Corp.
CAG-17. Docket Nos. CI77-700 and CP73-30, Pioneer Gas Products Co. and Lone Star Gas Co.
CAG-18. Docket No. CP80-21, Columbia Gas Transmission Corp.
CAG-19. Docket No. CP80-49, Cities Service Gas Co.

CAG–20. Docket No. CP79–402, Lone Star Gas Co., a Division of Enserch Corp.
CAG–21. Docket No. CP78–174, Kansas-Nebraska Natural Gas Co., Inc.
CAG–22. Docket No. CP64–21, East Tennessee Natural Gas Co.
CAG–23. Docket No. CP80–23, Columbia Gas Transmission Corp., and Panhandle Eastern Pipe Line Co.
CAG–24. Docket No. CP80–105 and CP80–106, Columbia Gulf Transmission Co. and Columbia Gas Transmission Corp.
CAG–25. Docket No. CP79–251, El Paso Natural Gas Co.
CAG–26. Docket Nos. RP80–39, et al., Arkansas Louisiana Gas Co.

Power Agenda—437th Meeting, January 30, 1980, Regular Meeting

I. Electric Rate Matters

ER–1. Docket Nos. ER80–2 and ER80–122, Consolidated Edison Co. of New York, Inc.
ER–2. Docket No. ER80–71, Central Illinois Public Service Co.
ER–3. Docket Nos. ER80–38 and ER80–121, West Texas Utilities Co.
ER–4. Docket Nos. ER80–124 and ER80–125, Missouri Utilities Co.
ER–5. Docket No. ER80–58, Southern Co. Services, Inc.
ER–6. Docket No. ER70–90, Central Kansas Power Co., Inc.

Miscellaneous Agenda—437th Meeting, January 30, 1980, Regular Meeting

M–1. Docket No. RM79–49, calculation of cash working capital allowance for electric utilities.
M–2. Reserved.
M–3. Reserved.
M–4. Docket No. RM80– , advance payments.
M–5. (A) RM80– , rule required by section 206(a) defining small boiler fuel users and (b) RM80– , exemption from the rule required by section 206(a) defining small boiler fuel users.
M–6. Docket No. RM80– , amendments to the prorating procedure in the incremental pricing regulations to exclude Canadian volumes which do not carry incremental acquisition costs.
M–7. Docket No. RM78–79, final rule defining the term new well under NGPA.
M–8. U.S. Geological Survey—alternative filing requirements for infill wells drilled in existing proration units in the Blanco Mesaverde and Basin Dakota pools in San Juan and Rio Arriba Counties, New Mexico.
M–9. Docket No. RA80–5, Kerr-McGee Corp.
M–10. Docket No. RO79–3, Chester F. Dolley and Atlantic Oil Co.

Gas Agenda—437th Meeting, January 30, 1980, Regular Meeting

I. Pipeline Rate Matters

RP–1. Docket No. RP80–61, Consolidated Gas Supply Corp.
RP–2. Docket No. RP80–63, El Paso Natural Gas Co.
RP–3. Docket No. RP73–36 (PGA78–3) (DCA78–2), Panhandle Eastern Pipe LIne Co.

II. Producer Matters

CI–1. Docket No. CI79–4, Chevron U.S.A., Inc.

III. Pipeline Certificate Matters

CP–1. Docket No. CP77–363, Columbia Gas Transmission Corp. and National Fuel Gas Supply Corp.
CP–2. Docket No. CP79–289, Michigan Wisconsin Pipe Line Co.
CP–3. Docket No. CP78–272, Brooklyn Union Gas Co.

Lois D. Cashell,
Acting Secretary.

[S–176 Filed 1–25–80; 12:59 pm]
BILLING CODE 6450–01–M

3

FEDERAL RESERVE SYSTEM. Board of Governors.

TIME AND DATE: 10 a.m., Friday, February 1, 1980.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452–3204.

Dated: January 24, 1980.

Theodore E. Allison
Secretary of the Board.

[S–173 Filed 1–24–80; 4:44 pm]
BILLING CODE 6210–01–M

4

INTERSTATE COMMERCE COMMISSION. Amended notice.

TIME AND DATE: 9:30 a.m., Thursday, January 31, 1980.

PLACE: Hearing Room "A," Interstate Commerce Commission, 12th Street and Constitution Avenue NW., Washington, D.C. 20423.

STATUS: Open special conference.

MATTER TO BE DISCUSSED: This notice corrects subject listed in notice served January 24, 1980.

Rock Island Directed Service Order 1398 (Sub-No. 1).

CONTACT PERSON FOR MORE INFORMATION: Douglas Baldwin, Director, Office of Communications, telephone: (202) 275–7252.

The Commission's professional staff will be available to brief news media representatives on conference issues at the conclusion of the meeting.

[S–174 Filed 1–25–80; 12:56 pm]
BILLING CODE 7035–01–M

5

NATIONAL MEDIATION BOARD.

TIME AND DATE: 2 p.m., Wednesday, February 6, 1980.

PLACE: Board hearing room, 8th floor, 1425 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

(1) Ratification of Board actions taken by notation voting during the month of January, 1980.

(2) Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's Office following the meeting.

CONTACT PERSON FOR MORE INFORMATION:
Mr. Rowland K. Quinn, Jr., Executive Secretary, tel.: (202) 523–5920.

Date of Notice: January 21, 1980.

[S–175 Filed 1–25–80; 12:56 pm]
BILLING CODE 7550–01–M

6

POSTAL SERVICE. Board of Governors Meeting.

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. § 552b), hereby gives notice that it intends to hold a meeting at 8:30 A.M. on Wednesday, February 6, 1980, in the Benjamin Franklin Room, 11th Floor, Postal Service Headquarters, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260. Except as indicated in the following paragraphs, the meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245–4632.

On January 8, 1980, the Board of Governors voted to close to public observation a portion of its next meeting. Each of the members of the Board voted in favor of partially closing this meeting, which is expected to be attended by the following persons: Governors Wright, Hardesty, Allen, Camp, Ching, and Sullivan; Postmaster General Bolger; Deputy Postmaster General Conway, Senior Assistant Postmaster General Finch, and Secretary of the Board Cox.

The portion of the meeting to be closed will consist of a continuation of the discussion of the Postal Service's possible strategies concerning future postal ratemaking which was commenced at the Board's meeting of December 4, 1979.

Agenda

1. Minutes of the previous meeting.
2. Remarks of the Postmaster General. (In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the appointment or assignment of a key official, or the effect on postal operations of unusual weather or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)
3. Quarterly Report on Financial Performance. (Mr. Finch, Senior Assistant Postmaster General, Finance Group, will present the quarterly summary of financial performance.)
4. Quarterly Report on Service Performance. (Mr. Benson, Senior Assistant Postmaster General, Operations Group, will present the quarterly summary of service performance.)
5. Report on Administration Group Programs. (Mr. Biglin, Senior Assistant Postmaster General, Administration Group, will provide a general report on the developments within the cognizance of the Administration Group.)
6. Capital Investment Projects:
(a) Proposed new General Mail Facility and Vehicle Maintenance Facility at New Brunswick, New Jersey. (Mr. Jellison, Regional Postmaster General, Northeast Region, will present a proposal for a new General Mail Facility and Vehicle Maintenance Facility near New Brunswick, New Jersey.)
(b) Proposed Relocation of the Postal Service Research and Development Laboratories. (Mr. Sommerkamp, Senior Assistant Postmaster General, Research and Technology Group, will present a proposal for the new Research and Development Laboratories building on the Northern Virginia Management Sectional Center site.)
(c) Procurement of One-Ton Trucks. (Mr. Hagburg, Assistant Postmaster General, Delivery Services Department, will present a proposal for a capital investment for the purchase of one-ton trucks.)
7. Recommended Decision of the Postal Rate Commission re Bulk Parcel Post. (The Governors may consider the Recommended Decision of December 5, 1979, recommending that the Postal Service's proposal for restructuring the parcel post subclass of the Domestic Mail Classification Schedule be rejected. Consideration of this matter by the Governors is contingent on the Board's Postal Rates Committee completing its consideration of the Bulk Parcel Post Recommendation during the Committee meeting which will be held in closed session following the Board's consideration of the preceding agenda items.)
8. Recommended Decision of the Postal Rate Commission on Electric Computer Originated Mail Service (E-COM). (The Governors may consider the Recommended Decision of December 17, 1979, re electronic mail classification proposal, 1978 (Commission Docket No. MC78-3). Consideration of this matter by the Governors is contingent on the Board's Postal Rates Committee completing its consideration of the E-COM recommendation during the Committee meeting which will be held in closed session following the Board's consideration of the preceding agenda items.)
9. Discussion of Postal Service ratemaking strategy. (The Board will discuss Postal Service ratemaking plans. As stated above in the Notice of Meeting, the part of the meeting that will be devoted to this matter will be closed to the public.)

Louis A. Cox,

Secretary.

[S-177 Filed 1-25-80; 2:17 pm]

BILLING CODE 7710-12-M

7

POSTAL SERVICE. Board of Governors Committee Meeting.

The Committee on Postal Rates of the Board of Governors of the United States Postal Service, pursuant to the Bylaws of the Board (39 CFR 5.2., 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting on Wednesday, February 6, 1980, at Postal Service Headquarters, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260. The Committee meeting will take place after the conclusion of consideration of the first 6 items on the agenda for the meeting of the Board of Governors which is schedules to be held on the morning of February 6 commencing at 8:30 a.m. The meeting is not open to the public.

The meeting will consist of a continuation of the discussions of the Recommended Decisions of the Postal Rate Commission on Bulk Parcel Post (Commission Docket No. MC78-1) and on Electronic Computer Originated Mail (E-COM) (Commission Docket No. MC 78-3) which were commenced at the Committee's meeting of January 8, 1980.

At its January 8 meeting, the Committee voted to close its February 6 meeting to public observation for the reasons stated in the "Notice of Vote to Close Meeting" published at 45 FR 2995 (January 15, 1980).

Louis A. Cox,

Secretary.

[S-178 Filed 1-25-80; 2:18 pm]

BILLING CODE 7710-12-M

8

POSTAL SERVICE. Board of Governors Committee Meeting.

The Committee on Audit of the Board of Governors of the United States Postal Service, pursuant to the Bylaws of the Board (39 CFR 5.2, 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 3:00 P.M. on Tuesday, February 5, 1980, in the Benjamin Franklin Room, 11th Floor, Postal Service Headquarters, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260. The meeting is open to the public. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245-4632.

The Committee will review with representatives of the Postal Service's outside auditors the auditors' most recent annual letter to Postal management summarizing their audit findings and making recommendations for managerial improvements.

Louis A. Cox,

Secretary.

[S-179 Filed 1-25-80; 2:19 pm]

BILLING CODE 7710-12-M

federal register

Tuesday
January 29, 1980

Part II

Department of Agriculture

Animal and Plant Health Inspection Service

Certain Stockyards and Livestock Markets; Approval and Withdrawal of Approval

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

Certain Stockyards and Livestock Markets; Approval and Withdrawal of Approval

The regulations in 9 CFR Part 76, as amended, contain restrictions on the interstate movement of swine and swine products to prevent the spread of hog cholera and other swine diseases. This document adds certain livestock markets to the list of livestock markets approved for purposes of the regulations on the basis of a determination of their eligibility for such approval under § 76.18 of the regulations and removes from the list certain other livestock markets which have been found no longer to qualify for such approval.

The following livestock markets preceded by an asterisk are specifically approved to handle any class of swine and those livestock markets *not* preceded by an asterisk are specifically approved to handle slaughter swine only:

Alabama

Alabama Pork Buyers, Elba
Agricultural marketing Association of Alabama, Inc., Andalusia
*Atmore Truckers Association, Inc., Atmore
Beard Livestock Market, Scottsboro
Capital Stockyard, Montgomery
Casey's Selma Stockyard, Selma
*Central Alabama Feeder Pig Association, Clanton
*Childress Farm Livestock, Albertville
*Conecuh Stockyard, Evergreen
*Cullman Feeder Pig Assn., Cullman
*Cullman Stock Yard, Cullman
*Dothan Livestock Auction, Inc., Dothan
*Escambia County Co-op, Brewton
*Farmers Co-op Market, Frisco City
*Farmers Cooperative Market, Inc., Opp
*Farmer's Livestock Co-op, Elba
Fayette Stockyards, Inc., Fayette
Florence Trading Post, Florence
H. E. Fulford Stockyard, Hartford
*Geneva Stock Yards, Inc., Geneva
*Hamilton Stockyard, Inc., Hamilton
*Headland Stockyards, Inc., Headland
*Henry County Livestock Association, Inc., Abbeville
Hodges Stockyard, Inc., Montgomery
Kennamer Livestock, Inc., Guntersville
*Limestone County Feeder Pig Association, Inc., Athens
*Louisville Livestock Company, Louisville
Moulton Stockyard, Moulton
*Northeast Alabama Feeder Pig Association, Section
*Northwest Alabama Feeder Pig Association, Inc., Russellville
Northwest Alabama Livestock Association, Russellville
*Northwest Alabama Livestock Auction, Russellville
*Perry-Dallas Feeder Pig Sale, Suttle
*Pickens County Livestock Commission Company, Aliceville
Carl Register Stockyards, Slocomb
*Robertsdale Livestock Auction, Inc., Robertsdale
*Sand Mountain Feeder Pig Association, Guntersville
*South Alabama Feeder Pig Producers Association, Greenville
*Southeast Alabama Feeder Pig Association, Inc., Dothan
*Southeast Alabama Feeder Pig Association, Troy
Stokes & Brogden Stock Yard, Andalusia
*Tennessee Valley Feeder Pig Association, Huntsville
*Upper Coastal Feeder Pig Association, Inc., Fayette
David West Livestock Company, Cottonwood

Arkansas

*Arkansas National Stockyards, Little Rock
*Ash Flat Livestock Auction, Ash Flat
Atkins Livestock Auction, Atkins
*Batesville Livestock Auction, Inc., Batesville
*Beebe Auction, Inc., Beebe
*Bentonville Livestock Auction, Bentonville
Central Livestock Auction, Inc., Morrilton
*Carroll County Livestock Auction, Berryville
*Clark County Livestock Auction, Arkadelphia
Cleburne County Livestock Auction, Herber Springs
Decatur Livestock Auction, Decatur
Drew County Auction, Monticello
Eudora Livestock Auction, Eudora
*Farmers & Ranchers Livestock Auction, Inc., Batesville
*Farmers & Ranchers Livestock Auction, Mt. View
Glover Livestock Commission, Co., Pine Bluff
*Bob Gordon Livestock Auction, Mena
*Harrison Stockyards Auction, Inc., Harrison
*Hill & Nuel Livestock Auction, Batesville
Hope Livestock Auction, Hope
*Jonesboro Stockyards, Jonesboro
*Lafayette County Livestock Company, Lewisdale
*Lewis Livestock Co., Inc., Conway
*Loftin Pig Farm, Fayetteville
*Magnolia Livestock Auction d.b.a. Allen Brothers Magnolia Livestock Auction, Magnolia
*Meridith Livestock Auction, Inc., Pocahontas
*MFA Livestock Association, Imboden
*Montgomery Auction, Searcy
*Mountain Home Livestock Auction, Mt. Home
North Arkansas Livestock Auction, Green Forest
*Oak Lawn Farms, Pine Bluff
Ola Livestock Market, Ola
*Paragould Livestock Auction, Paragould
*Rector Auction Salebarn, Rector
Salem Livestock Auction, Salem
*Saline-Ouachita Valley Livestock Commission Company, Warren
*Scott County Livestock Auction, Waldron
*Searcy County Livestock Auction, Marshall
*Shantz Livestock Commission Co., North Little Rock
Siloam Springs Sale Barn, Siloam Springs
Van Buren County Auction, Clinton
*Washington County Sales, Fayetteville
White County Livestock Auction, Russellville

California

*Dixon Livestock Auction Company, Dixon

Colorado

*Alamosa Action, Alamosa
*Basin Livestock Commission Company, Inc., Durango
*A. A. Blakley Livestock Commission Co., Denver
*Brush Livestock of Colorado, Inc., Brush
*Burlington Produce Livestock Marketing Assn., Burlington
Clougherty Packing Company, Greeley
*Cortez Livestock Auction, Inc., Cortez
*Delta Sales Yard, Delta
*Denver Livestock Market, Denver
*Farmers & Ranchers Livestock Commission Co., Inc., Fort Collins
*Fowler Auction Company, Fowler
*High Plains Marketing Assn., Inc., Burlington
*Monte Vista Livestock Commission Company, Inc., Monte Vista
*Producers Livestock Marketing Assn., Greeley
*Ranchland Livestock Commission Company, Wray
*Stratton Livestock Marketing Center, Stratton
*Sterling Livestock Commission Co., Inc., Sterling
*Union Stockyards, Denver
*Valley Livestock Auction Company, Fruita
*Winter Livestock Commission Company, LaJunta
*Yuma Livestock Auction, Yuma

Delaware

*Carroll's Sales Co., Felton
Goldinger Bros., Inc., Smyrna
Charles F. Poore Livestock Market, Smyrna
Floyd E. West Livestock, Frankford

Florida

*Chipley Livestock Market, Chipley
*Columbia Livestock Market, Lake City
*Gadsden County Livestock Auction Market, Quincy
*Gainesville Livestock Market, Inc., Gainesville
Jacksonville Livestock Auction Company, Whitehouse
*Jay Livestock Auction Market, Jay
*Madison Stockyards, Madison
*Mills Auction Market, Ocala
Monticello Livestock Market, Inc., Monticello
*Suwannee Valley Livestock Market, Live Oak
*Tindel Livestock Market, Graceville
West Florida Livestock Auction Market, Marianna

Georgia

*Appling Stockmen's Association, Baxley
B & M Livestock Company, Inc., Kite
Bainbridge Auction Market, Bainbridge
*Barrett Feeder Pigs, Dublin
Charles R. Barrineau (Stockyard), Douglas
Bartow Livestock Commission Co., Cartersville
*Blackshear Pig Sales, Inc., Blackshear
*Bleckley County Feeder Pig Sale, Cochran
Dwight Braswell (Holding Pen), Buford
David Burson Livestock Market (Assembly Point), Carrollton
*Bulloch Stockyards, Statesboro
Carroll County Livestock Sale Barn, Carrollton

Chatham Livestock Co., Savannah
Citizens Stockyard, Arlington
Columbus-Muscogee Livestock, Columbus
Coosa Valley Livestock Co., Rome
Cordele Livestock Commission Co., Cordele
*County Stock Barn, Sandersville
*CSRA Feeder Pig Association, Warrenton
Cutts Livestock Company, Pelham
Dawson Livestock Company, Dawson
*Dodge County Stock Barn, Eastman
*Dublin Livestock & Commission Co., Dublin
Effingham County Stockyard, Springfield
Farmers Livestock Market, Douglas
Farmers Stockyard, Sylvania
Farmers Stockyard of McRae, Inc., McRae
Fitzgerald Farmers Auction, Inc., Fitzerald
Flint River Livestock Market, Bainbridge
*Forshee Livestock Co., Inc., Statesboro
*Four County Farm Bureau Market Association, Inc., Twin City
Franklin County Livestock Market, Inc., Carnesville
Franklin County Livestock Swine Buying Station, Carnesville
Georgia Farm Products Sales Corp., Thomaston
Georgia Farmers Livestock, Inc., Cumming
Glennville Hog Market, Glennville
*Grady County Swine Producers Association, Cairo
O. M. Greene Livestock Company, Inc., Bainbridge
Hagan Livestock Market, Inc., Hagan
H. J. Hall and Company Hog Buying Station, Sparks
B. H. Harrison Livestock Company, Bainbridge
Heinold Hog Markets, Inc., Cairo
Irwin County Livestock Company, Ocilla
Jepeway-Craig Commission Co., Dublin
Livestock Marketers, Inc., Douglas
*Lolli Sales Pavilion, Macon
Metter Livestock Market, Metter
Miles Stockyard, Baxley
Miller Livestock Company, Colquitt
Mitchell County Livestock Market, Camilla
John Mosley Livestock and Holman Auction Company, Blakely
*Moultrie Livestock Company, Moultrie
Mt. Vernon Hog Market, Mt. Vernon
*Northeast Georgia Livestock Barn, Gainesville
North Georgia Livestock Auction, Inc., Athens
Peoples Livestock Market, Inc., Cartersville
Peoples Stockyard, Cuthbert
Pierce County Stockyard, Blackshear
Pulaski Stockyard, Hawkinsville
Radford Collection Point, Sylvester
Seminole Livestock, Inc., Donalsonville
Sam Simmons Gordon County Livestock Commission Company, Calhoun
Seaboard Stockyard, Colquitt
Smith Brothers Stockyard, Bartow
Soperton Stockyard, Soperton
*Sumter Livestock Association, Americus
*Sutton Livestock Co., Sylvester
Swainsboro Stockyards, Inc., Swainsboro
Sylvania Stockyard, Sylvania
*Tattnal County Feeder Pig Market, Glennville
Tattnall & Long N.F.O. Collection Point, Glennville
*Telfair-Wheeler Livestock Market, McRae
Thomas County Stockyard, Thomasville
Tift County N.F.O., Inc., Tifton
Tifton Stockyards, Tifton
Toombs County Stockyard, Lyons
*Tri-County Feeder Pig Sale, Broxton
Tri-County Livestock Co., Social Circle
Tri-County N.F.O. Collection Point, Inc., Blackshear
*Turner County Stockyard, Ashburn
Union Stockyards, Albany
Valdosta Livestock Co., Inc., Valdosta
Vidalia Livestock Auction, Inc., Vidalia
*Wayne County Stockyard, Jesup
Wheeler Brothers Livestock Market, Inc., Eastonolle
White Livestock Company, Quitman
Wilkes County Stockyard, Washington

Idaho

*Blackfoot Livestock Commission Co., Blackfoot
*Bonners Ferry Livestock, Inc., Bonners Ferry
Burley Livestock Commission Company, Burley
Cache Valley Livestock Auction, Preston
*Coeur d'Alene Livestock, Inc., Coeur d'Alene
Cottonwood Sales Yard, Cottonwood
Gooding Livestock Commission Co., Gooding
*Idaho Livestock Auction, Inc., Idaho Falls
*Nampa Livestock Markets, Inc., Nampa
Producer's Jerome Livestock Marketing Assn., Jerome
*Rexburg Livestock Auction, Inc., Rexburg
Salmon River Livestock Market, Salmon
Shoshone Sale Yard, Shoshone
*Spencer Livestock Commission Co., Lewiston
Stockgrowers Commission Co., Inc., Twin Falls
*Treasure Valley Livestock Auction, Inc. Caldwell
*Twin City Salesyard, Lewiston
*Twin Falls Livestock Commission Co., Twin Falls
*Valley Livestock Commission Co., Rupert
*Weiser Livestock Commission Co., Weiser

Illinois

Albion Livestock, Albion
Armour-Klarer & Company, Marshall
*Barnard Livestock Auction, Wayne City
*Benton Livestock Association, Benton
*Bloomington Livestock Commission Co., Bloomington
*Breed's Livestock Sales, Elizabeth
Brutlag Livestock Company, Potomac
*Carthage Livestock Auction, Carthage
Carthage Order Buyers, Carthage
*Cherry, Nellis (Bros.), Shannon
Chicago Stockyards—Atkinson Market, Inc., Atkinson
Cudahy, Patrick, Orangeville
*Dameron Livestock Auction, Vienna
*Danville Livestock Commission Co., Danville
Deckers Livestock, Charleston
*Deckey's Livestock, Inc., Milford
*DeWane's Livestock Exchange, Belvidere
Edgar County Marketing Association, Paris
Emge Stock Yards, Palestine
Farmers Hog Market of Ursa, Ursa
*Galesburg Livestock Sale, Galesburg
Galesburg Order Buyers, Milledgeville
*Greenville Livestock Auction Co., Greenville
Heinold Hog Market, Brookport
Heinold Hog Market, Girard
Heinold Hog Market, Leland
Heinold Hog Market, Marengo
Heinold Hog Market, Inc., Atkinson
Hesselbacher Bros., Scales Mound
Huber Livestock Co., Greenville
*Illinois Auction Commission Co., Paris
*Interstate Producers Livestock Association, Shelbyville
Interstate Producers Livestock Association, Apple River
*Interstate Producers Livestock Association, Fieldon
*Interstate Producers Livestock Association, Danville
*Interstate Producers Livestock Association, Dongola
Interstate Producers Livestock Association, Elvaston
Interstate Producers Livestock Association, Erie
*Interstate Producers Livestock Association, Fairfield
*Interstate Producers Livestock Association, Golconda
*Interstate Producers Livestock Association, Harrisburg
*Interstate Producers Livestock Association, Pinckneyville
*Interstate Producers Livestock Association, Quincy
*Interstate Producers Livestock Association, Salem
*Jennings Sales Co., Macomb
Joliet Livestock Marketing Center, Inc., Joliet
*Kewanee Sale Barn, Kewanee
Knowles Stock Yards, Marshall
*Knoxville Sale Company, Inc., Knoxville
*Kuntz, Clyde, Gridley
LaHarpe Order Buyers, LaHarpe
Oscar Mayer & Company, Berry
Oscar Mayer & Company, Davis
Oscar Mayer & Company, Esmond
Oscar Mayer & Company, German Valley
Oscar Mayer & Company, McConnell
Oscar Mayer & Company, Pleasant Hill
Oscar Mayer & Company, Pittsfield
Oscar Mayer & Company, Quincy
Oscar Mayer & Company, Shannon
Oscar Mayer & Company, Warren
*Mehler Stock Yards, West York
Mendon Order Buyers, Mendon
*Mercer County Livestock Company, Viola
*Monmouth Livestock Sales Company, Monmouth
*Olney Livestock Commission Co., Olney
*Paris Livestock Sales Co., Paris
Peoria Union Stockyards Co., Peoria
*Rock Island Auction Sales, Inc., Rock Island
St. Louis National Stockyards, National Stockyards
*Savanna Livestock Sales, Savanna
*Schrader, Harry, Consignment, Dakota
*Southeastern Livestock Association, Inc., Albion
Stanton Stock Yard, Lena
State Line Reload—NFO, Roscoe
George Thompson & Son, Morrison
Walnut Auction Company, Walnut
*Warren County Livestock Auction, Monmouth
Wilson Feeds Corporation, Albany
*Winslow Marketing Center, Inc., Winslow
Winslow Stockyards, Winslow
§ Wood, Marvin T., Morrison

Indiana

D. M. Archer, Princeton

Attica Stockyards, Attica
Joe Ault, Claypool
*Boone County Sale Barn, Lebanon
*Boswell Livestock Commission, Boswell
*Raymond Boyce Livestock Company, Monon
Mike Brady Stockyards, Lagrange
Mike Brady Stockyards, Waterloo
*Brookeville Sale Barn, Brookville
Camden Hog Market, Camden
*Don Clark Feeder Pig, Brook
*Claypool Sale, Inc., Silver Lake
*Delta Livestock Yards, Fort Wayne
Delta Livestock Yards, Fort Wayne
I. Duffey & Son, Lagro
I. Duffey & Son, Peru
Robert Elliott, Westport
Emge Packing Co., Fairmount
Emge Packing Company, Inc., Anderson
Emge Packing Company, Inc., Fort Branch
Emge Packing Company, Montpelier
*Evansville Union Stockyards Company, Inc. Evansville
*Fountain County Livestock Commission Company, Veedersburg
*Geneva Berne Livestock Sale, Berne
*Goshen Comm. Sale Goshen
Greencastle Livestock Center, Greencastle
J. L. Hawkins Company Logansport
Heinold Hog Market, Bluffton
Heinold Hog Market, Burlington
Heinold Hog Market, Cambridge City
Heinold Hog Market, Chalmers
Heinold Hog Market, Crawfordsville
Heinold Hog Market, Goodland
Heinold Market, Inc., Jasper
Heinold Hog Market, Corunna
Heinold Hog Market, Inc., Kouts
Heinold Hog Market, Liberty
Heinold Market, Milroy
Heinold Market, North Manchester
Heinold Hog Market, Portland
Heinold Hog Market, Rensselaer
Heinold Hog Market, Rushville
Heinold Hog Market, Tipton
Heinold Hog Market, Wheatland
*Henry County Livestock Auction, New Castle
*Hilltop Auction Sale, Hanover
Hoosier Stockyards, Inc., Frankfort
Hoosier Stockyards, Inc., Knightstown
Hoosier Stockyards, Inc., Ladoga
Hoosier Stockyards, Inc., Lebanon
Hoosier Stockyards, Inc., Roann
*Huntington Livestock Company, Huntington
Indianapolis Stockyards Corp., Indianapolis
*Johnson County Sale Pavilion, Franklin
*Knightstown Sale Barn, Knightstown
*Gordon Jones, Ridgeville
*La Fountain Livestock Sales, La Fountain
Logansport Livestock Yards, Inc., Logansport
Logansport Livestock, Winamac
*Lowell Livestock Auction, Lowell
*Loy's Sale Barn, Portland
M & R Livestock Market, Culver
M & R Livestock Co., Huntington
M & R Livestock Co., Loogootee
M & R Livestock Co., Spencer
*Bill Manns, Rensselaer
Marhoefer Packing Company, Inc., Muncie
Mentone Stockyards, Mentone
*Mid-States Feeder Pig Company, Inc., Flora
*Jack Milhollin, Parker
*Montgomery County Sale Pavilion, Crawfordsville
*Morton Sale Barn, Morton
Muncie Livestock Co., Muncie
*Muscatatuck Valley Feeder Pig Assn., North Vernon
New Castle Stockyards, New Castle
Ohio Valley Livestock Corp., Williamsburg
*Ohio Valley Producers, Evansville
*Owen-Monroe Feeder Association, Spencer
*Parke County Sales Pavilion, Rockville
Pavy Stockyards, Greensburg
Pavy Stockyards, Milroy
Porkland, Crawfordsville
*Producers Livestock Association, Bath
Producers Livestock Assn., Winchester
Producers Marketing Assn., Amboy
*Producers Marketing Association, Boonville
*Producers Livestock Assn., Vincennes
Producers Livestock Assn., Vincennes
*Producers Marketing Assn., Inc., Centerville
Producers Marketing Assn., Stockyards, Centerville
*Producers Marketing Association, Clayton
*Producers Marketing Association, Columbia City
Producers Marketing Assn., Frankfort
Producers Marketing Assn., Greensburg
*Producers Marketing Assn., Inc., Montgomery
*Producers Market Association, Mentone
*Producers Marketing Assn., Feeder Pig, Montpelier
Producers Marketing Assn., Rensselaer
Producers Marketing Assn., Rockville
*Producers Marketing Association, Salem
*Producers Marketing Association, Seymour
*Producers Marketing Assn., Inc., Terre Haute
Producers Marketing Assn., Terre Haute
*Producers Marketing Assn., Inc., Topeka
Producers Marketing Assn., Uniondale
*Producers Marketing Association, West Lafayette
Producers Marketing Assn., West Lafayette
Producers Marketing Assn., Inc., Worthington
*Reynolds Sale Barn, Reynolds
Reynolds Stockyards, Reynolds
*Rochester Sale Barn, Rochester
*Royal Center Sale Barn, Royal Center
Rushville Community Sale, Rushville
*Russellville Feeder Pig Company, Russellville
*Scottsburg Salebarn, Scottsburg
*Shipshewana Auction Co., Shipshewana
*Southeastern Indiana Feeder Pig Auction Association, Osgood
*Southern Indiana Livestock Exchange, Scottsburg
*Springville Feeder Auction Association, Inc., Springville
P. B. Stewart Co., Berne
P. B. Stewart Co., Decatur
P. B. Stewart Co., Fulton
P. B. Stewart Co., Plymouth
P. B. Stewart Co., Shipshewana
P. B. Stewart Co., South Whitley
*Stoney Pike Sale Barn, Logansport
Sullivan County Livestock Market, Sullivan
*Topeka Livestock Auction Co., Topeka
Topeka Livestock Auction Inc., Wakarusa
Valleydale Stockyard, Burlington
*Valparaiso Community Sale Barn, Valparaiso
Wabash Valley Stockyard, Wolcott
*White River Valley Feeder Auction Association, Worthington
Whiting and Decker, Vincennes
Wilson and Company, Inc., North Judson
Winner Order Buyers, Converse
*Ralph Yarling, Elwood
*Yeager and Sullivan, Inc., Camden
Zechiel Stockyards, Knox

Iowa

*Albia Sales Company, Inc., Albia
*Aplington Livestock Sales Co., Inc., Aplington
Applegate Hog Yard, Leon
Armour and Company, Bedford
Armour and Company, Mt. Ayr
*Audubon County Livestock Exchange, Audubon
Audubon County Livestock Exchange, Audubon
Bank's Hog Yards, Seymour
*Bedford Sale Co., Bedford
*B & H Cattle Co., Ida Grove
*Bingley Sale Company, Inc., Knoxville
*Bleil & Chapman Livestock Auction, Kingsley
*Bloomfield Livestock Market, Inc., Bloomfield
*Bowman Order Buyers, DeWitt
Brighton Stockyards, Inc., Brighton
*Centerville Hog Market, Centerville
*Central Iowa Stockyards, Webster City
*Clarinda Auction Co., Clarinda
Farmland Foods, Inc., Clarinda
Colfax Livestock Sales Company, Colfax
*Colfax Livestock Sales Company, Colfax
County Line Hog Market, Lineville
Decker Livestock, Chariton
*Decorah Sales Commission, Decorah
*DeVries Auction, Buffalo Center
*Dubuque Feeder Pig, Inc., DeWitt
*Dunlap Livestock Auction, Dunlap
*Edgewood Sale Barn, Inc., Edgewood
*Elkader Sale Barn, Elkader
J. G. Foecke & Company, West Point
*Forest City Cow Palace/Jennings Brothers, Inc., Forest City
*Gaffney Storm Lake Auction, Storm Lake
*Galva Pig Market, Galva
*Grassland Co., Odebolt
*Harlan G. Habben Feeder Pig Sales, Pocahontas
Heinold Hog Market, Birmingham
Heinold Hog Markets, Bloomfield
Heinold Hog Market, Donnellson
Heinold Hog Market, Seymour
*Hilltop Feeder Pig Company, Aplington
Hormel Hog Market, Centerville
*Humeston Livestock Auction, Humeston
Hygrade Food Products Corp., Clarinda
Hygrade Hog Buying Station, Sheldon
*Interstate Producers, Waukon
Interstate Producers, Waukon
*Iowa County Livestock Auction Company, Inc., Marengo
*Iowa Falls Livestock Sales, Iowa Falls
*Kalona Sale Barn, Inc., Kalona
*Keoco Auction Company, Sigourney
*Keosauqua Sale Company, Inc., Keosauqua
*Kimballton Auction Company, Kimballton
*Lamoni Livestock Sales Co., Inc. Lamoni
*Leon Sale, Leon
Mahaska Sale Company, Oskaloosa
*Manning Livestock Auction, Manning
*Mapleton Livestock Sales Company, Mapleton
*Maquoketa Sales Co., Inc., Maquoketa
*Middletown Auction Sales, Inc., Middletown
*Montezuma Sales Company, Inc., Montezuma
*Monticello Sale Barn, Monticello

*Moorhead Auction Company, Moorhead
*Mt. Ayr Livestock Market, Mt. Ayr
Ralph Mullenback, Stacyville
*Keith E. Myers, Grundy Center
New Albin Stockyard, New Albin
*New Liberty Livestock Auction, New Liberty
N. E. Iowa Sales Commission, Waukon
*N. E. Iowa Sales Commission, Waukon
NFO Collection Point, Ossian
Noe Livestock, Lime Springs
*Northeast Iowa Sales Commission, Waukon
*North Iowa Livestock Exchange, Garner
*Northside Sales Co., Sibley
Osage NFO Collection Point, Osage
*Perry Sales Pavilion, Perry
Petefish Scale Yard, Bloomfield
*Porth & Baxter, DeWitt
*Producers Livestock Marketing Agency Feeder Pig Division, Creston
Quale Livestock, Chester
Rath Hog Buying Station, Wever
*Riceville Sales Pavilion, Riceville
*Norb Roecker Feeder Pigs, Denison
*Sales Company of Hawarden, Hawarden
*Sheldon Approved Hog Mart, Sheldon
*Sheldon Livestock Sales Co., Sheldon
*Shenandoah Livestock Auction, Inc., Shenandoah
Simmons Hog Buyer, Farmington
*Sioux City Stockyards, Sioux City
*Sioux City Stockyards Feeder Pig Auction, Sioux City
*Spirit Lake State-Federal Approved Feeder Pig Market, Spirit Lake
Steeples Hog Market, Bonaparte
*Story City Auction Sales, Inc., Story City
*Tama Livestock Auction Company, Tama
Thompson Livestock Commission Company, Inc., Davis City
Carl S. Thurn Stockyard, Edgewood
*Traer Auction Co., Inc., Traer
*Tri-State Livestock Auction Co., Inc., Sioux Center
Troutman Hog Market, Burlington
*Wapello Livestock Sales, Inc., Wapello
*Waverly Sales Company, Waverly
*Wayland Livestock Auction Market, Wayland
Weerheim Livestock, Rock Rapids
Wiechman Pig Co., Inc., Des Moines
Wilson & Company, Inc., Shenandoah
*Wilson & Company, Inc., Shenandoah

Kansas

Atchison County Auction Company, Atchison
*Atwood Sale Barn, Inc., Atwood
*Caldwell Community Sale, Caldwell
*Circle "L" Livestock Sale, Liberal
*Clay Center Livestock Co., Inc., Clay Center
Clougherty Packing Co., Marysville
*Coffeyville Livestock Sales Co., Inc., Coffeyville
*Coffeyville Stockyards, Inc., Coffeyville
*Colby Livestock Auction, Colby
Coldwater Livestock Sale Co., Inc., Coldwater
*El Dorado Livestock Auction, Inc., El Dorado
Farmland Foods, Seneca
*Fort Scott Sale Company, Inc., Fort Scott
*Hansen Livestock Auction, Concordia
*Hays Livestock Market Center, Inc., Hays
*Hiawatha Auction Co., Hiawatha
Hormel Hog Buying Station, Washington
*Hoxie Livestock Sale, Hoxie
*J. J. Livestock Commission Company, Effingham
*Junction City Sales Co., Inc., Junction City
Kansas Hog Company, Morland
Kuhlman Hog Yards, Smith Center
Luckeroth Hog Market, Seneca
*Mankato Livestock Commission Company, Mankato
*Marysville Livestock Commission Co., Marysville
Mauer-Neuer Packing Company, Independence
*Medicine Lodge Sale Co., Medicine Lodge
*Miami County Livestock Co., Inc., Paloa
*Mid-Kansas Swine Association, Hutchinson
*Moline Auction Company, Inc., Moline
NFO Buying Station, Marysville
*Oberlin Livestock Commission Company, Oberlin
Ogle Hog Company, Emmett
*Parsons Livestock Auction, Inc., Parsons
*Phillipsburg Sales Co., Phillipsburg
*Sabetha Livestock Auction, Sabetha
*St. Francis Livestock Sales, St. Francis
Smith Center Hog Company, Smith Center
*South East Kansas Feeder Pig Association, Fredonia
Stafford Brothers Hog Market, Fort Scott
*The Stockmans Livestock Exchange, Belleville
*Syracuse Sale Company, Syracuse
*Washington Livestock Sales, Washington
Wilson Certified Foods, Independence
*Wichita Union Stockyards, Wichita
*Winfield Livestock Auction, Inc., Winfield
*Southwestern Livestock, Inc., Dodge City

Kentucky

* Albany Stockyard, Inc., Albany
R. B. Berry & Son, Clinton
* Blue Grass Stockyard, Lexington
* Bourbon Livestock Center, Bowling Green
* Bourbon Stockyard Company, Louisville
* Bowling Green Stockyard, Bowling Green
* Boyle County Stockyard, Danville
Breckinridge Livestock Center, Irvington
Brown Livestock Co., Clinton
* Bullitt County Stockyards, Shepherdsville
Burkesville Stockyard, Burkesville
Carnes Livestock Market, Leitchfield
* Catlettsburg Livestock Market, Catlettsburg
Christian County Livestock Market, Inc., Hopkinsville
* Clark County Livestock Market, Winchester
* Clay-Wachs Stockyard, Lexington
* Cross-Walton Livestock Market Center
* Dinwiddie Feeder Pig, Leitchfield
Edmonston Livestock Market, Edmonston
Elizabethtown NFO Reload, Elizabethtown
Faire Stockyards, Bardwell
* Farmers Commission Co., Inc., Tompkinsville
* Farmers Livestock Market, London
* Farmers Livestock Feeder Pig Sale, Mayfield
* Farmers Livestock Marketing Co-op, Russellville
* Farmers Livestock Market of Glasgow, Inc., Glasgow
Farmers Livestock Market, Mayfield
* Farmers Stockyards, Flemingsburg
Field Packing Company Stockyard, Owensboro
* Florence, Peak and Fryman, Cynthiana
Franklin-Simpson Livestock Co., Inc., Franklin
* Garfield Auction Market, Harned
* Garrard County Stockyard, Lancaster
* Glasgow Livestock Market, Glasgow
* Good Day Stockyards, Princeton
Graves County Livestock Co. Inc., Mayfield
* Grayson County Stockyards Market, Inc., Leitchfield
* Green County Stockyards, Greensburg
Hart County Livestock Market, Munfordville
Heinold Hog Markets, Inc., Fancy Farm
Heinold Hog Markets, Marion
Heinold Hog Markets, Inc., Morganfield
Hopkinsville NFO Collection Point, Hopkinsville
* Henry County Stockyard, Inc., Sulphur
Horse Cave Stockyards, Horse Cave
* Interstate Producers Livestock Association, Fancy Farm
* Jollys Feeder Pigs, Albany
* Kentuckiana Livestock Market, Owensboro
* Kentucky-Tennessee Livestock Market, Inc., Guthrie
* King Livestock Company, Inc., Hopkinsville
* Laurel Sales Company, London
* Madison Sales Co., Richmond
* Mammoth Cave Marketing Corporation, Smiths Grove
Mantle Stockyards, Bardwell
* Maysville Stockyard, Maysville
Morganfield NFO Collection Point, Morganfield
Morganfield Stockyards, Morganfield
* New Farmers Stockyard, Mount Sterling
* N.F.O. Collection Point, Walton
* N.F.O. Stockyards, Cynthiana
Ohio Valley Producers, Corydon
* Owen County Stockyard, Owenton
* Owsley County Stockyard, Booneville
Paducah Livestock Company, Paducah
* Paintsville Livestock Market, Paintsville
* Paris Stockyard, Paris
* Ratliff Stockyards, Mt. Sterling
John M. Riley Livestock Market, Mayfield
* Russell County Stockyard, Russell Springs
* Schneider and Colston Sale Barn, South Walton
* Somerset & Pulaski Livestock Market, Inc., Somerset
* Taylor County Stockyards, Campbellsville
* Washington County Livestock Center, Inc., Springfield
* Wayne County Feeder Pig Auction, Monticello
Wayne County Livestock Market, Inc., Monticello
* West Kentucky Land & Cattle Company, Inc., Marion
* Wigwam Hog and Feeder Pig Market, Horse Cave
* Williamstown Stockyard, Williamstown

Louisiana

Ark-La-Tex Pork Marketing Association, Minden
* Avoyelles Swine Association, Marksville
* Bastrop Livestock Auction, Bastrop
* Central Louisiana Swine Producer's Association, Jena
* Delhi Livestock Auction, Delhi
* DeQuincy Livestock Commission Co., DeQuincy
* DeRidder Livestock Commission Co., DeRidder
* Florida Parishes Feeder Pig Association, Amite
* Franklinton Stockyards, Inc., Franklinton
* Guilbeau-Kennedy, Inc., Baton Rouge
Homer Livestock Commission Co., Homer

Lum Brothers Stockyards, Inc., Vidalia
Bill Lyles Livestock Auction, Grand Cane
* Macon Ridge Swine Producers Association, Winnsboro
* Micelle's Commission Yard, Inc., Lake Charles
* Northwest Louisiana Swine Growers Association, Minden
* Southwest Louisiana Swine Producers Association, Basile
* West Monroe Livestock Auction, West Monroe

Maryland

* Aberdeen Sales Co., Aberdeen
Adkin Livestock, Inc., Parsonburg
Baltimore Livestock Exchange, Inc., West Friendship
* Caroline Sales Co., Denton
* Cumberland Stockyards, Inc., Cumberland
* Dukes Brothers Stockyards, Inc., Eden
Esskay Buying Station, Baltimore
Esskay Buying Station, Wye Mills
* Farmers Livestock Exchange, Inc., Boonsboro
* Farmers Market and Auction, Mechanicsville
* Four States Livestock Sales, Inc., Hagerstown
* Frederick Livestock Auction, Inc., Frederick
* Friend's Stock Yard, Inc., Accident
* Grantsville Community Sales, Inc., Grantsville
* Hunter's Sale Barn, Inc., Rising Sun
Penn Packing, Snow Hill
* Harry Rudnick & Sons, Inc., Galena
* Western Maryland Stock Yards, Inc., Westminster
* Woodsboro Livestock Sales, Inc., Walkersville

Massachusetts

* Northampton Cooperative Auction Assn., Inc., Whately
* Stanley Beckwith and Son, Granville
* Farmers Live Animal Market Exchange, Inc., Littleton
J. P. Hass and Sons, Rehoboth
* Soares Livestock and Equipment, West Bridgewater

Maine

* Ben Tilton and Sons, Corinth
* Crosman's Livestock Sales, Corinna

Michigan

Andy Adams Sale Barn, Hillsdale
Clare Bordner, Burr Oak
Coldwater Livestock Auction, Coldwater
Croswell Stockyards, Croswell
Dundee Livestock Sales, Inc.
Equity Cooperative Livestock Sales Association, Menominee
Heinold Hog Markets, Inc., Burlington
Heinold Hog Markets, Inc., Jones
Linsmeier Livestock Auction, Menominee
Lugbill Brothers, Inc., Morenci
Michigan Live Stock Exchange, Battle Creek
Michigan Live Stock Exchange, Cassopolis
Michigan Livestock Exchange, Manchester
Napoleon Livestock Commission Company, Napoleon
Ridley Commission, Inc., Detroit
Tecumseh NFO Collection Point, Britton
Westfall Stockyards, Hillsdale

Minnesota

*Anderson Feeder Pig Company, Willmar
*Arends Sale Yard, Inc., Blue Earth
Armour and Company, Browns Valley
Armour and Company, Dawson
Armour and Company, Winona
Armour Hog Buying Station, Ortonville
*Bauman's Livestock, Ellsworth
*Benson Livestock Exchange, Inc., Benson
*Canby Livestock Sales Company, Canby
*Cottonwood Veterinary Clinic, Windom
*Farmers Livestock Auction Market, Caledonia
Farmers Livestock Company, Elmore
*Geneva Livestock Exchange, Geneva
*Gibbon Feeder Pig Market, Gibbon
*Gordon Ness Feeder Pig Company, Hector
Gries Livestock Market, Kiester
*Hebrink Feeder Pig Market, Renville
Hokah Stockyards, Hokah
George Hormel and Company, Mabel
George A. Hormel Livestock Buying Station, Canby
Hormel Livestock Buying Station, Blue Earth
Ivanhoe NFO Collection Point, Ivanhoe
*Jackson Livestock Exchange, Inc., Jackson
*Kasson Livestock Exchange, Kasson
*Lee and John's Livestock, Inc. d.b.a. Harmony Livestock Sales, Harmony
Lakefield NFO Collection Point, Lakefield
*Lamberton Feeder Pig Market, Lamberton
*Lamberton Stockyards, Inc., Lamberton
Lee and John's Livestock, Harmony
*Lewiston Livestock Market, Lewiston
*Long Prairie Livestock Auction Market, Long Prairie
*Luverne Livestock Auction, Luverne
*Minnesota Feeder Pig Market, Inc., Morris
*Minnesota Feeder Pig Markets, Inc. (Willmar Divn), Willmar
*Minnesota Feeder Pig Market, Windom
John Morrell and Company, Kiester
Morrell Hog Buying Station, Madison
Northern States Feeder Pig, Inc., Sauk Center
Pierson Livestock, Ivanhoe
*Pipestone Livestock Auction Market, Pipestone
Rath Packing Company, Prosper
Rath Packing Company, Rushford
*Rice Feeder Pig Center, Rice
Rosen Livestock, Fairmont
*Rush City Livestock Auction, Rush City
*Rush City Livestock Sales, Inc., Rush City
*St. Paul Union Stockyards, South St. Paul
*Sleepy Eye Auction Market, Sleepy Eye
Smith Livestock Market, Granada
*Speldrich Feeder Pig Market, Belgrade
*Springfield Stockyards, Springfield
*Spring Grove Livestock Exchange, Inc., Spring Grove
*Spring Valley Sales Co., Spring Valley
*Tenney Feeder Pig Company, St. James
*Top Livestock Auction, Edgerton
*Walnut Grove Feeder Pig Market, Walnut Grove
Welcome NFO Livestock Collection Point, Welcome
Wilson & Co., Bricelyn
*Windom Sale Company, Inc., Windom
*Wisconsin Feeder Pig marketing Co-op, Perham
*Wisconsin Feeder Pig marketing Co-op., Sauk Centre
*Worthington Livestock Sales Co., Worthington
*Zumbrota Livestock Auction Market, Inc., Zumbrota

Mississippi

*Alcorn County Stockyards, Corinth
Max Alman's Assembly Point, Pelahatchie
*Amory Area Feeder Pig Sale, Amory
S. K. Askew Assembly Point, Edwards
*Booneville Area Feeder Pig Association, Booneville
*Booneville Commission Company, Booneville
*H. T. Branning Livestock Co., French Camp
*Bruce Area Feeder Pig Sale, Bruce
Central Livestock Company, Brandon
*Central Mississippi Livestock Commission Company, Carthage
*Chickasaw Livestock Auction, Inc., Houston
*Corinth Stockyard, Inc., Corinth
*Delta Stockyard, Inc., Greenville
*East Mississippi Farmer's Livestock Company, Philadelphia
George County Stockyards, Inc., Lucedale
*Grenada Livestock Exchange, Grenada
W. N. Heidel, Jr., Assembly Point, Vaughan
Laurel Stockyards, Laurel
*Lucedale Area Feeder Pig Association, Lucedale
*Lucedale Auction, Inc., Lucedale
*Lum Commission Company, Vicksburg
Mattox Livestock Dealer, Inc., Belden
Edward McCaughn Assembly Point, Morton
*McComb Area Feeder Pig Sale, McComb
Meridian Stockyards, Meridian
*Natchez Stockyards, Natchez
*New Albany Feeder Pig Sale, New Albany
*Peelers Livestock Sales, Kosciusko
*Port Gibson Area Feeder Pig Association, Port Gibson
Ranchers and Farmers Livestock Commission Co., Macon
Glynn Robinson Stockyard, West Point
Smith Brothers Stockyard, Poplarville
T. Smith Livestock, Hattiesburg
*Southeast Mississippi Feeder Pig Association, Laurel
*Southeast Mississippi Livestock Farmers Association, Hattiesburg
*Southwest Stockyard, Port Gibson
Spicer Livestock Inc., Tupelo
Stockyard Beef Sale, Inc., Tupelo
Stringer Sale Barn, Columbia
Donald & Vines Assembly Point, Morton
*Walnut Sales Company, Walnut
*Wayne Area Pork Producers Association, Waynesboro
*Waynesboro Livestock yards, Inc., Waynesboro

Missouri

*Adair County Livestock Market, Inc., Kirksville
*Alton Sale Company, Alton
Armour and Company, Corder
*Ava Sales Company, Ava
Baring Stockyards, Baring
*Beck & McCord Auction Company, Sikeston
*Benton County Producers Association, Warsaw
*Bollinger County Livestock Producers Association, Marble Hill
*Boonville Livestock Auction, Boonville
*Brookfield Livestock Auction, Inc., Brookfield
*Bryant and Kirkman, Summersville
*Buffalo Sale Barn, Buffalo
Burrus & Troutman Livestock, Memphis
*Butler Community Sale, Butler
*Cabool Livestock Market, Cabool

*Callaway Livestock Auction, Fulton
*Cantrell & Sons, Archie
Callao NFO Collection Point, Callao
*Callaway Stock Sales Company, Fulton
*Carrollton Livestock Auction, Carrollton
*Cassville Livestock Market, Inc., Cassville
*Cattlemen Auction Company, Inc., Humansville
Central Hog Buyers, Centralia
Central Hog Market, Rich Fountain
*Central Livestock Market of Poplar Bluff, Poplar Bluff
*Central Missouri Livestock Auction, Inc., Mexico
*Central Missouri Sales Company, Inc., Sedalia
*Central Ozark Auction, West Plains
*Chillicothe Livestock Market, Inc., Chillicothe
*Circle S Livestock Market, Stanberry
*Clark County Sale Company, Inc., Kahoka
Clinton Hog Market, Clinton
*Columbia Livestock Auction Market, Inc., Columbia
*Concordia Livestock Auction, Concordia
County Line Hog Market, Cainsville
Day's Hog Buying, Troy
*Dent County Livestock Improvement Association, Salem
*Downing Stockyards, Downing
*Edina Auction Market, Inc., Edina
Edina Stockyards-NFO Buying Station, Edina
Eldon Hog Market, Olean
*El Dorado Sales Company, Inc., El Dorado Springs
Esskay Buying Station, Littlestown
*Farmers & Traders Commission Co., Inc., Palmyra
*Farmington Action Market, Farmington
Ferguson Hog Market, Sedalia
Five County Collection Center, Mountain Grove
Fortuna NFO Collection Point, Fortuna
4 Corners Collection Point (NFO), Hunnewell
*4 County Feeder Pig Auction, Humansville
Four Rivers Collection Point, Labadie
*Four-Square Markets, Inc., Marshall
*Four State Livestock Auction Center, Diamond
*Bob Franklin Sale Barn, Buffalo
*Fredericktown Auction Company, Inc., Fredericktown
*Fruitland Livestock Market, Inc., Jackson
*Gallatin Livestock Auction, Inc., Gallatin
*Donald Ghere Marketing Facility, Butler
*Grant City Livestock Auction, Grant City
Grant City Livestock Auction, Grant City
Grant City Sale Barn, Grant City
*Green City Auction Market, Inc., Green City
Harkins Livestock Market, Trenton
Heinold Hog Market, Inc., Bloomfield
Heinold Hog Buyers, Inc., Bowling Green
Heinold Hog Market, Inc., Clarence
Heinold Hog Market, Hawk Point
Heinold Hog Market, King City
Heinold Hog Market, Labelle
Heinold Hog Market, Maryville
Heinold Hog Market, Monroe City
Heinold Hog Market #114, Monroe City
Heinold Hog Market, Inc., Monticello
Heinold Hog Markets, Inc., Paris
Heinold Hog Market, Stet
Heinold Hog Market, Inc., Tarkio
Heinold Hog Market, Trenton
Heinold Hog Market, Inc., Wellsville
George A. Hormel & Company, Princeton
Howard County NFO Collection Point, Armstrong
*Interstate Producers Livestock Association, Deepwater
*Interstate Producers Livestock Association, Brookfield
*Interstate Producers Livestock Association, Caledonia
*Interstate Producers Livestock Association, Cuba
*Interstate Producers Livestock Association Feeder Pig Market, Hamilton
*Interstate Producers Livestock Association, Jackson
*Interstate Producers Livestock Association, Perryville
*Ireland and Thorne Livestock Market, Inc., Trenton
*Johnson County Livestock Market, Warrensburg
*Joplin Stockyards, Joplin
*Kahoka Sale Company, Inc., Kahoka
*Kansas City Stockyards, Kansas City
*Kennett Sales Company, Inc., Kennett
*Kingsville Livestock Auction, Kingsville
Kirksville Community Sale, Inc., Kirksville
Kleen-Leen, Inc., Jackson
Kleen-Leen, Inc., Salem
Harold Kornbrust Hog Buying Station, Marceline
*The Lamar Cattle Auction, Lamar
*Lamar Sales, Lamar
*Laclede County Livestock Producers Association, Lebanon
LaMonte NFO Collection Point, LaMonte
*Lamar Auction Market, Lamar
La Monte Livestock Collection Point (NFO), La Monte
*Lebanon Livestock Auction, Lebanon
*Lewis County Auction Company, Lewistown
Lewis & Son Hog Buyers, Glasgow
*Lexington Livestock Auction, Lexington
*Licking Livestock Sales, Inc., Licking
*Linn County Beef Producers, Inc., Brookfield
*Lockwood Community Sales, Lockwood
*Lolli Sales Pavilion, Macon
*Mansfield Livestock Auction, Inc., Mansfield
*Marshall Livestock Auction, Marshall
Oscar Mayer & Company, Inc., Callao
Oscar Mayer & Company, Inc., Shelbina
Maysville NFO Collection Point, Amity
*Maysville NFO Collection Point, Amity
*Mercer County Producers Association, Princeton
*Mercer County Sale Co., Princeton
*Meta Collection Point, Inc., Meta
MFA Hog Market, Burlington Junction
*MFA Feeder Pig Assembly Point, Ellington
*MFA Feeder Pig Market, Sedalia
*MFA Feeder Pig Tele Auction, Doniphan
*MFA Feeder Pig Yards, Rolla
*MFA Feeder Pig Yards, Stockton
*MFA Feeder Pig Market, Taneyville
*MFA Feeder Pig Yards, Westphalia
*MFA Livestock Association, Alton
*MFA Livestock Association, Cabool
*MFA Livestock Association, Mansfield
*MFA Livestock Association, Inc., Wheaton
*Midstates Livestock Market, Inc., Maryville
*Mid-West Livestock Market, Inc., Nevada
*Missouri Feeder Pig Auctions, Inc., Middletown
*Moberly Auction Company, Inc., Moberly
*Mountain Grove Livestock Market, Mountain Grove
National Hog Buyers, Inc., Columbia
*Nevada Livestock Auction, Inc., Nevada
*New Cambria Livestock Auction Market, New Cambria
NFO Cameron Collection Point, Cameron
Nichols Stockyards, Bethany
*Odessa Community Sale, Odessa
*Olean Livestock Market, Inc., Eldon
Oligschlaeger Livestock Market, St. Elizabeth
Osage Hog Buyers, Inc., Linn
*Oregon Livestock Sales Company, Oregon
*Osage County Livestock Producers Association, Linn
*Palmyra Livestock Auction Market, Palmyra
*Pasley Auction Company, Osceola
*Patton Junction NFO Collection Point, Patton
*Bob Pierce Sale Barn, Buffalo
*Pike County Livestock Market, Bowling Green
*Poplar Bluff Sales Company, Poplar Bluff
*Potosi Livestock Market, Potosi
*Puxico Stockyards & Auction Company, Puxico
Rains Livestock, Inc., Poplar Bluff
Reed Livestock, Dexter
Reed (Chester) Livestock Market, Mountain Grove
*Rich Hill Sale Company, Rich Hill
Richland Livestock, Richland
*Roberts Livestock Auction, Bolivar
*Rockport Sales Pavilion, Inc., Rockport
*St. Clair Auction Company, St. Clair
*St. Joseph Stockyards, South St. Joseph
*St. Joseph Stockyards—Market Hog Division, South St. Joseph
Ste. Genevieve Livestock Collection Point, Ste. Genevieve
*Salem Auction Company, Salem
*Savannah Sale Company, Savannah
*Scotland County Livestock Auction, Memphis
*Sedgewickville Auction, Sedgewickville
*Shelbina Auction Company, Shelbina
Shell Feed & Supply, Frederickstown
Shell Feed & Supply, Perryville
Shell Feed & Supply, Lutesville
*Sho-Me Feeder Pig, Inc., Ava
*Sho-Me Feeder Pig, Inc., Thayer
6-D Hog Market Center, Marshall
*South Central Livestock Market, Inc., Vienna
Southeast Missouri Stockyard Co., Oran
*Southwest Feeder Pig Market, Inc., Nixa
*Southwest Missouri Livestock Association, Inc., Sarcoxie
*St. James Auction Company, St. James
*Sullivan County Livestock Auction Market, Milan
*Summersville Livestock Market, Summersville
Swift Fresh Meats Co., Eolia
Thomas Hog Market, Syracuse
Thomas & Potter Hog Markets, Eldon
Thompson Hog Market, Glasgow
*Tina Feeder Pig Auction, Tina
*Union Stockyards, Springfield
*Unionville Sale Company, Unionville
Carroll Warnock Stockyards, Lineville, Iowa
Warnock Stockyard, Trenton
*Warsaw Auction Company, Warsaw
West Plains City Scales, West Plains
*West Plains Livestock Auction, Pomona
*West Plains MFA Feeder Pig Yards, West Plains
*Wheaton Livestock Auction, Wheaton
Wil Lin Hog Buying, Browning

Wilson & Company Hog Market, Chillicothe
Wilson & Company Hog Market, Palmyra
Wilson and Company, Inc., Marshall
Wilson Hog Buying Station, Greenfield
Wilson Hog Market, Albany
Wilson Hog Market, Novelty
Wilson Hog Market, Salisbury
*Windsor Auction, Windsor

Montana

*Baker Livestock Auction, Inc., Baker
*Beaverhead Livestock Auction, Dillon
Glendive Livestock Sales Co., Glendive
*Kalispell Livestock Auction, Kalispell
*Livestock Auction, Inc., Baker
Pierce Buying Station No. 1 (Red Hickory Yard), Baker
*Public Auction Yards, Billings
*Sidney Livestock Market Center, Sidney

Nebraska

*Ainsworth Livestock Auction, Ainsworth
*Alma Livestock Commission Company, Alma
*Beatrice Sales Pavilion, Beatrice
*Beatrice 77 Livestock Sales Co., Beatrice
*Butte Livestock Market, Butte
*Chappell Livestock Auction, Chappell
*Creighton Livestock Market, Inc., Creighton
*Falls City Auction Co., Falls City
*Farmers Livestock Sales Co., Benkelman
Farmland Food, Inc., Hardy
Franklin Livestock Market, Franklin
Gordon NFO Collection Point, Gordon
*Hebron Livestock Commission Co., Hebron
*Holdrege Livestock Auction Market, Holdrege
*Holdrege Livestock Commission Co., Holdrege
George Hormel & Company, Falls City
*Humboldt Sale Barn and Humboldt Hog Market, Humboldt
*Huss Platte Valley Auction, Inc., Kearney
*Imperial Auction Market, Inc., Imperial
*Kimball Livestock Auction, Kimball
Kleen-Leen, McCook
*Lexington Livestock Market, Lexington
*Midwest Livestock Commission Co.,Inc., McCook
National Farmers Organization, Guide Rock
National Farmers Organization, Pawnee City
*Nebraska City Salebarn, Inc., Nebraska City
*Norfolk Livestock Market, Inc., Norfolk
*N.F.O. Reload Point, Whitney
*Omaha Livestock Market, Inc., Omaha
*Ogallala Livestock Market, Ogallala
*Oxford Livestock Market, Oxford
*Pawnee Livestock, Inc.. Pawnee City
*Pender Livestock, Inc., Pender
*Platte Valley Feeder Pig, Inc., Fremont
*Platte Valley Livestock Auction, Inc., Gering
Pork Packers International, Inc., Superior
*Red Cloud Livestock Commission Co., Red Cloud
*Sheridan Livestock Commission, Co., Rushville
Superior Hog Market, Superior
*Superior Livestock Commission Co., Inc., Superior
*Syracuse Sales Pavilion, Inc., Syracuse
*Tecumseh Livestock Market, Tecumseh
*Tri-State Livestock Commission Co., Inc., McCook
*Valentine Livestock Auction Co., Inc., Valentine
*Verdigre Livestock Market, Verdigre
WEW Hog Company, McCook
The Weichman Pig Co., Inc., Fremont
Whitney Livestock, Whitney
Wilson and Company, Auburn
Wilson and Company, Pawnee City
Wilson and Company, Syracuse
*York Livestock Sales Company, York
York Pack Buying Station, Superior

New Jersey

Wallace H. Coates Livestock Co., Monroeville
Jaeger's Livestock Market, Sussex
*Livestock Cooperative Auction Market, Association of North Jersey, Inc., Hackettstown

New Mexico

B & and Hog Company, Clovis
*Clovis Hog Company, Inc., Clovis
Clovis Hog Market, Clovis
*Five States Livestock Auction Co., Clayton
Portales Livestock Commission Company, Portales

New York

Buffalo Stockyards Company, Inc., Buffalo
*Empire Livestock Marketing Cooperative, Inc., Caledonia
Empire Livestock Marketing Cooperative, Inc., Waterloo
*Finger Lakes Livestock Sale, Canandaigua
Luther's Livestock Commission Market, Wassaic
Millerton Livestock Auction, Hillsdale

North Carolina

Coastal Livestock, Inc., Richlands
*Albermarle Cooperative Association, Inc., Edenton
Baker Hog Market, Tyner
Brite-Tatum Livestock Auction, Elizabeth City
*Carolina Stockyards, Siler City
*Carolina-Virginia Stockyard, Windsor
Cattleman's Livestock Market, Canton
*Central Carolina Farmers Livestock Market Quality Feeder Pig Sale, Hillsborough
*Chadbourn Graded Feeder Pig Sale, Chadbourn
Chadbournn Livestock Market, Chadbourn
William A. Crofton Livestock, Lumberton
*Elizabethtown Livestock Market, Elizabethtown
D. F. Foust Livestock Auction, Inc., Greensboro
Franklin Livestock Market, Franklin
Greenville Stock Yard, Greenville
Gwalteny-Hertford Livestock Market, Herford
W. H. Horney, Siler City
Robert P. Hollowell Livestock Market, Sunbury
*Iredell Livestock Company, Turnersburg
*Kinston Stockyard, Kinston
George P. Kittrell Livestock Market, Corapeake
*Gus Z. Lancaster Quality Feeder Pig Sale, Dunn
*Gus Z. Lancaster Quality Feeder Pig Sale, Rocky Mount
Gus Z. Lancaster Stockyards, Inc., Rocky Mount
Laurinburg Livestock Market, Laurinburg
*Lumberton Auction Co., Lumberton
Bill Martin, Greensboro
*M & R Livestock Company, Inc., Dunn
M & R Livestock Market, Snow Hill
Miller's Livestock, Inc., Winfall
Mountain Livestock Auction, Murphy
*Norwood Graded Quality Feeder Pig Sale, Norwood
*Oxford Livestock Market, Inc., Oxford
*Pates Stockyard, Inc., Pembroke
*Pates Stockyard, Inc. of Whiteville, Whiteville
*Powell Livestock Company of Smithfield, Smithfield
Reaves Livestock, Inc., Rowland
Smithfied Packing Company Hog Buying Station, Murfreesboro
Trenton Livestock, Inc., Richlands
Tommie Turner Livestock Market, Pink Hill
Turner's Livestock, Inc., Elizabeth City
*Union County Livestock Auction, Inc., Monroe
*Wells Livestock Market Graded Feeder Pig Sale, Wallace
*Western Carolina Feeder Pig Sale, Asheville
Whedbee Livestock Market, Hertford
R. O. Whitley, Inc., Como

North Dakota

Armour & Company, Wahpeton
*Bismarck Livestock Auction, Inc., Bismarck
*Bowman Livestock Auction Market, Bowman
*Carrington Livestock Sales, Inc., Carrington
Central Livestock Association, Inc., Dickinson
Dakota Meats, Inc., Minot
*Edgeley Livestock, Inc., Edgeley
*Ellendale Livestock Sales Company, Ellendale
Hamann Livestock Company, Dickinson
*Harvey Livestock Auction, Harvey
*Jamestown Livestock Sales Co., Jamestown
*Kist Livestock Action Co., Mandan
*Lake Region Auction and Livestock Market, Inc., Devils Lake
*Linton Livestock Sales, Inc., Linton
*Minot Livestock Auction Sales, Inc., Minot
NFO Collection Point, Beach
*Park River Livestock Exchange, Park River
Pierce Packing Company Buying Station, Hettinger
*Rugby Livestock Auction, Inc., Rugby
*Stockmen's Livestock Exchange, Inc., Dickinson
*Sitting Bull Auction, Williston
*Stockmen's Livestock Exchange, Inc., Beulah
*Tri-State Auction Market, Inc., Hettinger
*Turtle Lake Livestock, Inc., Turtle Lake
*Union Stockyards Company of Fargo, West Fargo
*Watford City Livestock Auction, Watford City
*Western Livestock, Inc., Dickinson
*Wikenheiser Livestock, Strasburg
*Wisconsin Feeder Pig Marketing Co-op., Litchville

Ohio

*A. E. Miller Livestock, Delphos
Bauman Stockyards, Inc., Napoleon
Bloomfield Livestock Auction, North Bloomfield
Merle A. Bussert Livestock, Amanda
*Burkettsville N.F.O. Collection Point, Burkettsville
Butler County NFO Collection Point, Hamilton
*Carrollton Livestock Auction, Carrollton

Chicakasaw Stockyard, Chickasaw
Cisco Stockyard, Inc., St. Marys
*Damascus Livestock Auction, Damascus
*Delta Livestock Auction, Delta
*Dicke Stockyard, New Bremen
Wm. Espel Sons, Inc., Cincinnati
Findlay Producers Livestock Association, Findlay
French City Meats, Inc., Gallipolis
Gamboe Stockyards, Pioneer
*Geauga Livestock Commission, Inc., Middlefield
Harpster Stockyards, Ashland
Harvey Livestock, Inc., Coldwater
Heinold Hog Market, Eldorado
Heinold Hog Markets, Gettysburg
Heinold Hog Market, Inc., Sedalia
Frank D. Helsel Livestock, Washington Court House
Interstate Farmers Livestock Company, Oxford
Interstate Livestock, Inc., Oxford
E. Kahn's Sons Company, Cincinnati
Kleinhenz Brothers Stockyard, Ft. Recovery
Kleinhenz Brothers Stockyard, Celina
Kloeppel Livestock, Sidney
*Krugh's Stockyards, Wren
*Virgil Lampert Stockyards, New Bremen
Lewisburg NFO Collection Point, Lewisburg
*Lugbill Brothers, Archbold
Lugbill Brothers, Fayette
Lugbill Brothers, Wauseon
*Middendorf Stockyards, Botkins
*Middendorf Stockyards, Celina
*Middendorf Stockyards, Co., Fort Loramie
*Middendorf Stockyards Company/d.b.a. Kenton Farmers Market, Kenton
Middleton Stockyards, Inc., New Madison
A. E. Miller Stockyard, Middle Point
*Ohio Valley Livestock Company, Gallipolis
Ohio Valley Livestock Corporation/d.b.a. Preble County Stockyards, Eaton
*Wilson Brothers/d.b.a. Peoples Livestock Exchange, Greenville
Philothea Stockyard, Coldwater
*Producers Livestock Association, Bucyrus
*Producers Livestock Association, Cadiz
*Producers Livestock Association, Eaton
*Producers Livestock Association, Findlay
Producers Livestock Association, Greenville
*Producers Livestock Association, Hillsboro
*Producers Livestock Association, Lancaster
Producers Livestock Association, London
*Producers Livestock Association, Marysville
*Producers Livestock Association, Mt. Vernon
*Producers Livestock Association, Orrville
*Producers Livestock Association, Springfield
*Producers Livestock Association, Wapakoneta
*Producers Livestock Association, Woodville
Selected Meat Company, Greenfield
Don H. Smith Stockyard, Fort Recovery
P. B. Stewart, Edon
Tuente Stockyards, Saint Sebastion
Tuente Stockyards, Yorkshire
The Union Stockyards Co., Hillsboro
*Vic Ruhe Livestock, Ottawa
Waynesfield Stockyard, Waynesfield
Werling and Sons, Inc./d.b.a. Burkettsville Stockyard, Burkettsville
Jerome Winner Stockyard, New Weston
Robert Winner Sons, Inc., Osgood
*Joe Wood Livestock Market, New Vienna

Oklahoma

*Adair County Livestock Auction, Inc., Stilwell
Ag Markets, Inc., Woodward
*Antlers Livestock Commission, Antlers
*Checotah Livestock Auction, Checotah
*Comanche Hog Sale, Ardmore
*Comanche Hog Sale, Comanche
*Delaware County Livestock Auction, Inc., Grove
*Durant Stockyards Co., Durant
*Farmers and Ranchers Livestock Auction, Vinita
*Ft. Smith Stockyards Co., Inc., West Ft. Smith
*Hugo Sales Commission, Inc., Hugo
Arthur Kelley Stockyards, Muskogee
*LeFlore County Livestock Auction, Wister
Maurer and Neuer, Enid
*Muskogee Stockyards & Livestock Auction, Inc., Muskogee
*Newkirk Sale Company, Newkirk
*Northeast Oklahoma Feeder Pig and Livestock Market, Leach
*Oklahoma National Stockyards, Oklahoma City
Small Hog Company, Alva
*South Coffeyville Livestock Market, Inc., South Coffeyville
*Tahlequah Sale Barn, Tahlequah
*Tonkawa Livestock Exchange, Tonkawa
*Welch Livestock Auction, Welch

Oregon

*Hermiston Livestock Commission Co., Hermiston
*Northwestern Livestock Commission Co., Hermiston
*Ontario Livestock Commission Co., Ontario
*The Portland Livestock Market, Inc., North Portland
*The Dallas Auction Yard, The Dalles
*Vale Livestock Auction, Vale

Pennsylvania

*Belknap Livestock Market, Inc., Dayton
*Belleville Livestock Market, Inc., Belleville
Edgar K. Black, Skippack
K. M. Border Livestock, Dover
*Carlisle Livestock Market, Inc., Carlisle
Cattle Sales, Inc./d.b.a. Scenery Hill Stockyards, Scenery Hill
*Chambersburg Livestock Sales, Inc., Chambersburg
*Chesley's Sales, Inc., Northeast
*Cowanesque Valley Livestock Auction, Knoxville
Wayne F. Craig & Son, Shippensburg
*Danville Cattle Co., Inc., Danville
*Dewart Livestock Market, Dewart
*Eighty Four Auction Sales, Inc., Eighty Four
*Enon Valley Community Sale, Enon Valley
*Fayette Stockyards, Inc., Uniontown
*G & M Livestock Market, Inc., Duncansville
*Greencastle Livestock Market, Inc., Greencastle
*Green Dragon Livestock Sales, Ephrata
*Hickory Auction and Sales, Inc., Hickory
*Hulshart, C. A., Stewartstown
*Indiana Livestock Auction, Inc., Homer City
*Jersey Shore Livestock, Inc., Jersey Shore
*Keister's Middleburg Auction Sales, Inc., Middleburg
*Lancaster Stockyards, Inc., Lancaster
*Lebanon Valley Livestock Market, Inc., Fredericksburg
*Leesport Market & Auction, Inc., Leesport
*Meadville Livestock Auction, Saegertown
*Mercer Livestock Auction, Mercer
C. Robert Miller, Watsontown
*Morrison Cove Livestock Market, Martinsburg
*New Holland Sales Stables, Inc., New Holland
*New Wilmington Livestock Auction, Inc., New Wilmington
*Nicholson Sales Company, Nicholson
*Penns Valley Livestock Auction, Inc., Centre Hall
*Pennsylvania Livestock Auction, Inc., Waynesburg
*Perkiomenville Livestock and Sales, Inc., Perkiomenville
*Quakertown Livestock Sale, Quakertown
*Sechirst Sales Company, Inc., Fawn Grove
W. R. Sellers Livestock, Greencastle
*Tri-County Livestock Auction, Inc., Brockway
*Thomasville Livestock Market, Inc., York
*Troy Sales Cooperative, Troy
*Union City Livestock Auction, Union City
Valley Stockyards, Inc., Athens
*Vintage Sales Stables, Inc., Paradise
*Wayne County Auction Barn, Inc., Honesdale
*Wyalusing Livestock Market, Wyalusing

South Carolina

Central Carolina Livestock Market, Inc., Lugoff
Chesnee Livestock Company, Chesnee
Conway Stockyard, Conway
Conway Stockyard, Loris
*Darlington Auction Market, Darlington
Dorchester Marketing Association, St. George
*Farmers County Line Stockyards, Andrews
*Farmers Market, Estill
Farmers Livestock Market, Leesville
Florence Union Stockyards, Florence
Greenwood Stockyard, Inc., Greenwood
*Hemingway Livestock Market, Hemingway
*Herndon's Stockyards, Inc., Ehrhardt
*Hutto Stockyard, Inc., Holly Hill
*Jim's Livestock, Inc. (Pig Barn), Kingstree
Kingstree Union Stockyard, Kingstree
M & R Livestock, Neeses
M & R Livestock, Nichols
M & R Livestock Company, Ruffin
Neeses Stockyards, Neeses
*Orangeburg Stockyard, Inc., Orangeburg
Saluda County Stockyards, Saluda
South Carolina Farm Bureau/d.b.a. Jim's Livestock, Kingstree
Spartanburg Livestock Market, Spartanburg
*Springfield Stockyard, Inc., Springfield
S & S Milling Company, Hemingway
John C. Taylor Stockyard, Anderson
Walterboro Stockyards Co., Inc., Walterboro
York County Stockyards, York

South Dakota

*Aberdeen Livestock Sales Company, Inc., Aberdeen
Armour and Company Hog Buying Station, Aberdeen
Armour Buying Station, Hudson
*Belle Fourche Livestock Exchange, Inc., Belle Fourche
*Bowdle Livestock Sales, Inc., Bowdle
*Brookings Livestock Auction, Brookings
Browns Valley Collection Point, Inc. (located in Roberts County, South Dakota), Browns Valley, Minnesota

*Burke Livestock Auction, Burke
*Canton Livestock Sales Company, Canton
*Chamberlain Livestock Auction, Inc. Chamberlain
Columbia Collection Point, Columbia
*Corsica Livestock Sales Company, Corsica
*Edgemont Livestock Commission Company, Edgemont
*Faith Livestock Commission Company, Inc., Faith
*Gettysburg Livestock Exchange, Inc., Gettysburg
*Gregory Livestock Auction Company, Gregory
*Hub City Livestock Sales, Aberdeen
*Kramer's Livestock Auction Company, Inc., Sioux Falls
*Loken's Watertown Sales Pavilion, Inc., Watertown
*Madden's Livestock Auction Market, Inc., St. Onge
*Madison Livestock Auction Company, Madison
*Magness-Huron Livestock Exchange, Inc., Huron
*Marshall Livestock Auction Company, Britton
*Martin Auction Company, Inc., Martin
*McLaughlin Commission Company, Inc., McLaughlin
*Mitchell Livestock Auction Co., Inc., Mitchell
*Mobridge Livestock Auction Sales, Inc., Mobridge
John Morrell Hog Buying Station, Aberdeen
John Morrell & Company, Watertown
Morrell Buying Station, Flandreau
Owen Livestock Company, Britton
*Philip Livestock Auction, Philip
*Rapid City Livestock Commission Company, Rapid City
*Scofield's Leola Livestock Sales, Leola
*Sioux Falls Stock Yards Company, Sioux Falls
*Sisseton Livestock Auction, Inc., Sisseton
Sodak Pork, Aberdeen
*South Dakota Livestock Sales Company, Watertown
*Stockman's Auction Co., Inc./d.b.a. Bales Continental Commission Company, Huron
*Stockmen's Livestock Auction Company, Yankton
*Sturgis Livestock Exchange, Inc., Sturgis
*Wall Livestock Auction, Wall
*Wessington Springs Livestock Company, Wessington Springs
*West River Livestock Market Co., Lemmon
*Willow Lake Livestock Auction, Willow
*Winner Livestock Auction Company, Winner
*Yankton Livestock Auction Market, Yankton
*Fort Pierre Livestock Auction, Inc., Fort Pierre

Tennessee

American Farmers Marketing Co-op, Clarksville
Athens Livestock Auction Company, Athens
*Bedford County Feeder Pig Sale, Unionville
*Harry Bogle Feeder Pig Barn, Murfreesboro
*Johnny Boyce Feeder Pig Barn, Unionville
*Raymond Boyce Feeder Pig Market, Unionville
*Brownsville Feeder Sales Assn., Brownsville
*Carroll County Feeder Pig Association, Huntingdon
Chattanooga Union Stockyard, Chattanooga
Clarksville Livestock Company, St. Bethlehem
*Chickasaw Feeder Association, Selmer
C & M Livestock Market, Jamestown
Cleveland Livestock Auction, Inc., Cleveland
Coffee County Livestock Market, Manchester
Collierville Livestock Auction Co., Collierville
Covington Sale Co., Covington
Crockett County Sales Co., Maury City
Cumberland City Stockyard, Cumberland City
*Cumberland Feeder Pig Sales, Cookeville
DeKalb County Livestock Company, Alexandria
*Joe H. Derryberry d.b.a. Derryberry Pig Barn, Chesterfield
*Dickson County Feeder Pig Sale, White Bluff
Dickson Livestock Center, Dickson
East Tennessee Livestock Center, Sweetwater
Farmers Auction Co., Fayetteville
Farmers Livestock Exchange, Union City
Farmers Livestock Market, Greeneville
*Feeder Pig Division of Lawrence County Livestock Association, Lawrenceburg
Gamaliel Livestock Market, Gamaliel
*Giles County Feeder Pig Sales, Pulaski
Giles County Stockyard, Pulaski
Greeneville Livestock Company, Inc., Greeneville
*Hardin County Livestock Association, Savannah
Hardin County Stockyard, Savannah
*J. T. Herren d.b.a. J. T. Herren Feeder Pig Market, Baxter
Jackson County Commission Co., Gainesboro
*Johns Brothers Feeder Pigs, Chapel Hill
*Jolley Bros., Doyle
Jonesboro Livestock Yard, Inc., Telford
Kentucky Buyers, Belvidere
Kingsport Livestock Auction Corp., Kingsport
Lawrence County Stockyards, Lawrenceburg
Lexington Sales Company, Lexington
Macon County Livestock Market, Lafayette
Middleton Sales Co., Middleton
Mid-South Livestock Commission Co., Columbia
*Mid-State Producers Feeder Pig Sale, Woodbury
Moody Livestock, Newbern
Morristown Stockyards, Inc., Morristown
Murfreesboro Livestock Center, Murfreesboro
N.F.O. Buying Station, Centerville
New Tazewell Livestock Market, New Tazewell
North Central Livestock Center, Cross Plains
Northwest Tennessee Livestock, Inc., Newbern
Paris Livestock Commission Company, Paris
Peoples Livestock Market, Cookeville
Peoples Stockyard, Fayetteville
Plateau Livestock Exchange, Crossville
Pulaski Stockyard, Pulaski
*Robinson, Jimmie and Son, Franklin
Rogersville, Livestock Market, Rogersville
Odell Sampson-Sampson & Maxwell Livestock Auction, Lewisburg
Scotts Hill Auction Company, Inc., Scotts Hill
*Sells, Lonnie, Winchester
Selmer Stockyard, Selmer
*Sevier County Livestock Association, Sevierville
Sevier County Livestock Auction, Seymour
Shelbyville Livestock Market, Shelbyville
Smith County Commission Co., Inc., Carthage
*Smith County Feeder Pig Association, Carthage
Smithville Livestock Market, Smithville
Smithville Stockyards, Smithville
*Smotherman, E. H., Murfreesboro
South Memphis Stock Yards Co., Memphis
Southern Livestock Auction Company, Columbia
Southwestern Sales Company, Inc., Huntingdon
Sparta Livestock Co., Inc., Sparta
*Taylor Bros. Feeder Pigs, College Grove
Tennessee Livestock Producers, Inc., Fayetteville
Tennessee Livestock Producers, Inc., Thompson Station
Tennessee Livestock Producers, Inc., Woodbury
Thompson Livestock Company, Obion
Trenton Livestock Sales, Trenton
Tri-County Stockyards, McKenzie
Trousdale County Livestock Market, Hartsville
Union Livestock Yards, Inc., Knoxville
Unionville Livestock Market, Unionville
*Volunteer Feeder Pig Association, Lexington
*Walker, Dallas Livestock, Rutherford
*Warren County Livestock Association, McMinnville
West Tennessee Auction Company, Martin
Wilson County Livestock Market, Lebanon
Wilson Livestock Market, Newport
*Young Livestock, Murfreesboro

Texas

*Dalhart Auction Company, Dalhart
*Ft. Worth Stockyards, Fort Worth
*Gainesville Livestock Auction, Gainesville
*J & J Livestock Commission Co., Inc., Texarkana
Muenster Livestock Auction, Muenster
Robinson Livestock, Booker
*Texarkana Stockyards Co., Texarkana
Texas Agricultural Marketing and Development Assn., Amarillo
West Texas Hog Company, Inc., Wellington

Utah

*Producers Livestock Marketing Association, North Salt Lake
*Producers Salina Auction, Salina
Uintah Sales Barn, Inc., Roosevelt
Vernal Livestock Auction, Vernal

Virginia

Abingdon Livestock Market, Inc., Abingdon
Albermarle Livestock Market, Inc., Charlottesville
Amherst County Livestock Market, Inc., Amherst
Bedford Livestock Market, Inc., Bedford
Blackstone Livestock Market, Blackstone
Caret Livestock Market, Caret
Christianburg Livestock Market, Inc., Christianburg
Creech Livestock Market, Inc., South Hill
Culpeper Livestock Exchange, Culpeper
Eddins Livestock Market, Stanardsville
Emporia Hog Market, Emporia
Esskay Buying Station, Caret
Ewing Livestock Market, Ewing
Farmers Livestock Market, Gate City
Farmers Livestock Market, Inc., Ewing
*Farmers Livestock Exchange, Inc., Winchester
Farmers Livestock Market, Rose Hill

Farmers Livestock Market, Inc., Tazewell
*Farmville Livestock Market, Farmville
Fauquier Livestock Exchange, Inc., Marshall
Fredericksburg Stockyard, Inc., Fredericksburg
Front Royal Livestock Market, Front Royal
Galax Livestock Market, Inc., Galax
Halifax Livestock Market, Halifax
Jonesville Livestock Market, Jonesville
Leesburg Livestock Market, Inc., Leesburg
Leonard Harrell Livestock Chesapeake
Lottsburg Buying Station, Lottsburg
Lynchburg Livestock Market, Inc., Lynchburg
*Madison Livestock Market, Inc., Madison Mills
McComb and Block, Inc./Lawrenceville Hog Market, Lawrenceville
Monterey Livestock Sales, Inc., Monterey
Narrows Livestock Auction Market, Narrows
*Nokesville Livestock Market, Nokesville
Orange Livestock Market, Orange
Pearce's Livestock Market, Holland
*Petersburg Livestock Market, Petersburg
Phenix Livestock Market, Phenix
Pulaski County Livestock Market, Dublin
Richmond Union Stockyards, Richmond
Roanoke-Hollins Stockyard, Hollins
Roanoke Livestock Market, Roanoke
*Rockingham Livestock Sales, Inc., Harrisonburg
J. L. Rose Hog Buying Stations, Courtland
J. L. Rose Hog Buying Stations, Wakefield
Saluda Buying Station, Glennis
Scott County Livestock Market, Gates City
Shen-Valley Buying Station, Dillwyn
Shen-Valley Buying Station, Madison Mills
*Shenandoah Valley Livestock Sales, Inc., Harrisonburg
Smithfield Livestock Market, Inc., Smithfield
Smithfield Packing Company Buying Station, Courtland
*Southampton Livestock Sales, Inc., Courtland
South Boston Livestock Market, Inc., South Boston
Southampton Peanut Company Buying Station, Branchville
*South Hill Livestock Market, South Hill
Southside Stockyards, Inc., Blackstone
*Southside Stockyards, Inc., Petersburg
Staunton Livestock Market, Inc., Staunton
*Staunton Union Stockyards, Staunton
*Tappahannock Livestock Market, Inc., Tappahannock
Tazwell Livestock Market, Inc., Tazewell
*Tidewater Livestock Sales Company, Courtland
Tri-State Livestock Market, Abingdon
B. C. Umbargers Assembly Yard, Wytheville
Victoria Livestock Market, South Hill
Virginia-Carolina Livestock and Agriculture Market, Inc., Danville
*Walker Bros. Livestock Pavilion, Seven Mile Ford
*Woodstock Livestock Market, Inc., Woodstock
Wytheville Livestock Market, Inc., Wytheville

Washington

*Auburn Livestock, Inc., Auburn
*Prosser Commission Company, Inc., Prosser
*Stockland Union Stockyards, Spokane
*Sunnyside Livestock Market, Sunnyside
*Walla Walla Livestock and Feedlot, Walla Walla

West Virginia

*Bluegrass Market, Inc., North Caldwell
*Blue Ridge Livestock Sales, Inc., Charles Town
*Jackson County Livestock Market, Inc., Ripley
*Moundsville Livestock Auction Co., Moundsville
*Ohio County Livestock Auction, Mt. Echo
*Terra Alta Livestock Market, Inc., Terra Alta
*Terra Alta Stockyards, Inc., Terra Alta
*United Livestock Sales Co., Parkersburg

Wisconsin

*Belmont Livestock Market, Belmont
Al Berning, Cuba City
Darlington N.F.O. Stockyards, Darlington
Dunwiddie Livestock, Brodhead
Dunwiddie Livestock, Juda
*Don Eilers, Marshfield
Ellsworth N.F.O. Collection Point, Ellsworth
*Equity Coop Livestock Sales Ass'n., Bonduel
*Equity Coop Livestock Sales Ass'n., Johnson Creek
*Equity Coop Livestock Sales Ass'n., Monroe
*Equity Coop Livestock Sales Ass'n., Ripon
*Equity Coop Livestock Sales Ass'n., Sparta
Equity Coop Livestock Sales Ass'n., West Salem
Grant County Livestock Exchange, Hazel Green
Leo Hennessey & Son, Shullsburg
Leo Hennessey & Son, Cuba City
*Iowa County Livestock Market, Dodgeville
Theodore Lipke, Avalon
*Midwest Livestock Producers Coop., Marion
*Midwest Livestock Producers Coop., Ettrick
*Midwest Livestock Producers Coop., Shullsburg
*Midwest Livestock Producers Coop., Monticello
*Midwest Livestock Producers Coop., Fennimore
*Midwest Livestock Producers Coop., Francis Creek
*Midwest Livestock Producers Coop., Lomira
Milwaukee Stockyards, Milwaukee
* Tim Orr Livestock Market, Weyauwega
* Peshtigo Livestock Market, Peshtigo
* Gordon Peterson, Waupaca
* Charles Pufahl Market, Paupaca
* Lawrence Richter, Rice Lake
Rock County Reload Market, Hanover
* Donald Schwebs Market, De Forest
* Haulis E. Simon, New Richmond
Emil Treuthardt, Juda
* Waupaca Feeder Pigs, Scandinavia
* Wisconsin Feeder Pigs, Blue Mounds
* Wisconsin Feeder Pigs, Boltonville
* Wisconsin Feeder Pigs, Francis Creek
* Wisconsin Feeder Pigs, Galesville
* Wisconsin Feeder Pigs, Lancaster
* Wisconsin Feeder Pigs, Waupaca
* Ray Wolosek, Jr., Wisconsin Rapids
* Philip C. Ziegler Livestock Market, Appleton

Wyoming

* Douglas Livestock Exchange Co., Douglas
* Gillette Livestock Exchange, Gillette
* Greybull Livestock Auction, Greybull
Pierce Packing Company Buying Station, Powell
* Powell Auction Market, Powell
* Sheridan Livestock Exchange, Sheridan
* Stockgrowers Livestock Auction, Worland
* Stockman Livestock Auction, Torrington
* Torrington Livestock Commission Co., Torrington
* Stockman's Livestock Auction, Torrington

(Sec. 2, 32, Stat. 792, as amended; secs. 4 and 5, 23 Stat. 32, as amended; sec. 1, 75 Stat. 481; sec. 1, 32 Stat. 791, as amended; secs. 3 and 4, 33 Stat. 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132 (21 U.S.C. 111–113, 114g, 120, 125, 126, 134b, 134f; 37 FR 28464, 28477; 38 FR 19141))

Effective date. The foregoing notice shall become effective on January 29, 1980.

Done at Washington, D.C., this 22nd day of January 1980.

R. P. Jones,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 80-2573 Filed 1-28-80; 8:45 am]

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federal register

Tuesday
January 29, 1980

Part III

Department of Health, Education, and Welfare

Food and Drug Administration

Infant Formulas; Public Meeting and Public Hearing

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Part 105

[Docket No. 80N-0025]

Infant Formulas; Public Meeting and Public Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice of Meeting and Public Hearing.

SUMMARY: The Food and Drug Administration (FDA) announces two proceedings, an open public meeting and an informal public hearing, to consider the need for new or revised regulatory requirements regarding the manufacture, processing, labeling, nutrient composition, and clinical testing of infant formulas. These issues are under consideration primarily because of recent incidents of infant illness associated with an insufficiency of chloride, an essential nutrient, in certain soy protein-based infant formulas.

DATE: The public meeting will begin at 9 a.m. on February 19, 1980, and will be continued on February 20, if necessary.

The public hearing will begin at 9 a.m. on March 12, 1980, and will be continued on March 13, if necessary. Written notices of participation must be received by February 28, 1980. Applications for reimbursement by February 25, 1980.

ADDRESS: Both proceedings will be held in the main auditorium of the HEW Bldg., 330 Independence Ave. SW., Washington, DC 20201.

Although not required, written notices of participation in the public meeting will be useful to FDA for planning and conducting the meeting and should be sent to the contact person indicated in this notice.

Written notices of participation in the public hearing are required. Written notices of participation and applications for reimbursement should be submitted to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Victor P. Frattali, Bureau of Foods (HFF-202), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-245-1561.

SUPPLEMENTARY INFORMATION: Recently, a major manufacturer of soy protein-based infant formulas initiated reformulation procedures which resulted in products containing an inadequate amount of chloride, an essential nutrient. In late July and early August 1979, a number of cases of hypochloremic metabolic alkalosis, an abnormal condition generally characterized in infants by a failure to thrive, were found by several pediatricians to be associated with prolonged exclusive use of the chloride-deficient soy protein-based infant formulas. In an attempt to prevent the recurrence of this type of problem, FDA is convening a public meeting and a public hearing to discuss, among other things, the types and frequency of tests which infant formula manufacturers should conduct to ensure product safety and quality, the adequacy of the nutrient composition of infant formulas and the need for clinical testing before marketing new infant formulas of following reformulation of existing infant formulas. Testimony and other information derived from these public proceedings will be used to assist FDA in developing proposed quality assurance and quality control regulations for infant formulas, revising the existing regulation concerning nutrient composition of infant formulas (21 CFR 105.65), and considering the matter of clinical testing of infant formulas. Materials related to the issues involved in these proceedings are on file with the Hearing Clerk, Food and Drug Administration.

A brief background paper on the history, safety, composition, and regulatory scheme for infant formulas is being prepared by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology under contract with FDA, and will be available at these proceedings. Requests for advance single copies of the background paper may be addressed to the contract person indicated above, and will be honored as soon as the paper is available.

The Committee on Nutrition of the American Academy of Pediatrics, also under contract with FDA, has been requested to review the need for revision of its 1976 guidelines on the nutrient characteristics of infant formulas (*Pediatrics* 57:278-285, 1976) and to provide their views on the need for clinical testing of new and reformulated formulas. Receipt by FDA of the results of these reviews is anticipated before the public meeting.

Public meeting. The public meeting will be held in accordance with Part 10 of the FDA procedural regulations (21 CFR 10.65(b)) and will be open to all interested persons. The meeting is scheduled to start at 9 a.m. on February 19, 1980, in the auditorium of the HEW Bldg., 330 Independence Ave., SW., Washington, DC 22201, and will be continued on the following day, if necesssary, to accommodate full participation by all interested parties. This meeting will be transcribed and will be chaired by Dr. Sanford Miller, Director, Bureau of Foods, FDA. The issues for consideration are being limited to: quality assurance and quality control procedures, and processing unit operations in the manufacture and packaging of infant formulas (liquid and dry); the need for clinical testing of new and reformulated products; and the desirability of open dating labeling requirements. FDA is solely interested in seeking information from individuals or organizations on current practices and needs, including benefits and limitations, for the topics indicated above. A few brief presentations from the public, the medical community, and industry may be solicited by FDA to open the meeting. The greater part of the time allotted for the meeting, however, will be open for comment by consumers, trade associations, industry representatives, the scientific and medical community, and any other interested party. Although not required, written notices of participation will be most helpful for determining equitable time allotments among those who wish to present their views.

Persons who desire to make presentations are urged to notify the contact person at the address and phone number given above by close of business Friday 15, 1980, and indicate the amount of time desired. A maximum of 5 to 15 minutes per presentation may be imposed unless more time can be justified. Although not mandatory, FDA encourages presubmission of the written texts of oral presentations. Although FDA will schedule presentations of those participants who request to participate in advance, ample time will be provided for presentations by all individuals, whether or not prior notification of their intent to participate has been received.

Public hearing. The informal public hearing will be held in accordance with Part 15 of the FDA procedural regulations (21 CFR Part 15). The hearing is scheduled to start at 9 a.m. on March 12, 1980, in the auditorium of the HEW Bldg., 330 Independence Ave., SW., Washington, DC 20201, and will be continued on the following day, if necessary. The issues for consideration at the hearing are being limited to the adequacy of the current nutrient composition of infant formulas and whether revisions of the existing regulation in Part 105 on infant foods (21 CFR 105.65) are necessary. FDA is

seeking comment, particularly scientific justification, for changes in the current regulation.

Persons desiring to make an oral presentation at this hearing or who desire to submit a written statement must file a written notice of participation by February 29, 1980, with the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857. The notice of participation should be identified with the Docket No. 80N–0025 and contain the following information:

1. Name, address, and telephone number of person desiring to make a presentation and/or to submit written comments;

2. Business or organizational affiliation, if any;

3. Topic(s) of presentation; and

4. Number of minutes required for an oral presentation (maximum of 15 minutes, unless more time can be justified).

A schedule of presentations for the hearing will be mailed to each person who files a notice of participation and will also be available from the Hearing Clerk. Time permitting, persons not formally scheduled to make a presentation may be allowed to make a presentation at the discretion of the presiding officer. Individuals and organizations with common interests are urged to consolidate their presentations. Formal written statements or extensions of remarks (preferably four copies) may be presented to the presiding officer on the day of the hearing for inclusion in the hearing record of this proceeding.

FDA has established a pilot program for financial assistance to participants in certain agency proceedings, including hearings under Part 15. This program is described in regulations that were published in the **Federal Register** of October 12, 1979 (44 FR 59174) and that became effective on October 25, 1979 (44 FR 72585; December 14, 1979). Subject to the availability of funds and other factors, FDA may reimburse participants meeting the criteria set forth in these regulations for certain costs of participating in this proceeding. For more information regarding the reimbursement program, contact Ron Wylie, Office of Consumer Affairs (HF–70), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2932. Although reimbursement may be made available for hearings, such as this, under Part 15, the program's priority will be given to funding participation in formal evidentiary public hearings under Part 12 or public boards of inquiry under Part 13 of FDA's regulations (21 CFR Parts 12 or 13).

Applications for reimbursement must be filed by February 25, 1980, in accordance with § 10.210 (44 FR 59186; October 12, 1979).

Dated: January 23, 1980.

Jere E. Goyan,

Commissioner of Food and Drugs.

[FR Doc. 80–2829 Filed 1–28–80; 8:45 am]

BILLING CODE 4110–03–M

federal register

Tuesday
January 29, 1980

Part IV

Department of Labor

Occupational Safety and Health Administration

Servicing Multi-Piece Rim Wheels; Procedures

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Servicing Multi-Piece Rim Wheels

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

ACTION: Final standard.

SUMMARY: By this final standard the Occupational Safety and Health Administration (OSHA) establishes procedures for the servicing of multi-piece rim wheels fitted on vehicles used on and off highways. Multi-piece rim wheels consist of two or more detachable rim components, one of which is a side or locking ring designed to hold the tire on the rim base when the tire is inflated. These wheels are used on motor vehicles, such as trucks, trailers, buses and motor homes, for either on-highway or off-highway usage. The major hazard in servicing multi-piece rim wheels is the possibility of an employee being struck by a wheel component which has been thrown from an inflated wheel during an unintended explosive separation. This standard includes requirements for training of all tire servicing employees, establishment of a safe practice procedure for servicing multi-piece rim wheels, use of restraining devices and criteria for interchangeability of rim components.

EFFECTIVE DATE: This standard will become effective April 28, 1980.

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SUPPLEMENTARY INFORMATION: For additional copies of this regulation contact: OSHA Office of Publications, U.S. Department of Labor, Room S-1212, Washington, D.C. 20210, Telephone: 202-523-8677.

A. Background

1. Multi-piece Rims

Multi-piece rims are used in conjunction with tube-type tires, most frequently on trucks, tractors, buses, trailers, campers and off-highway type vehicles. Multi-piece rims consist of two or more components which, when assembled and the tire is inflated, are held together by the force of the air pressure in the tire. Multi-piece rims may consist of up to five or six components on large wheels for off-the-road vehicles.

A multi-piece rim consists of a rim base, the largest part of the metal structure supporting the tire, and one or more detachable side rings serving as a flange to keep the inflated tire on the rim base. The rim base, side ring, lock rings, and tire are collectively referred to as a "wheel."

For multi-piece rims, the rim base and the side or locking rings are the primary components which support the tire's bead. This is referred to as a split side ring in two piece assemblies and a solid side ring and split lock ring in three piece assemblies. In the case of two piece assemblies, the circumferentially continuous outer small component is termed a side ring. (See Society of Automotive Engineers, SAE J393, which defines rim terminology.)

There are basically four multi-piece wheel designs. In the first design (exemplified by Goodyear's "KW" type rim) the rim base is split radially and the side ring is circumferentially continuous. In the second design (exemplified by Firestone's, Kelsey's and Budd's "RH5°" and "KL" rims) both the rim base and the side ring are circumferentially continuous. The third type rim (exemplified by Goodyear's "LW" type rim) is a two piece assembly composed of a demountable rim base and a split side ring. The fourth design in the larger sizes (exemplified by Firestone's "Commander 5°" rim) is a three piece assembly composed of rim base, a side and a lock ring.

2. History of the Regulation

OSHA concern for developing a standard to protect employees engaged in servicing multi-piece rim wheels was initiated by an internal report of "Hazards Not Covered by a Standard" from OSHA field personnel in the Louisville, Kentucky office. This was followed by a similar report from OSHA field personnel in Columbus, Ohio.

Since these reports were received, OSHA has monitored reports of accidents and injuries related to multi-piece rim wheels. In addition, petitions for the promulgation of a standard relating to the servicing of multi-piece rim wheels were submitted to OSHA in 1976 by the Rubber Manufacturers Association (RMA) and the Firestone Tire and Rubber Company. The National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT), stated its support for the promulgation of such a standard and has, by written request, urged OSHA to regulate the servicing of multi-piece rim wheels in the workplace.

NHTSA is currently investigating the safety hazards associated with the use of multi-piece rims. It issued an advance notice of proposed rulemaking on March 5, 1979 (44 FR 12072) to determine whether to require certain performance levels for tire and rim component retention and whether to ban the production of multi-piece rims. NHTSA's actions are not directed at working conditions of employees and therefore are not an exercise of statutory authority by a federal agency under Section 4(b)(1) of the Occupational Safety and Health Act which would preempt action by OSHA.

NHTSA does not intend that its regulations displace OSHA's coverage of tire servicing personnel. NHTSA has articulated this intent by that agency's recognition that numerous accidents occur because of improper servicing, coupled with NHTSA's formal request that OSHA promulgate a standard for servicing of multi-piece rims in the workplace [Ex. 2: (30-17)].

On April 24, 1979, after a review of the available data, OSHA published a proposed permanent standard for the servicing of multi-piece rim wheels (44 FR 24252). The proposal contained requirements for training of all tire servicing employees, establishment of safe operating procedures for servicing multi-piece rim wheels, use of restraining devices and criteria for serviceability and interchangeability of rim components. A period for receipt of written comments on the proposed standard and issues raised therein was established, extending through July 6, 1979.

To assist participants in preparing their written comments and to give interested persons an opportunity to obtain clarification of the proposal, OSHA scheduled a public meeting for June 19, 1979, more than two weeks prior to the end of the comment period. During the meeting several participants submitted further comments on the proposed standard. A transcript of the meeting was prepared and is part of the record of this rulemaking.

Fifty-nine written comments were received by the end of the comment period. Most of the comments favored the adoption of the proposed standard in principle. A number of comments offered recommendations for minor modification of certain of the provisions of the proposal. There were no requests for a hearing under section 6(b)(3) of the OSHA Act.

A Regulatory Assessment was prepared in accordance with Executive Order 12044 (43 FR 12661, March 24, 1978), and was made available to the public, as noted in the preamble to the

proposed standard (44 FR 24246). (See Section D, Regulatory Assessment, below). Opportunity was given to interested persons to comment on the subject matter and contents of that report.

This final standard on servicing of multi-piece rim wheels is based on a full consideration of the entire record of the rulemaking proceeding including the materials relied on in the proposal, the transcript of the public meeting, and all written comments and exhibits received. All materials in the record are available for public review and copying at the OSHA Docket Office, Room S6212, U.S. Department of Labor, 3rd Street and Constitution Avenue, NW., Washington, D.C. 20210, telephone (202) 523–7894.

3. Hazards

Although accidents may occur at any time when handling multi-piece rims, the primary danger arises during the process of inflating the tire. An inflated tire is a high pressure vessel; for example, a popular size 10.00 x 20 tire when inflated at 105 pounds per square inch gauge (psig) (7.38 kg/cm²) creates a force in excess of 40,000 pounds (18,144 kg) against the rim flange. This force, according to test data provided by the Insurance Institute for Highway Safety (IIHS), accelerated a locking ring to 130 mph (209 km/hr) and raised a 215 pound (97.5 kg) anthropomorphic dummy 10 feet (3.05 m) upward from a wheel resting horizontally on the pavement.

The principal hazard in mounting, installing, storing, and handling multi-piece rim wheels arises when they are assembled together and the unit is inflated to its required pressure or beyond. If a component is not set or seated in its proper position in relation to the other components, the rings or the removable flanges may separate violently from the assembly. Such separation may cause lock rings, or other components to be hurled violently through the air, with the likelihood of striking a person and causing serious injury or death. Such accidents are most likely to occur while a tire that has just been mounted on a rim is being inflated or immediately after it has been inflated.

Accidents that have caused the greatest number of injuries appear to have been due to improper mounting, use of damaged parts, or mismatch of component parts. Accidents may also occur because of overinflating the tire or striking the lock rings or rims with a hammer. Many accidents appear to have resulted from a lack of knowledge on the part of the employee servicing the tire as to proper handling techniques and the dangers involved in servicing multi-piece rim wheels. In written comments, the State of North Carolina said, "A large portion of the accidents, injuries, and fatalities related to multi-piece rim wheels are traceable to untrained, inadequately trained, or improperly trained personnel." [Ex. 3: (21)]

4. Accident Data

Incidents which result in a serious or fatal injury to a mechanic engaged in servicing a multi-piece rim wheel often are only reported locally. Therefore, the data available is believed to be limited to only a portion of the total injuries and fatalities which occur. The May 1974 issue of "Learn and Live," a monthly publication of the Industrial Safety Division of the Florida Department of Commerce, reported that the fatality toll in Florida from servicing multi-piece rims had risen to eleven over a period of ten and one half years. By the end of 1978, the toll had risen to fifteen.

On September 28, 1973, NHTSA's Office of Defects Investigation issued a report on its investigation of multi-piece rim failures (ODI Case No. 215). This report covered 29 accidents due to improper assembly procedures that resulted in serious injury or a fatality, involving KB and KW type wheels. The report indicated that many of the shop personnel who worked with the multi-piece rims in question may not have been aware of all the safety precautions to be followed when mounting or demounting these wheels.

On December 21, 1973, NHTSA issued a report on its investigation of RH5° wheel failures (ODI Case No. 150) that included investigation of 81 incidents which resulted in serious injury or fatality to employees engaged in servicing these wheels. This report recommended several courses of action which included discontinuance of the manufacture of this type of wheel; development and distribution of a poster illustrating the safety precautions to be used during multi-piece rim wheel assembly; and development and distribution of a matching chart showing the compatibility of parts of multi-piece rim wheels produced by different manufacturers. (NHTSA developed a safety precautions chart, and multi-piece rim wheel matching chart, after their report was issued. The contents of these charts are utilized by OSHA in the training and servicing provisions of this final standard.)

In addition to the pre-1973 accident reports supplied in the NHTSA investigations OSHA's Office of Management Data Systems and Statistical Coordination received reports of 10 fatal accidents involving servicing of multi-piece rim wheels which occurred during 1976 and 1977. These data were compiled from workers' compensation reports from 10 states.

Data supplied by RMA which are listed in Table 3–2 of the Regulatory Assessment indicate that 13% of all multi-piece rim accidents result in fatalities, 63% result in injuries and property damage, and no-injury accidents constitute the remaining 24% of the 165 cases reported for the years 1972–1975. Similarly, IIHS data indicate that fatalities constitute 18%, injuries 67% and property damage and no-injury accidents represent the remaining 15% of the 241 cases reported for the years 1968–1977. Neither data base is considered totally representative of the nation because the actual number of split-rim accidents is not ascertainable, nor can the annual frequency of occurrence be predicted with a high degree of accuracy. Since the reported accidents do not represent a statistical sampling, but are only cases known to each organization, these numbers are considered to represent a lower limit of accident experience.

A review of accident descriptions provided by IIHS indicates that 53% of accidents under OSHA jurisdiction have occurred while the tire was being mounted/demounted, 31% while the wheel was being installed/removed and the remainder (16%) when the wheel was being handled or moved. Five of the 241 accidents that were evaluated, occurred while a safety cage or restraint was being used. A breakdown of the 16% category of accidents which occurred during handling indicates that numerous accidents occurred while moving an inflated tire in the service area, measuring tire pressure, removing the valve core or simply while an inflated tire was stored at rest. In some cases, multi-piece wheels being serviced exploded and either injured or killed experienced tire service personnel. However, it would appear that in many cases, these employees had never received any training, nor had they ever been informed of the inherent hazards and the safety practices to be followed.

Although the data presented may not be statistically representative of all multi-piece wheel accidents, they provide an insight into the relative frequency of fatalities and injuries. Injuries have not been classified into categories of severity, but an examination of IIHS accident reports suggests the existence of a very high proportion of fatalities and severe injuries, including many permanent disabilities.

Until now, there have been no specific OSHA general industry standards that apply to the handling and servicing of multi-piece rims. In the construction

safety and health standards, § 1926.600(a) requires that a tire rack, cage, or equivalent protection be provided and used when inflating tires on multi-piece rims. Section 1926.600 is not affected by the standard being published today.

B. Summary and Explanation of the Standard and Major Issues

The following section discusses the individual requirements of the multi-piece rim wheel standard, including analysis of the major issues raised during the proceeding, the record evidence and the policy considerations underlying the various provisions of the standard.

The final standard sets requirements for training of all tire servicing employees, safe practice and procedures and the use of restraining devices. These and other portions of the standard, including those on criteria for interchangeability of rim components have been revised and clarified from the proposal as described in detail below.

The language of the standard essentially follows that of the proposal except for revisions based on OSHA's review of the entire rulemaking record, including written comments and testimony submitted at the public meeting.

Virtually all persons who participated in the rulemaking by submitting comments and/or appearing at the public meeting agreed with OSHA's determination that the principal causes of accidents involving multi-piece rim wheel separations could be eliminated by proper training of employees, availability and utilization of restraining devices and necessary tools and equipment and adherence to recommended safe procedures.

(1) *Scope-paragraph (a).* This standard is intended primarily to provide protection to employees engaged in servicing of multi-piece rim wheels used on trucks, buses or other large vehicles. It applies also to the servicing and maintenance of all other multi-piece rim wheels, wherever they are used. Workplaces covered by the construction industry standards are subject to § 1926.600, and are not intended to be covered by the general industry standard published today.

The proposed standard would only have covered the servicing of rims 16 inches or greater in diameter. However, the rulemaking record clearly indicates that the danger of an unintended explosive separation of a multi-piece rim wheel exists for rims less than 16 inches as well.

The Michigan Department of Labor reported one fatality and three severe injuries which occurred when multi-piece rim wheels less than 16 inches (40.6 cm) in diameter were being serviced. [Ex. 3:(8)]. In addition, IIHS stated in its comments regarding the scope of the proposal that

> the concept that smaller multipiece [sic] rims are somewhat different, is generally not true. All multipiece [sic] rims depend upon the same balance of interlocking metal components. [Ex. 3: (23)]

Comments were submitted documenting the general use of smaller, multi-piece rim wheels on trailer which transport cars, livestock and furniture, as well as "bob-tailed" tractors used to haul mobile homes. [Ex. 3:(13)]. Several manufactures, including The National Wheel and Rim Association and Firestone Tire and Rubber Company, also recommended changes in the scope of the standard, based on the fact that 15 inch (38.1 cm) rims are used in significant numbers. [Ex. 3:(18); 3:(33); 3:(39)] Accordingly, the standard's scope has been modified to apply to the servicing of all multi-piece rim wheels without regard to their size, as along as they contain a lock ring or side ring. This provision reflects the determiniation that it is the assembly of multiple pieces and not the size of the wheel which is relevant to the explosion hazard.

Several comments recommended that the scope of the standard should include aircraft wheels, which consist of more than one piece. [Ex. 3:(5); 3:(6)] However, a review of manufactures' descriptive rim and wheel material and field visits to commerical and military airports have revealed that aircraft wheels are not similar to the "multi-piece rim wheels" covered by the standard. Aircraft wheels consist of a two-piece disk design with mounting bolts to hold the two halves together. [Ex. 3:(37)] They do not have locking rings, and do not use the air pressure of the tire to hold the rim components together. In addition, different tools and procedures are required for bolted wheels. Therefore, bolted wheels do not present the type or degree of explosion hazard addressed by this standard. [Ex. 3:(44)] This standard will only cover multi-piece rim wheels containing a lock ring, or side ring and base. In order to clarify the scope in this regard the proposed definition of multi-piece rim wheels is being revised in the final standard. (See discussion of paragraph (b) "Definitions", below).

(2) *Definitions-paragraph (b).* The definitions are stated as commonly used in the tire industry; however, some have been modified slightly to accommodate the regulatory nature of this standard.

Throughout the relevant literature, the term "mounting" has two different meanings. In one case, "mounting" a tire means assembling a tire with an appropriate rim and tube, while in the other case it means attaching a wheel to an axle. A review of nationwide accident reports indicates that the word "mounting" is used in both senses throughout the United States. For the purposes of this standard, OSHA uses the terms "mount and demount a tire" to mean the assembly and disassembly of a wheel and its components. "Install and remove a wheel" means to attach and remove an assembled wheel to/from a vehicle axle hub. This choice of definitions lessens the possibility of confusion associated with the "demounting a tire" vs. "dismounting a wheel" usage, while still conforming to NHSTA and tire manufacturer terminology. The term "dismounting" is not used in this standard, but is replaced with "removal."

In order to clarify the scope of the standard, as noted above, the proposed definition of a multi-piece rim wheel is being changed. As defined in the proposal, a multi-piece rim wheel is a vehicle wheel rim consisting of two or more parts, at least one of which is detachable, designed to hold the tire in place on the rim. To clarify that this standard does not cover the types of multi-piece rim wheels that are bolted together, [Ex. 3:(4); 3:(37)], this definition is revised in the final standard to read as follows:

> "Multi-piece rim" means a vehicle wheel rim consisting of two or more parts, one of which is a side or locking ring designed to hold the tire on the rim by interlocking components when the tube is inflated, regardless of the sizes of the component parts.

The proposed definition of a "rim manual" is being clarified and amended to provide that any manual which contains appropriate instructions and safety precautions from the manufacturer or other qualified organization is acceptable as a rim manual. OSHA agrees with the comments which stated that the definition in the proposal was too restrictive, since it might have been interpreted as being limited to a publication supplied directly by the manufacturer.

The term "charts" is used in the final standard instead of the term "wall charts" because of the many formats in which the necessary information may be found. In addition, because multi-piece rim wheels are serviced frequently at remote locations away from the employer's premises, the use of the term

"wall charts" might be confusing in instances where there are no "walls" in the service area.

The proposed definition of "wall charts" was limited to the DOT wall charts on matching rim components and on safety precautions, and other publications containing the same instructions as these two charts. The definition is revised in the final standard to clarify that the term includes all publications, whether or not published by DOT, which contain at a minimum the same instructions as the DOT publications, for the type of multi-piece rim wheel being serviced.

Several comments stated that the proposed definition of the "service area" was too narrow, in that it did not take into account the remote locations (away from the employer's premises) where multi-piece rim wheels are routinely and frequently serviced. OSHA recognizes that the servicing activity at these remote locations is at least as hazardous as at the employer's premises, that the operations conducted are essentially the same, and that the same training, tools and procedures are applicable. In view of the above, the final standard has been modified to define a service area as any location where a multi-piece rim wheel is serviced. OSHA recognizes that this change in the definition of service area may create a greater demand for portable restraining devices. However, such devices are readily available. [Ex. 2:(3); 3:(21); 3:(59)] (See Regulatory Assessment pp. 19–23.)

The term "trajectory path" has been redefined. A review of the accident reports has revealed that because of the nature of an explosive separation of a wheel, the direction of the separated rim components is not entirely predictable. Therefore, the proposed definition has been changed to indicate that the trajectory is the potential path a component may be expected to follow and that it may deviate from the perpendicular. Likewise Appendix A has been changed to reflect possible trajectories but in no way is meant to limit the trajectory to those illustrated.

The term "trajectory path" is being revised to "trajectory," since the added word "path" would be redundant.

(3) *Training—paragraph (c).* The standard requires every employee who services multi-piece rim wheels to be trained by the employer in proper techniques and practices applicable to the type of wheel being serviced. Training is required because many tire mechanics do not understand the potential danger involved in servicing multi-piece rim wheels, and because of the need to remind employees of the hazards and appropriate measures. The need for training is substantiated by a review of accident cases in which there appears to be a lack of knowledge of safe operating practices.

Firestone Tire and Rubber Company said, "In our view, training is the only method to ensure the safety of those who will be working with truck and bus tires and rims." [Ex. 3:(33)]

OSHA considers that training, in conjunction with the use of a restraining device and clip-on chuck, can contribute significantly to a reduction of accidents.

This standard does not specify the details of the training program, but simply requires the development and maintenance of employee proficiency in given elements of servicing. A mechanic's level of proficiency can be established by demonstration of his familiarity with and ability to use the information contained in the charts and in this standard.

The training provisions of the standard are stated in performance language, allowing the employer flexibility in complying with the requirement for training. This places the burden of providing adequate training and the responsibility for evaluating the employee's proficiency solely on the employer. Employees are adequately trained if they have thorough knowledge of and can apply the information contained in the charts and in this standard.

The proposal contained no explicit requirement that an employee who demonstrates his ability to service multi-piece rim wheels must maintain that ability. This omission is remedied in the final standard. It is clear that an employee must maintain his ability to service multi-piece rim wheels as long as he is involved in this work.

Virtually all of the comments concurred that proper training of employees is a necessary prerequisite to a safe operation. Goodyear Tire and Rubber Company stated that

> proper and thorough training is essential toward achieving a reduction in the rate of accidents. In view of the consequences of improper handling and technique, this training must be as specific as possible, and should be embodied within a well-defined procedure. [Ex. 3:(40)]

Others commented that specific training criteria be developed. Suggestions included on-the-job training; requiring a refresher course once a year; maintaining a record of training for each employee; and having employees sign a statement acknowledging receipt of this training. [Ex. 3:(18); 3:(21); 3:(25)]

OSHA has considered the fact that some employees may need relatively little training and practical experience to grasp the proper methods, techniques and practices and would need little or no periodic refresher training. Others may require additional initial training and periodic refresher training to retain their knowledge of safe methods and procedures.

In the final standard, the training requirement has been revised to assure that an employee receives sufficient training to enable him to safely perform the tasks which are involved in servicing multi-piece rim wheels. In addition to the initial training required in the proposal, the final standard places a continuing obligation on the employer to evaluate the capability of his employee and conduct additional training as necessary to assure that the employee maintains his competence at servicing multi-piece rim wheels. This not only insures that the initial training was effective, but also provides a means of determining the need for remedial or refresher training.

(4) *Tire servicing equipment—paragraph (d).* The unintended explosive separation of multi-piece rim wheel components is the primary cause of most occupational accidents associated with these wheels. A majority of the accidents under OSHA jurisdiction have occurred while the tire was being inflated following assembly. Accordingly, a significant reduction of injuries can be attained through use of a restraining device, such as a cage, specifically designed to protect employees from lethal airborne wheel components. An accepted practice for employee protection is to use a cage surrounding the wheel in such a manner as to prevent any wheel component from being hurled beyond the cage boundaries. The standard requires use of a restraining device while inflating a tire off the vehicle, except that a tire may be inflated to 3 psig (.21 kg/cm^2) without a restraining device for the sole purpose of seating the wheel components. (See discussion on safe operating procedures, paragraph (f)).

Due to the magnitude of forces associated with a wheel separation, strength requirements for restraining devices are necessary. Specifying these requirements necessitates knowing the amount of potential energy stored in the compressed air of a tire that will be transferred to the restraining device during a separation. For example, an analysis of high speed film in which the rim base gutter cone angle was machined to favor an explosive separation indicated that 8,200 ft.-lbs. (11,119 Joules) of energy was released when a 10.00 x 20 test tire was inflated to 105 psig (9.38 kg/cm^2). Calculations of the total pneumatic energy in the tire

indicated 75,000 ft.-lbs. (101,700 Joules) of available potential energy. After the energy transfer is determined for a particular size wheel, selection of an appropriate factor of safety will lead to a properly-designed restraining device for use with that wheel.

OSHA proposed that the generally accepted minimum factor of safety, 1.5 for machinery, be used for the largest wheel that a restraining device could hold. Several comments recommended that such design details for specific restraining devices be certified by professional engineers. [Ex. 3: (10); 3: (35); 3: (40);]. Another comment recommended that the design be specified only by the performance objective rather than by detailed design specifications which may become obsolete as technology changes. [Ex. 3: (47)]

The proposed requirement for restraining devices to be capable of withstanding a force of 150% of the maximum tire size that the device can hold is revised in the final standard. Although a safety factor is necessary, it does not appear practical to require an employer to have a cage designed to withstand an impact several orders of magnitude beyond that which would ever be encountered during its use. Some restraining devices are built so that their capacity (the size of tire capable of being held) is greater than the size tire actually used in the device. This is usually done to ease the job of manual tire handling by providing extra room within the device. If the device had to be strong enough to restrain the explosive force of any tire capable of being held in the device, as required in the proposal, the device might be unnecessarily heavy, thereby exposing the employee to other hazards during its manual handling. Since the device can be rated for a maximum size tire which provides a margin of safety, the final standard has been written to provide that the restraining device must be able to withstand at a minimum 150% of the force of an unexpected wheel separation for the tire being handled, whether or not that wheel is the maximum size the device can hold. This provides the same margin of safety (1.5) as proposed, but more accurately reflects the actual usage of the restraining device in applying that margin.

In its proposal OSHA proposed to permit use of machinery or equipment other than cages as restraining devices. At that time the agency solicited information as to the availability and effectiveness of such other types of restraining devices.

Several comments supported the effectiveness of the cage type restraining device, including the portable cages currently available, but stressed that the standard should not restrict technology in developing other methods of restraint. [Ex. 3: (18); 3: (33)]

Ten comments were received on the issue of whether hydraulic lift rails are adequate restraining devices. Four were totally opposed to the use of hoist rails, whereas the others stated that they could be used under certain limited circumstances.

Those that were opposed stated that the use of hoists for this purpose is not safe, and that a hoist rail would have to be extensively modified to be used effectively and would provide only limited opportunity for use. [Ex. 3: (21); 3: (25); 3: (47)] Those who said a hoist could be used under certain circumstances contended that a hoist rail is better than nothing, but emphasized that it should be used only if it meets acceptable standards, including adequate size, strength, location and positioning [Ex. 3: (40); 3: (47)].

OSHA recognizes that most hoist rails have not been designed or specifically modified for use as restraining devices and that they are therefore unacceptable for this purpose. However, the final standard is written as a performance standard so as not to restrict the use of any specific type of device, including hoist rails, provided that the device is specifically designed to restrain multi-piece rim wheels. Whichever device is used must be capable of restraining the components of a multi-piece rim wheel during explosive separation, and must meet the 150% margin of safety.

The standard prohibits the use of any restraining device with cracks in welds or components, or with bent or broken components, because such defects may cause equipment failure when subjected to dynamic loading. Stress concentrations around some cracks may cause the 1.5 factor of safety to be exceeded for the material; thus, if a cracked member of a restraining device is loaded to its original design value, the material at the apex of the crack may become overstressed, resulting in failure of the device.

The provisions for removal of damaged restraining devices from service are expanded in the final standard to establish additional, more specific criteria for such removal. OSHA has determined that there are defects other than cracks in welds or components which would also affect the ability of the restraining device to perform its intended function. Components which are broken or bent due to mishandling, abuse or a prior accident, or are excessively corroded (pitted) cannot be relied upon to perform their intended function. Therefore, the final standard requires that restraining devices with these defects be removed from service.

Many of the defects which would make the restraining device incapable of performing its function can be remedied or repaired once the device is out of service. However, it is essential that the repaired device be examined by a qualified person in order to assure that the device's restraining capability has not been impaired. To insure that the restraining device is capable of performing its intended function, the standard requires that, after repairs are made, the device must be checked and certified as meeting the strength requirements of paragraph (d)(1)(i) by the manufacturer or a registered professional engineer before being placed back into service. As the designer of such equipment, the manufacturer is capable of determining a satisfactory method of repair. In addition, since the laws of most jurisdictions regulating the registration of professional engineers set standards of conduct and require levels of competence, it has been determined that allowing certification either by a professional engineer or by the manufacturer will permit the use of repaired equipment while assuring that repairs do not compromise the strength of the restraining device.

As stated in the proposal, inflation of tires installed on vehicles presents another major safety hazard. Many of the comments expressed concern that a restraining device was needed which could be used both during inflation of tires installed on vehicles and during handling of a wheel after inflation, but before its installation on a vehicle.

Most of the comments which addressed this question indicated that there is no practical method to provide such protection on the vehicle. [Ex. 3: (18); 3: (25); 3: (33); 3: (35); 3: (40)]

Other comments also indicated that there is no satisfactory restraining device for use while transporting and storing tire and wheel assemblies. [Ex. 3: (21); 3: (35); 3: (39)].

As indicated by the North Carolina Department of Labor in their comments:

> Although separation may occur during handling and storage between the service and installation operations, it is rare, especially if proper servicing and inspection procedures are followed. [Ex. 3: (21)]

After careful consideration, OSHA has determined that there is no practical method available to restrain wheel components while tires installed on vehicles are inflated or between the

inflation of a demounted wheel and the time the wheel is installed on a vehicle. The most practical procedure to assure employee safety during that time period is simply for the employee to minimize his exposure to the trajectory. (As noted in paragraph (f), wheels that have been driven underinflated at 80% or less of their recommended pressure or which have obvious or suspected damage to the tire or wheel components must be deflated before removal.)

The final standard requires the use of a restraining device only during the inflation of an assembled wheel off the vehicle. In order to provide protection when multi-piece rim wheels are serviced on the vehicle, the standard also requires that the employer provide equipment such as the clip-on-chuck and sufficient length of hose which permits the employee to be clear of the possible trajectory of each wheel component during inflation. During inflation and all other operations involving multi-piece rim wheels, the standard also requires the employee to stay out of the trajectory, unless the employer can show that it is necessary for the employee to be in the trajectory to service the tire.

The requirement that charts and rim manuals be made available remains largely unchanged from the proposal. The availability of current charts and rim manuals will assure ready reference for tire mechanics encountering unusual situations or rim matching problems.

In the proposed standard OSHA raised the issue as to whether a warning label for multi-piece rims should be specified. Section 6(b)(7) of the Occupational Safety and Health Act addresses ". . . the use of labels, or other appropriate forms of warning . . ." associated with employee exposure to hazards. Lock rings, side rings and rim bases, because of their size and operational use, do not lend themselves to being labeled. The manufacturer's name, size, type of rim and manufacturing date are presently required to be on each multi-piece rim in accordance with Federal Motor Vehicle Safety Standard 120. This information is imprinted into the metal components; however, due to surface rust and mud, legibility is reduced commencing with the use of the wheel. In addition, rim manufacturers claim that stamping letters into rim components creates stress raisers, a hazard in itself, and recommend that the imprinting of rim components be minimized.

Warning labels are usually affixed to equipment presenting a particular hazard. However, in this case, the majority of comments felt that the use of a warning label or tag on wheel components is impractical and infeasible. [Ex. 3: (18); 3: (33); 3: (35); 3: (40); 3: (47)]. Other comments stated that warning labels would be unnecessary if the training of those servicing multi-piece rim wheels was adequate. [Ex. 3: (56)]

In light of the technical and practical problems as noted in the record, OSHA has concluded that warning labels should not be required in this standard. It is OSHA's feeling that the required training will identify the potential hazards and dangers of servicing multi-piece rim wheels and will reinforce the prescribed correct and safe procedures to be followed.

The proposed requirement which specified that proper tools be used for repair or servicing of wheels is being revised because of confusion as to what constitutes a proper tool. A review of several rim manuals has shown that each one contains lists or otherwise identifies the safest, most acceptable tools for use in servicing the particular multi-piece rim wheels covered in the manual. The final standard, therefore, requires that only tools listed or identified in the respective rim manuals be used for servicing.

(5) *Wheel component acceptability—paragraph (e).* The standard requires that wheel and rim components not be interchanged between different manufacturers' wheel models, except as provided on the charts.

The proposal would have required that side or lock rings that are bent out of shape, corroded or broken not be used and that they be removed from the service area, and that any rim component containing visible cracks be removed from use and discarded.

After review of the proposal, OSHA recognized that the criteria for rejection of wheel components due to "corrosion" were not clear. Many wheel components in use will exhibit some surface rust when exposed to the rigors of usage but there is little likelihood that this surface rust, when not on a mating surface of the rim, will adversely affect the performance of the wheel. However, if the parts become so rusted as to actually affect internal grains of the metal structure (pitting the metal surface), OSHA doubts the continued reliability of the component. Therefore, the final standard clarifies this point by prohibiting the use of components which are pitted by corrosion, bent out of shape, or broken.

Wheel components must be inspected prior to assembly. The final standard, as did the proposal, requires that the mating surfaces of the rim gutter, rings and tire must be free of any surface rust, scale or rubber build-up prior to assembly and inflation.

Although the proposal stated that damaged components, be removed from the service area, some comments did not feel that was sufficient [Ex. 3: (18); 3: (25); 3: (31); 3: (40)]. The final standard goes further and requires that once components are damaged so as to require their removal from service, they are to be rendered unusable and discarded. OSHA believes that this will eliminate the possibility of inadvertent substitution of one unserviceable part for another unserviceable part and that adherence to this procedure will significantly reduce the potential hazard in servicing multi-piece rims.

(6) *Safe operating procedures—paragraph (f).* The standard requires that every employer instruct all his employees engaged in servicing multi-piece rim wheels in the practices and procedures prescribed in these standards.

Paragraph (f)(2) of the proposal would have required all tires which were driven underinflated (presumably, even if only slightly underinflated) to be deflated to 10 psig (.70 kg/cm^2) or less before removal from the axle. However, an additional paragraph, (f)(10), stated that *all* tires must be deflated prior to removal from the vehicle axle. It is clear that these two conflicting paragraphs have caused confusion. [Ex. 3: (26); 3: (30); 3: (36); 3: (38); 3: (54)]. These provisions were drafted too broadly and did not properly reflect the agency's intent. The intent of the proposal was to provide that when tires are driven while underinflated to a point where damage to the tire and wheel may have occurred, or when such damage otherwise is known or suspected to exist, the tire must be completely deflated prior to removal of the wheel from the vehicle axle.

Several comments expressed concern that both wheels on a dual assembly would have to be deflated before removal, even if only one had been driven underinflated or exhibited damage, if the provisions of proposed paragraph (f)(10) were followed. [Ex. 3: (10); 3: (38); 3: (46)] OSHA agrees that this would be impractical and inefficient and in some cases would expose the employee to the unnecessary risk of deflating and inflating another multi-piece rim wheel.

The final standard has been clarified to state that total deflation and removal is required only for the servicing of installed multi-piece rim wheels which exhibit obvious or suspected damage to the tire or wheel components or which have been driven underinflated at 80% or less of their recommended pressure.

Accordingly, deflation of both tires on dual assemblies is required by the final standard only if both tires meet any of these conditions.

The proposed requirement for deflating a tire before demounting is amended in the final rule to specify that the deflation must be accomplished by removing the valve core. Removal of the valve core assures the complete deflation of the tire. If the valve is only pressed to release pressure, air may still remain in the tire. Removal of the valve core also allows the tube, in the event of localized deformation during the demounting process, to either exhaust or take in more air, thereby eliminating localized areas of pressure and stress on the multi-piece rim components. [Ex. 3: (20); 3: (39)]

The proposed requirement prohibiting employees from entering into the trajectory during deflation is changed in the final standard to provide that employees must remain out of the trajectory unless the employer can show that it is necessary for the employee to be in the trajectory to service the tire. It is recognized that removal of the valve core requires the employee to place his hand into the trajectory. Once the valve core is removed, the employee must stay completely out of the trajectory until the tire is completely deflated.

The proposed requirement that an employee not lean or rest his body or any equipment against the restraining device remains unchanged in the final. If a tire explodes within the restraining device, the suddenly-applied force exerted against the frame will immediately be transferred to the object or person resting against it. Except for the force absorbed by the containment of the exploding wheel components, the effects of the force upon the person or object leaning against the frame will be almost as severe as if the frame was not present. This process can be compared to a pool ball being hit by a fast moving cue ball. The energy of the rings is transferred to the tool, object or person leaning against the restraining device.

The proposed requirement that before assembly and inflation of the wheel and tire, a rubber lubricant shall be applied to the bead and rim mating surfaces to reduce sliding friction received little comment and remains unchanged in the final standard.

The proposed safe operating procedure to assure proper seating of the components has been carried forward in the final standard. After a tire has been inflated in a restraining device and while the tire is still so protected, the tire, rim and rings are to be inspected to make sure they are properly seated and locked. If further adjustment work on the rim or rings is necessary, the tire must be deflated before proceeding with any adjustment.

The proposed prohibition against hammering, striking or forcing wheel components while the tire is inflated was strongly supported by many participants in this rulemaking and therefore remains unchanged in the final standard. [Ex. 3: (23); 3: (25); 3: (31); 3: (50)]

The proposed requirement for the servicing of tires off the vehicle has been changed. The proposal would have allowed tires to be inflated to not more than 10 psig (.70 kg/cm ^{2}) outside the restraining device for the sole purpose of seating the tube, flap and tire, lock ring. This provision raised serious concern among public participants.

The Goodyear Tire and Rubber Company stated that 10 psig was more air than needed to perform the desired tasks and that a minimum amount of air (no more than 3 psig (.21 kg/cm^2)) should be put in a tire while the wheel is not in a safety cage. They stated that even 10 psig. (.70 kg/cm^2) is enough tire pressure to cause injury should a side ring not be properly seated. [Ex. 3: (40)]

The American Trucking Association also expressed concern that 10 psig (.70 kg/cm^2) was excessive and recommended a lower air pressure for seating. [Transcript (Tr): 13–14]

Based upon the concerns expressed in the comments, the allowable air pressure for seating the lock ring or rounding out the tube outside a restraining device has been reduced from the proposed 10 psig to 3 psig.

For pressures at or below 3 psig (.21 kg/cm^2), the danger of an explosive separation is minimal. The low risk of injury during the seating process must be compared to a higher risk of injury due to an explosive separation if the rings are not properly seated. When a tire is placed into a restraining device, the lock rings may slip out of the gutter, thus setting the stage for a subsequent explosive separation. Therefore, to assure proper seating of lock rings, the standard permits partial inflation outside of a restraining device, as noted earlier.

The proposal required that whenever any part of a rim base, rings or lugs is to be subjected to a high temperature heat source, such as from a welding or brazing torch, the tire must be completely deflated. This provision was intended to address those instances where heat is used to release components which are frozen due to age, rust, or defect. However, if this is done while the tire is inflated, an explosion may result because the heat increases the air pressure in the tire. [Ex. 3: (23); 3: (33)]

The practice of using heat on wheel components received serious criticism from RMA, Budd Company, and The National Wheel and Rim Association. These parties objected to any application of heat to a component, as it would have a detrimental effect on the strength, yield modulus and other characteristics of the metal. [Ex. 3: (18); 3: (25); 3: (31)]

OSHA recognizes that the application of heat may adversely affect the design and function of wheel components. There are alternative methods of releasing frozen lugs that are in general use in the industry such as penetrating oil or graphite solution. [Ex. 3: (23); 3: (25)] Therefore, the final standard has been revised to prohibit entirely the use of heat on wheel components.

The proposed requirement that mounted wheels with inflated tires be moved or stored so that the trajectory does not pass through a service area has been deleted from the final rule, based upon the comments which pointed out the infeasibility of complying with this requirement. [Ex. 3: (32); 3: (37); 3: (47)] Such a requirement would also necessitate that personnel be moved every time a tire is moved and is not feasible. It has therefore been deleted from the final standard.

C. Regulatory Assessment

In the preamble to the proposal, OSHA noted that a regulatory assessment, which was prepared for the agency by Centaur Management Consultants, Inc., was available for review and comment. This assessment, which was developed pursuant to Executive Order No. 12044 (43 FR 12661, March 24, 1978), and DOL implementing procedures (44 FR 5570, January 26, 1979), examined the effects of compliance with the proposed standard on cost, productivity, employment, critical materials, energy and market structure. The major findings of the "Economic Impact Statement/ Assessment for Multi-Piece Rim Assemblies" include the following:

—The population at risk is approximately 322,000 persons. These persons are employed in 102,500 workplaces in ten industry segments. These persons will benefit from a safer workplace as a result of the standard.

—From 1968 to 1975, the wheel and rim industry reported a total of 295 injuries resulting from multi-piece rim accidents. A minimum of 22 fatalities resulted from these accidents.

—Provisions of the standard resulting in economic impact include the use of

restraining devices, clip-on-chuck assemblies and training.

—Capital costs resulting from compliance with the standard total $8,342,000. Total annualized costs including capital and training costs are estimated to total $3,810,000.

—Cost, productivity, employment, critical materials, energy and market structure impacts were examined. No significant impacts on any of these areas were found to result from compliance with the standard.

Based on estimated sales of restraining devices over the past 10 years, 24% of stationary workstations presently use cages or racks and 72% of mobile workstations presently use portable safety racks. It is estimated that those establishments currently using restraining devices also use clip-on-chucks with in-line valves. Therefore, approximately 77,700 establishments will have to purchase at least a $134 cage and a $21 clip-on-chuck for compliance with this standard. Wall charts and rim manuals are free to tire assemblers; consequently, only administrative costs are involved in their acquisition. The cost of training employees should not exceed an hour of employee time plus corresponding instructor time.

The major benefit to be attained by complying with this regulation is a significant reduction in the number of fatalities and permanent injuries which occur while servicing multi-piece rim wheels each year.

The benefit derived from using the proposed training technique is that it is applicable to both experienced employees and new hires, and it is flexible because employers may choose to conduct group training classes rather than individual instruction. In general, increased productivity, reduced insurance premiums, reduced workers compensation payments and fewer product liability suits can be expected through compliance with this standard.

Opportunity was given to interested persons to comment on and testify concerning the contents of the report and related issues. Since OSHA received no comments regarding the regulatory assessment, the determination that the standard on multi-piece rim wheels is not a "major" action in terms of economic impact remains unchanged. Based on the record, OSHA also concludes that the standard is both economically and as technologically feasible.

D. Effective Date

Based on the information in the regulatory assessment, and in the absence of any contentions to the contrary, it is anticipated that employers will have little difficulty in obtaining restraining devices, clip-on-chuck assemblies or training materials. There should be no need for extended delay for employers to implement the provisions of the standard. Therefore, the effective date of this standard is April 28, 1980.

E. Appendices

Two appendices have been included in this permanent standard for information purposes. Nothing contained in the appendices should be construed as establishing a mandatory requirement not otherwise imposed by the standard, or as detracting from an obligation which the standard does impose.

The information contained in Appendix A illustrates possible trajectories of wheel components during an explosive separation. Appendix B contains information concerning ordering of wall charts.

The contents of the proposed appendices have been clarified where necessary.

F. 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 Street and Constitution Avenue, NW., Washington, D.C. 20210.

Accordingly, pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593; 29 U.S.C. 655) Secretary of Labor's Order No. 8–76 (41 CFR 25059), and 29 CFR part 1911, Part 1910 of Title 29, Code of Federal Regulations is amended by adding a new § 1910.177 as set forth below.

Signed at Washington, D.C., this 18th day of January 1980.

Eula Bingham,

Assistant Secretary of Labor.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

A new § 1910.177 is added to 29 CFR Part 1910, to read as follows:

§ 1910.177 Servicing multi-piece rim wheels.

(a) *Scope.* This section applies to the servicing of vehicle wheels which have tube-type tires mounted on multi-piece rims as defined below in paragraph (b) of this section.

(b) *Defintions.* "Charts" means the United States Department of Transportation, National Highway Traffic Safety Administration (NHTSA) publications entitled "Safety Precautions for Mounting and Demounting Tube-Type Truck/Bus Tires" and "Multi-Piece Rim/Wheel Matching Chart," or any other publications containing, at a minimum, the same instructions, safety precautions and other information contained on those charts that are applicable to the types of multi-piece rim wheels being serviced.

"Installing a Wheel" means the transfer and attachment of an assembled wheel onto a vehicle axle hub. "Removing" means the opposite of installing.

"Mounting a Tire" means the assembly or putting together of rim components, tube, liner (flap) and tire to form a wheel, including inflation. "Demounting" means the opposite of mounting.

"Multi-piece rim" means a vehicle wheel rim consisting of two or more parts, one of which is a side or locking ring designed to hold the tire on the rim by interlocking components when the tube is inflated, regardless of the sizes of the component parts.

"Restraining device" means a mechanical apparatus such as a safety cage, rack, or safety bar arrangement or other machinery or equipment specifically designed for this purpose, that will constrain all multi-piece rim wheel components following their release during an explosive separation of the wheel components.

"Rim manual" means a publication containing instructions from the manufacturer or other qualified organization for correct mounting, demounting, maintenance and safety precautions peculiar to the multi-piece rim being serviced.

"Service" or "servicing" means the mounting and demounting of multi-piece rim wheels, and related activity such as inflating, deflating, installing, removing, maintaining, handling or storing of multi-piece rim wheels, including inflating and deflating of wheels installed on vehicles.

"Service area" means that part of an employer's premises used for the servicing of multi-piece rim wheels, or any other place where an employee services multi-piece rim wheels.

"Trajectory" means any potential path or route that a lock ring, side ring, rim base and/or tire may travel during an explosive rim separation, and includes paths which may deviate from that perpendicular to the assembled position of the components on the rim base at the time of separation. (See Appendix A for examples of expected trajectories).

"Wheel" means an assemblage of tire, tube, and multi-piece rim components.

(c) *Employee training.* (1) The employer shall provide a training

program to train and instruct all employees who service multi-piece rim wheels in the hazards involved in servicing multi-piece rim wheels and the safety procedures to be followed.

(i) The employer shall assure that no employee services any multi-piece rim wheel unless the employee has been trained and instructed in correct procedures of mounting, demounting, and all related services, activities, and correct safety precautions for the rim type being serviced, and the safe operating procedures described in paragraph (f) of this section.

(ii) Information to be used in the training program shall include, at a minimum, the data contained on the charts and the contents of this standard.

(iii) Where an employer knows or has reason to believe that any of his employees is unable to read and understand the charts or rim manual, the employer shall assure that the employee is instructed concerning the contents of the charts and rim manual in a manner which the employee is able to understand.

(2) The employer shall assure that each employee demonstrates and maintains his ability to service multi-piece rim wheels safely, including performance of the following tasks:

(i) Demounting of tires (including deflation);

(ii) Inspection of wheel components;

(iii) Mounting of tires (including inflation within a restraining device);

(iv) Use of the restraining device;

(v) Handling of wheels;

(vi) Inflation of tires when a wheel is mounted on the vehicle; and

(vii) Installation and removal of wheels.

(3) The employer shall evaluate each employee's ability to perform these tasks and to service multi-piece rim wheels safely and shall provide additional training as necessary to assure that each employee maintains his proficiency.

(d) *Tire servicing equipment.* (1) The employer shall furnish and shall assure that employees use a restraining device in servicing multi-piece rim wheels.

(i) Each restraining device shall have the capacity to withstand the maximum force that would be transferred to it during an explosive wheel separation occurring at 150 percent of maximum tire specification pressure for the wheels being serviced.

(ii) Restraining devices shall be capable of preventing rim components from being thrown outside or beyond the frame of the device for any wheel position within the device.

(iii) Restraining devices shall be inspected prior to each day's use and after any explosive separation of wheel components and any restraining devices exhibiting any of the following defects shall be immediately removed from service:

(A) cracks at welds;

(B) cracked or broken components;

(C) bent or sprung components caused by mishandling, abuse or wheel separation; or

(D) pitting of components due to excessive corrosion.

(iv) Restraining devices removed from service in accordance with paragraph (d)(1)(iii) of this section, shall not be returned to service until they are inspected, repaired, if necessary, and are certified either by the manufacturer or by a Registered Professional Engineer as meeting the strength requirements of paragraphs (d)(1) (i) and (ii) of this section.

(2) A clip-on-chuck with a sufficient length of hose to permit the employee to stand clear of the potential trajectory of the wheel components, and an in-line valve with gauge or a pressure regulator preset to a desired value shall be furnished by the employer and used to inflate tires.

(3) Current charts shall be available in the service area.

(4) A current rim manual containing instructions for the type of rims being serviced shall be available in the service area.

(5) The employer shall assure that only tools recommended in the rim manual for the type of wheel being serviced are used to service multi-piece rim wheels.

(e) *Wheel component acceptability.* (1) Wheel components shall not be interchanged except as provided in the charts, or in the applicable rim manual.

(2) Wheel components shall be inspected prior to assembly. Rim bases, side rings or lock rings which are bent out of shape, pitted from corrosion, broken or cracked shall not be used and shall be rendered unusable and discarded.

(3) Mating surfaces of the rim gutter, rings and tire shall be free of any dirt, surface rust, scale or rubber buildup prior to mounting and inflation.

(f) *Safe operating procedure.* The employer shall establish a safe operating procedure for servicing multi-piece rim wheels and shall assure that employees are instructed in and follow that procedure. The procedure shall include at least the following elements:

(1) Tires shall be completely deflated before demounting by removal of the valve core.

(2) Tires shall be completely deflated by removing the valve core, before a wheel is removed from the axle in either of the following situations:

(i) When the tire has been driven underinflated at 80% or less of its recommended pressure, or

(ii) When there is obvious or suspected damage to the tire or wheel components.

(3) Rubber lubricant shall be applied to bead and rim mating surfaces during assembly of the wheel and inflation of the tire.

(4) Tires shall be inflated only when contained by a restraining device, except that when the wheel assembly is on a vehicle, tires that are underinflated but have more than 80% of the recommended pressure, may be inflated while the wheel is on the vehicle if remote control inflation equipment is used and no employees are in the trajectory, and except as provided in paragraph (f)(5) of this section.

(5) When a tire is being partially inflated without a restraining device for the purpose of seating the lock ring or to round out the tube, such inflation shall not exceed 3 psig (0.21 kg/cm^2).

(6) Whenever a tire is in a restraining device the employee shall not rest or lean any part of his body or equipment on or against the restraining device.

(7) After tire inflation, the tire, rim and rings shall be inspected while still within the restraining device to make sure that they are properly seated and locked. If further adjustment to the tire, rim or rings is necessary, the tire shall be deflated by removal of the valve core before the adjustment is made.

(8) No attempt shall be made to correct the seating of side and lock rings by hammering, striking or forcing the components while the tire is pressurized.

(9) Cracked, broken, bent or otherwise damaged rim components shall not be reworked, welded, brazed, or otherwise heated.

(10) Whenever multi-piece rim wheels are being handled, employees shall stay out of the trajectory unless the employer can demonstrate that performance of the servicing makes the employee's presence in the trajectory necessary.

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APPENDIX A
TRAJECTORY

WARNING

STAY OUT OF THE TRAJECTORY AS INDICATED BY SHADED AREA

Note: Under some circumstances, the trajectory may deviate from its expected path

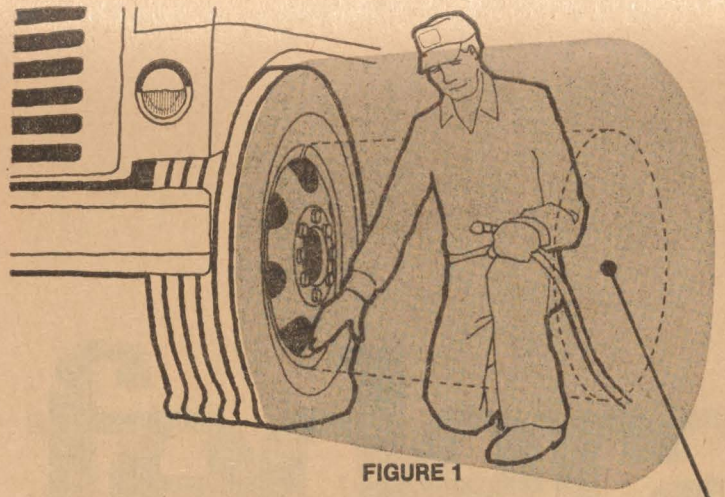
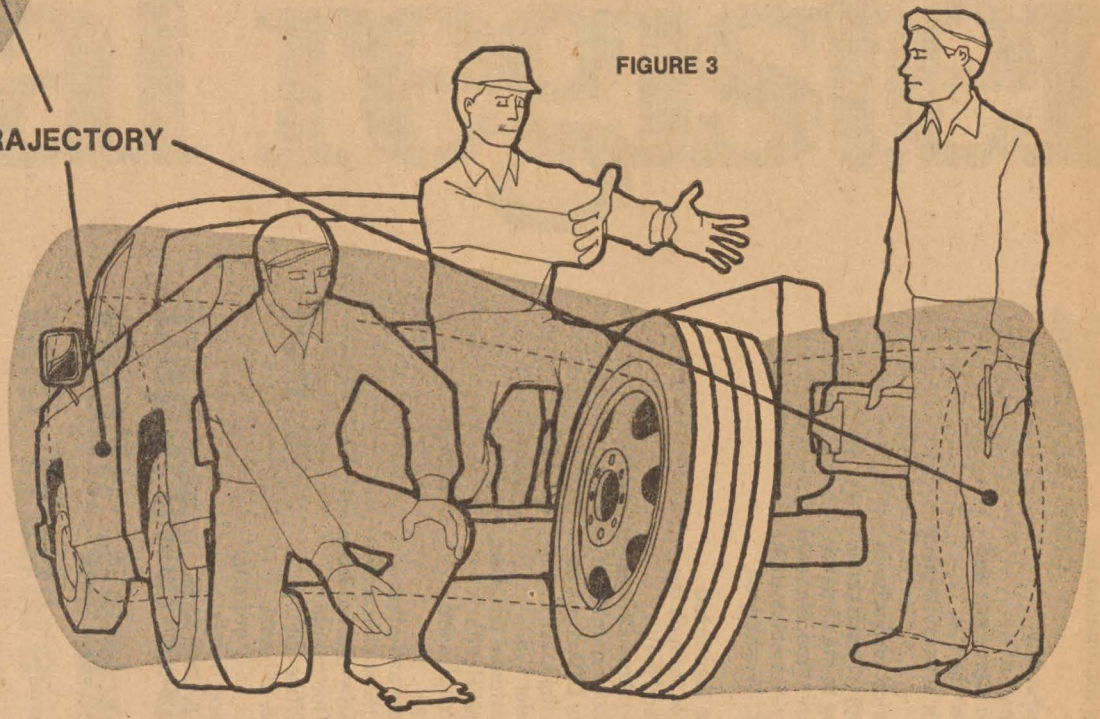


FIGURE 1

FIGURE 2

TRAJECTORY

FIGURE 3



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Appendix B—Ordering Information for NHTSA Charts

NHTSA has prepared safety information charts as part of a continuing campaign to alert truck and bus service personnel to the risk involved when working with multi-piece truck and bus wheels.

Individuals who service such wheels may obtain a single copy of each chart, without cost, by writing to the General Services Division/Distribution, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590.

Reprints of the above mentioned charts are also available through the Occupational Safety and Health Administration (OSHA) Area Offices. The address and telephone number of the nearest OSHA Area Office can be obtained by looking in the local telephone directory under U.S. Government, U.S. Department of Labor, Occupational Safety and Health Administration. Single copies are available without charge.

Service establishments and other organizations desiring these charts may order them in any quantity desired from the Superintendent of Documents, Government Printing Office (GPO), Washington, D.C. 20402, at a cost established by the GPO. GPO ordering number for the charts are: Safety Chart—050–003–00315–8, Cost: $2.25, Matching Chart—050–003–00316–6, Cost: $2.00.

(Sec. 6, 84 Stat. 1593 (28 U.S.C. 655); Secretary of Labor's Order 8–76 (41 FR 25059), 29 CFR Part 1911.)

[FR Doc. 80–2768 Filed 1–28–80; 8:45 am]

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federal register

Tuesday
January 29, 1980

Part V

Department of Health, Education, and Welfare

National Institutes of Health

Recombinant DNA Research; Actions Under Guidelines

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health

Recombinant DNA Research; Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, HEW.

ACTION: Notice of actions under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth actions taken by the Director, NIH, under the 1978 NIH Guidelines for Research Involving Recombinant DNA Molecules (43 FR 60108). Revised NIH Guidelines are printed following this notice.

EFFECTIVE DATE: January 29, 1980.

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. William J. Gartland, Office of Recombinant DNA Activities (ORDA), National Institutes of Health, Bethesda, Maryland 20205. (301) 496–6051.

SUPPLEMENTARY INFORMATION: I am promulgating today revised NIH Guidelines for Research Involving Recombinant DNA Molecules. This announcement is a "Decision Document" explaining the background and reasons for my decision. Immediately following this announcement there appears a copy of the revised NIH Guidelines.

The structure of this Decision Document is as follows:

I. *History of the NIH Guidelines Through 1978.*

II. *Revision of the December 1978 Guidelines.*

III. *Analysis of Comments on Decision Document/Environmental Impact Assessment/Proposed Revised Guidelines as Published For Comment in the Federal Register on November 30, 1979 (44 FR 69210).*

I. History of the NIH Guidelines Through 1978

The history leading to the issuance of the original 1976 NIH Guidelines for Recombinant DNA Research is described in detail in the Environmental Impact Statement on the 1976 Guidelines, and in the "Decision Document" accompanying the Guidelines in the **Federal Register** of July 7, 1976. Key points in the history included:

- The Maxine Singer-Dieter Soll letter (*Science 181*, 1114, 1973) arising from the Gordon Research Conference on Nucleic Acids of July 1973.
- The Paul Berg et al. letter to *Science (185*, 303, 1974) calling for the NIH to establish an advisory committee to write guidelines.
- The Asilomar conference of February 1975.
- The work of the NIH Recombinant DNA Advisory Committee (RAC) through 1975, resulting in the proposed guidelines of December 1975.
- The special meeting of the Advisory Committee to the Director, NIH, on February 9–10, 1976, to review the proposed guidelines.
- Final issuance of the NIH Guidelines on June 23, 1976 (published in the **Federal Register** on July 7, 1976).

The history from the period July 1976 to December 1978 included the following key points:

- Deliberations on revisions by the RAC during 1977, resulting in proposed revisions published for comment in the **Federal Register** on September 27, 1977 (42 FR 49596).
- A public hearing on the revisions, at the meeting of the Advisory Committee to the Director, NIH, December 15–16, 1977.
- Publication for public comment in the **Federal Register** on July 28, 1978 (43 FR 33042), of new proposed revised guidelines accompanied by a detailed Decision Document and a detailed Environmental Impact Assessment.
- A public hearing on the proposed revisions, chaired by the General Counsel of HEW, on September 15, 1978.
- Publication of revised guidelines on December 22, 1978 (43 FR 60080), accompanied by a detailed Decision Document and Environmental Impact Assessment.

The entire history is extensively documented in Volumes 1–4 of "Recombinant DNA Research"—a series constituting a readily available public record of activities in regard to the NIH Guidelines.

II. Revision of the December 1978 Guidelines

The December 1978 NIH Guidelines for Research Involving Recombinant DNA Molecules (43 FR 60108) include procedures for changing the Guidelines. As detailed in Section IV–E–1–b–(1) of the Guidelines, this involves: (1) publication in the **Federal Register** for public comment, at least 30 days prior to a RAC meeting, of the proposed changes; (2) consideration of the proposed changes by the RAC; and (3) publication in the **Federal Register** of the final decision by the Director, NIH.

In accordance with these procedures, proposed changes in the Guidelines appeared in the **Federal Register** on January 15, 1979 (44 FR 3226), were considered by the RAC at its February 16–17, 1979, meeting, and were promulgated by the NIH Director in the **Federal Register** on April 11, 1979 (44 FR 21730).

Proposed changes in the Guidelines appeared in the **Federal Register** on April 13, 1979 (44 FR 22314), were considered by the RAC at its May 21–23, 1979, meeting, and were promulgated by the NIH Director in the **Federal Register** on July 20, 1979 (44 FR 42914).

Proposed changes in the Guidelines appeared in the **Federal Register** on July 31, 1979 (44 FR 45088) and were considered by the RAC at its September 6–7, 1979, meeting. Rather than promulgating the recommended changes, the Director, NIH, instead issued them for 30 days of additional public comment in the **Federal Register** on November 30, 1979 (44 FR 69210).

This was in accordance with Section IV–E–1–b–(1) of the NIH Guidelines (43 FR 60126) which says, "The Director's proposed decision, at his discretion, may be published in the **Federal Register** for 30 days of comment before final action is taken." What appeared in the **Federal Register** on November 30 was a detailed "Decision Document" explaining the background and reasons for the proposed decision, an Environmental Impact Assessment, and proposed revised NIH Guidelines. Included was an analysis of many letters received prior to November 30. Part III of the present document contains an analysis by the Director, NIH, of all comments received during the period November 30, 1979 to January 18, 1980 on the Decision Document/Environmental Impact Assessment/Proposed Revised Guidelines as published in the **Federal Register** on November 30, 1979. All of the changes in the Guidelines accepted by the Director, NIH, and promulgated today have been found by the Director, NIH, in accordance with Section IV–E–1–b of the NIH Guidelines, to comply with the Guidelines and to present no significant risk to health or the environment.

Proposed changes in the Guidelines appeared in the **Federal Register** on November 1, 1979 (44 FR 63074), were considered by the RAC at its December 6–7, 1979, meeting, and were promulgated by the NIH Director in the **Federal Register** on January 17, 1980 (45 FR 3552).

Immediately following this "Decision Document," there appears a copy of the revised NIH Guidelines which are effective today. These were obtained by incorporating into the December 1978 Guidelines all the changes made following the February 16–17, 1979, May 21–23, 1979, September 6–7, 1979, and December 6–7, 1979, RAC meetings.

III. Analysis of Comments on Decision Document/Environmental Impact Assessment/Proposed Revised Guidelines as Published for Comment in the Federal Register on November 30, 1979 (44 FR 69210)

III–A. Discussion at RAC Meeting on December 6, 1979

The Decision Document/ Environmental Impact Assessment/ Proposed Revised Guidelines as sent to the **Federal Register** to appear on November 30, 1979, were simultaneously sent to RAC members who received the documents on November 29. The material was discussed by the RAC at its December 6–7, 1979, meeting. At this meeting, the RAC Chairman presented the document pointing out the changes between the "*E. coli* K–12/P1 Recommendation" as adopted by the RAC on September 6, 1979, and the somewhat revised version of this recommendation (Section III–O of the proposed revised Guidelines) as issued by the NIH Director for public comment in the **Federal Register** on November 30, 1979. She noted that the NIH Director had eliminated the reference to these experiments as "exempt from the Guidelines" and had added a requirement for prior review and approval by the IBC for experiments in which there is a deliberate attempt to have the *E. coli* K–12 efficiently express a gene coding for a eukaryotic protein. The Chairman asked for comments from the RAC. Except for questions of clarification from RAC members, which were answered by NIH staff, there were no comments either on these particular items or on the recommendations generally. NIH staff urged RAC members to write individually to the NIH Director during the comment period giving their views. (Six RAC members did write. Four endorsed Section III–O of the Guidelines. Two, who had voted against the "*E. coli* K–12/P1 Recommendation" at the September 6–7, 1979, meeting, wrote. One urged the "exemption" not be approved. The other urged that the final decision not be delayed.)

III–B. Public Comments

The Decision Document/ Environmental Impact Assessment/ Proposed Revised Guidelines as they appeared in the **Federal Register** on November 30, 1979, were sent out to over 2000 people for comment—this included the chairmen of all Institutional Biosafety Committees registered with NIH, all principal investigators doing recombinant DNA experiments supported by NIH, and all persons who had previously requested their inclusion on a mailing list to receive information concerning the NIH Guidelines. During the period up to January 18, 1980, 185 letters signed by a total of 205 individuals were received. All of these letters: (i) are now available for public inspection at ORDA; (ii) can be made available (in whole or in part) to any requester upon payment of reproduction costs; and (iii) will be published (and subsequently may be purchased through the U.S. Government Printing Office) as part of Volume 5 of "Recombinant DNA Research," a series constituting a public record of activities in regard to the NIH Guidelines.

The Decision Document/ Environmental Impact Assessment consisted of an analysis of the six "major actions" which were recommended favorably at the September 6–7, 1979, RAC meeting. These six "major actions" were: "The *E. coli* K–12/P1 Recommendation"; "Proposed Amendment of Sections II–D–1–a–(1) and III–A–1–b–(1) of the Guidelines"; "Proposed Exemption for *Pseudomonas Putida* and *Pseudomonas Florescens*"; "Cloning in *Bacillus Subtilis* and *Streptomyces Coelicolor*"; "Use of *Agrobacterium Tumefaciens* as a Host-Vector System"; and "Proposed Supplement (Part VI) to the Guidelines."

The bulk of the November 30 Decision Document/Environmental Impact Assessment consisted of an analysis of the "*E. coli* K–12/P1 Recommendation"; it was ponted out that "of all the recommendations arising from the last three meetings of the RAC [this recommendation was] the one that has generated the greatest number of letters and the most discussion at the RAC meetings." The analysis included the NIH Director's proposed acceptance of a modified version of this recommendation to become Section III–O of the proposed revised Guidelines.

In the comment period only three letters were received that included comments dealing specifically with any of the other five "major actions" i.e., all other letters made reference to the entire proposed revised Guidelines or commented specifically upon the "*E. coli* K–12/P1 Recommendation." The remainder of this document is organized as follows: III–B–1. Comments on The Entire Proposed Revised Guidelines; III–B–2. Comments on the "*E. coli* K–12/P1 Recommendation" or Section III–O of the Proposed Revised Guidelines; III–B–3. Comments on the Proposed Revised Guidelines Other Than Section III–O; III–B–4. Comments on the Guidelines Other Than Changes Recommended by the RAC; III–C. Decision of the NIH Director on Promulgation of Revised Guidelines.

III–B–1. Comments on the Entire Proposed Revised Guidelines

Eighty-three letters signed by a total of 100 individuals were received in support of the proposed revised Guidelines. (Many of these commentators also specifically endorsed Section III–O of the proposed Guidelines.) Comments included the following—"I heartily support the changes that you propose for the NIH Guidelines for Research Involving Recombinant DNA Molecules. I am especially impressed by the detailed and reasoned consideration that the Advisory Committee (RAC) and you have used to reach these very enlightened decisions."—"This letter is to indicate my wholehearted support of the revisions."—"Although I am highly concerned with laboratory safety, I believe the revised guidelines are certainly reasonable."—"They are reasonable and sensible Guidelines which take into account the body of new information and research experience which has become available since the formulation and enactment of the original guidelines."—"The proposed new Guidelines are a very sensible step forward. By freeing scientists from unnecessary red tape, and administrative delays in doing experiments, they will appreciably accelerate the progress of research and the realization of its benefits."

III–B–2. Comments on the "E. coli K–12/P1 Recommendation" or Section III–O of the Proposed Revised Guidelines

Comments received on the RAC's "*E. coli* K–12/P1 Recommendation" or the NIH Director's proposed incorporation of a modified version of this recommendation to become Section III–O of the proposed revised Guidelines are discussed below.

III–B–2–a. Endorsement of the "E. coli K–12/P1 Recommendation" or Section III–O of the Proposed Revised Guidelines

In addition to the 83 letters mentioned above which endorsed the entire proposed revised Guidelines, another 86 letters signed by a total of 89 individuals were received endorsing what was referred to as either the proposed new "Section III–O of the Guidelines," the "*E. coli* K–12/P1 Recommendation," or the "decision to reclassify recombinant DNA experiments performed in *E. coli* K–12 as P1." Thus, of the 185 letters received, 169 supported the proposed new Section III–O.

These commentators included four RAC members, and six former RAC members. Comments included the following—"Section III–O describing experiments with *E. coli* K–12 host-vector systems represents a realistic and safe modification of some of the previous regulations. . . . We wish to express our confidence in the good judgment and scientific qualifications of the committee that has made these decisions. The enormous effort in preparing these guidelines in the interest of all of us should earn high praise."—"In Section III–O there is a classificatory downgrading of a large group of experiments in *E. coli* K–12. I applaud that change. It appears to me to be soundly based on the accumulating experience and evaluation of real hazards of such experiments."—"For this reason, I strongly endorse the decentralization of control over experiments using the *E. coli* K–12 Host-Vector systems as outlined in section III–O."—"I, therefore, urge adoption of Section III–O, as a way of eliminating a costly and time-consuming unnecessary obstacle to research of great practical importance as well as scientific interest."—"In particular, I specifically endorse the revision of the guidelines concerning the K–12 containment (section III–O). The proposals are a reasonable way of matching the realistic risks with the clear benefit of removing unnecessary administrative work."—"I believe that the category change is fully consistent with public safety, and is essential to permit legitimate health related research dependent upon cloning techniques to proceed."—"I consider the evidence overwhelming that these experiments pose no significant hazard."

III–B–2–b. Request that Experiments Involving E. coli K–12 Be Exempted from the Guidelines

Nine commentators, while indicating their endorsement of Section III–O, also indicated that they favored a somewhat greater relaxation of the Guidelines. Comments included the following—"My personal opinion is that the data does not even warrant registration of these experiments."—"My current view is that even P1 containment is probably unnecessary."

Nineteen commentators wrote requesting that all or most experiments with *E. coli* K–12 be completely exempted from the Guidelines; this would relax the conditions for doing these experiments much further than I had proposed in Section III–O of the proposed revised Guidelines. (Some of these commentators endorsed Section III–O as a "step in the right direction.") Comments included the following—"To continue Federal regulation after evidence has been obtained that there is no clear threat to the public health is a waste of already dwindling Federal scientific resources and in addition, sets an ominous precedent for future Federal regulatory adventures. In addition, at the level of the working scientist or student, the perpetration of needless regulations, directed at imagined hazards, undercuts our continuing efforts to institute and make effective safety practices governing the handling of real pathogens and toxic agents."

On the other hand, four commentators specifically endorsed the decision that experiments with *E. coli* K–12 not be exempted from the Guidelines, and four commentators specifically endorsed IBC registration of these experiments.

In my Decision Document/Environmental Impact Assessment of November 30, 1979, I discussed why I was not proposing to exempt from the Guidelines experiments under the "*E. coli* K–12/P1 Recommendation." As I wrote then, and still believe is prudent policy: "Three important safety features for these experiments that will not be exempt, but will according to the proposed decision form a special class under the Guidelines, are:

"1. P1. Containment—Including the ban on mouth pipetting and the requirement that all biological wastes shall be decontaminated. Proper employment of P1 conditions eliminates the primary means of *E. coli* escape from the laboratory.

"2. EK1—Allowing only *E. coli* K–12 strains and not allowing the use of conjugation proficient plasmids or generalize transducing phages. This greatly reduces the probability that any escaping *E. coli* K–12 would survive and transfer their recombinant DNA to other organisms.

"3. IBC Oversight—Continuing local surveillance and registration of these experiments.

"In addition, keeping these experiments under the Guidelines rather than exempting them means that any scale-up of the experiments beyond 10 liters will require prior NIH approval."

These important safety features apply to the experiments described in Section III–O of the proposed revised Guidelines; they would not apply if these experiments were exempted from the Guidelines.

III–B–2–c. Request That Section III–O of the Guidelines Not Be Promulgated

Of the 185 letters received by January 18, 1980, five said that Section III–O and/or the proposed revised Guidelines should not be promulgated. These five commentators included one current and one former RAC member. Among the comments they made were:

1. "I urge you to extend the comment period."

2. The NIH Director should reconsider "the *E. coli* exemption as voted for by the RAC at its September 1979 meeting."

3. "It needs emphasis that there is currently no *requirement* (only a recommendation) that institutions require workers in this field to be trained in good laboratory practice."

4. Many of the arguments used to justify this revision of the Guidelines were used to justify a previous revision.

5. The discussion in the November 30 Decision Document "implies that microorganisms do not 'escape' from laboratories in which containment is supposed to be practiced."

6. "I continue to be disturbed that such far-reaching policy changes are being considered *in the absence of data from a risk-assessment program.*"

7. "I'm less than totally convinced by the information in the November 30, 1979 **Federal Register** that it is prudent to allow cloning of all DNA at the P1 + EK1 level except where prohibited."

None of these commentators provided any new scientific data.

In reply to the first comment given above, I note that although the comment period formally ended December 30, 1979, I considered all letters received until January 18, 1980.

In response to the second comment given above, I note that the November 30 Decision Document/Environmental Impact Assessment discussed in detail why I am not in fact exempting these experiments from the Guidelines.

In response to the third comment given above, the NIH Guidelines do in fact require training of workers. Section IV–D–1–g of the Guidelines discussing responsibilities of the Institution says the Institution shall "Ensure appropriate training for the IBC chairperson and members, the BSO, Principal Investigators (PIs), and laboratory staff regarding the Guidelines, their implementation, and laboratory safety. Responsibility for training IBC members may be carried out through the IBC chairperson. Responsibility for training laboratory staff may be carried out through the PI. The Institution is responsible for seeing that the PI has sufficient training, but may delegate this responsibility to the IBC." Section IV–D–3–a–2 says the Institutional Biosafety Committee is responsible for "An assessment of the facilities, procedures, and practices, and of the training and expertise of recombinant DNA personnel." Section IV–D–5–d–2 of the Guidelines says the Principal Investigator is responsible for

"Instructing and training staff in the practices and techniques required to ensure safety and in the procedures for dealing with accidents."

In response to the fourth comment given above, I note that this was discussed in the November 30 Decision Document/Environmental Impact Assessment under the consideration of the comments "Data Are Not Sufficient To Justify Exemption."

In response to the fifth comment given above, we did not mean to imply that microorganisms do not escape from laboratories in which containment is practiced. Data on laboratory-acquired infection rates at different physical containment levels were given in the NIH Environmental Impact Statement on the 1976 Guidelines where it was pointed out that "when known hazardous agents are handled, the risk of a laboratory-acquired infection cannot be totally eliminated." What is discussed in the November 30, 1979, Decision Document/Environmental Impact Assessment is the low probability of *E. coli* K–12 escaping in significant numbers from a P1 laboratory. This, combined with the low probabilities of a series of other steps discussed in that document, leads to an extremely low probability of hazard arising from *E. coli* K–12 carrying recombinant DNA.

In response to the sixth and seventh comments given above that changes are being made "in the absence of data from a risk-assessment program," or upon insufficient data, I must note that the November 30 Decision Document/ Environmental Impact Assessment discussed in detail the substantial body of data available on the safety of *E. coli* K–12 and specifically dealt with the issue of risk-assessment under the discussions of the comments "Delay Any Change in the NIH Guidelines Pending Many More Risk-Assessment Experiments," and "Data Are Not Sufficient to Justify Exemption" as well as the alternative "Make No Change In The Guidelines Until Many More Risk-Assessment Experiments Are Completed." I continue to believe, as I wrote then, that the action is fully supported by the data.

III–B–2–d. Comments on the Time Taken To Promulgate the NIH Director's Decision on This Recommendation

Fourteen commentators, including one of the four RAC members who voted against the *"E. coli* K–12/P1 Recommendation" at the September 6, 1979, RAC meeting, wrote against delay, noting that the RAC's *"E. coli* K–12/P1 Recommendation" had been made in September 1979 but not yet promulgated. Comments included the following—"It is regrettable that these revisions have been delayed for further comment in view of the extensive period provided already for such comments and the extensive discussions by the Recombinant DNA Advisory Committee prior to its votes. I believe that the expense in terms of time taken from other fruitful activities of yourself and the many commentators on this issue was unnecessary and extremely wasteful."—"I am appalled at the interminable delays required before a recommendation of the RAC can be put into effect. The procedures required by the December 1978 guidelines are cumbersome enough without an additional layer of public comment, analysis, and justification added on. NIH and American biomedical scientists deserve better treatment and trust from their top health administrators."—"It is disheartening to find that, even after thorough consideration and approval by RAC, the *E. coli* K–12/P1 measure remains in administrative limbo."—"The unnecessarily long delays in implementing the new guidelines have adversely affected the morale of American scientists and hampered progress in this highly significant area of research and development."

On the other hand, one commentator wrote, "I once again congratulate you on the exemplary way in which revision of these guidelines is being continued while still making proposals available to the public for scrutiny before their final adoption."

I am firmly committed to the procedures of the NIH Guidelines. As pointed out above in Section II of this document, procedures for revising the Guidelines involve certain mandatory "delays" including publication of the proposed changes in the **Federal Register** for public comment, at least 30 days prior to a meeting of the RAC, and consideration of the proposed changes at a formal RAC meeting. For recommendations arising from three of the last four RAC meetings, there was no additional public comment period. For the recommendations made at the September 6–7, 1979, RAC meeting, however, I did issue my proposed decision for an additional 30-day period of public comment. It is my intention, generally, in the future, to rely, in formulating my final decision, on the comments received in the initial comment period, and on the recommendations of the RAC, without issuing a proposed decision for an additional period of public comment.

III–B–2–e. Ff Bacteriophages

Three letters discussed the use of Ff bacteriophages. One wrote, "Nor can I see why other *E. coli* K–12 host-vector systems, such as those employing Ff bacteriophages, are not included within the Section III–O reduction." Another wrote, "I certainly hope that this proposal will be extended to the Ff bacteriophages in the near future."

I discussed this in detail in my November 30, 1979, Decision Document/ Environmental Impact Assessment under the alternative "Include Ff Bacteriophages (Filamentous Single Strand Male Specific Bacteriophages such as M13 and fd) With Lambda or Lambdoid Bacteriophages To Be Permissible Under the *'E. coli* K–12/P1 Recommendation.' " There, I noted that I would "ask the RAC to consider the use of Ff bacteriophages again." At the December 1979 RAC meeting, a Working Group was appointed to consider this issue. They will report to the RAC at its next (March 1980) meeting. I will consider the recommendations of the RAC before taking action on inclusion of Ff bacteriophages within Section III–O.

III–B–2–f. Requirement for IBC Prior Review and Approval When There Is a Deliberate Attempt To Have the E. coli K–12 Efficiently Express a Gene Coding for a Eukaryotic Protein

One of the differences between the *"E. coli* K–12/P1 Recommendation" made by the RAC on September 6, 1979, and my proposed modification of this recommendation to become Section III–O of the November 30, 1979, proposed revised Guidelines was the addition of the text which states, "An exception, however, which does require prior review and approval by the IBC is any experiment in which there is a deliberate attempt to have the *E. coli* K–12 efficiently express any gene coding for a eukaryotic protein."

Four commentators wrote in opposition to this. One said that the requirement "is in my view superfluous, and is almost guaranteed to cause nuisance and confusion for investigators and IBC's. Many IBC's will understand this section to imply that they must require higher containment for such experiments, and for this the guidelines give no guidance or clarification. This requirement will expose many investigators to arbitrariness and unnecessary restrictions. . . . The Guidelines should clarify the intent of this requirement and should explicitly state that P1 containment is recommended. . . ." Two other commentators urged that this sentence be eliminated. One wrote, "Failing that

amendment, I must ask for a clarification of the intent of the sentence in question. As I read the relevant paragraph, these 'expression' experiments are understood to be appropriately carried out at the P1+EK1 level of containment. I am afraid that an alternate, presumably unintended, reading would be that each IBC is urged to set its own standards on these experiments. This policy, I am sure you would agree, would be disastrous."

On the other hand, three commentators wrote in favor.—"I agree with your decision to require that experiments in which there is a deliberate attempt to have expression of a eukaryotic gene be reviewed and approved by the local IBC prior to their being performed."

In response, I do not judge this requirement to be "superfluous." I discussed it in my November 30, 1979, Decision Document/Environmental Impact Assessment under the alternative "Treat Experiments Equally In Which There Is Or Is Not A Deliberate Attempt To Achieve Gene Expression." There, I concluded the discussion on this issue by stating, "Therefore, experiments in which there is a deliberate attempt to achieve gene expression continue to merit special attention. . . . This will allow the IBC to judge whether it wishes to require any added restrictions to be placed on the experiment, and to remain fully informed of its progress."

In response to the request that the Guidelines "should explicitly state that P1 containment is recommended," I note that the Guidelines do explicitly state in Section III–O that ". . . experiments using *E. coli* K–12 shall use P1 physical containment. . . ." including those "in which there is a deliberate attempt to have the *E. coli* K–12 efficiently express any gene coding for a eukaryotic protein. It is not NIH's intention that the IBC must require higher containment for such experiments.

One commentator suggested a rewording of this sentence as follows—"An exception, however, which does require prior review and approval by the IBC is any experiment in which there is a deliberate attempt to have the *E. coli* K–12 efficiently express as a protein product the information carried in any gene derived either from a eukaryotic organism or from any virus or viroid which infects a eukaryotic organism." I will have this suggestion published for at least 30 days public comment, and will ask the RAC to consider it at its next (March 1980) meeting before I take action on it.

III–B–2–g. Use of Poorly Mobilizable Plasmids

One commentator suggested that experiments described in Section III–O of the Guidelines which specify that "the host shall not contain conjugation-proficient plasmids" add an additional safety feature by the use of "a poorly mobilizable plasmid. By that I mean one that is mobilizable at frequencies of $<10^{-5}$ by a derepressed conjugative plasmid." I will have this suggestion published for at least 30 days public comment and will ask that it be considered first by the RAC Subcommittee on Host-Plasmid Vector Systems, and then by the full RAC at its March 1980 meeting, before I take action on it.

III–B–2–h. Transfer of Clones to Other Laboratories

One correspondent discussed "the requirement that clones subject to the guidelines can be transferred to other laboratories only after the recipient submits an approved MUA to the supplying laboratory" and questioned whether this should apply to clones described in Section III–O of the Guidelines.

Detailed instructions on the administration of the NIH Guidelines are contained in the "Administrative Practices Supplement to the NIH Guidelines for Research Involving Recombinant DNA Molecules" (APS). Currently, a Memorandum of Understanding and Agreement (MUA) is required to be submitted to NIH for each NIH-funded recombinant DNA project subject to the Guidelines. As described in the APS, the MUA must contain a statement "agreeing to abide by the provisions of the NIH Guidelines and the requirements of this Supplement concerning shipment and transfer of recombinant DNA materials." The revised NIH Guidelines, issued today, specify that for experiments described in Section III–O, "no Memorandum of Understanding and Agreement (MUA) . . . need be submitted . . ." NIH will soon issue a revised version of the APS taking into account the changes in the Guidelines promulgated today. At that time, requirements concerning shipment of clones described under Section III–O of the Guidelines will be described.

III–B–3. Comments on the Proposed Revised Guidelines Other Than Section III–O

Only three comments were received dealing with a "major action" recommended at the September 6–7, 1979, RAC meeting, other than the "*E. coli* K–12/P1 Recommendation." These three requested that the Proposed Supplement (Part VI) on Voluntary Compliance not be added to the Guidelines. The reason given by one commentator was that it may "lead to unnecessary and wasteful legislative attempts." The other two commentators, on the other hand, specifically called for mandatory compliance.

In my November 30 Decision Document, I reviewed the history of this proposed supplement in detail including endorsement of it by the Federal Interagency Committee on Recombinant DNA Research and by the RAC. In accord with the analysis in that document, I accept the recommendation of these two committees to add Part VI to the Guidelines.

III–B–4. Comments on the Guidelines Other Than Changes Recommended by the RAC

The Decision Document/Environmental Impact Assessment/Proposed Revised Guidelines, as published for public comment on November 30, were based upon changes in the Guidelines recommended by the RAC at its September 6–7, 1979, meeting. During the comment period, five letters were received proposing additional changes in the Guidelines totally unrelated to the RAC recommendations. One commentator requested exemption from the Guidelines of "return to host of origin" type experiments. One commentator requested that the Institutional Biosafety Committee members not affiliated with the institution "shall be appointed by the governing body of the community in which the institution is situated." Two commentators submitted a proposed addition to Appendix B of the Guidelines to deal with plant pathogens. One commentator requested elimination of Prohibition I–D–3, and a revision of Sublist A of Appendix A to the Guidelines.

I will have the proposals mentioned above under III–B–4 published for at least 30 days public comment, and will ask the RAC to consider them at its next (March 1980) meeting before I take action on them.

III–C. Decision of the NIH Director on Promulgation of Revised Guidelines

Based on my analysis of the comments received during this comment period, I am today promulgating revised NIH Guidelines for Research Involving Recombinant DNA Molecules. They differ from the proposed revised Guidelines as published in the **Federal Register** on November 30, 1979, by the incorporation of the additional changes which were recommended by the RAC at its December 6–7, 1979, meeting, and which were promulgated in the **Federal Register** on January 7, 1980 (45 FR 3552).

Dated: January 23, 1980.

Donald S. Fredrickson,

Director, National Institutes of Health.

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Part VI

Department of Health, Education, and Welfare

National Institutes of Health

Guidelines for Research Involving Recombinant DNA Molecules

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health

Guidelines for Research Involving Recombinant DNA Molecules

January 1980.

Contents

I. Scope of the Guidelines

I–A. *Purpose.* The purpose of these Guidelines is to specify practices for constructing and handling (i) recombinant DNA molecules and (ii) organisms and viruses containing recombinant DNA molecules.

I–B. *Definition of Recombinant DNA Molecules.* In the context of these Guidelines, recombinant DNA molecules are defined as either (i) molecules which are constructed outside living cells by joining natural or synthetic DNA segments to DNA molecules that can replicate in a living cell, or (ii) DNA molecules that result from the replication of those described in (i) above.

I–C. *General Applicability.* See Section IV–B.

I–D. *Prohibitions.* The following experiments are not to be initiated at the present time.

I–D–1. Formation of recombinant DNAs derived from the pathogenic organisms classified (*1*) as Class 3, 4, or 5 (*2*) or from cells known (*2A*) to be infected with such agents, regardless of the host-vector system used.

I–D–2. Deliberate formation of recombinant DNAs containing genes for the biosynthesis of toxins potent for vertebrates (*2A*) (e.g., botulinum or diphtheria toxins; venoms from insects, snakes, etc.).

I–D–3. Deliberate creation by the use of recombinant DNA of a plant pathogen with increased virulence and host range beyond that which occurs by natural genetic exchange. (*2A*)

I–D–4. Deliberate release into the environment of any organism containing recombinant DNA.

I–D–5. Deliberate transfer of a drug resistance trait to microorganisms that are not known to acquire it naturally, if such acquisition could compromise the use of a drug to control disease agents in human or veterinary medicine or agriculture. (*2A*)

I–D–6. Large-scale experiments (e.g., more than 10 liters of culture) with organisms containing recombinant DNAs, unless the recombinant DNAs are rigorously characterized and the absence of harmful sequences established (*3*). (See Section IV–E–1–b–(3)–(d).)

We differentiate between small- and large-scale experiments with organisms containing recombinant DNAs because the probability of escape from containment barriers normally increases with increasing scale.

Experiments in Categories I–D–1 to I–D–6 may be excepted (*4*) from the prohibitions (and will at that time be assigned appropriate levels of physical and biological containment) provided that these experiments are expressly approved by the Director, NIH, with advice of the Recombinant DNA Advisory Committee after appropriate notice and opportunity for public

comment. (See Section IV–E–1–b–(1)–(e).)

Experiments in Categories I–D–1, I–D–2, I–D–3, I–D–5, and experiments involving "wild type" host-vector systems are excepted from the prohibitions, provided that these experiments are designed for risk-assessment purposes and are conducted within the NIH high-containment facilities located in Building 41-T on the Bethesda campus and in Building 550 located at the Frederick Cancer Research Center. The selection of laboratory practices and containment equipment for such experiments shall be approved by ORDA following consultation with the RAC Risk-Assessment Subcommittee and the NIH Biosafety Committee. ORDA shall inform RAC members of the proposed risk-assessment projects at the same time it seeks consultation from the RAC Risk-Assessment Subcommittee and the NIH Biosafety Committee. If a major biohazard is determined, the clones will be destroyed after the completion of the experiment rather than retaining them in the high containment facility. Other clones that are non-hazardous or not of major hazard will be retained in the high containment.

I–E. *Exemptions.* It must be emphasized that the following exemptions(*4*) are not meant to apply to experiments described in the Sections I–D–1 to I–D–5 as being prohibited.

The following recombinant DNA molecules are exempt from these Guidelines, and no registration with NIH is necessary:

I–E–1. Those that are not in organisms or viruses.(*5*)

I–E–2. Those that consist entirely of DNA segments from a single nonchromosomal or viral DNA source, though one or more of the segments may be a synthetic equivalent.

I–E–3. Those that consist entirely of DNA from a prokaryotic host, including its indigenous plasmids or viruses, when propagated only in that host (or closely related strain of the same species) or when transferred to another host by well established physiological means; also those that consist entirely of DNA from a eukaryotic host, including its chloroplasts, mitochondria, or plasmids (but excluding viruses), when propagated only in that host (or a closely related strain of the same species).

I–E–4. Certain specified recombinant DNA molecules that consist entirely of DNA segments from different species that exchange DNA by known physiological processes, though one or more of the segments may be a synthetic equivalent. A list of such exchangers will be prepared and periodically revised by the Director, NIH, with advice of the Recombinant DNA Advisory Committee, after appropriate notice and opportunity for public comment. (See Section IV–E–1–b–(1)–(d).) Certain classes are exempt as of publication of these Revised Guidelines. The list is in Appendix A. An updated list may be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20205.

I–E–5. Other classes of recombinant DNA molecules, if the Director, NIH, with advice of the Recombinant DNA Advisory Committee, after appropriate notice and opportunity for public comment, finds that they do not present a significant risk to health or the environment. (See Section IV–E–1–b–(1)–(d).) Certain classes are exempt as of publication of these Revised Guidelines. The list is in Appendix C. An updated list may be obtained from the Office of Recombinant DNA Activities; National Institutes of Health, Bethesda, Maryland 20205.

I–F. *General Definitions.* See Section IV–C.

II. Containment

Effective biological safety programs have been operative in a variety of laboratories for many years. Considerable information therefore already exists for the design of physical containment facilities and the selection of laboratory procedures applicable to organisms carrying recombinant DNAs.(*6–19*) The existing programs rely upon mechanisms that, for convenience, can be divided into two categories: (i) a set of standard practices that are generally used in microbiological laboratories, and (ii) special procedures, equipment, and laboratory installations that provide physical barriers which are applied in varying degrees according to the estimated biohazard.

Experiments on recombinant DNAs, by their very nature, lend themselves to a third containment mechanism—namely, the application of highly specific biological barriers. In fact, natural barriers do exist which limit either (i) the infectivity of a *vector*, or *vehicle*, (plasmid or virus) for specific hosts or (ii) its dissemination and survival in the environment. The vectors that provide the means for replication of the recombinant DNAs and/or the host cells in which they replicate can be genetically designed to decrease by many orders of magnitude the probability of dissemination of recombinant DNAs outside the laboratory.

As these three means of containment are complementary, different levels of containment appropriate for experiments with different recombinants can be established by applying various combinations of the physical and biological barriers along with a constant use of the standard practices. We consider these categories of containment separately here in order that such combinations can be conveniently expressed in the Guidelines.

In constructing these Guidelines, it was necessary to define boundary conditions for the different levels of physical and biological containment and for the classes of experiments to which they apply. We recognize that these definitions do not take into account all existing and anticipated information on special procedures that will allow particular experiments to be carried out under different conditions than indicated here without affecting risk. Indeed, we urge that individual investigators devise simple and more effective containment procedures and that investigators and institutional biosafety committees recommend changes in the Guidelines to permit their use.

II–A. *Standard Practices and Training.* The first principle of containment is a strict adherence to good microbiological practices.(*6–15*) Consequently, all personnel directly or indirectly involved in experiments on recombinant DNAs must receive adequate instruction. (See Sections IV–D–1–g, IV–D–5–d and IV–D–8–b.). This shall as a minimum include instructions in aseptic techniques and in the biology of the organisms used in the experiments, so that the potential biohazards can be understood and appreciated.

Any research group working with agents with a known or potential biohazard shall have an emergency plan which describes the procedures to be followed if an accident contaminates personnel or the environment. The principal investigator must ensure that everyone in the laboratory is familiar with both the potential hazards of the work and the emergency plan. (See Sections IV–D–5–e and IV–D–3–d.) If a research group is working with a known pathogen where there is an effective vaccine it should be made available to all workers. Where serological monitoring is clearly appropriate it shall be provided. (See Sections IV–D–1–h and IV–D–8–c.)

II–B. *Physical Containment Levels.* The objective of physical containment is to confine organisms containing recombinant DNA molecules, and thus

to reduce the potential for exposure of the labortory worker, persons outside of the laboratory, and the environment to organisms containing recombinant DNA molecules. Physical containment is achieved through the use of laboratory practices, containment equipment, and special laboratory design. Emphasis is placed on primary means of physical containment which are provided by laboratory practices and containment equipment. Special laboratory design provides a secondary means of protection against the accidental release of organisms outside the laboratory or to the environment. Special laboratory design is used primarily in facilities in which experiments of moderate to high potential hazard are performed.

Combinations of laboratory practices, containment equipment, and special laboratory design can be made to achieve different levels of physical containment. Four levels of physical containment, which are designated as P1, P2, P3, and P4, are described. It should be emphasized that the descriptions and assignments of physical containment detailed below are based on existing approaches to containment of pathogenic organisms. For example, the "Classification of Etiologic Agents on the Basis of Hazard," (7) prepared by the Center for Disease Control, describes four general levels which roughly correspond to our descriptions for P1, P2, P3, and P4; and the National Cancer Institute describes three levels for research on oncogenic viruses which roughly correspond to our P2, P3, and P4 levels.(8)

It is recognized that several different combinations of laboratory practices, containment equipment, and special laboratory design may be appropriate for containment of specific research activities. The Guidelines, therefore, allow alternative selections of primary containment equipment within facilities that have been designed to provide P3 and P4 levels of physical containment. The selections of alternative methods of primary containment is dependent, however, on the level of biological containment provided by the host-vector system used in the experiment. Consideration will also be given by the Director, NIH, with the advice of the Recombinant DNA Advisory Committee to other combinations which achieve an equivalent level of containment. [See Section IV–E–1–b–(2)–(b).] Additional material on physical containment for plant host-vector systems is found in Sections III–C–3 and III–C–4.

II–B–1. *P1 Level.*

II–B–1–a. *Laboratory Practices.*

II–B–1–a–(1). Laboratory doors shall be kept closed while experiments are in progress.

II–B–1–a–(2). Work surfaces shall be decontaminated daily, and immediately following spills of organisms containing recombinant DNA molecules.

II–B–1–a–(3). All biological wastes shall be decontaminated before disposal. Other contaminated materials, such as glassware, animal cages, and laboratory equipment, shall be decontaminated before washing, reuse, or disposal.

II–B–1–a–(4). Mechanical pipetting devices shall be used; pipetting by mouth is prohibited.

II–B–1–a–(5). Eating, drinking, smoking, and storage of foods are not permitted in the laboratory area in which recombinant DNA materials are handled.

II–B–1–a–(6). Persons shall wash their hands after handling organisms containing recombinant DNA molecules and when they leave the laboratory.

II–B–1–a–(7). Care shall be taken in the conduct of all procedures to minimize the creation of aerosols.

II–B–1–a–(8). Contaminated materials that are to be decontaminated at a site away from the laboratory shall be placed in a durable leak-proof container, which is closed before removal from the laboratory.

II–B–1–a–(9). An insect and rodent control program shall be instituted.

II–B–1–a–(10). The use of laboratory gowns, coats, or uniforms is discretionary with the laboratory supervisor.

II–B–1–a–(11). Use of the hypodermic needle and syringe shall be avoided when alternative methods are available.

II–B–1–a–(12). The laboratory shall be kept neat and clean.

II–B–1–b. *Containment Equipment.* Special containment equipment is not required at the P1 level.

II–B–1–c. *Special Laboratory Design.* Special laboratory design is not required at the P1 level.

II–B–2. *P2 Level.*

II–B–2–a. *Laboratory Practices.*

II–B–2–a–(1). Laboratory doors shall be kept closed while experiments are in progress.

II–B–2–a–(2). Work surfaces shall be decontaminated daily, and immediately following spills of organisms containing recombinant DNA molecules.

II–B–2–a–(3). All laboratory wastes shall be steam-sterilized (autoclaved) before disposal. Other contaminated materials such as glassware, animal cages, laboratory equipment, and radioactive wastes shall be decontaminated by a means demonstrated to be effective before washing, reuse, or disposal.

II–B–2–a–(4). Mechanical pipetting devices shall be used; pipetting by mouth is prohibited.

II–B–2–a–(5). Eating, drinking, smoking, and storage of food are not permitted in the laboratory area in which recombinant DNA materials are handled.

II–B–2–a–(6). Persons shall wash their hands after handling organisms containing recombinant DNA molecules and when they leave the laboratory.

II–B–2–a–(7). Care shall be exercised to minimize the creation of aerosols. For example, manipulations such as inserting a hot inoculating loop or needle into a culture, flaming an inoculation loop or needle so that it splatters, and forceful ejection of fluids from pipettes or syringes shall be avoided.

II–B–2–a–(8). Contaminated materials that are to be steam sterilized (autoclaved) or decontaminated at a site away from the laboratory shall be placed in a durable leak-proof container, which is closed before removal from the laboratory.

II–B–2–a–(9). Only persons who have been advised of the nature of the research being conducted shall enter the laboratory.

II–B–2–a–(10). The universal biohazard sign shall be posted on all laboratory access doors when experiments requiring P2 containment are in progress. Freezers and refrigerators or other units used to store organisms containing recombinant DNA molecules shall also be posted with the universal biohazard sign.

II–B–2–a–(11). An insect and rodent control program shall be instituted.

II–B–2–a–(12). The use of laboratory gowns, coats, or uniforms is required. Laboratory clothing shall not be worn to the lunch room or outside of the building in which the laboratory is located.

II–B–2–a–(13). Animals not related to the experiment shall not be permitted in the laboratory.

II–B–2–a–(14). Use of the hypodermic needle and syringe shall be avoided when alternative methods are available.

II–B–2–a–(15). The laboratory shall be kept neat and clean.

II–B–2–a–(16). Experiments of lesser biohazard potential can be carried out concurrently in carefully demarcated areas of the same laboratory.

II–B–2–b. *Containment Equipment.* Biological safety cabinets [20] shall be used to contain aerosol-producing equipment, such as blenders, lyophilizers, sonicators, and centrifuges, when used to process organisms containing recombinant DNA molecules.

except where equipment design provides for containment of the potential aerosol. For example, a centrifuge may be operated in the open if a sealed head or safety centrifuge cups are used.

II–B–2–c. *Special Laboratory Design.* An autoclave for sterilization of wastes and contaminated materials shall be available in the same building in which organisms containing recombinant DNA molecules are used.

II–B–3. *P3 Level.*

II–B–3–a. *Laboratory Practices.*

II–B–3–a–(1). Laboratory doors shall be kept closed while experiments are in progress.

II–B–3–a–(2). Work surfaces shall be decontaminated following the completion of the experimental activity, and immediately following spills of organisms containing recombinant DNA molecules.

II–B–3–a–(3). All laboratory wastes shall be steam-sterilized (autoclaved) before disposal. Other contaminated materials, such as glassware, animal cages, laboratory equipment, and radioactive wastes, shall be decontaminated by a method demonstrated to be effective before washing, reuse, or disposal.

II–B–3–a–(4). Mechanical pipetting devices shall be used; pipetting by mouth is prohibited.

II–B–3–a–(5). Eating, drinking, smoking, and storage of food are not permitted in the laboratory area in which recombinant DNA materials are handled.

II–B–3–a–(6). Persons shall wash their hands after handling organisms containing recombinant DNA molecules and when they leave the laboratory.

II–B–3–a–(7). Care shall be exercised to minimize the creation of aerosols. For example, manipulations such as inserting a hot inoculating loop or needle into a culture, flaming an inoculation loop or needle so that it splatters, and forceful ejection of fluids from pipettes or syringes shall be avoided.

II–B–3–a–(8). Contaminated materials that are to be steam-sterilized (autoclaved) or decontaminated at a site away from the laboratory shall be placed in a durable leak-proof container, which is closed before removal from the laboratory.

II–B–3–a–(9). Entry into the laboratory shall be through a controlled access area. Only persons who have been advised of the nature of the research being conducted shall enter the controlled access area. Only persons required on the basis of program or support needs shall be authorized to enter the laboratory. Such persons shall be advised of the nature of the research being conducted before entry, and shall comply with all required entry and exit procedures.

II–B–3–a–(10). Persons under 16 years of age shall not enter the laboratory.

II–B–3–a–(11). The universal biohazard sign shall be posted on the controlled access area door and on all laboratory doors when experiments requiring P3-level containment are in progress. Freezers and refrigerators or other units used to store organisms containing recombinant DNA molecules shall also be posted with the universal biohazard sign.

II–B–3–a–(12). An insect and rodent control program shall be instituted.

II–B–3–a–(13). Laboratory clothing that protects street clothing (e.g., long-sleeve solid-front or wrap-around gowns, no-button or slipover jackets) shall be worn in the laboratory. Front-button laboratory coats are unsuitable. Laboratory clothing shall not be worn outside the laboratory and shall be decontaminated before it is sent to the laundry.

II–B–3–a–(14). Raincoats, overcoats, topcoats, coats, hats, caps, and such street outer-wear shall not be kept in the laboratory.

II–B–3–a–(15). Gloves shall be worn when handling materials requiring P3 containment. They shall be removed aseptically immediately after the handling procedure and decontaminated.

II–B–3–a–(16). Animals and plants not related to the experiment shall not be permitted in the laboratory.

II–B–3–a–(17). Vacuum outlets shall be protected by filter and liquid disinfectant traps.

II–B–3–a–(18). Use of hypodermic needle and syringe shall be avoided when alternative methods are available.

II–B–3–a–(19). The laboratory shall be kept neat and clean.

II–B–3–a–(20). If experiments involving other organisms which require lower levels of containment are to be conducted in the same laboratory concurrently with experiments requiring P3-level physical containment, they shall be conducted in accordance with P3-level laboratory practices.

II–B–3–b. *Containment Equipment.*

II–B–3–b–(1). Biological safety cabinets [20] shall be used for all equipment and manipulations that produce aerosols—e.g., pipetting, dilutions, transfer operations, plating, flaming, grinding, blending, drying, sonicating, shaking, centrifuging—where these procedures involve organisms containing recombinant DNA molecules, except where equipment design provides for containment of the potential aerosol.

II–B–3–b–(2). Laboratory animals held in a P3 area shall be housed in partial-containment caging systems, such as Horsfall units (*19A*), open cages placed in ventilated enclosures, solid-wall and solid-bottom cages covered by filter bonnets, or solid-wall and solid-bottom cages placed on holding racks equipped with ultraviolet radiation lamps and reflectors. (Note: Conventional caging systems may be used, provided that all personnel wear appropriate personal protective devices. These shall include, at a minimum, wrap-around gowns, head covers, gloves, shoe covers, and respirators. All personnel shall shower on exit from areas where these devices are required.

II–B–3–b–(3). *Alternative Selection of Containment Equipment.* Experimental procedures involving a host-vector system that provides a one-step higher level of biological containment than that specified in Part III can be conducted in the P3 laboratory using containment equipment specified for the P2 level of physical containment. Experimental procedures involving a host-vector system that provides a one-step lower level of biological containment than that specified in Part III can be conducted in the P3 laboratory using containment equipment specified for the P4 level of physical containment. Alternative combinations containment safeguards are shown in Table I.

Table I

COMBINATIONS OF CONTAINMENT SAFEGUARDS

Classification of experiment according to Guidelines		Alternate combinations of physical and biological containment			
		Physical Containment			
Physical containment	Biological* containment	Laboratory design specified for:	Laboratory practices specified for:	Containment equipment specified for:	Biological containment
P3	HV3	P3	P3	P3	HV3
P3	HV3	P3	P3	P4	HV2
P3	HV2	P3	P3	P3	HV2
P3	HV2	P3	P3	P2	HV3
P3	HV2	P3	P3	P4	HV1
P3	HV1	P3	P3	P3	HV1
P3	HV1	P3	P3	P2	HV2

*See Section II-D for description of biological containment.

II–B–3–c. *Special Laboratory Design.*

II–B–3–c–(1). The laboratory shall be separated by a controlled access area from areas that are open to unrestricted traffic flow. A controlled access area is an anteroom, a change room, an air lock or any other double-door arrangement that separates the laboratory from areas open to unrestricted traffic flow.

II–B–3–c–(2). The surfaces of walls, floors, and ceilings shall be readily cleanable. Penetrations through these surfaces shall be sealed or capable of being sealed to facilitate space decontamination.

II–B–3–c–(3). A foot-, elbow-, or automatically-operated handwashing facility shall be provided near each primary laboratory exit area.

II–B–3–c–(4). Windows in the laboratory shall be sealed.

II–B–3–c–(5). An autoclave for sterilization of wastes and contaminated materials shall be available in the same building (and preferably within the controlled laboratory area) in which organisms containing recombinant DNA molecules are used.

II–B–3–c–(6). The laboratory shall have a ventilation system that is capable of controlling air movement. The movement of air shall be from areas of lower contamination potential to areas of higher contamination potential (i.e. from the controlled access area to the laboratory area). If the ventilation system provides positive pressure supply air, the system shall operate in a manner that prevents the reversal of the direction of air movement or shall be equipped with an alarm that would be actuated in the event that reversal in the direction of air movement were to occur. The exhaust air from the laboratory area shall not be recirculated to other areas of the building unless the exhaust air is filtered by HEPA filters or equivalent. The exhaust air from the laboratory area can be discharged to the outdoors without filtration or other means for effectively reducing an accidental aerosol burden provided that it can be dispersed clear of occupied buildings and air intakes.

II–B–3–c–(7). The treated exhaust-air from Class I and Class II biological safety cabinets (*20*) may be discharged either to the laboratory or to the outdoors. The treated exhaust-air from a Class III cabinet shall be discharged directly to the outdoors. If the treated exhaust-air from these cabinets is to be discharged to the outdoors through a building exhaust air system, it shall be connected to this system so as to avoid any interference with the air balance of the cabinet and the building ventilation system.

II–B–4. *P4 Level.*

II–B–4–a. *Laboratory Practices.*

II–B–4–a–(1). Laboratory doors shall be kept closed while experiments are in progress.

II–B–4–a–(2). Work surfaces shall be decontaminated following the completion of the experimental activity and immediately following spills of organisms containing recombinant DNA molecules.

II–B–4–a–(3). All laboratory wastes shall be steam-sterilized (autoclaved) before disposal. Other contaminated materials such as glassware, animal cages, laboratory equipment, and radioactive wastes shall be decontaminated by a method demonstrated to be effective before washing, reuse, or disposal.

II–B–4–a–(4). Mechanical pipetting devices shall be used; pipetting by mouth is prohibited.

II–B–4–a–(5). Eating, drinking, smoking, and storage of food are not permitted in the P4 facility.

II–B–4–a–(6). Persons shall wash their hands after handling organisms containing recombinant DNA molecules and when they leave the laboratory.

II–B–4–a–(7). Care shall be exercised to minimize the creation of aerosols. For example, manipulations such as inserting a hot inoculating loop or needle into a culture, flaming an inoculation loop or needle so that it splatters, and forceful ejection of fluids from pipettes or syringes shall be avoided.

II–B–4–a–(8). Biological materials to be removed from the P4 facility in a viable or intact state shall be transferred to a non-breakable sealed container, which is then removed from the P4 facility through a pass-through disinfectant dunk tank or fumigation chamber.

II–B–4–a–(9). No materials, except for biological materials that are to remain in a viable or intact state, shall be removed from the P4 facility unless they have been steam-sterilized (autoclaved) or decontaminated by a means demonstrated to be effective as they pass out of the P4 facility. All wastes and other materials as well as equipment not damaged by high temperature or steam shall be steam sterilized in the double-door autoclave of the P4 facility. Other materials which may be damaged by temperature or steam shall be removed from the P4 facility through a pass-through fumigation chamber.

II–B–4–a–(10). Materials within the Class III cabinets shall be removed from the cabinet system only after being steam-sterilized in an attached double-door autoclave or after being contained in a non-breakable sealed container, which is then passed through a disinfectant dunk tank or a fumigation chamber.

II–B–4–a–(11). Only persons whose entry into the P4 facility is required to meet program or support needs shall be authorized to enter. Before entering, such persons shall be advised of the nature of the research being conducted and shall be instructed as to the appropriate safeguards to ensure their safety. They shall comply with instructions and all other required procedures.

II–B–4–a–(12). Persons under 18 years of age shall not enter the P4 facility.

II–B–4–a–(13). Personnel shall enter into and exit from the P4 facility only through the clothing change and shower rooms. Personnel shall shower at each egress from the P4 facility. Air locks shall not be used for personnel entry or exit except for emergencies.

II–B–4–a–(14). Street clothing shall be removed in the outer side of the clothing-change area and kept there. Complete laboratory clothing, including undergarments, head cover, shoes, and

either pants and shirts or jumpsuits, shall be used by all persons who enter the P4 facility. Upon exit, personnel shall store this clothing in lockers provided for this purpose or discard it into collection hampers before entering the shower area.

II–B–4–a–(15). The universal biohazard sign is required on the P4 facility access doors and on all interior doors to individual laboratory rooms where experiments are conducted. The sign shall also be posted on freezers, refrigerators, or other units used to store organisms containing recombinant DNA molecules.

II–B–4–a–(16). An insect and rodent control program shall be instituted.

II–B–4–a–(17). Animals and plants not related to the experiment shall not be permitted in the laboratory in which the experiment is being conducted.

II–B–4–a–(18). Vacuum outlets shall be protected by filter and liquid disinfectant traps.

II–B–4–a–(19). Use of the hypodermic needle and syringe shall be avoided when alternate methods are available.

II–B–4–a–(20). The laboratory shall be kept neat and clean.

II–B–4–a–(21). If experiments involving other organisms which require lower levels of containment are to be conducted in the P4 facility concurrently with experiments requiring P4-level containment, they shall be conducted in accordance with all P4-level laboratory practices specified in this section.

II–B–4–b. *Containment Equipment.*

II–B–4–b–(1). Experimental procedures involving organisms that require P4-level physical containment shall be conducted either in (i) a Class III cabinet system or in (ii) Class I or Class II cabinets that are located in a specially designed area in which all personnel are required to wear one-piece positive-pressure isolation suits.

II–B–4–b–(2). Laboratory animals involved in experiments requiring P4-level physical containment shall be housed either in cages contained in Class III cabinets or in partial-containment caging systems (such as Horsfall units[*19A*), open cages placed in ventilated enclosures, or solid-wall and -bottom cages covered by filter bonnets, or solid-wall and -bottom cages placed on holding racks equipped with ultraviolet irradiation lamps and reflectors) that are located in a specially designed area in which all personnel are required to wear one-piece positive-pressure suits.

II–B–4–b–(3). *Alternative Selection of Containment Equipment.* Experimental procedures involving a host-vector system that provides a one-step higher level of biological containment than that specified in Part III can be conducted in the P4 facility using containment equipment requirements specified for the P3 level of physical containment. Alternative combinations of containment safeguards are shown in Table II.

Table II

COMBINATIONS OF CONTAINMENT SAFEGUARDS

Classification of experiment according to Guidelines		Alternate combinations of physical and biological containment			
		Physical containment			
Physical containment	Biological* containment	Laboratory design specified for:	Laboratory practices specified for:	Containment equipment specified for:	Biological containment
P4	HV1	P4	P4	P4	HV1
P4	HV1	P4	P4**	P3	HV2

* See Section II–D for description of biological containment.
** In this case gloves shall be worn, in addition to the clothing requirements specified in II–B–4–a–(14).

II–B–4–c. *Special Laboratory Design.*

II–B–4–c–(1). The laboratory shall be located in a restricted-access facility which is either a separate building or a clearly demarcated and isolated zone within a building. Clothing-change areas and shower rooms shall be provided for personnel entry and egress. These rooms shall be arranged so that personnel leave through the shower area to the change room. A double-door ventilated vestibule or ultraviolet air lock shall be provided for passage of materials, supplies, and equipment which are not brought into the P4 facility through the change room area.

II–B–4–c–(2). Walls, floors, and ceilings of the P4 facility are constructed to form an internal shell which readily allows vapor-phase decontamination and is animal- and insect-proof. All penetrations through these structures and surfaces are sealed. (The integrity of the walls, floors, ceilings, and penetration seals should ensure adequate containment of a vapor-phase decontaminant under static pressure conditions. This requirement does not imply that these surfaces must be airtight.)

II–B–4–c–(3). A foot-, elbow-, or automatically-operated hand-washing facility shall be provided near the door within each laboratory in which experiments involving recombinant DNA are conducted in open-faced biological safety cabinets.

II–B–4–c–(4). Central vacuum systems are permitted. The system, if provided, shall not serve areas outside the P4 facility. The vacuum system shall include in-line HEPA filters near each use point or service cock. The filters shall be installed so as to permit in-place decontamination and replacement. Water supply and liquid and gaseous services provided to the P4 facility shall be protected be devices that prevent backflow.

II–B–4–c–(5). Drinking water fountains shall not be installed in laboratory or animal rooms of the P4 facility. Foot-operated water fountains are permitted in the corridors of the P4 facility. The water service provided to such fountains shall be protected from the water services to the laboratory areas of the P4 facility.

II–B–4–c–(6). Laboratory doors shall be self-closing.

II–B–4–c–(7). A double-door autoclave shall be provided for sterilization of material passing out of the P4 facility. The autoclave doors shall be interlocked so that both doors will not be open at the same time.

II–B–4–c–(8). A pass-through dunk tank or fumigation chamber shall be provided for removal from the P4 facility of material and equipment that cannot be heat-sterilized.

II–B–4–c–(9). All liquid effluents from the P4 facility shall be collected and decontaminated before disposal. Liquid effluents from biological safety cabinets and laboratory sinks shall be sterilized by heat. Liquid effluents from the shower and hand washing facilities may be inactivated by chemical treatment.

HEPA filters shall be installed in all vents from effluent drains.

II–B–4–c–(10). An individual supply and exhaust-air ventilation system shall be provided. The system shall maintain pressure differentials and directional air flow as required to ensure inflow from areas outside the facility toward areas of highest potential risk within the facility. The system shall be designed to prevent the reversal of air flow. The system shall sound an alarm in the event of system malfunction.

II–B–4–c–(11). Air within individual laboratories of the P4 facility may be recirculated if HEPA filtered.

II–B–4–c–(12). The exhaust air from the P4 facility shall be HEPA filtered and discharged to the outdoors so that it is dispersed clear of occupied buildings and air intakes. The filter chambers shall be designed to allow *in situ* decontamination before removal and to facilitate certification testing after replacement.

II–B–4–c–(13). The treated exhaust-air from Class I and Class II biological safety cabinets (*20*) may be discharged directly to the laboratory room environment or to the outdoors. The treated exhaust-air from Class III cabinets shall be discharged to the outdoors. If the treated exhaust-air from these cabinets is to be discharged to the outdoors through the P4 facility exhaust air system, it shall be connected to this system so as to avoid any interference with the air balance of the cabinets or the facility exhaust air system.

II–B–4–c–(14). As noted in Section II–B–4–b–(1), the P4 facility may contain specially designed areas in which all personnel are required to wear one-piece positive-pressure isolation suits. Such areas shall be airtight. The exhaust-air from the suit area shall be filtered by two sets of HEPA filters installed in series, and a duplicate filtration unit and exhaust fan shall be provided. The air pressure within the suit area shall be less than that in any adjacent area. An emergency lighting system, communication systems, and power source shall be provided. A double-door autoclave shall be provided for sterilization of all waste materials to be removed from the suit area.

Personnel who enter this area shall wear a one-piece positive-pressure suit that is ventilated by a life-support system. The life-support system shall be provided with alarms and emergency backup air. Entry to this area is through an airlock fitted with airtight doors. A chemical shower air shall be provided to decontaminate the surfaces of the suit before removal.

II–C. *Shipment.* Recombinant DNA molecules contained in an organism or virus shall be shipped only as an etiologic agent under requirements of the U.S. Public Health Service and the U.S. Department of Transportation (Section 72.25, Part 72, Title 42, and Sections 173.386–.388, Part 173, Title 49, U.S. Code of Federal Regulations) as specified below:

II–C–1. Recombinant DNA molecules contained in an organism or virus requiring P1, P2, or P3 physical containment, when offered for transportation or transported, are subject to all requirements of Section 72.25(c)(1)–(5), Part 72, Title 42 CFR, and § 173.386–.388, Part 173, Title 49 CFR.

II–C–2. Recombinant DNA molecules contained in an organism or virus requiring P4 physical containment, when offered for transportation or transported, are subject to the requirements listed above under II–C–1 and are also subject to Section 72.25(c)(6), Part 72, Title 42 CFR.

II–C–3. Additional information on packaging and shipment is given in the "Laboratory Safety Monograph—A Supplement to the NIH Guidelines for Recombinant DNA Research."

II–D. *Biological Containment.*

II–D–1. *Levels of Biological Containment.* In consideration of biological containment, the vector (plasmid, organelle, or virus) for the recombinant DNA and the host (bacterial, plant, or animal cell) in which the vector is propagated in the laboratory will be considered together. Any combination of vector and host which is to provide biological containment must be chosen or constructed so that the following types of "escape" are minimized: (i) survival of the vector in its host outside the laboratory and (ii) transmission of the vector from the propagation host to other nonlaboratory hosts.

The following levels of biological containment (HV, or *H*ost-*V*ector, systems) for prokaryotes will be established; specific criteria will depend on the organisms to be used. Eukaryotic host-vector systems are considered in Part III.

II–D–1–a. *HV1.* A host-vector system which provides a moderate level of containment. *Specific systems:*

II–D–1–a–(1). *EK1.* The host is always *E. coli* K–12 or a derivative thereof, and the vectors include nonconjugative plasmids (e.g., pSC101, Co1E1, or derivatives thereof (*21–27*) and variants of bacteriophage, such as lambda (28–33). The *E. coli* K–12 host shall not contain conjugation-proficient plasmids, whether autonomous or integrated, or generalized transducing phages, except as specified in Section III–0.

II–D–1–a–(2). *Other Prokaryotes.* Hosts and vectors shall be, at a minimum, comparable in containment to *E. coli* K–12 with a non conjugative plasmid or bacteriophage vector. The data to be considered and a mechanism for approval of such HV1 systems are described below (Section II–D–2).

II–D–1–b. *HV2.* These are host-vector systems shown to provide a high level of biological containment as demonstrated by data from suitable tests performed in the laboratory. Escape of the recombinant DNA either via survival of the organisms or via transmission of recombinant DNA to other organisms should be less than $1/10^8$ under specified conditions. *Specific systems:*

II–D–1–b–(1). For EK2 host-vector systems in which the vector is a plasmid, no more than one in 10^8 host cells should be able to perpetuate a cloned DNA fragment under the specified nonpermissive laboratory conditions designed to represent the natural environment, either by survival of the original host or as a consequence of transmission of the cloned DNA fragment.

II–D–1–b–(2). For EK2 host-vector systems in which the vector is a phage, no more than one in 10^8 phage particles should be able to perpetuate a cloned DNA fragment under the specified nonpermissive laboratory conditions designed to represent the natural environment either (i) as a prophage (in the inserted or plasmid form) in the laboratory host used for phage propagation or (ii) by surviving in natural environments and transferring a cloned DNA fragment to other hosts (or their resident prophages).

II–D–1–c. *HV3.* These are host-vector systems in which:

II–D–1–c–(1). All HV2 criteria are met.

II–D–1–c–(2). The vector is dependent on its propagation host or is highly defective in mobilizability. Reversion to host-independence must be less than $1/10^8$ per vector genome per generation.

II–D–1–c–(3). No markers conferring resistance to antibiotics commonly used clinically or in agriculture are carried by the vector, unless expression of such markers is dependent on the propagating host or on unique laboratory-controlled conditions or is blocked by the inserted DNA.

II–D–1–c–(4). The specified containment shown by laboratory tests has been independently confirmed by specified tests in animals, including primates, and in other relevant environments.

II-D-1-c-(5). The relevant genotypic and phenotypic traits have been independently confirmed.

II-D-2. *Certification of Host-Vector Systems.*

II-D-2-a. *Responsibility.* HV1 systems other than *E. coli* K–12, and HV2 and HV3 host-vector systems, may not be designated as such until they have been certified by the Director, NIH. Application for certification of a host-vector system is made by written application to the Office of Recombinant DNA Activities (ORDA), National Institutes of Health, Bethesda, Maryland 20205.

Host-vector systems that are proposed for certification will be reviewed by the NIH Recombinant DNA Advisory Committee (RAC). (See Section IV-E-1-b-(1)-(c).) This will first involve review of the data on construction, properties, and testing of the proposed host-vector system by a Working Group composed of one or more members of the RAC and other persons chosen because of their expertise in evaluating such data. The Committee will then evaluate the report of the Working Group and any other available information at a regular meeting. The Director, NIH is responsible for certification after receiving the advice of the RAC. Minor modifications of existing certified host-vector systems, where the modifications are of minimal or no consequence to the properties relevant to containment may be certified by the Director, NIH without review by the RAC. (See Section IV—E-1-b-(3)-(f).)

When new host-vector systems are certified, notice of the certification will be sent by ORDA to the applicant and to all IBCs and will be published in the *Recombinant DNA Technical Bulletin.* Copies of a list of all currently certified host-vector systems may be obtained from ORDA at any time.

The Director, NIH may at any time rescind the certification of any host-vector system. (See Section IV-E-1-b-(3)-(i).) If certification of a host-vector system is rescinded, NIH will instruct investigators to transfer cloned DNA into a different system, or use the clones at a higher physical containment level unless NIH determines that the already constructed clones incorporate adequate biological containment.

Certification of a given system does not extend to modifications of either the host or vector component of that system. Such modified systems must be independently certified by the Director, NIH. If modifications are minor, it may only be necessary for the investigator to submit data showing that the modifications have either improved or not impaired the major phenotypic traits on which the containment of the system depends. Substantial modifications of a certified system require the submission of complete testing data.

II-D-2-b. *Data To Be Submitted for Certification.*

II-D-2-b-(1). *HV1 Systems Other than E. Coli K–12.* The following types of data shall be submitted, modified as appropriate for the particular system under consideration: (i) A description of the organism and vector; the strain's natural habitat and growth requirements; its physiological properties, particularly those related to its reproduction and survival and the mechanisms by which it exchanges genetic information; the range of organisms with which this organism normally exchanges genetic information and what sort of information is exchanged; and any relevant information on its pathogenicity or toxicity. (ii) A description of the history of the particular strains and vectors to be used, including data on any mutations which render this organism less able to survive or transmit genetic information. (iii) A general description of the range of experiments contemplated, with emphasis on the need for developing such an HV1 system.

II-D-2-b-(2). *HV2 Systems.* Investigators planning to request HV2 certification for host-vector systems can obtain instructions from ORDA concerning data to be submitted [33A, 33B]. In general, the following types of data are required: (i) Description of construction steps, with indication of source, properties, and manner of introduction of genetic traits. (ii) Quantitative data on the stability of genetic traits that contribute to the containment of the system. (iii) Data on the survival of the host-vector system under nonpermissive laboratory conditions designed to represent the relevant natural environment. (iv) Data on transmissibility of the vector and/or cloned DNA fragment under both permissive and nonpermissive conditions. (v) Data on all other properties of the system which affect containment and utility, including information on yields of phage or plasmid molecules, ease of DNA isolation, and ease of transfection or transformation. (vi) In some cases, the investigator may be asked to submit data on survival and vector transmissibility from experiments in which the host-vector is fed to laboratory animals (e.g., rodents). Such *in vivo* data may be required to confirm the validity of predicting *in vivo* survival on the basis of *in vitro* experiments.

Data must be submitted in writing to ORDA. Ten to twelve weeks are normally required for review and circulation of the data prior to the meeting at which such data can be considered by the NIH recombinant DNA Advisory Committee (RAC). Investigators are encouraged to publish their data on the construction, properties, and testing of proposed HV2 systems prior to consideration of the system by the RAC and its subcommittee. More specific instructions concerning the type of data to be submitted to NIH for proposed EK2 systems involving either plasmids or bacteriophage λ in *E. coli* K–12 are available from ORDA.

II-D-2-b-(3). *HV3 Systems.* Putative HV3 systems must, as the first step in certification, be certified as HV2 systems. Systems which meet the criteria given above under II-D-1-(c)-1, II-D-1-(c)-2, and II-D-1-(c)-3 will then be recommended for HV3 testing. Tests to evaluate various HV2 host-vector systems for HV3 certification will be performed by contractors selected by NIH. These contractors will repeat tests performed by individuals proposing the HV2 system and, in addition, will conduct more extensive tests on conditions likely to be encountered in nature. The genotypic and phenotypic traits of HV2 systems will be evaluated. Tests on survival and transmissibility in and on animals, including primates, will be performed, as well as tests on survival in certain specified natural environments.

II-D-3. *Distribution of Certified Host-Vectors.* Certified HV2 and HV3 host-vector systems (plus appropriate control strains) must be obtained from the NIH or its designees, one of whom will be the investigator who developed the system. NIH shall announce the availability of the system by publication of notices in appropriate journals.

Plasmid vectors will be provided in a suitable host strain, and phage vectors will be distributed as small-volume lysates. If NIH propagates any of the host strains or phage, a sample will be sent to the investigator who developed the system or to an appropriate contractor, prior to distribution, for verification that the material is free from contamination and unchanged in phenotypic properties.

In distributing the certified HV2 and HV3 host-vector systems, NIH or its designee will (i) send out a complete description of the system; (ii) enumerate and describe the tests to be performed by the user in order to verify important phenotypic traits; (iii) remind the user that any modification of the system necessitates independent approval of the system by the NIH; and (iv) remind the user of responsibility for notifying ORDA of any discrepancies with the

reported properties or any problems in the safe use of the system.

NIH may also distribute certified HV1 host-vector systems.

III. Containment Guidelines for Covered Experiments

Part III discusses experiments covered by the Guidelines. The reader must first consult Part I, where listings are given of prohibited and exempt experiments.

Containment guidelines for permissible experiments are given in Part III. Changes in these levels for specific experiments (or the assignment of levels to experiments not explicitly considered here) may not be instituted without the express approval of the Director, NIH. (See Sections IV–E–1–b–(1)–(a), IV–E–1–b–(1)–(b), IV–E–1–b–(2)–(b), IV–E–1–b–(2)–(c), and IV–E–1–b–(3)–(b).)

In the following classification of containment criteria for different kinds of recombinant DNAs, the stated levels of physical and biological containment are minimal for the experiments designated. The use of higher levels of biological containment (HV3>HV2>HV1) is encouraged if they are available and equally appropriate for the purposes of the experiment.

III–O. *Classification of Experiments Using the E. coli K–12 Host-Vector Systems.* Most recombinant DNA experiments currently being done employ *E. coli* K–12 host-vector systems. These are the systems for which we have the most experience and knowledge.

Some experiments using *E. coli* K–12 host-vector systems are prohibited (see Section I–D).

Some experiments using *E. coli* K–12 host-vector systems are exempt from the Guidelines (see Section I–E).

Other experiments using *E. coli* K–12 shall use P1 physical containment and, except as specified in the last paragraph of this section, an EK1 host-vector system (i.e. (a) the host shall not contain conjugation-proficient plasmids or generalized transducing phages, and (b) lambda or lambdoid bacteriophages or non-conjugative plasmids shall be used as vectors). For these experiments no Memorandum of Understanding and Agreement (MUA) as described in Section IV–D–1–c need be submitted, nor is any registration with NIH necessary. However, for these experiments, prior to their initiation, investigators must submit to their Institutional Biosafety Committee (IBC) a registration document that contains a description of (a) the source(s) of DNA, (b) the nature of the inserted DNA sequences, and (c) the hosts and vectors to be used. This registration document must be dated and signed by the investigator and filed only with the local IBC. The IBC shall review all such proposals but such review is not required prior to initiation of experiments. An exception, however, which does require prior review and approval by the IBC is any experiment in which there is a deliberate attempt to have the *E. coli* K–12 efficiently express any gene coding for a eukaryotic protein.

Experiments involving the insertion into *E. coli* K–12 of DNA from prokaryotes that exchange genetic information with *E. coli* by known physiological processes will be exempted from these Guidelines if they appear on the "list of exchangers" set forth in Appendix A (see Section I–E–4).

For those not on the Appendix A list but which exchange genetic information [35] with *E. coli*, experiments may be performed with any *E. coli* K–12 vector (e.g. conjugative plasmid). When a non-conjugative vector is used, the *E. coli* K–12 host may contain conjugation-proficient plasmids, either autonomous or integrated, or generalized transducing phages.

III–A. *Classification of Experiments Using Certain HV1 and HV2 Host-Vector Systems.* Certain HV1 and HV2 host-vector systems are assigned containment levels as specified in the subsections of this Section III–A. Those so classified as of publication of these revised Guidelines are listed in Appendix D. An updated list may be obtained from the Office of Recumbinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20205.

It has been necessary, throughout this section, to use words and terms marked with footnote reference numbers. The footnotes (Part V) define more fully what the terms denote.

III–A–1. *Shotgun Experiments.* These experiments involve the production of recombinant DNAs between the vector and portions of the specified cellular source, preferably a partially purified fraction. Care should be taken either to preclude or eliminate contaminating microorganisms before isolating the DNA.

III–A–1–a. *Eukaryotic DNA Recombinants.*

III–A–1–a–(1). *Primates.* P2 physical containment + an HV2 host-vector or P3+HV1.

III–A–1–a–(2). *Other Mammals.* P2 physical containment + an HV2 host-vector or P3 + HV1.

III–A–1–a–(3). *Birds.* P2 physical containment + an HV2 host-vector, or P3 + HV1.

III–A–1–a–(4). *Cold-Blooded Vertebrates.* P2 physical containment + an HV1 host-vector or P1 + HV2. If the eukaryote is known to produce a potent polypeptide toxin,(*34*) the containment shall be increased to P3 + HV2.

III–A–1–a–(5). *Other Cold-Blooded Animals and Lower Eukaryotes.* This large class of eukaryotes is divided into two groups:

III–A–1–a–(5)–(a). Species that are known to produce a potent polypeptide toxin(*34*) that acts in vertebrates, or are known pathogens listed in Class 2,(*1*) or are known to carry such pathogens must use P3 physical containment + an HV2 host-vector. When the potent toxin is not a polypeptide and is likely not to be the product of closely linked eukaryote genes, containment may be reduced to P3 + HV1 or P2 + HV2. Species that produce potent toxins that affect invertebrates or plants but not vertebrates require P2 + HV2 or P3 + HV1. Any species that has a demonstrated capacity for carrying particular pathogenic microorganisms is included in this group, unless the organisms used as the source of DNA have been shown not to contain those agents, in which case they may be placed in the following group.(*2A*)

III–A–1–a–(5)–(b). The remainder of the species in this class including plant pathogenic or symbiotic fungi that do not produce potent toxins: P2 + HV1 or P1 + HV2. However, any insect in this group must be either (i) grown under laboratory conditions for at least 10 generations prior to its use as a source of DNA, or (ii) if caught in the wild, must be shown to be free of disease-causing microorganisms or must belong to a species that does not carry microorganisms causing disease in veterbrates or plants.(*2A*) If these conditions cannot be met, experiments must be done under P3 + HV1 or P2 + HV2 containment.

III–A–1–a–(6). *Plants.* P2 physical containment + an HV1 host-vector, or P1 + HV2. If the plant source makes a potent polypeptide toxin,(*34*) the containment must be raised to P3 physical containment + an HV2 host-vector. When the potent toxin is not a polypeptide and is likely not to be the product of closely linked plant genes, containment may be reduced to P3 + HV1 or P2 + HV2.(*2A*)

III–A–1–b. *Prokaryotic DNA Recombinants.* P2 + HV1 or P1 + HV2 for experiments with phages, plasmids and DNA from nonpathogenic prokaryotes which do not produce polypeptide toxins(*34*). P3 + HV2 for experiments with phages, plasmids and DNA from Class 2 agents(*1*).

III–A–2–a. *Viruses of Eukaryotes* (summary given in Table III; see also exception given at asterisk at end of Appendix D).

III–A–2–a–(1)–(a). *Nontransforming viruses.*

III–A–2–a–(1)–(a)–(*1*). *Adeno-Associated Viruses, Minute Virus of Mice, Mouse Adenovirus (Strain FL), and Plant Viruses.* P1 physical containment + and HV1 host-vector shall be used for DNA recombinants produced with (i) the whole viral genome, (ii) subgenomic DNA segments, or (iii) purified cDNA copies of viral mRNA.(*37*)

III–A–2–a–(1)–(a)–(*2*). *Hepatitis B.*

III–A–2–a–(1)–(a)–(*2*)–(*a*). P1 physical containment + an HV1 host-vector shall be used for purified subgenomic DNA segments.(*38*)

III–A–2–a–(1)–(a)–(*2*)–(*b*). P2 physical containment + an HV2 host-vector, or P3 + HV1, shall be used for DNA recombinants produced with the whole viral genome or with subgenomic segments that have not been purified to the extent required in footnote 38.

III–A–2–a–(1)–(a)–(*2*)–(*c*). P2 physical containment + an HV1 host and a vector certified for use in an HV2 system, or P3 + HV1, shall be used for DNA recombinants derived from purified cDNA copies of viral mRNA.(*37*)

III–A–2–a–(1)–(a)–(*3*). *Other Nontransforming Members of Presently Classified Viral Families.(36)*

III–A–2–a–(1)–(a)–(*3*)–(*a*). P1 physical containment + an HV1 host-subgenomic DNA(*38*) segments or (ii) purified cDNA copies of viral mRNA.(*37*)

III–A–2–a–(1)–(a)–(*3*)–(*b*). P1 physical containment + an HV1 host and a vector certified for use in an HV2 system shall be used for DNA recombinants produced with the whole viral genome or with subgenomic segments that have not been purified to the extent required in footnote 38.

III–A–2–a–(1)–(a)–(b). *Transforming Viruses.(37A)*

III–A–2–a–(1)–(b)–(*1*). *Herpes Saimiri, Herpes Ateles, and Epstein Barr Virus.(39)*

III–A–2–a–(1)–(b)–(*1*)–(*a*). P1 physical containment + an HV1 host-vector shall be used for DNA recombinants produced with purified nontransforming subgenomic DNA segments.(*38*)

III–A–2–a–(1)–(b)–(*1*)–(*b*). P2 physical containment + an HV1 host and a vector certified for use in an HV2 system, or P3 + HV1, shall be used for (i) DNA recombinants produced with purified subgenomic DNA segments containing an entire transforming gene(*38*) or (ii) purified cDNA copies of viral mRNA.(*37*)

III–A–2–a–(1)–(b)–(*1*)–(*c*). P3 physical containment + an HV1 host-vector, or P2 + HV2, shall be used for DNA recombinants produced with the whole viral genome or with subgenomic segments that have not been purified to the extent required in footnote 38.

III–A–2–a–(1)–(b)–(*2*). *Other Transforming Members of Presently Classified Viral Families.(36)*

III–A–2–a–(1)–(b)–(*2*)–(*a*). P1 physical containment + an HV1 host-vector shall be used for DNA recombinants produced with purified nontransforming subgenomic DNA segments.(*38*)

III–A–2–a–(1)–(b)–(*2*)–(*b*). P2 physical containment + an HV1 host and a vector certified for use in an HV2 system, or P3 + HV1, shall be used for (i) DNA recombinants produced with the whole viral genome, (ii) subgenomic DNA segments containing an entire transforming gene, (iii) purified cDNA copies of viral mRNA, (*37*) or (iv) subgenomic segments that have not been purified to the extent required in footnote 38.

III–A–2–a–(2). *DNA Transcripts of RNA Viruses.*

III–A–2–a–(2)–(a). *Retroviruses.*

III–A–2–a–(2)–(a)–(*1*). *Gibbon Ape, Woolly Monkey, Feline Leukemia and Feline Sarcoma Viruses.(39).*

III–A–2–a–(2)–(a)–(*1*)–(*a*). P1 physical containment + an HV1 host-vector shall be used for DNA recombinants produced with purified nontransforming subgenomic DNA segments.(*38*).

III–A–2–a–(2)–)a)–(*1*)–(*b*). P2 physical containment + an HV1 host and a vector certified for use in an HV2 system, or P3 + HV1, shall be used for DNA recombinants produced with purified subgenomic DNA segments (*38*) containing an entire transforming gene.

III–A–2–a–(2)–(a)–(*1*)–(*c*). P2 physical containment + an HV2 host-vector, or P3 + HV1, shall be used for DNA recombinants produced with (i) the whole viral genome, (ii) purified cDNA copies of viral mRNA,(*37*) or (iii) subgenomic segments that have not been purified to the extent required in footnote 38.

III–A–2–a–(2)–(a)–(*2*). *Other Members of the Family Retroviridiae.(36)*

III–A–2–a–(2)–(a)–(*2*)–(*a*). P1 physical containment + an HV1 host-vector shall be used for DNA recombinants produced with purified nontransforming subgenomic DNA segments.(*38*).

III–A–2–a–(2)–(a)–(*2*)–(*b*). P2 physical containment + an HV1 host and a vector certified for use in an HV2 system, or P3 + HV1, shall be used for DNA recombinants produced with (i) subgenomic DNA segments containing an entire transforming gene, (ii) the whole viral genome, or (iii) purified cDNA copies of viral mRNA.(*37*) or (iv) subgenomic segments that have not been purified to the extent required in footnote 38.

III–A–2–a–(2)–(b). *Negative Strand RNA Viruses.* P1 physical containment + an HV1 host-vector shall be used for DNA recombinants produced with (i) cDNA copies of the whole genome, (ii) subgenomic cDNA segments, or (iii) purified cDNA copies of viral mRNA.(*37*)

III–A–2–a–(2)–(c). *Plus-Strand RNA Viruses.*

III–A–2–a–(2)–(c)–(*1*). *Types 1 and 2 Sabin Poliovirus Vaccine Strains and Strain 17D (Theiler) of Yellow Fever Virus.* P1 physical containment + an HV1 host-vector shall be used for DNA recombinants produced with (i) cDNA copies of the whole viral genome, (ii) subgenomic cDNA segments, or (iii) purified cDNA copies of viral mRNA.(*37*)

III–A–2–a–(2)–(c)–(*2*). *Other Plus-Strand RNA Viruses Belonging to Presently Classified Viral Families.(36)*

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Table III

Recommended Containment for Cloning of Viral DNA or cDNA in Certain HV1 and HV2 Systems Specified in Appendix D
(See text for full details)

Virus class	Type of viral DNA segment to be cloned				
	Subgenomic[38]		Genomic*		cDNA from viral mRNA[37]
	Nontransforming segment	Segment containing an entire transforming gene	Nonsegmented genome	Segmented genome	
DNA					
Nontransforming viruses					
AAV, MVM, Mouse Adeno (Strain FL)	P1 + HV1		P1 + HV1		P1 + HV1
Plant Viruses	P1 + HV1		P1 + HV1		P1 + HV1
Hepatitis B	P1 + HV1[38]		P2 + HV2 or P3 + HV1		P2 + HV1CV[40] or P3 + HV1
Other	P1 + HV1[38]		P1 + HV1CV[40]		P1 + HV1
Transforming Viruses					
Herpes Saimiri, H. Ateles and EBV[39]	P1 + HV1[38]	P2 + HV1CV[40] or P3 + HV1[38]	P2 + HV2 or P3 + HV1		P2 + HV1CV[40] or P3 + HV1
Other	P1 + HV1[38]	P2 + HV1CV[40] or P3 + HV1	P2 + HV1CV[40] or P3 + HV1		P2 + HV1CV[40] or P3 + HV1
RNA					
Retroviruses					
Gibbon Ape, Woolly Monkey FeLV and FeSV[39]	P1 + HV1[38]	P2 + HV1CV[40] or P3 + HV1[38]	P2 + HV2 or P3 + HV1		P2 + HV2 or P3 + HV1
Other	P1 + HV1[38]	P2 + HV1CV[40] or P3 + HV1	P2 + HV1CV[40] or P3 + HV1		P2 + HV1CV[40] or P3 + HV1

* See exception given at asterisk at end of Appendix D

Table III, continued

Recommended Containment for Cloning of Viral DNA or cDNA in Certain HV1 and HV2 Systems Specified in Appendix D
(See text for full details)

Virus class	Type of viral DNA segment to be cloned				
	Subgenomic[38]		Genomic*		cDNA from viral mRNA[37]
	Nontransforming segment	Segment containing an entire transforming gene	Nonsegmented genome	Segmented genome	
Negative-Strand RNA	P1 + HV1		P1 + HV1	P1 + HV1	P1 + HV1
Plus-Strand RNA					
Types 1 and 2 Sabin Polio, 17D Yellow Fever Vaccine Strains	P1 + HV1		P1 + HV1		P1 + HV1
Other	P1 + HV1[38]		P2 + HV1CV[40] or P3 + HV1		P2 + HV1CV[40] or P3 + HV1
Double-Stranded RNA	P1 + HV1			P1 + HV1	P1 + HV1
Plant Viruses + Viroids	P1 + HV1		P1 + HV1	P1 + HV1	P1 + HV1
Intracellular Viral DNA	See text	See text	See text		

* See exception given at asterisk at end of Appendix D

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III–A–2–a–(2)–(c)–(*2*)–(*a*). P1 physical containment + an HV1 host-vector shall be used for DNA recombinants produced with purified subgenomic cDNA segments. (*38*)

III–A–2–a–(2)–(c)–(*2*)–(*b*). P2 physical containment + an HV1 host and a vector certified for use in an HV2 system, or P3 + HV1, shall be used for DNA recombinants produced with (i) cDNA copies of the whole genome, or (ii) purified cDNA copies of viral mRNA. (*37*)

III–A–a–A–(2)–(d). *Double-Stranded Segmented RNA Viruses.* P1 physical containment + an HV1 host-vector shall be used for DNA recombinants produced with (i) mixtures of subgenomic cDNA segments, (ii) a specific subgenomic cDNA segment, or (iii) purified cDNA copies of viral mRNA. (*37*)

III–A–2–a–(2)–(e). *RNA Plant Viruses and Plant Viroids.* P1 physical containment + an HV1 host-vector shall be used for DNA recombinants produced with (i) cDNA copies of the whole viral genone, (ii) subgenomic cDNA segments, or (iii) purified cDNA copies of viral mRNA. (*37*)

III–A–2–a–(3). *Intracellular Viral DNA.* Physical and biological containment specified for shotgun experiments with eukaryotic cellular DNA [see Section III–A–(1)–(a)] shall be used for DNA recombinants produced with integrated viral DNA or viral genomes present in infected cells.

III–A–2–b. *Eukaryotic Organelle DNAs.* P2 physical containment + an HV1 host-vector, or P1 + HV2, for mitochondrial or chloroplast DNA from eukaryotes when the organelle DNA has been obtained from isolated organelles. Otherwise, the conditions given for shotgun experiments apply.

III–A–2–c. *Prokaryotic Plasmid and Phage DNAs.* The containment levels required for shotgun experiments with DNA from prokaryotes apply to their plasmids or phages (See Section III–A–1–b).

III–A–3. *Lowering of Containment Levels for Characterized or Purified DNA Preparations and Clones.* Many of the risks which might conceivably arise from some types of recombinant DNA experiments, particularly shotgun experiments, would result from the inadvertant cloning of a harmful sequence. Therefore, in cases where the risk of inadvertently cloning the "wrong" DNA is reduced by prior enrichment for the desired piece, or in which a clone made from a random assortment of DNAs has been purified and the absence of harmful sequences established, the containment conditions for further work may be reduced. The following section outlines the mechanisms for such reductions.

III–A–3–a. *Purified DNA Other than Plasmids, Bacteriophages, and Other Viruses.* The formation of DNA recombinants from cellular DNAs that have been purified (*41*) and in which the absence of harmful sequences has been established (*3*) can be carried out under lower containment conditions than used for the corresponding shotgun experiment. (*42*) The containment may be decreased one step in physical containment (P4→P3; P3→P2; P2→P1) while maintaining the biological containment specified for the shotgun experiment, or one step in biological containment (HV3→HV2; HV2→HV1) while maintaining the specified physical containment. The institutional biosafety committee (IBC) must review such a reduction and the approval of the IBC and of the NIH must be secured before such a reduction may be put into effect.

III–A–3–b. *Characterized Clones of DNA Recombinants.* When a cloned DNA recombinant has been rigorously characterized and the absence of harmful sequences has been established (*3*), experiments involving this recombinant DNA may be carried out under lower containment conditions, with the prior approval of the IBC and of NIH.

III–B. *Experiments with Prokaryotic Host-Vectors Other Than E. coli K–12*

III–B–1. *HV1 and HV2 Systems.* Certain certified HV1 and HV2 host-vector systems appear in Appendix D. The containment levels for these systems are given in the subsections of Section III–A. Other systems in the future may be certified as HV1 and HV2. At the time of certification, the classification of containment levels for experiments using them will be assigned by NIH.

III–B–2. *Return of DNA Segments to Prokaryotic Non-HV1 Host of Origin.* Certain experiments involving those prokaryotes that exchange genetic information with *E. coli* by known physiological processes will be exempt from these Guidelines if they appear on the "list of exchangers" set forth in Appendix A (see Section I–E–4). For a prokaryote which can exchange genetic information (*35*) with *E. coli* under laboratory conditions but which is not on the list (Host A), the following type of experiment may be carried out under P1 conditions without Host A having been approved as an HV1 host: DNA from Host A may be inserted into a vector and propagated in *E. coli* K–12 under P1 conditions. Subsequently, this recombinant DNA may be returned to Host A by mobilization, transformation, or transduction and may then be propagated in Host A in any desired vector under P1 conditions.

For a prokaryote which does not exchange genetic information with *E. coli* (Host B), the following type of experiment may be carried out without Host B having been approved as an HV1 host: DNA from Host B may be inserted into a vector and propagated in *E. coli* K–12 under P1 conditions. Subsequently, the recombinant DNA may be returned to Host B and propagated in Host B under P1 conditions. (*43*)

III–B–3. *Non-HV1 Systems.* Containment levels for other classes of experiments involving non-HV1 systems may be approved by the Director, NIH. (See Sections IV–E–1–b–(1)–(b), IV–E–1–b–(2)–(c), and IV–E–1–b–(3)–(b).)

In those cases where genetic exchange has not been demonstrated between two bacterial species A and B, neither of which is known to be pathogenic for man, animals, or plants, recombinant DNA experiments involving only A and B can be conducted under P3 containment. (*2A*)

III–C. *Experiments with Eukaryotic Host-Vectors.*

III–C–1. *Vertebrate Host-Vector Systems. (44)* (Summary given in Table IV).

III–C–1–a. *Polyoma Virus.*

III–C–1–a–(1). *Productive Virus-Cell Interactions.*

III–C–1–a–(1)–(a). Defective or whole polyoma virus genomes, with appropriate helper, if necessary, can be used in P2 conditions to propagate DNA sequences:

III–C–1–a–(1)–(a)–(*1*). from bacteria of class 1 or class 2 (*1*) or their phages or plasmids, except for those that produce potent polypeptide toxins; (*34*)

III–C–1–a–(1)–(a)–(*2*). from mice;

III–C–1–a–(1)–(a)–(*3*). from eukaryotic organisms that do not produce potent polypeptide toxins, (*34*) provided that the DNA segment is >99% pure.

III–C–1–a–(1)–(b). Defective polyoma genomes, with appropriate helper, if necessary, can be used in P2 conditions for shotgun experiments to propagate DNA sequences from eukaryotic organisms that do not produce potent polypeptide toxins. (*34*)

III–C–1–a–(1)–(c). Whole virus genomes with appropriate helper, if necessary, can be used in P3 conditions for shotgun experiments to propagate DNA sequences from eukaryotic organisms that do not produce potent polypeptide toxins. (*34*)

III–C–1–a–(1)–(d). Experiments involving the use of defective polyoma virus genomes to propagate DNA sequences from eukaryotic viruses will be evaluated by NIH on a case-by-case basis (*45*) and will be conducted under

the prescribed physical and biological containment conditions. (See Section IV–E–1–b–(3)–(c).)

III–C–1–a–(2). *Nonproductive Virus-Cell Interactions.* Defective or whole polyoma virus genomes can be used as vectors in P2 conditions when production of viral particles cannot occur (e.g., transformation of nonpermissive cells or propagation of an unconditionally defective recombinant genome in the absence of helper), provided the inserted DNA sequences are not derived from eukaryotic viruses. In the latter case, such experiments will be evaluated by NIH on a case-by-case basis (*45*) and will be conducted under the prescribed physical and biological containment conditions. (See Section IV–E–1–b–(3)–(c).)

III–C–1–b. *Simian Virus 40.*

III–C–1–b–(1). *Productive Virus-Cell Interactions.*

III–C–1–b–(1)–(a). SV40 DNA, rendered unconditionally defective by a deletion in an essential gene, with appropriate helper, can be used in P2 conditions to propagate DNA sequences from:

III–C–1–b–(1)–(a)–(*1*). bacteria of Class 1 or Class 2, (*1*) or their phages or plasmids, except for those that produce potent polypeptide toxins; (*34*)

III–C–1–b–(1)–(a)–(*2*). Unifected African green monkey kidney cell cultures.

III–C–1–b–(1)–(b). SV40 DNA, rendered unconditionally defective by a deletion in an essential gene, with a appropriate helper, can be used in P3 conditions to propagate DNA sequences from eukaryotic organisms that do not produce potent polypeptide toxins (*34*) (shotgun experiments or purified DNA).

III–C–1–b–(1)–(c). Experiments involving the use of defective SV40 genomes to propagate DNA sequences from eukaryotic viruses will be evaluated by NIH on a case-by-case basis[45] and will be conducted under the prescribed physical and biological containment conditions. (See Section IV–E–1–b–(3)–(c).)

III–C–1–b–(2). *Nonproductive Virus-Cell Interactions.* Defective or whole SV40 genomes can be used as vectors in P2 conditions when production of viral particles cannot occur (e.g., transformation of nonpermissive cells or propagation of an unconditionally defective recombinant genome in the absence of helper), provided the inserted DNA sequences are not derived from eukaryotic viruses. In the latter case, such experiments will be evaluated by NIH on a case-by-case basis [45] and will be conducted under the prescribed physical and biological containment conditions. (See Section IV–E–1–b–(3)–(c).)

III–C–1–c. *Human Adenoviruses 2 and 5.*

III–C–1–c–(1). *Productive Virus–Cell Interactions.*

III–C–1–c–(1)–(a). Human adenoviruses 2 and 5, rendered unconditionally defective by deletion of at least two essential genes, with appropriate helper, can be used in P3 conditions to propagate DNA sequences from:

III–C–1–c–(1)–(a)–(*1*). bacteria of Class 1 or Class 2 (*1*) or their phages or plasmids except for those that produce potent polypeptide toxins; [34]

III–C–1–c–(1)–(a)–(*2*). eukaryotic organisms that do not produce potent polypeptide toxins[34] (shotgun experiments or purified DNA).

III–C–1–(c)–(1)–(b). Experiments involving the use of unconditionally defective human adenovirus 2 and 5 genomes to propagate DNA sequences from eukaryotic viruses will be evaluated by NIH on a case-by-case basis [45] and will be conducted under the prescribed physical and biological containment conditions. (See Section IV–E–1–b–(3)–(c).)

III–C–1–c–(2). *Nonproductive Virus-Cell Interactions.* Defective or whole human adenovirus 2 and 5 genomes can be used as vectors in P2 conditions when production of viral particles cannot occur (e.g., transformation of nonpermissive cells or propagation of an unconditionally defective recombinant genome in the absence of helper), provided the inserted DNA sequences are not derived from eukaryotic viruses. In the latter case, such experiments will be evaluated by NIH on a case-by-case basis (45) and will be conducted under the prescribed physical and biological containment conditions. (See Section IV–E–1–b–(3)–(c).)

III–C–1–d. *Murine Adenovirus Strain FL.*

III–C–1–d–(1). *Productive Virus-Cell Interactions.*

III–C–1–d–(1)–(a). Unconditionally defective murine adenovirus strain FL genomes, with appropriate helper, can be used in P2 conditions to propagate DNA sequences from:

III–C–1–d–(1)–(a)–(*1*). bacteria of Class 1 or Class 2 (*1*) or their phages or plasmids except for those that produce potent polypeptide toxins;[34]

III–C–1–d–(1)–(a)–(*2*). eukaryotic organisms that do not produce potent polypeptide toxins[34] (shotgun experiments or purified DNA).

III–C–1–d–(1)–(b). Experiments involving the use of whole murine adenovirus strain FL genomes to propagate DNA sequences from prokaryotic or eukaryotic organisms will be evaluated by NIH on a case-by-case basis[45] and will be conducted under the prescribed physical and biological containment conditions. (See Section IV–E–1–b–(3)–(c).)

III–C–1–d–(1)–(c). Experiments involving the use of unconditionally defective murine adenorvirus strain FL genomes to propagate DNA sequences from eukaryotic viruses will be evaluated by NIH on a case-by-case basis (*45*) and will be conducted under the prescribed physical and biological containment conditions. (See Section IV–E–1–b–(3)–(c).)

III–C–1–d–(2). *Nonproductive Virus-Cell Interactions.* Defective or whole murine adenovirus strain FL genomes can be used as vectors in P2 conditions when production of viral particles cannot occur (e.g., transformation of nonpermissive cells or propagation of an unconditionally.defective recombinant genome in the absence of helper), provided the inserted DNA sequences are not derived from eukaryotic viruses. In the latter case, such experiments will be evaluated by NIH on a case-by-case basis (*45*) and will be conducted under the prescribed physical and biological containment conditions. (See Section IV–E–1–b–(3)–(c).)

III–C–1–e. *All Other Potential Viral Vectors.*

III–C–1–e–(1). Experiments involving recombinant DNA molecules containing viral DNA segments consisting of 25% or less of the virus genome can be done:

III–C–1–e–(1)–(a). in P2 conditions when the recombinant DNA is to be integrated into the cell genome or is known to replicate as a plasmid in cells in culture, provided the additional DNA sequences are not derived from a eukaryotic virus. In the latter case, such experiments will be evaluated by NIH on a case-by-case basis [45] and will be conducted under the prescribed physical and biological containment conditions. (See Section IV–E–1–b–(3)–(c).)

III–C–1–e–(1)–(b). under physical and biological containment conditions to be determined by NIH (*45*) when a viral helper will be used to propagate DNA sequences from prokaryotic or eukaryotic organisms. (See Section IV–E–1–b–(3)–(c).)

III–C–1–e–(2). Experiments involving the use of other whole or defective virus genomes to propagate DNA sequences from prokaryotic or eukaryotic organisms (and viruses), or as vectors to transform nonpermissive cells, will be evaluated by NIH on a case-by-case basis (*45*) and will be conducted under the prescribed physical and biological containment conditions. (See Section IV–E–1–b–(3)–(c).)

NIH will also review on a case-by-case basis (*45*) all experiments involving the use of virus vectors in animals and will prescribe the physical and biological containment conditions appropriate for such studies. (See Section IV–E–1–b–(3)–(c).)

III–C–1–f. *Nonviral Vectors.* Organelle, plasmid, and chromosomal DNAs may be used as vectors. DNA recombinants formed between such vectors and host DNA, when propagated only in that host (or a closely related strain of the same species), are exempt from these Guidelines (see Section I–E). DNA recombinants formed between such vectors and nonviral DNA from cells other than the host species require only P1 physical containment for cells in culture since vertebrate cells in tissue culture inherently exhibit a very high level of containment. Recombinants involving viral DNA or experiments which require the use of the whole animals will be evaluated by NIH on a case-by-case basis (*45*).

III–C–2. *Invertebrate Host-Vector Systems.*

III–C–2–a. *Insect Viral Vectors.* As soon as information becomes available on the host range restrictions and on the infectivity, persistence, and integration of the viral DNA in vertebrate and invertebrate cells, experiments involving the use of insect viruses to propagate DNA sequences will be evaluated by NIH on a case-by-case (*45*) and will be conducted under the recommended physical containment conditions. (See Section IV–E–1–b–(3)–(c).)

III–C–2–b. *Nonviral Vectors.* Organelle, plasmid, and chromosomal DNAs may be used as vectors. DNA recombinants formed between such vectors and host DNA, when propagated only in that host (or a closely related strain of the same species), are exempt from these Guidelines (see Section I–E). DNA recombinants formed between such vectors and DNA cells from other than the host species require P1 physical containment for invertebrate cells in culture since invertebrate cells in culture inherently exhibit a very high level of containment. Experiments which require the use of whole animals will be evaluated by NIH on a case-by-case basis (*45*).

III–C–3. *Plant Viral Host-Vector Systems.* The DNA plant viruses which could currently serve as vectors for cloning genes in plants and plant cell protoplasts are Cauliflower Mosaic Virus (CaMV) and its close relatives (*2A*) which have relaxed circular double-stranded DNA genomes with a molecule weight of 4.5×10^6, and Bean Golden Mosaic Virus (BGMV) and related viruses with small ($<10^6$ daltons) single-stranded DNA genomes. CaMV is spread in nature by aphids, in which it survives for a few hours. Spontaneous mutants of CaMV which lack a factor essential for aphid transmission arise frequently. BGMV is spread in nature by whiteflies, and certain other single-stranded DNA plant viruses are transmitted by leafhoppers.

The DNA plant viruses have narrow host ranges and are relatively difficult to transmit mechanically to plants. For this reason, they are most unlikely to be accidentally transmitted from spillage of purified virus preparations.

Table IV

Recommended Containment for Recombinant DNA Research Using Eukaryotic Viral Vectors
(See text for full details)

Vector DNA	Productive virus-cell interactions						Nonproductive virus-cell interactions[46]
	Type of DNA insert						
	Prokaryotic		Eukaryotic			Eukaryotic viral	
	Shotgun	Purified	Shotgun		Purified[47]		
			Natural host	Other			
1. Polyoma							
Intact Genome	P2	P2	P2	P3	P2	CBC*	P2
Deleted Genome	P2	P2	P2	P2	P2	CBC*	P2
2. SV40							
Intact Genome	—	—	—	—	—	—	P2
Deleted Genome	P2	P2	P2	P3	P3	CBC*	P2
3. Human Ad2 and Ad5							
Deleted Genome	P3	P3	P3	P3	P3	CBC*	P2
4. Mouse Adenovirus (Strain FL)							
Intact Genome	CBC*	CBC*	CBC*	CBC*	CBC*	CBC*	P2
Deleted Genome	P2	P2	P2	P2	P2	CBC*	P2
5. Insect Viruses	CBC*	CBC*	CBC*	CBC*	CBC*	CBC*	—
6. Plant Viruses (CaMV and BGMV)	**	**	**	**	**	CBC*	—
7. All other potential Viral Vectors	CBC*	CBC*	CBC*	CBC*	CBC*	CBC*	CBC*

*CBC = case-by-case[45]
**See text

When these viruses are used as vectors in intact plants, or propagative plant parts, the plants shall be grown under P1 conditions—that is, in either a limited access greenhouse or plant growth cabinet which is insect-restrictive, preferably with positive air pressure, (*2A*) and in which an insect fumigation regime is maintained. Soil, plant pots, and unwanted infected materials shall be removed from the greenhouse or cabinet in sealed insect-

proof containers and sterilized. It is not necessary to sterilize run-off water from the infected plants, as this is not a plausible route for secondary infection. When the viruses are used as vectors in tissue cultures or in small plants in axenic cultures, no special containment is necessary. Infected plant materials which have to be removed from the greenhouse or cabinet for further research shall be maintained under insect-restrictive conditions. These measures provide an entirely adequate degree of containment. They are similar to those required in many countries for licensed handling of "exotic" plant viruses.

The CaMV strain used as a cloning vector shall be a mutant that lacks the aphid transmission factor.

The viruses or their DNA may also be useful as vectors to introduce genes into plant protoplasts. The fragility of plant protoplasts combined with the properties of the viruses provides adequate safety. Since no risk to the environment from the use of the DNA plant virus/protoplast system is envisaged, no special containment is necessary, except as described in the following paragraph.

Experiments involving the use of plant virus genomes to propagate DNA sequences from eukaryotic viruses will be evaluated by NIH on a case-by-case basis (*45*) and will be conducted under the prescribed physical and biological containment conditions. (See Section IV–E–1–b–(3)–(c).)

III–C–4. *Plant Host-Vector Systems Other than Viruses.* Organelle, plasmid, and chromosomal DNAs may be used as vectors. DNA recombinants formed between such vectors and host DNA, when propagated only in that host (or a closely related strain of the same species), are exempt from these Guidelines (See Section I—E). DNA recombinants formed between such vectors and DNA from cells other than the host species require P2 physical containment. The development of host-vector systems that exhibit a high level of biological containment, such as those using protoplasts or undifferentiated cells in culture, permit (2A) a decrease in the physical containment to P1.

Intact plants or propagative plant parts which cannot be grown in a standard P2 laboratory because of their large size may be grown under the P1 conditions described above in Section III–C–3, except that (i) sterilization of run-off water is required where this is a plausible route for secondary infection and (ii) the standard P2 practices are adopted for microbiological work.

III–C–5. *Fungal or Similar Lower Eukaryotic Host-Vector Systems.*

Certain certified HV1 and HV2 host-vector systems appear in Appendix D. The containment levels for these systems are given in the subsection of Section III–A. Other systems in the future may be certified as HV1 and HV2. At the time of certification, they may be added to Appendix D (and thus the containment levels for their use will be those of the subsections of Section III–A). Alternatively, at the time of their certification, another classification of containment levels for experiments using them may be assigned by NIH.

In addition to the experiments described above, the following experiments may be carried out without the eukaryotic host (Host C) having been approved as an HV1 host: DNA from Host C may be inserted into a vector and propagated in *E. coli* K–12 under P1 conditions. Subsequently, this recombinant DNA may be returned to Host C and propagated there under P1 conditions. (*43*)

Containment levels for other classes of experiments involving non-HV1 systems may be expressly approved by the Director, NIH. (See Sections IV–E–1–b–(1)–(b), IV–E–1–b–(2)–(c), and IV–E–1–b–(3)–(b).)

III–C–6. *Return of DNA Segments to a Higher Eukaryotic Host of Origin.* DNA from a higher eukaryote (Host D) may be inserted into a vector and propagated in *E. coli* K–12 under P1 containment conditions. Subsequently, this recombinant DNA may be returned to Host D and propagated under conditions of physical containment comparable to P1 and appropriate to the organism under study. (*2A*)

III–C–7. *Transfer of cloned DNA Segments to Eukaryotic Organisms*

III–C–7–a. *Transfer to Non-human Vertebrates.* DNA from any nonprohibited source [Section I–D], except for greater than one quarter of a eukaryotic viral genome, which has been cloned and propagated in *E. coli* under P1 conditions, may be transferred with the *E. coli* vector used for cloning to any eukaryotic cells in culture or to any non-human vertebrate organism and propagated under conditions of physical containment comparable to P1 and appropriate to the organism under study (*2A*). Transfers to any other host will be considered by the RAC on a case-by-case basis (*45*).

III–C–7–b. *Transfer to Higher Plants.* DNA from any nonprohibited source [Section I–D] which has been cloned and propagated in *E. coli* under P1 conditions, may be transferred with the *E. coli* vector used for cloning to any higher plant organisms (angiosperms and Gymnosperms) and propagated under conditions of physical containment comparable to P1 and appropriate to the organism under study (*2A*). Intact plants or propagative plant parts may be grown under P1 conditions described under Section III–C–3. Containment must be modified to ensure that the spread of pollen, seed or other propagules is prevented. This can be accomplished by conversion to negative pressure in the growth cabinet or greenhouse or by physical entrapment by "bagging" of reproductive structures. Transfers to any other plant organisms will be considered on a case-by-case basis (*45*).

III–D. *Complementary DNAs.* Specific containment levels are given in Section III–A–2–a (see also last column of Table III) for complementary DNA (cDNA) of viral mRNA. For the other Sections of the Guidelines, where applicable, cDNAs synthesized *in vitro* are included within each of the above classifications. For example, cDNAs formed from cellular RNAs that are not purified and characterized are included under III–A–1, shotgun experiments; cDNAs formed from purified and characterized RNAs are included under III–A–3; etc.

Due to the possibility of nucleic acid contamination of enzyme preparations used in the preparation of cDNAs, the investigator must employ purified enzyme preparations that are free of viral nucleic acid.

III–E. *Synthetic DNAs.* If the synthetic DNA segment is likely to (*2A*) yield a potentially harmful polynucleotide or polypeptide (e.g., a toxin or a pharmacologically active agent), the containment conditions must be as stringent as would be used for propagating the natural DNA counterpart.

If the synthetic DNA sequence codes for a harmless product, (*2A*) it may be propagated at the same containment level as its purified natural DNA counterpart. For example, a synthetic DNA segment which corresponds to a nonharmful gene of birds, to be propagated in *Saccharomyces cerevisiae*, would require P2 phyical containment plus an HV1 host-vector, or P1+HV2.

If the synthetic DNA segment is not expressed *in vivo* as a polynucleotide or polypeptide product, the organisms containing the recombinant DNA

molecule are exempt (4) from the Guidelines.

IV. Roles and Responsibilities

IV–A. *Policy.* Safety in activities involving recombinant DNA depends on the individual conducting them. The Guidelines cannot anticipate every possible situation. Motivation and good judgment are the key essentials to protection of health and the environment.

The Guidelines are intended to help the Institution, the Institutional Biosafety Committee (IBC), the Biological Safety Officer, and the Principal Investigator determine the safeguards that should be implemented. These Guidelines will never be complete or final, since all conceivable experiments involving recombinant DNA cannot be foreseen. Therefore, it is the responsibility of the Institution and those associated with it to adhere to the *purpose* of the Guidelines as well as to their specifics.

Each Institution (and the IBC acting on its behalf) is responsible for ensuring that recombinant DNA activities comply with the Guidelines. General recognition of institutional authority and responsibility properly establishes accountability for safe conduct of the research at the local level.

The following roles and responsibilities constitute an administrative framework in which safety is an essential and integral part of research involving recombinant DNA molecules. Further clarifications and interpretations of roles and responsibilities will be issued by NIH as necessary.

IV–B. *General Applicability.* The Guidelines are applicable to all recombinant DNA research within the United States or its territories which is conducted at or sponsored by an Institution that receives any support for recombinant DNA research from NIH. This includes research performed by NIH directly.

An individual receiving support for research involving recombinant DNA must be associated with or sponsored by an Institution that can and does assume the responsibilities assigned in these Guidelines.

The Guidelines are also applicable to projects done abroad if they are supported by NIH funds. If the host country, however, has established rules for the conduct of recombinant DNA projects, then a certificate of compliance with those rules may be submitted to NIH in lieu of compliance with the NIH Guidelines. NIH reserves the right to withhold funding if the safety practices to be employed abroad are not reasonably consistent with the NIH Guidelines.

IV–C. *General Definitions.* The following terms, which are used throughout the Guidelines, are defined as follows:

IV–C–1. "DNA" means deoxyribonucleic acid.

IV–C–2. "Recombinant DNA" or "recombinant DNA molecules" means either (i) molecules which are constructed outside living cells by joining natural or synthetic DNA segments to DNA molecules that can replicate in a living cell, or (ii) DNA molecules which result from the replication of a molecule described in (i) above.

IV–C–3. "Memorandum of Understanding and Agreement" or "MUA" is a document that (i) provides to NIH or other Federal funding agency an Institution's certification that the recombinant DNA research project complies with the NIH Guidelines and (ii) contains other essential data as required in the Administrative Practices Supplement.

IV–C–4. "Institution" means any public or private entity (including Federal, State, and local government agencies).

IV–C–5. "Institutional Biosafety Committee" or "IBC" means a committee that (i) meets the requirements for membership specified in Section IV–D–2, and (ii) reviews, approves, and oversees projects in accordance with the responsibilities defined in Sections IV–D–2 and –3.

IV–C–6. "NIH Office of Recombinant DNA Activities" or "ORDA" means the office within NIH with responsibility for (i) reviewing and coordinating all activities of NIH related to the Guidelines, and (ii) performing other duties as defined in Section IV–E–3.

IV–C–7. "Recombinant DNA Advisory Committee" or "RAC" means the public advisory committee that advises the Secretary, the Assistant Secretary for Health, and the Director of the National Institutes of Health concerning recombinant DNA research. The RAC shall be constituted as specified in Section IV–E–2.

IV–C–8. "Director, NIH" or "Director" means the Director of the National Institutes of Health and any other officer or employee of NIH to whom authority has been delegated.

IV–C–9. "Federal Interagency Advisory Committee on Recombinant DNA Research" means the committee established in October 1976 to advise the Secretary, HEW, the Assistant Secretary for Health, and the Director, NIH on the coordination of those aspects of all Federal programs and activities which relate to recombinant DNA research.

IV–C–10. "Administrative Practices Supplement" or "APS" means a publication to accompany the NIH Guidelines specifying administrative procedures for use at NIH and at Institutions.

IV–C–11. "Laboratory Safety Monograph" or "LSM" means a publication to accompany the NIH Guidelines describing practices, equipment, and facilities in detail.

IV–D. *Responsibilities of the Institution*

IV–D–1. Each Institution conducting or sponsoring recombinant DNA research covered by these Guidelines is responsible for ensuring that the research is carried out in full conformity with the provisions of the Guidelines. In order to fulfill this responsibility, the Institution shall:

IV–D–1–a. Establish and implement policies that provide for the safe conduct of recombinant DNA research and that ensure compliance with the Guidelines. The Institution, as part of its general responsibilities for implementing the Guidelines, may establish additional procedures, as deemed necessary, to govern the Institution and its components in the discharge of its responsibilities under the Guidelines. This may include (i) statements formulated by the Institution for general implementation of the Guidelines and (ii) whatever additional precautionary steps the Institution may deem appropriate.

IV–D–1–b. Establish an Institutional Biosafety Committee (IBC) that meets the requirements set forth in Section IV–D–2 and carries out the functions detailed in Section IV–D–3.

IV–D–1–c. Submit, for each recombinant DNA project that meets with its approval, a Memorandum of Understanding and Agreement (MUA) to the funding agency for approval and registration.

Note.—No MUA is required for experiments described in Section III–0).) All projects, however, can proceed upon IBC approval (before submission of the MUA to the funding agency) except for the following, which require prior approval by NIH (or other funding agency designated by NIH for this purpose):

IV–D–1–c–(1). Projects for which containment levels are not specified by the Guidelines or NIH,

IV–D–1–c–(2). Projects requiring P4 containment,

IV–D–1–c–(3). Reductions of containment levels for characterized or purified DNA preparations or clones (see Section III–A–3),

IV–D–1–c–(4). The first project conducted in a facility at P3 containment, or

IV–D–1–c–(5). The first project conducted by an Institution.

Note.—The MUA shall be submitted to the funding agency within 30 days of the IBC approval. If the funding agency does not routinely register recombinant DNA projects with NIH, the MUA must be submitted to NIH as well as to the funding agency. Authority to submit MUAs (or addenda) for which prior approval is not required may be delegated to the IBC chairperson. All MUAs that require NIH approval before the work can proceed shall be submitted to the NIH by the institutional official to whom the IBC is responsible.

IV–D–1–d. Take appropriate action to bring protocols into compliance when advised by NIH or other funding agency that IBC-approved projects do not conform to standards set forth in the Guidelines. This responsibility may be delegated to the IBC. (See Administrative Practices Supplement for further details).

IV–D–1–e. If the Institution is engaged in recombinant DNA research at the P3 or P4 containment level, appoint a Biological Safety Officer (BSO), who shall be a member of the IBC and carry out the duties specified in Section IV–D–4.

IV–D–1–f. Require that investigators responsible for research covered by these Guidelines comply with the provisions of Section IV–D–5, and assist investigators to do so.

IV–D–1–g. Ensure appropriate training for the IBC chairperson and members, the BSO, Principal Investigators (PIs), and laboratory staff regarding the Guidelines, their implementation, and laboratory safety. Responsibility for training IBC members may be carried out through the IBC chairperson. Responsibility for training laboratory staff may be carried out through the PI. The Institution is responsible for seeing that the PI has sufficient training, but may delegate this responsibility to the IBC.

IV–D–1–h. Determine the necessity, in connection with each project, for health surveillance of recombinant DNA research personnel, and conduct, if found appropriate, a health surveillance program for the project. [The Laboratory Safety Monograph (LSM) discusses various possible components of such a program—for example, records of agents handled, active investigation of relevant illnesses, and the maintenance of serial serum samples for monitoring serologic changes that may result from the employees' work experience. Certain medical conditions may place a laboratory worker at increased risk in any endeavor where infectious agents are handled. Examples given in the LSM include gastrointestinal disorders and treatment with steroids, immunosuppressive drugs, or antibiotics. Workers with such disorders or treatment should be evaluated to determine whether they should be engaged in research with potentially hazardous organisms during their treatment or illness.]

IV–D–1–i. Report within 30 days to ORDA any significant problems with and violations of the Guidelines and significant research-related accidents and illnesses, unless the institution determines that the PI or IBC has done so.

IV–D–2. *Membership and Procedures of the IBC.* The Institution shall establish an Institutional Biosafety Committee (IBC) meeting the following requirements:

IV–D–2–a. The IBC shall comprise no fewer than five members so selected that they collectively have experience and expertise in recombinant DNA technology and the capability to assess the safety of recombinant DNA research experiments and any potential risk to public health or the environment. At least two members (but not less than 20 percent of the membership of the committee) shall not be affiliated with the Institution (apart from their membership on the IBC) and shall represent the interest of the surrounding community with respect to health and protection of the environment. Members meet this requirement if, for example, they are officials of State or local public health or environmental protection agencies, members of other local governmental bodies, or persons active in medical, occupational health, or environmental concerns in the community. The Biological Safety Officer (BSO), mandatory when research is being conducted at the P3 and P4 levels, shall be a member (see Section IV–D–4).

IV–D–2–b. In order to ensure the professional competence necessary to review recombinant DNA activities, it is recommended that (i) the IBC include persons from disciplines relevant to recombinant DNA technology, biological safety, and engineering; (ii) the IBC include, or have available as consultants, persons knowledgeable in institutional commitments and policies, applicable law, standards of professional conduct and practice, community attitudes, and the environment; and (iii) at least one member be a nondoctoral person from a laboratory technical staff.

IV–D–2–c. The Institution shall identify the committee members by name in a report to the NIH Office of Recombinant DNA Activities (ORDA) and shall include relevant background information on each member in such form and at such times as ORDA may require. (See the Administrative Practices Supplement for further guidance.)

IV–D–2–d. No member of an IBC may be involved (except to provide information requested by the IBC) in the review or approval of a project in which he or she has been, or expects to be, engaged or has a direct financial interest.

IV–D–2–e. The Institution may establish procedures that the IBC will follow in its initial and continuing review of applications, proposals, and activities. (IBC review procedures are specified in Section IV–D–3–a.)

IV–D–2–f. Central to implementation of the Guidelines is the review of proposed experiments by the IBC. The Institutions shall submit, within 30 days of IBC approval, an MUA to NIH (ORDA), or shall otherwise register proposed experiments as specified under Section IV–D–1–c, IV–D–1–d, and IV–F. In carrying out this responsibility, the Institution shall comply with instructions and procedures specified in the Administrative Practices Supplement.

IV–D–2–g. Institutions are encouraged to open IBC meetings to the public whenever possible, consistent with protection of privacy and proprietary interests.

IV–D–2–h. Upon request, the Institution shall make available to the public all minutes of IBC meetings and any documents submitted to or received from funding agencies which the latter are required to make available to the public (e.g., NUAs, reports of Guideline violations and significant research-related accidents, and agency directives to modify projects). If comments are made by members of the public on IBC actions, the Institution shall forward to NIH both the comments and the IBC's response.

IV–D–3. *Functions of the IBC.* On behalf of the Institution, the IBC is responsible for:

IV–D–3–a. Reviewing for compliance with the NIH Guidelines all recombinant DNA research to be conducted at or sponsored by the Institution, and approving those research projects that it finds are in conformity with the Guidelines. (See Administrative Practices Supplement, II–D, for prior NIH approval requirements.) This review shall include:

IV–D–3–a–(1). An independent assessment of the containment levels

required by these Guidelines for the proposed research, and

IV–D–3–a–(2). An assessment of the facilities, procedures, and practices, and of the training and expertise of recombinant DNA personnel.

Note.—See Laboratory Safety Monograph (pages 187–190) for suggested guidance in conducting this review.

IV–D–3–b. Authorizing the Principal Investigator (PI) to proceed with the project upon receipt of proper agency approval; or authorizing the PI to proceed without agency approval to initiate or change a project for which none of the exceptions under IV–D–1–c apply.

Note.—Some examples of work that might ordinarily proceed without prior funding-agency approval are the initiation of a project at the P1 or P2 level (other than the first project at the institution). Other examples are significant changes in hosts or vectors, in the donor species or the nature of the DNA segment selected, or in the physical location of the experiments. It should be clear, however, that the funding agency must be notified of IBC approvals even when prior agency approval is not required. See the Administrative Practices Supplement for further discussion.

IV–D–3–c. Reviewing periodically recombinant DNA research being conducted at the Institution, to ensure that the requirements of the Guidelines are being fulfilled.

IV–D–3–d. Adopting emergency plans covering accidental spills and personnel contamination resulting from such research.

Note.—Basic elements in developing specific procedures for dealing with major spills of potentially hazardous materials in the laboratory are detailed in the Laboratory Safety Monograph. Included are information and references on decontamination and emergency plans. NIH and the Center for Disease Control are available to provide consultation, and direct assistance if necessary, as posted in the LSM. The Institution shall cooperate with the State and local public health departments, reporting any significant research-related illness or accident that appears to be a hazard to the public health.

IV–D–3–e. Reporting within 30 days to the appropriate institutional official and to the NIH Office of Recombinant DNA Activities (ORDA) any significant problems with or violations of the Guidelines, and any significant research-related accidents or illnesses, unless the IBC determines that the PI has done so.

IV–D–3–f. Performing such other functions as may be delegated to the IBC under Section IV–D–1.

IV–D–4. *Biological Safety Officer.* The Institution shall appoint a BSO if it engages in recombinant DNA research at the P3 or P4 containment level. The officer shall be a member of the Institutional Biosafety Committee (IBC), and his or her duties shall include (but need not be limited to):

IV–D–4–a. Ensuring through periodic inspections that laboratory standards are rigorously followed;

IV–D–4–b. Reporting to the IBC and the Institution all significant problems with and violations of the Guidelines and all significant research-related accidents and illnesses of which the BSO becomes aware, unless the BSO determines that the Principal Investigator (PI) has done so.

IV–D–4–c. Developing emergency plans for dealing with accidental spills and personnel contamination, and investigating recombinant DNA research laboratory accidents;

IV–D–4–d. Providing advice on laboratory security;

IV–D–4–e. Providing technical advice to the PI and the IBC on research safety procedures.

Note.—See Laboratory Safety Monograph for additional information on the duties of the BSO.

IV–D–5. *Principal Investigator.* On behalf of the Institution, the PI is responsible for complying fully with the Guidelines in conducting any recombinant DNA research.

IV–D–5–a. *PI—General.* As part of this general responsibility, the PI shall:

IV–D–5–a–(1). Initiate or modify no recombinant DNA research subject to the Guidelines until that research, or the proposed modification thereof, has been approved by the Institutional Biosafety Committee (IBC) and has met all other requirements of the Guidelines and the Administrative Practices Supplement (APS), and make changes to conform if the NIH Office of Recombinant DNA Activities' (ORDA's) review so requires.

Note.—No prior approval by the IBC is required for most experiments described in Section III–0.

IV–D–5–a–(2). Report within 30 days to the IBC and NIH (ORDA) all significant problems with and violations of the Guidelines and all significant research-related accidents and illnesses;

IV–D–5–a–(3). Report to the IBC and to NIH (ORDA) new information bearing on the Guidelines;

IV–D–5–a–(4). Be adequately trained in good microbiological techniques;

IV–D–5–a–(5). Adhere to IBC-approved emergency plans for dealing with accidental spills and personnel contamination; and

IV–D–5–a–(6). Comply with shipping requirements for recombinant DNA molecules. (See Section II–C for shipping requirements, Laboratory Safety Monograph for technical recommendations, and the APS for administrative instructions and procedures. The requesting laboratory must be in compliance with the NIH Guidelines and under appropriate review by its IBC, and the sending investigator must maintain a record of all shipments of recombinant DNA materials.)

IV–D–5–b. *Submissions by the PI to NIH.* The PI shall:

IV–D–5–b–(1). Submit information to NIH (ORDA) in order to have new host-vector systems certified;

IV–D–5–b–(2). Petition NIH, with notice to the IBC, for exemptions to these Guidelines (see Sections I–E–4 and I–E–5 and, for additional information on procedures, the APS); and

IV–D–5–b–(3). Petition NIH, with concurrence of the IBC, for exceptions to the prohibitions under these Guidelines (see Section I–D and, for additional information on procedures, the APS).

IV–D–5–c. *Submissions by the PI to the IBC.* The PI shall:

IV–D–5–c–(1). Make the initial determination of the required levels of physical and biological containment in accordance with the Guidelines;

IV–D–5–c–(2). Select appropriate microbiological practices and laboratory techniques to be used in the research;

IV–D–5–c–(3). Submit the initial research protocol (and also subsequent changes—e.g., changes in the source of DNA or host-vector system, which require a new or revised Memorandum of Understanding and Agreement) to the IBC for review and approval or disapproval; and

IV–D–5–c–(4). Remain in communication with the IBC throughout the conduct of the project.

IV–D–5–d. *P1 Responsibilities After Approval But Prior to Initiating the Research.* The P1 is responsible for:

IV–D–5–d–(1). Making available to the laboratory staff copies of the approved protocols that describe the potential biohazards and the precautions to be taken;

IV–D–5–d–(2). Instructing and training staff in the practices and techniques required to ensure safety and in the procedures for dealing with accidents; and

IV–D–5–d–(3). Informing the staff of the reasons and provisions for any precautionary medical practices advised or requested, such as vaccinations or serum collection.

IV–D–5–e. *P1 Responsibilities During the Conduct of the Approved Research.* The P1 is responsible for:

IV–D–5–e–(1). Supervising the safety performance of the staff to ensure that

the required safety practices and techniques are employed;

IV–D–5–e–(2). Investigating and reporting in writing to ORDA, the Biological Safety Officer (where applicable), and the IBC any significant problems pertaining to the operation and implementation of containment practices and procedures;

IV–D–5–e–(3). Correcting work errors and conditions that may result in the release of recombinant DNA materials;

IV–D–5–e–(4). Ensuring the integrity of the physical containment (e.g., biological safety cabinets) and the biological containment (e.g., purity, and genotypic and phenotypic characteristics); and

IV–D–5–e–(5). *Publications.* PIs are urged to include, in all publications reporting on recombinant DNA research, a description of the physical and biological containment procedures employed.

IV–E. *Responsibilities of NIH.*

IV–E–1. *Director.* The Director, NIH, is responsible for (i) establishing the NIH Guidelines on recombinant DNA research, (ii) overseeing their implementation, and (iii) their final interpretation.

The Director has a number of responsibilities under the Guidelines that involve the NIH Office of Recombinant DNA Activities (ORDA) and the Recombinant DNA Advisory Committee (RAC). ORDA's responsibilities under the Guidelines are administrative. Advice from the RAC is primarily scientific and technical. In certain circumstances, there is specific opportunity for public comment, with published response, before final action.

IV–E–1–a. *General Responsibilities of the Director, NIH.* The responsibilities of the Director shall include the following:

IV–E–1–a–(1). Promulgating requirements as necessary to implement the guidelines;

IV–E–1–a–(2). Establishing and maintaining the RAC to carry out the responsibilities set forth in Section IV–E–2. The RAC's membership is specified in its chapter and in Section IV–E–2.

IV–E–1–a–(3). Establishing and maintaining ORDA to carry out the responsibilities defined in Section IV–E–3; and

IV–E–1–a–(4). Maintaining the Federal Interagency Advisory Committee on Recombinant DNA Research established by the Secretary, HEW, for advice on the coordination of all Federal programs and activities relating to recombinant DNA, including activities of the RAC.

IV–E–1–b. *Specific Responsibilities of the Director, NIH.* In carrying out the responsibilities set forth in this Section, the Director shall weigh each proposed action, through appropriate analysis and consultation, to determine that it complies with the Guidelines and presents no significant risk to health or the environment.

IV–E–1–b–(1). *The Director is responsible for the following major actions* (For these, the Director must seek the advice of the RAC and provide an opportunity for public and Federal agency comment. Specifically, the agenda of the RCA meeting citing the major actions will be published in the **Federal Register** at least 30 days before the meeting, and the Director will also publish the proposed actions in the **Federal Register** for comment at least 30 days before the meeting. In addition, the Director's proposed decision, at his discretion, may be published in the **Federal Register** for 30 days of comment before final action is taken. The Director's final decision, along with response to the comments, will be published in the **Federal Register** and the *Recombinant DNA Technical Bulletin.* The RAC and IBC chairpersons will be notified of this decision):

IV–E–1–b–(1)–(a). Changing containment levels for types of experiments that are specified in the Guidelines when a major action is involved;

IV–E–1–b–(1)–(b). Assigning containment levels for types of experiments that are not explicitly considered in the Guidelines when a major action is involved;

IV–E–1–b–(1)–(c). Certifying new host-vector systems, with the exception of minor modifications of already certified systems [The standards and procedures for certification are described in Section II–D–2–a. Minor modifications constitute, for example, those of minimal or no consequence to the properties relevant to containment. See the Administrative Practices Supplement (APS) for further information];

IV–E–1–b–(1)–(d). Promulgating and amending a list of classes of recombinant DNA molecules to be exempt from these Guidelines because they consist entirely of DNA segments from species that exchange DNA by known physiological processes, or otherwise do not present a significant risk to health or the environment (see Sections I–E–4 and –5 and the APS for further information);

IV–E–1–b–(1)–(e). Permitting exceptions to the prohibited experiments in the Guidelines, in order, for example, to allow risk-assessment studies; and

IV–E–1–b–(1)–(f). Adopting other changes in the Guidelines.

IV–E–1–b–(2). *The Director is also responsible for the following lesser actions* (For these, the Director must seek the advice of the RAC. The Director's decision will be transmitted to the RAC and IBC chairpersons and published in the *Recombinant DNA Technical Bulletin*):

IV–E–1–b–(2)–(a). Interpreting and determining containment levels, upon request by ORDA;

IV–E–1–b–(2)–(b). Changing containment levels for experiments that are specified in the Guidelines (see Section III);

IV–E–1–b–(2)–(c). Assigning containment levels for experiments not explicitly considered in the Guidelines (see Section III); and

IV–E–1–b–(2)–(d). Designating certain class 2 agents as class 1 for the purpose of these Guidelines (see Footnote 1 and Appendix B).

IV–E–1–b–(3). *The Director is also responsible for the following actions* (The Director's decision will be transmitted to the RAC and IBC chairpersons and published in the *Recombinant DNA Technical Bulletin*):

IV–E–1–b–(3)–(a). Interpreting the Guidelines for experiments to which the Guidelines specifically assign containment levels;

IV–E–1–b–(3)–(b). Determining appropriate containment conditions for experiments according to case precedence developed under Section IV–E–1–b–(2)–(c).

IV–E–1–b–(3)–(c). Determining appropriate containment conditions upon case-by-case analysis of experiments explicitly considered in the Guidelines but for which no containment levels have been set (see Footnote 45 in Part V; Sections III–C–1–a through –e; and Sections III–C–2 and –3);

IV–E–1–b–(3)–(d). Authorizing, under procedures specified by the RAC, large-scale experiments (i.e., involving more than 10 liters of culture) for recombinant DNAs that are rigorously characterized and free of harmful sequences (see Footnote 3 and Section I–D–6);

IV–E–1–b–(3)–(e). Lowering containment levels for characterized clones or purified DNA (see Sections III–A–3–a and –b, and Footnotes 3 and 41);

IV–E–1–b–(3)–(f). Approving minor modifications of already certified host-vector systems (The standards and procedures for such modifications are described in Section II–D–2–a); and

IV–E–1–b–(3)–(g). Decertifying already certified host-vector systems.

IV–E–1–b–(4). The Director shall conduct, support, and assist training programs in laboratory safety for Institutional Biosafety Committee members, Biological Safety Officers, Principal Investigators, and laboratory staff.

IV–E–1–b–(5). The Director, at the end of 36 months from the time these Guidelines are promulgated, will report on the Guidelines, their administration, and the potential risks and benefits of this research. In doing so, the Director will consult with the RAC and the Federal Interagency Committee. Public comment will be solicited on the draft report and taken into account in transmitting the final report to the Assistant Secretary for Health and the Secretary, HEW.

IV–E–2. *Recombinant Advisory Committee.* The NIH Recombinant DNA Advisory Committee (RAC) is responsible for carrying out specified functions cited below as well as others assigned under its charter or by the Secretary, HEW, the Assistant Secretary for Health, and the Director, NIH.

The members of the committee shall be chosen to provide, collectively, expertise in scientific fields relevant to recombinant DNA technology and biological safety—e.g., microbiology, molecular biology, virology, genetics, epidemiology, infectious diseases, the biology of enteric organisms, botany, plant pathology, ecology, and tissue culture. At least 20 percent of the members shall be persons knowledgeable in applicable law, standards of professional conduct and practice, public attitudes, the environment, public health, occupational health, or related fields. Representatives from Federal agencies shall serve as nonvoting members. Nominations for the RAC may be submitted to the NIH Office of Recombinant DNA Activities.

All meetings of the RAC will be announced in the **Federal Register**, including tentative agenda items, 30 days in advance of the meeting, with final agendas (if modified) available at least 72 hours before the meeting. No item defined as a major action under Section IV–E–1–b–(1) may be added to an agenda after it appears in the **Federal Register**.

IV–E–2–a. *The RAC shall be responsible for advising the Director, NIH, on the actions listed in Section IV–E–1–b –(1) and –(2).*

IV–E–3. *The Office of Recombinant DNA Activities.* ORDA shall serve as a focal point for information on recombinant DNA activities and provide advice to all within and outside NIH, including Institutions, Biological Safety Committees, Principal Investigators, Federal agencies, State and local governments, and institutions in the private sector. ORDA shall carry out such other functions as may be delegated to it by the Director, NIH, including those authorities described in Section IV–E–1–b–(3). In addition ORDA shall be responsible for the following:

IV–E–3–a. Review and approval of Institutional Biosafety Committee (IBC) membership;

IV–E–3–b. Registration of recombinant DNA projects; and

IV–E–3–c. Review of Memoranda of Understanding and Agreement (MUAs), and approval of those that conform to the Guidelines. In so doing, ORDA shall:

IV–E–3–c–(1). Conduct an independent evaluation of the containment levels required for the research covered by these Guidelines;

IV–E–3–c–(2). Determine whether the physical and biological containment levels approved by the IBC are in accordance with the requirement of the Guidelines;

IV–E–3–c–(3). Notify Institutions and the IBC chairperson in a timely fashion when MUAs (including changes in ongoing projects) do not conform to the Guidelines, and inform them of corrective measures to be taken;

IV–E–3–c–(4). Publish in the **Federal Register:**

IV–E–3–c–(4)–(a). Announcements of Recombinant DNA Advisory Committee (RAC) meetings and agendas 30 days in advance, with publication of the Director's proposed decision for 30 days of public and Federal agency comment followed by a published response, on any action listed in Section IV–E–1–b–(1); and

IV–E–3–c–(4)–(b). Announcements of RAC meetings and agendas 30 days in advance on any action listed in Section IV–E–1–b–(2).

Note.—If the agenda for an RAC meeting is modified, ORDA shall make the revised agenda available to anyone, upon request, at least 72 hours in advance of the meeting.

IV–E–3–c–(5). Publish the *Recombinant DNA Technical Bulletin;* and

IV–E–3–c–(6). Serve as executive secretary to the RAC.

IV–E–4. *Other NIH Components.* Other NIH components shall be responsible for:

IV–E–4–a. Awarding no grant or contract involving recombinant DNA techniques unless a properly executed MUA has been received;

IV–E–4–b. Certifying P4 facilities, inspecting them periodically, and inspecting other recombinant DNA facilities as deemed necessary; and

IV–E–4–c. Announcing and distributing certified HV2 and HV3 host-vector systems (see Section II–E–3).

(See Administrative Practices Supplement for additional information on the administrative procedures of ORDA and other NIH components.)

IV–F. *Registration*

IV–F–1. *Required Registration.* Institutions receiving NIH funds for recombinant DNA projects shall inform NIH of all recombinant DNA projects at the Institution. A non-NIH project, after approval by the Institutional Biosafety Committee, shall be registered with NIH within 30 days of initiation. Applications for NIH projects must be accompanied by a Memorandum of Understanding and Agreement (MUA).

For information on MUAs or equivalent documents that must be submitted for registration of recombinant DNA projects, see the Administrative Practices Supplement (APS).

IV–F–2. *Federal Agency Registration.* Institutions at which recombinant DNA research projects funded by other Federal agencies are conducted need not register such projects with NIH when the Federal agency maintains a registry and provides such information to NIH. Registration of non-NIH-funded research with the NIH Office of Recombinant DNA Activities (ORDA) is described in the APS. (The information required is similar to that in an MUA for NIH-supported research.)

IV–F–3. *Voluntary Registration and Certification.* Any institution that is not required to comply with the Guidelines may nevertheless register recombinant DNA research projects with NIH by submitting the appropriate information to ORDA. NIH will accept requests for certification of host-vector systems proposed by the institution. The submitter must agree to abide by the physical and biological containment standards of the NIH Guidelines.

IV–F–4. *Disclosure of Information.* Institutions are reminded that they should consider applying for a patent before submitting information to DHEW which they regard as potentially proprietary. (Provisions for protection of proprietary information as permitted under current DHEW authorities are discussed in Part VI of these Guidelines.)

IV–G. *Compliance.* As a condition for NIH funding of recombinant DNA research, Institutions must ensure that such research conducted at or sponsored by the Institution, irrespective of the source of funding, shall comply with these Guidelines. The policies on noncompliance are as follows:

IV–G–1. All NIH-funded projects involving recombinant DNA techniques must comply with the NIH Guidelines. Noncompliance may result in (i) suspension, limitation, or termination of financial assistance for such projects and of NIH funds for other recombinant

DNA research at the Institution, or (ii) a requirement for prior NIH approval of any or all recombinant DNA projects at the Institution.

IV–G–2. All non-NIH-funded projects involving recombinant DNA techniques conducted at or sponsored by an Institution that receives NIH funds for projects involving such techniques must comply with the NIH Guidelines. Noncompliance may result in (i) suspension, limitation, or termination of NIH funds for recombinant DNA research at the Institution, or (ii) a requirement for prior NIH approval of any or all recombinant DNA projects at the Institution.

IV–G–3. Information concerning noncompliance with the Guidelines may be brought forward by any person. It should be delivered to both NIH (ORDA) and the relevant Institution. The Institution shall forward a complete report of the incident to ORDA, recommending any further action indicated.

IV–G–4. In cases where NIH proposes to suspend, limit, or terminate financial assistance because of noncompliance with the Guidelines, applicable DHEW and Public Health Service procedures shall govern.

IV–G–5. *Voluntary Compliance.* Any individual, corporation, or institution that is not otherwise covered by the Guidelines is encouraged to conduct recombinant DNA research activities in accordance with the Guidelines, through the procedures set forth in Part VI.

V. Footnotes and References

1. The reference to organisms as Class 1, 2, 3, 4, or 5 refers to the classification in the publication *Classification of Etiologic Agents on the Basis of Hazard,* 4th Edition, July 1974; U.S. Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, Office of Biosafety, Atlanta, Georgia 30333. The list of organisms in each class, as given in this publication, is reprinted in Appendix B to these Guidelines.

The Director, NIH, with advice of the Recombinant DNA Advisory Committee, may designate certain of the agents which are listed as Class 2 in the *Classification of Etiologic Agents on the Basis of Hazard,* 4th Edition, July 1974, as Class 1 agents for the Purposes of these Guidelines (see Section IV–E–1–b–(2)–(d)). An updated list of such agents may be obtained from the Office of Recombinant DNA Activities (ORDA), National Institutes of Health, Bethesda, Maryland 20205.

The entire *Classification of Etiologic Agents on the Basis of Hazard* is in the process of revision.

2. One exception to the prohibition of formation of recombinant DNAs derived from Class 3, 4, or 5 agents is that the formation of recombinant DNAs derived from Vesicular Stomatitis Virus (VSV) is not prohibited. The reason for this is explained in the "Decision Document" accompanying the proposed revised guidelines published in the **Federal Register** on July 28, 1978. However, as noted in Appendix B, a permit from the U.S. Department of Agriculture is required for the import of interstate transport of VSV. This can be obtained from USDA–APHIS, Veterinary Service, Federal Building, Hyattsville, Maryland 20782.

2A. In parts I and III of the Guidelines, there are a number of places where judgments are to be made. These include: "cells known to be infected with such agents" (Section I–D–1); "toxins potent for vertebrates" (Section I–D–2); "beyond that which occurs by natural genetic exchange" (Section I–D–3); "known to acquire it naturally" (Section I–D–5); "known to produce a potent polypeptide toxin . . . or known to carry such pathogens . . . not likely to be a product of closely linked eukaryote genes . . . shown not to contain such agents" (Section III–A–1–a–(5)–(a)); "shown to be free of disease causing microorganisms" (Section III–A–1–a–(5)–(b)); "close relatives" (Section III–C–3); and "produce a potent polypeptide toxin" (Footnote 34).

In all these cases the principal investigator is to make the initial judgment on these matters as part of his responsibility to "make the initial determination of the required levels of physical and biological containment in accordance with the Guidelines" (Section IV–D–7–a). In all these cases, this judgment is to be reviewed and approved by the Institutional Biosafety Committee as part of its responsibility to make "an independent assessment of the containment levels required by these Guidelines for the proposed research" (Section IV–D–3–a–(1)). If the IBC wishes, any specific cases may be referred to the NIH Office of Recombinant DNA Activities as part of ORDA's functions to "provide advice to all within and outside NIH" (Section IV–E–3), and ORDA may request advice from the Recombinant DNA Advisory Committee as part of the RAC's responsibility for "interpreting and determining containment levels upon request by ORDA" (Section IV–E–1–b–(2)–(a)).

3. The following types of data should be considered in determining whether DNA recombinants are "characterized" and the absence of harmful sequences has been established: (a) the absence of potentially harmful genes (e.g., sequences contained in indigenous tumor viruses or sequences that code for toxins, invasins, virulence factors, etc., that might potentiate the pathogenicity or communicability of the vector and/or the host or be detrimental to humans, animals or plants); (b) the type(s) of genetic information on the cloned segment and the nature of transcriptional and translation gene products specified; (c) the relationship between the recovered and desired segment (e.g., hybridization and restriction endonuclease fragmentation analysis where applicable); (d) the genetic stability of the cloned fragment; and (e) any alterations in the biological properties of the vector and host.

4. In section I–E, "exemptions" from the Guidelines are discussed. Such experiments are not covered by the Guidelines and need not be registered with NIH. In Section I–D on "prohibitions," the possibility of "exceptions" is discussed. An "exception" means that an experiment may be expressly released from a prohibition. At that time it will be assigned an appropriate level of physical and biological containment.

5. Care should be taken to inactivate recombinant DNA before disposal. Procedures for inactivating DNA can be found in the "Laboratory Safety Monograph: A Supplement to the NIH Guidelines for Recombinant DNA Research."

6. *Laboratory Safety at the Center for Disease Control* (Sept. 1974). U.S. Department of Health, Education, and Welfare Publication No. CDC 75–8118.

7. *Classification of Etiologic Agents on the Basis of Hazard.* (4th Edition, July 1974). U.S. Department of Health, Education, and Welfare. Public Health Service. Center for Disease Control, Office of Biosafety, Atlanta, Georgia 30333.

8. *National Cancer Institute Safety Standards for Research Involving Oncogenic Viruses* (Oct. 1974). U.S. Department of Health, Education, and Welfare Publication No. (NIH) 75–790.

9. *National Institutes of Health Biohazards Safety Guide* (1974). U.S. Department of Health, Education, and Welfare, Public Health Service, National Institutes of Health. U.S. Government Printing Office, Stock No. 1740–00383.

10. *Biohazards in Biological Research* (1973). A. Hellman, M. N. Oxman, and R. Pollack (ed.) Cold Spring Harbor Laboratory.

11. *Handbook of Laboratory Safety* (1971). Second Edition. N. V. Steere (ed.). The Chemical Rubber Co., Cleveland.

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14. *The Prevention of Laboratory Acquired Infection* (1974). C. H. Collins, E. G. Hartley, and R. Pilsworth. Public Health Laboratory Service, Monograph Series No. 6.

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16. *Design Criteria for Viral Oncology Research Facilities* (1975). U.S. Department of Health, Education, and Welfare, Public Health Service, National Institutes of Health, DHEW Publication No. (NIH) 75–891.

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Animals in a Single Room. J. Bact. *40,* 569–580.

20. Biological safety cabinets referred to in this section are classified as *Class I, Class II,* or *Class III* cabinets. A *Class I* is a ventilated cabinet for personnel protection having an inward flow of air away from the operator. The exhaust air from this cabinet is filtered through a high-efficiency particulate air (HEPA) filter. This cabinet is used in three operational modes: (1) with a full-width open front, (2) with an installed front closure panel (having four 8-inch diameter openings) without gloves, and (3) with an installed front closure panel equipped with arm-length rubber gloves. The face velocity of the inward flow of air through the full-width open front is 75 feet per minute or greater. A *Class II* cabinet is a ventilated cabinet for personnel and product protection having an open front with inward air flow for personnel protection, and HEPA filtered mass recirculated air flow for product protection. The cabinet exhaust air is filtered through a HEPA filter. The face velocity of the inward flow of air through the full-width open front is 75 feet per minute or greater. Design and performance specifications for *Class II* cabinets have been adopted by the National Sanitation Foundation, Ann Arbor, Michigan. A *Class III* cabinet is a closed-front ventilated cabinet of gas-tight construction which provides the highest level of personnel protection of all biohazard safety cabinets. The interior of the cabinet is protected from contaminants exterior to the cabinet. The cabinet is fitted with arm-length rubber gloves and is operated under a negative pressure of at least 0.5 inches water gauge. All supply air is filtered through HEPA filters. Exhaust air is filtered through two HEPA filters or one HEPA filter and incinerator before being discharged to the outside environment.

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33A. Skalka, A. (1978). *Current Status of Coliphage EK2 Vectors.* Gene *3,* 29–35.

33B. Szybalski, W., A. Skalka, S. Gottesman, A. Campbell, and D. Botstein (1978). *Standardized Laboratory Tests for EK2 Certification.* Gene *3,* 36–38.

34. We are specifically concerned with the remote possibility that potent toxins could be produced by acquiring a single gene or cluster of genes. See also footnote 2A.

35. Defined as observable under optimal laboratory conditions by transformation, transduction, phage infection, and/or conjugation with transfer of phage, plasmid, and/or chromosomal genetic information. Note that this definition of exchange may be less stringent than that applied to exempt organisms under Section I–E–4.

36. As classified in the Second Report of the International Committee on Taxonomy of Viruses: Classification and Nomenclature of Viruses, Frank Fenner, Ed. Intervirology *7* (19–115) 1976. (As noted in the Prohibition Section, the use of viruses classified[1] as Class 3, 4, or 5, other than VSV, is prohibited.)

37. The cDNA copy of the viral mRNA must be >99% pure; otherwise as for shotgun experiments with eukaryotic cellular DNA.

37A. For the purpose of these Guidelines, viruses of the families *Papovaviridae, Adenoviridae,* and *Herpetoviridae* (36) should be considered as "transforming" viruses. While only certain of these viruses have been associated with cell transformation *in vivo* or *in vitro,* it seems prudent to consider all members to be potentially capable of transformation. In addition, those viruses of the family *Poxviridae* that produce proliferative responses—i.e., myxoma, rabbit and squirrel fibroma, and Yaba viruses—should be considered as "transforming."

38. >99% pure (i.e., less than 1% of the DNA consists of intact viral genomes); otherwise as for whole genomes.

39. The viruses have been classified by NCI as "moderate-risk oncogenic viruses." See "Laboratory Safety Monograph—A Supplement to the NIH Guidelines for Recombinant DNA Research" for recommendations on handling the viruses themselves.

40. HV1CV means the use of an HV1 host and a vector certified for use in an HV2 system.

41. The DNA preparation is defined as "purified" if the desired DNA represents at least 99% (w/w) of the total DNA in the preparation, provided that it was verified by more than one procedure.

42. The lowering of the containment level when this degree of purification has been obtained is based on the fact that the total number of clones that must be examined to obtain the desired clone is markedly reduced. Thus, the probability of cloning a harmful gene could, for example, be reduced by more than 10-fold when a nonrepetitive gene from mammals was being sought. Furthermore, the level of purity specified here makes it easier to establish that the desired DNA does not contain harmful genes.

43. This is not permitted, of course, if it falls under any of the Prohibitions of Section I–D. Of particular concern here is prohibition I–D–5, i.e., "Deliberate transfer of a drug resistance trait to microorganisms that are not known to acquire it naturally, if such acquisition could compromise the use of a drug to control disease agents in human or veterinary medicine or agriculture."

44. Because this work will be done almost exclusively in tissue culture cells, which have no capacity for propagation outside the laboratory, the primary focus for containment is the vector. It should be pointed out that risk of laboratory-acquired infection as a consequence of tissue culture manipulation is very low. Given good microbiological practices, the most likely mode of escape of recombinant DNAs from a physically contained laboratory is carriage by an infected human. Thus the vector with an inserted DNA segment should have little or no ability to replicate or spread in humans.

For use as a vector in a vertebrate host cell system, an animal viral DNA molecule should display the following properties:

(i) It should not consist of the whole genome of any agent that is infectious for humans or that replicates to a significant extent in human cells in tissue culture. If the recombinant molecule is used to transform nonpermissive cells (i.e., cells which do not produce infectious virus particles), this is not a requirement.

(ii) It should be derived from a virus whose epidemiological behavior and host range are well understood.

(iii) In permissive cells, it should be defective when carrying an inserted DNA segment (i.e., propagation of the recombinant DNA as a virus must be dependent upon the presence of a complementing helper genome). In almost all cases this condition would be achieved automatically by the manipulations used to construct and propagate the recombinants. In addition, the amount of DNA encapsidated in the particles of most animal viruses is defined within fairly close limits. The insertion of sizable foreign DNA

sequences, therefore, generally demands a compensatory deletion of viral sequences. It may be possible to introduce very short insertions (50–100 base pairs) without rendering the viral vector defective. In such a situation, the requirement that the viral vector be defective is not necessary, except in those cases in which the inserted DNA encodes a biologically active polypeptide.

It is desired but not required that the functional anatomy of the vector be known—that is, there should be a clear idea of the location within the molecule of:

(i) the sites at which DNA synthesis originates and terminates,

(ii) the sites that are cleaved by restriction endonucleases, and

(iii) the template regions for the major gene product.

If possible the helper virus genome should:

(i) be integrated into the genome of a stable line of host cells (a situation that would effectively limit the growth of the vector recombinant to such cell lines) or

(ii) consist of a defective genome, or an appropriate conditional lethal mutant virus, making vector and helper dependent upon each other for propagation.

However, neither of these stipulations is a requirement.

45. Review by NIH on a case-by-case basis means that NIH must review and set appropriate containment conditions before the work may be undertaken. NIH actions in such case-by-case reviews will be published in the *Recombinant DNA Technical Bulletin.*

46. Provided the inserted DNA sequences are not derived from eukaryotic viruses. In the latter case, such experiments will be evaluated on a case-by-case basis.

47. ≥99% pure; otherwise as for shotgun experiments.

VI. Voluntary Compliance

VI–A. *Basic Policy.* Individuals, corporations, and institutions not otherwise covered by the Guidelines are encouraged to do so by following the standards and procedures set forth in Parts I–IV of the Guidelines. In order to simplify discussion, reference hereafter to "institutions" are intended to encompass corporations, and individuals who have no organizational affiliation. For purposes of complying with the Guidelines, an individual intending to carry out research involving recombinant DNA is encouraged to affiliate with an institution that has an Institutional Biosafety Committee approved under the Guidelines.

Since commerical organizations have special concerns, such as protection of proprietary data, some modifications and explanations of the procedures in Parts I–IV are provided below, in order to address these concerns.

VI–B. *IBC Approval.* The NIH Office of Recombinant DNA Activities (ORDA) will review the membership of an institution's Institutional Biosafety Committee (IBC) and, were it finds the IBC meets the requirements set forth in Section IV–C–2, will give its approval to the IBC membership.

It should be emphasized that employment of an IBC member solely for purposes of membership on the IBC does not itself make the member an institutionally affiliated member of purposes of Section IV–D–2–a.

Except for the unaffiliated members, a member of an IBC for an institution not otherwise covered by the Guidelines may participate in the review and approval of a project in which the member has direct financial interest, so long as the member has not been and does not expect to be engaged in the project. Section IV–2–d is modified to that extent for purposes of these institutions.

VI–C. *Registration.* Upon approval of a recombinant DNA research project by the IBC, an institution may register the project by submitting to ORDA the information required in the Administrative Practices Supplement.

VI–D. *Certification of Host-Vector Systems.* A host-vector system may be proposed for certification by the Director, NIH, in accordance with the procedures set forth in Section II–D–2–a.

Institutions not otherwise covered by the Guidelines will not be subject to Section II–D–3 by complying with these procedures.

In order to ensure protection for proprietary data, any public notice regarding a host-vector system which is designated by the institution as proprietary under Section VI–F–1 will be issued only after consultation with the institution as to the content of the notice.

VI–E. *Requests for Exceptions, Exemptions, Approvals.* Requests for exceptions from prohibitions, exemptions, or other approvals required by the Guidelines should be requested by following the procedures set forth in the appropriate sections in Parts I–IV of the Guidelines.

In order to ensure protection for proprietary data, any public notice regarding a request for an exception, exemption, or other approval which is designated by the institution as proprietary under Section VI–F–1 will be issued only after consultation with the institution as to the content of the notice.

VI–F. *Protection of Proprietary Data.* In general, the Freedom of Information Act requires Federal agencies to make their records available to the public upon request. However, this requirement does not apply to, among other things, "trade secrets and commercial and financial information obtained from a person and privileged or confidential." 18 U.S.C. 1905, in turn makes it a crime for an officer or employee of the United States or any Federal department or agency to publish, divulge, disclose, or make known "in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, [or] processes . . . of any person, firm, partnership, corporation, or association." This provision applies to all employees of the Federal Government, including special Government employees. Members of the Recombinant DNA Advisory Committee are "special Government employees."

VI–F–1. In submitting information to NIH for purposes of complying voluntarily with the Guidelines, an institution may designate those items of information which the institution believes constitute trade secrets or privileged or confidential commercial or financial information.

VI–F–2. If NIH receives a request under the Freedom of Information Act for information so designated, NIH will promptly contact the institution to secure its views as to whether the information (or some portion) should be released.

VI–F–3. If the NIH decides to release this information (or some portion) in response to a Freedom of Information request or otherwise, the institution will be advised; and the actual release will not be made until the expiration of 15 days after the institution is so advised, except to the extent that earlier release, in the judgment of the Director, NIH, is necessary to protect against an imminent hazard to the public or the environment.

VI–F–4. Projects should be registered in accordance with procedures specified in the *Administrative Practices Supplement.* The following information will usually be considered publicly available information, consistent with the need to protect proprietary data:

a. The names of the institution and principal investigator.

b. The location where the experiments will be performed.

c. The host-vector system.

d. The source of the DNA.

e. The level of physical containment.

VI–F–5–a. Any institution not otherwise covered by the Guidelines, which is considering submission of data or information voluntarily to NIH, may request presubmission review of the records involved to determine whether, if the records are submitted, NIH will or

will not make part of all of the records available upon request under the Freedom of Information Act.

VI–F–5–b. A request for presubmission review should be submitted to ORDA, along with the records involved. These records must be clearly marked as being the property of the institution, on loan to NIH solely for the purpose of making a determination under the Freedom of Information Act. ORDA will then seek a determination from the HEW Freedom of Information Officer, the responsible official under HEW regulations (45 CFR Part 5), as to whether the records involved (or some portion) are or are not available to members of the public under the Freedom of Information Act. Pending such a determination, the records will be kept separate from ORDA files, will be considered records of the institution and not ORDA, and will not be received as part of ORDA files. No copies will be made of the records.

VI–F–5–c. ORDA will inform the institution of the HEW Freedom of Information Officer's determination and follow the institution's instructions as to whether some or all of the records involved are to be returned to the institution or to become a part of ORDA files. If the institution instructs ORDA to return the records, no copies or summaries of the records will be made or retained by HEW, NIH, or ORDA.

VI–F–5–d. The HEW Freedom of Information Officer's determination will represent that official's judgement, as of the time of the determination, as to whether the records involved (or some portion) would be exempt from disclosure under the Freedom of Information Act, if at the time of the determination the records were in ORDA files and a request were received from them under the Act.

Appendix A

Section I–E–4 states that exempt from these Guidelines are "certain specified recombinant DNA molecules that consist entirely of DNA segments from different species that exchange DNA by known physiological processes, though one or more of the segments may be a synthetic equivalent. A list of such exchangers will be prepared and periodically revised by the Director, NIH, with advice of the Recombinant DNA Advisory Committee, after appropriate notice and opportunity for public comment (see Section IV–E–1–b–(1)–(d).) Certain classes are exempt as of publication of these Revised Guidelines. The list is in Appendix A."

Under exemption I–E–4 of these revised Guidelines are recombinant DNA molecules that are (1) composed entirely of DNA segments from one or more of the organisms within a sublist and (2) to be propagaated in any of the organisms within a sublist.

(Classification of *Bergey's Manual of Determinative Bacteriology*, eight edition. R. E. Buchanan and N. E. Gibbons, editors. Williams and Wilkins Company: Baltimore, 1974.)

Sublist A

1. Genus *Escherichia*
2. Genus *Shigella*
3. Genus *Salmonella* (including *Arizona*)
4. Genus *Enterobacter*
5. Genus *Citrobacter* (including *Levinea*)
6. Genus *Klebsiella*
7. *Erwinia amylovora*
8. *Pseudomonas aeruginosa, Pseudomonas putida* and *Pseudomonas fluorescens*
9. *Serratia marcescens*

Sublist B

1. *Bacillus subtilis*
2. *Bacillus licheniformis*
3. *Bacillus pumilus*
4. *Bacillus globigii*
5. *Bacillus niger*
6. *Bacillus nato*
7. *Bacillus anyloliquefaciens*
8. *Bacillus aterrimus*

Sublist C

1. *Streptomyces aureofaciens*
2. *Steptomyces rimosus*
3. *Streptomyces coelicolor*

Sublist D

1. *Streptomyces griseus*
2. *Streptomyces cyaneus*
3. *Streptomyces venezuelae*

Appendix B.—Classification of Microorganisms on the Basis of Hazard

I. Classification of Etiologic Agents on the Basis of Hazard (1).

A. Class 1 Agents: All bacterial, parasitic, fungal, viral, rickettsial, and chlamydial agents not included in higher classes.

B. Class 2 Agents:

1. Bacterial Agents

Actinobacillus—all species except *A. mallei*, which is in Class 3
Arizona hinshawii—all serotypes
Bacillus anthracis
Bordetella—all species
Borrelia recurrentis, B. vincenti
Clostridium botulinum, Cl. chauvoei, Cl. haemolyticum, Cl. histolyticum, Cl. novyi, Cl. septicum, Cl. tetani
Corynebacterium diptheriae, C. equi, C. haemolyticum, C. pseudotuberculosis, C. pyogenes, C. renale
Diplococcus (Streptococcus) pneumoniae
Erysipelothrix insidiosa
Escherichia coli—all enteropathogenic serotypes
Haemophilus ducreyi, H. influenzae
Herellae vaginicola
Klebsiella—all species and all serotypes
Leptospira interrogans—all serotypes
Listeria—all species
Mima polymorpha
Moraxella—all species
Mycobacteria—all species except those listed in Class 3
Mycoplasma—all species except *Mycoplasma mycoides* and *Mycoplasma agalactiae*, which are in Class 5
Neisseria gonorrhoeae, N. meningitidis
Pasteurella—all species except those listed in Class 3
Salmonella—all species and all serotypes
Shigella—all species and all serotypes
Sphaerophorus necrophorus
Staphylococcus aureus
Streptobacillus moniliformis
Streptococcus pyogenes
Treponema carateum, T. pallidum, and T. pertenue
Vibrio fetus, V. comma, including biotype El Tor, and *V. parahemolyticus*

2. Fungal Agents

**Actinomycetes (including Nocardia* species and *Actinomyces species and Arachnia propionica)*
Blastomyces dermatitidis
Cryptococcus neoformans
Paracoccidioides brasiliensis

3. Parasitic Agents

Endamoeba histolytica
Leishmania sp.
Naegleria gruberi
Toxoplasma gondii
Toxocara canis
Trichinella spiralis
Trypanosoma cruzi

4. Viral, Rickettsial, and Chlamydial Agents

Adenoviruses—human—all types
Cache Valley virus
Coxsackie A and B viruses
Cytomegaloviruses
Echoviruses—All types
Encephalomyocarditis virus (EMC)
Flanders virus
Hart Park virus
Hepatitis-associated antigen material
Herpes viruses—except *Herpesvirus simiae* (Monkey B virus) which is in Class 4
Corona viruses
Influenza viruses—all types except A/PR8/34, which is in Class 1
Langat virus
Lymphogranuloma venereum agent
Measles virus
Mumps virus
Parainfluenza virus—all types except Parainfluenza virus 3, SF4 strain, which is in Class 1
Polioviruses—all types, wild and attenuated
Poxviruses—all types except *Alastrim, Smallpox, Monkey pox, and Whitepox*, which depending on experiments, are in Class 3 or Class 4
Rabies virus—all strains except *Rabies street virus*, which should be classified in Class 3 when inoculated into carnivores
Reoviruses—all types
Respiratory syncytial virus
Rhinoviruses—all types
Rubella virus
Simian viruses—all types except *Herpesvirus simiae (Monkey B virus) and Marburg virus*, which are in Class 4
Sindbis virus
Tensaw virus
Turlock virus
Vaccinia virus
Varicella virus

**Since the publication of the classification in 1974 [1], the *Actinomycetes* have been reclassified as bacterial rather than fungal agents.

Vole rickettsia
Yellow fever virus, 17 D vaccine strain

C. Class 3 Agents:

1. Bacterial Agents

*Actinobacillus mallei**
Actinobacillus mallei*
Bartonella—all species
Brucella—all species
Francisella tularensis
Mycobacterium avium, M. bovis, M. tuberculosis
Pasteurella multocide type B ("buffalo" and other foreign virulent strains*)
*Pseudomonas pseudomallei**
Yersenia pestis

2. Fungal Agents

Coccidioides immitis
Histoplasma capsulatum
Histoplasma capsulatum var. *duboisii*

3. Parasitic Agents

Schistosoma mansoni

4. Viral, Rickettsial, and Chlamydial Agents

Alastrim, Smallpox, Monkey pox, and Whitepox, when used *in vitro*
Arboviruses—all strains except those in Class 2 and 4 (Arboviruses indigenous to the United States are in Class 3, except those listed in Class 2. *West Nile* and *Semliki Forest* viruses may be classified up or down, depending on the conditions of use and geographical location of the laboratory.)
Dengue virus, when used for transmission or animal inoculation experiments
Lymphocytic choriomeningitis virus (LCM)
Psittacosis-Ornithosis-Trachoma group of agents
Rabies street virus, when used in inoculations of carnivores (See Class 2)
Rickettsia—all species except *Vole rickettsia* when used for transmission or animal inoculation experiments
Vesicular stomatitis virus *
Yellow fever virus—wild, when used *in vitro*

D. Class 4 Agents:

1. Bacterial Agents

None.

2. Fungal Agents

None.

3. Parasitic Agents

None.

4. Viral, Rickettsial, and Chlamydial Agents

Alastrim, Smallpox, Monkey pox, and Whitepox, when used for transmission or animal inoculation experiments
Hemorrhagic fever agents, including *Crimean hemorrhagic fever (Congo), Junin*, and *Machupo* viruses, and others as yet undefined
Herpesvirus simiae (Monkey B virus)
Lassa virus
Marburg virus
Tick-borne encephalitis virus complex, including *Russian spring-summer encephalitis, Kyasanur forest disease, Omsk hemorrhagic fever*, and *Central European encephalitas viruses*
Venesuelan equine encephalits virus, epidemic strains, when used for transmission or animal inoculation experiments
Yellow fever virus—wild, when used for transmission or animal inoculation experiments

II. Classification of Oncogenic Viruses on the Basis of Potential Hazard (2). A. Low-Risk Oncogenic Viruses:

Rous Sarcoma
SV–40
CELO
Ad7–SV40
Polyoma
Bovine papilloma
Rat mammary tumor
Avian Leukosis
Murine Leukemia
Murine Sarcoma
Mouse mammary tumor
Rat Leukemia
Hamster Leukemia
Bovine Leukemia
Dog Sarcoma
Mason-Pfizer Monkey Virus
Marek's
Guinea Pig Herpes
Lucké (Frog)
Adenovirus
Shope Fibroma
Shope Papilloma

B. Moderate-Risk Oncogenic Viruses:

Ad2–SV40
FeLV
HV Saimiri
EBV
SSV–1
GaLV
HV ateles
Yaba
FeSV

III. Animal Pathogens (3).

A. Animal disease organisms which are forbidden entry into the United States by Law (CDC Class 5 agent): 1. Foot and mouth disease virus

B. Animal disease organisms and vectors which are forbidden entry into the United States by USDA Policy (CDC Class 5 Agents):

African horse sickness virus
African swine fever virus
Besnoitia besnoiti
Borna diseas virus
Bovine infectious petechia fever
Camel pox virus
Ephermeral fever virus
Fowl plague virus
Goat pox virus
Hog cholera virus
Louping ill virus
Lumpy skin disease virus
Nairobi sheep disease virus
Newcastle disease virus (Asiatic strains)
Mycoplasma mycoides (contagious bovine pleuropneumonia)
Mycoplasma agalactiae (contagious agalactia of sheep)
Rickettsia ruminatium (heart water)
Rift valley fever virus
Rinderpest virus
Sheep pox virus
Swine vesicular disease virus
Teschen disease virus
Trypanosoma vivax (Nagana)
Trypanosoma evansi
Theileria parva (East Coast fever)
Theileria annulata
Theileria lawrencei
Theileria bovis
Theileria hirci
Vesicular exanthema virus
Wesselsbron disease virus
Zyonema farciminosum (pseudofarcy)

References

1. *Classification of Etiologic Agents on the Basis of Hazard.* (4th Edition, July 1974). U.S. Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, Office of Biosafety, Atlanta, Georgia 30333.
2. *National Cancer Institute Safety Standards for Research Involving Oncogenic Viruses* (October 1974). U.S. Department of Health, Education, and Welfare Publication No. (NIH) 75–790.
3. U.S. Department of Agriculture, Animal and Plant Health Inspection Service.

Appendix C

Section I–E–5 states that exempt from these Guidelines are "Other classes of recombinant DNA molecules, if the Director, NIH, with advice of the Recombinant DNA Advisory Committee, after appropriate notice and opportunity for public comment, finds that they do not present a significant risk to health or the environment. (See Section IV–E–1–b–(1)–(d).) Certain classes are exempt as of publication of these Revised Guidelines. The list is in Appendix C."

Under exemption I–E–5 of these Revised Guidelines are those recombinant DNA molecules that are propaged and maintained in cells in tissue culture and that are derived entirely from non-viral components (that is, no component is derived from a eukaryotic virus).

Appendix D

As noted above at the beginning of Section III–A, certain HV1 and HV2 host-vector systems are assigned containment levels as specified in the subsections of Section III–A. Those so classified as of publication of these Revised Guidelines are listed below.

*HV1—Unmodified laboratory strains of *Saccharomyces cerevisiae*
*HV1—The following specified strains of *Neurospora crassa* which have been modified to prevent aerial dispersion: (1) in1 (inositolless) strains 37102, 37401, 46316, 64001 and 89601.
(2) csp–1 strain UCLA37 and csp–2 strains FS 590, UCLA101 (these are conidial separation mutants).
(3) eas strain UCLA191 (an "easily wettable" mutant).
HV1—Asporogenic mutant derivatives of *B. subtilis*
These derivatives must not revert to sporeformers with a frequency greater than 10^{-8}; data confirming this requirement must be presented to NIH for certification. The following plasmids are accepted as the vector components of

* USDA permit also required for import or interstate transport.

*These follow the assigned containment levels as specified in the subsections of Section III–A with one exception. This exception is that experiments involving complete genomes of eukaryotic viruses will require P3+HV1 or P2+HV2 rather than the levels given in the subsections of Section III–A.

certified *B. subtilis* HV1 systems: pUB110, pC194, pS194, pSA2100, pE194, pT127, pUB112, pC221, pC223.

'HV2—The following sterile strains of *Saccharomyces cerevisiae*, all of which have the ste-VC9 mutation, SHY1, SHY2, SHY3, and SHY4. The following plasmids are certified for use: YIp1, YEp2, YEp4, YIp5, YEp6, YRp7, YEp20, YEp21, YEp24, YIp25, YIp26, YIp27, YIp28, YIp29, YIp30, YIp31, YIp32, and YIp33. These plasmids can be considered EK2 vectors when propagated in chi-1776.

Appendix E

As noted in the subsections of Section IV-E-1-b-(1) the Director, NIH, may take certain actions with regard to the Guidelines after public notice and RAC consideration.

Some of the actions taken to date include the following:

• The following experiment has been approved: The cloning in *B. subtilis*, under P2 conditions, of DNA derived from *Saccharomyces cerevisiae* using EK2 plasmid vectors provided that an HV1 *B. subtilis* host is used.

• Unmodified laboratory strains of *Neurospora crassa* can be used in all experiments for which HV1 *N. crassa* systems are approved provided that these are carried out at physical containment one level higher than required for HV1. However, if P3 containment is specified for HV1 *N. crassa*, this level is considered adequate for unmodified *N. crassa*. For P2 physical containment, special care must be exercised to prevent aerial dispersal of macroconidia, including the use of a biological safety cabinet.

• P2 physical containment shall be used for DNA recombinants produced between members of the genera *Streptomyces* and *Micromonospora* except for those species which are known to be pathogenic for man, animals or plants.[2A].

• Cloned desired fragments from any non-prohibited source may be tranferred into *Agrobacterium tumefaciens* containing a Ti plasmid (or derivatives thereof), using a nonconjugative *E. coli* plasmid vector coupled to a fragment of the Ti plasmid and/or the origin of replication of an *Agrobacterium* plasmid, under containment conditions one step higher than would be required for the desired DNA in HV1 systems (i.e. one step higher physical containment than that specified in the subsections of Section III-A). Transfer into plant parts or cells in culture would be permitted at the same containment level (one step higher).

• *Bacillus subtilis* strains that do not carry an asporogenic mutation can be used as hosts specifically for the cloning of DNA derived from *E. coli* K-12 and *Streptomyces coelicolor* using NIH-approved *Staphylococcus aureus* plasmids as vectors under P2 conditions.

• *Streptomyces coelicolor* can be used as a host for the cloning of DNA derived from *B. subtilis*, *E. Coli* K-12, or from *S. aureus* vectors that have been approved for use in *B. subtilis* under P2 conditions.

• Certain cloned segments of *Anabena* DNA may be transferred into *Klebsiella* under P2 physical containment.

• Permission is granted to clone foot-and-mouth disease virus in the EK1CV host-vector system consisting of *E. coli K-12 and the vector pBR322, all work to be done at the Plum Island Animal Disease Center.*

Dated: January 23, 1980.

Donald S. Fredrickson,

Director, National Institutes of Health.

[FR Doc. 80-2822 Filed 1-28-80; 8:45 am]

BILLING CODE 4110-08-M

federal register

Tuesday
January 29, 1980

Part VII

Environmental Protection Agency

Authorization of State Hazardous Waste Programs; Advance Notice of Final Regulation

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[FRL 1396-6]

Authorization of State Hazardous Waste Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance Notice of Final Regulation.

SUMMARY: EPA today is giving notice of the requirements it intends to promulgate for interim and final authorization of State hazardous waste programs under Section 3006 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA). The purpose of this notice is to provide advance guidance to States to give them full opportunity to qualify for interim authorization by the effective date of the first phase of the Federal program. This notice should also assist States in developing an authorization plan to describe how a State will develop a program capable of receiving final authorization.

DATE: A meeting to brief State officials and the public on this notice will be held on February 12, 1980 at 1:30 p.m.

ADDRESS: Room 3906, EPA Headquarters, 401 M Street, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Region I

Dennis Huebner, Chief, Radiation, Noise, and Solid Waste Branch, John F. Kennedy Building, Boston, Massachusetts 02203, (617) 223-5708.

Region II

Dr. Ernest Regna, Chief, Solid Waste Branch, 26 Federal Plaza, New York, New York 10007, (212) 264-0503/4/5.

Region III

Robert L. Allen, Chief, Hazardous Materials Branch, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-0980.

Region IV

James Scarbrough, Chief, Residuals Management Branch, 345 Courtland Street NE., Atlanta, Georgia 30308, (404) 881-3016.

Region V

Karl J. Klepitach, Jr., Chief, Waste Management Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 866-6148.

Region VI

Dr. Richard Hill, Chief, Solid Waste Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270, (214) 767-2645.

Region VII

Robert L. Morby, Chief, Hazardous Materials Branch, 324 E. 11th Street, Kansas City, Missouri 64106, (816) 374-3307.

Region VIII

Lawrence P. Gazda, Chief, Waste Management Branch, 1860 Lincoln Street, Denver, Colorado 80203, (303) 837-2221.

Region IX

Robert Kuykendall, Chief, Hazardous Materials Branch, 215 Fremont Street, San Francisco, California 94105, (415) 556-4606.

Region X

Kenneth D. Feigner, Chief, Waste Management Branch, 1200 6th Avenue, Seattle, Washington 98101, (206) 442-1260.

Headquarters

Sam Morekas, U.S. Environmental Protection Agency, Office of Solid Waste (WH-563), Washington, D.C. 20460, (202) 755-9145.

SUPPLEMENTARY INFORMATION:

Executive Summary

In the next few months EPA will be issuing final regulations to control the management of hazardous wastes. These regulations will establish a Federal regulatory program that will ensure that hazardous wastes are transported, stored, treated and disposed of in a manner that protects public health and the environment.

The first phase or "core" of the Federal program is expected to be published by April 1980 and will be in effect in October 1980. Then, generators and transporters of hazardous waste will have to comply with the Section 3002 and Section 3003 regulations, including the use of a manifest system. Owners and operators of treatment, storage and disposal facilities will have to meet the first set of standards set forth in the Section 3004 regulation.

As soon as practicable after April 1980, EPA will promulgate the remaining parts of the Section 3004 regulation which will set forth additional technical standards for treatment, storage and disposal facilities. The second phase of the Federal progam, which involves the issuance of permits for such facilities, will then begin.

RCRA allows EPA to grant final authorization to States to carry out hazardous waste management programs which are equivalent to the Federal program. EPA may also grant States interim authorization for a period of two years to carry out substantially equivalent hazardous waste programs. The period of interim authorization is intended to provide States with time to develop programs so that they become capable of receiving final authorization.

The purpose of this notice is to provide advance guidance to States to give them full opportunity to qualify for interim authorization by the effective date of the first phase of the Federal program. This notice should also assist States in developing an authorization plan to describe how a state will develop a program capable of receiving final authorization.

Final Authorization

Appendix A outlines the major features of the minimum requirements for final authorization. Additional and more specific information will be provided in the EPA regulations to be issued on this subject in April of this year.

In summary the requirements for final authorization are that the State demonstrate that its program:

1. Assures control over the same universe of hazardous wastes and the same population of generators, transporters and hazardous waste (treatment, storage and disposal) facilities as the Federal program.

2. Requires that generators, transporters and hazardous waste facilities comply with standards that are equivalent (or equal in effect) to the Federal standards.

3. Requires that generators and transporters of hazardous wastes use a manifest system that ensures shipments of hazardous waste are only delivered to authorized facilities. The State manifest system must adopt certain aspects of the Federal manifest system in order that intrastate and interstate shipments of hazardous waste are managed in a consistent manner nationwide.

4. Requires a permit for all hazardous waste storage, treatment and disposal facilities. This permit program must be administered through procedures that are equivalent to the Federal program.

Since the criteria for final authorization depend on the complete set of Federal regulations, final authorization of State programs cannot begin until the effective date of the second phase of the Federal program.

Interim Authorization

In establishing the requirements for interim authorization EPA had to balance a number of somewhat competing interests, including the desire to promote uniform State programs as quickly as possible and the desire not to disrupt existing State efforts through the imposition of separate and parallel Federal requirements. The Agency also had to recognize that the Federal program would become effective in two phases and would continue to expand and evolve over time. Appendix B explains the logic used in dealing with

this complex issue and outlines the basic requirements for interim authorization.

RCRA states that in order to receive interim authorization a State program must be substantially equivalent to the Federal program. In summary this is interpreted to mean that the State demonstrate that its program:

1. Controls a nearly identical universe of hazardous wastes generated, transported, treated, stored and disposed of in the State as would be controlled by the Federal program.

2. Covers all types of hazardous waste management facilities existing in the State as of the date of interim authorization.

3. Is based on standards that provide substantially the same degree of human health and environmental protection as the Federal standards and is administered through procedures that are substantially equivalent to the procedures used in the Federal program.

A State program will have the opportunity to receive interim authorization in phases similar to the implementation of the Federal program.

If a State program meets all of the other requirements for interim authorization except that it does not have a manifest system to control shipments of hazardous waste, the State may receive interim authorization for the remainder of the program and the Federal manifest system will be administered in the State by EPA.

Finally, in order to receive interim authorization, a State must have an authorization plan that commits the State to closing the gaps in its existing program as soon as practicable and to developing a program capable of receiving final authorization by the end of the interim authorization period. The State/EPA Agreement should reflect this commitment, delineate State and EPA responsibilities during the interim authorization period, and clearly communicate this information to the public.

Other State-EPA Relationships

EPA contemplates providing those States which do not qualify for interim authorization the opportunity to enter into cooperative arrangements with EPA under which they would be responsible for administering portions of the Federal hazardous waste program until they are authorized to run the State program, and with financial support through the Subtitle C grant program under Section 3011. Guidance on this approach to cooperation between EPA and the States will be issued within 30 days.

* * * * *

In order to assist the States better to understand these policies, EPA will hold a briefing on this notice for State representatives on February 12 1980, at 1:30 p.m. in Room 3906, EPA Headquarters, 401 M Street, S.W., Washington, D.C. this briefing will be open to the public.

Dated: January 24, 1980.

Douglas M. Costle,

Administrator.

Appendix A—Requirements for Final Authorization

Under RCRA, before the Administrator can approve final authorization for a State program he must find that it (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and programs in authorized States, (3) provides "adequate enforcement" and (4) provides adequate public participation. (Requirements 1, 2 and 3 are found in Section 3006(b); requirement 4 is derived from Section 7004(b)).

EPA interprets the term equivalent to mean "equal in effect." EPA has used this interpretation of equivalence in establishing minimum requirements for final authorization of State programs. Each requirement of the Federal program has been analyzed to determine the minimum a State must do to meet the four statutory criteria of equivalency, consistency, enforceability and public participation. In some instances EPA has concluded that the requirements for States must be very similar to the Federal program requirements in order to be equal in effect. In other instances the State may adopt standards which it demonstrates to be at least equal in effect to the Federal standards in the area. The more closely the State standard resembles the Federal standard, of course, the easier the determination that it is equal in effect.

In evaluating State programs for final authorization, one of EPA's primary concerns will be whether the State program controls, at a minimum, the same universe of hazardous wastes and the same generators, transporters and hazardous waste facilities as the Federal program. One way of assuring this would be for the State program to adopt the hazardous waste characteristics and lists promulgated by EPA under Section 3001 and certain definitions and other provisions of the Federal regulations.

The consistency criterion is very important with respect to the manifest system, which is applicable to both intrastate and interstate shipments of hazardous waste nationwide. The Agency believes that a State must adopt certain aspects of the Federal manifest system in order for the State program to be consistent with the Federal program and other State programs. Also, in order for a State program to be consistent with other programs, no aspect of that program should restrict or impede the free movement of hazardous waste across State borders to permitted facilities.

Following is an outline of the major features of the minimum requirements for final authorization. In order to receive final authorization a State program must meet the requirements of 40 CFR Part 123 (the consolidated permit regulations) which will be promulgated in April. More specific requirements will, of course, be provided in these regulations, as will EPA's statement of basis and purpose and response to comments.

A. General

The State program must demonstrate control over the same universe of hazardous waste, generators, transporters and treatment, storage and disposal facilities covered by the Section 3001–3005 regulations and must assure that this control continues as the scope of the Federal program expands in the future.

Specifically, the State program must demonstrate:

1. Legislative authority adequate for the State to carry out its responsibilities;

2. Regulations in effect necessary to implement the requirements of the program;

3. The capacity to inspect, monitor, and require of the regulated community recordkeeping, reporting and monitoring in order to determine compliance with the requirements of the program, and to obtain information necessary to meet EPA requirements for State reporting (as will be described in the final consolidated permit regulations);

4. Enforcement capabilities that are adequate to ensure compliance with the requirements of the program (More specific requirements for enforcement capabilities will be provided in the final consolidated permit regulations); and

5. Adequate resources to administer and enforce the requirements of the program.

B. Generator and Transportation Standards

1. The State program must demonstrate that generators and transporters of hazardous waste use a manifest system that ensures that interstate and intrastate shipments of hazardous waste are delivered only to

facilities that are authorized to operate under RCRA.

2. Requirements for the State manifest system are:

(a) The EPA identification code must be used to identify generators, transporters and facilities.

(b) The Federal manifest format must be used (but may be supplemented to a limited extent subject to U.S. Department of Transportation (DOT) constraints).

(c) All wastes transported to an off-site facility must be accompanied by a manifest.

(d) The generator must initiate the manifest and designate the storage, treatment, or disposal facility to which the waste is to be shipped.

(e) The transporter must carry the manifest and deliver wastes only to that designated facility.

(f) The facility owner/operator must return a copy of the manifest to the generator indicating delivery of the waste shipment.

(g) The generator must be responsible for investigating unreturned manifests and reporting undelivered shipments to the State.

(h) For interstate shipments, the State program must provide for notification to other States (or EPA in unauthorized States) of undelivered shipments.

3. For hazardous wastes that are discharged (spilled) in transit, the State program must require that transporters clean up such wastes or take action so that such wastes do not present a hazard to human health or the environment. Transporters must be required to notify appropriate State, local and Federal agencies of such discharges.

4. For hazardous wastes that are accumulated for short periods of time prior to shipment off-site, the State program must require that generators accumulate such wastes in containers meeting DOT shipping requirements or be stored in accordance with authorized State storage standards.

5. The State program must require that generators and transporters comply with requirements for the labeling, marking, placarding and containerization of hazardous wastes that are equivalent to the requirements of the Section 3002 and 3003 regulations.

C. Facility Standards and Permit Program

(1) The State program must demonstrate that hazardous waste storage, treatment and dispoal facilities comply with standards that provide the same degree of human health and environmental protection as the standards promulgated in the Section 3004 regulations.

(2) The State standards for treatment, storage and disposal facilities must cover (as a minimum):

(a) Technical standards for tanks, containers, basins, waste piles, incineration, chemical physical and biological treatment, surface impoundments, landfills and land treatment facilities;

(b) Financial responsibility (insurance) during facility operation;

(c) Preparedness for and prevention of discharges of hazardous waste, and contingency plans and emergency procedures to be followed in the event of a discharge of hazardous wastes;

(d) Closure and post-closure requirements, including financial requirements for closure and post-closure monitoring and maintenance;

(e) Groundwater monitoring;

(f) Security to prevent unauthorized access to the facility;

(g) Facility personnel training;

(h) Inspections, monitoring, recordkeeping and reporting;

(i) Compliance with the manifest system by storage, treatment, and disposal facilities; and

(j) Other aspects to the extent that they are included in the Section 3004 regulation.

(3) The State program must require a permit for all hazardous waste storage, treatment and disposal facilities for which a permit is required by Section 3005 and the Section 3005 regulations. The State program must prohibit the operation of such facilities except as authorized by a State permit program. The State permit may be issued only to facilities that comply with authorized State standards.

(4) The State permit program must be administered through procedures that are equivalent to the procedures for the Federal permit program described in Section 3005 regulation. (More specific requirements for State permit program procedures will be included in the final consolidated permit regulations.)

Since the criteria for final authorization depend on the Federal regulations, final authorization of State programs cannot begin until the effective date of the Phase II Section 3004 regulation which will set forth technical standards for permitting storage, treatment and disposal facilities.

Appendix B—Requirements for Interim Authorization

RCRA specifies in Section 3006(c) that in order to receive interim authorization, a State program must be "substantially equivalent" to the Federal program. The Agency interprets substantial equivalence as "to a large degree or in the main, equal in effect."

Substantial Equivalence

As the result of a recent analysis of State legislation and regulations, three areas have been identified where this definition of substantial equivalence must be clarified.

First, the part of the Federal program for which States will now have the most difficulty in meeting the substantial equivalence test is the generator and transporter standards; in particular, many States probably will not have a manifest system in place that adequately controls interstate shipments of hazardous waste and is consistent with the Federal manifest system. The Agency does not believe that the lack of authority for this program part should cause States to be denied interim authorization. Such a decision would result in parallel Federal and State programs in many States with attendant duplicative regulation and resource expenditures. On the other hand, the manifest system is the heart of the "cradle-to-grave" control system of RCRA and has significant consequences on interstate commerce. Accordingly, EPA will administer and enforce the Federal manifest system and generator and transporter requirements if the State lacks the necessary legal authority.

Second, present State laws and regulations define hazardous wastes in ways which make it likely that few if any States now cover exactly the wastes which will be identified in the Section 3001 regulation. Time will be needed to bring the State definitions into conformance with the Federal definition. Accordingly, State procedures for defining hazardous wastes will be compared to the Section 3001 regulation, and differences will be identified. The requirement will be that the State program control as nearly identical a universe of hazardous wastes generated, transported, treated, stored or disposed of in the State as would be controlled by the Federal program. While some exceptions to the Federal universe may be allowed, this must not create a significant loophole that would exempt entire classes of wastes or practices from adequate control. For these reasons, only relatively minor differences between the Federal and State definitions of hazardous wastes will be allowed during interim authorization.

Third, some States do not have regulatory authority over all types of hazardous waste facilities. Generally these are facilities which do not exist in the State. The only types of hazardous

waste management facilities a State need not have authority to regulate during interim authorization will be those types of facilities which do not exist in the State as of the date of interim authorization.

The State authorization plan must provide for closing all of the legislative and regulatory gaps in the State hazardous waste program as soon as practicable and in no event later than the end of the interim authorization period.

Phasing of Interim Authorization

As mentioned previously, EPA will be issuing the Section 3004 regulation in two major phases. Therefore interim authorization will be divided into two phases which correspond to the two Federal regulation phases. Phase I will cover generator and transporter requirements and preliminary facility standards. Phase II will cover permitting of hazardous waste treatment, storage and disposal facilities.

The two phases are considered to be integral parts of a complete State hazardous waste program; EPA does not intend to provide authorization for only one phase since it views interim authorization as a stage leading towards full authorization.

States may receive interim authorization for Phase I beginning on the effective date of the initial Section 3001–3005 regulations. States may receive interim authorization for Phase II after thePhase II Section 3004 regulation is promulgated. In order to give States the two-year period of time that Congress intended be available to them to develop final programs, interim authorization for both phases will be allowed to continue for 24 months from the effective date of the Phase II Section 3004 regulation. At the end of this period, all interim authorizations will automatically expire and EPA will administer the Federal program in any State which has not received final authorization.

Following is an outline of the major features of the requirements for interim authorization. In order to receive interim authorization a State must meet the requirements of 40 CFR Part 123. More specific requirements will, of course, be provided in that part of the consolidated permit regulations, as will EPA's statement of basis and purpose and response to comments.

A. General

The State program must demonstrate control over as nearly identical a universe of hazardous wastes (as defined by the Section 3001 regulation) generated, transported, treated, stored and disposed of in the State as would be controlled by the Federal program. The authorization plan must delineate actions the State will take to control the complete universe of hazardous wastes as soon as practicable.

In general, in order to receive interim authorization for either phase, a State program must demonstrate:

(1) Legislative authority adequate for the State to carry out its responsibilities for that phase

(2) Regulations in effect necessary to implement the requirements of that phase

(3) The capacity to inspect, monitor, and require of the regulated community recordkeeping, reporting and monitoring in order to determine compliance with the requirements of that phase of the program and to obtain information necessary to meet EPA requirements for State reporting (as will be described in the final consolidated permit regulations)

(4) Enforcement capabilities that are adequate to ensure compliance with the requirements of that phase

(5) Adequate resources to administer and enforce the requirements of that phase of the program and

(6) An authorization plan describing the additions and modifications that will be made to the State program in order to qualify for final authorization by the end of the interim authorization period.

There are a few exceptions to these requirements which are discussed below.

B. Specific Criteria for Phase I

1. Preliminary Facility Standards. The State program must require that hazardous waste treatment, storage and disposal facilities comply with standards that provide substantially the same degree of human health and environmental protection as the facility standards promulgated in the Phase I, Section 3004 regulation. The State program must prohibit the operation of facilities that are not in compliance with these State standards. The State standards for treatment, storage and disposal facilities should cover:

(a) Preparedness for and prevention of discharges of hazardous waste, and contingency plans and emergency procedures to be followed in the event of a discharge of hazardous waste

(b) Closure and post-closure requirements, including financial requirements for closure and post-closure monitoring and maintenance

(c) Groundwater monitoring

(d) Security to prevent unauthorized access to the facility

(e) Facility personnel training

(f) Inspection, monitoring, recordkeeping and reporting

(g) Compliance with the manifest system (see 2(b)(iii) below)

(h) Other facility standards to the extent that they are included in the Phase I Section 3004 regulation

2. *Generator and Transporter Standards.* (a) The State program must require that generators and transporters of hazardous waste use a manifest system that ensures that interstate and intrastate shipments of hazardous waste are delivered only to facilities that are authorized to operate under RCRA.

(b) The State manifest system must require that:

(i) The manifest identify the generator, transporter, facility, and the waste being shipped

(ii) Copies of the manifest are carried with all hazardous waste shipments

(iii) shipments of hazardous waste that are not delivered to a designated facility are identified and reported by the generator to the State (or identified by the State)

(iv) For all shipments received from another State, the facility owner/operator or the State must return a copy of the manifest to the generator indicating delivery of the waste shipment (see l(g) above)

(c) For hazardous wastes that are discharged (spilled) in transit, the State program must require transporters to clean up such wastes or to take action so that such wastes do not present a hazard to human health or the environment. Transporters must be required to notify appropriate State, local and Federal agencies of such discharges.

(d) For hazardous wastes that are accumulated by generators for short periods of time prior to shipment, the State program must require that generators accumulate such wastes in a manner that does not present a hazard to human health or the environment.

During the interim authorization period a State which is presently operating a manifest system need not have a system identical to the Federal manifest system, provided the system can operate as part of the national system. The intent is to allow States with existing manifest systems adequate time to modify such systems to make them consistent with the Federal system. All States should make such modifications as quickly as possible, especially for interstate shipments of hazardous waste. On the other hand, all States developing new manifest systems must insure that they are equivalent and consistent with the Federal system as required for final authorization.

If a State meets all of the other requirements for interim authorization for Phase I except that it does not have legislative authority or regulations for the manifest system and other generator and transporter requirements discussed above, the State may be granted interim authorization for the remainder of Phase I, providing the State authorization plan delineates the necessary steps for obtaining such legal authority or regulations as soon as practicable. Until such State requirements are approved, Federal requirements for generators and transporters will apply in such States (including the use of the Federal manifest system), and enforcement responsibility for that part of the program will remain with the Federal Government.

If a State does not have legislative authority or regulatory control over certain activities that do not occur in the State, the State may be granted interim authorization for Phase I providing the State authorization plan provides for the development of a complete program as soon as practicable after receiving interim authorization.

C. Specific Criteria for Phase II—Facility Permitting

(a) The State program must require that hazardous waste treatment, storage and disposal facilities comply with standards that provide substantially the same degree of human health and environmental protection as the standards promulgated in the final Section 3004 regulation.

(b) The State program must require a permit for all hazardous waste treatment, storage and disposal facilities which handle any waste considered hazardous under the Phase I program and for which a permit is required by Section 3005 and the Section 3006 regulations. The State program must prohibit the operation of such facilities except as authorized by a State permit.

(c) The State permit program should be administered through procedures that are substantially equivalent to the procedures for the Federal permit program described in the Section 3005 regulation especially with respect to public participation in the permitting process.

As stated earlier, EPA does not intend to provide authorization for only one phase. If a State has been granted interim authorization for Phase I, but does not receive interim authorization for Phase II by the effective date of the Federal permit program, the State program could continue to be authroized for Phase I provided the State authorization plan describes the steps that will be taken to meet the criteria for Phase II authorization as soon as practicable. During the period for which a State was not authorized for Phase II, EPA could administer the Federal permit program in the State.

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Tuesday
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Part VIII

Department of Agriculture

Food and Nutrition Service

National School Lunch Program and School Breakfast Program; Competitive Foods

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

[Amdt. No. 37 for Part 210; Amdt. No. 32 for Part 220]

National School Lunch Program and School Breakfast Program; Competitive Foods

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for Part 210, National School Lunch Program, and Part 220, School Breakfast Program, to implement the amendment of section 10 of the Child Nutrition Act of 1966 by section 17 of Public Law 95–166, respecting the sale of foods in competition with meals served under the National School Lunch Program and the School Breakfast Program. Specifically, this final rule restricts the sale of categories of foods of minimal nutritional value from the beginning of the school day to the end of the last lunch period. Foods of minimal nutritional value are defined as those foods which provide less than 5% of the USRDA for each of eight specified nutrients per 100 calories *and* per serving. For example, licorice does not contain even 5% of the USRDA for any one of the eight specified nutrients per 100 calories or per average serving. In the case of artificially sweetened foods, only the per serving measure will apply. The restricted categories of foods are identified in Appendix B as soda water (carbonated beverages), water ices, chewing gum, and certain candies (hard candies, jellies and gums, marshmallow candies, fondants, licorice, spun candies, and candy coated popcorn). This rule affects only those schools participating in the National School Lunch and School Breakfast Programs.

DATES: Effective January 29, 1980.

Implementation date: July 1, 1980. The Department encourages schools to work towards the July 1 implementation date of this final rule by phasing out the foods of minimal nutritional value at this time. (For more information read Section IV. D.)

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett, Branch Chief, (202) 447–9069, School Programs Division, USDA, FNS, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION:

Table of Contents of Preamble

I. Introduction

Congress has placed responsibility for administration of the School Breakfast Program and the National School Lunch Program in the Department of Agriculture. In carrying out this responsibility we have established minimum standards for foods served by local School Food Authorities wishing to participate in the federal school food programs. These standards, such as the meal pattern requirements for school lunches, are imposed as conditions of receiving federal funds and are designed to ensure that those funds are used to promote good nutrition among students.

In 1977, Congress enacted the competitive foods amendment to the Child Nutrition Act of 1966. That amendment authorized the Secretary to regulate the sale of foods in competition with meals served in the School Breakfast and National School Lunch Programs in participating schools. This final rule establishes minimum nutritional standards for such competitive foods. It identifies foods of minimal nutritional value and restricts their sale from the beginning of the school day until after the last lunch period.

A. Legislative Background From 1970 to 1977

On October 10, 1977, Congress enacted Public Law 95–166. Section 17 of that statute amended Section 10 of the Child Nutrition Act of 1966 to restore to the Secretary of Agriculture the authority to regulate the sale of competitive foods in schools participating in the National School Lunch and/or the School Breakfast Programs. This rulemaking proceeding was initiated to implement this competitive foods amendment. Competitive foods are any foods sold in competition with the National School Lunch or School Breakfast programs.

Prior to 1977, the sale of competitive foods in schools had twice engaged the attention of Congress. In 1970, the concerns of numerous public organizations and local governments about the increasing variety and quantity of foods being sold in competition with the school feeding programs led to the first competitive foods amendment to Section 10 of the Child Nutrition Act of 1966 (Pub. L. 91–248).

This amendment provided statutory authority to the Secretary of Agriculture to regulate foods sold in competition with the nonprofit school feeding programs authorized under the Child Nutrition Act and the National School Lunch Act. Regulations implementing the 1970 amendment allowed the competitive sale of only those foods which either fulfilled a requirement of the prescribed meal pattern for school lunches or were served along with such a lunch.[1] Thus, the effect of the 1970 rule was to allow any food served as part of a school lunch also to be sold competitively. For example, under this rule, if a school sometimes served cake as dessert with the meal, cake could then be sold as a competitive food. Because of wide local discretion in the choice of foods served, the result of this rule in many places was that only soft drinks and some candies—which were rarely served along with the school meals—were disallowed.

While the impact of the 1970 rule was thus limited, it nonetheless aroused controversy, and some groups advocated the transfer of the Secretary's authority to regulate competitive foods to State and local education agencies.

Section 10 was again amended in 1972 by Pub. L. 92–433. The 1972 amendment restricted the Secretary's regulatory powers under the statute by providing that federal regulations could not prohibit the sale of competitive foods if the proceeds of such sale accrued to the schools or approved student organizations. Thus, the 1972 amendment placed authority for the regulation of competitive foods with State agencies and local School Food Authorities. Various types of competitive foods rules were developed by State and local bodies in the years that followed. During this period the States were free, as they always have been, to adopt regulations which placed greater restrictions on the sale of competitive foods than the federal rule required.

Nationwide, the regulation of the sale of competitive foods under the 1972 amendment was unsystematic. Foods approved for competitive sale varied among localities, and many jurisdictions developed no competitive foods regulation at all. By 1977, owing to increasing concerns about the quality of childrens' diets, there was growing

dissatisfaction with the results of the 1972 competitive foods provision. Nutritionists, parents, school administrators, and others urged legislation restoring regulatory authority to the Secretary of Agriculture. The Department also supported such legislation.

In 1977, Congress responded by again amending Section 10 to restore to the Secretary authority to regulate the sale of competitive foods. The Department did not propose this provision in Public Law 95–166 but supported its adoption. This rule is a direct result of that amendment.

B. Background History From 1977 to Present

On April 25, 1978, the Department published a proposed rule regulating the sale of competitive foods (43 FR 17476). Over 2,100 public comments were submitted in response to this proposal. After analysis of these comments, we determined that additional consideration of the issues they raised was necessary. Accordingly, we withdrew the April 25 proposal, held a series of public meetings to discuss these issues, and solicited further written comments to aid in formulation of a new proposal.

On July 6, 1979, the Department published another proposed rule concerning competitive foods (44 FR 4004). During the public comment period which followed, 3,067 comments were received from parents, businesses, industry officials, teachers, school foodservice personnel, nutritionists, dentists, other medical professionals, and other concerned citizens.

Of the 3,067 comments received, 23% (692) were from commentors who expressed opposition to a federal rule of any kind. The other 77% (2375) of the commentors either expressed support for the proposed rule, focused on specific concerns about the proposal and/or did not state any objection to federal rulemaking on the competitive foods issue.

The majority of those commentors who opposed any federal rule (524) are listed in the comment analysis category "concerned citizen." It should be noted that in analyzing the comments, the Department categorized any comment which did not indicate a particular association (such as teacher, food service personnel, student, or industry) as a comment from a "concerned citizen."

Approximately 562 comments (20% of the total) were received which, because of their similar content and format, appeared to have been generated by PepsiCo Incorporated. A few PepsiCo employees sent the Department copies of similar form letters opposing the rule stating that PepsiCo had distributed the forms to its employees with the suggestion that the employees send them to USDA on their own letterhead.

A number of commentors again raised issues which were considered in the formulation of the July 6 proposal. The rationales for decisions made in drafting that proposed rule are fully explained in its preamble which appears at 44 FR 40004. Many of these issues are, therefore, only briefly discussed in this preamble. Those aspects of the proposal which remain unchanged in this final rule were carefully scrutinized in light of the comments in order to insure that the supporting reasons presented in the July 6 preamble remain sound.

Of the total comments received, 48.1% (1,476) stated objections to the rule or some aspect of it as proposed, while 51.3% (1,572) stated support for the entire proposal or part of it.

Of the 39 comments from State directors and State staff, 27 favored the proposed rule, 11 objected to some aspects and 1 expressed neither view. Of those who objected to some aspect of the rule, seven suggested that the establishment of a minimum standard would jeopardize more stringent existing State policies regarding the sale of competitive foods. We emphasize that State and local authorities should view this rule as a minimum standard which, like the required meal pattern, may be improved upon by State and local authorities.

Some comments from State officials as well as other school personnel expressed concern that the rule would lead students to leave the school campus in order to obtain the restricted foods. The Department believes that movement off-campus by students has multiple causes and, if it occurred, could not be directly attributed to the operation of the rule.

There were 87 comments from food service personnel. There were 36 comments opposed to the rule and 51 in favor. Of the 36 commentors who expressed some opposition to aspects of the rule, many voiced concern about fortification. This issue is discussed in detail later in this preamble. Some of the food service commentors were also concerned about the possibility that the rule would lead to increased paperwork. The Department has deliberately fashioned this rule to minimize the paperwork burden at the local, State, and regional level. For this reason, the rule restricts the sale of foods in identifiable categories rather than on an individual basis.

Of the 159 "interested organizations" comments (e.g., PTA's, food/nutrition groups), 27 stated opposition to the rule and 132 favored the rule. Of the 27 who expressed some opposition to the proposed rule, 16 opposed any federal action. Concerns raised by commentors in this category include a request that the rule be integrated with nutrition education in some manner and that it incorporate some type of parent and student involvement at the local level.

While this rule does not deal explicitly with these two concerns, other activities of the Department address these questions. The Nutrition Education and Training (NET) Program established by Congress in 1977 gives States funds to administer nutrition education programs for children. Many States and localities have used these funds for nutrition education projects on snacking habits. The Department hopes that these jurisdictions and others will include the issue of competitive foods within these educational activities. The Department has already considered the issue of parent and student involvement, but in a broader context than the competitive foods rule. In the final rule on meal pattern changes, the Department included a requirement that schools actively seek to involve parents and students in the school meals programs. The implementation of this regulation could very easily encompass involvement by students and parents in additional decisions regarding competitive foods.

In the industry category, 22 of the total 112 comments expressed support while 88 opposed the rule. Of the 88 who expressed some dissatisfaction with the rule, 55 opposed the rule because they felt there should be no federal action in this area. Some industry commentors indicated that the Department's objectives could be better achieved through nutrition education programs. The Department believes that this rule is consistent with its efforts to promote nutrition education and complements those efforts. Other commentors indicated that the definitions used in the proposed rule were confusing. The Department has attempted to clarify the definition of foods of minimal nutritional value and to use that definition consistently throughout this preamble.

Of the 450 student commentors, 225 opposed the rule, 210 favored the rule and 15 expressed no opinion. Most of the 225 who opposed the rule stated no specific reason for their opposition. Eighteen expressed concern that there would be a loss of revenue to student organizations as a result of the application of the rule. The Department

has thoroughly considered this issue which has been raised during each public comment period and at public hearings. The Department finds no conclusive evidence that the rule will necessarily lead to diminished revenues.

Of the 237 comments from medical, dental and nutritional professionals, only 13 expressed any type of opposition to the rule. Of those, roughly half thought there should be no federal rule on competition foods.

In subsequent sections of the preamble, key issues are discussed in greater detail.

II. Review of Literature

In evaluating the need for a competitive foods rule and in designing its specific features, we reviewed the scientific literature on the relation of diet to disease, the patterns of food consumption among children, and the nutritional status of children. The outcome of this review and our resulting conclusions are summarized below:

1. Numerous current studies and publications deal with associations between diet and disease and, specifically, with the health effects of the overconsumption of the food components sugar, fat and salt. A summary of the information in these studies appears in the **Federal Register** notice of December 15, 1978 at 44 FR 58780. The Department concluded on the basis of a review of these sources that a significant portion of the population has nutritional problems resulting from overconsumption and poor food choices.

These conclusions have been corroborated by more recent findings. The American Society for Clinical Nutrition provided a symposium on "The Evidence Relating Six Dietary Factors to the Nation's Health." A group of scientists studied the available evidence and reported on the strength of the associations between various dietary factors and prevalent chronic diseases. They found four correlations to be of considerable strength. The strongest association was the relationship of alcohol consumption to liver disease. The second was between sugar and dental caries. The third showed a relationship between salt and hypertension. The fourth showed a relationship between cholesterol and saturated fat and coronary disease.[2]

The Surgeon General's report, "Disease Prevention and Health Promotion: Federal Programs and Prospects," recently published with background papers prepared by the Institute of Medicine of the National Academy of Sciences, discusses associations between sucrose consumption and dental caries, between dietary fat, cholesterol and salt and cardiovascular disease, and between dietary factors and increased risk of cancer. The report terms overconsumption the key nutrition problem in the United States and recommends the reduction of calories, fat, cholesterol, sugar and salt.[3]

The National Cancer Institute presented a statement in October 1979 at Senate committee hearings on the relationship between cancer and dietary practices. The statement pointed to studies which suggest that a high fat intake may be associated with an increased risk of cancer. While the Institute acknowledged that definitive evidence is not yet available, it proposed prudent interim principles, based on evidence that is presently available. The Institute made the following recommendation: "To facilitate control of body weight, and in view of the suggestive association between fat consumption and the risk of cancer, a high intake of fat should be avoided.[4]

2. Current studies and publications dealing with nutritional status of children in the United States and with their dietary practices indicate that some children consume less that the recommended level of some nutrients. The Ten State Nutrition Survey conducted by the Department of Health, Education and Welfare (HEW) [5] reports that iron deficiency is a widespread problem in the population. Data from the Health and Nutrition Examination Survey (HANES) of HEW [6] show that intake of iron is low for a significant proportion of children aged 6–17. In the Bogalusa Heart Study,[7] a recent study of the dietary and cardiovascular status of rural school age children funded by the National Institutes of Health, at least one-third of all children studied consumed less than two-thirds of the recommended dietary allowances (RDA) of vitamin A, ascorbic acid, and niacin for their age and sex.

In addition to nutrient consumption, calorie consumption is also of concern in assessing the nutritional status of children. The Bogalusa Heart Study reported that 19% of the boys and 25% of the girls consumed less than two-thirds of the RDA for calories for their age and sex.[8] The HANES data indicated that many children consumed less than recommended levels of calories, but the report cautioned that calorie intake cannot be analyzed meaningfully unless it is related to activity and weight status.[9] Although these studies have indicated that calorie consumption among school children is at times less than the RDA's, it may be that the established standards are too high. It is widely recognized that there are significant variations in energy demands from individual to individual, particularly among children.

The most appropriate way to assess whether caloric needs are being met is to examine the physiological status of children. If there are significant levels of underweight or growth retardation, it would indicate possible caloric deficiencies. However, there are no data showing significant levels of underweight or growth inadequacy among school aged children in the United States. Physical status findings from the HANES survey and other major surveys of the growth and health of U.S. children reveal that underweight and stunted growth are not observed in a high proportion of children in the United States.[10] In fact, caloric excess leading to obesity is a greater concern than stunted growth.

The Ten State Nutrition Survey found that 9 to 39 percent of adolescents were obese.[11] There is particular concern over childhood obesity because of the likelihood that the pattern, once set, will persist into adulthood. Parental obesity and obesity during childhood appear to be major predictors of obesity in an adult. Obesity is generally regarded to be a risk factor in hypertension, heart disease and diabetes. Thus, there is substantial reason to attempt to prevent the onset of obesity in children.

These findings on the health and nutritional status of children indicate that overconsumption of calories may be a problem at the same time that nutrient intake is inadequate.

3. Studies of the food consumption patterns of children show that snacking makes a significant contribution to the total calories they consume daily. Ninety-eight percent of the children interviewed in the Bogalusa Heart Study consumed some snacks. Snacks contributed one-third (34 percent) of the daily calories in the diets of the children who snacked, more than the contribution of breakfast (17 percent of calories), lunch (23 percent of calories) or dinner (29 percent of calories). For about one-third of the Bogalusa children (30 percent), snacks contributed between 40–70 percent of their total calories. Snacks sometimes took the place of meals. For some children an almost hourly snacking pattern was apparent. Although snacks contributed *more* total calories to diets than any other single factor, they contributed *less* to nutrient levels than did meals.

Snacks provided calories mainly from fat and sucrose. In the Bogalusa study, they provided 31% of the fat and 59% of the sucrose in children's diets. The foods

which contributed the most sucrose to the diets were beverages (37%) and candy (25%). Reports summarizing the food consumption profiles of individuals in different age groups issued by HANES show that sweetened beverages and candy are more frequently consumed by those aged 1 to 17 than any other age group.[12] In the Bogalusa Study, sucrose contributed 18% of the total calories consumed by children.[13]

Sucrose and other sugars are a source of calories but they offer little else nutritionally. Data from the Ten State Survey indicated that there is a high prevalence of dental caries among children in the United States. A recent report, "Evaluation of the Health Aspects of Sucrose as a Food Ingredient," prepared for HEW by the Federation of American Societies for Experimental Biology, concludes that, "Reasonable evidence exists that sucrose is a contributor to the formation of dental caries when used at the levels that are now current and in the manner practiced." The report also states that various factors affect the cariogenicity of sucrose. Among them is the form in which the sucrose is eaten and the frequency of exposure.[14]

The American Society for Clinical Nutrition recently published the proceedings of its symposium titled "Can Disease of Overconsumption be Prevented by Dietary Changes? A critique of the evidence." Participants in the symposium concluded that sucrose, especially when consumed frequently throughout the day, is the dietary component that is most conducive to oral bacterial infection and caries.[15] It has been demonstrated that consumption of snack-type foods between meals has a significant effect on the frequency and severity of dental caries.[16]

The Surgeon General's report, "Healthy People," summarizes a number of studies that have compared the frequency and amount of sugar eaten to dental caries development. Although some show no correlation between dental caries development and the frequency with which sugar is eaten, most demonstrate a positive correlation. In a study of 200 children aged 5 to 13 years Zita *et al.* found a significant positive correlation between the amount of between meal sugar eaten and the prevalence of caries. Weiss and Trithart found that among 783 children 4 and 5 years old there was a positive correlation between the number of meal snacks and dental caries. Fanning *et al.* (45) in 1969, examined 1,266 secondary school children. In those schools where canteens were available where sweets could be purchased, children had a higher incidence of caries than children in schools lacking canteens.[17]

In light of the findings of the studies described, the Department concluded that concern about the quality of children's diets is appropriate. Moreover, these studies demonstrate that there is reason to be concerned about the kind of snacks that children eat. Since snacks contribute a significant proportion of the calories that children consume, it is important that snacks contain nutrients as well as calories if children's diets are to be nutritionally adequate.

III. Development of a Final Rule

A. Method of Analysis

Three broad approaches were considered when the competitive foods rule was developed. One approach would have been to base the rule on the required meal pattern from the school lunch program. This would have meant that any food which satisfied the meal pattern requirement would be approved for competitive sale. Of the substantive comments received on the July 6, 1979 proposal, only twenty people (8%) suggested that the required meal pattern standard be used. The major defect of this approach is that it does not offer a means by which to assess the nutritional contribution of individual foods. Therefore, we concluded that it was not an appropriate standard to use in this rule.

The two other methods of analysis considered in the development of this rule are the food composition approach and the nutrient analysis approach. A considerable number of people commented on each of these. They are discussed in more detail below.

1. *Food Composition.* An analysis of foods under the food composition approach would assess the levels of ingredients such as sugar, fat or salt contained in foods. This approach directly addresses the strong associations between the overconsumption of certain food components and current public health problems. However, as we explain in this section, problems related to the practical application of such an approach preclude its use as the basis for a competitive foods rule at this time.

Many of the comments that the Department received suggested that the rule be designed to limit the amount of sugar, fat, and salt in foods approved for competitive sale in schools. These comments came both from consumers and from members of scientific and professional communities. The concern of consumers about this issue has been well documented. The report "Family Health in an Era of Stress" sponsored by General Mills describes the views on nutrition and diet expressed by approximately 2,000 adults and teenagers who were interviewed. Eighty-four percent termed "fats" a very serious or somewhat serious threat to health, 78 percent said that "sugar or sugar products" posed very serious or somewhat serious threats to health, and 73 percent expressed similar concerns about "salt."[18] In a survey commissioned by Pacific Mutual Life Insurance Company called "Health Maintenance," 570 people with school-aged children were asked how concerned they were about the amount of cholesterol and fats the children have in their daily diets. Seventy-three percent of those people responded that they were very concerned or somewhat concerned.[19]

This concern by consumers is a response to similar expressions of concern by members of the scientific community about the levels of sugar, fat, and salt in the total diet. Despite agreement among many experts about the advisability of reducing consumption of these components in foods, however, the Department encountered three significant practical problems in attempting to fashion a competitive foods rule that would achieve this objective directly. First, although many concerned scientists believe that consumption of sugar, fat, and salt should be reduced, there is not yet clear agreement on the precise levels of these components appropriate in the total diet. Second, and more importantly, even if there were agreement on appropriate levels of these components in the diet as a whole, there is no way to assign an appropriate level of sugar, fat, and salt for each of the individual foods available in the marketplace. Third, even assuming that the first two problems could be resolved, data on the composition of individual foods is inadequate to permit the practical application of a rule which prescribed appropriate levels of all of these components in all foods. These problems are more fully discussed below.

In considering the application of a food composition standard we surveyed recommendations for dietary modification that had been made by various agencies and organizations on the basis of careful review of scientific evidence. We found agreement about general goals but little guidance on what specific standard to adopt. In 1977 the Senate Select Committee on Nutrition and Human Needs recommended that Americans increase their consumption

of complex carbohydrates and "naturally occurring" sugars to approximately 48 percent of energy intake and reduce the consumption of refined and processed sugar to account for approximately 10 percent of total energy intake. The Committee also recommended reduction of overall fat consumption to about 30 percent of an individual's total energy intake, saturated fat to about 10 percent of total energy intake and reduction of cholesterol consumption to about 300 grams per day. Reducing the intake of salt to about 5 grams per day was recommended to limit the intake of sodium.[20] Several international committees on food and coronary heart disease have recommended dietary modification to reduce the amount of fat and sugar that is consumed.[21] The American Heart Association has recommended that the proportion of energy derived from fat not exceed 35% and that recommendation has been supported by the National Academy of Sciences' Food and Nutrition Board.[22]

The Surgeon General's report "Disease Prevention and Health Promotion: Federal Programs and Prospects" recommended actions in nutrition to promote good health but did not suggest specific ideal percentages for food components in the diet. The report states, "Not only is the national diet excessive in terms of total calories, but it also is poorly distributed in sources of calories. Total fat intake, especially animal fats, refined carbohydrates, and salt should be reduced as part of a prudent diet." [23]

The problem of designing a specific food composition standard to apply in a competitive foods rule is made much more difficult by the fact that acceptable levels of fat, sugar, and salt in individual foods necessarily vary. For example, there are individual foods, such as some meats and nuts, which generally are recognized as making positive nutritional contributions to the diet but which have a high proportion of fat. As they have been defined, competitive foods are any foods sold in competition with the federally subsidized meals in schools. They may be available in alternate or a la carte lunch lines, or from vending machines, snack counters, or school stores. This means, essentially, that any food might be termed a competitive food depending on the circumstances of its sale. The difficulty of fashioning a rule which would establish appropriate levels of sugar, fat, and salt for all foods that might be sold in the school thus is considerable.

Although the Department found concern among experts about high levels of sugar, fat, and salt in the diet as a whole, we found that those experts are as yet unable to suggest specific percentage limitations for each individual food available in the marketplace.

The Department asked the nation's leading health officials if, in their opinion, there was a scientific and practical basis for establishing appropriate levels of these components in the full array of individual foods and, if so, what specific standard they would apply. Dr. Arthur C. Upton, the director of the National Cancer Institute, responded by referring to the general dietary recommendations from the Institute's October 1979 "Statement on Diet, Nutrition and Cancer" but he stated that at this time it is not possible to give advice on specific levels of acceptability for fat, sugar, and salt in all foods. [24]

Dr. Mark Hegsted, the Administrator of the Department of Agriculture's Human Nutrition Center, replied that, "A difficulty in establishing appropriate levels [of sugar, fat, and salt], of course, is that we have no standards for appropriate intakes of these whereas we do have the RDA for essential nutrients. Furthermore, while it is possible to establish appropriate levels for the diet as a whole, it will be extremely difficult to find a single appropriate standard to apply to all individual foods." [25]

Dr. Julius B. Richmond, Surgeon General and HEW Assistant Secretary for Health, acknowledged the desirability of preventing excessive dietary intake of fat, salt, and sugar in the diets of Americans but concluded that, "given the limitation of the science base at this stage, we believe that it is not now possible to establish specific levels of acceptability for amounts of these substances in individual foods." [26]

Even if the Department were able to establish a standard for specific acceptable levels of sugar, fat or salt in individual foods, the problem of inadequate food composition data would remain. Information about the amount of fat in many foods is available. Some figures are available for the sodium content of foods, but scientists doubt the validity of these numbers because the techniques used to analyze foods for that nutrient are not reliable. Current knowledge about the total sugar available in individual foods is in general scanty even though sugar content data are available for some types of food. Several government planning and review agencies and some professional organizations have stated that the determination of the nutrient composition of foods is a high research priority in human nutrition.[27] The Department of Agriculture's Human Nutrition Center plans to greatly increase activities related to the generation of food composition data in the 1980's. Until a substantially broader data base is available, however, it will not be possible to apply any food composition standard to the vast array of available foods.

Many commentors asked us to address broad concerns about the composition of the whole diet in a standard which can be used to evaluate individual foods, but they were not able to suggest workable methods for quantitative assessment or to provide the data that are needed for such an assessment. Approximately 54% of the substantive comments that the Department received suggested that the competitive foods rule be designed to limit the amount of sugar, fat, or salt in foods. Forty percent of those comments were from medical, dental or nutrition professionals and organizations, but only four of the fifty-three commentors in that category (8%) offered specific suggestions for appropriate amounts of sugar, fat, or salt in foods. Those four commentors all suggested that percentage values that have been recommended for components in the whole diet be applied to individual foods. None of these commentors discussed how to deal with the problem of individual foods which are generally recognized as making positive contributions to the diet but which contain a high proportion of sugar, fat, or salt. Similarly, the commentors did not address the problem of inadequate food composition data.

Although we have concluded that the substantial practical problems of applying a food composition standard make it an infeasible basis for a competitive foods rule at this time, we share the concern of consumers, professionals, and members of the scientific community about health problems associated with over-consumption of foods high in sugar, fat, or salt. The Department has taken a number of actions to reduce the levels of these components in its child nutrition programs. New regulations for the National School Lunch Program published in August 1979 require schools to serve skim milk, low-fat milk or buttermilk to decrease the fat content of the lunches. These regulations also contain recommendations for menu planning including the recommendation to, "Keep fat, sugar, and salt at a moderate level." In addition, new guidance materials which stress the moderate use of sugar and fat in meal preparation are being developed.

The Department has attempted to reduce sugar and fat levels in commodities purchased and distributed to schools through the Food Distribution Program. For example, we now distribute canned fruit in light syrup rather than fruits packed in heavy syrup. New specifications require that the ground beef purchased for feeding programs contain no more than 22 percent of calories as fat; previously a maximum of 24 percent was specified.

The Department has also made efforts to reduce the amount of sugar in the diets of participants in the Special Supplemental Food Program for Women, Infants and Children (WIC) by proposing to set a maximum level of sugar in WIC cereals. The proposed changes for the food packages provided in the WIC program set a maximum level of 6 grams of sugar per ounce for approved cereals. The Department was able to make specific recommendations about the appropriate level of sugar in cereals because of their unique features. Of primary importance is the fact that manufacturers have made complete food composition information about their products available. Thus, we know the range for the amount of sugar in cereals as well as the amount in each cereal. Also, since much of the sugar in cereal is added during the manufacturing process, it is reasonable to assume that the amount of sugar in the products could be relatively easily reduced.

The Department's concern about the amount of sugar, fat, and salt in the diets of program participants is evidenced by the actions described above which were designed to reduce the consumption of these components. However, we also recognize our responsibility as an administrative agency to promulgate a feasible regulation. In our view, the practical problems discussed in this section make it infeasible to base this regulation on a food composition standard at this time.

2. *Nutrient Analysis.* We concluded that nutrient analysis provides the most effective and feasible basis for a competitive foods rule. Nutrient analysis can be broadly defined as any analysis method which measures levels of nutrients in units of food. The rule specifies a dual method of assessing the nutrient content of individual foods. It calls for both an assessment of the levels of nutrients in units of food as they are commonly served and an assessment of a food's nutrient content in relation to its energy or caloric value. The second measure is called a nutrient density analysis.

The two measures together address the essential objectives which the Department has defined for the competitive foods rule:

1. The rule must identify foods which contribute such low amounts of nutrients as to be considered of "minimal nutritional value."

2. The rule must identify the nutritive contribution of foods in relation to their calorie content.

Foods containing few nutrients as well as foods with calorie contents that are very high in relation to the nutrients that they provide will have lower values in a nutrient density analysis than foods which contain high levels of nutrients or foods with a high proportion of nutrients relative to calories. Foods which contain a large proportion of sugar will have low nutrient density values because sugar provides calories but no other nutrients. Foods which contain a large proportion of fat will also have low nutrient density values because fat provides more than twice as much energy, 9 calories per gram, than the other components of food—protein and carbohydrate—which provide approximately 4 calories per gram. Thus, nutrient density indirectly addresses the concern about sugar and fat.

The principal difficulty in using a nutrient analysis approach is the complexity involved in translating the concept into a workable formula to be applied in a federal competitive foods rule.

B. Application of a Nutrient Analysis Approach in a Competitive Foods Rule

The translation of the nutrient analysis approach into a workable formula to be applied to individual foods raises several important questions including: which nutrients to assess, what units of measurement to use, what standard of reference to use and what value to select as an acceptable level of nutrients. These questions are discussed below.

1. *Nutrients for Analysis.* Roughly 45 vitamins, minerals and other elements which play an essential role in human nutrition have been identified by nutritional scientists. The precise function and necessary levels of many of these nutrients have not yet been identified. The Food and Nutrition Board of the National Academy of Sciences, National Research Council has established Recommended Dietary Allowances (RDA's) for various age groups for the following nutrients: protein, vitamin A, vitamin D, vitamin E, ascorbic acid, folacin, niacin, riboflavin, thiamin, vitamin B_6, vitamin B_{12}, calcium, phosphorus, iodine, iron, magnesium and zinc. To establish the RDA's, the Food and Nutrition Board had to make estimates based on available information. RDA's have been established for these 17 nutrients because scientific data are available to estimate the human requirements for them.

The establishment of RDA's for the other nutrients will be possible only after further research in this area has been conducted. Considerable time and expense will be required to obtain this information.

Food composition information is most widely available for eight of these 17 nutrients: protein, vitamin A, ascorbic acid, niacin, riboflavin, thiamin, calcium and iron. Because deficiencies in these eight nutrients have been associated historically with public health problems, these nutrients have been the ones most commonly studied by researchers. Thus, the technology needed to assess their presence in foods is well established and relatively inexpensive.

Approximately 2% of the substantive commentors questioned the use of only eight specified nutrients as a basis for analyzing the nutrient content of foods. These commentors generally believe that more nutrients should be considered when determining the status of a food under this rule. One comment received from a national soft drink manufacturer stated that the 8 nutrients should be used only as a first test. If a particular product failed this test but the manufacturer could prove that the food contained 5% or more of an additional nutrient, the food would be classified as an approved competitive food under this commentor's proposed approach.

In its rule on nutrition labeling, the Food and Drug Administration (FDA) requires that if a manufacturer chooses to state the nutritional content of a food, the label must contain information about each of the eight commonly analyzed nutrients listed above. In the process of choosing the nutrients that would be required for labeling purposes, FDA asked nutrition professionals to name the most important nutrients. Some suggested that zinc and folacin also be included on the labels, but FDA concluded at the time that the data bases for those nutrients were too limited to permit imposition of such a requirement. They chose the eight specified nutrients because they are the ones that have been associated most commonly with public health problems and because they are the ones about which the most is known.

While current data on the nutritional status of the general population indicate that there may be reason to be concerned about deficiencies of certain micronutrients such as zinc and folacin, few data are available to indicate how much of these nutrients foods contain.

The Department thus cannot analyze the presence of these and other micronutrients in all foods. If nutrients other than the commonly measured eight were incorporated in the standard, we would be unable to treat all foods equally.

As more composition information about micronutrients and more information about the nutritional status of the population becomes available, FDA may expand its labeling requirements to include additional nutrients. The Department would view such action as an indication that sufficient information on these nutrients had become available to justify revision of the competitive foods rule. However, at this time, for the purposes of this rule, we have concluded that analysis of the eight nutrients will enable us to make a meaningful and accurate decision on the nutritional contribution made by different foods. Therefore, the nutrient standard proposed by this rule measures the quantities of protein, vitamin A, ascorbic acid, niacin, riboflavin, thiamin, calcium and iron present in foods.

2. *Units of Measurement.* The Department has determined that individual foods will be evaluated on the basis of two measurements: (1) nutrients in a 100-calorie portion of the food and (2) nutrients in an average portion of the food as it is commonly served.

Both measures can be used to determine the nutrient content of the food, but they serve distinct purposes in the rule. The 100-calorie measure makes possible a relative comparison of all foods. The analysis of nutrients per average serving permits a more realistic assessment of the nutritional contribution of foods as they are commonly consumed. By coupling the 100-calorie measure and the per serving measure, we will be able to evaluate and compare foods on a theoretical, standardized basis and to assess the nutritional contribution of foods as they are commonly consumed by students in school.

Artificially sweetened foods present a special problem. They contain few calories (and few nutrients in the case of those most commonly consumed by children), but may nevertheless satisfy a child's appetite and may thus replace other foods in a child's diet which would provide more nutrients. We therefore propose to analyze artificially sweetened foods on the basis of serving size alone. Because the balance of calories to nutrients has been intentionally altered in these processed foods, the consumption of 100 calories of such products represents unrealistically large quantities. For example, to measure an artificially sweetened soda on a per-100-calorie basis would require an assessment of 3 to 10 gallons of soda depending on how many calories the soda contained. Since it is not meaningful to compare artificially sweetened foods with other foods on a 100-calorie basis, we have concluded that artificially sweetened foods will be analyzed solely on the basis of serving size.

Moreover, since we share the concerns of the scientific community about the health risks resulting from the use of some non-nutritive sweeteners, we are reluctant to adopt a standard that, while restricting the sale of ordinary soft drinks, would permit the sale of soft drinks artifically sweetened with saccharin. The Committee for Study on Saccharin and Food Safety Policy formed by the National Academy of Sciences in response to Congressional mandate [28] summarized the facts which should be considered in the formulation of a policy concerning saccharin. The Committee stated, "Whether as an initiator or promoter, saccharin is a potential carcinogen in humans, but one of currently uncertain consequence and potency in comparison with other carcinogens. In any case, the large number of persons exposed to saccharin justifies serious continued public health concern." The Committee's report further states, "The observation that saccharin use among young children may be increasing suggests that public health officials should take a prudent course of action."

Recently, the National Cancer Institute and the Food and Drug Administration released preliminary findings of an epidemiological study that examined the relationship between the use of artificial sweeteners such as saccharin and cyclamate and the incidence of bladder cancer in humans. Preliminary results indicated no increased risk of bladder cancer among users of artificial sweeteners in the overall study population. However, there was some evidence that the sweeteners may be hazardous. Among three groups of people—those who consumed both diet beverages and sugar substitutes, those who smoked cigarettes heavily and who also made heavy use of artificial sweeteners, and those women who normally would be at low risk for bladder cancer but consumed sugar substitutes or diet beverages—the risk of bladder cancer increased. Heavy use of artificial sweeteners was defined as six or more servings a day of sugar substitute or two or more eight-ounce diet beverages a day. On the basis of this study and previous experiments with laboratory animals, the authors of the study concluded that while saccharin and cyclamate are not strong carcinogens, they should be regarded as potential risk factors for human bladder cancer.[29] In discussing the study results, Dr. Jere Goyan, Commissioner of the Food and Drug Administration, said, "I reiterate my concern about the consumption by so many Americans, especially young people, of large amounts of saccharin. More than half the subjects in this study were 67 years old or older, and therefore consumed much less artificial sweeteners than their children and grandchildren are today. We may have to wait 20 or 30 years to assess the possible effects on our young people of consuming large amounts of a weak carcinogen." [30]

In a letter to the Department of Agriculture, Dr. Arthur Upton, Director of the National Cancer Institute, said, "We share your concern about the use of saccharin by children. Saccharin is of little or no benefit to normal healthy children, and its elimination from their diet involves no risk to them. Hence in the public health sense, it would seem prudent at this time to eliminate foods containing saccharin from school lunches." [31]

Eighty-five of the commentors (3%) expressed concern about the use of saccharin or artificial sweeteners in foods sold in the schools. Of those who commented on the issue, the majority (84%) were concerned citizens.

These comments as well as the recommendations from the scientific community strengthened our view that it is reasonable to make distinctions between naturally and artificially sweetened products, particularly in a regulation that will affect children.

3. *Standard of Reference.* In performing nutrient calculations the Department relied on the USRDA's adapted by the Food and Drug Administration from the Recommended Dietary Allowances (RDA's) which are established by the Food and Nutrition Board, National Academy of Sciences, National Research Council. The USRDA's which are currently in use are based on the RDA's which were established by the Board in 1974.

A handful of commentors were concerned that the Department was not using the most up-to-date values. The Food and Nutrition Board plans to publish new RDA's in 1980. They have made these new RDA values available to professionals prior to publication, but the text that will accompany the values is not yet available. The Food and Drug Administration has as yet made no

changes in the USRDA values. Therefore, we will continue to rely on those established USRDA values for the purposes of this rule.

4. *Level of Nutrients.* Using the nutrient analysis approach as the basis for the proposed rule, it was necessary for the Department to select a minimum level of nutrients for foods acceptable for competitive sale. Sale of foods not containing this minimum level would be restricted during certain hours in schools.

The Department has determined that foods which provide less than 5% of the USRDA for each of the eight specified nutrients per 100 calories *and* per serving will be considered foods of minimal nutritional value. Only the per serving measure will apply to artificially sweetened foods. The sale of foods of minimal nutritional value in schools will be permitted only after the last lunch period of the school day. For example, licorice does not contain even 5% of the USRDA for any one of the eight specified nutrients per 100 calorie quantity or per average serving. Thus, licorice may be sold only after lunch.

In determining that a 5% level would be used for this purpose the Department turned, once again, to the related actions of another federal agency for guidance. The FDA , in its nutrition labeling regulations, allows a manufacturer to claim that a food is a "significant source" of a particular nutrient if that nutrient is present in a serving of food at a level equal to or in excess of 10% of the USRDA for that nutrient. We concluded that if a food which contains 10% of a nutrient may be termed a "significant source" of that nutrient, something less than 10% would be an appropriate test for this rule.

In its labeling rule, the FDA considers less than 2% of the USRDA to be an insignificant quantity of the nutrient in a particular food. The FDA chose the 2% level as the cut off for measurement of nutrients in foods for labeling purposes because scientific techniques for nutrient analysis are not sufficiently sophisticated to provide reliable data about nutrients that are present in foods in very small quantities. FDA has used these 2% and 10% levels in its labeling rule for almost a decade and they are well accepted by professionals and consumers.

The Department concluded, in light of FDA's approach, that a 5% standard was the most reasonable to adopt in the competitive foods rule. While a food which provides 5% of the USRDA for a particular nutrient would not be considered a "significant source" of that nutrient under FDA's rule, it nevertheless makes a positive contribution to the satisfaction of an individual's daily needs for that nutrient.

FDA scientists suggested during a meeting with Department officials that rather than applying a 5% standard to all nutrients, a more desirable approach might be to consider each nutrient individually. Such an approach would relate the required level for each nutrient in foods to the average amount of that nutrient provided by foods in general. This would entail making an inventory of all available foods and determining the amount of each nutrient that each food contains. The approach described is an attractive one because of its greater precision but it would require a great deal of preliminary research which has not yet been done and which cannot feasibly be undertaken for the purposes of this rule.

A few commentors maintained that in proposing the 5% standard, the Department was acting inconsistently with the efforts of FDA which, in its regulation for label statements, requires that percentages of the USRDA be expressed in increments of two percentage points up to and including the 10% level. Although we relied on FDA's characterizations of the nutrient content of individual foods in selecting the 5% level, we did not intend to rely specifically on the use of nutrient labels to administer this rule.

For three primary reasons the use of nutrient labels is not practical for this particular regulatory purpose. First, as we explain in the next section, this rule ultimately identifies categories of foods which cannot be sold competitively until after the last lunch period. Categories are defined primarily for reasons of administrative necessity so that each individual food need not be evaluated. This approach makes it unnecessary for members of the public to use food labels to make determinations about the acceptability of individual foods. The Department will re-evaluate its defined categories as new information becomes available.

The second reason that the Department chooses not to rely on nutrition labeling information in administering this rule is that all foods are not labeled. The FDA requires nutrition labeling only in special circumstances: food product labels must bear nutrition information when any vitamin, mineral or protein is added to the product or when any nutrition claim or information, other than sodium content, appears on a label or in advertising for the food. Many manufacturers label their products voluntarily but it is estimated that in 1978 only approximately 40% of all processed foods were labeled with nutrition information. FDA does not have a record of which specific products are labeled in the entire national food supply.

The range of foods that can be sold competitively is very broad. The Department must make assessments about the nutrient content of foods such as fresh fruits as well as processed products. Since the majority of the foods available in the market do not have nutrition labels, the Department cannot consistently use the labels as tools for assessment. We must rely instead on available food composition information that allows us to make accurate decisions about the nutritional contributions of a wide variety of foods. The most complete food composition information is available in tables of nutritive values which have been derived from chemical analysis of foods. The Department relied on these in making determinations about what foods could be sold competitively.

The third reason for the Department's decision not to use nutrient labels as the practical basis for administering the competitive foods rule is that the figures on the labels are not expressed in a manner consistent with the expressions that appear in food composition tables. As some commentors pointed out, the values between two and ten percent are expressed in even increments on the labels. Each stated value has been rounded. Thus, to judge some foods for the purposes of this rule on the basis of figures from nutrition labels and others on the basis of figures from food composition tables would not be equitable.

The 5% value established to evaluate foods for competitive sale is based on accepted principles reflected in FDA's labeling rule. Because of questions that were raised during the comment period we considered whether it would be more practical to change that 5% value to correspond to the 4% or 6% figures that appear on food labels. We concluded that while nutrition labels provide some useful information, it is not practical to rely on the labels for this regulatory purpose. The Department continues to believe that the established 5% level is an appropriate one for this rule.

5. *Fortification of Foods.* In the proposed competitive foods rule we indicated that we did have some concern about using a nutrient analysis approach because it might encourage manufacturers to fortify foods to meet the nutritional requirements of the rule. The Department received many comments related to this issue; 243 of the 3,067 commentors (8%) expressed

concern about the influence that this rule might have on fortification practices. Most people who commented discussed the danger that this rule could, at least in theory, encourage inappropriate fortification practices.

Public concern about fortification has been expressed in other contexts. In December, 1979 proposed regulations on food labeling practices were issued jointly by HEW, USDA, and FTC after a series of public meetings had been held and public comments had been solicited. Food fortification was one of the issues which stimulated many comments. Of the 1,103 commentors who discussed the advisability of fortifying foods, 84% approved of the practice, but many of these commentors had some reservations about it. These are reflected in the proposal which states, "Public reservations thus stem largely from concern about overfortification and the potential for inappropriate fortification." [32]

Historically, the fortification of foods has occurred in response to a nutriitional need in a clearly defined population. Specified nutrients are added to foods in an attempt to correct deficiencies that have been identified. With advances in food technology and increases in the number of formulated products on the market, nutrients have been added to an increasing number of foods. This trend has raised questions about the appropriateness of some fortification practices. Professionals are concerned that indiscriminate fortification of foods may mislead the public.

Traditionally nutritionists have promoted a diet composed of a wide variety of conventional foods because knowledge of human nutrient requirements is incomplete. Experience has shown, as new essential nutrients are discovered, that conventional foods supply the nutrients that are known to be essential as well as those micronutrients and food components which we need but which have not yet been identified. Some fortified foods may be inferior to those that they replace in the diet. For example, a manufacturer may add vitamin C, a recognized essential nutrient, to a product. A person who consumes that product can benefit from the specific added nutrient but may be deprived of some other food components such as fiber or some micronutrients that are contained in the conventional food but not in the replacement product.

A related concern is that the overfortification of foods could cause an imbalance of nutrients or the excessive intake of some nutrients in the diet. It is relatively inexpensive to add certain nutrients to foods but these are not necessarily the ones that are lacking in most peoples' diets. People who rely on fortified foods to supply nutrients may believe that they are eating well but may actually have inadequate diets.

There is also some apprehension because of the possibility that people who rely on fortified products may be unable to distinguish those foods from their unfortified counterparts. A person who is accustomed to drinking a fortified beverage, for example, may assume that all beverages of that same flavor or type are equally nutritious and may consume a product that seems to be the same but actually provides little nutritionally.

The nature of the foods that are fortified is another issue of concern. Nutrients can be added to any food but many nutritionists believe that there are some foods which should not be fortified. They maintain that the addition of nutrients to foods which contain large amounts of sugar or fat, for example, may be counterproductive because that practice will encourage people to eat those foods. As we have pointed out earlier in this preamble, concern already exists about the overconsumption of sugar and fat because of the documented associations between those food components and public health problems.

Many of the general concerns discussed above are specifically raised by the competitive foods rule. For example, it may be particularly difficult for children to distinguish between fortified foods and their nonfortified counterparts. The Department believes that it is important to provide examples of good nutritional practices which can be easily understood by children in the schools. Because of each of the reasons discussed, we would oppose the fortification of any foods which are identified in this rule as foods of minimal nutritional value.

The foods which this rule restricts for sale in competition with federally subsidized meals in the schools are those which contain few, if any, nutrients per 100 calorie measure and per serving of the food. They are foods which are generally eaten as snacks rather than as components of meals. They are also foods which generally are not fortified. The addition of nutrients to any of the foods identified in this rule as foods of minimal nutritional value could qualify them for competitive sale. However, the Department believes that fortification of foods simply to satisfy the technical requirements of this rule rather than in response to identified public health problems would be inappropriate.

The subject of inappropriate fortification practices has been widely addressed. Most recently the Food and Drug Administration has published "General Principles for the Addition of Nutrients to Foods," a policy statement intended to promote the rational addition of nutrients to foods. The document discusses the types of foods that are appropriate to fortify: "Although, as a theoretical matter, most types of food can be fortified under the general principles expressed in this document, FDA emphasizes that, as a matter of policy, it does not consider it appropriate or reasonable to fortify certain classes of food such as fresh produce, fresh meat, poultry or fish products, sugars, or snack foods such as candies and carbonated beverages. * * * FDA sees no reason to add nutrients to fresh produce, meat, poultry, or fish products. The use of these foods is firmly established by customary dietary practice, and their role in a balanced diet is well understood by the public. FDA also believes it is inappropriate to fortify snack foods such as candies and carbonated beverages. These foods are not considered by the public as components of meals, and even if snack foods are used with meals, their nutritional contribution is, and is understood by the public to be incidental. To date, neither the public nor the scientific community has considered snack foods to be appropriate carriers for added nutrients, given the general adequacy and diversity of the national food supply. Their fortification could readily mislead consumers to believe that substitution with fortified snack foods would insure a nutritionally sound diet. Moreover, such fortification would disrupt public understanding about the nutritional value of individual foods and thereby promote confusion among consumers and make it more difficult for them to construct diets that are nutritionally neither excessive or deficient." [33]

The Food and Nutrition Board of the National Academy of Sciences has also addressed the issue of inappropriate fortification. The Board published a statement, "General Policies in regard to Improvement of Nutritive Quality of Foods," [34] which lists conditions under which fortification is appropriate. In a report entitled "Technology of Fortification of Foods," the Food and Nutrition Board's Committee on Food Protection relies on these general policies in making a determination about soft drinks: "These (soft drinks) are products defined by the existing standard of identity for carbonated soda water. We believe that such products

should be treated as a pure refreshment and should not be the subject of fortification. . . . For this reason, on which our views concur with those expressed earlier by the Food and Nutrition Board of the National Academy of Sciences, we have not worked on the addition of nutrients to soda water.[35]

The joint expert committee on nutrition of the World Health Organization and the Food and Agriculture Organization of the United Nations has also addressed the issue of the fortification of soft drinks in the report, "Food Fortification, Protein—Calorie Malnutrition." In a discussion of the selection of foods to which nutrients might be added the report says, "special mention should be made of sugar soft drinks, and alcohol beverages as potential vehicles * * *. Special problems are raised when foods whose excessive consumption is discouraged by nutritionists are selected as potential vehicles for fortification. Fortification of these products with properly selected nutrients could increase their nutritive value and thus reduce to some extent the disadvantage of their consumption in large quantities. It must be borne in mind, however, that there is a danger that such fortification might frustrate the endeavors that are being made, or might be made, to check excessive consumption of these products and might even be used as publicity in their favor * * *. The Committee considered that, as a general rule, it is preferable not to include such products among the possible vehicles for fortification programs." [36]

Many commentors suggested that the competitive foods rule distinguish between fortified foods and those that do not contain added nutrients. We consulted the FDA to determine the feasibility of such an approach. While FDA does require that foods to which vitamins, minerals, or protein have been added bear nutrition labels, a list of these products is not maintained. It would thus be impossible to identify all of the products on the market to which nutrients have been added without examining all of the specific product labels. In addition, although it would be possible to determine from each label that nutrients have been added to the food, it would not be possible to determine what proportion of a particular nutrient in a product was naturally occurring and what proportion had been added artificially. Thus a distinction in the competitive foods rule between fortified and unfortified products would be difficult to administer at this time.

The department endorses the guidelines for fortification that have been established by FDA and the fortification policies developed by committees on nutrition. We have stated that the intention of this rule is not to encourage the fortification of foods. Commentors have strongly supported this policy as they express concern about the potential for inappropriate fortification. We expect that industry will continue to add nutrients to foods in response to identified public health problems and that new fortification practices will not be instituted specifically in response to this rule. It is worth noting that roughly less than 0.5% of the dollar value of candy and less than 0.6% of the dollar value of soda sold in the U.S. would be affected by this rule. The rule restricts the sale of foods which generally are not fortified today and, as is evident from the statements above, should not be fortified. If inappropriate fortification of foods identified in this rule as food of minimal nutritional value occurs, the Department will immediately take appropriate action to restrict such practices with respect to competitive foods.

C. Identification of Foods of Minimal Nutritional Value

After establishing a specific standard to define foods of minimal nutritional value, the Department attempted to identify those foods that fell below the standard and therefore could be sold only after the last lunch period. The 5% standard was applied to a wide array of individual foods using nutrient values from food composition data that were available to the Department.

We contracted with three universities—Colorado State, Utah State, and Case Western Reserve—to supply information relating to the nutrient composition of several thousand individual foods. Subsequently, we asked Case Western Reserve University to do some additional calculations with respect to the approximately 2,300 food items and recipes it had already analyzed. The University calculated the percentage of the USRDA for each of seventeen specified nutrients provided by a 100-calorie quantity and by an individual serving of each food. This information allowed us to compare each food to the standard stated in the proposed rule.

During this process, it became clear that it is necessary and reasonable to identify foods by category. The Department recognizes that there are important similarities among the individual items initially identified as foods of minimal nutritional value by application of the 5% standard: these foods contain similar ingredients.

In addition, the Department was aware of numerous practical and policy reasons for adopting a categorical approach. First, the nutritional data available were not sufficiently detailed to permit analysis of all of the individual food items that are on the market. In particular, almost no information was available for items by brand name.

Second, the development of a list of approved individual food items for competitive sale would impose a monumental administrative burden at the federal level. Since there are many thousands of food items sold in grocery stores and thousands more introduced into the market each year, the Department would have to spend considerable effort reviewing these individual items to determine whether they did or did not meet the competitive food standard. Under this system, we would have to obtain specific composition information on each product from the manufacturer and review each food every time a formula adjustment was made by the manufacturer.

Moreover, implementation of a federal rule that identified thousands of individual foods for competitive sale would result in an immense administrative burden at the local level as well. The implementation of federal regulations pertaining to the National School Lunch Program takes place in 92,000 participating schools. Under a competitive foods rule, each of these schools will need to know which foods can and cannot be sold competitively in the school. It would not be practical to expect each school to maintain a current list of all individual foods identified by the Department as foods of minimal nutritional value since such a list would be lengthy and would be constantly changing due to the introduction of new items and reformulation of existing items in the market place.

In its comments on the April 25 proposal, Hershey Foods suggested that one way to avoid these problems of USDA developing and maintaining a list of individual foods would be for manufacturers to certify directly to school officials that their products met objective nutritional criteria established by the Department. Alternatively, Hershey suggested that a list of foods approved for competitive sale could be compiled by USDA on the basis of certification or other information submitted to the Department by the manufacturers. Hershey commented that the Department could authorize a USDA seal to be placed on the labels of approved products for ease of

identification by school officials. We rejected these approaches in order to avoid even the appearance of Department endorsement of specific products.

Based on our review of the nutrient content of individual foods, it became clear that all or virtually all foods in certain categories provide less than 5% of the USRDA for each of the eight specified nutrients per 100 calories and per serving. We have therefore defined four categories of foods of minimal nutritional value: soda water, water ices, chewing gum, and certain candies. These candies are subcategorized to include hard candies, jellies and gums, marshmallow candies, fondants, licorice, spun candies, and candy coated popcorn. In describing these categories, the Department relied on descriptions used by industry, classifications used in nationwide surveys, and Standards of Identity established by the Food and Drug Administration in the Code of Federal Regulations. For the purpose of this rule the Department has determined serving sizes for each of the categories. They are:

Soda—12 fluid ounces
Water Ices—3 fluid ounces
Candies—1.5 ounces
Gum—1 stick or piece

These units correspond with the units in which these products are frequently sold or consumed.

The Department recognizes that a regulatory scheme based entirely on a categorical approach cannot be precise. To insure greater precision in the application of the rule, a procedure is provided for consideration of individual foods and additional categories of foods. The petition procedure as set forth below differs from the one described in the July 6 proposal. Changes were made in light of the comments to provide a more workable procedure. Specifically, although persons may petition the Department to remove individual foods from the established categories of foods of minimal nutritional value, additional foods will not be restricted for competitive sale on an individual basis. Rather, the Department will review petitions requesting that new *categories* of foods of minimal nutritional value be designated. Because of the large number of individual foods available in the marketplace and the constant development of new food products, the Department believes that it would not be feasible to maintain a list of individual foods which failed the nutrient test established in the rule and thus were restricted for competitive sale.

The procedure will operate as follows. A person may petition the Department to approve for competitive sale an individual food which falls into a category of foods of minimal nutritional value restricted from sale in schools until after the last lunch period by submitting a nutrient analysis of the food demonstrating that it provides 5% or more of the USRDA for any of the eight specified nutrients per 100 calories or 5% or more of the USRDA for any of the eight specified nutrients per serving. (In the case of artificially sweetened foods, only the per serving measure will apply.) Upon such a showing, the Department will inform the petitioner that the food is an approved competitive food.

A person may petition the Department to add a new *category* to the list of previously identified categories of foods of minimal nutritional value. Any such new category must be composed primarily of foods which provide less than 5% of the USRDA for each of the eight specified nutrients per 100 calories and less than 5% of the USRDA for each of the eight specified nutrients per serving. (In the case of artificially sweetened foods, only the per serving measure will apply.) Along with the request, the petitioner must identify and define the category by providing a general description and by submitting a list of the ingredients which these foods usually contain. It is important that the petitioner keep in mind that the food category must be easily identified and understood by local school districts.

If the Department determines from a review of the ingredients that the proposed new category should be classified as a category of foods of minimal nutritional value, the Department will publish a notice of proposed rulemaking indicating its intention to so classify it, stating the reasons for this action, and soliciting public comments. The public comment procedure will be used to solicit information from manufacturers and other interested members of the public about the description and the composition of the foods in the proposed category. The Department may in addition conduct its own food composition analysis of those foods. On the basis of the information available to it, the Department will determine whether the proposed category should be classified as a category of foods of minimal nutritional value.

By May 1 and November 1 of each year, the Department will amend Appendix B of Parts 210 and 220 to reflect the results of any new Departmental decisions on such petitions, provided that there is a need to add a category of foods of minimal nutritional value, or a need to delete an individual food from a previously identified category of foods of minimal nutritional value.

The Department recognizes, from our own review of the available food composition data and from information submitted during the comment period, that there are some individual products which can be defined by the 5% standard as "foods of minimal nutritional value" but which are not part of groups of foods which can be easily categorized. For example, data show that some cakes contain less than 5% of the USRDA for each of the eight specified nutrients per 100 calories and per serving. But many cakes do provide substantially more nutrients. Because there are so many kinds of cakes it is not possible to define a category of products to be restricted nor is it possible to accurately describe specific cakes. There are, for example, many recipes for "chocolate cake," all with different ingredients or proportions of ingredients. Many would satisfy the nutrient test of the rule but some may not. Distinguishing among them would be an impossible administrative task requiring analysis of a wide array of recipes from thousands of local schools. These practical contraints dictate that some individual foods which fail the 5% nutrient test established by the rule will nonetheless remain available for competitive sale throughout the school day.

IV. Implementation Issues

A. Local Rules

This rule identifies foods that clearly make the least nutritional contribution to a child's diet. The test used to define foods of minimal nutritional value is a conservative one. Like the Department's meal pattern requirements for the school lunch program, it represents a baseline, minimum standards approach. This rule should in no way be construed as endorsing all other foods.

While no School Food Authority may adopt a less comprehensive competitive foods policy, any State or locality may develop more comprehensive rules. Thus, those States and localities which have already adopted rules that are more comprehensive than this proposal are urged to continue those rules. This is consistent with the general proposition that States may develop any regulation concerning the National School Lunch Program and School Breakfast Program as long as the local regulation does not conflict with federal regulations (7 CFR 210.19). Recognizing that existing

regulations for the school food programs establish *minimum* standards for the receipt of federal funds, many school districts have adopted more rigorous standards in order to provide superior meals to students. School districts may wish to continue this leadership in the competitive foods area.

In adopting a conservative, baseline approach to the regulation of competitive foods, the Department recognizes that there is presently considerable interest in this issue at the local level. The public comments on the Department's April 25, 1978, December 15, 1979, and July 6, 1979 notices concerning competitive foods from parents of school age children reflected parents' desire and willingness to participate in the development of local competitive foods policies.

Testimony at the public hearings indicated that, in the past, competitive foods decisions at the local level were frequently made without the knowledge or participation of parents. In communities where there is no competitive foods policy, many parents at the public hearings stated that they were willing to participate in establishing one. A recent Gallup Poll revealed that 67 percent of parents of children attending schools that offer the school lunch program believed that candy should not be available for sale in schools while 65 percent believed chewing gum should not be available. Thus, it is apparent that parents have definite ideas about competitive foods policy and considerable interest in participating in its formulation.

The Department encourages parents, students, school officials, teachers, school food service personnel, and nutrition experts to work together to design local policies. We believe it is desirable for local communities to consider local needs in the development of a competitive foods policy which uses the federal rule as a minimum standard. The school nutrition programs are a partnership of local, State and federal agencies. Local and State officials have the authority to implement a more comprehensive rule—one that may go beyond the Department's minimal rule. Similarly, the Department may, in its continuing review of this issue determine that in the future a more comprehensive federal rule is desirable.

B. Age Distinctions

The Department received a few comments on the July 1979 proposal that favored age distinctions in the rule that would allow older children access to foods of minimal nutritional value not available to younger children. The majority of these comments came from students.

The legislative history of the competitive foods amendment does not discuss such a distinction. Of those States and localities which have competitive foods policies, only a handful make age distinctions. Many commentors on both the April 1978 and July 1979 proposals opposed making age distinctions in the rule on the ground that because nutrition education programs are still new in most areas, children of all ages lack the information necessary to make informed food choices. These commentors indicated that until such time as all children have adequate nutrition education programs, any rule should apply equally to children of all ages. The Department is taking steps to provide nutrition education training to children to alleviate this lack of knowledge with the Nutrition Education and Training (NET) program. The NET program is a result of Pub. L. 95–166 (enacted in November 1977), the same law that initiated the competitive foods rule. These programs are just getting underway. Progress should be noted in schools during the next few years.

The Department believes that since its standard defines as foods of minimal nutritional value those foods which have the least to offer nutritionally, the rule should apply to all age groups. Where local communities develop more comprehensive, competitive foods policies, they may wish to consider whether age distinctions may be appropriate in their additional regulations.

C. Time and Place

This rule would prohibit the sale to children of foods of minimal nutritional value throughout the school until after the end of the last lunch period of the school day. In restoring the Secretary's authority to regulate the sale of competitive foods, Congress sought to protect the nutritional integrity of the federal school nutrition programs and to foster a school environment in which nutrition education and food service policies reinforce each other in promoting good eating habits among students. We believe that a rule permitting the sale to children of foods of minimal nutritional value before lunch or in areas of the school outside the cafeteria could not accomplish these central objectives of the 1977 competitive foods amendment.

If immediately outside the cafeteria—or anywhere else in the school—foods of minimal nutritional value could be sold in vending machines or at snack counters, it is doubtful whether the sale of these foods would be curtailed. Similarly, if students were permitted to purchase such foods in the morning hours it is unlikely that their consumption in place of the more nutritious foods in the federal school nutrition programs would be reduced. Many of the commentors agreed with the position taken in the proposed rule on this issue. Although 25 commentors felt the restriction should apply during meal periods only, or a half hour before to a half hour after the meal periods, 851 commentors felt that the restriction was reasonable and necessary if this rule is to be effective. An additional 206 commentors stated that the restriction should be for the entire school day throughout the school premises.

Our decision to retain unchanged the provision of the proposed rule with respect to time and place of application reflects our conclusion that such scope is essential if the rule is to carry out the fundamental purposes of the statute.

D. Implementation Date

This final rule must be implemented no later than July 1, 1980. The Department encourages schools to work towards the July 1 implementation date of this final rule by phasing out the foods of minimal nutritional value at this time. Schools may elect to implement the rule immediately and we urge them to do so as soon as is feasible prior to the July 1 deadline.

Four of the technical commentors strongly urged that this rule be implemented at the beginning of the school year and not in the middle of a school year. Three of these commentors were State staff who were well aware of the difficulties schools would have if the rule were implemented in the middle of a school year. These commentors stated that schools would have a difficult time breaking or negotiating contracts with vendors and that there would be insufficient time to publicize the requirements of the rule, as well as other local burdens. The Department is aware of these problems and is responding by requiring implementation of the final rule at the beginning of the school year.

V. Labeling and Advertising

In making this rule final, the Department is aware of the possibility that manufacturers may adopt labeling practices or make advertising claims concerning competitive foods which may mislead the public. We emphasize that this rule does not and is not intended to designate any food as nutritious. The rule simply restricts the sale in schools during part of the school day of some foods which make a

minimal nutritional contribution to the diet.

The Department has carefully avoided the designation of foods as nutritious or non-nutritious, by the terms of this rule, and expects similar restraint on the part of manufacturers in promotion of their products. Any labeling or advertising claims concerning a food's status under this competitive foods rule will be carefully scrutinized for accuracy. We would view as inaccurate and misleading, for example, an advertisement that a particular product had been approved by USDA. The Federal Trade Commission has been advised of our concerns about this issue.

Footnotes

1. In order to qualify for federal reimbursement, a "Type A" school lunch must contain specified portions from four food groups. Other foods may be served along with these Type A foods.

2. Report of the Task Force on the Evidence Relating Six Dietary Factors to the Nation's Health, sponsored by the American Society for Clinical Nutrition, in the American Journal of Clinical Nutrition, Supplement Volume 32, No. 12, December 1979.

3. U.S. Department of Health, Education, and Welfare, "Disease Prevention and Health Promotion: Federal Programs and Prospects" Report of the Departmental Task Force on Prevention, and "Health People" Background Papers, A Report to the Surgeon General by The Institute of Medicine, National Academy of Sciences, 1979.

4. National Cancer Institute, "Statement on Diet, Nutrition and Cancer" before the Senate Committee on Agriculture, Nutrition and Forestry, Subcommittee on Nutrition, October 2, 1979.

5. Ten-State Nutrition Survey, 1968–1970, Center for Disease Control, Atlanta, Georgia. *DHEW Publication No. (HSM) 72–8134, 1970.*

6. The Health and Nutrition Examination Survey (HANES), United States, 1971–72, Dietary Intake and Biochemical Findings, National Center for Health Statistics. *DHEW Publication No. 74–1219–1, 1974.*

7. Frank, Gail C. et al. Dietary Studies and the Relationship of Diet to Cardiovascular Disease Risk Factor Variables in Ten Year Old Children. The Bogalusa Heart Study. *The American Journal of Clinical Nutrition.* Volume 31. February 1978.

8. *Ibid.*

9. HANES, *supra* note 3.

10. Hanes, *supra* note 3; Nutrition Surveillance, Center for Disease Control, *DHEW Publication No. (CDC) 77–8295,* December, 1975.

11. Ten State Nutrition Survey, *supra* note 2.

12. Dresser, Connie M., Eating Styles Today: Implications of the HANES Food Consumption Survey, National Center for Health Statistics, presented at the American Dietetic Association 61st Annual Meeting, 1978.

13. Frank, *supra* note 4.

14. Evaluation of the Health Aspects of Sucrose as a Food Ingredient, Federation of American Societies for Experimental Biology, FDA Contract No. FDA 223–75–2004, 1976.

15. Report of the Task Force on the Evidence Relating Six Dietary Factors to the Nation's Health, sponsored by the American Society for Clinical Nutrition, in the American Journal of Clinical Nutrition, Supplement Volume 32, No. 12, December 1979.

16. Bibby, Basil G., The Carcinogenicity of Snack Foods and Confections, Journal of the American Dental Association, Volume 90, January 1975.

17. U.S. Department of Health, Education, and Welfare, "Healthy People" Background Papers, A Report to the Surgeon General by the Institute of Medicine, National Academy of Sciences, 1979.

18. Yankelovich, Skelly and White, Inc., "Family Health in an Era of Stress," The General Mills American Family Report, 1978–79.

19. Louis Harris and Associates, Inc., "Health Maintenance," commissioned by Pacific Mutual Life Insurance Co., November, 1978.

20. United States Senate, Select Committee on Nutrition and Human Needs, "Dietary Goals for the United States, second edition," December, 1977.

21. "Round Table on Comparison of Dietary Recommendations in Different European Countries," European Nutrition Conference, Munich, Germany, 1976, Metabolism 21:210–214, 1977.

22. National Academy of Sciences, National Research Council, Food and Nutrition Board, "Recommended Dietary Allowances," eighth revised edition, 1974.

23. U.S. Department of Health, Education and Welfare, "Disease Prevention and Health Promotion: Federal Programs and Prospects" Report of the Departmental Task Force on Prevention, and "Healthy People" Background Papers, A Report to the Surgeon General by the Institute of Medicine, National Academy of Sciences, 1979.

24. Communication from Arthur C. Upton, M.D., Director, National Cancer Institute, Bethesda, Maryland, December 27, 1979.

25. Communication from Dr. D. Mark Hegsted, Administrator, Human Nutrition Center, USDA, Washington, D.C., January 18, 1980.

26. Communications from Julius B. Richmond, M.D., Assistant Secretary for Health and Surgeon General, Department of Health, Education and Welfare, Washington, D.C., January 11, 1980.

27. U.S. Department of Agriculture, "Food and Nutrition for the 1980's: Moving Ahead," Washington, D.C., April, 1979.

28. Assembly of Life Science/National Research Council and the Institute of Medicine, National Academy of Sciences, Committee for a Study on Saccharin and Food Safety Policy.

Part 1 of a 2-part Study, Saccharin: Technical Assessment of Risks and Benefits, Washington, D.C., November 1978.

Part 2 of a 2-part Study, Food Safety Policy: Scientific and Societal Considerations, Washington, D.C., March 1, 1979.

29. Progress Report to the Food and Drug Administration from the National Cancer Institute, concerning the National Bladder Cancer Study, The National Cancer Institute, Bethesda, Maryland.

30. Press Release, U.S. Department of Health, Education and Welfare, The National Cancer Institute, Bethesda, Maryland, December 21, 1979.

31. Communication from Arthur C. Upton, M.D., Director, National Cancer Institute, Bethesda, Maryland, December 27, 1979.

32. **Federal Register,** Food Labeling, tentative positions of agencies, December 21, 1979.

33. FDA Fortification Guidelines, January 25, 1980.

34. Food and Nutrition Board, National Research Council, General policies in regard to improvement of nutritive quality of foods. Policy statement. National Academy of Sciences, Washington, D.C., 1973.

35. Committee of Food Protection, Food and Nutrition Board, Technology of Fortification of foods. National Academy of Sciences, Washington, D.C., 1975.

36. Joint FAO/WHO Expert Committee on Nutrition, Eighth Report, Food Fortification, Protein-calorie Malnutrition, Geneva, Switzerland, 1971.

Accordingly, Part 210 is amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. § 210.2 is amended by redesignating (h–1) thru (h–7) as (h–2) thru (h–8) and adding new paragraphs (c–3), (c–4) and (h–1) to read as follows:

§ 210.2 Definitions.

* * * * *

(c–3) "Competitive foods" means any foods sold in competition with the National School Lunch Program. This includes any food that is sold as a separate item even if it is also a component of the school lunch.

(c–4) "Competitive foods approved by the Secretary" means all foods sold in competition with the National School Lunch Program to children on school premises from the beginning of the school day until after the last lunch period with the exception of categories of foods of minimal nutritional value as listed in Appendix B of this part.

* * * * *

(h–1) "Foods of minimal nutritional value" means (1) in the case of artificially sweetened foods, a food which provides less than 5 percent of the USRDA for each of eight specified nutrients per serving; (2) in the case of all other foods, a food which provides less than 5 percent of the USRDA for each of eight specified nutrients per 100 calories *and* less than 5 percent of the USRDA for each of eight specified nutrients per serving. The eight nutrients to be assessed for this purpose are: protein, vitamin A, vitamin C, niacin, riboflavin, thiamin, calcium, and iron. Categories of foods of minimal

nutritional value are listed in Appendix B of this part.

2. § 210.15b is revised to read as follows:

§ 210.15b Competitive food services.

(a) State agencies and School Food Authorities shall establish such rules or regulations as are necessary to control the sale of foods in competition with a school's nonprofit food service under the program, *Provided,* That such regulations shall not authorize the sale of foods in the categories of foods of minimal nutritional value as listed in Appendix B of this part on the school premises from the beginning of the school day to the end of the last lunch period. The sale of competitive foods approved by the Secretary may be allowed at the discretion of the State agency and School Food Authority provided that the proceeds from the sale of such foods inure to the benefit of the school's nonprofit meal program or to the school or to student organizations approved by the school.

(b)(1) Any person may submit a petition to FNS requesting that an individual food be exempted from a category of foods of minimal nutritional value listed in Appendix B. In the case of artificially sweetened foods, the petition must include a statement of the percent of USRDA for the eight nutrients listed in § 210.2(h–1) that the food provides per serving and the petitioner's source of this information. In the case of all other foods, the petition must include a statement of the percent of USRDA for the eight nutrients listed in § 210.2(h–1) that the food provides per serving and per 100 calories and the petitioner's source of this information. The Department will determine whether or not the individual food is a food of minimal nutritional value as defined in § 210.2(h–1), and will inform the petitioner in writing of such determination, and the public by notice in the **Federal Register** as indicated under section (b)(3).

(b)(2) Any person may submit a petition to FNS requesting that foods in a particular category of foods be classified as foods of minimal nutritional value as defined in § 210.2(h–1). The petition must identify and define the food category in easily understood language, list examples of the foods contained in the category and include a list of ingredients which the foods in that category usually contain. If, upon review of the petition, the Department determines that the foods in that category should not be classified as foods of minimal nutritional value, the petitioner will be so notified in writing. If, upon review of the petition, the Department determines that there is a substantial likelihood that the foods in that category should be classified as foods of minimal nutritional value as defined in § 210.2(h–1), the Department shall at that time inform the petitioner. In addition, the Department shall publish a proposed rule restricting the sale of the foods in that category, setting forth the reasons for this action, and soliciting public comments. On the basis of comments received within 60 days of publication of the proposed rule and other available information, the Department will determine whether the nutrient composition of the foods indicates that the category should be classified as a category of foods of minimal nutritional value. The petitioner shall be notified in writing and the public shall be notified of the Department's final determination upon publication in the **Federal Register** as indicated under section (b)(3).

(b)(3) By May 1 and November 1 of each year, the Department will amend Appendix B to exclude those individual foods identified under section (b)(1), and to include those categories of foods identified under section (b)(2), *Provided,* That there are necessary changes.

PART 220—SCHOOL BREAKFAST PROGRAM

Accordingly, Part 220 is amended as follows:

1. § 220.2 is amended by adding new paragraphs (c–1), (c–2) (i–1) to read as follows:

§220.2 Definitions.

* * * * *

(c–1) "Competitive foods" means any foods sold in competition with the School Breakfast Program. This includes any food that is sold as a separate item even if it is also a component of the breakfast meal.

(c–2) "Competitive foods approved by the Secretary" means all foods sold in competition with the School Breakfast Program to children on school premises from the beginning of the school day until after the last lunch period with the exception of categories of foods of minimal nutritional value as listed in Appendix B of this part.

* * * * *

(i–1) "Foods of minimal nutritional value" means (1) in the case of artificially sweetened foods, a food which provides less than 5 percent of the USRDA for each of eight specified nutrients per serving; (2) in the case of all other foods, a food which provides less than 5% of the USRDA for each of eight specified nutrients per 100 calories *and* less than 5% of the USRDA for each of eight specified nutrients per serving. The eight nutrients to be assessed for this purpose are: protein, vitamin A, vitamin C, niacin, riboflavin, thiamin, calcium and iron. Categories of foods of minimal nutritional value are listed in Appendix B of this part.

2. § 220.12 is revised to read as follows:

§ 220.12 Competitive food services.

(a) State agencies and School Food Authorities shall establish such rules or regulations as are necessary to control the sale of foods in competition with a school's nonprofit food service under the Program, *Provided,* That such regulations shall not authorize the sale of foods in the categories of foods of minimal nutritional value as listed in Appendix B of this part on the school premises from the beginning of the school day to the end of the last lunch period. The sale of competitive foods approved by the Secretary may be allowed at the discretion of the State agency and School Food Authority provided that the proceeds from the sale of such foods inure to the benefit of the school's nonprofit meal program or to the school or to student organizations approved by the school.

(b)(1) Any person may submit a petition to FNS requesting that an individual food be exempted from a category of foods of minimal nutritional value listed in Appendix B. In the case of artificially sweetened foods, the petition must include a statement of the percent of USRDA for the eight nutrients listed in § 220.2(i–1) that the food provides per serving and the petitioner's source of this information. In the case of all other foods, the petition must include a statement of the percent of USRDA for the eight nutrients listed in § 220.2(i–1) that the food provides per serving and per 100 calories and the petitioner's source of this information. The Department will determine whether or not the individual food is a food of minimal nutritional value as defined § 220.2(i–1), and will inform the petitioner in writing of such determination, and the public by notice in the **Federal Register** as indicated under section (b)(3).

(b)(2) Any person may submit a petition to FNS requesting that foods in a particular category of foods be classified as foods of minimal nutritional value as defined in § 220.2(i–1). The petition must identify and define the food category in easily understood language, list examples of the foods contained in the category and include a list which the foods in that category usually contain. If, upon review of the petition, the Department determines that

the foods in that category should not be classified as foods of minimal nutritional value, the petitioner will be so notified in writing. If upon review of the petition, the Department determines that there is a substantial likelihood that the foods in that category should be classified as foods of minimal nutritional value as defined in § 220.2(i–1), the Department shall at that time inform the petitioner. In addition, the Department shall publish a proposed rule restricting the sale of the foods in that category, setting forth the reasons for this action, and soliciting public comments. On the basis of comments received within 60 days of publication of the proposed rule and other available information, the Department will determine whether the nutrient composition of the foods indicates that the category should be classified as a category of foods of minimal nutritional value.

The petitioner shall be notified in writing and the public shall be notified of the Department's final determination upon publication in the **Federal Register** as indicated under section (b)(3).

(b)(3) By May 1 and November 1 of each year, the Department shall amend Appendix B to exclude those individual foods identified under section (b)(1), and to include those categories of foods identified under section (b)(2), *Provided* That there are necessary changes.

Appendix B—Categories of Foods of Minimal Nutritional Value

(1) Soda Water—As defined by 21 CFR 165.175 Food and Drug Administration Regulations except that artificial sweeteners are an ingredient that is included in this definition.

(2) Water Ices—As defined by 21 CFR 135.160 Food and Drug Administration Regulations except that water ices which contain fruit or fruit juices are not included in this definition.

(3) Chewing Gum—Flavored products from natural or synthetic gums and other ingredients which form an insoluble mass for chewing.

(4) Certain Candies—Processed foods made predominantly from sweeteners or artificial sweeteners with a variety of minor ingredients which characterize the following types: (a) Hard Candy—A product made predominantly from sugar (sucrose) and corn syrup which may be flavored and colored, is characterized by a hard, brittle texture, and includes such items as sour balls, fruit balls, candy sticks, lollipops, starlight mints, after dinner mints, sugar wafers, rock candy, cinnamon candies, breath mints, jaw breakers and cough drops.

(b) Jellies and Gums—A mixture of carbohydrates which are combined to form a stable gelatinous system of jelly-like character, and are generally flavored and colored, and include gum drops, jelly beans, jellied and fruit-flavored slices.

(c) Marshmallow Candies—An aerated confection composed of sugar, corn syrup, invert sugar, 20% water and gelatin or egg white to which flavors and colors may be added.

(d) Fondant—A product consisting of microscopic-sized sugar crystals which are separated by a thin film of sugar and/or invert sugar in solution such as candy corn, soft mints.

(e) Licorice—A product made predominantly from sugar and corn syrup which is flavored with an extract made from the licorice root.

(f) Spun Candy—A product that is made from sugar that has been boiled at high temperature and spun at a high speed in a special machine.

(g) Candy Coated Popcorn—Popcorn which is coated with a mixture made predominantly from sugar and corn syrup.

(Sec. 17, Pub. L. 95–166, 91 Stat. 1345 (42 U.S.C. 1779)).

Note.—In accordance with Executive Order 12044 a copy of the detailed final impact analysis statement for this final regulation 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: January 25, 1980.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

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23.....1110
107.....2616
230.....4366
251.....2636
255.....2636
259.....2636
601.....3618
611.....56, 2354
651.....1112
676.....3619

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/SLSDC	HEW/FDA		DOT/SLSDC	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

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

Note: There were no items eligible for inclusion in the list of **Rules Going Into Effect Today.**

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing January 17, 1980

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(Revised as of October 1, 1979)

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_____	Title 42—Public Health (Parts 1 to 399)	$8.50	$_____
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_____	Title 45—Public Welfare (Parts 500 to 1199)	7.00	_____
_____	Title 46—Shipping (Parts 90 to 109)	4.75	_____
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[A Cumulative checklist of CFR issuances for 1979 appears in the back of the first issue of the Federal Register each month in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).]

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