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Highlights

12769 **Occupational Safety and Health Programs for Federal Employees** Executive order

12914 **Curriculum Development Grants** HEW/HRA announces applications for fiscal year 1980, apply by 4-7-80

12915 **Head Start** HEW/HDSO announces program funding levels of Administration for Children, Youth, and Families in States for fiscal year 1980

12919 **Private Sector Grant Program** ICA announces a program providing selective assistance, encouragement and grant support to non-profit activities of U.S. organizations outside the Federal Government

12938 **Jail Pretrial Release Recommendation/Decision Systems** Justice/NIJ announces a competitive research cooperative agreement program; apply by 4-1-80

12827 **Economic Emergency Loans** USDA/FmHA proposes clarifying regulations and redefines aquaculture; comments by 4-28-80

13028 **Weatherization Assistance for Low-Income Persons** DOE amends program to relieve hardships resulting from delay in delivery; effective 2-27-80 (Part V of this issue)

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Presidential Documents

Title 3—

The President

Executive Order 12196 of February 26, 1980

Occupational Safety and Health Programs for Federal Employees

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 7902(c) of Title 5 of the United States Code and in accord with Section 19 of the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. 668), it is ordered:

1–1. *Scope of this Order.*

1–101. This order applies to all agencies of the Executive Branch except military personnel and uniquely military equipment, systems, and operations.

1–102. For the purposes of this order, the term "agency" means an Executive department, as defined in 5 U.S.C. 101, or any employing unit or authority of the Federal government, other than those of the judicial and legislative branches. Since section 19 of the Occupational Safety and Health Act ("the Act") covers all Federal employees, however, the Secretary of Labor ("the Secretary") shall cooperate and consult with the heads of agencies in the legislative and judicial branches of the government to help them adopt safety and health programs.

1–2. *Heads of Agencies.*

1–201. The head of each agency shall:

(a) Furnish to employees places and conditions of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm.

(b) Operate an occupational safety and health program in accordance with the requirements of this order and basic program elements promulgated by the Secretary.

(c) Designate an agency official with sufficient authority to represent the interest and support of the agency head to be responsible for the management and administration of the agency occupational safety and health program.

(d) Comply with all standards issued under section 6 of the Act, except where the Secretary approves compliance with alternative standards. When an agency head determines it necessary to apply a different standard, that agency head shall, after consultation with appropriate occupational safety and health committees where established, notify the Secretary and provide justification that equivalent or greater protection will be assured by the alternate standard.

(e) Assure prompt abatement of unsafe or unhealthy working conditions. Whenever an agency cannot promptly abate such conditions, it shall develop an abatement plan setting forth a timetable for abatement and a summary of interim steps to protect employees. Employees exposed to the conditions shall be informed of the provisions of the plan. When a hazard cannot be abated without assistance of the General Services Administration or other Federal lessor agency, an agency shall act with the lessor agency to secure abatement.

(f) Establish procedures to assure that no employee is subject to restraint, interference, coercion, discrimination or reprisal for filing a report of an unsafe or unhealthy working condition, or other participation in agency occupational safety and health program activities.

(g) Assure that periodic inspections of all agency workplaces are performed by personnel with equipment and competence to recognize hazards.

(h) Assure response to employee reports of hazardous conditions and require inspections within twenty-four hours for imminent dangers, three working days for potential serious conditions, and twenty working days for other conditions. Assure the right to anonymity of those making the reports.

(i) Assure that employee representatives accompany inspections of agency workplaces.

(j) Operate an occupational safety and health management information system, which shall include the maintenance of such records as the Secretary may require.

(k) Provide safety and health training for supervisory employees, employees responsible for conducting occupational safety and health inspections, all members of occupational safety and health committees where established, and other employees.

(l) Submit to the Secretary an annual report on the agency occupational safety and health program that includes information the Secretary prescribes.

1–3. *Occupational Safety and Health Committees.*

1–301. Agency heads may establish occupational safety and health committees. If committees are established, they shall be established at both the national level and, for agencies with field or regional offices, other appropriate levels. The committees shall be composed of representatives of management and an equal number of nonmanagement employees or their representatives. Where there are exclusive bargaining representatives for employees at the national or other level in an agency, such representatives shall select the appropriate nonmanagement members of the committee.

1–302. The committees shall, except where prohibited by law,

(a) Have access to agency information relevant to their duties, including information on the nature and hazardousness of substances in agency workplaces.

(b) Monitor performance, including agency inspections, of the agency safety and health programs at the level they are established.

(c) Consult and advise the agency on the operation of the program.

1–303. A Committee may request the Secretary of Labor to conduct an evaluation or inspection pursuant to this order if half of a Committee is not substantially satisfied with an agency's response to a report of hazardous working conditions.

1–4. *Department of Labor.*

1–401. The Secretary of Labor shall:

(a) Provide leadership and guidance to the heads of agencies to assist them with their occupational safety and health responsibilities.

(b) Maintain liaison with the Office of Management and Budget in matters relating to this order and coordinate the activities of the Department with those of other agencies that have responsibilities or functions related to Federal employee safety and health, including the Office of Personnel Management, the Department of Health, Education, and Welfare, and the General Services Administration.

(c) Issue, subject to the approval of the Director of the Office of Management and Budget, and in consultation with the Federal Advisory Council on Occupational Safety and Health, a set of basic program elements. The program elements shall help agency heads establish occupational safety and health committees and operate effective occupational safety and health programs, and shall provide flexibility to each agency head to implement a program consistent with its mission, size and organization. Upon request of an agency head, and after consultation with the Federal Advisory Council on Occupa-

tional Safety and Health, the Secretary may approve alternate program elements.

(d) Prescribe recordkeeping and reporting requirements.

(e) Assist agencies by providing training materials, and by conducting training programs upon request and with reimbursement.

(f) Facilitate the exchange of ideas and information throughout the government about occupational safety and health.

(g) Provide technical services to agencies upon request, where the Secretary deems necessary, and with reimbursement. These services may include studies of accidents, causes of injury and illness, identification of unsafe and unhealthful working conditions, and means to abate hazards.

(h) Evaluate the occupational safety and health programs of agencies and promptly submit reports to the agency heads. The evaluations shall be conducted through such scheduled headquarters or field reviews, studies or inspections as the Secretary deems necessary, at least annually for the larger or more hazardous agencies or operations, and as the Secretary deems appropriate for the smaller or less hazardous agencies.

(i) Conduct unannounced inspections of agency workplaces when the Secretary determines necessary if an agency does not have occupational safety and health committees; or in response to reports of unsafe or unhealthful working conditions, upon request of occupational safety and health committees under Section 1–3; or, in the case of a report of an imminent danger, when such a committee has not responded to an employee who has alleged to it that the agency has not adequately responded to a report as required in 1–201 (h). When the Secretary or his designee performs an inspection and discovers unsafe or unhealthy conditions, a violation of any provisions of this order, or any safety or health standards adopted by an agency pursuant to this order, or any program element approved by the Secretary, he shall promptly issue a report to the head of the agency and to the appropriate occupational safety and health committee, if any. The report shall describe the nature of the findings and may make recommendations for correcting the violation.

(j) Submit to the President each year a summary report of the status of the occupational safety and health of Federal employees, and, together with agency responses, evaluations of individual agency progress and problems in correcting unsafe and unhealthful working conditions, and recommendations for improving their performance.

(k) Submit to the President unresolved disagreements between the Secretary and agency heads, with recommendations.

(l) Enter into agreements or other arrangements as necessary or appropriate with the National Institute for Occupational Safety and Health and delegate to it the inspection and investigation authority provided under this section.

1–5. *The Federal Advisory Council on Occupational Safety and Health.*

1–501. The Federal Advisory Council on Occupational Safety and Health, established pursuant to Executive Order No. 11612, is continued. It shall advise the Secretary in carrying out responsibilities under this order. The Council shall consist of sixteen members appointed by the Secretary, of whom eight shall be representatives of Federal agencies and eight shall be representatives of labor organizations representing Federal employees. The members shall serve three-year terms with the terms of five or six members expiring each year, provided this Council is renewed every two years in accordance with the Federal Advisory Committee Act. The members currently serving on the Council shall be deemed to be its initial members under this order and their terms shall expire in accordance with the terms of their appointment.

1–502. The Secretary, or a designee, shall serve as the Chairman of the Council, and shall prescribe rules for the conduct of its business.

1–503. The Secretary shall make available necessary office space and furnish the Council necessary equipment, supplies, and staff services, and shall perform such functions with respect to the Council as may be required by the Federal Advisory Committee Act, as amended (5 U.S.C. App. I).

1–6. *General Services Administration.*

1–601. Within six months of the effective date of this order the Secretary of Labor and the Administrator of the General Services Administration shall initiate a study of conflicts that may exist in their standards and other requirements affecting Federal employee safety and health, and shall establish a procedure for resolving conflicting standards for space leased by the General Services Administration.

1–602. In order to assist the agencies in carrying out their duties under Section 19 of the Act and this order the Administrator shall:

(a) Upon request, require personnel of the General Services Administration to accompany the Secretary or an agency head on any inspection or investigation conducted pursuant to this order of a facility subject to the authority of the General Services Administration.

(b) Assure prompt attention to reports from agencies of unsafe or unhealthy conditions of facilities subject to the authority of the General Services Administration; where abatement cannot be promptly effected, submit to the agency head a timetable for action to correct the conditions; and give priority in the allocation of resources available to the Administrator for prompt abatement of the conditions.

(c) Procure and provide safe supplies, devices, and equipment, and establish and maintain a product safety program for those supplies, devices, equipment and services furnished to agencies, including the issuance of Material Safety Data Sheets when hazardous substances are furnished them.

1–7. *General Provisions.*

1–701. Employees shall be authorized official time to participate in the activities provided for by this order.

1–702. Nothing in this order shall be construed to impair or alter the powers and duties of the Secretary or heads of other Federal agencies pursuant to Section 19 of the Occupational Safety and Health Act of 1970, Chapter 71 of Title 5 of the United States Code, Sections 7901, 7902, and 7903 of Title 5 of the United States Code, nor shall it be construed to alter any other provisions of law or Executive Order providing for collective bargaining agreements and related procedures, or affect the responsibilities of the Director of Central Intelligence to protect intelligence sources and methods (50 U.S.C. 403(d)(3)).

1–703. Executive Order No. 11807 of September 28, 1974, is revoked.

1–704. This order is effective July 1, 1980.

Jimmy Carter

THE WHITE HOUSE,
February 26, 1980.

[FR Doc. 80-6330
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Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Orange, Grapefruit, Tangerine, and Tangelo Reg. 3, Amdt. 8]

Oranges, Grapefruits, Tangerines, and Tangelos Grown in Florida; Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This amendment lowers to Florida No. 1 Golden the minimum grade requirement on domestic and export shipments of fresh Florida Honey Tangerines, during the period February 25 through October 12, 1980. Grade requirements for other varieties of tangerines remain unchanged. Currently, the minimum grade for domestic and export shipments of Honey Tangerines is Florida No. 1. The change in minimum grade is necessary because of current and prospective supply and demand for the fruit and to maintain orderly marketing conditions in the interest of producers and consumers.

EFFECTIVE DATE: February 25 through October 12, 1980.

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

SUPPLEMENTARY INFORMATION: *Findings.* (1) This regulation is issued under the marketing agreement and Order No. 905, both as amended (7 CFR Part 905), regulating the handling of oranges, grapefruits, tangerines and tangelos grown in Florida. The agreement and order are effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the committee established under the order, and upon other available information. It is found that the regulation of Honey Tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) This amendment reflects the Department's appraisal of the current and prospective supply and market demand conditions for Florida Honey Tangerines. It is designed to assure an ample supply of acceptable quality Honey Tangerines to consumers consistent with the quality of the crop.

(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 opportuntiy to submit information and views on the amendment at an open meeting, and the amendment relieves restrictions on the handling of Florida tangerines. It is necessary to effectuate the declared purposes of the act to make the regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

Further, in accordance with procedures in Executive Order 12044, the emergency nature of this regulation warrants publication without opportunity for further public comment. The regulation has not been classified significant under USDA criteria for implementing the Executive Order. An Impact Analysis is available from Malvin E. McGaha, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, phone (202) 447–5975.

Accordinlgy, it is found that the provisions of § 905.303 (Orange, Grapefruit, Tangerine and Tangelo Regulation 3) (44 FR 59195; 65962; 66779; 69917; 72095; 74797; 45 FR 6591; 7999), should be and hereby are amended by revising Table I, paragraph (a) applicable to domestic shipments, and Table II, paragraph (b) applicable to export shipments, to read as follows:

§ 905.303 Orange, grapefruit, tangerine, and tangelo regulation 3.

(a) * * *

Table I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
Tangerines: Honey	Feb. 25 through Oct. 12, 1980.	Florida No. 1 Golden	2 9/16

(b) * * *

Table II

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
Tangerines: Honey	Feb. 25 through Oct. 12, 1980.	Florida No. 1 Golden	2 9/16

* * * * * * *

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

Dated: February 22, 1980.

D. S. Kuryloski,

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

[FR Doc. 80-5984 Filed 2-26-80; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Regulation 239, Amendment 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This action increases the quantity of California-Arizona lemons that may be shipped to the fresh market during the period February 17–23, 1980. Such action is needed to provide for orderly marketing of fresh lemons for the period specified due to the marketing situation confronting the lemon industry.

DATES: The amendment is effective for the period February 17–23, 1980.

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

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

The committee met on February 21, 1980, to consider supply and market conditions and other factors affecting the need for regulation, and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports continued good order business for lemons.

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. This amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared policy of the act to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

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

Paragraph (a) of § 910.539 *Lemon Regulation 239* (45 FR 10311) is amended to read as follows:

§ 910.539 Lemon regulation 239.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period February 17, 1980, through February 23, 1980, is established at 220,000 cartons.

* * * * *

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

Dated: February 21, 1980.

D. S. Kuryloski,

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

[FR Doc. 80-5985 Filed 2-26-80; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 201

Extensions of Credit by Federal Reserve Banks; Changes in Discount Rates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A, "Extensions of Credit By Federal Reserve Banks," for the purpose of adjusting discount rates with a view to accommodating commerce and business in accordance with other related rates and the general credit situation of the country.

EFFECTIVE DATE: The changes were effective on the dates specified below.

FOR FURTHER INFORMATION CONTACT: Theodore E. Allison, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452–3257).

SUPPLEMENTARY INFORMATION: Pursuant to the authority of 5 U.S.C. Sec. 553(b)(3)(B) and (d)(3), these amendments are being published without prior general notice of proposed rulemaking, public participation, or deferred effective date. The Board has for good cause found that current economic and financial considerations required that these amendments must be adopted immediately.

Pursuant to section 14(d) of the Federal Reserve Act (12 U.S.C. 357), Part 201 is amended as set forth below:

1. Section 201.51 is revised to read as follows:

§ 201.51 Advances and discounts for member banks under sections 13 and 13a.

The rates for all advances and discounts under sections 13 and 13a of the Federal Reserve Act (except advances under the last paragraph of such section 13 to individuals, partnerships, or corporations other than member banks) are:

Federal Reserve bank of	Rate	Effective
Boston	13	Feb. 19, 1980.
New York	13	Feb. 15, 1980.
Philadelphia	13	Feb. 19, 1980.
Cleveland	13	Feb. 15, 1980.
Richmond	13	Feb. 15, 1980.
Atlanta	13	Feb. 15, 1980.
Chicago	13	Feb. 15, 1980.
St. Louis	13	Feb. 15, 1980.
Minneapolis	13	Feb. 15, 1980.
Kansas City	13	Feb. 19, 1980.
Dallas	13	Feb. 15, 1980.
San Francisco	13	Feb. 15, 1980.

2. Section 201.52 is revised to read as follows:

§ 201.52 Advances to member banks under section 10(b).

(a) The rates for advances to member banks under section 10(b) of the Federal Reserve Act are:

Federal Reserve bank of	Rate	Effective
Boston	13½	Feb. 19, 1980.
New York	13½	Feb. 15, 1980.
Philadelphia	13½	Feb. 19, 1980.
Cleveland	13½	Feb. 15, 1980.
Richmond	13½	Feb. 15, 1980.
Atlanta	13½	Feb. 15, 1980.
Chicago	13½	Feb. 15, 1980.
St. Louis	13½	Feb. 15, 1980.
Minneapolis	13½	Feb. 15, 1980.
Kansas City	13½	Feb. 19, 1980.
Dallas	13½	Feb. 15, 1980.
San Francisco	13½	Feb. 15, 1980.

(b) The rates for advances to member banks for prolonged periods and significant amounts under section 10(b) of the Federal Reserve Act and § 201.2(e)(2) of Regulation A are:

Federal Reserve bank of	Rate	Effective
Boston	14	Feb. 19, 1980.
New York	14	Feb. 15, 1980.
Philadelphia	14	Feb. 19, 1980.
Cleveland	14	Feb. 15, 1980.
Richmond	14	Feb. 15, 1980.
Atlanta	14	Feb. 15, 1980.
Chicago	14	Feb. 15, 1980.
St. Louis	14	Feb. 15, 1980.
Minneapolis	14	Feb. 15, 1980.
Kansas City	14	Feb. 19, 1980.
Dallas	14	Feb. 15, 1980.
San Francisco	14	Feb. 15, 1980.

3. Section 201.53 is revised to read as follows:

§ 201.53 Advances to persons other than member banks.

The rates for advances under the last paragraph of section 13 of the Federal Reserve Act to individuals, partnerships, or corporations other than member banks secured by direct obligations of, or obligations fully guaranteed as to principal and interest by, the United States or any agency thereof are:

Federal Reserve bank of	Rate	Effective
Boston	16	Feb. 19, 1980.
New York	16	Feb. 15, 1980.
Philadelphia	16	Feb. 19, 1980.
Cleveland	16	Feb. 15, 1980.
Richmond	16	Feb. 15, 1980.
Atlanta	16	Feb. 15, 1980.
Chicago	16	Feb. 15, 1980.
St. Louis	16	Feb. 15, 1980.
Minneapolis	16	Feb. 15, 1980.
Kansas City	16	Feb. 19, 1980.
Dallas	16	Feb. 15, 1980.
San Francisco	16	Feb. 15, 1980.

(12 U.S.C. 248(i). Interprets or applies 12 U.S.C. 357)

By order of the Board of Governors, February 19, 1980.

Theodore E. Allison,

Secretary of the Board.

[FR Doc. 80-6004 Filed 2-26-80; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 344

Recordkeeping and Confirmation Requirements for Securities Transactions

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: On July 24, 1979 the Federal Deposit Insurance Corporation ("FDIC") published in the **Federal Register** (44 FR 43260) a new 12 CFR Part 344 (Part 344). The Part requires that insured banks which are not members of the Federal Reserve System ("insured nonmember banks") that effect certain securities transactions for customers provide confirmation of and maintain records with respect to such transactions. The provisions of Part 344 were effective as of January 1, 1980. Similar regulations were adopted by the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency. At the time of adoption, the three agencies also requested comment on the confirmation requirements and on the bank officers and employees reporting requirements as they apply to transactions in certain government obligations. Several letters of comment were received. The FDIC has considered the comments and is amending the regulation to limit the applicability of recordkeeping requirements, internal policies, and officer and employee reporting relating to government securities. Other minor amendments are also being made.

EFFECTIVE DATE: The amendments are effective February 27, 1980.

FOR FURTHER INFORMATION CONTACT: Gerald J. Gervino, Attorney, Federal Deposit Insurance Corporation, 550 Seventeenth Street, N.W., Washington, D.C. 20429 (202) 389-4422.

SUPPLEMENTARY INFORMATION:

A. Background

Part 344 requires insured nonmember banks to establish uniform procedures and records relating to the handling of securities transactions for certain accounts. The provisions of Part 344 were effective as of January 1, 1980. Any insured nonmember bank that effects securities transactions for customers is required to maintain specified records and furnish confirmations of transactions to customers. Similar regulations have been adopted by the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency. At the time of adoption, the three agencies also requested comment on the confirmation requirements and on the bank officers and employees reporting requirements as they apply to transactions in certain government obligations.

Although comment was solicited only with respect to the confirmation requirements as they apply to transactions in U.S. Government, Federal agency and municipal securities and with respect to the bank officers and employees reporting requirements as they apply to transactions in U.S. Government or Federal agency obligations, several commentators commented on sections of the regulation which had been adopted previously in final form. The FDIC found some of the comments to have merit and has amended certain previously adopted sections in response to these comments.

B. Revisions

The following is a summary of the revisions hereby made with respect to the subject upon which comment was solicited and with respect to other sections upon which comment was received. Subjects raised upon which no change was made are also discussed.

1. Section 344.5(c) requires an insured nonmember bank which exercises investment discretion for an account in an agency capacity to furnish an itemized statement at least once every three months or upon request of the customer to furnish individual transaction confirmations within an alternative time. In response to a comment, § 344.5(c)(2) has been amended to state that a bank may charge accounts over which it exercises investment discretion in an agency capacity for confirmations made on a per transaction basis. This change merely reflects the FDIC's prior intent that banks could charge for furnishing individual confirmations in agency accounts where the bank exercises investment discretion.

2. Banks have commented that § 344.5(c) should be amended to permit the bank and its customers to agree to a different arrangement than the quarterly statement which is required. The FDIC has decided that the quarterly requirement is desirable and is not so unduly burdensome as to justify permitting less frequent notifications. It is noted that this requirement is comparable to the reporting system required of nonbank investment advisors.

3. Section 344.5(a) allows a bank and a customer of a nondiscretionary agency account to agree in writing to a different arrangement of notification than that set forth in § 344.5. One commentator stated his understanding that the intent of the banking agencies in drafting § 344.5(a) was to permit a bank and an agency account customer to agree on a suitable alternative reporting system. The commentator noted that the placement of this authority under the "Time of Notification," § 344.5, might be interpreted as a grant of authority for the customer and the bank to agree to a different time of notification, but not to a different form of notification. This was not the FDIC's intent when adopting the regulation; however, the FDIC does not object to a different form of notification. Accordingly, § 344.5(a) has been amended to make clear that a bank and its agency customers may mutually agree upon alternative forms of notification. The FDIC advises insured nonmember banks that any such alternative form of notification for nondiscretionary agency accounts must be affirmatively approved by the customer. An insured nonmember bank will not be considered to be in compliance with this Section if it interprets a customer's nonresponse to a bank communication as constituting customer approval.

4. Subparagraph (d) of § 344.6, *Securities Trading Policies and Procedures*, requires bank officers and

employees who make or participate in making investment recommendations or who, in connection with their duties, obtain certain information to report to the bank on a quarterly basis all securities transactions made by them or on their behalf or in which they have a beneficial interest. Several commentators suggested changes to various parts of § 344.6(d). Of these, some commentators suggested that bank officers and employees who purchase U.S. Government and Federal agency securities should not have to report transactions in those securities. One commentator noted that "since the purpose of the disclosure is to detect misuse of inside information and manipulation of the market, and since such activity seems particularly unlikely in the marketplace for government securities, we feel that these securities should be excepted from the disclosure requirements." The FDIC has concluded that the benefit that would result from requiring disclosure of transactions in U.S. Government and Federal agency securities is outweighed by the increased reporting burden. The rule as amended exempts transactions in U.S. Government and Federal agency securities from the reporting requirements applicable to bank officer and employees, and also exempts bank officers and employees whose duties do not involve knowledge of or transactions in securities other than U.S. Government and Federal agency obligations.

5. Section 344.7(a) exempts banks from certain recordkeeping requirements if the bank has an average of less than 200 securities transactions per year for customers over the prior three-calendar-year period. The comment letters pointed out the importance of transactions in U.S. Government and Federal agency securities in determining the scope of the 200 securities transactions exemption. One commentator noted that by including transactions in U.S. Government and Federal agency securities in the 200 securities transactions per year, the exemption is not as helpful in relieving the recordkeeping requirements as it may appear. The FDIC has concluded that the intended purpose of the exemption can best be accomplished by excluding transactions in U.S. Government and Federal agency securities from the 200 securities transactions which are to be counted for purposes of the exemption and has accordingly amended § 344.7(a).

6. A related comment noted that the requirement of § 344.6(a) through 344.6(c), which require written supervisory policies and procedures relating to supervision of officers and employees, fair and equitable allocation of securities and fair and equitable crossing of orders, could be triggered by performance of a single customer accommodation transaction. The 200 securities transactions exemption set forth in § 344.7(a) has now been modified to exempt banks coming within the exemption from the policy and procedures requirements of § 344.6(a) through 344.6(c).

7. Section 344.4, *Form of Notification,* requires a bank to furnish a written confirmation for transactions in U.S. Government securities (other than U.S. Savings Bonds), Federal agency obligations and municipal securities (where the bank is not already required to comply with the rules of the Municipal Securities Rulemaking Board). A few adverse comments were received concerning the burden imposed by extension of confirmation requirements to transactions in U.S. Government and Federal agency securities. After consideration of these comments, the FDIC has determined that application of the confirmation requirements to transactions in U.S. Government and federal agency securities is necessary to provide customers with appropriate disclosure. Accordingly, no change has been made in these requirements.

8. Comments were received as to the possible inapplicablility of some of the requirements of § 344.3, *Recordkeeping,* to U.S. Government and Federal agency obligations. For example, the requirement of time stamping was raised, and the need for disclosure of the name of the broker where the bank is a dealer (and not acting as agent) and is selling the security to the customer. In both cases the FDIC is of the opinion that the regulation should be followed, to permit supervision and examination of the functions and provide appropriate disclosure to the customer.

9. For the purposes of Part 344, the term "security" is defined to mean any interest or instrument commonly known as a security, whether in the nature of debt or equity, including any stock, bond, note, debenture, evidence of indebtedness or any participation in or right to subscribe to or purchase any of the foregoing. One commentator requested that shares of money market mutual funds be excluded from the definition of security because the regulation excludes from the definition alternative sources of temporary investment of fiduciary funds which are usually included in the portfolio of money market mutual funds, such as certificates of deposit, variable-amount master notes and short-term Treasury bills. The FDIC is of the opinion that the fact that a money market mutual fund involves the intervention of a manager other than the bank deciding the mix of these investments renders desirable the disclosure and recordkeeping requirements of the regulation. It is noted that the regulation permits the use of a single order for multiple account transactions. This should reduce the potential costs of recordkeeping. Furthermore, the FDIC noted that transactions in money market fund shares derive primarily from accounts over which the banks exercise investment discretion and therefore are not required to be confirmed on an individual basis except upon customer request (Section 344.5(b) and § 344.5(c)).

10. A question was raised with regard to the applicability of Part 344 to employee benefit accounts for which an insured nonmember bank acts as Investment Manager, as defined in Section 3(38) of the Employees Retirement Income Security Act of 1974, with another entity acting as trustee and/or custodian of the assets. The Investment Manager concept permits one bank to be sole trustee of a pension plan ("Master Trust"). The Master Trustee renders to the plan sponsor uniform accounting reports, including cash statements and valuation statements, at the same time it accepts investment direction as to specified parts of the pension plan assets from Investment Managers (another bank, an insurance company, or a registered investment advisor).

In the case of a Master Trust the requirements of the regulation will be served if either the Master Trustee or the Investment Manager maintains the specified records and gives the prescribed statements and confirmations required by Part 344. Any insured nonmember bank serving as Master Trustee should ensure that the requirements of the regulation are being met, either by performing the required functions itself or contracting with another party to do so.

C. Certain Findings

Since the amendments only interpret or relieve restrictions of the current Part 344, they will impose no new administrative requirements nor will they adversely affect the competitive status of any insured bank. For this reason, FDIC concludes that a cost-benefit analysis (including a small bank impact statement) is unnecessary. Further, it finds that the amendments reflect a flexible regulatory approach. The amendments vary requirements according to the volume of a bank's

securities business. Thus, small banks would normally be subject to lesser regulatory requirements, since the volume of securities business would usually be smaller.

These amendments have not been published for prior comment nor has their effective date been delayed, as generally required by 5 U.S.C. 553. In accordance with that statute, the FDIC has found that prior notice and delayed effectiveness are unnecessary because the amendments reduce requirements that are imposed by the existing rule.

Pursuant to its authority under Sections 7, 8 and 9 of the Federal Deposit Insurance Act (12 U.S.C. 1817, 1818 and 1819), the FDIC amends 12 CFR Part 344 as set forth below.

PART 344—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

1. Section 344.5 is amended by revising paragraphs (a) and (c) to read as follows:

§ 344.5 Time of notification.

The time for mailing or otherwise furnishing the written notification described in § 344.4 shall be five business days from the date of the transaction, or if a broker/dealer is utilized, within five business days from the receipt by the bank of the broker/dealer's confirmation, *but* the bank may elect to use the following alternative procedures if the transaction is effected for:

(a) Accounts (except periodic plans) where the bank does not excercise investment discretion and the bank and the customer agree in writing to a different arrangement as to the time and content of the notification; provided, however, that such agreement makes clear the customer's right to receive the written notification within the above prescribed time period at no additional cost to the customer;

* * * * *

(c) Accounts where the bank excercises investment discretion in an agency capacity, in which instance:

(1) The bank shall mail or otherwise furnish to each customer, at least once every three months, an intemized statement that specifies the funds and securities in the custody or possession of the bank at the end of such period, and all debits, credits, and transactions in the customer's account during such period; and

(2) If requested by the customer, the bank shall mail or otherwise furnish to each such customer witing a reasonable time the written notification described in § 344.4. The bank may charge a reasonable fee for providing the information described in § 344.4;

* * * * *

2. Section 344.6 is amended by revising paragraph (d) to read as follows:

§ 344.6 Securities trading policies and procedures.

Every bank effecting securities transactions for customers shall establish written policies and procedures providing:

* * * * *

(d) That bank officers and employees who make investment recommendations or decisions for the account of customers, who participate in the determination of such recommendations or decisions, or who, in connection with their duties, obtain information concerning which securities are being purchased or sold or recommended for such action, must report to the bank, within ten days after the end of the calendar quarter, all securities transactions made by them or on their behalf, either at the bank or elsewhere, in which they have a beneficial interest. The report shall identify the securities purchased or sold and indicate the dates of the transactions and whether the transactions were purchases or sales. Excluded from this requirement are transactions for the benefit of the officer or employee over which the officer or employee has no direct or indirect influence or control, transactions in mutual fund shares or U.S. Government or Federal agency obligations, and all other transactions involving in the aggregate $10,000 or less during the calendar quarter.

3. Section 344.7 (a) is revised to read as follows:

§ 344.7 Exceptions.

(a) The requirements of §§ 344.3(b) through 344.3(d) and 344.6(a) through 344.6(c) shall not apply to banks having an average of less than 200 securities transactions per calendar year for customers over the prior three-calendar-year period, exclusive of transactions in U.S. Government and Federal agency obligations.

* * * * *

(12 U.S.C. 1817, 1818, 1819)

By Order of the Board of Directors, dated February 20, 1980.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 80-6008 Filed 2-26-80; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM80-16]

Disclosed Estimation Methodology Approach for Determination of Volumes of Natural Gas Used for Exempt Purposes Under the Incremental Pricing Program; Extension of Time To File Comments

February 20, 1980.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of extension of time to file comments.

SUMMARY: On December 27, 1979 (45 FR 21, January 2, 1980), the Federal Energy Regulatory Commission (Commission) issued an interim rule which establishes procedures to be used for the first ten months of the incremental pricing program by industrial users in calculating the volumes of natural gas subject to incremental pricing surcharges. The interim rule set February 1, 1980, as the deadline to file comments. The comment period is hereby reopened and extended through March 31, 1980. A public hearing will be held in late March. The exact date and location will be announced at a later date.

DATES: Comments due March 31, 1980. Hearing date to be announced later.

ADDRESS: All comments to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. (Reference Docket No. RM80-16). Hearing location to be announced later.

FOR FURTHER INFORMATION CONTACT: Barbara K. Christin, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 8113, Washington, D.C. 20426, (202) 357-8079.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-6054 Filed 2-26-80; 8:45 am]

BILLING CODE 6450-85-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2620

Rules for Administrative Enforcement of Post Employment Conflict of Interest Restrictions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This regulation establishes the policies and procedures of the Pension Benefit Guaranty Corporation with respect to its enforcement of the post employment conflict of interest provisions of Title V the Ethics in Government Act of 1978. These rules are issued in accordance with the Office of Personnel Management's Post Employment Conflict of Interest regulation (5 CFR Part 737), which, among other things, prescribes guidelines for agency enforcement proceedings. The effect of this regulation is to establish an administrative procedure for the determination of possible violations, and to prescribe administrative sanctions for violations of the post employment conflict of interest restrictions.

EFFECTIVE DATE: This regulation is effective March 28, 1980.

FOR FURTHER INFORMATION, CONTACT: Karen H. Clark, Staff Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, (202) 254–3010.

SUPPLEMENTARY INFORMATION: On October 26, 1978, Congress enacted the Ethics in Government Act of 1978 (the "Act"), Pub. L. 95–521. Title V of the Act broadens and adds new restrictions to existing provisions of 18 U.S.C. 207, which prohibit a former government employee from acting as another person's representative to the Government in matters in which the employee had been involved while in the Government. The intent of Title V is to bar certain acts by former Government employees which may reasonably give the appearance of making unfair use of prior Government employment and affiliations. The prohibitions depend on the degree of the former employee's involvement in a matter while in Government and whether he or she was one of a specified group of high-ranking employees. Previously, 18 U.S.C. 207 was entirely a criminal provision; as amended, it provides that the Government agencies will have a major role in enforcing the prohibitions.

Section 207(j) of Title 18 provides that an agency head may take disciplinary action if he or she finds, after providing notice and opportunity for a hearing, that a former employee has violated a post employment restriction. As required under section 207(j), PBGC's regulation provides for notifying a former employee of a possible violation (§ 2620.6) and for providing the employee with an opportunity to respond both in writing and through a personal appearance (§§ 2620.7 and 2620.8).

An initial decision issued by the examiner under this part may be appealed only under § 2620.8; it is not subject to review under 29 CFR Part 2618.

One provision of this regulation bears special note. It is likely that often an allegation is made) will inform the former employee that an allegation of violation will involve a then-current representation by a former employee of someone in a proceeding before the PBGC. When this occurs, the Ethics Officer (to whom the allegation of violation has been made (§ 2620.4(b)).

The PBGC has determined that this regulation is not a "significant regulation" according to the criteria prescribed by Executive Order 12044 and the PBGC's Statement of Policy and Procedures implementing the Order (43 FR 58237, December 13, 1978), because the regulation conforms to the guidelines for agency enforcement proceedings contained in the Office of Personnel Management's Post Employment Conflict of Interest regulation (5 CFR Part 737), deals generally with procedural matters that are not likely to engender substantial public interest or controversy and will not affect other Federal agencies, nor have a major economic impact.

Opportunity for public participation in the rule making process is waived under 5 U.S.C. 553(b) because this regulation relates solely to PBGC procedures. In consideration of the foregoing, Chapter XXVI of Title 29, Code of Federal Regulations, is hereby amended by adding a new Part 2620 to read as follows:

PART 2620—RULES FOR ADMINISTRATIVE ENFORCEMENT OF POST EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

Sec.

2620.1 Purpose and scope.
2620.2 Definitions.
2620.3 Allegation of violation.
2620.4 Initiation of an enforcement proceeding.
2620.5 Duties, powers and qualifications of examiner.
2620.6 Enforcement proceeding.
2620.7 Decision of examiner.
2620.8 Appeal.
2620.9 Sanctions.
2620.10 Judicial review.

Authority: Pub. L. 95–521, 92 Stat. 1862–1863 (5 U.S.C. Appendix), 92 Stat. 1864–1867 (18 U.S.C. 207).

§ 2620.1 Purpose and scope.

(a) *Purpose.* This part establishes the procedures of the Pension Benefit Guaranty Corporation with respect to its enforcement of the post employment conflict of interest provisions of Title V of the Ethics in Government Act of 1978, 18 U.S.C. 207, and the regulations issued thereunder.

(b) *Scope.* This part applies to all former PBGC employees. Those employees whose effective date of retirement or resignation was on or before July 1, 1979 are not subject to the restrictions added to 18 U.S.C. 207 by section 501 of the Ethics in Government Act of 1978.

§ 2620.2 Definitions.

For purposes of this part (unless otherwise indicated)—

"Employee" means any employee of PBGC, including a Special Employee.

"Ethics Officer" means the PBGC employee designated by the Executive Director to investigate allegations under this part and represent the PBGC in enforcement proceedings under this part.

"Examiner" means the individual designated by the Executive Director to conduct the enforcement proceedings with respect to alleged violations under this part.

"Executive Director" means the Executive Director of the PBGC.

"Former Employee" means an individual who has been separated from employment with the PBGC.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Post employment conflict of interest restrictions" mean the provisions of Title V of the Ethics in Government Act of 1978 (18 U.S.C. 207) and the regulations in 5 CFR Part 737.

"Special Employee" means an employee of PBGC who is retained, designated, appointed or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis (18 U.S.C. 202). A "special employee" includes an advisor or consultant.

§ 2620.3 Allegation of violation.

(a) *How an allegation is made.* An allegation of a possible violation of the post employment conflict of interest restrictions may be made by any individual. The allegation must—

(1) Be made in writing;

(2) Be signed by the individual making the allegation;

(3) State facts with sufficient specificity to permit the Ethics Officer to determine the allegation; and

(4) Be submitted to the Ethics Officer.

(b) *Currently pending matter.* Whenever an allegation is made against a former employee who is then representing another party before the PBGC, the Ethics Officer shall inform the former employee in writing that the allegation has been made and the basis of the allegation.

(c) *Determination by Ethics Officer.* If, after review of the allegation and any investigation he or she causes to be made into the allegation, the Ethics Officer finds reasonable cause to believe that a violation has occurred, he or she—

(1) Shall issue the notices described in paragraph (d) of this section; and

(2) May initiate an enforcement proceeding in accordance with § 2620.4.

If no proceeding is initiated under § 2620.4, the Ethics Officer shall so inform the person who made the allegation and the former employee if he or she has received a notice pursuant to paragraph (b) of this section.

(d) *Notice to Office of Government Ethics and Department of Justice.* Whenever the Ethics Officer finds reasonable cause to believe that a violation has occurred, he or she shall provide notice of the allegation, along with any PBGC comments, to—

(1) The Director of the Office of Government Ethics; and

(2) The Criminal Division, Department of Justice. The PBGC will coordinate any investigation or administrative action with the Department of Justice to avoid prejudicing any criminal proceedings, unless the Department of Justice advises PBGC that no criminal prosecution will be initiated.

(e) *Safeguarding information.* Prior to the initiation of an enforcement proceeding, the Ethics Officer shall insure that an allegation is kept confidential. All documents relating to the allegation will be maintained in secured files. Once a proceeding has begun, the allegation is no longer confidential information.

§ 2620.4 Initiation of an enforcement proceeding.

(a) *General.* When the Ethics Officer finds reasonable cause to believe that a violation has occurred, he or she may initiate an enforcement proceeding by requesting that the Executive Director appoint an examiner to conduct the proceeding and by issuing the notice described in paragraph (b) of this section.

(b) *Notice to former employee.* The Ethics Officer shall notify the former employee that the PBGC has decided to institute an enforcement proceeding to determine whether the former employee has violated the post employment conflict of interest restrictions. This notice shall—

(1) State the allegations, and the basis thereof, in sufficient detail to enable the former employee to frame a response;

(2) State that an examiner has been designated to conduct the proceeding, and identify the examiner;

(3) Inform the former employee of his or her right to file a written response to the allegations pursuant to § 2620.6(a); and

(4) Inform the former employee of his or her right to a hearing pursuant to § 2620.6(b)

§ 2620.5 Duties, powers and qualifications of Examiner.

(a) *Duties and powers.* The examiner shall conduct the enforcement proceeding and make the initial determination as to whether a violation has occurred. In carrying out these functions, the examiner has the powers and duties set forth in section 7(b) of the Administrative Procedure Act, 5 U.S.C. 556(c), including—

(1) Administering oaths and affirmations;

(2) Ruling on offers of proof and receiving relevant evidence;

(3) Taking depositions or having depositions taken when the ends of justice would be served;

(4) Regulating the course of the hearing;

(5) Holding conferences for the settlement or simplification of the issues by consent of the parties;

(6) Disposing of procedural requests or similar matters; and

(7) Doing any other action or issuing any order necessary for or appropriate to the disposition of the proceeding.

(b) *Qualifications.* No individual who has participated in any way in the decision to initiate the proceedings under § 2620.3(c) or who is subject to the supervision of an employee who is investigating or prosecuting an allegation under this part may serve as the examiner.

§ 2620.6 Enforcement proceeding.

(a) *Submission of written statements.* The former employee and the Ethics Officer may each submit a written statement setting forth the facts of the alleged violation and the basis for his or her position. Any such statement shall be submitted to the examiner within 30 days after the date of the notice issued pursuant to § 2620.4(b).

(b) *Request for hearing.* The former employee may request a hearing within 30 days after the date of the notice issued pursuant to § 2620.4(b). This request shall—

(1) Be in writing and filed with the examiner;

(2) State whether the former employee requests an extension of the hearing date to no more than 90 days after the filing of the request;

(3) State whether the former employee will appear through a representative;

(4) State the basis of the defense and the nature of the evidence to be presented; and

(5) State whether witnesses will be presented and, if so, the substance of their testimony.

(c) *Burden of proof.* The Ethics Officer has the burden of proof and must establish substantial evidence of a violation of the post employment conflict of interest restrictions.

(d) *Hearing.* At the request of the former employee, a formal hearing on the record will be held at the main offices of the PBGC on a date set by the examiner. Generally, the date will be not more than 30 days after the filing of the request for a hearing, although it may be as much as 90 days after the filing of the request for a hearing if the former employee so requests. At the hearing, the former employee and the Ethics Officer may—

(1) Introduce and examine witnesses, and submit physicial evidence;

(2) Submit rebuttal evidence and confront and cross-examine adverse witnesses; and

(3) Present oral argument.

Unless otherwise ordered by the examiner, the former employee and the Ethics Officer may file with the examiner proposed findings and conclusions and supporting reasons for those findings and conclusions within 10 days after the conclusion of the hearing.

(e) *Record for decision.* The written submissions of the former employee and the Ethics Officer and the transcript of the hearing, if one was held, shall constitute the record of the proceeding upon which the examiner's decision shall be based.

(f) *Copy of Transcript.* At the request of the former employee and upon payment of the prescribed fee, the PBGC will furnish him or her a transcript of the proceeding.

§ 2620.7 Decision of examiner.

(a) *In general.* The examiner shall issue the initial decision in the case, and that decision shall become the final decision of the PBGC without further proceedings upon the expiration of the time within which an appeal can be filed under this part, unless an appeal is taken.

(b) *Contents of decision.* The decision as to whether a violation has occurred shall be in writing, be based exclusively

on the record of the proceedings, set forth the findings of fact and conclusions of law upon which it is based, and state how an appeal of the decision may be taken pursuant to § 2620.8.

(c) *Notification of decision.* The examiner shall provide a copy of his or her decision to the former employee and to the Ethics Officer.

§ 2620.8 Appeal.

(a) *Request for review.* Within 20 days after the date of the examiner's decision, the former employee or the Ethics Officer may appeal that decision to the Executive Director.

(b) *Contents of appeal.* An appeal shall—

(1) Be in writing;

(2) Contain a statement of the grounds upon which it is brought; and

(3) Refer to those portions of the record which provide the basis for the appeal.

(c) *Decision of the Executive Director.* The decision of the Executive Director shall—

(1) Be in writing;

(2) Be based on the record;

(3) Modify, affirm or reverse the examiner's decision;

(4) Be the final decision of the PBGC; and

(5) Be delivered to the former employee and the Ethics Officer.

§ 2620.9 Sanctions.

If the decision of the PBGC is that the former employee violated the post employment conflict of interest restrictions, the Executive Director may, taking into account the findings of the examiner and the recommendations, if any, of the Ethics Officer, impose sanctions for the violation, including—

(a) Prohibiting the individual from making, on behalf of any other person (except the United States), any formal or informal appearance before, or, with the intent to influence, any oral or written communication to the PBGC on any matter of business for a period not to exceed five years, which may be accomplished by directing PBGC employees to refuse to participate in any such appearance or to accept any such communication; and

(b) Taking other appropriate disciplinary action.

§ 2620.10 Judicial review.

Any person found by the PBGC to have violated the post employment conflict of interest restrictions may seek judicial review of the PBGC decision, pursuant to 18 U.S.C. 207(j).

Issued at Washington, D.C., on this 21st day of February, 1980.

Robert E. Nagle,

Executive Director.

[FR Doc. 80-6006 Filed 2-26-80; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 841

Paternity Claims; Deletion of Regulations

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending Title 32, Chapter VII, of the Code of Federal Regulations, by deleting Part 841, Paternity Claims. This rule is deleted because it has been combined with Part 818 (Financial Responsibility) of this chapter. The intended effect of this amendment is to improve 32 CFR, Chapter VII, by removing unnecessary material.

EFFECTIVE DATE: February 20, 1980.

FOR FURTHER INFORMATION CONTACT: Mrs. Carol M. Rose, Air Force Federal Register Liaison Officer, AS/DASJR, Pentagon, Washington, D.C. 20330. Phone (202) 697-1861.

SUPPLEMENTARY INFORMATION: Accordingly, 32 CFR Chapter VII, is amended by deleting Part 841.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 80-6002 Filed 2-26-80; 8:45 am]

BILLING CODE 3910-01-M

32 CFR Part 846

Support of Dependents; Deletion of Regulations

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending Title 32, Chapter VII, of the Code of Federal Regulations, by deleting Part 846, Support of Dependents. This rule is deleted because it has been combined with Part 818 (Financial Responsibility) of this chapter. The intended effect of this amendment is to improve 32 CFR, Chapter VII, by removing unnecessary material.

EFFECTIVE DATE: February 20, 1980.

FOR FURTHER INFORMATION CONTACT: Mrs. Carol M. Rose, Air Force Federal Register Liaison Officer, AS/DASJR, Pentagon, Washington, D.C. 20330. Phone (202) 697-1861.

SUPPLEMENTARY INFORMATION: Accordingly, 32 CFR, Chapter VII, is amended by deleting Part 846.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 80-6003 Filed 2-26-80; 8:45 am]

BILLING CODE 3910-01-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

36 CFR Part 923

Planning and Design Objectives, Controls, and Standards on the East Section of Square 458

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: Interim rule; request for comment.

SUMMARY: The Pennsylvania Avenue Development Corporation is adopting interim regulations relating to controls and standards for the east section of Square 458, an area in the District of Columbia which is scheduled for development and rejuvenation under The Pennsylvania Avenue Plan—1974. The regulations address such areas as height, development massing, pedestrian features and related subjects. The controls and standards are intended to implement The Pennsylvania Avenue Plan—1974, as amended. Public comment is invited on the substance of this Interim Rule as well as the readability and clarity of presentation.

DATES: Effective date: February 27, 1980. Comments must be received on or before March 28, 1980.

ADDRESS: Send comments to Mr. Jerry Smedley, Square 458 Coordinator, Pennsylvania Avenue Development Corporation, 425 13th Street, N.W., Suite 1148, Washington, D.C. 20004.

FOR FURTHER INFORMATION CONTACT: Ms. Mary M. Schneider, Attorney (202) 566-1078, or Mr. Yong-Duk Chyun, Architect (202) 566-1218, Pennsylvania Avenue Development Corporation.

SUPPLEMENTARY INFORMATION: The Pennsylvania Avenue Development Corporation (the Corporation) is a wholly owned government corporation of the United States with authority to develop and rejuvenate 21 blocks along the north side of Pennsylvania Avenue, N.W., Washington, D.C. The Corporation has prepared a development plan, The Pennsylvania Avenue Plan—1974, which has been adopted by Congress. In order to

facilitate development in accordance with the Plan, the Corporation will be preparing Controls and Standards for many of the blocks under its jurisdiction.

This interim rule sets forth the Controls and Standards for both required and recommended features applicable to development of the east section of Square 458, a block in the District of Columbia. The Controls and Standards will be distributed to affected property owners and potential developers, and will become the basis on which development proposals and related actions will be reviewed and approved by the Corporation.

The Controls and Standards set forth required controls and standards for height, development massing, land uses, pedestrian amenities, land parcelization, historic preservation, off-street parking and loading, and related subjects. The document also sets forth recommended controls and standards in such areas as uses, energy conservation, off-street loading and parking, historic preservation, and related subjects.

36 CFR Chapter IX, Subchapter B, is amended by adding a new Part 923 to read as follows:

PART 923—EAST SECTION OF SQUARE 458

Subpart A—General

Sec.

923.1 Definitions.

Subpart B—Required planning and design controls and standards.

923.20 Required controls and standards: coordinated planning area and development parcels.
923.21 Required controls and standards: comprehensive planning and design.
923.22 Required controls and standards: height of development.
923.23 Required controls and standards: build-to line and build-to height.
923.24 Required controls and standards: uniform cornice line.
923.25 Required controls and standards: special design requirements.
923.26 Required controls and standards: roof structures and structures related to rooftop use.
923.27 Required controls and standards: subsurface restrictions.
923.28 Required controls and standards: pedestrian features.
923.29 Required controls and standards: uses.
923.30 Required controls and standards: curb-cuts.
923.31 Required controls and standards: off-street parking.
923.32 Required controls and standards: off-street loading.
923.33 Required controls and standards: provisions for the handicapped.
923.34 Required controls and standards: historic preservation.

Subpart C—Recommended Planning and Design Controls and Standards

923.50 Recommended controls and standards: comprehensive planning and design.
923.51 Recommended controls and standards: uniform cornice line.
923.52 Recommended controls and standards: uses.
923.53 Recommended controls and standards: pedestrian features.
923.54 Recommended controls and standards: fine arts.
923.55 Recommended controls and standards: curb-cuts.
923.56 Recommended controls and standards: off-street loading.
923.57 Recommended controls and standards: fire safety.

Authority: Section 6(8) Pennsylvania Avenue Development Corporation Act of 1972 (40 U.S.C. 875(8)).

Subpart A—General

§ 923.1 Definitions.

In addition to the words and phrases defined in this section, the words and phrases as defined in Section 1202 of the Zoning Regulations of the District of Columbia, as amended, are applicable to this Part. Where a conflict arises in terminology or interpretation between this section and Section 1202 of the Zoning Regulations, this section shall control.

Access, when used in reference to parking or loading, means both ingress and egress.

Build-to height means a minimum height to which the exterior wall of a building in a development must rise. Minor deviations from the build-to height for architectural embellishments and articulations of the cornice and roof level are permitted, unless otherwise prohibited by these Controls and Standards or the District of Columbia's codes and regulations.

Build-to line means a line with which the exterior wall of a building in a development is required to coincide. Minor deviations from the build-to-line for such architectural features as weather protection, recesses, niches, ornamental projections, entrance by pass, or other articulations of the facade are permitted, unless otherwise prohibited by these Controls and Standards or the District of Columbia's codes and regulations.

Coordinated planning area means a Square, portion of a Square, or group of Squares that is composed of one or more development parcels and is treated as a unit under these Controls and Standards, in order to achieve comprehensive planning and design.

Curb-cut means that portion of the curb and sidewalk over which vehicular access is allowed. Unless otherwise specified, a single curb-cut shall accommodate no more than two access lanes.

Development means a structure, including a building, planned unit development, or project resulting from the process of planning, land acquisition, demolition, construction, or rehabilitation consistent with the objectives and goals of the Plan.

Development parcel means an area of land established by the Corporation to be a minimum site on which a development may occur under the Plan and any applicable Planning and Design Objectives or Controls and Standards adopted by the Corporation.

Height of development means the vertical distance measured from a specified point at the curb level to the highest point of the roof or parapet of the development, whichever is higher, exclusive of all *roof structures* except as otherwise specified.

The Plan means The Pennsylvania Avenue Plan—1974, as amended, and prepared pursuant to Public Law 92-578, 86 Stat. 1266 (40 USC 871), and the document which sets forth the development concepts upon which these Controls and Standards are based.

A *vault* means an enclosure of space beneath the surface of the public space or sidewalk setback, except that the term vault shall not include public utility structures.

Weather protection means a seasonal or permanent shelter to protect pedestrians from sun or precipitation, consisting of arcades, canopies, awnings, or other coverings.

Subpart B—Required Planning and Design Controls and Standards

§ 923.20 Required controls and standards: coordinated planning area and development parcels.

(a) The east section of Square 458 is a coordinated planning area consisting of Lots 13, 19, 20, 800, 801, 802, 803, 804, 814, 815, and 824 as presently recorded or shown on the records of the Surveyor, District of Columbia (see Diagram 1).

(b) Parcel A is a development parcel consisting of Lot 824.

(c) Parcel B is a development parcel consisting of the remaining portion of the east section of Square 458 after the exclusion of Parcel A.

(d) Parcel A and Parcel B may be developed separately or as a single combined development parcel.

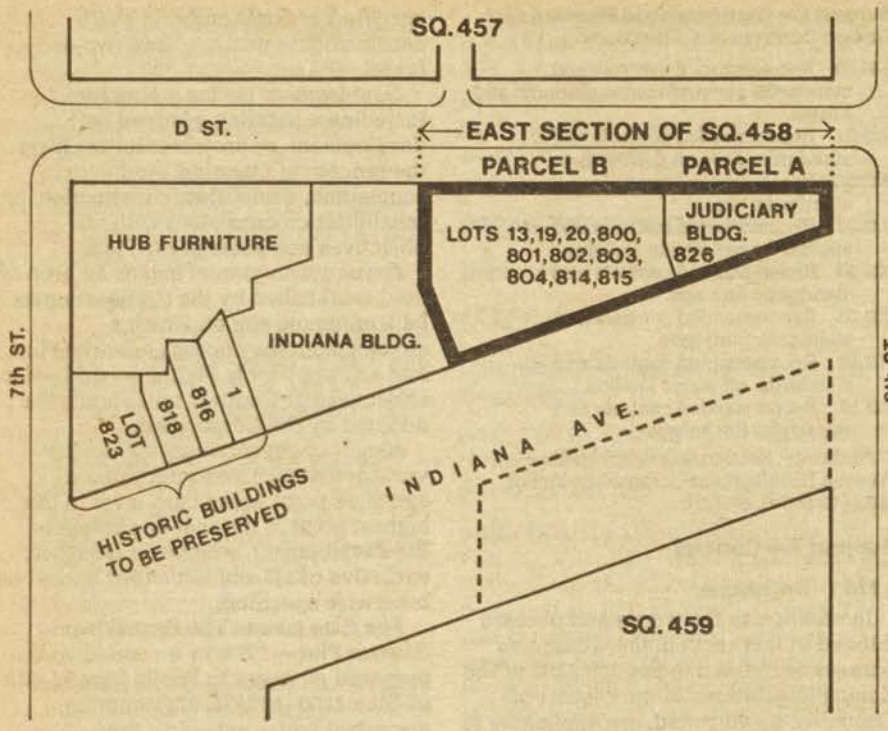


DIAGRAM 1

§ 923.21 Required controls and standards: Comprehensive planning and design.

(a) *Development* on the east section of Square 458 shall be consistent with the Plan.

(b) The design of development on the east section of Square 458 shall take into account the Plan's proposed future treatment of the buildings, squares, and pedestrian spaces in the immediate surrounding area.

(c) The design of development on the east section of Square 458 shall be coordinated with nearby buildings constructed under the Plan, or to be retained under the Plan, with specific regard to massing, architectural design, service provisions, pedestrian amenities, and uses.

(d) The design of development on the east section of Square 458 shall take into account the closing of Indiana Avenue to vehicular traffic, and the creation of a pedestrian-oriented open space, to be known as Indiana Plaza, as described in the Plan. Pedestrian amenities, vehicular access, and ground floor uses of development on the east section of Square 458 shall be designed and developed to reinforce this aspect of the Plan.

§ 923.22 Required controls and standards: height of development.

The maximum height of development permitted for the east section of Square 458 shall be 110 feet, measured from the curb at the middle of the development's frontage on D Street, N.W.

§ 923.23 Required controls and standards: build-to line and build-to height.

(a) Build-to lines for development are established at the right-of-way lines of Indiana Avenue and 6th Street, N.W., for their entire length on the east section of Square 458 (see Diagram 2).

(b) Along the entire length of the build-to line on Indiana Avenue and 6th Street, N.W., a build-to height is

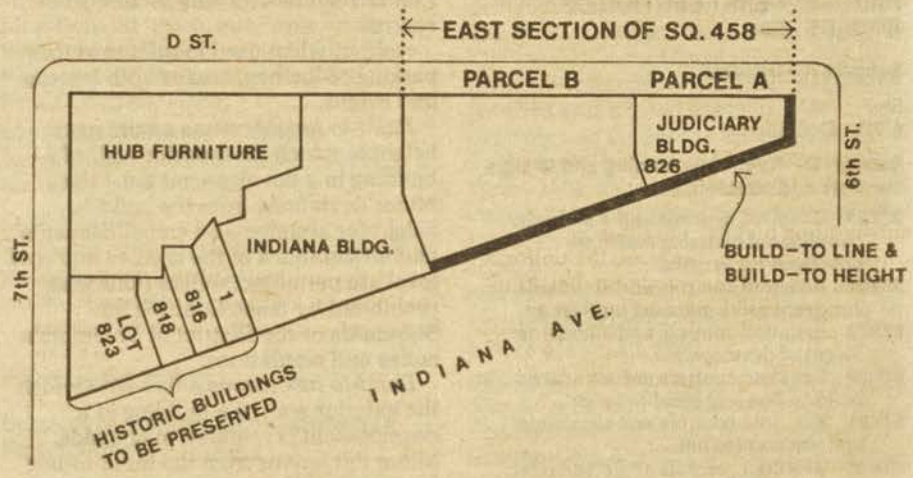


DIAGRAM 2

established at the level of the 11th floor cornice of the Indiana Building (which is at elevation +127.28 based on the Vertical Datum of the District of Columbia Department of Transportation Datum).

§ 923.24 Required controls and standards: uniform cornice line.

Along the entire length of the build-to line on Indiana Avenue, development shall provide at the level of the build-to height a cornice, setback, or other articulation that will visually unify the Indiana Building, new development on Parcel B, and the Judiciary Building (or new development on Parcel A), creating an effect of a unified vertical plane along the northern edge of Indiana Avenue.

§ 923.25 Required controls and standards: special design requirements.

(a) *Development* shall consider the following design elements of the adjacent buildings and the historic buildings on Squares 458 and 459 to be retained under the Plan: height; scale; proportion of building; rhythm of solids and voids in fenestration; vertical and horizontal articulation of the facade composition; rhythm of entrances, recesses, and show windows; materials; textures; color; architectural detail; and signs.

(b) *Development* shall be designed so that it visually reinforces the plane of the street facade along Indiana Avenue, N.W.

(c) *Development* shall be designed to serve as a background building in relation to Indiana Plaza and the surrounding historic buildings.

(d) *Development* between the uniform cornice line and the maximum height of development shall be designed in a manner which integrates the appearance of the additional height and mass with the rest of the building and the adjacent buildings.

§ 923.26 Required controls and standards: roof structures

(a) The following roof structures incidental to a development may rise above the maximum height of development specified in § 923.22, provided that these roof structures comply with the requirements of this Section and the pertinent sections of the District of Columbia Zoning Regulations.

(1) A structure which is specifically permitted to exceed the height of building allowed under the Zoning Regulations of the District of Columbia;

(2) A skyligh, exhaust duct, plumbing stack, flagpole, communications antenna, window washing apparatus, or the like;

(3) A penthouse for kitchen, washroom, toilets, or storage incidental to an accessory to a rooftop use; and,

(4) A temporary and seasonal structure incidental to a rooftop use.

(b) A roof structure may not exceed 18½ feet in height above the roof level on which it is located.

(c) A roof structure in excess of four feet in height shall be set back from all street right-of-way lines a distance equal to its height above the roof on which it is located.

(d) When located on a roof, housing for mechanical equipment and all penthouses shall be placed in a single enclosure.

(e) Roof structures visible from the street shall be attractively designed to harmonize with the building facade.

§ 923.27 Required controls and standards: subsurface restrictions.

(a) *Vaults* are permitted under the public space immediately adjacent to Parcels A and B provided that they comply with the following criteria (see Diagram 3).

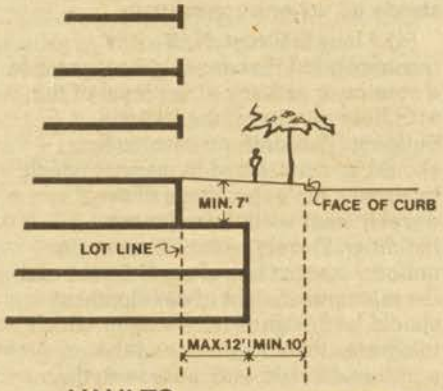
(1) A minimum vertical dimension of 7 feet shall be maintained at every point between the vault and the surface of the public space;

(2) A vault may extend up to 12 feet from the lot line, except that no vaults are permitted within 10 feet of a vertical plane established by the face of the adjacent curb; and

(3) The extent of the vault shall be measured at the outer face, including any layer of construction materials related to the vault.

(b) Subsurface structures incidental to electrical transformers are prohibited within the Indiana Avenue right-of-way. The location and layout of these transformer structures shall be subject to a special review by the Corporation.

(c) All connections to water, gas, electric, telephone, and sewer lines shall be from D Street or 6th Street, N.W.



VAULTS DIAGRAM 3

§ 923.28 Required controls and standards: pedestrian features.

(a) A continuous weather protection shall be provided along the entire length of the development along Indiana Avenue, N.W., to be designed compatible with existing and planned improvements for Indiana Plaza, as described in the Plan.

(b) *Development* on Parcel B shall provide a ground level though square connection from Indiana Avenue to D Street, N.W., near the western edge of Parcel B. The through square connection shall be designed in a manner which provides a safe, attractive, and convenient pedestrian passage between Indiana Avenue and D Street.

(c) All retail spaces on the ground level which are adjacent to streets or the through square connection shall be made directly accessible from those areas.

§ 923.29 Required controls and standards: uses.

(a) *Development* on the east section of Square 458 shall be devoted to residential or office use, or a combination of both, above the ground level.

(b) The ground level of a development shall be primarily devoted to retail use. The ground level may also include entertainment, restaurant, or exhibition uses that will encourage lively activities at the street level throughout the evening and weekend.

(c) Rooftop uses such as cafes, gardens, and recreational facilities are permitted on any roof level.

§ 923.30 Required controls and standards: curb-cuts.

(a) Vehicular curb-cuts are permitted only on D Street, N.W.

(b) Where the east section of Square 458 is developed as a single development parcel, only one curb-cut shall be permitted for the access for both parking and off-street loading.

(c) Where the east section of Square 458 is developed as two development parcels, each development parcel shall be permitted to have only one curb-cut for the access for both parking and off-street loading.

§ 923.31 Required controls and standards: off-street parking.

(a) Off-street parking as a principal use is prohibited. Off-street parking as an accessory use in a development is permitted.

(b) All parking spaces shall be located below grade level.

(c) The maximum number of parking spaces for a development may not exceed the aggregate of the number of spaces allowed for each use within the development. The schedule of limitations for parking spaces is as follows:

(1) Hotel: One parking space for each four sleeping rooms or suites;

(2) Places of public assemblage other than hotels: (i.e., arena, armory, theater, auditorium, community center, convention center, concert hall, etc.) one parking space for each ten seats of occupancy capacity for the first 10,000 seats plus one for each 20 seats above 10,000: Provided, That where seats are not fixed, each seven square feet of gross floor area usable for seating shall be considered one seat;

(3) Retail, trade, and service establishments: one parking space for each 750 square feet of gross floor area;

(4) Residential: One parking space for each 1.2 units;

(5) Offices: One parking space for each 1,800 square feet of gross floor area.

§ 923.32 Required controls and standards: off-street loading.

(a) An off-street loading facility shall comply with Article 73 of the Zoning Regulations of the District of Columbia.

(b) In the event that an off-street loading facility abuts a sidewalk, it shall be provided with doors which harmonize with the materials and design of the building facade, and which minimize any negative impact on the sidewalk environment.

§ 923.33 Required controls and standards: provisions for the handicapped.

Every development shall incorporate features that will make the development readily accessible by the physically handicapped. The specifications published by the American National Standards Institute, Inc. (ANSI A117.1 Revised 1979) titled "Specifications for Making Buildings and Facilities Accessible to, and Usable By, the Physically Handicapped" should be used as guidelines.

§ 923.34 Required controls and standards: historic preservation.

(a) *Development* shall be implemented in accordance with the historic preservation aspects of the Plan and the Historic Preservation Plan of the Pennsylvania Avenue Development Corporation. Indiana Avenue will become a pedestrian-oriented open space, to be known as Indiana Plaza, in the center of a "Historic Preservation Zone" consisting of existing buildings and facades, relocated building facades, and new building designs. The Historic Preservation Zone will recreate the visual quality and character of the typical 19th Century commercial street in areas along Pennsylvania Avenue, Indiana Avenue, and 7th Street. However, the overall effect desired is not that of a museum, but an eclectic street frontage which expresses the growth and change of the city.

(b) The facade of 625 Indiana Avenue, N.W. (Lot 13), shall be preserved in place or relocated as specified in Program IIB of the Historic Preservation Plan.

(c) The developer of Parcel B is expected to cooperate with the Corporation to facilitate this preservation activity.

(d) Facade relocation to accomplish historic preservation goals and requirements shall be carried out in consulation with the Pennsylvania Avenue Development Corporation, and on the basis of the "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" issued by the Technical Preservation Services Division, Heritage Conservation and Recreation Service, U.S. Department of the Interior.

Subpart C—Recommended Planning and Design Controls and Standards

§ 923.50 Recommended controls and standards: comphehensive planning and design.

Development of Parcel A and Parcel B as a single development parcel is preferred.

§ 923.51 Recommended controls and standards: uniform cornice line.

(a) Along D Street, N.W., it is recommended that development provide a cornice or setback at the level of the 11th floor cornice of the Indiana Building. This uniform cornice line should be maintained in manner which integrates the appearance of the development with the adjacent buildings. Development between the uniform cornice line along D Street and the maximum height of development should be designed in a manner which integrates the appearance of the additional height and mass with the adjacent buildings.

(b) It is recommended that the facade of development above the uniform cornice lines along Indiana Avenue and D Street be treated differently from the facade of development below the uniform cornice lines.

§ 923.52 Recommended controls and standards: uses.

(a) Along the ground level frontages of Indiana Avenue and 6th Street, N.W. uses which generate a low level of activities or engage in business for a limited period of time during the day such as banks, airline ticket offices, travel bureaus, etc., are discouraged.

(b) it is recommended that as many stores as possible be provided along the ground level frontages of Indiana Avenue and 6th Street, N.W., and along the through square connection.

(c) Cafes in the sidewalk on Indiana Avenue are encouraged.

(d) Rooftop uses such as cafes, gardens, and recreational facilities are encouraged on any roof level.

§ 923.53 Recommended controls and standards: pedestrian features.

(a) The through square connection on Parcel B should be separate from the internal circulation of the building and open to the public at all times.

(b) The through square connection should be generous in size to ensure free-flowing pedestrian circulation, and should provide a visual connection between D Street and Indiana Avenue.

(c) It is recommended that the weather protection along the length of Indiana Avenue be in the form of well-designed and coordinated canopies or awnings providing a visual as well as functional connection along the ground level frontage. Where Parcel B is separately developed, a continuous arcade along Indiana Avenue is discouraged on Parcel B.

§ 923.54 Recommended controls and standards: fine arts.

(a) Fine arts, including sculpture, paintings, decorative windows, bas-reliefs, ornamental fountains, murals, tapestries, and the like, should be included in each development. Commissions for original works of art which are appropriate for the development are encouraged.

(b) The Corporation is available to assist a developer in selecting and evaluating artists and works of art.

(c) A reasonable expenditure for fine arts is deemed to be one half of one percent of the total construction cost of the development.

§ 923.55 Recommended controls and standards: curb-cuts.

Where separate development occurs on Parcel A and Parcel B, it is recommended that the access for parking and loading for both

developments be consolidated with single curb-cut to minimize disruption of the pedestrian movement along the sidewalk.

§ 923.56 Recommended controls and standards: off-street loading.

Off-street loading facilities are discourged from directly abutting a sidewalk.

§ 923.57 Recommended controls and standards: fire safety.

As a complementary action to meeting required District of Columbia codes related to fire safety, it is highly recommended that all buildings in the east section of Square 458 satisfy the recommended standards of the NFPA Code for fire and life safety and that all buildings be equipped with an approved sprinkler system.

Dated: February 13, 1980.

Thomas F. Murphy,

Chairman.

[FR Doc. 80-6051 Filed 2-26-80; 8:45 am]

BILLING CODE 7630-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8F2081; PP 8F2098; PP 9F2213; FRL 1421-8]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Metolachlor

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide metolachlor. The regulation was requested by Ciba-Geigy Corp. This rule establishes maximum permissible levels for residues of metolachlor on corn forage and fodder, soybean forage and fodder, sorghum grain, sorghum forage and fodder, peanuts, peanut hulls, and peanut forage and hay.

EFFECTIVE DATE: Effective on February 27, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. Willa Garner, Product Manager (PM) 23, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington, DC (202/755-1397).

SUPPLEMENTARY INFORMATION: On August 2, 1978, notice was given (43 FR 33962) that Ciba-Geigy Corp., PO Box 11422, Greensboro, NC 27409, had filed a petition (PP 8F2081) with EPA. This petition proposed that 40 CFR 180.368 be amended by establishing a tolerance for residues of the herbicide metolachlor [2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide] and its metabolites determined as 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as parent metolachlor, in or on corn forage and fodder at 1.25 parts per million (ppm); fresh corn including sweet corn (kernels plus cobs, husks removed) at 0.1 ppm; popcorn (grain) at 0.1 ppm; and soybean forage and fodder at 2.0 ppm.

On August 18, 1978, notice was given (43 FR 36688) that Ciba-Geigy Corp. had filed a petition (PP 8F2098) with EPA. This petition proposed that 40 CFR 180.368 be amended by establishing a tolerance for residues for the herbicide metolachlor [2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide] and its metabolites determined as 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as parent metolachlor, in or on sorghum forage and fodder at 1.5 ppm and sorghum grain at 0.3 ppm.

On July 11, 1979, notice was given (44 FR 40556) that Ciba-Geigy Corp. had filed a petition (PP 9F 2213) with EPA. This petition proposed that 40 CFR 180.368 be amended by establishing a tolerance for the combined residues of the herbicide metolachlor [2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide] and its metabolites determined as 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as parent metolachlor, in or on the raw agricultural commodities peanuts at 0.1 ppm, peanut hulls at 1.0 ppm, and peanut forage and hay at 3.0 ppm. No comments were received in response to these notices of filing.

Ciba-Geigy subsequently amended the petitions by withdrawing the proposed tolerances for fresh corn including sweet corn (kernels plus cobs, husks removed) at 0.1 ppm and for popcorn (grain) at 0.1 ppm; by revising corn forage and fodder residue tolerances from 1.25 ppm to 1.0 ppm and by revising the sorghum forage and fodder residue tolerances from 1.5 ppm to 2.0 ppm. The changes in the proposed tolerances are not being submitted for public comment since the sorghum forage and fodder is fed to livestock and the existing meat and milk tolerances cover any possible residues, thus there would not be an increased exposure to man.

The data submitted in the petition and other relevant material have been evaluated. The data considered in support of the proposed tolerances included corn, soybean, sorghum, and peanut residue studies; metabolism studies in plants, rats, cattle, goat, and chickens; cattle, goat, and chicken feeding studies; a rat acute oral toxicity study with a lethal dose (LD_{50}) of 2.78 grams (g)/kilogram (kg) of body weight (bw); a 90-day dog feeding study with a no-observable-effect level (NOEL) of 500 ppm; a rat teratology study which was not fetotoxic or teratogenic at 360 milligrams (mg)/kg bw/day; a mouse oncogenicity study, audit report, and IBT validation, with no oncogenic potential at 30 ppm, 1,000 ppm, or 3,000 ppm, a mouse mutagenic dominant lethal study (negative); a 6-month dog feeding study with a NOEL of 100 ppm, a three-generation rat reproduction study, audit report, and IBT validation classified only as a supplementary study due to poor conditions in the study including animal husbandry, which suggested no serious reproductive effects but this is not considered definitive information; and a 2-year rat feeding study with oncogenic evaluation audit report, and IBT validation, classified only as a supplementary study for oncogenic evaluation since dose levels were not verified by analysis of diet, which showed no evidence of oncogenic effects, and is an invalid study for chronic toxicity.

Studies currently lacking to reinforce the present findings are a rat chronic feeding study with oncogenic evaluation, a teratology study in a second species; and, a rat multi-generation reproduction study. A rabbit teratology test has been initiated and will be submitted no later than November 1, 1980. A second mouse oncogenicity study has been started and will be submitted no later than November 1, 1982. In a letter of December 11, 1979, the petitioner agreed to conduct a second two-year chronic oral test in the rat to be submitted no later than September 1, 1983. In a letter of January 30, 1980, the petitioner agreed to conduct another multi-generation rat reproduction study to be submitted no later than June 1, 1982 and agreed not to contest revocation of the corn forage and fodder, soybean forage and fodder, sorghum grain, sorghum forage and fodder, peanut, peanut hulls, and peanut forage and hay tolerances after establishment should the above studies indicate an unreasonable adverse effect upon man or the environment, and will withdraw the products from the U.S. market, if any of the above studies exceed the risk criteria as specified in 40 CFR 162.11(a)(3)(ii)(A) and (B).

Tolerances have previously been established for residues of metolachlor ranging from 0.02 ppm in meat, milk, and eggs to 0.1 ppm in corn grain (excluding popcorn) and in soybeans. Based upon the NOEL of 100 ppm in the 6-month dog study and a 2,000 fold safety factor, the acceptable daily intake (ADI) has been set at 0.0013 mg/kg/day with a maximum permissible intake (MPI) of 0.0750 mg/day/60-kg man. The established tolerances on corn, grain, soybeans, meat, milk, and eggs have a theoretical maximal residue contribution (TMRC) of 0.0164 mg/day in a 1.5 kg diet. The proposed tolerance in sorghum at 0.3 ppm would contribute an additional 0.00014 mg/day/1.5 kg-diet or an increase of 1.22% of the TMRC. The proposed tolerance in peanuts would contribute an additional 0.00054 mg/day/1.5-kg diet or an increase of 3.05% of the TMRC. The metabolism of metolachlor is adequately understood. An adequate analytical method is available for enforcement purposes, and the proposed tolerance levels are adequate to cover residues of metolachlor and its metabolites.

The tolerances previously established under 40 CFR 180.368 will be adequate to cover residues that would result in meat, milk, poultry, and eggs as delineated in 40 CFR 180.6(a)(2).

There are no pending regulatory actions against the continued registration of metolachlor. The pesticide is considered useful for the purpose for which tolerances are being sought, and it is concluded that this regulation will protect the public health.

Any person adversely affected by this regulation may, on or before March 28, 1980, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M–3708, 401 M St., SW, Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Effective on February 27, 1980, Part 180, Subpart C, § 180.368 is amended by inserting tolerances for residues of metolachlor in or on corn forage and fodder at 1.0 ppm, peanuts at 0.1 ppm, peanut forage and hay at 3.0 ppm, peanut hulls at 1.0 ppm, sorghum forage and fodder at 2.0 ppm, sorghum grain at 0.3 ppm and soybean forage and fodder at 2.0 ppm, as set forth below.

Dated: February 21, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

(Sec. 408(e), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)))

§ 180.368 Metolachlor; tolerances for residues.

Tolerances are established for combined residues of the herbicide metolachlor [2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide] and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound in or on the following raw agricultural commodities:

Commodity	Parts per million
* * *	* * *
Corn, forage and fodder	1.0 ppm
* * *	* * *
Peanuts	0.1 ppm
Peanut, forage and hay	3.0 ppm
Peanut, hulls	1.0 ppm
* * *	* * *
Sorghum, forage and fodder	2.0 ppm
Sorghum grain	0.3 ppm
* * *	* * *
Soybean, forage and fodder	2.0 ppm
* * *	* * *

[FR Doc. 80–6219 Filed 2–25–80; 3:18 pm]

BILLING CODE 6560–01–M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

42 CFR Part 23

Assignment of National Health Service Corps Personnel; Requirements

AGENCY: Public Health Service, HEW.

ACTION: Final regulation.

SUMMARY: This regulation sets forth the requirements for the assignment of National Health Service Corps personnel to public or nonprofit private entities to provide health services in or to health manpower shortage areas.

EFFECTIVE DATE: February 27, 1980.

FOR FURTHER INFORMATION CONTACT: Fitzhugh S. M. Mullan, M.D., Associate Bureau Director, National Health Service Corps, Bureau of Community Health Services, Room 6–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301 443–4434.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 31, 1978 (43 FR 33265), the Assistant Secretary for Health, Department of Health, Education, and Welfare, proposed to add a new Subpart A, entitled "Assignment of National Health Service Corps Personnel," to 42 CFR Part 23. The regulation was proposed to implement section 333 *et seq.* of the Public Health Service Act as amended by Pub. L. 94–484. Section 333 authorizes the Secretary to assign members of the National Health Service Corps (NHSC) to public and nonprofit private entities to provide health services in or to a health manpower shortage area designated under section 332 of the Public Health Service Act (Act).

Interested persons were invited to submit comments on the proposed regulation not later than August 30, 1978, and several responses were received. The Secretary's responses to them and the revisions in the regulation are discussed below. For clarity, the comments and responses have been arranged according to the section numbers and titles as they appeared in the Notice of Proposed Rulemaking (NPRM).

§ 23.4 Application

Section 23.4(c) of the proposed regulation provides that each application for assignment must include evidence that a copy of the application was submitted for review to either: (1) The health systems agency (HSA) designated for the health systems area which includes all or part of the health manpower shortage area (shortage area) for which assigned National Health Service Corps personnel are sought; or (2) if no HSA has been designated, to the State health planning and development agency (SHPDA) designated for the State which includes all or part of the shortage area for which assigned NHSC personnel are sought.

One commenter recommended amendment of this proposed section to require that each application for assignment be submitted to the appropriate HSA for review and approval under section 1513(e) of the Public Health Service Act rather than for review and comment. In making this recommendation, the commenter stated that, in his view, an HSA is required by law to review and approve applications for the assignment of NHSC personnel.

Section 1513(e) of the Act provides that an HSA shall review and approve or disapprove the proposed uses of Federal funds appropriated under the Public Health Service Act, the Community Mental Health Centers Act, sections 409 and 410 of the Drug Abuse Office and Treatment Act, and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act if these proposed

uses are for the development, expansion, or support of health resources in the health service area. While the NHSC program is supported by funds appropriated under the Public Health Service Act, nonetheless the activities of the assignment program are not *by law* subject to the review and approval or disapproval requirements of section 1513(e) because section 333(b) of the Act, authorizing the Secretary to approve applications for assignment of NHSC personnel, was enacted *after* section 1513(e) and requires only that HSAs have the "opportunity" to review and comment. Consequently, HSAs are under no obligation to review these applications, and simply may review and comment on them. In light of section 333(b), no change has been made in response to this recommendation. However, the Secretary has determined that, consistent with their importance in local health planning, HSAs should be given the opportunity to review and approve or disapprove NHSC assignment applications, and has thus requested that HSAs review and approve or disapprove these applications. The Secretary has directed that the Department follow all of the procedures under section 1513(e) of the Act and its implementing regulation in instances when an HSA reviews and approves or disapproves an assignment application.

Another commenter recommended inclusion of a requirement that each assignment application be reviewed on a routine basis by the SHPDA and Statewide Health Coordinating Council designated for the State in which the proposed health manpower shortage area will be located. Under section 333(b) of the Act, the SHPDA must be given an opportunity to review and comment on the proposed assignment application only if no HSA has been designated for the health service area in which the proposed health manpower shortage area will be located. Based upon this limited statutory requirement and in light of the Secretary's belief that in this instance the HSA can adequately perform the necessary review, the regulation has not been changed to reflect this recommendation. It should be noted, however, that the SHPDA will be given an opportunity to comment upon an NHSC assignment application if an HSA disapproves such application and the Secretary is asked to approve the application notwithstanding the HSA disapproval.

One commenter recommended a requirement for simultaneous review of applications for assignment by the appropriate HSA and professional groups located in the health manpower shortage area. While the Secretary encourages simultaneous review of assignment applications, it is believed that this review should not be required by regulation because the statute requires the Secretary to consider the comments submitted from both the HSA and professional groups located in the health manpower shortage area before approving an application for assignment, but does not require simultaneous review.

Section 23.4 of the regulation has been amended to provide that the application for assignment is to include the applicant's request, if any, for a loan under section 335(c) of the Act to assist the applicant in establishing the NHSC practice. Section 335(c) provides that the Secretary may make one loan to an entity whose application for assignment has been approved to assist that entity in meeting the costs of: (1) Establishing medical, dental, or other health profession practices, including the development of medical practice management systems; (2) acquiring equipment for use in providing health services; (3) renovating buildings to establish health facilities; and (4) establishing appropriate continuing education programs.

This amendment sets forth procedures for applying for a loan under section 335(c) of the Act. Loans will be made pursuant to a loan agreement meeting the substantive requirements for the loan as set forth in the statute. The loan program is being implemented through the regulation at this time because operations to date have shown a need for the loan funds. This implementation is consistent with the proposal made in the May 20, 1977, Notice of Intent (42 FR 25992) and with the public comments received on the proposal.

Unlike the previous discussion concerning the effect of section 1513(e) of the Act on the assignment of NHSC personnel under section 333 of the Act, it should be noted that each HSA located in the health manpower shortage area for which NHSC personnel are sought is required to review and approve or disapprove an applicant's loan request under section 335(c) of the Act because this request is a proposed use of Federal funds within the meaning of section 1513(e).

§ 23.5 Evaluation of application.

Under this proposed section, the Secretary will consider the following in approving or disapproving an application for assignment: (1) The administrative and managerial capability of the applicant; (2) the soundness of the applicant's proposed financial plan for operating the NHSC site; (3) the degree to which the applicant adequately provides for meeting the requirements in § 23.8 of the proposed regulation; (4) the extent to which community resources will be utilized in operating the NHSC site; (5) the comments received under § 23.4(c) from either the HSA designated for the health systems area for which assigned personnel are sought or the SHPDA designated for the State which includes all or part of the area if there is no HSA; and (6) comments from professional societies serving the health manpower shortage area.

One commenter recommended that the regulation specify (1) the types of professional societies which should submit comments on assignment applications, (2) the issues to be addressed by these professional societies, and (3) the geographic area within which the professional societies must be located.

The types of professional societies from which the Secretary will consider comments concerning proposed assignments are set forth in section 333(c) of the Act. That section provides that the Secretary must take into consideration comments of medical, osteopathic, dental, or other health professional societies serving the shortage area, or, if there is no such professional society serving the area, the Secretary must consider the comments of physicians, dentists, or other health professionals serving that shortage area. Thus, the reference in the proposed regulation to the term "professional societies" includes those societies listed in section 333(c) of the Act. However, in order to clarify this matter, the regulation has been amended to state that the Secretary will consider comments received from *health* professional societies serving the area.

In addition, since NHSC personnel can by statute be assigned to any entity which is either located in a health manpower shortage area or has a demonstrated interest in such an area, it is clear that comments from health professional societies which are either located in the health manpower shortage area or which serve that area may be submitted even though these societies may be located in an adjacent city, State, or shortage area. Thus, the regulation has not been changed in response to the commenter's third recommendation.

Finally, the Secretary believes that, in the interest of encouraging the health professional societies to comment freely upon all aspects of the proposed assignment, the regulation should not

specify the issues which should be addressed by them.

§ 23.6 Assignment of NHSC personnel.

Section 333(c) of the Act requires that the Secretary take into consideration four factors in assigning NHSC personnel to entities with approved applications: (1) The need of the health manpower shortage area; (2) indication of the use of physician assistants, nurse practitioners, or expanded function dental auxiliaries; (3) willingness of the individuals within the health manpower shortage area to assist and cooperate with the NHSC; and (4) the comments of health professional societies serving the health manpower shortage area.

In implementing this statutory authority, the regulation provides that the Secretary will utilize a weighted-value system in which weights will be assigned to the four factors, with the greatest weight being assigned to the first factor (need) and decreasing weights being assigned to the other three factors in descending order. In addition, the Act requires the Secretary to seek to assign to an area personnel with characteristics which will increase the probability of their remaining to serve in the area upon completion of the assignment period.

With respect to this weighted-value system, one commenter stated that it appears to be unduly complicated. It is the Secretary's view, however, that this system is an effective and efficient method of implementing the provisions of section 333(c) of the Act. The National Health Service Corps will publish in the **Federal Register**, on an annual basis, the values assigned to each of the four criteria set forth under § 23.6(b) of the regulation.

Another commenter expressed the concern that the requirement in section 333(c)(2) of the Act, that the Secretary in approving or disapproving an application consider whether the application provides for the use of physician assistants, nurse practitioners, or expanded function dental auxiliaries, may be unnecessarily restrictive and may penalize an applicant located in a State which has not enacted a statute prescribing the use and functions of physician assistants, nurse practitioners, or expanded function dental auxiliaries. The purpose of the NHSC program is to provide physicians and other health professionals to those areas of the United States which are otherwise unable to attract health manpower. With respect to the provision of health service in those areas, and throughout the Nation, the Secretary believes that the use of physician assistants, expanded function dental auxiliaries, and nurse practitioners will, among other things, improve both the availability and quality of services. The requirement in section 333(c)(2) reflects the importance of these three health professions.

The Secretary is aware that some States may not authorize the use of physician assistants, nurse practitioners, or expanded function dental auxiliaries, and that these States may not receive as much consideration for assignment of NHSC personnel as States which authorize the use of the health auxiliaries. However, in light of the requirement in section 333(c)(2) and the Secretary's interest in encouraging States to broaden their use of health auxiliaries, the regulation has not been amended in response to the commenter's concern.

Another commenter recommended that the regulation require that expanded function dental auxiliaries be utilized within the limits established by the laws of the States to which they are assigned. The Secretary recognizes the concern of the commenter on this matter, and notes that a comprehensive policy is being developed to govern the relationship between NHSC health personnel and the States to which they are assigned.

A commenter recommended that with respect to the assignment of NHSC personnel, a preference be given to geographical areas over population groups. Section 332 of the Act defines a health manpower shortage area as a geographic area, population group, public or nonprofit private medical facility, or other public facility which the Secretary determines has a shortage of health manpower. The determination of whether there is a health manpower shortage in a given geographical area, population group, public or nonprofit private medical facility or other medical facility is made on the basis of the criteria set forth in 42 CFR Part 5 (43 FR 1586). Since there is nothing in section 332 of the Act or its implementing regulation which requires that a preference be given to one component of the definition of health manpower shortage area over another, the Secretary has not adopted this recommendation.

One commenter questioned the manner in which the NHSC program will cooperate with a State in cases where an assignee has incurred a service obligation under a State scholarship program prior to his or her membership in the NHSC. With respect to members of the NHSC who received scholarships under the NHSC Scholarship Program, the answer to this question has been addressed in § 62.3(b) of the regulation implementing that program (42 CFR Part 62; 42 FR 43713). That section provides that if an individual owes an obligation for professional practice to a State or other entity, the individual will be ineligible to apply for a NHSC scholarship unless he or she submits a written statement satisfactory to the Secretary that (1) there is no potential conflict in fulfilling the service obligation to the State entity and the NHSC Scholarship Program, and (2) the NHSC Scholarship Program's service obligation will be served before the service obligation for professional practice owed to the State or entity.

With respect to volunteer members of the NHSC who have incurred State obligations to practice, the Secretary intends to consult with the appropriate State officials prior to assigning NHSC personnel in an effort to coordinate the Federal and State interests of having their respective service obligations fulfilled. To the extent possible, those individuals will be assigned in the States to which they owe the scholarship obligations.

A commenter recommended that the regulation set forth criteria governing the evaluation of an application for reassignment of NHSC personnel. The criteria to be used in determining whether assigned NHSC personnel should be reassigned to an entity are set forth in section 333(a)(1)(D) of the Act, and § 23.4(d) of the proposed regulation refers to these statutory criteria.

§ 23.7 Agreement.

Section 23.7(b) of the proposed regulation provides that an assignment agreement entered into between the Secretary and the NHSC site may be terminated by either party on 30-days written notice or modified by mutual consent consistent with the requirements of section 334 of the Act. A recommendation was made that the regulation include a full explanation of the bases upon which the agreement may be terminated.

The Secretary believes that § 23.7(b) should remain flexible enough to encompass a variety of bases upon which an assignment may be terminated consistent with section 334 of the Act and, therefore the recommendation was not included in the final regulation.

§ 23.8 Operational requirements.

Section 23.8 of the proposed regulation provides that each NHSC site must: (1) Operate a health care delivery system within a planned or existing community structure to assure, among other things, the provision of high quality comprehensive health care; (2) establish a patient record system for maintaining the confidentiality of

patient records; (3) meet applicable fire and safety codes; (4) develop linkages with other health care facilities; (5) operate a quality assurance system; and (6) establish basic data, cost accounting, and management and information systems.

One commenter recommended that § 23.8 be expanded to require that each NHSC site provide preventive services and health education. This commenter also recommended that the quality assurance provisions of this section be expanded to require that patient records be maintained to indicate whether patients (1) have a regular source of physician services, (2) were referred from local emergency departments, and (3) no longer use other sources of primary care.

The Secretary has not incorporated this recommendation in the final regulation because of the belief that the regulation should remain flexible enough to allow a NHSC site to operate a health care delivery system which reflects the circumstances and factors which are unique to it and which meet the general requirements of § 23.8.

Another commenter recommended that health professionals not be assigned at a specific NHSC site, but that a mobile service be provided to several agencies for the purpose of serving adolescents. The regulation has not been changed in response to this recommendation because the Secretary believes that it is flexible enough to allow a nonprofit private or public entity whose application for assignment has been approved to establish where necessary, as determined by the Secretary, a mobile unit for the provision of health services to the health manpower shortage area.

§ 23.9 Charges for services.

Section 23.9(b) of the proposed regulation requires a NHSC site to provide health services at no charge or a reduced charge to individuals, within the health manpower shortage area, with annual incomes at or below the "CSA Income Poverty Guidelines." With respect to this provision, one commenter suggested that this requirement constitutes unfair competition with private practitioners in the health manpower shortage area. The Secretary believes that, for the reasons set forth below, the provision does not represent unfair competition with existing providers. The NHSC practitioners are assigned only to areas which have a shortage of such practitioners and are required to charge patients at competitive fee levels. Only those patients with incomes below the CSA Income Poverty Guidelines level receive services without charge. This should not be considered a competitive edge as one of the alternatives for many of these individuals is to forgo service. Those individuals with limited incomes (i.e., above the poverty level, but less than 200 percent of it) are charged at a rate commensurate with their ability to pay. Also, in accordance with § 23.9(c), charges will be made for services to those persons to the extent that payment will be made by a third party. While some of these persons with very limited resources may be drawn away from the potential patient pool for existing providers, this does not create an unfair competitive atmosphere because the area is a shortage area and utilization of the full capacity of private practitioners should continue. The provision is a reasonable and limited implementation of the statutory requirement that if a "person is determined under regulations of the Secretary to be unable to pay such charge, the Secretary shall provide for the furnishing of such services at a reduced rate or without charge." (Section 334(d) of the Act.)

The regulation has been changed to provide that those individuals whose incomes are at or below the CSA Income Poverty Guidelines level will receive health services at no charge or a nominal charge. This change was made in order to make the regulations consistent with similar provisions in other regulations implementing programs administered by the Bureau of Community Health Services, Health Services Administration.

§ 23.12 Supervision of assigned personnel.

Several comments were received concerning the provisions of the proposed regulation which state that: (1) Assigned NHSC personnel will at all times remain under the direct supervision and control of the Secretary; (2) observance of institutional rules and regulations by these assigned personnel are mere incidents of the performance of their Federal functions; and (3) the observance of these institutional rules and regulations does not alter their direct professional and administrative responsibility to the Secretary. One commenter expressed concern that each NHSC assignee should be responsible to the community as well as to the Secretary, and that this section of the regulation would allow an NHSC assignee to disobey the policies and procedures of the entity to which he or she is assigned. Another commenter recommended that an entity should have hiring and firing responsibility for NHSC personnel.

With respect to these comments, the Secretary notes that the entities to which NHSC personnel are assigned exercise a vital role in the assignment process. First, each entity is given an opportunity to interview NHSC personnel in order to determine whether the individual will be compatible with its organizational structure and principles, as well as with the community in which the health services will be provided. In addition, each assignment agreement between the Secretary and an entity must contain a statement signed by the assignee and entity outlining the prinicples of practice to be followed by the assignee. This statement usually describes, among other things, the types of services to be provided, the type of appointment system to be used, and the general manner in which care is to be provided. Finally, the regulation provides that, consistent with section 333 of the Act, the assignment agreement between the Secretary and the entity may be terminated by either party on 30-days notice or modified by mutual consent.

In the Secretary's view, the provisions of § 23.12 do not ignore the importance of the entity's role with respect to the assignment process, but rather are intended to clearly set forth the parameters of the employment relationship between the assigned NHSC personnel and the Federal Government. It is the Secretary's view that each NHSC assignee must, as a part of his or her Federal employment, observe the rules of the entity to which he or she is assigned. In this regard, the Department is developing guidelines to further explain the relationship between the assignee and the entity.

Miscellaneous comments.

Two commenters recommended that the regulation be amended to require that each NHSC assignee be licensed in the State in which he or she is assigned. In making this recommendation, one commenter stated that non-Federal health professionals resent the fact that the Federal employees are not required to obtain such a license.

The Department is currently developing a policy with respect to the licensure of NHSC employees which will be consistent with the provisions of section 333(h) of the Act. Section 333(h) provides "notwithstanding any other law, any member of the Corps licensed to practice medicine, osteopathy, or dentistry in any State shall, while serving in the Corps, be allowed to practice such profession in any State."

One commenter recommended that NHSC personnel be encouraged to operate a private practice as authorized

under section 753 of the Act in lieu of serving as an NHSC assignee. The commenter felt that a person who has developed a private practice over a number of years is more likely to remain in a health manpower shortage area after completing a period of obligation. The Department is developing the necessary guidelines to implement the private practice option, and will issue this guidance in the near future.

Finally, a number of technical and editorial changes have been made in order to improve the readability of the regulation. Accordingly, the existing Subpart A of 42 CFR Part 23 is revoked and a new Subpart A is adopted as set forth below.

Dated: February 7, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: February 18, 1980.

Patricia Roberts Harris,

Secretary.

PART 23—NATIONAL HEALTH SERVICE CORPS

Subpart A—Assignment of National Health Service Corps Personnel

Sec.

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23.13 What nondiscrimination requirements apply to National Health Service Corps sites?

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690 as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 333 *et seq.* of the Public Health Service Act, 90 Stat. 2272 (42 U.S.C. 254f).

Subpart A—Assignment of National Health Service Corps Personnel

§ 23.1 To what entities does this regulation apply?

This regulation applies to the assignment of National Health Service Corps personnel under section 333 *et seq.* of the Public Health Service Act (42 U.S.C. 254f) to provide health services in or to health manpower shortage areas as designated under section 332 of the Public Health Service Act (42 U.S.C. 254e).

§ 23.2 Definitions.

As used in this subpart:

"Act" means the Public Health Service Act, as amended.

"Assigned National Health Service Corps personnel" or "Corps personnel" means health personnel of the Regular and Reserve Corps of the Public Health Service Commissioned Corps and civilian personnel as designated by the Secretary including, but not limited to, physicians, dentists, nurses, and other health professions personnel who are assigned under section 333 of the Act and this regulation.

"Health manpower shortage area" means the geographic area, the population group, the public or nonprofit private medical facility or any other public facility which has been determined by the Secretary to have a shortage of health manpower under section 332 of the Act and its implementing regulation (42 CFR Part 5).

"National Health Service Corps site" means the entity to which personnel have been assigned under section 333 of the Act and this regulation to provide health services in or to health manpower shortage area.

"Nonprofit private entity" means as entity which may not lawfully hold or use any part of its net earnings to the benefit of any private shareholder or individual and which does not hold or use its net earnings for that purpose.

"Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of that Department to whom the authority involved has been delegated.

§ 23.3 What entities are eligible to apply for assignment?

Any public or nonprofit private entity which is located in a health manpower shortage area, or has a demonstrated interest in the shortage area, may apply for the assignment of National Health Service Corps personnel.

§ 23.4 How must an entity apply for assignment?

(a) An application for the assignment of National Health Service Corps personnel must be submitted to the Secretary by an eligibe applicant in the form and at the time prescribed by the Secretary.[1] The application must be signed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by law, the Act, this regulation, and any additional conditions of assignment imposed under these authorities.

(b) In addition to other pertinent information required by the Secretary, an application for the assignment of Corps personnel must include—

(1) A description of the applicant's overall organizational structure;

(2) A justification of the request for the assignment of personnel based upon the needs of the health manpower shortage area;

(3) A description of the applicant's financial plan for operating the National Health Service Corps site including a proposed budget, sources of non-Federal support obtained, and the proposed expenditures for obtaining adequate support staff, equipment and supplies;

(4) A list of the proposed fees and discounted fees to be charged for the provision of health services; and

(5) A request for an interest-free loan (not to exceed $50,000) sought under section 335(c) of the Act to assist the applicant in establishing the practice of the assigned National Health Service Corps personnel, including a detailed justification of the amount requested.

(c) An application for assignment must include evidence that the applicant has provided a copy of the completed application for review to (1) each health systems agency designated under section 1515 of the Act for the health service area which includes all or part of the health manpower shortage area for which as assignment of National Health Service Corps personnel is sought or (2) if no health systems agency has been designated for such a health service area, to each State health planning and development agency designated under section 1521 of the Act for each State which includes all or part of the health manpower shortage area for which an assignment of National Health Service Corps personnel is sought.

(d) If an application for assignment is filed by an applicant which had

[1] Applications and instructions may be obtained from Regional Offices of the Department of Health, Education, and Welfare at the addresses set forth at 45 CFR 5.31(b).

previously been assigned National Health Service Corps personnel under an agreement entered into under section 329 of the Act as in effect before October 1, 1977, or under section 334 of the Act, the applicant must provide the information the Secretary considers necessary to make the determinations required by section 333(a)(1)(D) of the Act.

§ 23.5 What are the criteria for deciding which applications for assignment will be approved?

(a) In approving or disapproving an application for assignment of Corps personnel, the Secretary will consider, among other pertinent factors:

(1) The applicant's ability and plans to meet the operational requirements in § 23.8.

(2) The administrative and managerial capability of the applicant.

(3) The soundness of the applicant's financial plan for operating the National Health Service Corps site.

(4) The extent to which community resources will be used in operating the National Health Service Corps site.

(5) Comments received from any designated health systems agency or any designated State health planning and development agency to which an application was submitted for review under § 23.4(c).

(6) Comments received from health professional societies serving the health manpower shortage area.

(b) Special consideration for the assignment of Corps personnel will be given to the entity which is located in a health manpower shortage area over an entity which is not located in a health manpower shortage area but has a demonstrated interest in it.

§ 23.6 What are the criteria for determining the entities to which National Health Service Corps personnel will be assigned?

(a) The Secretary may, upon approving an application for the assignment of personnel and after entering into an agreement with an applicant under § 23.7, assign National Health Service Corps personnel to provide health services in or to a health manpower shortage area.

(b) In assigning National Health Service Corps personnel to serve in a health manpower shortage area, the Secretary will seek to assign personnel who have those characteristics which will increase the probability of their remaining to serve in the health manpower shortage area upon completion of the period of assignment. In addition, the Secretary will apply a weighted-value system in which the first factor listed below is assigned the greatest weight and the second, third, and fourth factors are assigned lesser weights in descending order:

(1) The need of the health manpower shortage area as determined by criteria established under section 332(b) of the Act.

(2) The provision in the application for the use of physician assistants, nurse practitioners, or expanded function dental auxiliaries.

(3) The willingness of individuals, government agencies, or health entities within the health manpower shortage area to cooperate with the National Health Service Corps in providing effective health services.

(4) The comments of health professional societies serving the health manpower shortage area.

The values assigned to each of these criteria will be published in the **Federal Register** on an annual basis.

§ 23.7 What must an entity agree to do before the assignment is made?

(a) *Requirements.* To carry out the purposes of section 334 of the Act, each National Health Service Corps site must enter into an agreement with the Secretary under which the site agrees to: (1) Be responsible for charging for health services provided by assigned National Health Service Corps personnel; (2) take reasonable action for the collection of the charges for those health services; (3) reimburse the United States the sums required under section 334(a)(3) of the Act; and (4) prepare and submit an annual report. The agreement will set forth the period of assignment (not to exceed 4 years), the number and type of Corps personnel to be assigned to the site, and other requirements which the Secretary determines necessary to carry out the purposes of the Act.

(b) *Termination.* An agreement entered into under this section may be terminated by either party on 30-days written notice or modified by mutual consent consistent with section 333 of the Act.

§ 23.8 What operational requirements apply to an entity to which National Health Service Corps personnel are assigned?

Each National Health Service Corps site must:

(a) Operate a health care delivery system within a planned or existing community structure to assure (1) the provision of high quality comprehensive health care, (2) to the extent feasible, full professional health care coverage for the health manpower shortage area, (3) continuum of care, and (4) the availability and accessibility of secondary and tertiary health care (the two more sophisticated levels of health care beyond primary care);

(b) Establish and maintain a patient record system;

(c) Implement a system for maintaining the confidentiality of patient records;

(d) Meet the requirements of applicable fire and safety codes;

(e) Develop, to the extent feasible, linkages with other health care facilities for the provision of services which supplement or complement the services furnished by the assigned Corps personnel;

(f) Operate a quality assurance system which meets the requirements of 42 CFR 51c.303(c) for the establishment and operation of a quality assurance system in a community health center; and

(g) Establish basic data, cost accounting, and management information and reporting systems as prescribed by the Secretary.

§ 23.9 What must an entity to which National Health Service Corps personnel are assigned (i.e., a National Health Service Corps site) charge for the provision of health services by assigned personnel?

(a) Except as provided in paragraph (b) of this section, individuals receiving services from assigned National Health Service Corps personnel must be charged on a fee-for-service or other basis at a rate which is computed to permit recovery of the value of the services and is approved by the Secretary.

(b) In determining whether to approve fees to be charged for health services, the Secretary will consider: The costs to the National Health Service Corps of providing the health services; the costs to the health manpower shortage area for providing the services; and the charges for similar services by other practitioners or facilities in or nearby the health manpower shortage area. However, if assigned National Health Service Corps personnel are providing services within the framework of an established health services delivery system, the Secretary may approve the fees charged under that system without regard to the foregoing factors.

(c)(1) No charge or a nominal charge will be made for health services provided by assigned National Health Service Corps personnel to individuals within the health manpower shortage area with annual incomes at or below the "CSA Income Poverty Guidelines" (45 CFR 1060.2). However, no individual will be denied health services based upon inability to pay for the services. Any individual who has an annual income above the "CSA Income Poverty Guidelines," but whose income does not

exceed 200 percent of the CSA levels, will receive health services at a nominal charge. However, charges will be made for services to the extent that payment will be made by a third party which is authorized or under legal obligation to pay the charges.

(2) The provisions of this paragraph also apply with respect to services provided by an individual who is fulfilling an NHSC scholarship obligation under section 753 or who received a special grant under section 755.

§ 23.10 Under what circumstances may a National Health Service Corps site's reimbursement obligation to the Federal Government be waived?

(a) The Secretary may waive in whole or in part the reimbursement requirements of section 334 of the Act if he determines that:

(1) The National Health Service Corps site is financially unable to meet the reimbursement requirements or that compliance with those requirements will unreasonably limit the ability of the site to adequately support the provision of services by assigned Corps personnel. In making these determinations, the Secretary will consider—

(i) The costs necessary to adequately support the health services provided by the assigned National Health Service Corps personnel and the income and financial resources available to meet the costs;

(ii) The ability of the applicant to obtain credit from suppliers, lending institutions, private organizations and individuals;

(iii) The need of the health manpower shortage area for health services; and

(iv) The extent to which the National Health Service Corps site utilizes health professions personnel.

(2) A significant percentage of the individuals who are located in the health manpower shortage area and are receiving the health services of the assigned National Health Service Corps personnel are elderly, living in poverty, or have other characteristics which indicate an inability to pay. For purposes of this section, "elderly" means persons 65 years or older and the "CSA Income Poverty Guidelines" will be used as the standard for determining whether individuals are living in poverty. Other characteristics indicating inability to pay include, but are not to be limited to, the ratio of unemployment in the health manpower shortage area and the area's cost-of-living index.

(b) Requests for waiver must be made at the time and in the manner and contain the documentation prescribed by the Secretary.

§ 23.11 Under what circumstances may the Secretary sell equipment or other property of the United States used by the National Health Service Corps site?

(a) Upon expiration of the assignment of all Corps personnel to a health manpower shortage area, the Secretary may sell equipment and other property of the United States used by the assigned personnel. The equipment may be sold at the fair market value or less than the fair market value to any entity providing health services in or to a health manpower shortage area if the Secretary determines that an entity is unable to pay the fair market value. In determining whether an entity is financially unable to purchase equipment or property at fair market value, the Secretary will consider (1) the present financial resources of the entity available to purchase the equipment or property based upon its current liabilities, and (2) the entity's ability to obtain the funds necessary to purchase the equipment or property. However, the Secretary will not sell the equipment or property for less than fair market value to a profitmaking organization unless the organization gives reasonable assurance that it will use the equipment or property to provide health services in or to the health manpower shortage area.

(b) The Secretary will give priority to sales to an entity providing reasonable assurance that it will use the equipment or property for the purpose of retaining within the health manpower shortage area National Health Service Corps personnel who have completed their assignments.

§ 23.12 Who will supervise and control the assigned personnel?

Assigned National Health Service Corps personnel will at all times remain under the direct supervision and control of the Secretary. Observance of institutional rules and regulations by the assigned personnel is a mere incident of the performance of their Federal functions and does not alter their direct professional and administrative responsibility to the Secretary.

§ 23.13 What nondiscrimination requirements apply to National Health Service Corps sites?

National Health Service Corps sites are advised that in addition to complying with the terms and conditions of this regulation, the following laws and regulations are applicable—

(a) Title VI of the Civil Rights Act of 1964 (43 U.S.C. 2000d *et seq.*) and its implementing regulations, 45 CFR Part 80 (prohibiting discrimination in federally assisted programs on the grounds of race, color, or national origin); and

(b) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and its implementing regulations, 45 CFR Part 84 (prohibiting discrimination in federally assisted programs on the basis of handicap).

(c) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*) and its implementing regulations, 45 CFR Part 90 (prohibiting unreasonable discrimination based on age in programs and activities receiving Federal financial assistance).

[FR Doc. 80-6026 Filed 2-26-80; 8:45 am]
BILLING CODE 4110-84-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 536 and 552

[General Order 13, Amdt. 2 and General Order 43; Docket No. 79-65]

Filing of Tariffs by Common Carriers and Certification of Company Policies and Efforts to Combat Rebating in the Foreign Commerce of the United States

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: These final rules implement provisions of Pub. L. 96-25, 93 Stat. 71, which mandates that the Commission require the Chief Executive Officer of every vessel operating common carrier by water in the foreign commerce of the United States to file periodic certification attesting to company policies and efforts to combat rebating. Discretionary authority is given to the Commission to require similar certification from any shipper, consignor, consignee, forwarder, broker, other carrier or other person subject to the Shipping Act, 1916.

EFFECTIVE DATE: February 27, 1980.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, N.W., Room 11101, Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: The Commission previously gave notice (44 FR 39232-33) that it proposed to amend 46 CFR 536 and to add a new Part 552 to enable the Commission to implement the provisions of Pub. L. 96-25, 93 Stat. 71, which mandates that the Commission require the Chief Executive Officer of every vessel operating common carrier by water in the foreign commerce of the United States to file periodic certification attesting to company policies and efforts to combat rebating.

Further, Pub. L. 96–25 gives the Commission discretionary authority to require similar certification from a shipper, consignor, consignee, forwarder, broker, other carrier, or other person subject to the Shipping Act, 1916. Comments from the public were invited with respect to the proposed rules, and a total of 15 comments were filed on behalf of 29 representative commentators. Of the 15 separate comments, 8 comments represented the opinion of 21 conferences, 3 comments represented the views of U.S. flag carriers (Farrell Lines, Lykes Brothers Steamship Co. and Sea-Land Service), 2 comments were received from 2 shippers (City Products Corporation and NCR Corp.), 1 comment was submitted by the Council of European and Japanese National Shipowners' Associations (CENSA) and the Department of State forwarded an Aide Memoire from the Consultative Shipping Group (CSG).

Positions of the Commentators

Many of the commentators viewed portions of the proposed rules as exceeding the authority prescribed by Pub. L. 96–25. One commentator was in total agreement with the rules as proposed, while another totally rejected the rules in the proposed form. The majority of comments, however, suggested specific changes in the proposed rules.

The CENSA group urged that the rules as proposed be rejected because the certification would (1) exceed the statutory mandate under section 4(b) of Pub. L. 96–25, and (2) do violence to established principles of international law and comity.

Three commentators urged that the certification requirements be binding upon nonvessel operating common carriers (NVO's) as well as vessel operating common carriers (VOC's) for the reasons that, (1) NVO's would not present the Commission with an identification problem since they are required to file tariffs with the Commission and, (2) that VOC's are sometimes in competition with NVO's, and NVO's would gain an unfair advantage by not being bound to the certification requirements. One of these commentators also urged that in addition to NVO's, freight forwarders and major shippers, consignees and consignors be bound by the certification requirements.

One commentator suggested that the Chief Executive Officer be defined as the most senior officer within the company as designated by the Board of Directors. This commentator also suggested that, if the Chief Executive Officer is domiciled in a country other than the United States, the top ranking official domiciled in the United States also be required to make such certification in order to avoid any legal impediments in the country where the Chief Executive Officer resides.

One commentator wanted to make the certification subject to national law and/or the express permission of its government.

One commentator urged clarification of § 552.2(a) in order to show that this section applies to the company generally as well as officers, employees or agents of that company. The same commentator also stated that the broad promulgation required under paragraph (b) of this section is neither feasible nor reasonable for persons other than vessel operating common carriers, since such persons, particularly shippers, have many employees and agents who are in no way connected or associated with the company's ocean shipping practices and to require promulgation to such persons is an unnecessary and undue burden.

One commentator states that the language of paragraph 552.2(c) could be interpreted as requiring the filing company to establish an intra-corporate program to prevent malpractices, while the statute only appears to call for disclosure of the measures, if any, which have been taken by the filing company to prevent or correct the illegal rebating. Two commentators urge the deletion of "and any subsidiaries, affiliated companies, or agents" from this paragraph, stating that compliance is impossible in the current world of interrelated companies and submitted that the Commission does not have jurisdiction to so extend the clear terms of the statute.

Nine commentators favored deletion of the last sentence of paragraph (d) of § 552.2 which states that full cooperation shall include disclosure of all relevant documents and information. Commentators felt that this requirement exceeded the statutory authority under section 4(b) of Public Law 96–25 because regardless of any privilege, statutory requirement of other ground for exception from such disclosure, the Commission has introduced a substantive change in the certification requirement that was neither considered nor contemplated by Congress. Another commentator suggests that at the very least, if not deleted, such affirmation for disclosure of relevant documents or information be required "only as otherwise required by law." Another commentator stated that the Commission has the authority to implement the certification requirements only with respect to the frequency, form and specific content of the certification.

Six commentators, all representing conferences/rate agreements, strongly opposed the tariff notification requirement of § 552.3, as applicable to conferences and rate agreements. These commentators argue that this requirement would serve no useful function, that the Commission offered no justification for this requirement in the Notice of Proposed Rulemaking, and that conferences and rate agreements have neither statutory responsibility nor any means of knowing whether member lines have implemented such policies. Their concern is that the carrier would be subject to additional sanction for the violation of the tariff notation required by the proposals and that such a requirement does not in any way enhance enforcement of the anti-rebating laws.

Two commentators urged that § 552.4–(Change of Chief Executive Officer) be deleted, since it is the comittment of the carrier, and not the Chief Executive Officer, that is the goal of the certification process and there is no reason to believe that a company would change its policy with a change of its executive officer.

Regarding the reporting requirement of § 552.5, one commentator suggested that a period of every three years would fully satisfy the statutory purpose and would significantly reduce the administrative burden of the certifications to the carrier. Another commentator suggested that all certifications be required to be filed within a specified period of time in each calendar year, so as to avoid inadvertent default because the carrier failed to recall the date of its initial submission to the Commission.

Regarding paragraph (b) of the reporting requirement section, one commentator questioned whether annual certifications for persons other than carriers should be required unless the Commission has good cause.

All comments submitted with respect to the proposed rules were given due consideration. The following is a section-by-section analysis of the changes made as a result of the comments received.

Section 552.1 Scope

Two conference commentators and one carrier suggested that NVO's be bound by the proposed rules. One of these commentators also recommended that major shippers, consignees, consignors and all freight forwarders be bound by the rules proposed.

It was pointed out that since NVO's are already required to file tariffs with

the Commission, and freight forwarders are required to obtain licenses from the Commission, the identification problem would be manageable and not an administrative burden to the Commission. Further, commentators argue that VOC's are sometimes in competition with NVO's and to require NVO certification would tend to eliminate the opportunity for the NVO's to gain an unfair advantage through not being subject to the anti-rebating principles of the statute. In order to implement the certification requirement of Public Law 96–25 expeditiously, the final rule has not been changed to bind NVO's to the same certification requirement as vessel operators. However, the Commission will consider the issuance of a separate notice of proposed rulemaking proposing to amend this rule to bind NVO's and other entities to the annual certification requirement.

Freight forwarders, shippers, consignees and consignors do represent an enormous number of potential ocean carrier users for which a certification requirement cannot feasibly be administered by the Commission. The discretionary authority prescribed in the statute for such certifications on a case-by-case basis has, however, not been changed.

Section 552.2 Form of Certification

The first paragraph of this section has been changed to include a definition of "Chief Executive Officer". Paragraph (a)(1) has been clarified to show that rebates *by the company*, as well as by any officer, employee or agent, are prohibited.

Paragraph (b) of the proposed rules which is now paragraph (a)(2), has been changed to require that the company policy be promulgated to each company owner, officer, employee and agent who is directly or indirectly connected with commercial ocean shipping, import or export sales or purchasing.

Proposed paragraph (c) which is now paragraph (b), has been changed to conform more closely with the statutory language. The reference to subsidiaries, affiliated companies or agents has been deleted in order to ascertain the specific efforts made within the company or otherwise to prevent illegal rebating.

Proposed paragraph (d) which is now paragraph (c), has also been changed to conform more closely with the statutory language. The Commission deems it unnecessary to elaborate on the question of what constitutes full cooperation since this rule will not and cannot affect the obligation of carriers to produce documents and information in response to subpoenas or discovery in rebating investigations and the statutory sanctions for failure to produce such documents and information.

The change in § 552.2 have been incorporated in the certification form.

With regard to the one comment suggesting that the Commission also require certification from the top ranking official of a foreign company who is domiciled in the United States, the Commission has determined that such a requirement is not necessary at this time.

Section 552.3 Tariff Notification

The justification for this requirement evolves from the basic definition and purpose of a tariff, i.e. a publication containing the actual rates, charges, classifications, rules, regulations, and *practices* of a carrier or conference of carriers for transportation by water (46 CFR 536.2(m)). The term "practice" refers to usages, customs, or modes of operation which in anyway affect, determine or change the transportation rates, charges, or services provided by a carrer. The unlawful practice of rebating, or charging any rate lower than those in published tariffs, has been singled out by Congress to be "eliminated from the U.S. ocean commerce".

To require that a practice (or policy) against illegal rebating be published in a carrier's tariff is consistent with the purpose of the tariff filing requirements and the purpose of Public Law 96–25. The Commission believes that such publication will inform the shipping public of the carrier's prohibition against rebates.

Although the Commission agrees with several conference commentators that conference/rate agreements have neither the responsibility nor the means of knowing whether such policies of the member lines have been implemented, it believes that conference/rate agreements do have the duty to publish the anti-rebating practices or policies or their members.

Therefore, § 552.3 has been revised to provide that, when the carrier's tariff is a conference/rate agreement tariff, the carrier shall ensure that the conference publish the carrier's tariff provision in the conference or rate agreement tariff.

Section 552.4 Change of Chief Executive Officer

Two commentators urged that this section be deleted since it is the commitment of the carrier, and not its chief executive that is the objective of the certification process and that there is no reason to believe that a company policy in favor of adhering to United States laws would change because of a change of the Chief Executive Officer.

While the Commission agrees that company policy may not change with a new Chief Executive Officer, the statute mandates that the Commission shall have such certification from the Chief Executive Officer and the proposed paragraph assures that such certification will be kept up-to-date, regardless of company personnel changes.

Therefore, no change in this requirement has been made.

Section 552.5 Reporting Requirements

This section has been revised to require written certification from vessel operating common carriers on or before March 31 of each year. The provision referring to evey person other than a vessel operating common carrier required to submit such certification has been changed to delete the annual certification requirement.

The Commission has considered all filed comments and arguments reasonably related to this rulemaking proceeding.

Accordingly, pursuant to the provisions of section 4 of the Administrative Procedure Act (5 U.S.C. 553), sections 21 and 43 of the Shipping Act, 1916 (46 U.S.C. 820 and 841(a)), the Federal Maritime Commission hereby amends 46 CFR 536 and enacts 46 CFR 552 as follows. The reporting requirements contained in 46 CFR 552 sections 2, 3, 4 and 5(a) have been approved by the U.S. General Accounting Office under number B–180233 (R0663).

PART 536—FILING OF TARIFFS BY COMMON CARRIERS IN THE FOREIGN COMMERCE IN THE UNITED STATES

Section 536.5(c)(2) is amended to add the following language:

§ 536.5 Tariff contents.

* * * * *

(c) * * *

(2) * * * Every vessel operating common carrier shall publish a tariff provision to be effective upon filing which shall read substantially as follows:

(Name of Company) has a policy against the payment of any rebate, directly or indirectly, by the company or by any officer, employee, or agent, which payment would be unlawful under the United States Shipping Act, 1916. Such policy has been certified to the Federal Maritime Commission in accordance with the Shipping Act Amendments of 1979, Public Law 96–25, 93 Stat. 71, and the regulations of the Commission set forth in 46 CRR 552.

When the carrier's tariff is a conference/rate agreement tariff, the

carrier shall ensure that the conference or rate agreement publish the carrier's tariff provision in the conference/rate agreement tariff.

2. A new Part 552 is added to read as set forth below:

PART 552—CERTIFICATION OF COMPANY POLICIES AND EFFORTS TO COMBAT REBATING IN THE FOREIGN COMMERCE OF THE UNITED STATES

Sec.
552.1 Scope.
552.2 Form of certification.
552.3 Tariff notification.
552.4 Change of Chief Executive Officer.
552.5 Reporting requirements.
Appendix A

Authority: Secs. 21 and 43 of the Shipping Act of 1916, (46 U.S.C. 820 and 841(a))

§ 552.1 Scope.

The requirements set forth in this part are binding upon every vessel operating common carrier by water in the foreign commerce of the United States and, at the discretion of the Commission, will be applicable to any shipper, consignor, consignee, forwarder, broker, other carrier, or other person subject to the Shipping Act, 1916.

§ 552.2 Form of certification.

The Chief Executive Officer (defined as the most senior officer within the company designated by the board of directors, owners, stockholders or controlling body as responsible for the direction and management of the company) of every vessel operating common carrier by water in the foreign commerce of the United States and, when required, at the discretion of the Commission, the Chief Executive Officer of any shipper, consignor, consignee, forwarder, broker, other carrier or other person subject to the Shipping Act, 1916, shall file a written certification, under oath, as set forth in the format in Appendix A attesting to the following:

(a)(1) That it is the stated policy of the filing company that the payment, solicitation or receipt of any rebate, directly or indirectly, by the company or by any officer, employee, or agent which is unlawful under the provisions of the Shipping Act, 1916, is prohibited; and

(2) That such company policy was promulgated (together with the date of such promulgation) to each company owner, officer, employee, and agent who is, directly or indirectly, connected with commercial ocean shipping, import or export sales or purchasing; and

(b) The details of measures instituted within the filing company or otherwise to eliminate or prevent the payment of illegal rebates in the foreign commerce of the United States; and

(c) That the filing company will fully cooperate with the Commission in any investigation of illegal rebating or refunds in United States foreign trades and with the Commission's efforts to end such illegal practices.

§ 552.3 Tariff notification.

Within 90 days after the effective date of this Part, each vessel operating common carrier by water in the foreign commerce of the United States shall file a provision in each of its tariffs that shall read substantially as follows:

(Name of Company) has a policy against the payment of any rebate, directly or indirectly, by the company or by any officer, employee, or agent, which payment would be unlawful under the United States Shipping Act, 1916. Such policy has been certified to the Federal Maritime Commission in accordance with the Shipping Act Amendments of 1979, Public Law 96–25, 93 Stat. 71, and the regulations of the Commission set forth in 46 CFR 552.

When the carrier's tariff is a conference/rate agreement tariff, the carrier shall ensure that the conference or rate agreement publishes the carrier's tariff provision in the conference/ rate agreement tariff. This provision shall be effective upon filing.

§ 552.4 Change of chief executive officer.

Every vessel operating common carrier by water and any other person required by the Commission to file a certification in accordance with § 552.2 shall notify the Secretary, Federal Maritime Commission, of the identity of any new Chief Executive Officer within thirty (30) days of such appointment. Each new Chief Executive Officer shall file a certification as required by § 552.2 of this Part within thirty (30) days of appointment.

§ 552.5 Reporting requirements.

(a) Every vessel operating common carrier by water in the foreign commerce of the United States required by this Part to submit a written certification to the Secretary, Federal Maritime Commission, shall submit such certification on or before March 31 of each year.

(b) Every person other than a vessel operating common carrier by water in the foreign commerce of the United States who is required by the Commission to submit a written certification under § 552.2 of this Part shall submit the initial certification to the Secretary, Federal Maritime Commission, on the date designated by the Commission and, thereafter, as the Commission may direct.

Francis C. Hurney,
Secretary.

Appendix A.—(Name of Filing Company), Certification of Company Policies and Efforts To Combat Rebating in the Foreign Commerce of the United States

Pursuant to the requirements of section 21(b) of the Shipping Act, 1916, 46 U.S.C. 820, and Federal Maritime Commission regulations promulgated pursuant thereto, 46 CFR 552, I, ———, Chief Executive Officer of (*name of company*) state under oath that:

1. It is the policy of (*name of company*) that the payment, solicitation, or receipt of any rebate, directly or indirectly, by the company or any officer, employee, or agent of such company which is unlawful under the provisions of the Shipping Act, 1916, is prohibited.

2. On or before ——, 19—, such company policy was promulgated to each owner, officer, employee and agent of (*name of company*) who is directly or indirectly connected with commercial ocean shipping, import or export sales or purchasing.

3. [Set forth the details of measures instituted by the filing company or otherwise to eliminate or prevent the payment of illegal rebates in the foreign commerce of the United States].

4. *(Name of company)* affirms it will fully cooperate with the Federal Maritime Commission in any investigation of illegal rebating or refunds in United States foreign trades and with the Commission's efforts to end such illegal practices.

———
Signature

Subscribed and sworn before me this — day of ——— 19—.

———
Notary Public

By the Commission
Francis C. Hurney,
Secretary.

[FR Doc. 80-5933 Filed 2-26-80; 8:45 am]
BILLING CODE: 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 79-185; RM-3310]

Radio Broadcast Services; FM Broadcast Station in West Union, Ohio; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Action taken herein assigns a Class A FM channel to West Union, Ohio, as that community's first FM

assignment, in response to a petition filed by Harold Parshall. The proposed station can provide for a first local aural broadcast service to the community.

EFFECTIVE DATE: March 31, 1980.

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

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (West Union, Ohio), BC Docket No. 79–185, RM–3310.

Report and Order—Proceeding Terminated

Adopted: February 13, 1980.

Released: February 20, 1980.

1. On July 25, 1979, the Commission adopted a *Notice of Proposed Rule Making*, 44 FR 45653, proposing the assignment of FM Channel 276A to West Union, Ohio, as its first FM channel, in response to a petition filed by Harold Parshall ("petitioner"). In comments petitioner reaffirmed his intention to file for the channel, if assigned. Supporting comments were filed by Dennis C. Brown. No oppositions to the proposal have been received.

2. West Union (pop. 1,951),[1] seat of Adams County (pop. 18,951), is located approximately 161 kilometers (100 miles) south of Columbus, Ohio. There is no local aural broadcast service in West Union or Adams County.

3. Petitioner has submitted information with respect to West Union which is persuasive as to its need for a first FM assignment. Mr. Brown's comments serve to reinforce the case of the petitioner and to comment favorably on petitioner's qualifications. However, beyond petitioner's interest in applying for the channel, if assigned, his character is not an issue in this assignment proceeding.

4. We believe the public interest would be served by the assignment of FM Channel 276A to West Union, Ohio. An interest has been shown for its use, and such an assignment would provide the town of West Union and Adams County with an FM station which could render a first local aural broadcast service.

5. The Canadian Government has given its concurrence to the proposed assignment of Channel 276A to West Union, Ohio.

6. Accordingly, pursuant to authority contained 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 of the Commission's rules, it is ordered, that effective March 31, 1980, the FM Table of Assignments, § 73.202(b) of the rules, is amended with respect to the community listed below:

City	Channel No.
West Union, Ohio	276A

7. It is further ordered, that this proceeding is terminated.

8. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632–9660.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; (47 U.S.C. 154, 303, 307))

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80–6005 Filed 2–26–80; 8:45 am]

BILLING CODE 6712–01–M

[1] Population figures are taken from the 1970 U.S. Census.

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1043, 1045B, 1046

[Ex Parte No. MC–96 (Sub-2)]

Passenger Broker Entry Control

AGENCY: Interstate Commerce Commission.

ACTION: Stay of rulemaking.

SUMMARY: The United States Court of Appeals for the District of Columbia Circuit has stayed the simplified passenger broker licensing procedure adopted in this proceeding. The decision adopting these procedures appeared at 44 FR 70167, Dec. 6, 1979, as corrected at 44 FR 74838, Dec. 18, 1979.

The Commission will not accept passenger broker applications filed under these new rules. Persons wishing to file for passenger broker authority shall use the OP–OR–11 procedures until further notice.

The consumer notice requirement (49 CFR Part 1046) and the increased surety bond requirement (49 CFR Part 1043) adopted at 44 FR 70167 are also not in effect.

DATES: Effective February 27, 1980.

FOR FURTHER INFORMATION CONTACT: Peter Metrinko or Leonard Arnaiz (202) 275–7292 or (202) 275–7737.

SUPPLEMENTARY INFORMATION: In compliance with the court's stay decision, the Commission is returning all applications filed under the special rules. Persons may file a new application under the existing OP–OR–11 procedures. On or about March 1, 1980, the Commission will have a handbook available to assist persons wishing to apply under the OP–OR–11 procedures. These may be obtained by calling the Small Business Assistance Office at (202) 275–7597 after March 1, 1980.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–6172 Filed 2–26–80; 8:45 am]

BILLING CODE 7035–01–M

Proposed Rules

Federal Register
Vol. 45, No. 40
Wednesday, February 27, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Ch. IX

[Docket No. F&V AO-79-2]

Grapes Grown in Southeastern California; Recommended Decision and Opportunity To File Written Exceptions to Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This recommended decision proposes a marketing agreement and order regulating the handling of grapes grown in southeastern California. It provides interested persons with the opportunity to file written exceptions concerning the recommendations made in this decision. The proposed order would: establish a committee of 11 grower and handler members and one public member for local administration; authorized grade, size, quality, maturity, pack, container, and volume regulations; and allow the committee to engage in production and marketing research and development projects financed by handler assessments. The primary objective is to promote orderly marketing of grapes. Consumers would benefit from a consistent supply of good quality fruit and growers would benefit from an expanded market.

DATE: Written exceptions to this recommended decision may be filed by March 18, 1980.

ADDRESS: Written exceptions should be filed in duplicate with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, Phone: (202) 447-5975.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing-Issued November 23, 1979, and published in the **Federal Register** (44 FR 67990) on November 28, 1979.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to a proposed marketing agreement and order regulating the handling of grapes grown in southeastern California.

This notice of filing of this decision and of opportunity to file exceptions thereto is issued under the Agricultural Marketing Agreement of 1937, as amended (7 U.S.C. 601 et seq.), hereinafter referred to as the "act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The proposed marketing agreement and order, hereinafter referred to collectively as the "order," were formulated on the record of a public hearing held at Coachella, California, December 12-13, 1979. Notice of the hearing was published in the November 28, 1979, issue of the **Federal Register.** The notice set forth a proposed order submitted by a group of producers and handlers of grapes grown in the production area.

Material issues. The material issues presented on the record of the hearing are as follows:

(1) The existence of the right to exercise Federal jurisdiction in this instance;

(2) The need for the proposed regulatory program to effectuate the declared purposes of the act;

(3) The definition of the commodity and the determination of the production area to be affected by the order;

(4) The identity of the persons and marketing transactions to be regulated; and

(5) The specific terms and provisions of the order, including:

(a) Definition of terms used therein which are necessary and incidential to attain the declared objectives of the act;

(b) The establishment, maintenance, composition, procedures, powers, duties, and operation of a committee which shall be the local administrative agency for assisting the Secretary in the administration of the order;

(c) The authority to incur expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses;

(d) The authority to establish production and marketing research, and market development projects;

(e) The method for regulating the handling of grapes grown in the production area;

(f) The authority for inspection and certification of shipments of regulated grapes;

(g) The establishment of reporting and related recordkeeping requirements;

(h) The requirement of compliance with all provisions of the order and with the regulations issued pursuant thereto; and

(i) Additional terms and conditions as set forth in §§ .62 through .69 of the Notice of Hearing published in the **Federal Register** of November 28, 1979 (44 FR 67990), which are common to all marketing agreements and marketing orders, and certain other terms as set forth in §§ .70 through .72, which are common to marketing agreements only.

Findings and conclusions. The following findings and conclusions on the material issues are based on the record of the hearing. (1) Several varieties of vinifera species (European-type) grapes are grown in the desert area of California comprising the proposed "production area." The principal area of production is the Coachella Valley, which is the earliest grape-growing section in California. Practically all of the grapes grown in this area are shipped in fresh market channels.

Harvesting of the grapes grown in the production area generally begins in mid-May. Vineyards may be picked from 2 to 6 times, depending on the progress of maturity of the grapes. Harvesting generally concludes in the latter part of July. Nearly all of the grapes are harvested and packed at the vineyard. Some may be harvested and transported to a central location for packing. Subsequent to packing, the grapes are precooled and held for shipment, although in most instances the grapes are shipped immediately.

Grapes grown in the production area are marketed in the major market areas in the United States. Approximately 85 percent of the crop is shipped to markets

outside of the State of California with the balance utilized within the State. A small volume is exported.

The desert grape industry has been regulated under a State marketing order since 1966. The proposed order contains essentially the same inspection, grading, and packing regulations as those under the State program. Such regulations are specifically aimed at maintaining high quality of grapes in fresh shipments. However, State order provisions are not directly applicable to grapes shipped in interstate or foreign commerce.

Grape shipments from the production area are in primary competition with grape shipments from Arizona and imported grapes from Chile and Mexico. Grape shipments from Arizona represent about 20 percent of the U.S. market supply during May through July—the period when grapes from the production area are being marketed. Grapes imported from Mexico represented 26 percent of the U.S. market supply during May-July, 1979, compared to 13 percent in 1975. Projections indicate that Mexico could increase its share of the U.S. grape market substantially in the near future due to expansion in grape acreage. Although the majority of the grapes from Chile are imported prior to the marketing season for Coachella Valley grapes, imports overlap into the Coachella season and can contribute to setting the tone of the market. Testimony indicated that fruit quality of imported grapes varies from very good to very poor.

The record indicates that the movement of grapes in the channels of commerce is so intermingled as to make it impracticable to differentiate between those shipped only to destinations within the production area and those shipped in interstate and foreign commerce. Any handling of grapes for the fresh market exerts an influence on all other handling of such grapes. Sellers of grapes, as with any other commodity, seek to conduct their business so as to secure the best return for the grapes they have for sale. The seller continually surveys the available markets in order to take advantage of the best possible opportunity to market grapes. Markets within the State of California provide opportunities to dispose of grapes the same as do markets in other states, or for export, and the sale of a quantity of grapes in a market within California exerts an influence on sales of such grapes in a market in any other state. If shipments of grapes to markets outside California were regulated while those within the State were unregulated, growers and handlers would likely attempt to find fresh markets within the State for all the lower quality grapes which could not be shipped under regulation. This would depress the price of grapes in California markets to a level below that prevailing in markets outside the State. The existence of a lower price level for grapes marketed within California would tend to depress the price for such grapes sold in interstate markets. Buyers generally have ready access to market information and knowledge of prices in one market is used in bargaining for the same commodity to be shipped into other markets, including markets outside California. Thus, it is concluded that the shipment and sale of grapes, whether to a market within the State of California or outside thereof, affect the price of all such grapes grown in the production area. Therefore, it is found that the handling of grapes grown in the production area is either in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce. Hence, except as hereinafter otherwise provided, all handling of grapes grown in the production area should be subject to the authority of the act and the order.

(2) Shipments of California desert grapes totaled 3.63 million lugs (22 pounds each) in 1978. This compares to 3.21 million lugs in 1977 and the five year (1973–1977) average of 3.28 million lugs. Since 1973 bearing acreage of California desert grapes has remained fairly stable. Bearing acreage was reported at 7,912 acres in 1978, slightly less than the 7,293 acres in 1973. A record 4.0 million lugs were shipped in 1979. The increase in the level of fresh shipments in recent years is primarily attributed to improved production practices, and increased per acre yields. There are about 1,000 non-bearing acres of desert grapes which are expected to be productive within the next three years. Hence, production of desert grapes is expected to increase significantly in the near future. The three major varieties of desert grapes are Perlette, Thompson Seedless, and Cardinal. These three varieties accounted for approximately 92 percent of total shipments in 1978.

The production area accounts for approximately 10 percent of total California fresh grape shipments. However, during the period May to mid-July, fresh shipments from the area constitute about 60 percent of the U.S. supply of fresh grapes.

Fruit development in the production area is very rapid, i.e., the period of time required from bloom to maturity of the fruit is relatively short. For the last three years, initial shipments of grapes from the production area began in late May. During each of these years about 75 percent of the grapes had been shipped by July 1. Typically, prices for grapes are relatively high at the beginning of the season but decline rapidly as the season progresses.

A crop of grapes is produced three to five years after the vines are planted. During these years the vines are trained on a trellis and pruned to promote vine vigor and facilitate harvesting. The record indicates that vineyard establishment and the production and marketing of grapes involves a substantial investment. In addition, production requires sizable annual outlays for pruning, thinning, disease and pest control, and soil and water management. Hence, growers and handlers have a substantial financial interest in the establishment and maintenance of stable markets.

In order to promote the orderly marketing of grapes and to achieve the wide distribution needed to dispose of the crop at reasonable returns to growers, it is necessary to assure buyers of a consistent supply of uniformly graded and packed good quality grapes. The establishment of regulations such as are contemplated under the order would provide a method whereby such orderly marketing could be promoted, and this would tend to effectuate the declared policy of the act.

It is particularly important in view of the prospective increase in production which will have to be absorbed by the market that demand not be adversely affected by the marketing of poor quality grapes. Shipment of such grapes tends to depress prices, demoralize the market, and reduce grower returns. The use of authority to establish quality requirements could be used to assure consumer that the grapes offered in the marketplace are of satisfactory quality. In the absence of such regulation, grapes of low quality—lacking in flavor, small in size, and off-color—could be marketed. Marketing of such grapes would tend to destroy the reputation of the fruit with consumers and with wholesalers, retailers, and others at all levels in the marketing channel.

Regulation of the size, capacity, dimensions, materials, and pack of containers used in the marketing of grapes could promote the development and standardization of improved shipping containers. The record indicates that authority to regulate markings on containers could be used to assure that containers are properly marked as to weight of contents and the name of the variety. This would be particularly important in the event

different regulations are applied to different varieties of grapes as contemplated under the order.

At times during the season the major markets for grapes are closed and sales are slow. Continued packing of fruit during these periods results in the buildup of inventories at distribution points and an accumulation of excessive quantities of fruit in the markets. If a market is glutted, the quality of fruit in distribution channels deteriorates and becomes unattractive to consumers, which adversely affects demand. Thus, there is a clear need for a means to prevent the accumulation of excessive supplies of grapes in the market. Authority to prohibit packing of grapes, as defined in the order, during specified periods could promote orderly marketing in the public interest.

(3) The term "grapes" should be defined in the order to identify the commodity to be regulated thereunder. Such term, as used in the order, refers to all varieties of grapes classified botanically as Vitis vinifera. The definition of grapes should include varieties that may be developed and produced in the production area. Grapes are readily distinguishable from other fruits, and the term has a specific meaning to all producers and handlers of the commodity in the production area.

A definition of the term "production area" should be incorporated in the order to designate the specific area in which the grapes to be regulated are grown. Such term should be defined to mean that portion of the State of California comprising Imperial County and designated portions of Riverside and San Diego Counties. The grapes produced within this area are similar in character and move freely within such area and to markets outside thereof and it would be impracticable to limit coverage to a lesser area. Moreover, while there are areas within this production area which are not planted to grapes, many nonplanted areas are suitable for vineyards, and if such were excluded and later planted to grapes, this production would be indistinguishable from the grapes which are subject to the order. This would result in compliance problems and impede the effectiveness of the program. Hence, it is concluded that the production area, as hereinafter defined, is the smallest regional production area that is practicable consistent with carrying out the declared policy of the act.

(4) The term "handler" should be defined in the order to identify the persons who are subject to regulations under the order. Since it is the handling of grapes that is regulated, the term "handler" should apply to all persons who place grapes in the current of commerce by performing any of the activities within the scope of the term "handle," as hereinafter described. In other words, any person who is responsible for the sale, consignment, or transportation of grapes, or who in any other way places grapes in the current of commerce, should be a handler under the order and be required to carry out such activities in accordance with the order provisions.

The term "handle" should be defined to identify those activities that are necessary to regulate in order to effectuate the declared policy of the act. Such activities include all phases of selling and transporting which place grapes in the channel of commerce within the production area or from the production area to any point outside thereof. The performance of any one or more of these activities, such as selling, consigning, delivering, or transporting grapes, by any person, including a grower, either directly or through others, should constitute handling. In order to effectuate the declared policy of the act, each such person should be required, except as hereinafter indicated, to limit such handling of grapes to fruit which conforms to the applicable requirements under the order.

Transportation by a common or contract carrier of grapes owned by another person should not be considered as making such a carrier a "handler" as in such instances, the carrier is performing a service for hire. Of course, if the carrier is the owner of the grapes being transported, such carrier would be a handler the same as any other person who may be engaged primarily in another business—such as a producer or retailer—but at times is also a handler.

Grapes are sometimes sold, after packing, at the vineyard where grown, or to persons who transport the grapes or cause transportation thereof from such points to markets or storage facilities within and without the production area. Selling or transporting of grapes and the subsequent movement to market or storage are each handling transactions. Any person who engages in any such transaction, whether grower, packinghouse operator, or others, would therefore be a handler under the order by virtue of such transaction. Each such person handling grapes should have the responsibility of assuring that the grapes meet all applicable regulations in effect at the time of handling. Handling should not include harvesting of fruit or the sale of grapes on the vine as it is not necessary to regulate these activities to achieve the purposes of the order. However, persons who buy grapes on the vine, and pick, pack, and ship the grapes to markets should be responsible for assuring that the grapes meet the requirements of regulations under the order before the grapes are placed in fresh market channels.

As indicated, the order contemplates regulations limiting the packing of grapes or the transportation of grapes to a packinghouse for preparation for market during specified periods. It is usual for grapes, after harvesting, to be cleaned and packed in the vineyard and transported to a packinghouse for inspection and otherwise prepared for market. Some grapes may be transported or delivered to a handler's packinghouse for packing and inspection. These preparations by the grower, including packing of grapes in the field and the delivery of grapes to a handler's packinghouse within the production area for preparation for market should be excluded from the definition of "handle" except during specified "packing holidays" during which these activities would be limited. In this connection, the term "pack" should be defined to mean the placement of grapes into containers for shipment to market as fresh grapes. The term "pack" should also be defined, for purposes of container regulations, to mean the specific arrangement of grapes within a container by size of grapes, weight, grade, or any combination thereof, for shipment as fresh grapes.

(5)(a) Certain terms applying to specific individuals, agencies, legislation, concepts, or things are used throughout the order. These terms should be defined for the purpose of designating specifically their applicability and establishing appropriate limitations on their respective meaning whenever they are used.

The definition of "Secretary" should include not only the Secretary of Agriculture of the United States, the official charged by law with the responsibility for programs of this nature, but also any other officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to act for the Secretary. This is necessary to recognize the fact that it is physically impossible for the Secretary to perform personally all functions and duties imposed by law, and some such functions and duties must be delegated to others.

The definition of "act" provides the correct legal citation for the Agricultural Marketing Agreement Act of 1937, as amended, the statute pursuant to which

the proposed regulatory program is to be operative, and avoids the need for referring to the citation each time it is used.

The definition of "person" should follow the definition of that term as set forth in the act, and will insure that it will have the same meaning as it has in the act.

The term "varieties" should be defined in the order, as hereinafter set forth, since it is proposed, for reasons hereinafter discussed, to provide authority for different regulations for different varieties of grapes. Such regulations would recognize the different characteristics of the varieties. In addition to the 3 major varieties (Perlette, Thompson Seedless, and Cardinal) there are about 11 other varieties of grapes grown commercially in the production area. Also, additional varieties may become prominent in the future. Each of the varieties has characteristics which serve to distinguish it. From a market standpoint, however, they are competitive one with the other. It is necessary, therefore, that all varieties of grapes, including those that may be developed in the future, be subject to regulations under the order.

The term "producer" should be synonymous with "grower" and should be defined to include any person who produces grapes for fresh market and who has a proprietary interest therein. A definition of the term "producer" is necessary for such determinations as eligibility to vote for, and to serve as, a member or alternate member of the California Desert Grape Administrative Committee, the agency which will administer the program locally, and voting in referenda. The term "producer" should, therefore, be defined as hereinafter set forth.

The term "fiscal period" should be defined to set forth the period with respect to which financial records of the California Desert Grape Administrative Committee are to be maintained. It is desirable to establish a 12-month period beginning December 1 of one year and ending the last day of November of the subsequent year as a fiscal period. Such a period would fix the end of one fiscal period and beginning of the next at a time of relative inactivity in the marketing of grapes. Also, the beginning of the fiscal period would coincide with the beginning of the term of office of members and alternates, as hereinafter discussed, and this would allow sufficient time prior to the time shipments begin for the committee to organize and develop information necessary to its functioning during the ensuing year. However, it may develop that for convenience of management or for other good and sufficient reasons not now apparent, that it would be desirable to establish a fiscal period other than one ending the last day of November. Hence, authority should be included in the order to provide for such establishment subject to approval of the Secretary pursuant to recommendation of the committee. Therefore, it is concluded that such term should be defined as hereinafter set forth to provide the flexibility.

"Container" should be defined in the order as follows: "Container means any lug, box, bag, crate, carton, or any other receptacle used in packing grapes for shipment as fresh grapes, and includes the dimensions, capacity, weight, marketing, and any pads, liners, lids, and any or all appurtenances thereto or parts thereof. The term applies, in the case of grapes packed in consumer packages, to the master receptacle and to any and all packages therein." A definition of this term is needed to serve as a basis for differentiation among the various shipping receptacles in which grapes may be shipped to the fresh market. The evidence of record indicates that the committee will likely adopt those container regulations currently effective under California law. However, the order should provide for establishment of different regulations applicable to containers or packages within a container as recommended by the committee and approved by the Secretary if it is found that any such regulations would tend to effectuate the declared policy of the act.

The definition of "committee" should be incorporated in the order to identify the administrative agency established under the provisions of the program. Such committee is authorized by the act and the definition thereof, as hereinafter set forth, is merely to avoid the necessity of repeating its full name each time it is referred to.

(b) It is desirable to establish an agency to administer the order under and pursuant to the act, as an aid to the Secretary in carrying out the purposes of the order and the declared policy of the act. The term "California Desert Grape Administrative Committee" is a proper identification of the agency and reflects the character thereof. It should be composed of 12 members, of whom 5 should represent producers, 5 should represent handlers, one should represent either producers or handlers, and one should represent the public. Alternate members should be provided to act in the place and stead of the members. Such a committee would be large enough to provide representation to all segments of the industry. At the same time, it is of such size that it can operate effectively and efficiently. The foregoing division of members between producers and handlers would provide suitable producer representation and handler experience and information. Provision for producer members is made because the program is designed to benefit producers. Provision for handler members tends to give balance to the committee by providing the handler experience and marketing information necessary to the development of economically sound regulation of grape shipments. The public member would be in a position to express the consumers' viewpoint in the contemplation of actions by the committee.

Evidence indicates that changes in the industry may make it desirable to reallocate the committee membership among grower and handler members at some future time and the order should provide for this. It is therefore concluded that authority should be included whereby the Secretary could, upon recommendation of the committee, provide for such other allocation of producer or handler membership, or both, as may be necessary to assure equitable representation. A modification of the proposal was offered to provide that the Secretary may increase or decrease the number of producer or handler members on the committee upon recommendation of the committee. However, it was testified that any recommendation for a change in the number of members should be preceded by a public hearing on the need for such a change. There are no circumstances indicating such need at the present time. Therefore, it is concluded that no provision for changing the number of committee members should be included in the proposed order.

The producer and handler members and their alternates should be selected from the production area at large, but no more than two members and two alternate members should be affiliated with the same handler entity. This is appropriate since it would be most beneficial to the committee that the members represent a wide range of producer and handler interests.

Each producer member of the committee, and alternate, should be a producer, or an officer or employee of a producer. There are producers in the production area which are companies, either incorporated or otherwise, and a company, as such, would be precluded from having representation on the committee unless officers and employees of producers were permitted to vote for and serve as producer members of the committee.

Each handler member of the committee and alternate should be a handler, or an officer or employee of a handler. There are handlers in the production area which are companies, either incorporated or otherwise, and a company, as such, would be precluded from having representation on the committee unless officers and employees of handlers were permitted to vote for and serve as handler members of the committee.

In addition to the 11 producer and handler members of the committee, there should be an individual to serve as public member of the committee, and an individual who should serve as public member alternate. In recent years, there has been manifested a greater interest in regulatory and other programs which are carried out under auspices of government. While committee meetings are open to the public, a public member on the committee could perform a valuable service to the committee and the general public by providing input into deliberations which reflect the views of consumers and the public generally whose principal interests lie outside the grape industry. Such member also would be valuable as an intermediary in explaining to consumers and others of similar orientation what the program is about and the rationale of actions taken. The nominee for the public member position should be a person who does not represent an agricultural interest and who is not financially interested in or associated with the production, processing, financing, or marketing of grapes. The committee should specify, in administrative rules issued with approval of the Secretary, the additional qualifications which a person should possess to be eligible for the public member and alternate member positions. Nominations for public member and alternate member on the committee should be submitted to the Secretary by the committee consistent with a nomination procedure established by the committee and approved by the Secretary.

The term of office of committee members and alternates under the proposed program should be for one fiscal period. A term of office starting December 1 will allow the committee to organize and start operating in advance of the marketing season for grapes.

Since it is possible that the new committee members may not be appointed immediately upon the expiration of the term of existing members, or that some may fail to qualify immediately, provision should be made for members to continue to serve until their successors are selected and have qualified. This is necessary to insure continuity of committee operations.

The order should provide for submission of the names of nominees for initial members and alternate members of the California Desert Grape Administrative Committee by the group responsible for initiating the request for the order. The record indicates that this group intends to secure such names by conducting nomination meetings among all known grape producers and handlers. Any nominations resulting from such meetings should be filed with the Secretary no later than the effective date of the order, should the order be promulgated. In the event no such nominations are made, the Secretary should be authorized to select the initial committee members from among qualified persons. In the event that this order is made effective at a time other than at the beginning of a fiscal period, the initial members and alternates should be selected to serve for the balance of the term of office.

Nomination meetings for the purpose of designating successor nominees for members and alternates should, insofar as possible, be scheduled by the committee at such times and places as will result in maximum producer and handler participation. The committee should be authorized to adopt such procedural rules as may be deemed necessary to assure that such meetings will be conducted in an orderly and uniform manner. Meetings for the purpose of designating nominees for members of the committee and their alternates should be held sufficiently in advance of the expiration of the term of office to allow selection of a successor prior to the start of the new term. Consequently, a meeting of producers and a meeting of handlers should be held not later than November 15 of each year. One member and alternate should be nominated by both producers and handlers and may be of either group. To insure equal opportunity for all producers and handlers to participate, it would be appropriate to hold one meeting for producer nominations and one meeting for handler nominations, and one meeting of producers and handlers for nomination of the person that may be of either group—producer or handler.

The order should provide that only producers, including duly authorized officers or employees of producers, who are present at the nomination meeting may participate in the nomination and selection producer members and their alternates, since the producers should be the ones to indicate the persons they desire to represent them on the committee. Also, each producer should be allowed to cast one vote for each nominee to be elected. The order also should provide that if a person is both a producer and handler of grapes, such person may participate in both producer and handler nominations. If a person were elected as a nominee in one category, such person would be precluded from being nominated in the other category.

Only eligible handlers, including duly authorized employees or officers of such handlers, who are present at the nomination meeting should be permitted to participate in the nomination and election of handler members and their alternates since the handlers should be the ones to indicate the persons they desire to represent them on the committee. Also, each handler should be allowed to cast only one vote for each nominee to be elected.

In the nomination of the member and alternate that may be either a producer or a handler, each producer and handler, including duly authorized officers or employees of producers and handlers, who is present at such nomination meeting, is entitled to one vote for each nominee to be selected.

In order that there will be an administrative committee in existence at all times to administer the order, and the Secretary not be limited as to nominees from which to select the committee membership, the Secretary should be authorized to select committee members and alternate members without regard to nominations if, for some reason, nominations are not submitted in conformance with the procedure prescribed in the order, or the selection of someone other than a nominee so submitted is deemed warranted by the Secretary. Such selection should, of course, be on the basis of the representation provided in the order so that the composition of the committee will at all times continue as prescribed in the order.

Each person selected by the Secretary as committee member or alternate should qualify by filing with the Secretary a written acceptance of a willingness and intention to serve in such capacity.

Provision should be set forth in the order for the filling of any vacancies on the committee, including selection by the Secretary without regard to nominations if such nominations are not made as prescribed, in order to provide for maintaining a full membership on the committee.

The order should provide that an alternate member shall be nominated

and selected for each member of the committee in order to insure that there is adequate representation at meetings.

Each alternate who is selected should have the same qualifications for membership as the member. In the event any member is absent, dies, resigns, is removed from office, or is disqualified, the alternate member should serve in such member's place so that the representation on the committee will remain unchanged. The alternate should serve until a successor to such member has been appointed and has qualified. Also, since an alternate may be more familiar with a particular issue before the committee than the member, the order should provide that the member may designate the member's alternate to serve as member at such meeting or portion thereof notwithstanding the presence of the member. The order should provide that in the event both a member and that member's alternate are unable to attend a meeting, the member or committee members present may designate any other alternate to serve in such member's place at the meeting, if such action is necessary to constitute a quorum. Such provision should maintain the limitation on handler affiliation, heretofore discussed, so that not more than two members and not more than two alternate members, or alternates acting for members, who are affiliated with the same handler entity shall serve as members at the same meeting.

The committee should be given those specific powers which are set forth in § 8c(7)(C) of the act. Such powers are (a) to administer the provisions of this part in accordance with its terms; (b) to receive, investigate, and report to the Secretary complaints of violations of the provisions of this part; (c) to make and adopt rules and regulations to effectuate the terms and provisions of this part; and (d) to recommend to the Secretary amendments to this part. Such powers are necessary to enable an administrative agency of this character to function.

The committee's duties, as set forth in the order, are necessary for the discharge of its responsibilities. These duties are generally similar to those specified for administrative agencies under other programs of this character. It is intended that any activities undertaken by the members of the committee will be confined to those which reasonably are necessary for the committee to carry out its responsibilities as prescribed in the program. It should be recognized that these specified duties are not necessarily all-inclusive, and that it may develop that there are other duties the committee may need to perform.

At least eight members of the committee should be present at any meeting in order for the committee to make decisions. Any committee action should require at least eight concurring votes. It is very desirable that a high percentage of the committee membership present agree to any action so as to obtain the necessary support of the industry.

The committee should be authorized to vote by telephone, telegraph, or other means of communication when a matter to be considered is so routine that it would be unreasonable to call an assembled meeting or when rapid action is necessary because of an emergency. Any votes cast by telephone should be confirmed promptly in writing to provide a written record of the votes so cast. In the case of an assembled meeting, however, all votes should be cast in person.

The order should provide that members of the committee, and alternates when acting as members, may be reimbursed for out-of-pocket reasonable expenses incurred when performing committee business, since it would be unfair to require them to bear personally such expenses incurred in the interest of all grape producers and handlers in the production area.

In order for producer or handler alternates adequately to serve effectively at any committee meeting in place of an absent member, it may be desirable that they should have attended previous meetings along with the member, so as to have a good understanding of background discussion leading up to an action that may be taken at the meeting. Likewise, an alternate may, in future years, be selected as a member on the committee, and to this extent, attendance at meetings by alternate members could be helpful. Although only committee members, and alternates acting as members, have authority to vote on actions taken by the committee, it is often desirable for the committee to obtain as wide a representation as practicable of producer and handler views and attitudes in considering a proposed regulation or other matter. Therefore, the order should provide that the committee, at its discretion, may request the attendance of alternate members at any or all meetings, notwithstanding the expected or actual presence of the respective member, when a situation appears to so warrant. The same reimbursement of expenses that is available to members should be made available to alternate members when they are requested and attend such meetings as alternates.

Provision should be made whereby the committee should prepare an annual report as soon as practical after the end of the fiscal period. Such report would provide committee members, the industry, and the Secretary with a record of the annual operations of the program and would provide a means for evaluation of the program and the need for any changes.

(c) The committee should be authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each fiscal period for its maintenance and functioning and for such other purposes as the Secretary may, pursuant to the provisions of the marketing agreement and order, determine to be appropriate.

The funds to cover the expenses of the committee should be obtained through the levying of assessments on handlers. The act specifically authorizes the Secretary to approve the incurring of such expenses by any authority or agency established under an order, and requires that each marketing program of this nature contain provisions requiring handlers to pay their pro rata shares of expenses. The proposed California Desert Grape Administrative Committee would be the agency established to administer the order.

The committee should be required to prepare a budget at the beginning of each fiscal period showing estimates of the income and expenditures necessary for the administration of the order during such period. Each such budget should be submitted to the Secretary with an analysis of its components. Such budget and report should also recommend to the Secretary the rate of assessment believed necessary to secure the income required for that period. The committee, because of its knowledge of the prospective crop, will be in a good position to ascertain the necessary assessment rate and make recommendations in this regard.

The rate of assessment should be established by the Secretary on the basis of the committee's recommendation, or other available information, so as to assure the imposition of such assessments as are consistent with the act. In order to assure the continuance of the committee, the payment of assessments should be required even if particular provisions of the marketing agreement and order are suspended or become inoperative.

The order should require each handler to pay to the committee, upon demand, his or her pro rata share of such expenses as the Secretary finds are

reasonable and likely to be incurred by the committee during each fiscal period. Each handler's share of such expenses should be equal to the ratio between the total quantity of grapes handled by such handler as the first handler thereof during the applicable fiscal period and the total quantity of grapes so handled by all handlers during the same fiscal period. In this way, payments by handlers of assessments would be proportionate to the respective quantities of grapes handled by each handler and assessments would be levied on the same grapes only once.

Should it develop that assessment income during a fiscal period would not provide sufficient income to meet expenses, the funds to cover such expenses should be obtained by means of increasing the rate of assessment. Since the act requires that the administrative expenses shall be paid by handlers, this is the only source of income to meet such expenses. The increased assessment rate should be applied to all grapes handled during the particular fiscal period so that the total payments by each handler during each fiscal period will be proportional to the total volume of grapes handled during that period.

In order to provide funds for the administration of the program prior to the time assessment income becomes available during a fiscal period, the committee should be authorized to accept advance payments of assessments from handlers and also, when such action is deemed to be desirable, to borrow money for such purpose. The provisions for the acceptance by the administrative agency of advance assessment payments is included in other marketing agreements and orders and has been found to be a satisfactory and desirable method of providing funds to cover costs of operation early in a crop year prior to the time when assessment collections are being received in an appreciable amount. During years of normal growing conditions, revenue available to the committee from assessments within the year would provide the funds to repay any loans.

The order should provide authority for the committee to impose a late payment charge on any handler who fails to pay his or her assessment within the time prescribed by the committee. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, the committee should be authorized to impose an additional charge in the form of interest on such outstanding amount. Nonpayment of assessments can have an adverse effect on the operation of the committee and may require it to borrow money and pay interest to continue operations. Authority for the committee to levy a late payment charge and to add interest to the outstanding delinquent obligation should encourage handlers to pay assessment obligations promptly. By paying the obligation when due, handlers would not be subject to either the late payment charge or interest. It would not be desirable to specify the rate of interest in the order because interest rates change as the availability of money fluctuates. If the interest rate were specified in the order, it would be necessary to amend the order each time the interest rate should be changed. Amending the order involves a considerable amount of time and expense. Therefore, the order should permit the committee to establish the late payment charge, and fix the rate of interest, with the approval of the Secretary, so as to provide the flexibility needed to make such adjustments as are found to be necessary.

The order should contain provision for a financial reserve. Should crop failure or partial crop loss reduce the crop so that assessment income falls below expenses, in the absence of a reserve it woud be necessary for handlers to cover the deficit. It could be burdensome on handlers to increase the assessment rate after some disaster had materially reduced the crop. A financial reserve available for any approved expenses could enable the committee to avoid such increases. It would be equitable for handlers to contribute to the establishment of an operating reserve during years of normal production rather than to be required to pay an excessively high rate of assessment during a year when the crop is materially reduced. The reserve fund should be built over a period of time, as funds in excess of expenses may be available. In order that reserve funds not be accumulated beyond a reasonable amount, however, it should be provided that such funds shall not exceed approximately one fiscal period's operational expenses. A reserve of that amount should be adequate to meet any foreseeable need. In view of the foregoing, it is concluded that authority should be provided, as hereinafter set forth, to permit the establishment and use of a reserve fund in the manner heretofore described.

Handlers should be entitled to a proportionate refund of any excess assessments that remain at the end of a fiscal period, except as necessary to establish and maintain an operating reserve. However, any such refund should be reduced by any outstanding obligation due the committee from such handler.

Upon termination of the order, any funds, including any funds in the reserve, that are not used to defray the necessary expenses of liquidation should, to the extent practicable, be returned to the handlers from whom such funds were collected. However, should the order be terminated after many years of operation, the precise equities of handlers may be difficult to ascertain, and any requirement that there be a precise accounting of the remaining funds could involve such costs as to nearly equal funds to be distributed. Therefore, the order should permit the unexpended reserve funds to be disposed of in any manner that the Secretary may determine to be appropriate in such circumstances.

Funds received by the committee under the order should be used solely for the purposes of the order. The Secretary should be authorized to require the committee, at any time, to account for all receipts and disbursements. Such authority would aid in assuring careful administration of assessment funds. Also, whenever any person ceases to be a member or alternate member of the committee, he or she should be required to account for all funds, property, and other committee assets for which he or she is responsible and to deliver such funds, property and other assets to the committee. Such person should also be required to execute such assignments and other instruments as may be appropriate to vest in the committee the right to all such funds and property and all claims vested in such person. This is a matter of good business practice.

(d) The order should provide authority, as hereinafter set forth, for the establishment of production research and marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of grapes. This authority is intended to permit research into propagation and cultural practices, as well as marketing, storage, and distribution. Research relative to more efficient methods of pruning, fertilization, cultivation and pest control would be appropriate areas for research. Grapes grown in the production area are subject to high winds and extreme heat. Research may focus on production techniques to minimize the impact of these weather variables. With respect to research on marketing and distribution,

container and other packaging research should be included.

The foregoing are examples of the kinds of research that the committee may wish to undertake. They are not intended to be all-inclusive. It is not possible to anticipate all the problems that may arise which may require research. Hence, it is desirable for the order to contain all the authority of the act so the committee may engage in any research projects relative to production and marketing designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of grapes.

The committee should be empowered to engage in or contract for such projects, to spend funds for such purposes, and to consult and cooperate with other agencies in the conduct of research projects.

Prior to engaging in any research or development projects, the committee should, of course, submit to the Secretary for approval the plans for each project. When evaluating any research or development project, the committee should consider the cost, the objectives to be accomplished, the time required to complete the project, and other factors in order to arrive at a sound decision as to whether the project is justified. The costs of any such projects should be included in the budget submitted for approval, and such costs should be defrayed by the use of assessment funds as authorized by the act.

In order to facilitate the operation of the program, the committee should each year, before recommending regulations applicable to grapes produced that year, prepare and adopt a marketing policy for the ensuing marketing season. A report on such policy should be submitted to the Secretary and made available to growers and handlers of grapes. The marketing policy should be useful when specific regulatory action is being considered since it would provide basic necessary information. The marketing policy should be a plan for orderly marketing of the anticipated production. Among the factors the committee should review in developing the marketing policy are: an estimate of the total shipments of grapes produced in the production area; the expected general quality of the crop, expected demand conditions, the probable prices for grapes, supplies of competing commodities, the trend and level of consumer income, and the type of regulations expected to be recommended by the committee; and any other known factors which may bear on the marketing of grapes.

The committee should also be permitted to revise its marketing policy, if appropriate, so as to give recognition to the latest known market conditions when changes in such conditions are sufficient to warrant modification of such policy. Such action is necessary if the marketing policy is to be of maximum benefit. A report of each revised marketing policy should be submitted to the Secretary and made available to growers and handlers, together with the data considered by the committee in making the revision.

(e) The declared policy of the act is to establish and maintain such orderly marketing conditions for grapes, among other commodities, as will tend to establish parity prices to growers and be in the public interest. The regulation of the handling of grapes, as proposed in the order, would provide a means for carrying out such policy.

The California Desert Grape Administrative Committee, as the local administrative agency under the proposed order, should be authorized to recommend regulations designed to effectuate the declared policy of the act as provided in the order. As previously mentioned, authority for regulations should include grade, size, maturity, or any combination thereof, for the different varieties of grapes grown in the production area. The committee should be authorized by the order to recommend regulations relative to the size, capacity, weight, dimensions, materials, markings, or pack of any container used in the handling of such gapes. The committee should also be authorized by the order to recommend regulations limiting packing of grapes during specific periods. In addition, the committee should have the authority to recommend such other terms and conditions as may be incidental to, and not inconsistent with, the regulatory authority, as hereinafter set forth, which may be necessary to effectuate the provisions of the order. It is appropriate that the committee should have the responsibility for recommending regulations to be considered by the Secretary and that the Secretary look to the committee for such recommendations.

The regulation of the grade, size, quality, and maturity of grapes should be a basic function of the proposed marketing order. The shipment of low grade, small size, and otherwise poor quality grapes tend to destroy consumer confidence, reduce demand, and depress financial returns to growers.

The grade, size, and quality composition of the grape crop and the volume of the available supply for the season as a whole and for any particular period during the season are important factors which must be considered in establishing regulations. There is generally a sufficient volume of grapes harvested in the production area so that the shipment of only the better grades, sizes, and qualities of grapes to fresh market could fill market demands.

The evidence of record indicates that the United States Standards for Grades of Table Grapes could serve as a basis for regulation under the order. Size, when used with reference to the size of grapes, means not only the size of the individual grapes, but the weight of a bunch of grapes and the uniformity of size of berries within a bunch. Size and proper maturity are important factors determining consumer acceptance. It is in the public interest to establish quality, size, and maturity standards to prohibit the marketing of grapes that are materially discolored, decayed, sunburned, and otherwise unacceptable.

The committee should be authorized to recommend, and the Secretary to establish, such minimum standards of quality and maturity, when prices for grapes are expected to exceed parity, as will be in the public interest. The shipment of grapes lacking maturity or the quality necessary to assure delivery in satisfactory condition could cause an adverse consumer reaction and tend to demoralize the market for later shipments of grapes.

As indicated, about 14 major varieties of vinifera species grapes are grown in the production area. Each variety has certain characteristics which serve to distinguish it from other varieties. Recognition of these differences such as size, color, and maturing characteristics, may make it desirable to apply different grade, size, or maturity regulations to different varieties. Also, differences in demand for some varieties may make it desirable to recognize such differences in the establishment of regulations. Hence, the order should provide authority for different regulations for different varieties. Regulations issued should cover the entire production area. Minor variations occur in characteristics of varieties in different locations of the production area but such variations are insufficient to justify the issuance of regulations for only part or parts of the area.

The order should provide authority for the committee to recommend and the Secretary to establish standards in regard to containers used in the handling of grapes. Containers of a capacity of 22 pounds of fruit have become standard throughout the industry. However, there have been occasions when containers of a slightly different capacity have been used. The

use of such containers introduces pricing uncertainty and creates unstable market conditions. Standardization of size, capacity, weight, dimensions, and packs of containers used in the marketing of grapes could enable buyers and handlers alike to know the exact quantitiy of grapes covered by the prices quoted and thereby tend to increase trade confidence and promote orderly marketing.

Other containers may be developed for use in shipping grapes which may provide possible greater efficiency in the packing and handling of grapes. In this connection it was stated that the order should contain authority to specify in the container regulation the strength of materials and design of containers, as these influence the protection afforded the grapes packed therein. Also, the order should provide for regulation of container markings to prevent deception or misrepresentation of the grade, size, variety, weight, or related specifications of the grapes moving in commerce.

It is concluded, therefore, that the order should contain authorization for the committee to recommend and the Secretary to issue regulations fixing the size, capacity, weight, markings, materials, dimensions, or pack of the containers which may be used in the handling of grapes.

The order should provide authority for the committee to recommend and the Secretary to issue volume regulations in the form of "packing holidays," during specified periods, to prevent the buildup of excessive quantities of grapes in the markets and to balance supplies with demand. Wholesale and retail buyers of grapes normally make their purchases during a five-day period, Monday through Friday, of each week. Few purchases are made on Saturday or Sunday. Also, buying activity is reduced during certain legal holidays. For example, on the July 4th holiday most the major markets are closed. Continued picking and packing of grapes during periods when the major markets are closed or when buying is curtailed results in the buildup of inventories of grapes at distribution points and a consequent accumulation of excessive quantities of grapes in the markets. When markets become oversupplied with unsold grapes and shipments continue, markets tend to become demoralized. The marketing problem is accentuated because of the highly perishable nature of grapes. When markets are supplied to excess and the fruit is held in marketing channels beyond its normal shelf life, the fruit deteriorates and the supply available to consumers is of lesser quality, and this further slows retail movement. There is a delicate balance between the demand and the available quantity of fruit in the market place. Volume regulations as contemplated in the order could be used to establish and maintain an appropriate balance.

Though mature, grapes can be held on the vines for a reasonable time without deterioration. Therefore, prohibition of the packing of grapes during periods when market demand is down and sales are slow would constitute a practical means of averting the excessive accumulation of inventories of grapes at distribution points and subsequent shipment of grapes in excess of market requirements. As hereinafter specified in the order, the term "pack," with respect to such regulation, should be defined to mean the placement of grapes into containers for shipment to market as fresh grapes. Any such limitation on the packing of grapes should apply uniformly to all varieties of grapes grown in the production area.

Fruit is generally shipped on the same day that it is packed. This is true regardless of whether the fruit is packed in the vineyard or packed in a packinghouse. There may be occasions, however, when the fruit is packed but for some reason not shipped immediately. Some such grapes may be on hand or in temporary storage when a regulation prohibiting packing is put into effect. The record indicates that any person should be allowed to ship or transport or otherwise handle such grapes during a "packing holiday" if they meet other order requirements and were packed prior to such holiday.

In developing any recommendation for a holiday regulation, the committee should consider factors affecting the supply and demand as specified in the order and recommend accordingly. The committee should, therefore, have authority to recommend such regulations and engage in such activities as are authorized by the order whenever such regulations or activities will, in the judgment of the committee, tend to promote more orderly marketing conditions and effectuate the declared policy of the act.

When conditions change so that the then current regulations do not appear to the committee to be carrying out the declared policy of the act, the committee should have the authority to recommend such amendment, modification, suspension, or termination of such regulations as the situation warrants.

The order should authorize the Secretary, on the basis of committee recommendations or other available information, to issue regulations which tend to improve grower returns and to establish more orderly marketing conditions for grapes. The Secretary should not be precluded from using such information as the Secretary may have, and which may or may not be available to the committee, in issuing regulations, or amendments or modifications thereof, as may be deemed appropriate to effectuate the declared policy of the act. Also, when the Secretary determines that any regulation does not tend to effectuate such policy, the Secretary should have authority to suspend or terminate the regulation, in accordance with the requirements of the act.

The record indicates that all fresh shipments of grapes grown in the production area should be subject to the order. However, provision should be made for the exemption of grapes for specified purposes or types of shipments from the payment of assessments, regulation requirements, or inspection and certification requirements or any combination thereof. Any such exemption and the procedures to obtain exemption should be recommended by the committee and approved by the Secretary. Shipment of organically grown grapes is an example of a type of shipment which may be exempted from certain order requirements.

In order to prevent possible abuse of the exemption provisions, the committee should have authority to prescribe appropriate rules, regulations, and safeguards to prevent grapes handled under exemptions from entering the channels of commerce for fresh grapes or for some purpose other than the specific purpose authorized, if such action is necessary.

(f) Inspection and certification of shipments are necessary to assure that the handling of grapes complies with regulations effective under the proposed order. Responsibility for obtaining inspection would fall upon the handlers. All grapes should be inspected prior to handling. It was testified that since Federal-State Inspection Service is readily available in the production area, and is equipped to perform the services of inspection and certification, this is the proper agency to perform such services.

Grapes are perishable and quality changes over time, particularly if preventive steps are not taken. Hence, if grapes are not shipped within a reasonable time after inspection, deterioration could occur and the inspection certificate previously issued would not accurately state the quality of the grapes. Therefore, the order should authorize establishment of a maximum time for which an inspection certificate is valid. Such authority could be used as necessary to require that grapes be inspected within a specified time prior

to shipment, and if the grapes are not shipped within the prescribed time, they would be subject to reinspection.

The order should require that handlers furnish the committee a copy of the inspection certificate applicable to each lot of grapes. In addition to assuring that shipments are in conformance with regulations, the certificates can be used as a basis for assessment billing and provide information for other purposes. This requirement may be accomplished by having thge Federal-State Inspection Service forward to the committee a copy of each inspection certificate issued on grapes. The order should authorize the committee to enter into an agreement with the Federal-State Inspection Service for the required inspection and collect from handlers their respective pro rata share of inspection costs. The benefits of the order, including inspection, will accrue to the industry generally. Under a committee contract, it is contemplated that the inspection fee would be set as a uniform fee per carton or lug regardless of where or how many cartons or lugs are inspected at a particular time.

(g) The committee should have authority, with the approval of the Secretary, to require that handlers submit to the committee such reports and information as it may need to perform its functions and fulfill its responsibilities under the order. Handlers have the necessary information in their possession and the requirement that they furnish it to the committee in the form of reports should not constitute an undue burden.

Reports are needed by the committee for such purposes as determining whether handlers are complying with order requirements; to aid in determining and collecting program assessments; and to enable computations of statistical data for use in marketing policy development and recommendations for regulations.

It is anticipated that information needed may include the name of the shipper and the shipping point, identification of the carrier, date and time of shipment, the variety of grapes, number of containers in a shipment, destination of shipment, and inspection certifcate applicable to the shipment. The foregoing, however, should not be construed as a complete list of information the committee might require. It is not possible at this time to anticipate every type of report or kind of information which the committee may find necessary for the proper conduct of operations under the order. Therefore, the order should authorize the committee, with the approval of the Secretary, to require each handler to furnish such information as it finds necessary for it to perform its duties under the order.

The order should require each handler to maintain such records of the grapes received and disposed of as may be necessary to verify the reports such handler submits to the committee. All such records shoud be maintained for two fiscal periods after the fiscal period in which the transactions occurred.

As hereinafter specified in the order, all reports and records submitted by handlers for committee use should be kept confidential in the custody of a committee employee and the contents disclosed to no person other than the Secretary and persons authorized by the Secretary. Under certain circumstances, release of information compiled from reports may be helpful to the committee and to the industry generally in planning operations under the order. However, any information released should be on a composite basis, and such release of information should disclose neither the identity of the person furnishing the information nor such person's individual operations. This is necessary to prevent disclosure of information that may affect the trade or financial position or business operations of individual handlers.

(h) No handler should be permitted to handle grapes, the handling of which is prohibited by such order or prohibited by any regulation issued under such order. If the program is to operate effectively, compliance with its requirements is essential and no handler should be permitted to evade any of its provisions. Any such evasion on the part of even one handler could be demoralizing to those handlers who are in compliance and could impair the effective operation of the program.

(i) The provisions of §§ .62 through .69 as contained in the notice of hearing published in the **Federal Register** on November 28, 1979 (44 FR 67990) and hereinafter set forth in the recommeded order, are common to marketing agreements and orders now operating. All such provisions are incidential to and not inconsistent with the act and are necessary to effectuate the other provisions of the recommended marketing order and marketing agreement and to effucuate the declared policy of the act. The evidence of record supports inclusion of each such provision. Those provisions which are applicable to both the marketing agreement and the marketing order, identified by section numbers and heading are as follows: § .62 Right of the Secretary, § .63 Termination; § .64 Proceedings after termination; § .65 Effect of termination or amendment; § .66 Duration of immunities; § .67 Derogration; § .68 Personal liability; and § .69 Separability. Those provisions applicable to the marketing agreement only are: § .70 Counterparts; § .71 Additional parties; and § .72 Order with marketing agreement.

Rulings on briefs of interested parties. At the conclusion of the hearing the Administrative Law Judge fixed January 4, 1980, as the final date for interested persons to file proposed findings and conclusions and written arguments or briefs based upon the the evidence received at the hearing. No briefs were filed.

General findings. Upon the basis of the evidence introduced at such hearing, and the record thereof, it is found that:

(1) The marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said marketing agreement and order regulate the handling of grapes grown in the production areas in the same manner as, and are applicable only to persons in the respective classes of commercial or industrial activity specified in, a proposed marketing agreement and order upon which a hearing has been held;

(3) The said marketing agreement and order are limited in their applicability to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) There are no differences in the production and marketing of grapes grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of grapes grown in the production area, as defined in said marketing agreement and order, is in the current interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Recommended marketing agreement and order. The following marketing agreement and order are recommended as the detailed means by which the foregoing conclusions may be carried out.

Definitions

§ .1 *Secretary*

"Secretary" means the Secretary of Agricuture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, to whom authority may hereafter be delegated.

§ .2 *Act*

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601–674).

§ .3 *Person*

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ .4 *Grapes*

"Grapes" means any variety of vinifera species table grapes grown in the production area

§ .5 *Production area.*

"Production area" means Imperial County, California, and that part of Riverside County and San Diego County, California, situated east of a line drawn due north and south through the Post Office in White Water, California.

§ .6 *Varieties*

"Varieties" means and includes all classifications or subdivisions of Vitis vinifera table grapes.

§ .7 *Producer*

"Producer" is synonymous with "grower" and means any person who produces grapes for the fresh market and who has a proprietary interest therein.

§ .8 *Handler*

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of grapes owned by another person) who handles grapes or causes grapes to be handled.

§ .10 *Handle*

"Handle" is synonymous with "ship" and means to pack, sell, deliver (including delivery to a storage facility), transport, or in any way to place grapes in the current of commerce within the production area or between the production area and any point outside thereof: *Provided,* That such term shall not include the sale of grapes on the vine and except when regulations are effective pursuant to § .52(a)(5) shall not include the transportation or delivery of grapes to a packinghouse within the production area for preparation for market.

§ .11 *Pack*

"Pack" means the specific arrangement, weight, grade or size, including the uniformity thereof, of the grapes within a container: *Provided,* That when used in or with respect to § .52(a)(5) such term shall mean to place grapes into containers for shipment to market as fresh grapes.

§ .12 *Fiscal Period*

"Fiscal period" is synonymous with "fiscal year" and means the 12 month period beginning on December 1 of one year and ending the last day of November of the following year or such other period as the committee, with the approval of the Secretary, may prescribe.

§ .13 *Container*

"Container" means any lug, box, bag, crate, carton, or any other receptacle used in packing grapes for shipment as fresh grapes, and includes the dimensions, capacity, weight, marking, and any pads, liners, lids, and any or all appurtenances thereto or parts thereof. The term applies, in the case of grapes packed in consumer packages, to the master receptacle and to any and all packages therein.

§ .14 *Committee*

"Committee' means the California Desert Grape Administrative Committee established under § .20.
Administrative Body

§ .20 *Establishment and Membership*

(a) There is hereby established a California Desert Grape Administrative Committee consisting of 12 members, each of whom shall have an alternate who shall have the same qualifications as the member. Five of the members and their alternates shall be producers or officers or employees of producers (producer members). Five of the members and their alternates shall be handlers or officers or employees of handlers (handler members). One member and alternate shall be either a producer or handler or officer of employee thereof. One member and alternate shall represent the public.

(b) Not more than two members and not more than two alternate members shall be affiliated with the same handler entity.

(c) The committee may, with the approval of the Secretary, provide such other allocation of producer or handler membership, or both, as may be necessary to assure equitable representation.

§ .21 *Term of Office*

The term of office of the members and alternates shall be one fiscal period. Each member and alternate shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified.

§ .22 *Nomination*

(a) *Initial members.* Nominations for each of the initial members, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by the committee responsible for promulgation of this part. Such nominations may be made by means of a meeting of the growers and a meeting of the handlers. Such nominations, if made, shall be filed with the Secretary no later than the effective date of this part. In the event nominations for initial members and alternate members of the committee are not filed pursuant to, and within the time specified in, this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided in § .20.

(b) *Successor members.* The Secretary shall cause to be held, not later than November 15, of each year, meetings of producers and handlers for the purpose of making nominations for members and alternate members of the committee.

(c) Only producers, including duly authorized officers or employees of producers, who are present at such nomination meetings, may participate in the nomination and election of nominees for producer members and their alternates. Each producer entity shall be entitled to cast only one vote. If a person is both a producer and a handler of grapes, such person may participate in both producer and handler nominations.

(d) Only handlers, including duly authorized officers or employees of handlers, who are present at such nomination meetings, may participate in the nomination and election of nominees for handler members and their alternates. Each handler entity shall be intitled to cast only one vote.

(e) One member and alternate member shall be nominated by a vote of both producers and handlers and may be of either group.

(f) The public member and alternate member shall be nominated by the committee. The committee shall prescribe, with the approval of the Secretary, procedures for the nomination of the public member and qualification requirements for such member.

§ .23 *Selection*

The Secretary shall select members and alternate members of the committee from persons nominated pursuant to § .22 or from other qualified persons.

§ .24 *Failure to Nominate*

If nominations are not made within the time and in the manner specified in § .22 the Secretary may select the members and alternate members of the committee without regard to nominations on the basis of the representation provided for in § .20.

§ .25 *Acceptance*

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§ .26 *Vacancies*

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§ .22 and .23. If the names of the nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of the representation provided for in § .20.

§ .27 *Alternate Members*

An alternate member shall act in the place of the member during such member's absence or at such member's request, and may be assigned other program duties by the chairman or the committee. In the event of the death, removal, resignation, or disqualification of a member, the alternate shall act for the member until a successor for such member is selected and has qualified. In the event that both a member and that member's alternate are unable to attend a committee meeting, the member or committee members present may designate any other alternate to serve in such members's place at the meeting if such action is necessary to secure a quorum: *Provided,* That not more than two members or alternates acting for members who are affiliated with the same handler entity shall serve as members at the same meeting.

§ .28 *Powers*

The Committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ .29 *Duties*

The committee shall have, among others, the following duties:

(a) To select a chairman and such other officres as may be necessary, and to define the duties of such officers;

(b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(d) To keep minutes, books, and records which will reflect all of the facts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a competent public accountant at least once each fiscal period and at such times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to grapes;

(i) To submit to the Secretary the same notice of meetings of the committee as is given to its members;

(j) To submit to the Secretary such available information as may be requested; and

(k) To investigate complicance with the provisions of this part.

§ .30 *Procedure*

(a) Eight members of the committee shall constitute a quorum and any action of the committee shall require at least eight concurring votes;

(b) The committee may vote by telephone, telegraph, or other means of communication; and any votes so cast shall be confirmed promptly in writing: *Provided,* That if an assembled meeting is held, all votes shall be cast in person.

§ .31 *Compensation and Expenses*

The members of the committee, and alternates when acting as members, shall serve without compensation but may be reimbursed for expenses necessarity incurred by them in the performance of their duties under this part: *Provided,* That the committee at its discretion may request the attendance of one or more alternates at any or all meetings notwithstanding the expected or actual presence of the respective members and may pay expenses as aforesaid.

§ .32 *Annual Report*

The committee should, as soon as practicable after the close of each fiscal period, prepare and mail an annual report to the Secretary and make a copy available to each grower and handler who requests a copy of the report.

Expenses and Assessments

§ .40 *Expenses*

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee for its maintanance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in § .41.

§ .41 *Assessments*

(a) Each person who first handles grapes shall pay to the committee, upon demand, such handler's pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during a fiscal period. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such person during a fiscal period in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such period and to accumulate and maintain a reserve fund equal to approximately one fiscal period's expenses. At any time during or after a fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later findings by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all grapes handled during the applicable fiscal period. In order to provide funds for the administration of the provisions

of this part during the first part of a fiscal period before sufficient operating income is available from assessments in the current period's shipments, the committee may accept the payment of assessments in advance, and may also borrow money for such purpose.

(c) Any assessment not paid by a handler within a period of time prescribed by the committee may be subject to an interest or late payment charge, or both. The period of time, rate of interest, and late payment charge shall be recommended by the committee and approved by the Secretary. Subsequent to such approval, all assessments not paid within the prescribed time shall be subject to the interest or late payment charge, or both.

§ .42 *Accounting*

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in subparagraph (2) of this paragraph, it shall be refunded proportionately to the persons from whom it was collected: *Provided,* That any sum paid by a person in excess of that person's pro rate share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such person.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided,* That funds in the reserve shall not exceed approximately one fiscal period's expenses. Such reserve funds may be used (i) to defray expenses, during any fiscal period, prior to the time the assessment income is sufficient to cover such expenses; (ii) to cover deficits incurred during any fiscal period when assessment income is less than expenses; (iii) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; or (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practicable such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee under this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in such member's possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

Research and Market Development

§ .45 *Production Research and Market Research and Development*

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development projects designed to assist, improve or promote the marketing, distribution and consumption or the efficient production of grapes. The expense of such projects shall be paid from funds collected pursuant to this part.

Regulations

§ .50 *Marketing Policy*

Each season prior to making any recommendation pursuant to § .51 the committee shall submit to the Secretary a report setting for its marketing policy for the ensuing marketing season. Such marketing policy report shall contain information relative to:

(a) The estimated total shipments of grapes produced within the production area;

(b) The expected general quality of grapes in the production area;

(c) The expected demand conditions for grapes;

(d) The probable prices for grapes;

(e) Supplies of competing commodities, including foreign produced grapes;

(f) Trend and level of consumer income;

(g) Other factors having a bearing on the marketing of grapes; and

(i) The type of regulations expected to be recommended during the marketing season.

§ .51 *Recommendation for Regulation*

Upon complying with the requirements of § .50 the committee may recommend regulations to the Secretary whenever the committee deems that such regulations as are provided in § .52 will tend to effectuate the declared policy of the act.

§.52 *Issuance of Regulations*

(a) The Secretary shall regulate, in the manner specified in this section, the handling of grapes upon finding from the recommendations and informaton submitted by the committee, or from other available information, that such regulation would tend to effectuate the declared policy of the act. Such regulation may: (1) limit the handling of any grade, size, quality, maturity, or pack, or any combination thereof, of any or all varities of grapes during any period or periods; (2) limit the handling of any grade, size, quality, maturity, or pack of grapes differently for different varieties, or any combination of the foregoing during any period or periods; (3) limit the handling of grapes by establishing in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level; (4) fix the size, capacity, weight, dimensions, markings, materials, or pack of the container which may be used in handling of grapes; (5) establish holidays by prohibiting the packing of all varieties of grapes during a specified period or periods.

(b) No handler shall handle grapes that were packed during any period when such packing was prohibited by any regulation issued under paragraph (a)(5) of this section unless such grapes are handled under §.54.

§.53 *Modification, Suspension, or Termination of Regulations*

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to §.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee or from other available information that a regulation should be modified, suspended, or terminated with respect to any or all shipments of grapes in order to effectuate the declared policy of the act, the Secretary shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, the Secretary shall suspend or termiante such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

§.54 *Special Purpose Shipments*

(a) Regulations in effect pursuant to §§.41, .52, or .55 may be modified, suspended, or terminated to facilitate

handling of grapes for purposes which may be recommended by the committee and approved by the Secretary.

(b) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent grapes handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section.

Inspection and Certification

§.55 Inspection and Certification

(a) Whenever the handling of any variety of grapes is regulated pursuant to §.52, each handler who handles grapes shall, prior thereto, cause such grapes to be inspected by the Federal or Federal-State Inspection Service and certified as meeting the applicable requirements of such regulation: *Provided,* That inspection and certification shall not be required for grapes which previously have been so inspected and certified if such prior inspection was performed within such period as may be established pursuant to paragraph (b) of this section. Promptly after the inspection and certification each such handler shall submit, or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such grapes.

(b) The committee may, with the approval of the Secretary, establish a period prior to shipment during which the inspection required by this section must be performed.

(c) The committee may enter an agreement with the Federal or Federal-State Inspection Services with respect to the costs of the inspection required by pragraph (a) of this section, and may collect from handlers their respective pro rata share of such costs.

Reports

§.60 Reports

(a) Each handler shall furnish to the committee, at such times and for such periods as the committee may designate, certified reports covering, to the extent necessary for the committee to perform its functions, each shipment of grapes as follows: (1) The name of the shipper and the shipping point; (2) the car or truck license number (or name of the trucker), and identification of the carrier; (3) the date and time of departure; (4) the variety; (5) the number and type of containers in the shipment; (6) the destination; and (7) identification of the inspection certificate pursuant to which the grapes were handled.

(b) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such times as it may prescribe, such other information as may be necessary to enable the committee to perform its duties under this part.

(c) Each handler shall maintain for at least two succeeding fiscal periods after the end of the fiscal period in which the transactions occurred, such records of the grapes received and disposed of by such handler as may be necessary to verify the reports such handler submits to the committee pursuant to this section.

(d) All reports and records submitted by handlers pursuant to the provisions of this section shall be received by, and at all times be in custody of one or more designated employees of the committee. No such employee shall disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided,* That such data and information may be combined, and made available to any person, in the form of general reports in which the identities of the individual handler furnishing the information is not disclosed and may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

Miscellaneous Provisions

§ .61 Compliance

Except as provided in this part, no handler shall handle grapes except in conformity with the provisions of this part and the regulations issued thereunder.

§ .62 Right of the Secretary

The members of the committee (including successors and alternates) and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ .63 Termination

(a) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the act.

(b) The Secretary shall terminate the provisions of this part whenever it is found by referendum or otherwise that such termination is favored by a majority of the growers: *Provided,* That such majority has during the current marketing season produced more than 50 percent of the volume of grapes which were produced within the production area for shipment in fresh form. Such termination shall become effective on the first day of December subsequent to the announcement thereof by the Secretary.

(c) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ .64 Proceedings After Termination

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination. Any action by said trustees shall require the concurrence of a majority of the trustees.

(b) The said trustees shall: (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ .65 Effect of Termination or Amendment

Unless otherwise expressly provided by the Secretary, the termination of this part or any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not: (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this

part or any regulation issued under this part; or (b) release or extinguish any violation of this part or any regulation issued under this part; or (c) affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

§ .66 *Duration of Immunities*

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ .67 *Derogation*

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States: (a) to exercise any powers granted by the act or otherwise; or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ .68 *Personal Liability*

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willfull misconduct, or gross negligence.

§ .69 *Separability*

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be effected thereby.

§ .70 *Counterparts.* (*)

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ .71 *Additional Parties* (*)

After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ .72 *Order With Marketing Agreement* (*)

Each signatory handler hereby requests the Secretary to issue, pursuant to the act, an order providing for regulating the handling of grapes in the same manner as is provided for in this agreement.

Note.—This proposal has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations," and has been classified "significant." A Draft Impact Analysis is available from Malvin E. McGaha, Fruit Branch, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, Phone: (202) 447-5975.

Copies of this Recommended Decision are being mailed to known interested persons. Others may obtain copies from Fruit and Vegetable Division, AMS, Department of Agriculture, Washington, D.C. 20250 or from Roland Harris, USDA-AMS, 845 S. Figueroa—Suite 540, Los Angeles, California 90017.

Signed at Washington, D.C., on February 22, 1980.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 80-5987 Filed 2-26-80; 8:45 am]

BILLING CODE 3410-02-M

*The provisions identified with asterisks (*) apply only to the proposed marketing agreement and not to the proposed marketing order.

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7 CFR Part 1004

[Docket No. A0-160-A56]

Milk in the Middle Atlantic Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision changes the present order provisions based on industry proposals which were considered at a public hearing held July 10, 1979. The amendments provide for changing the funding rate for the advertising and promotion program from a fixed level to a rate tied to the level of producers' pay prices in the market. The funding level would be increased from seven cents to an initial level of twelve cents per hundredweight. Producers who do not want to participate in the program would submit one refund request for the year's remaining calendar quarters. Refunds to producers would be made on a monthly basis rather than quarterly. Another amendment provides a penalty charge of 1 percent per month on any overdue obligation of a handler, with such charge accruing to the administrative expense fund. The amendments are necessary to reflect current marketing conditions and to insure orderly marketing in the area.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6273.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing: issued June 20, 1979: published June 25, 1979 (44 FR 36985).

Recommended Decision: Issued November 19, 1979, published November 26, 1979 (44 FR 67427).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Middle Atlantic marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Philadelphia, Pennsylvania on July 10, 1979 (44 FR 36985).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Program Operations, on November 19, 1979, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

Index of Changes

1. Issue No. 1—*Funding rate for the adversiting and promotion program*—The 6th paragraph is revised, a paragraph is added between paragraphs 14 and 15 and the last paragraph is revised.

2. Issue No. 2—*Revision of administrative provisions of the advertising and promotion program*—A new paragraph is added at the end.

3. Issue No.3—*Charges on overdue accounts*—Two new paragraphs are inserted after paragraph 14; one paragraph is inserted after paragraph 18;

and one paragraph is inserted after paragraph 21.

The material issues on the record of the hearing relate to:

1. Funding rate for the advertising and promotion program.
2. Revision of administrative provisions of the advertising and promotion program.
3. Charges on overdue accounts.
4. Date payments are made from the producer settlement fund.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Funding rate for the advertising and promotion program.* The funding rate for the advertising and promotion program should be modified by changing the present 7-cent rate to a rate determined yearly by multiplying the simple average of the monthly "weighted average prices" for the six-month period ending September 30 by one percent. The resulting figure would be the funding rate for the following calendar year.

Under the revised funding formula, a simple average of the "weighted average prices" for the six-month period ending September 30 would be computed by the market administrator as soon as possible after September 30. The average price would be multiplied by .01 and rounded to the nearest whole cent to determine the actual rate for assessment for the following calendar year (one percent of the producer pay price). As soon as possible after the rate of withholding is computed, the market administrator would notify in writing all producers currently on the market and any new producer that subsequently enters the market of the new withholding rate. This notification would be repeated annualy thereafter only if there was any change in the rate from the previous period.

The advertising and promotion program was established under the Middle Atlantic order effective April 1, 1972. The program has been funded since its inception through a monthly assessment on milk delivered during the month by participating producers. The assessment rate was 5 cents per one hundred pounds of milk until January 1, 1977 when the rate was increased to 7 cents per hundredweight. The funds are deducted by the market administrator from the producer-settlement fund and turned over to an agency organized by producers and producers' cooperative associations. Certain reserves are withheld by the market administrator to cover refunds to producers and administrative costs.

The advertising and promotion agency is responsible for the development and implementation of programs and projects approved by the secretary and designed to carry out the the purposes of the act. The scope of the Agency's activities may include the establishment of research and development projects, advertising on a nonbrand basis, sales promotion, and educational and other programs designed to improve or promote the domestic marketing and consumption of milk and its products.

The advertising and promotion program is a voluntary program. Accordingly, each producer, on a quarterly basis, is given an opportunity to request a refund of the money withheld from his pool proceeds. About 11 percent of the producers in the market received a refund for the last quarter of 1978.

On behalf of four of its member-cooperatives that supply the majority of the milk regulated under Order 4, a federation of cooperative associations proposed that the funding rate for the advertising and promotion program be increased from 7 cents to one percent of the producer pay price. Another cooperative proposed that the deduction for advertising and promotion be increased to three-quarters of one percent of the average of the monthly weighted average prices for the twelve-month period ending September 30, rounded to the nearest whole cent (three-quarters of one percent of the producer pay price). The resulting figure would be the funding rate for the following calendar year. The proponent federation of cooperative associations contended that the program has contributed to an increase in Class I sales during various periods and has minimized declining sales during times of rising milk prices. It was such proponents position, however, that the current funding rate is no longer adequate because inflation has caused the cost of the advertising and promotion activities to rise significantly faster than the program's resources. They also contended that inflation has caused a reduction in the amount of advertising and promotion and, thus, has reduced the effectiveness of the program.

The Order 4 advertising and promotion agency disburses the bulk of its available funds through Dairy Council, Incorporated (DCI) and the United Dairy Industry Association (UDIA). A spokesman for DCI presented information at the hearing regarding the Council's organizational structure, its activities and its need for additional funds to operate a more effective program.

During its 60 years of operation, DCI has provided nutritional education, including the support of milk and milk products, to consumers and professional leaders in medicine, education, nutrition, communications and the dairy industry. This has been accomplished through the use of films, radio, literature, personal contact and staff of nutritionists.

In recent years DCI's primary source of support in the Middle Atlantic area has been Order 4 dairy farmers. The Council's witness stated that per capita funding has increased 13.6 percent since 1977. During this same period, however, inflation has eroded the buying power of these funds by 17 percent. While the cost of films, literature, and labor have increased, the demand for DCI's services have not slackened. Over 600,000 people saw Dairy Counicl films in 1978. The distribution of National Dairy Council technical publications doubled between 1976 and 1978. In 1978, DCI distributed over a million pieces of this literature, 93 percent free of charge. The spokesman for DCI concluded his statement by noting that it has become more and more difficult to maintain a qualified staff unless wage levels and employee benefits progress at rates similar to competing organizations. He indicated that since people are the backbone of the Dairy Council program, increased funding is essential.

At the proponent's request, a representative of UDIA presented data in support of the federation's proposed funding rate. These data indicate that from 1972 to 1978 inflation has been rapid, with the Consumer Price Index (CPI) increasing 56 percent. The witness stated that in the Middle Atlantic area the cost of media advertising, particularly television advertising, has increased significantly faster than producer milk prices. It was estimated that by the end of 1979 television advertising costs will have increased 125 percent over 1974 costs. He further testified that while the cost of scientific research has been increasing, UDIA has been forced to decrease the actual dollars spent in this area. When adjusted by the CPI, only about half as many dollars are available for research in 1979 as were available when the program began in 1972.

Proponent of the funding rate equal to three-quarters of one percent of the producer pay price contended that the current rate is no longer generating revenues adequate to support advertising and promotion activities at the level contemplated by producers when the program was adopted. In April

1972, when the order's advertising and promotion provisions became effective, the five-cent rate was equal to 0.76 percent of the weighted average price for that month. At that time, the cooperative's proposed formula also would have generated a five-cent funding rate. The cooperative's witness stated that when the order was amended effective January 1, 1977 the rate adopted at that time, seven cents per hundredweight, equaled 0.68 percent of the simple average of the weighted average prices of the preceding months of October 1975 through September 1976. He contended that the formula proposed by his cooperative to determine the funding rate was in line with the rate at which producers originally funded the program in 1972 and that this formula would provide adequate funding for the advertising and promotion program in the years to come.

The federation which proposed a funding rate of 1% of the producer pay prices contended that any rate less than 1% would not generate the funds necessary to carry out the intended advertising and promotion program in the Order 4 area. It is their position that basing the rate upon one percent of the weighted average price would allow the level of funds available for the agency to keep up to date on a continual basis.

An increase in the funding rate for the advertising and promotion program is warranted in view of the increased costs of the program's activities that have occurred over its duration. Inflation has impacted on every area of activity pursued by the program. The Consumer Price Index increased 56% between 1972 and 1978 and is expected to rise sharply again this year. The cost of labor, research, and printing has increased substantially over this period. In terms of a dollar's worth of advertising in 1974, radion advertising in the Middle Atlantic area currently costs abut $1.53. The greatest cost increase has occurred in local television advertising. One dollar's worth of television advertising in 1974 cost $1.73 in 1978 and is expected to average $2.26 during 1979.

In 1972, when the advertising and promotion program was adopted, the 5-cent rate was equal to 0.77 percent of the weighted average prices for the six-month period ending September 30, 1971. On January 1, 1977, when the order's funding rate was amended, the adopted 7-cent rate equaled 0.70 percent of the weighted average prices for the six months ending September 30, 1976. It can therefore be concluded that a funding rate equal to three-quarters of one percent of producer pay prices, as noted by its proponent, would be more in line with the rates Order 4 producers favored in 1972 and 1977 than a one percent funding rate. Cooperatives representing a large proportion of the Middle Atlantic producers, however, now favor expanding their support of the advertising and promotion program to one percent of producer pay prices. If this rate were now in effect, the assessment for 1979 and 1980 would be 11 cents and 12 cents per hundredweight, respectively. In view of the substantial producer support in the market for the higer funding rate, and in light of the voluntary nature of the program, it is reasonable that the rate of funding be increased to one percent of the producer pay prices.

In its exceptions to the recommended decision, the proponenet of the funding rate of three-quarters of one percent of the producer pay price contended that the record does not support the one percent funding rate. Exceptor reiterated its contention that the three-quarters of one percent rate is all that is needed to restore the financial support by producers to that percentage of the producer pay price that was set under the initial funding of the program in 1972, and again in 1977. This is true, but the record evidence makes it clear that such funding rate would no longer buy the same amount of advertising since the cost of advertising, particularly television advertising, has increased at a faster rate then the increase in the producer pay price. Consequently, a higher proportion of the producer pay price is now needed to purchase a given amount of television advertising.

Due to the voluntary nature of the program, a producer who wants to participate at a lower funding level than provided in the order may do so by electing to participate only intermittently. For example, a producer could participate in the program for the first three quarters of a year and request that his money to refunded for the last quarter. By such means a producer could fund the program at whatever level he believes to be appropriate.

Conforming changes have been made in the order to recognize that the current references in some sections to "weighted average price plus 7 cents" will no longer be appropriate. In implementing the revised funding rate for the advertising and promotion program, the order has been modified so that the weighted average price would be computed without deducting the amount of money to be withheld for such program. Thus, the current references to "weighted average price plus 7 cents" are changed to read "weighted average price". Under the adopted changes, the computation of the uniform prices for base milk and excess milk will continue, however, to reflect the deduction applicable for funding the advertising and promotion program.

The changes adopted herein that relate to the Advertising and Promotion program should be implemented in two steps. It is preferable from an operational standpoint that the change in the funding rate become effective at the beginning of a calendar quarter and that producers have adequate advance notice of the change. The order now provides that producers who desire not to participate in the program must submit their refund requests in advance of the period during which the refund is applicable. Also, under the adopted order changes, the market administrator normally would compute the funding rate and notify producers of the new rate about two months prior to the change in the rate. In this way, producers would be aware of the forthcoming rate change when deciding whether or not they want to participate in the program during the following calendar year or portion thereof beginning on a calendar quarter. At this stage of the proceeding, it appears that the funding rate could become effective on July 1, 1980. The provisions directing the market administrator to compute the funding rate and to notify producers of the new rate should be made effective two or three months prior to July 1, 1980.

2. *Revision of administrative provisions of the advertising and promotion program.* A dairy farmer who does not want to participate in the Order 4 advertising and promotion program should have to submit to the market administrator only one request to obtain a refund for the year's calendar quarters that remain at the time of the request. Such requests should be submitted within the first 15 days of December, March, June or September. Also, the producer's deductions for advertising and promotion should be refunded by the market administrator on a monthly basis.

Under the current provisions of the order, the advertising and promotion Agency conducts its operations on a quarterly basis. Producers who participate in the program fund it for a calendar quarter. Those producers who do not want to participate in the program during a calendar quarter must submit a refund request to the market administrator during the first 15 days of the month preceding such quarter. The nonparticipating producers receive their refund from the market administrator

shortly after the quarter during which the deductions are made.

An Order 4 cooperative association proposed amendments that would allow a producer not wishing to participate in the advertising and promotion program to obtain a refund by filing a request with the market adminstrator during the first 15 days of any month. Unless rescinded by the producer, the refund request would apply from the first day of the month in which filed to the end of that calendar year. However, if a dairy farmer acquired producer status for the first time under Order 4 after the 15th day of the month, he would not be subject to the 15-day filing limit during that month. The cooperative also proposed that refunds by made by the market administrator on or before the 20th day of the second month after the milk is delivered. In its brief, another Order 4 cooperative association endorsed these procedures.

The proponent cooperative's witness stated that it was Congress' intention that producers not wishing to participate in the promotion program could get their money refunded without unnecessary impediments. He contended that because producers had to request a refund every 3 months some producers who had wanted refunds had forgotten to notify the market administrator at the proper time. Consequently, they had to participate in the program for an entire quarter. He also contended that his cooperative's proposal would simplify the method of obtaining refunds and make them more prompt.

On behalf of four of its member cooperatives, a federation of cooperative associations opposed any change in the order's procedure for requesting refunds. The federation's witness noted that the provisions of Order 4 require the advertising and promotion Agency to prepare and submit to the Secretary for approval, prior to each quarterly period, a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the agency. He contended that the proposed amendments would make it more difficult for the agency to predict the level of funding and thus make budgeting harder. The federation was also in opposition to the market administrator refunding advertising and promotion deductions on a monthly basis. It argued that monthly refunds would increase administrative costs. The witness stated that the present ask-out and refund procedures are necessary for the effective and efficient expenditure of the funds collected under Order 4 for advertising and promotion.

Proponent on the other hand, maintained that its amendments would not significantly increase budgeting problems. In fact, the cooperative claimed that over time these amendments would make participation in the program more stable and would therefore make it easier to estimate funding and plan a budget. It also contended that monthly refunds would not generate any undue expenses because producers who do not want to participate in the program should not have their funds withheld any longer than necessary.

The order should be amended to allow a producer to request a refund during the first 15 days of the month immediately preceding any calendar quarter, with such request applying for the remainder of the calendar year. This order modification would simplify the procedure for requesting refunds and decrease administrative costs. Producers would only have to submit and the market administrator would only have to process approximately one-fourth as many refund requests as is presently the case.

Producers should not, as proposed by an Order 4 cooperative association, be allowed to obtain a refund by filing a request with the market administrator during the first 15 days of any month. The refund request periods should be limited to the first 15 days of the month preceding each calendar quarter, as is presently the case. Allowing producers to request refunds during any month for the rest of the calendar year would make it more difficult for the advertising and promotion Agency to forecast its funding and plan its budgets, because producer participation could fluctuate after the budget had to be submitted to the Secretary for approval. By only requiring producers to request a refund once a year, while limiting the request periods to the first 15 days of the month preceding each calendar quarter, administrative costs and producer inconvenience could be minimized without increasing the Agency's budgeting problems.

A minor change should be made in the refund procedure with respect to new Order 4 producers. Presently, a dairy farmer who first acquires producer status under Order 4 after the 15th of December, March, June, or September and prior to the start of the next refund notification period may, upon application filed with the market administrator, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This should be changed to allow a new producer who submits a request by the end of the month following the month in which producer status is first acquired to be eligible for a refund on all marketings against which an assessment is withheld during the current calendar year. If producer status is first acquired in December, such producer should be eligible for a refund on all marketings during December and the following calendar year. These changes will coordinate the procedure through which new Order 4 producers may request refunds with the refund procedure adopted herein for producers already on the Middle Atlantic market.

Compared to the present quarterly refunds, monthly refunds would increase administrative mailing costs. When the Order 4 advertising and promotion program was initiated, the cost of monthly refunds was high relative to its value to nonparticipating producers. Since then, however, monthly production per producer[1] and interest rates have increased significantly. Changing the rate of deduction to one percent of the producer pay price, as herein adopted, will substantially increase the amount of money to be refunded. For these reasons monthly refunds are mor valuable to non-participating producers than ever before and should be provided.

In its exceptions, the federation of cooperative associations reiterated its opposition to any change in the refund procedures. The federation contends that participating producers should not be burdened with additional administrative costs. While it is true that there will be some increase in mailing costs, this does not represent a valid basis for not adopting the monthly refund procedure. The administrative costs incurred by the market administrator have represented less than one percent of the program funds generated and can be expected in the future to represent an even lesser proportion of total funds to be generated by the higher funding rate. Thus, the changes in the refund procedures can not be expected to be unduly burdensome to participating producers.

3. *Charges on overdue accounts.* The order should provide for the application of a late-payment charge of 1 percent per month on handler obligations that are overdue. Such obligations to the market administrator would be those due the producer settlement fund, the administrative expense fund, and the marketing services fund. Any overdue

[1] Official notice is taken of Federal Order Market Statistics, Annual Summary for 1972, issued June 1973.

payments by handlers due to producers and cooperative associations would be subject to the late-payment charge. Any such unpaid obligation should be assessed a charge of 1 percent on the first day after the due date of the obligation and on the same day of each succeeding month until the obligation is paid. Any such assessed charges shall be due to the administrative expense fund maintained by the market administrator.

The institution of a late-payment charge on all handler obligations under the order was proposed by cooperatives associations representing over 80 percent of the producers supplying the market. The initial proposals by cooperatives, as included in the hearing notice, would provide a late-payment charge of 1 percent beginning the first day the obligation is overdue.

At the hearing and in briefs, the cooperatives supported a modification of the charge. As modified, the proposed charge would be at the rate of 1.5 percent per month prorated on a daily basis. No handlers, other than cooperatives, offered proposals, or testified, or filed beliefs in this proceeding. One cooperative filed a brief in support of the proponent cooperatives.

Witnesses for proponents indicated that the institution of a charge on overdue obligations of handlers is necessary to encourage prompt payments by regulated handlers. They cited the collection problems being experienced by the market administrator and cooperatives and indicated that producers have an interest in timely payments by handlers. It was pointed out that if producers or their cooperative associations are not paid by the due date they are forced to draw upon their own equity or borrow from commercial sources in order to meet their money obligations. In addition, the spokesmen indicated that those handlers making late payments have a competitive advantage in their business operations relative to handlers making timely payments.

In support of the proposed late-payment charge, the witnesses for the proponent cooperatives contended that the charge should be related to current interest rates since delinquent handlers are, in effect, borrowing money from producers. Proponents indicated that most country banks now charge 11.5 to 12 percent interest per annum on well-protected, short-term borrowing. They noted that local Production Credit Associations in the Order 4 production area currently charge interest rates varying from 10.5 to 11.5 percent per annum for short-term operating capital. In addition, farm suppliers such as Agway and Southern States Cooperative, petroleum suppliers, farm equipment dealers, and truck companies in the production area assess finance charges or late-payment charges ranging from 1 to 1.5 percent per month.

In urging that the late-payment charge be 1.5 percent per month apportioned on a daily basis, proponents contended that it would be more equitable for handlers. Also, they believed there would be an incentive on the part of a delinquent handler to delay payment for a full month if the full monthly charge was assessed on the first day the payment was overdue.

It is essential to the effective operation of the order that handlers make their payments to the market administrator on time. Under the marketwide pooling arrangement, it is necessary that handlers with Class I utilization higher than the market average pay part of their total use value of milk to the producer settlement fund. Through this means, money is made available to handlers with lower than average Class I utilization so that all handlers in the market, irrespective of the way they use the milk, can pay their producers the uniform prices for base milk and excess milk. The success of this arrangement depends on the solvency of the producer settlement fund. Also, the prompt payment of amounts due the administrative expense fund and the marketing service fund is essential to the performance by the market administrator of the various administrative functions prescribed by the order. Delinquent payments to these funds could impair the ability of the market administrator to carry out his duties in a timely and efficient manner. Payment delinquency also results in an inequity among handlers. Handlers who are late in paying any of the obligations required under the order are, in effect, borrowing money. In the absence of any late-payment charge that is comparable to the cost of borrowing from commercial sources, handlers who are delinquent in their payments have a financial advantage relative to those handlers making timely payments.

Data placed in the record by a representative of the market administrator's office indicate a late-payment experience of a serious and continuing nature on the part of handlers in the Middle Atlantic market. During those months from April 1978 through June 1979 when the payment date did not fall on a weekend or holiday, 67 percent of the moneys owed to the producer-settlement fund were received by the market administrator after the due date. Such delinquent payments ranged from a low of 57 percent of the amount owed by handlers in January 1979 to a high of 79 percent in February 1979. Even for those months in which the payment date fell on a weekend or holiday, nearly 43 percent of the moneys owed were not received by the first working day thereafter. Also, for the period April 1978 through June 1979, nearly 40 percent of the moneys owed to the producer-settlement fund were not received by the 17th of the month or the first working day thereafter when the market administrator must make payments from the fund. Moneys still not received by the prescribed pay-out date ranged from a low of 18 percent in March 1979 to a high of 50 percent in July 1978. The respective amounts involved were $418,902 in March 1979 and $1,202,603 in July 1978.

With respect to handler obligations due the administrative assessment fund, during the period June 1978 through February 1979, 24 percent of the handlers failed to make such payments by the due date. Such delinquent payments ranged up to 18 days late for December 1978 obligations and 68 days late for August 1978 obligations. (Assessments were waived during March through May 1978 and for the same months in 1979.)

For the period of June 1978 through May 1979, nearly 38 percent of the handlers who made marketing service deductions from payments to producers failed to remit the deductions to the market administrator by the due date. Such delinquencies ranged up to as many as 18 days late in June and December 1978 to 68 days late for August 1978.

In addition to this late-payment information on handler obligations to the market administrator, since October 1978 the market administrator has obtained reports from cooperative associations concerning the date by which cooperatives receive and deposit payments owed to them by handlers. A table based on such reports was placed in the record by a representative of the market administrator's office. The table demonstrates that handlers still have the use of a large proportion of the money owed to cooperatives beyond the due date for making such payments. For example, in April 1979 milk handlers owed cooperatives $12.9 million in partial payments for milk received during the first fifteen days of the month and only $7.3 million were deposited by cooperatives as of the due date. With respect to the final payment for April milk deliveries, handlers owed $13.1

million to cooperatives and cooperatives had deposited only $4.8 million as of the due date.

A further indication of a late-payment problem with respect to milk supplied by cooperatives was entered into the record by a cooperative association. During the eight-month period of October 1978 through May 1979, all partial payment moneys owed to the cooperative by Order 4 handlers were received late; nearly 89 percent were late by eight days or more. All but 0.3 percent of the final payments owed to the cooperative during that period were received after the due date; nearly 62 percent were late by eight days or more. The cooperative's witness stated that for the eight-month period, the value of the late payments, at an interest cost of 12 percent per year, would total more than $39,000.

On the basis of this payment experience, it is appropriate to institute a late-payment charge on all handler obligations under the order that are overdue. In the absence of a late-payment charge, handlers have little incentive to make their payments on time. Enforcement action may be taken, of course, to seek strict handler compliance with the payment dates. However, this is a cumbersome administrative route, and the practicalness of such action becomes questionable in the case of handlers who are only several days late. While the charge adopted herein may not result in strict compliance by all handlers, it should provide handlers a substantial inducement to make their payments on time.

The late-payment charge should be established at the rate of 1 percent per month of the unpaid balance. If the charge is to have any impact on handlers in terms of encouraging prompt payments, it must be an amount that is at least comparable to what a delinquent handler would be charged by commercial banks for money borrowed for short-term purposes.

If this is not so, handlers who may have financial problems would be encouraged to delay their payments, knowing that the charge under the order is cheaper than borrowing money commercially at a higher loan rate. Under the conditions indicated in the record, a monthly charge of 1 percent should provide reasonable assurance that order obligations do not represent a cheap source of money.

As noted earlier, the proponents modified their proposals to apply a higher charge to be apportioned on a daily basis so that handlers would be assessed for only the value of borrowed money for the number of days that the payment is late. These modifications of the proposal should not be adopted. If late-payment charges were treated strictly on a money market basis, the order would merely represent a banking service for handlers who desire to use order obligations as a source of borrowed funds. This is not the intended purpose of the late-payment charge. Rather, it is to be a penalty, in effect, that will induce handlers to pay their obligations under the order on time.

One cooperative association contended in its exceptions that the late-payment charge should be at least 1.5 percent per month. Exceptor pointed out that changes in the money market and prevailing interest rates would indicate that a 1 percent rate may not be high enough to provide sufficient inducement to handlers to pay their order obligations on time. This could be the case if handlers tended to be nearly a full month late in making payments. However, the record indicates that handlers who have been making payments after the due date generally have made the required payments within a two-week period after the due date. For such period of time the 1 percent rate would not represent a cheap source of money.

Three milk dealer associations in the Pennsylvania segment of the market excepted to the application of the full late-payment charge the day after the due date. Such associations state that they would support a late-payment charge only on the basis that it be prorated on a daily basis. These dealers contend that otherwise a dealer paying late would be encouraged to delay payment for 29 days. Such a lengthy delay in making payments for milk is not realistic from a handler's standpoint, since any producer or cooperative would have a strong incentive to discontinue supplying milk under such circumstances and seek an alternative buyer for its milk. The due date for final payments to producers is the 20th day after the end of the month. By such date producers have already waited 20 to 35 days after delivery of their milk to get paid. Thus, they are not likely to continue delivery of milk for perhaps another 29 days if payment is not received from the handler.

Experience under orders has demonstrated that a late-payment charge applied on the day after the obligation is due is effective in inducing handlers to pay on time. For example, a late-payment charge of 1 percent on the day after the due date was adopted under the neighboring New York-New Jersey order effective November 1, 1977. An exhibit placed in the hearing record contains information as to the timeliness of payments to the producer-settlement fund and administrative fund before and after the late-payment charge was adopted. The exhibit shows that in March 1977—before the late-payment charge was in effect—only 6 of the 79 handlers having obligations to the producer-settlement fund and administrative fund made their payments on time and only 5.3 percent of the total handler obligations to the funds was paid by the due date. In March 1979—16 months after the late-payment charge was instituted—95.2 percent of the total handler obligations to the producer-settlement fund and the administrative fund had been paid to the market administrator on or before the due date.

Under the cooperative's proposals late-payment charges would accrue to the respective person or fund that was paid late. If a handler's payment obligation directly to a producer or cooperative was not paid on time, the late-payment charge would accrue to such producer or cooperative. If a handler is late in paying an obligation to the producer-settlement fund, administrative assessment fund or marketing service fund the late-payment charge assessed would accrue to the particular fund not paid on time.

As further inducement to make payments to producers and cooperatives on time, the late-payment charges should accrue to the order's administrative assessment fund, which is the market administrator's source of funds for activities involved with collections and noncompliance. If the late-payment charge were to be added to the amount owed by handlers to producers and cooperatives, it would likely result in such producers and cooperatives being less concerned whether they are paid on time. Thus, it could be counterproductive to the purpose sought to be achieved by the institution of the late-payment charge. Moreover, if a charge of 1 percent were made with respect to a payment that was only a few days late, it would represent a significantly higher value than the cost of money borrowed from commercial sources for such a short time span. Thus, cooperatives and producers would be placed in a position where they would prefer to be paid several days late and get the late-payment charge. In addition, in a circumstance where a handler buys milk from a cooperative handler on a classified use basis, the obligation on such milk would not be the same as its value at the uniform prices for base milk and excess milk, which is the value the

cooperative is entitled to after equalization with the producer-settlement fund. Thus, it would unduly complicate the terms of the order to construct order provisions that would return to producers and cooperatives an equitable late-payment value for their milk if, in fact, such value could be determined.

The late-payment charge on obligations due the producer-settlement fund, marketing services fund, and administrative assessment fund also should accrue to the order's administrative assessment fund. In the case of delinquent handlers, money is spent by the market administrator in determining the amount of the late-payment charges and in collecting such payments or inducing noncomplying handlers to pay on time. The money for expenditures of this type, of course, comes from the administrative assessment fund. Thus, the competitors of the noncomplying handlers who pay assessments to this fund are bearing the administrative costs of dealing with the delinquent handlers. Thus, it is reasonable that the late-payment charges assessed on noncomplying handlers be used to help defray these administrative costs.

In exceptions filed three milk dealer associations contended that late-payment charges should accrue to the respective persons and accounts that had not received on time the monies due. Exceptors argued that this is standard commercial practice. While this may be so with respect to certain types of commercial transactions, there are unique circumstances involved in payment transactions under a milk order in that the market administrator is charged with the responsibility of administering the payment transactions. As has already been discussed, the late-payment charge is to be a penalty, in effect, that will induce compliance with the payment terms of the order. As such the charge should accrue to the source of funding (i.e., the administrative expense fund) for determining when there is an incidence of late payment and the amount of the late-payment charges and for collecting such payments or inducing noncompliant handlers to pay on time. The exceptions do not provide a compelling basis for not adopting the new procedure.

The late-payment charge provisions as proposed by proponents provide that such charge be applied if payment is not received by the due date. Proponents stated that they consider the present payment dates in the order to be receipt dates and contended that if they were to be postmark dates that such dates should be advanced by two days. In view of the need to make timely payments to handlers from the producer settlement fund, it is essential that money due such fund be received by the due date. Also, since a payment cannot be converted to "good money" by the recipient until it is physically received, more uniform application of the payment schedules to handlers would be effected if the payment dates are applied as receipt dates. Additionally, it is desirable to give handlers all the time possible for submitting their payments and the flexibility of using whatever payment means they wish. This can be achieved best by merely specifying the date by which payment is to be received. Obviously, payment cannot be received on a non-business day. Thus, if a due date falls on a Saturday, Sunday, or national holiday, the due date of the payment should be the next day that the market administrator's office is open for business, for the purpose of applying a late-payment charge.

An additional exception in applying a late-payment charge with respect to any payment sent through the U.S. Postal Service was proposed by a cooperative association. This exception would consider such payment to be made on time if the envelope has a postage cancellation date not later than the second day preceding the due date. Such a provision would enable a handler to have greater assurance that a payment is made on a timely basis. An exhibit in the record indicates that with respect to payments mailed to the market administrator, they are often received within two days of the postmark date. However, the exhibit indicates also that on occasion, such as around Christmas time, some payments are received more than two days after the postmark date.

It is a common practice in the market to send payments through the mail. Handlers would have greater control over knowing whether they are complying with the payment dates if postmark dates applied by the U.S. Postal Service can be used in determining whether a payment is made on time. Moreover, postmark dates would provide reliable evidence for the market administrator to use in verifying the timeliness of payments. Since it would be helpful to handlers and to the market administrator in the determination of when a late-payment charge is to be applied, the proposal relative to postmark dates should be adopted. A postage date applied by a handler's postage meter, however, would not be an acceptable indication of a timely payment, since a handler would be able to predate the envelope.

In its exceptions a federation of cooperative associations questioned whether it was intended that the acceptable postmark date be set back when the due date falls on a weekend or holiday. This is not intended. The weekend and holiday exception is only for the purpose of providing that the receipt date be on a day that the market administrator's office is open for public business.

Under the provisions adopted herein, overdue handler obligations that are payable to the market administrator would be increased by 1 percent on the first day after the due date. Any remaining unpaid portion of the original obligation would be further increased by 1 percent on the same date of each succeeding month until the obligation is paid. The additional late payment charge would apply not only to the original obligation but to any unpaid late-payment charges previously assessed.

At the time the adopted provisions become effective, there may be handlers with obligations already overdue. In such cases, the newly adopted late-payment charge should apply even though the obligation was incurred prior to the institution of the charge under the order. For transitional purposes, obligations that are outstanding on the effective date of the amended order should not be increased until the day after such type of obligation would be overdue under the amended order.

The provision adopted herein would provide a late-payment charge in the case of an unpaid obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due. Such obligation should be considered to have been payable by the date it would have been due if the report had been filed when due.

Proponents recognized that it may be necessary for the market administrator to require handlers and cooperatives to maintain specific records or make special reports for the purpose of verification of the timeliness of payments made by handlers directly to producers and cooperatives. The attached amendments do not prescribe the specific means be which he shall verify such transactions. The need for such specification should be based on actual experience in the market.

Under the terms of the order, the market administrator has authority to make rules and regulations to effectuate the terms and provisions of the order. Should there be need for more specificity with respect to carrying out the provisions adopted herein, this may

be accommodated through the promulgation of appropriate administrative rules with the approval of the Director of the Dairy Division and in consultation with the local industry.

If the purpose of the late-payment provisions adopted herein is to be fully accomplished, it is necessary that payments not only be made on time but must be deposited in the recipient's account as promptly as possible. The proposals considered at the hearing did not encompass new provisions that would assure the prompt deposit of payments received. If serious problems exist with respect to the timely deposit of payments, it may be necessary for the market administrator to promulgate appropriate rules with respect to the deposit of payments received by cooperative associations.

4. *Date payments are made from the producer-settlement fund.* The order should be amended to provide that payments to handlers from the producer-settlement fund should be made on or before the 16th day after the end of the month. However, if the 16th should fall on a Saturday, Sunday or national holiday, the market administrator may delay payments from the fund until the next day his office is officially open for business.

Currently, the order provides that payments from the producer-settlement fund be made on or before the 17th day after the end of the month. Cooperatives proposed that this payment date be advanced one day. In support of the proposal, cooperatives conteded that with the adoption of a late-payment charge, as provided herein, it can be expected that the payments to the producer-settlement fund will be received by the due date, the 15th, and therefore, the market administrator would be able to make payments from the fund by the next day.

As previously indicated, it can be expected that the adoption of a late-payment charge will be sufficient inducement for handlers to pay their producer-settlement fund obligations on time. In this circumstance, the market administrator would have sufficient funds to enable him to make the prescribed payments from the fund by the day after payments are due.

The market administrator makes it a practice to notify handlers by telephone on the date the uniform prices are announced of their producer-settlement fund obligation. Such announcement date has not been later than the 12th day after the end of the month. In some cases the postmark dates on envelopes containing handler payments to the producer-settlement fund are the same dates that handlers are notified by telephone of the amount of their obligation. Thus, it is apparent that handlers can make their payments to the producer-settlement fund on or before the due date if they are sufficiently induced to do so.

It is desirable that payments be made from the producer settlement fund as promptly as possible so that those handlers who receive the funds can make their required payments to producers. Payments to producers are due on or before the 20th day after the end of the month. Thus, adoption of the earlier payment date for payments from the producer-settlement fund will tend to better assure that all producers are paid by the due date.

The order provides that if the balance in the producer-settlement fund is insufficient to make all the prescribed payments, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. This procedure would involve two series of payments and should be avoided when practicable. Advancing the pay-out date could involve the use of this procedure in the case where the date for payments from the fund falls on a Saturday, Sunday or national holiday when the market administrator's office is not open for public business. Therefore, the order should provide that the required pay-out date may be delayed until the next date the market administrator's office is open for business when the pay-out date falls on Saturday, Sunday or national holiday.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a MARKETING AGREEMENT [2] regulating the handling of milk, and an ORDER amending the order regulating the handling of milk in the Middle Atlantic marketing area which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the **Federal Register.** The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

[2] Filed as part of the original document.

Determination of Producer Approval of the Order; Determination of Producer Approval of the Advertising and Promotion Program; and Determination of Representative Period

October 1979 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended (except for the proposed Advertising and Promotion Program), regulating the handling of milk in the Middle Atlantic marketing area is approved or favored by producers, as defined under the terms of the order as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

October 1979 is hereby further determined to be the representative period for the purpose of ascertaining whether the proposed order provisions constituting the Advertising and Promotion Program in the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Middle Atlantic marketing area are separately approved or favored by producers, as defined under the terms of the order as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

Note.—This final decision has been reviewed under USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A determination has been made that this decision should not be classified "significant" under those criteria. This decision constitutes the Department's Final Impact Analysis Statement for this proceeding.

Signed at Washington, D.C., on February 22, 1980.

P. R. "Bobby" Smith,

Assistant Secretary for Marketing and Transportation Services.

Order[3] amending the order, regulating the handling of milk in the Middle Atlantic marketing area

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Middle Atlantic marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Middle Atlantic marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Marketing Program Operations, on November 19, 1979 and published in the **Federal Register** on November 26, 1979 (44 FR 67427) shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein with modifications in §§ 1004.120(c) and 1004.121(e).

Changes 1, 2, 4, 5, 6, 8 and 9 set forth below relate to amendments to provisions of the Advertising and Promotion Program. Changes 3 and 7 relate to amendments to the order other than those relating to the Advertising and Promotion Program.

1. Section 1004.61 is revised to read as follows:

§ 1004.61 Computation of weighted average price and uniform prices for base milk and excess milk.

(a) For each month the market administrator shall compute the "weighted average price" per hundredweight of milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to § 1004.60 for all handlers who filed the reports prescribed by § 1004.30 for the month and who made the payments pursuant to § 1004.71 for the preceding month;

(2) Add an amount equal to the total value of the location differentials computed pursuant to § 1004.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer settlement fund;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk included pursuant to paragraph (a)(1) of this section; and

(ii) The total hundredweight for which a value is computed pursuant to § 1004.60(e); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight.

(b) Subject to paragraph (c) of this section, for each month the market administrator shall compute the uniform prices per hundredweight for base milk and excess milk, each of 3.5 percent butterfat content, f.o.b market, as follows:

(1) Compute the aggregate value of excess milk for all handlers included in the computations pursuant to paragraph (a) of this section as follows:

(i) Multiply the quantity of such milk which does not exceed the total quantity of producer milk received by such handlers assigned to Class II milk by the Class II milk price;

(ii) Multiply the remaining hundredweight quantity of excess milk by the Class I price; and

(iii) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b)(1) of this section by the total hundredweight of such milk and round to the nearest cent;

(3) Subtract the withholding rate for the advertising and promotion program as computed in § 1004.121(e). The result shall be the inform price for excess milk;

(4) From the amount resulting from the computations of paragraphs (a)(1) through (3) of this section subtract an

[3] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4) (ii) of this section by the weighted average price;

(5) Subtract the aggregate value of excess milk determined in paragraph (b)(1) of this section;

(6) Divide the result obtained in paragraph (b)(5) of this section by the total hundredweight of base milk for handlers included in the computations pursuant to paragraph (a) of this section and subtract not less that 4 cents nor more than 5 cents per hundredweight; and

(7) Subtract the withholding rate for the advertising and promotion program as computed in § 1004.121(e). The result shall be the uniform price for base milk.

(c) If the base milk price obtained in paragraph (b)(7) of this section should exceed the Class I price, the aggregate amount in excess thereof shall be included in the computation of the excess milk price pursuant to paragraph (b)(1) of this section, except that if by such addition the excess milk price should exceed the base milk price then the aggregate amount of the excess shall be prorated to the aggregate values of base milk and excess milk on the basis of the respective volumes of base and excess milk.

2. In § 1004.71, paragraph (b)(2) is revised to read as follows:

§ 1004.71 Payments to the producer settlement fund.

* * * * *

(b) * * *

(2) The value at the weighted average price, adjusted by the applicable location differential on nonpool milk pursuant to § 1004.75(b), with respect to other source milk for which a value was computed pursuant to § 1004.60(e).

* * * * *

3. Section 1004.72 is revised to read as follows:

§ 1004.72 Payments from the producer-settlement fund.

On or before the 16th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1004.71(b) exceeds the amount computed pursuant to § 1004.71(a), subject to the following conditions:

(a) If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

(b) If the 16th day after the end of the month is a Saturday, Sunday, or national holiday, the market administrator may delay payments pursuant to this section until the next day his office is open for public business.

4. In § 1004.73, paragraph (a)(2) is revised to read as follows:

§ 1004.73 Payments to producer and to cooperative associations.

(a) * * *

(1) * * *

(2) On or before the 20th of the following month at not less than the uniform price for base milk computed pursuant to § 1004.61(b) with respect to base milk received from such producer and not less than the uniform price for excess milk computed pursuant to § 1004.61(b) for excess milk received from such producer, subject to the following adjustments:

(i) Proper deductions authorized in writing by such producer;

(ii) Partial payment made pursuant to paragraph (a)(1) of this section;

(iii) The butterfat differential computed pursuant to § 1004.74;

(iv) Less the location differential applicable pursuant to § 1004.75; and

(v) If by such date such handler has not received full payment from the market administrator pursuant to § 1004.72 for such month he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

* * * * *

5. In § 1004.75, paragraph (b) is revised to read as follows:

§ 1004.74 Location differentials to producers and on nonpool milk.

* * * * *

(b) For purposes of computations pursuant to §§ 1004.71 and 1004.72 the weighted average price shall be reduced at the rate set forth in paragraph (a) of this section applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class II price.

6. In § 1004.76, paragraph (b)(5) is revised to read as follows:

§ 1004.76 Payments by a handler operating a partially regulated distributing plant.

* * * * *

(b)* * *

(5) From the value of such milk at the Class I price, subtract its value at the weighted average price, and add for the quantity of reconstituted skim milk specified in paragraph (b)(3) of this section its value computed at the Class I price less the value of such milk at the Class II price (except that the Class I price and the weighted average price shall be adjusted for the location of the nonpool plant and shall not be less than the Class II price).

7. A new § 1004.78 is added to read as follows:

§ 1004.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1004.71, 1004.73, 1004.76, 1004.77, 1004.79, 1004.85, or 1004.86 shall be increased 1 percent beginning on the day after the due date, and on the same day of each succeeding month until such obligation is paid, subject to the following conditions:

(a) The amount payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed pursuant to this section and all such amounts shall be paid to the administrative assessment fund maintained by the market administrator;

(b) Any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due, shall be considered to have been payable by the date it would have been due if the report had been filed when due; and

(c) Payments shall be deemed not to have been made until such payments have been received, except:

(1) Any payment received after the due date in an envelope that is postmarked not later than the second day prior to the due date shall be considered to have been received by the due date; and

(2) If the date by which payments must be received falls on a Saturday or Sunday or on a national holiday, payments shall be considered to have been received by the due date if received not later than the next day on which the market administrator's office is open for public business.

8. In § 1004.120, paragraphs (b), (c) and (d) are revised to read as follows:

§ 1004.120 Procedure for requesting refunds.

* * * * *

(b) Except as provided in paragraph (c) of this section, the request must be submitted within the first 15 days of December for milk to be marketed during the following calendar year and during the first 15 days of March, June, or September for milk to be marketed

from the first of the immediately following month through the remainder of the calendar year.

(c) Upon first acquiring producer status under this part, a dairy farmer shall, upon application filed with the market administrator pursuant to paragraph (a) of this section by the end of the month immediately following the month in which producer status is acquired, be eligible for refund on all marketings against which an assessment is withheld during the current calendar year and if producer status was first acquired in December such producer shall be eligible for a refund on all marketings during December and the following calendar year.

(d) A producer, located in a State which has a State advertising and promotion program in which producers are required to participate unless they are participating in an advertising and promotion program under a Federal order, may (in lieu of a refund request) authorize the market administrator to pay to the State the amount of his required participation not in excess of the rate computed pursuant to § 1004.121(e).

9. In § 1004.121 the introductory text of paragraph (b), paragraphs (b) (2), (3), and (4), and paragraph (c) are revised and new paragraphs (e) and (f) are added to read as follows:

§ 1004.121 Duties of the market administrator.

* * * * *

(b) Set aside into an advertising and promotion fund, separately accounted for, an amount equal to the withholding rate for the month as set forth in paragraph (e) of this section times the amount of producer milk included in the computation of uniform prices for such month. The amount set aside shall be disbursed as follows:

* * * * *

(2) To producers, a refund of the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such producer for which deductions were made pursuant to this paragraph.

(3) To any State, a payment on behalf of any producer for which a specific authorization has been received pursuant to § 1004.120(d), but not in amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such producers for which deductions were made pursuant to this paragraph.

(4) After the end of each month, make a refund to each producer who made application for such refund pursuant to § 1004.120. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section times the hundredweight of such producer's milk pooled for which deductions were made pursuant to this paragraph for such month, less the amount of any refund otherwise made to, or on behalf of, the producer pursuant to paragraph (b) (2) and (3) of this section.

(c) Promptly after the issuance of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1004.110 through 1004.122).

* * * * *

(e) As soon as possible after September of each year compute the rate of withholding as follows:

(1) Compute the simple average of the monthly weighted average prices for the six-month period ending September 30; and

(2) Multiply the price computed pursuant to paragraph (e)(1) of this section by one percent and round to the nearest full cent. This rate shall apply during the following calendar year.

(f) As soon as possible after the rate of withholding is computed, notify in writing each producer currently on the market and any new producer that subsequently enters the market of the withholding rate. This notification shall be repeated annually thereafter only if there is any change in the rate from the previous period.

[FR Doc. 80-6105 Filed 2-26-80; 8:45 am]
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7 CFR Part 1007

[Docket No. AO-366-A16]

Milk in the Georgia Marketing Area; Hearing of Proposed Amendments to Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Public hearing on proposed rules.

SUMMARY: The hearing is being held at the request of Dairymen, Inc. (DI), a cooperative that represents a major portion of the dairy farmers that supply milk for the market. DI proposes that the Class I base plan be replaced, by September 1, 1980, with a seasonal base-excess plan for paying producers for their milk. In addition, DI proposes that the current Class I base plan be amended on an emergency basis to permit only intrafamily transfers of base. Alternatively, the cooperative requests an emergency suspension of certain base transfer provisions on the basis of the hearing record. DI claims that the proposed changes will result in more orderly marketing conditions for producers.

DATE: March 12, 1980.

ADDRESS: Olde English Inn, Interstate 285 at Glenwood Road, Decatur, Georgia 30032.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-4829.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a public hearing to be held at the Olde English Inn, Interstate 285 at Glenwood Road, Decatur, Georgia, beginning at 9:30 a.m., on March 12, 1980 with respect to proposed amendments to the tentative marketing agreement and to the order, regulating the handling of milk in the Georgia marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR Part 900.12(d)) with respect to proposal No. 1. In addition, consideration will be given to whether the effect of proposal No. 1. should be achieved on a temporary basis through the suspension of certain base transfer provisions.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Diarymen, Inc.

Proposal No. 1

In § 1007.95 *Transfer of bases*, amend paragraph (c) to read as follows and delete paragraphs (d) through (o) inclusive.

§ 1007.95 Transfer of bases.

* * * * *

(c) A transfer may be made only in the case of intrafamily transfers (including transfers to the estate and from an estate to a member of the immediate family).

* * * * *

Proposal No. 2

Amend the Georgia Federal Order No. 7 by adopting a Base-Excess Plan as herein set forth (Sections 1007.90 through 1007.94) in lieu of the Class I Base Plan (Sections 1007.90 through 1007.97).

Base-Excess Plan

§ 1007.90 Base milk.

"Base milk" means the producer milk of a producer in each month of February through August that is not in excess of the producer's base multiplied by the number of days in the month.

§ 1007.91 Excess milk.

"Excess milk" means the producer milk of a producer in each month of February through August in excess of the producer's base milk for the month, and shall include all the producer milk in such months of a producer who has no base.

§ 1007.92 Computation of base for each producer.

(a) Subject to § 1007.93, the base for each producer shall be an amount obtained by dividing the total pounds of his producer milk during the immediately preceding months of September through January by the number of days' production represented by such producer milk or by 145, whichever is more.

(b) The base for a producer whose milk was delivered to a nonpool plant that became a pool plant shall be calculated as if the plant were a pool plant for the entire immediately preceding base-forming period. A base thus assigned shall not be transferable.

(c) For a producer who held producer-handler status at any time subsequent to September 1, 1980, a base shall be calculated as prescribed in paragraph (a) of this section as if the milk of his own production received at his producer-handler plant had been received at a pool plant.

§ 1007.93 Base rules.

(a) Except as provided in § 1007.92(b) and in paragraph (b) of this section, a base may be transferred only in its entirety in amounts of not less than 100-pound increments effective on the first day of the month following the date on which an application for such transfer is received by the market administrator; provided, however, that any base transferred shall be cancelled on the same date as the transferring producer begins delivery of Grade A milk to any outlet other than a pool plant of this order. Such application shall be on a form approved by the market administrator and signed by the baseholder or his heirs.

(b) The base established by a partnership may be divided between the partners on any basis agreed to in writing by them if written notification of the agreed-upon division of base signed by each partner is received by the market administrator prior to the first day of the month in which such division is to be effective.

(c) Two or more producers with established base may combine their respective bases when forming a partnership by giving notice to the market administrator prior to the first day of the month in which such partnership is to be effective.

§ 1007.94 Announcement of established bases.

On or before March 1 of each year, the market administrator shall calculate a base for each person who was a producer during any of the immediately preceding months of September through January and shall notify each producer and the handler receiving milk from him of the base established by the producer. If requested by a cooperative association, the market administrator shall notify the cooperative association of each producer-member's base.

Proposal No. 3

In connection with the base-excess plan, make the following conforming changes in the order:

A. In § 1007.10 *Producer-handler,* amend paragraph (e) to read as follows:

§ 1007.10 Producer-handler.

* * * * *

(e) If such person had been a producer to whom a base had been assigned pursuant to § 1007.92, such base shall be forfeited.

B. In § 1007.32, *Other reports,* amend paragraph (a) to read as follows:

§ 1007.32 Other reports.

(a) Each handler described in § 1007.9(a), (b) and (c) shall report to the market administrator on or before the seventh day after the end of each month of February through August the aggregate quantity of base milk received from producers during the month, and on or before the 20th day after the end of each month of February through August the pounds of base milk received from each producer during the month.

* * * * *

§ 1007.60 [Amended]

C. In § 1007.60, *Handler's value of milk for computing uniform price,* insert the word "and" after paragraph (e), place a period at the end of paragraph (f), and delete paragraph (g).

D. Amend § 1007.61 to read as follows:

§ 1007.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) The market administrator shall compute the weighted average price for each month and the uniform price for each month of September through January per hundredweight for milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to § 1007.60 for all handlers who filed the reports prescribed in § 1007.30 for the month and who made the payments pursuant to § 1007.71 for the preceding month;

(2) Add one-half the unobligated balance in the producer-settlement fund;

(3) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1007.75;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations;

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1007.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The resulting figure, rounded to the nearest cent shall be the weighted average price for each month and the uniform price for the months of September through January.

(b) For each month of February through August the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the total value of excess milk for all handlers included in the computations pursuant to paragraph (a)(1) of this section as follows:

(i) Multiply the hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class III milk by the Class III price;

(ii) Multiply the remaining hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class II milk by the Class II price;

(iii) Multiply the remaining hundredweight quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b)(1) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk;

(3) From the amount resulting from the computations pursuant to paragraph (a)(1) through (3) of this section, subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(4) Subtract the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b)(2) of this section times the hundredweight of excess milk from the amount computed pursuant to paragraph (b)(3) of this section;

(5) Divide the amount calculated pursuant to paragraph (b)(4) of this section by the total hundredweight of base milk included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The resulting figure, rounded to the nearest cent, shall be the uniform price for base milk.

E. Amend § 1007.62 to read as follows:

§ 1007.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the applicable uniform prices pursuant to § 1007.61 for such month.

§ 1007.71 [Amended]

F. In paragraph (a)(2)(i) of § 1007.71, *Payments to the producer-settlement fund,* change the section reference from "1007.61(b)" to "1007.61" and in paragraph (a)(2)(ii) of § 1007.71, change the word "uniform" to "weighted average."

G. In § 1007.73, *Payments to producers and to cooperative associations,* amend paragraph (a) to read as follows:

§ 1007.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment for producer milk as follows:

(1) On or before the last day of the month to each producer who had not discontinued shipping milk to such handler before the 15th day of the month not less than the Class III price for the preceding month per hundredweight of milk received during the first 15 days of the month less proper deductions authorized in writing by such producer;

(2) On or before the 15th day of each month at not less than the applicable uniform price(s) for the quantities of milk or base milk and excess milk received adjusted by the butterfat differential computed pursuant to § 1007.74, and by the location adjustment computed pursuant to § 1007.75, subject to the following:

(i) Less payments made pursuant to paragraph (a)(1) of this section;

(ii) Less proper deductions authorized by such producer;

(iii) Less deductions for marketing services made pursuant to § 1007.86; and

(iv) If by such date such handler has not received full payment from the market administrator pursuant to § 1007.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

* * * * *

§ 1007.75 [Amended]

H. In paragraph (b) of § 1007.75, *Plant location adjustments for producers and on nonpool milk,* change the word "uniform" to "weighted average", where it appears in the paragraph.

§ 1007.76 [Amended]

I. In paragraph (a)(4) of § 1007.76, *Payments by handler operating a partially regulated distributing plant,* change the word "uniform" to "weighted average", where is appears in the paragraph.

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 4

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, P.O. Box 49025, Atlanta, Georgia 30359 or from the Hearing Clerk, Room 1077–S, United States Department of Agriculture, Washington, D.C. 20250 or may be there inspected.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator, Georgia Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, D.C., on: February 21, 1980.

William T. Manley,

Deputy Administrator Marketing Program Operations.

[FR Doc. 80–5986 Filed 2–26–80; 8:45 am]

BILLING CODE 3410–02

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7 CFR Part 1076

[Docket No. AO–260–A24]

Milk in the Eastern South Dakota Marketing Area; Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider order changes proposed by Land O'Lakes, Inc. The key proposals would revise the order to allow milk plant operators and cooperative associations greater flexibility in milk handling and accounting practices. The penalty charge on overdue payments by handlers would be increased and a marketing services payment by producers would be instituted. Proponent contends that the requested order changes could result in more efficient movement of milk to market and make the order terms more compatible with changing marketing conditions.

DATE: March 11, 1980.

ADDRESS: Holiday Inn—Downtown, 100 West 8th Street, Sioux Falls, South Dakota.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (telephone: 202–447–6273).

SUPPLEMENTARY INFORMATION: Notice is hereby given of a public hearing to be held at the Holiday Inn—Downtown, 100 West 8th Street, Sioux Falls, South Dakota, beginning at 9:30 a.m., on March 11, 1980, with respect to proposed amendment to the tentative marketing agreement and to the order, regulating the handling of milk in the Eastern South Dakota marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et. seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Land O'Lakes, Inc.

Proposal No. 1

Add a new § 1076.4 and amend § 1076.7 as follows:

§ 1076.4 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk products (including filled milk) are received, processed or packaged. Separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition or separate facilities used only as a reload point for transferring bulk milk from one tank truck to another shall not be a "plant" under this definition.

§ 1076.7 [Amended]

Amend § 1076.7(d) by deleting the word "physically".

Proposal No. 2

In § 1076.7 revise paragraphs (b) and (c) to read as follows:

§ 1076.7 Pool plant.

* * * * *

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped or diverted during the month to distributing pool plants is not less than 35 percent of the Grade A milk received at such plant from dairy farmers and handlers described in § 1076.9(c) during such month. Any plant that has qualifying shipments, as described above, of not less than 50 percent of the receipts described, during the immediately preceding months of September through November may remain a pool supply plant by shipping 15 percent of such receipts to distributing pool plants in each of the months of March through July. All receipts mentioned in this paragraph are to include any diversions from the plant as provided in § 1076.13.

(c) A plant, other than a distributing plant, operated by a cooperative association if more than 50 percent of the total milk supply of producer members of such cooperative association is shipped to pool distributing plants during either the month or the immediately preceding 12 month period. Such shipments may be either directly from the farm or transferred from a plant owned or operated by the cooperative association.

Proposal No. 3

§ 1076.9 [Amended]

Revised § 1076.9(c) by deleting the words "of another handler".

Proposal No. 4

Amend § 1076.13 to read:

§ 1076.13 Producer milk.

"Producer milk" of each handler means all skim milk and butterfat of producers that is:

(a) Received at a pool plant directly from producers;

(b) Received by a handler described in § 1076.9(c); or

(c) Diverted to a plant, other than a producer-handler plant, under the following conditions;

(1) A cooperative association may divert for its account the milk of any member producer whose milk has been received at a pool plant at least once during the month, provided; that the quantity of milk diverted to nonpool plants shall not exceed 50 percent of its member producer milk during each of the months of March, April, May, June and July, and 35 percent in each of the other months of the year.

(2) A handler in his capacity as the operator of a pool plant may divert for his account the milk of any producer, whose milk has been received at the handlers pool plant at least once during the month, provided; that the quality of milk diverted to nonpool plants during each of the months of March, April, May, June and July shall not exceed 50 percent and during each of the remaining months of the year 35 percent of the total quantity of milk received from producers who are not members of a cooperative association which has diverted milk in accordance with paragraph (c)(1) of this section.

(3) Diversions in excess of limitations cited in paragraph (c)(1) and (c)(2) of this section shall not be considered producer milk. The diverting handle may designate the dairy farmers whose diverted milk will not be producer milk otherwise the milk last diverted, in lots of an entire day's production, shall be excluded first in determining which milk should not be producer milk.

(4) Diverted milk shall be priced at the location of the plant to which diverted.

Proposal No. 5

§ 1076.30 [Amended]

Amend § 1076.30 by changing the word "7th" to "8th".

Proposal No. 6

Make the following changes in §§ 1076.42, 1076.44, 1076.52, 1076.60, 1076.71 and 1076.73:

Amend § 1076.42(a) to read:

§ 1076.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a packaged fluid milk product shall be classified as Class I milk. Skim milk or butterfat transferred in the form of bulk or packaged products specified in § 1076.40(b)(1), except bulk fluid cream products, shall be classfied as Class II milk. All transfers and diversions of bulk fluid milk and cream products, including transfers by a handler described in § 1076.9(c), shall be priced as producer milk at the transferee plant and are not to be included as utilization by the transferor plant for classification purposes.

* * * * *

Revise § 1076.44(a)(4) to read:

§ 1076.44 Classification of producer milk.

(a) * * *

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in § 1076.40(b)(1), other than bulk fluid cream products, received from other plants, but not in excess of the pounds of skim milk remaining in Class II;

* * * * *

Delete § 1076.44(a)(13) and renumber § 1076.44(a)(14) as (a)(13) and revise to read:

(a) * * *

(13) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, milk from a handler described in § 1076.9(c) and bulk transfers from other pool plants, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class

III. Any amount so subtracted shall be known as "overage".

* * * * *

Revise § 1076.44(c) to read:

* * * * *

(c) The quantity of milk in each class for which a handler's obligation is to be determined shall be the combined pounds of skim milk and butterfat remaining in each class after the computations described in paragraphs (a) and (b) of this section have been completed.

* * * * *

§ 1076.52 [Amended]

Delete § 1076.52(b);

§ 1076.60 [Amended]

Revise § 1076.60(a) by deleting the word "producer".

§ 1076.71 [Amended]

Revise § 1076.71(a)(2)(i) to read:

(a) * * *

(2) * * *

(i) The value at the uniform price, adjusted for location as described in § 1076.75, of such handler's receipts of producer milk, milk from a handler described in § 1076.9(c) and from other pool plants; and

* * * * *

Revise § 1076.73 (b) introductory text, (c) introductory text, and (c)(2) to read:

§ 1076.73 Payments to producers, cooperative associations and pool plants of cooperative associations.

* * * * *

(b) Each handler shall make payment to a cooperative association for producer milk which is caused to be delivered to such handler including milk for which the cooperative was the handler pursuant to 1076.9(c), an amount equal to the sum of the individual payments otherwise payable to producers, as follows:

* * * * *

(c) To a pool plant of a cooperative association with respect to receipts of transferred or diverted fluid milk or cream products as follows:

* * * * *

(2) on or before the 15th day after the end of each month, for transfers or diversions of bulk fluid milk and cream products not less than the value of such milk at the uniform price; for transfers of packaged fluid milk and cream products not less than the value of such milk at the class prices. Values are to be determined based on prices applicable at the location of the receiving handler's pool plant subject to adjustment by the butterfat differential specified in section 1076.4 and less any payment made pursuant to paragraph (c)(1) of this section; and

* * * * *

Proposal No. 7

§ 1076.52 [Amended]

Revise § 1076.52(a) to read;

(a) For milk received from producers at a plant which is classified as Class I milk the price specified in § 1076.50 (a) shall be reduced 1.5 cents for each 10 miles or fraction thereof, (by shortest hard-surface highway distance as measured by the market administrator) that such plant is located from the post office of Sioux Falls, South Dakota.

* * * * *

Proposal No. 8

This is an alternative proposal if Proposal 6 is not adopted.

Revise § 1076.52 (b) to read

* * * * *

(b) For purposes of calculating such adjustment bulk transfers between pool plants shall be allowed Class I location adjustment in the following manner;

(1) Multiply the gross Class I disposition at the transferee plant by 115 percent,

(2) Prorate the result based on the sum of recipts at the transferee plant including producer milk and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants.

Proposal No. 9

§ 1076.71 [Amended]

Amend § 1076.71 by changing "13th day" to "15th day".

§ 1076.72 [Amended]

Amend § 1076.73 by changing "14th day" to "16th day".

§ 1076.73 [Amended]

Amend § 1076.73 (a)(2) by changing "15th day" to "18th day".

Amend § 1076.73 (b)(2) by changing "13th day" to "15th day".

Amend § 1076.73 (c)(2) by changing "13th day" to "15th day".

Proposal No. 10

Add a new § 1076.86 as follows:

§ 1076.86 Deduction for marketing services.

(a) Each handler before making payments prescribed in § 1076.73(a) shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may announce, for any producer other than himself who is not a member of a qualified cooperative association.

(b) Any handler making deductions described in paragraph (a) of this section shall pay such deductions to the market administrator on or before the 15th day after the end of the month that such milk was received.

Proposal No. 11

§ 1076.78 [Amended]

Amend § 1076.78 to read:

Any unpaid obligation of a handler pursuant to § 1076.71(a), § 1076.77(a), § 1076.85 or § 1076.86(b) shall be increased 1 percent for each month or portion thereof that such payment is overdue.

Proposed by the Dariy Division, Agricultural Marketing Service:

Proposal No. 12

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, P.O. Box 4606, Overland park, Kansas 66204, or from the Hearing Clerk, Room 1077–South Building, United States Department of Agriculture, Washington, D.C. 20250 or may be there inspected.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture.
Office of the Administrator, Agricultural Marketing Service.
Office of the General Counsel.
Dairy Division, Agricultural Marketing Service (Wahsington Office only).
Office of the Market Administrator, eastern South Dakota Marketing Area.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, D.C., on: February 21, 1980.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 80-5983 Filed 2-26-80: 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1464

Tobacco Loan Program; Proposed 1980 Price Support Level, Grade Loan Rates, and Program Procedures—Flue-Cured Tobacco

AGENCY: Commodity Credit Corporation.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation is proposing to (1) announce the level of support of $1.415 per pound for flue-cured tobacco as required by the Agricultural Act of 1949, as amended, (2) publish a schedule of grade loan rates so as to provide this level of support, and (3) make ineligible for price support eight grades of flue-cured tobacco for which there is limited demand and oversupply. All other procedures for making price support available to producers of 1980 crop flue-cured tobacco shall remain the same. You are invited to submit views and recommendations with respect to these proposals.

DATES: Written comments must be received by March 28, 1980 in order to be sure of consideration.

ADDRESS: Send comments to Director, Price Support and Loan Division, ASCS, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, ASCS, (202) 447–6733.

SUPPLEMENTARY INFORMATION: The Agricultural Act of 1949, as amended, (the "Act") requires the Secretary through loans, purchases and other operations, to make price support available on any crop of tobacco for which marketing quotas are in effect, or for which marketing quotas have not been disapproved by producers. Under section 106 of the Act, the level of support in cents-per-pound for each crop of each kind of tobacco for which marketing quotas are in effect, or for which marketing quotas are not disapproved, is mandatory at the support level for the 1959 crop of such kind of tobacco, multiplied by the ratio of (i) the average of the index of prices paid by farmers for the three calendar years immediately preceding the calendar year in which the marketing year begins for the crop for which the support level is being determined to (ii) the average index of prices paid by farmers for the 1959 calendar year. The average of the index of such prices paid for calendar years 1977–79 will be used in computing the 1980 tobacco support levels. The average is 761. The average index of prices paid for the calendar year 1959 is 298. The resulting ratio is 2.55. Thus, the support level for the 1980 crop of flue-cured tobacco will be 255 percent of the 1959 level (55.5 cents per pound), or $1.415 per pound. It is expected that price support will be provided through loans to a producers' cooperative marketing association which would receive eligible tobacco from producers and make price support advances to the producers, through auction warehouses, for the tobacco received as collateral. Price support advances would be based on the proposed loan rates for each grade, which would average the required level of support when weighted by the anticipated grade percentages, in accordance with section 403 of the Act. Price support advances to producers would be the amount determined by multiplying the pounds of each grade received by the applicable loan rate for that grade less 1 cent per pound, which the producers' association is authorized to deduct and apply against its overhead costs.

For the 1979 and preceding crops of flue-cured tobacco, all grades except No–G and N2 were eligible for price support. No–G and N2 have been ineligible for price support because these grades are of such low quality that they do not make good collateral.

Because certain other grades, P5L, P5F, P5G, N1GL, N1XO, N1PO, N1L, and N1XL are also of low quality and have a very limited market demand, it is proposed that these grades shall also be ineligible for price support beginning with the 1980 crop of tobacco.

The proposed rates, calculated to provide the level of support of $1.415 per pound as determined under section 106 of the Act, are set forth below.

Proposed Rule

Accordingly, it is proposed that 7 CFR Part 1464 be amended by revising § 1464.16 to read as follows effective for the 1980 crop of flue-cured tobacco, types 11–14.

§ 1464.16 1980 crop flue-cured tobacco, types 11–14, loan schedule.[1]

(a) Loan schedule

[Rate per pound]

Grade:	Loan rate
A1F	$1.83
A1L	1.83
B1L	1.73
B2L	1.69
B3L	1.66
B4L	1.62
B5L	1.55
B6L	1.49
B1F	1.73
B2F	1.69
B3F	1.66
B4F	1.62
B5F	1.55
B6F	1.49
B1FR	1.71
B2FR	1.67
B3FR	1.64
B4FR	1.61
B5FR	1.54
B6FR	1.47
B4R	1.45
B5R	1.36
B3K	1.59
B4K	1.53
B5K	1.46
B6K	1.38
B3V	1.54
B4V	1.49
B5V	1.42
B3S	1.48
B4S	1.44
B5S	1.37
B3KL	1.49
B4KL	1.45
B5KL	1.39
B6KL	1.30
B3KF	1.49
B4KF	1.45
B5KF	1.39
B6KF	1.30
B3KM	1.51
B4KM	1.48
B5KM	1.42
B6KM	1.31
B3KR	1.55
B4KR	1.51
B5KR	1.44
B4KV	1.40
B5KV	1.32
B6KV	1.24
B4G	1.37
B5G	1.31
B6G	1.22
B5GR	1.18
B4GK	1.31
B5GK	1.27
B6GK	1.19
B5GG	1.10
H3L	1.68
H4L	1.65
H5L	1.57
H6L	1.52
H1F	1.75
H2F	1.71
H3F	1.68
H4F	1.65
H5F	1.57
H6F	1.52
H4FR	1.61
H5FR	1.55
H6FR	1.48
H4K	1.55
H5K	1.50
H6K	1.43
C1L	1.75
C2L	1.72
C3L	1.69
C4L	1.65
C5L	1.58
C1F	1.75
C2F	1.72
C3F	1.69
C4F	1.65
C5F	1.58
C4V	1.52
C4S	1.49
C4KL	1.46
C4KM	1.49

[1] The loan rates listed are applicable to tied and untied flue-cured tobacco which is (1) eligible tobacco as defined in the regulations and (2) identified by a marketing card which does not bear the notation "Discount Variety-Limited Support". Rates for eligible tobacco identified by a marketing card, which bears the notation "Discount Variety-limited support", are 50 percent of the loan rate listed plus fifty cents ($0.50) per hundred pounds. Any grade to which the special factor "sand" or "dirt" is added (denoting a moderate amount of sand or dirt in excess of normal) may be accepted at 90 percent, rounded to the nearest dollar, of the loan rate listed. Tobacco graded "W" (doubtful keeping order), "U" (unsound), "N2", "No–G", "No–G–F", "No–G–F–sand", "No–G–F–dirt", P5F, P5L, P5G, N1GL, N1XO, N1PO, N1L, N1XL, or "scrap" will not be accepted. Tobacco is eligible for advance only if consigned by the original producer. The cooperative association through which advances are made available is authorized to deduct 1 cent per pound to apply against overhead costs.

C4KR	1.54
C4G	1.37
C4GK	1.31
X1L	1.70
X2L	1.65
X3L	1.59
X4L	1.49
X5L	1.35
X1F	1.70
X2F	1.65
X3F	1.59
X4F	1.49
X5F	1.35
X3V	1.48
X4V	1.42
X3S	1.42
X4KL	1.34
X4KF	1.34
X4KV	1.27
X3KR	1.49
X4KR	1.44
X3KM	1.43
X4KM	1.36
X4G	1.27
X5G	1.21
X4GK	1.22
P2L	1.19
P3L	1.11
P4L	1.01
P2F	1.19
P3F	1.11
P4F	1.01
P4G	.91
M4F	1.30
M5F	1.26
M4KR	1.20
M4KM	1.19
M5KM	1.14
M4GK	1.14
M5GK	1.06
N1K	1.07
N1R	.97
N1GF	.97
N1GR	.92
N1KV	.96
N1GG	.88
N1BO	.89

(b) *Level of support.* The statutory level of support for the 1980-crop of flue-cured tobacco, calculated in accordance with section 106 of the Agriculture Act of 1949, is $1.415 per pound.

All written submissions will be made available for pubic inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday in Room 3741—South Building, USDA, 14th and Independence Avenue, SW, Washington, D.C. 20013.

This amendment has not been classified "significant" and is being published under emergency procedures, as authorized by Executive Order 12044 and Secretary's Memorandum No. 1955, without a full 60-day comment period. It has been determined by Jerome F. Sitter that an emergency situation exists which warrants less than a full 60-day comment period on this proposal because the grade loan rates for the 1980–81 flue-cured tobacco marketing year should be announced prior to the planting season in early April. Accordingly, comments must be received by March 28, 1980 in order to be sure of consideration. An approved Draft Impact Analysis is available from Robert L. Tarczy, Price Support and Loan Division, Room 3741—South Building, P.O. Box 2415, Washington, D.C. 20013.

Signed at Washington, D.C. on February 22, 1980.

John W. Goodwin,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 80-6052 Filed 2-22-80; 3:28 pm]

BILLING CODE 3410-05-M

Farmers Home Administration

7 CFR Parts 1945 and 1980

Economic Emergency Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) is considering amending its regulations concerning Economic Emergency (EE) loans. After several months of administering the program it has come to our attention that several areas of the regulations are causing confusion and are in need of further clarification. The intended effect of this action is to redefine aquaculture, require that principal members, stockholders, and partners of entity applicants must be unable to get credit elsewhere as individuals and collectively, and require that an applicant must have been engaged in farming for the 12-month period or during one full production and marketing cycle, whichever is the lesser, immediately before the application was filed, and add regulations governing a change in the form of an applicant.

DATES: Comments must be received on or before April 28, 1980.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6346–S, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. William Krause, USDA, FmHA, Washington, D.C., 202–447–6257.

SUPPLEMENTARY INFORMATION: FmHA proposes to amend Subpart C of Part 1945 and Subpart F of Part 1980, Chapter XVIII, Title 7, Code of Federal Regulations as follows:

(1) Sections 1945.104 and 1980.504 to require that an applicant who conducts an aquaculture operation must own, lease, or have an exclusive right to use the area being farmed.

(2) Sections 1945.105 and 1980.512 to require that principal members, stockholders, and partners of entity applicants must be unable to get credit elsewhere as individuals and collectively.

(3) Sections 1945.112 and 1980.512 to require that an applicant must have been engaged in farming for the 12-month period, or during one full production and marketing cycle, whichever is the lesser, immediately before the application was filed, and add regulations governing a change in form of an applicant.

Accordingly, as proposed, Subpart C of Part 1945 and Subpart F of Part 1980 are amended as follows:

PART 1945—EMERGENCY

Subpart C—Economic Emergency Loans

1. § 1945.104 (a)(4) is revised to read as follows:

§ 1945.104 Definitions and abbreviations.

(a) *Definitions*

* * * * *

(4) *Aquaculture.* The husbandry of aquatic organisms in a controlled or selected environment. An aquatic organism is any fish (the term "fish" includes any aquatic gilled animal commonly known as "fish", as well as mollusks, crustaceans, or other invertebrates produced under controlled conditions—that is feeding, tending, harvesting, and such other activities as are necessary to properly raise and market the products—in ponds, lakes, streams, or similar holding areas), amphibians, reptiles, or aquatic plants. An aquaculture operation is considered to be a farm only if it is conducted on grounds which the applicant owns, leases, or has an exclusive right to use. An exclusive right to use must be evidenced by a permit issued to the applicant and the permit must specifically identify the waters available to be used by the applicant only.

* * * * *

2. § 1945.105 is revised as follows:

§ 1945.105 Credit elsewhere.

The applicant shall certify in writing on the application form and the County Supervisor shall confirm, that the applicant is unable to obtain sufficient credit from its normal agricultural lender(s) including an FmHA guaranteed loan to finance the actual needs at rates and terms that will allow the applicant to continue the farming operation. The applicant's equity in real estate, chattels, and other assets will be considered in determining ability to obtain such credit from the applicant's normal lender(s). Cooperatives, corporations, and partnerships, and the principal members, principal stockholders, and principal partners, both individually and collectively, must be unable to obtain the required funds

with their own resources or with credit obtained from their normal lender(s).

3. § 1945.112 (b)(1) is revised and (h) is added to read as follows:

§ 1945.112 Eligibility

* * * * *

(b) *Bona fide farmer.* * * *

(1) A bona fide farmer must be actually engaged in farming operations to be financed by an EE loan, and must have been engaged in farming during the 12-month period, or during one full production and marketing cycle, whichever is the lesser, immediately preceding the date of the application. If the applicant is an individual, the applicant must manage such farming operation. If the applicant is a cooperative, corporation, or partnership, it must be managed by one or more of the members, stockholders, or partners. One who does not devote full time to the farming enterprise may be considered the manager provided the person visits the farm at sufficiently frequent intervals to exercise control over the farming enterprise, gives directions as to how it should be run, and see that the enterprise is being carried on properly. Any enterprise that involves an outside full-time manager or mangagement service does not qualify regardless of the number of visits made. In addition, as between two applications on file at the same time, FmHA will give preference to an applicant who owns and operates not larger than a family farm as defined in § 1945.104 of this subpart. However, for the purpose of an EE loan, this does not exclude an applicant who does not own or operate a family farm.

* * * * *

(h) *Change in the form of an applicant.* A change in the form of an applicant from an individual, partnership, cooperative or corporation to another form of legal entity will not disqualify the new entity if it is conducting the same operation as was conducted during the 12-month period, or one full production and marketing cycle, whichever is the lesser, immediately preceding the date of the application, and is primarily owned by substantially the same people that owned the operation during the 12-month period, or one full production and marketing cycle, whichever is the lesser, immediately preceding the date of the application.

(1) When one or more *individuals* who were engaged in a farming operation during the 12-month period, or one full production and marketing cycle, whichever is the lesser, immediately preceding the application later form a partnership, cooperative or corporation, the operation's application may still receive consideration provided such individual(s) owns at least 50 percent of the new partnership assets or cooperative or corporations's voting stock and continues to manage or control the farming operation.

(2) When a *partnership* that was engaged in a farming operation during the 12-month period, or one full production and marketing cycle, whichever is the lesser, immediately preceding the application later dissolves and the operation is continued by an individual or a newly formed partnership or cooperative or corporation, an application from the individual or the new entity will receive consideration provided one or more of the partners who managed the farming operations for the prior partnership will now manage the operation for the applicant, and provided

(i) The assets of the prior partnership are now owned by an individual applicant who as a partner in the prior partnership had owned at least 50 percent of the partnership assets; or

(ii) The assets of the prior partnership are now owned by a new partnership applicant and the partners who had owned at least 50 percent of the assets of the prior partnership are now partners owning at least 50 percent of the assets of the new partnership applicant; or

(iii) The assets of the prior partnership are now owned by a new cooperative or corporation applicant, and the partners of the prior partnership who had owned at least 50 percent of those assets now own at least 50 percent of the voting stock of the new cooperative or corporation applicant.

(3) When a *cooperative* that was engaged in a farming operation during the 12-month period, or one full production and marketing cycle, whichever is the lesser, immediately preceding the application dissolves but the farming operation is continued by an individual or a newly formed cooperative, corporation or partnership, the application from the individual or new entity will receive consideration provided one or more of the members who managed the farming operation for the prior cooperative must now manage the operation for the new applicant, and provided

(i) The assets of the dissolved cooperative are now owned by an individual who had owned at least 50 percent of the voting stock of the former cooperative, or

(ii) The assets of the former cooperative are now owned by a new partnership applicant and the members who had owned at least 50 percent of that cooperative are now partners owning at least 50 percent of the assets of the new partnership applicant, or

(iii) The assets of the former cooperative are now owned by a new cooperative or corporation applicant and the members or stockholders who had owned at least 50 percent of the voting stock of the former cooperative are now members or stockholders owning at least 50 percent of the voting stock of the new cooperative or corporation applicant.

(4) When a *corporation* that was engaged in a farming operation during the 12-month period, or one full production and marketing cycle, whichever is the lesser, immediately preceding the application dissolves but the farming operation is continued by an individual or a newly formed cooperative or corporation or partnership, the application from the individual or new entity will receive consideraton provided one or more of the stockholders who managed the farming operation for the prior corporation must now manage the operation for the new applicant, and provided

(i) The assets of the dissolved corporation are now owned by an individual who had owned at least 50 percent of the voting stock of the former corporation; or

(ii) The assets of the former corporation are now owned by a new partnership applicant and the stockholders who had owned at least 50 percent of that corporation are now partners owning at least 50 percent of the assets of the new partnership applicant; or

(iii) The assets of the former corporation are now owned by a new cooperative or corporation applicant and the members or stockholders who had owned at least 50 percent of the voting stock of the former corporation are now members or stockholders owning at least 50 percent of the voting stock of the new cooperative or corporation applicant.

PART 1980—GENERAL

Subpart F—Economic Emergency Loans

4. § 1980.504(d) is revised to read as follows:

§ 1980.504 Definitions.

* * * * *

(d) *Aquaculture.* The husbandry of aquatic organisms in a controlled or selected environment. An aquatic organism is any fish (the term "fish" includes any aquatic gilled animal commonly known as "fish", as well as

mollusks, crustaceans, or other invertebrates produced under controlled conditions—that is feeding, tending harvesting, and such other activities as are necessary to properly raise and market the products—in ponds, lakes, streams, or similar holding areas), amphibians, reptiles, or aquatic plants. An aquaculture operation is considered to be a farm only if it is conducted on grounds which the applicant owns, leases, or has an exclusive right to use. An exclusive right to use must be evidenced by a permit issued to the applicant and the permit must specifically identify the waters available to be used by the applicant only.

* * * * *

5. § 1980.512 (b)(1) and (e) are revised and (h) is added to read as follows:

§ 1980.512 Eligibility.

* * * * *

(b) *Bona fide farmer.* * * *

(1) A bona fide farmer must be actually engaged in farming operations to be financed by an EE loan, and must have been engaged in farming during the 12-month period, or one full production and marketing cycle, whichever is the lesser, immediately preceding the date of the application. If the applicant is an individual, the applicant must manage such farming operation. If the applicant is a cooperative, corporation, or partnership, it must be managed by one or more of the members, stockholders, or partners. One who does not devote full time to the farming enterprise may be considered the manager provided the person visits the farm at sufficiently frequent intervals to exercise control over the farming enterprise, gives directions as to how it should be run, and sees that the enterprise is being carried on properly. Any enterprise that involves an outside full-time manager or management service does not qualify regardless of the number of visits made. In addition, as between two applications on file at the same time, FmHA will give preference to an applicant who owns and operates not larger than a family farm as defined in § 1980.504 of this Subpart. However, for the purpose of an EE loan, this does not exclude an applicant who does not own or operate a family farm.

* * * * *

(e) *Credit elsewhere.* The applicant shall certify in writing on the application form, and the County Supervisor shall confirm, that the applicant is unable to obtain sufficient credit from its normal agricultural lender(s) to finance the actual needs at rates and terms that will allow the applicant to continue the farming operation. The applicant's equity in real estate, chattels, and other assets will be considered in determining ability to obtain such credit from the applicant's normal lender(s). Cooperatives, corporations, and partnerships, and the principal members, principal stockholders, and princiapl partners, both individually and collectively, must be unable to obtain the required funds with their own resources or with credit obtained from their normal lender(s).

* * * * *

(h) *Change in the form of an applicant.* A change in the form of an applicant from an individual, partnership, cooperative or corporation to another form of legal entity will not disqualify the new entity if it is conducting the same operation as was conducted during the 12-month period, or during one full production and marketing cycle, whichever is the lesser, immediately preceding the date of the application, and is primarily owned by substantially the same people that owned the operation during the 12-month period, or during one full production and marketing cycle, whichever is the lesser, immediately preceding the date of the application.

(1) When one or more *individuals* who were engaged in a farming operation during the 12-month period, or during one full production and marketing cycle, whichever is the lesser, immediately preceding the application later forms a partnership, cooperative or corporation, the operation's application may still receive consideration provided such individual(s) owns at least 50 percent of the new partnership asserts or cooperative or corporation's voting stock and continues to manage or control the farming operation.

(2) When a *partnership* that was engaged in a farming operation during the 12-month period, or during one full production and marketing cycle, whichever is the lesser, immediately preceding the application later dissolves and the operation is continued by an individual or a newly formed partnership or cooperative or corporation, an application from the individual or the new entity will receive consideration provided one or more of the partners who managed the farming operation for the prior partnership will now manage the operation for the applicant, and provided

(i) The assets of the prior partnership are now owned by an individual applicant who as a partner in the prior partnership has owned at least 50 percent of the partnership assets; or

(ii) The assets of the prior partnership are now owned by a new partnership applicant and the partners who had owned at least 50 percent of the assets of the prior partnership are now partners owning at least 50 percent of the assets of the new partnership applicant; or

(iii) The assets of the prior partnership are now owned by a new cooperative or corporation applicant, and the partners of the prior partnership who had owned at least 50 percent of those assets now own at least 50 percent of the voting stock of the new cooperative or corporation applicant.

(3) When a *cooperative* that was engaged in a farming operation during the 12–month period, or during one full production and marketing cycle, whichever is the lesser, immediately preceding the application dissolves but the farming operation is continued by an individual or a newly formed cooperative, corporation or partnership, the application from the individual or new entity will receive consideraton provided one or more of the members who managed the farming operation for the prior cooperative must now manage the operation for the new applicant, and provided

(i) The assets of the dissolved cooperative are now owned by an individual who had owned at least 50 percent of the voting stock of the former cooperative, or

(ii) The assets of the former cooperative are now owned by a new partnership applicant and the members who had owned at least 50 percent of that cooperative are now partners owning at least 50 percent of the assets of the new partnership applicant, or

(iii) The assets of the former cooperative are now owned by a new cooperative or corporation applicant and the members or stockholders who had owned at least 50 percent of the voting stock of the former cooperative are now members or stockholders owning at least 50 percent of the voting stock of the new new cooperative or corporation applicant.

(4) When a *corporation* that was engaged in a farming operation during the 12–month period, or during one full production and marketing cycle, whichever is the lesser, immediately preceding the application dissolves but the farming operation is continued by an individual or a newly formed cooperative or corporation or partnership, the application from the individual or new entity will receive consideration provided one or more of the stockholders who managed the farming operation for the prior corporation must now manage the operation for the new applicant, and provided

(i) The assets of the dissolved corporation are now owned by an individual who had owned at least 50 percent of the voting stock of the former corporation; or

(ii) The assets of the former corporation are now owned by a new partnership applicant and the stockholders who had owned at least 50 percent of that corporation are now partners owning at least 50 percent of the assets of the new partnership applicant; or

(iii) The assets of the former corporation are now owned by a new cooperative or corporation applicant and the members or stockholders who had owned at least 50 percent of the voting stock of the former corporation are now members or stockholders owning at least 50 percent of the voting stock of the new cooperative or corporation applicant.

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Note.—This proposal has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria. A Draft Impact Analysis has been prepared and is available from the Chief, Directives Management Branch, Room 6346, South Agriculture Building, Washington, D.C. 20250.

(7 U.S.C. 1989; 5 U.S.C 301; Title II of Pub. L. 95–334; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70)

Dated: February 4, 1980.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

[FR Doc. 80-6007 Filed 2-26-80; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF ENERGY

10 CFR Part 435

Energy Performance Standards for New Buildings; Additional Public Hearing

AGENCY: Department of Energy.

ACTION: Scheduling of additional hearing.

SUMMARY: The Department of Energy, in response to significant public comment to schedule a hearing in the Pacific Northwest on the Energy Performance Standards for New Buildings Notice of Proposed Rulemaking published in the **Federal Register** on November 28, 1979, 44 FR 68120, has scheduled an additional hearing as listed below:

April 24–25, 1980 in Seattle, Washington.

It should be noted that the procedure for submitting comments and requests to speak at the hearings remains the same as originally published in Section 7.0 of the preamble to the Notice of Proposed Rulemaking.

DATES: Written comments on the proposed rule and the Technical Support Documents, including the Draft Environmental Impact Statement, must be received by the Department by close of business April 30, 1980. The additional hearing is scheduled for April 24–25, 1980, in Seattle, Washington. The other five hearings remain scheduled as previously listed in the **Federal Register** on January 22, 1980, 45 FR 4359: March 24–26, 1980 for Washington, D.C.; April 14–16, 1980, for Atlanta, Georgia and Kansas City, Missouri; and April 21–23, 1980 for Los Angeles, California, and Boston, Massachusetts. The deadline for submitting requests to speak is March 12, 1980, and speakers will be notified by March 19, 1980.

ADDRESSES: The hearings will begin at 9:30 a.m. local time, at the locations given in the table. Written comments and requests to speak at the hearings, as well as questions regarding the conduct of the hearings, should be directed to Joanne Bakos at the address and telephone number given below.

FOR FURTHER INFORMATION CONTACT:

James L. Binkley, A.I.A. (Buildings and Community Systems), U.S. Department of Energy, Office of Conservation and Solar Energy, Mail Station 2114C, 20 Massachusetts Avenue NW., Washington, D.C. 20585, (800) 424–9040, (800) 424–9081, (202) 252–2855.

Joanne Bakos (Hearing Procedures), U.S. Department of Energy, Office of Conservation and Solar Energy, Mail Station 2221C, 20 Massachusetts Avenue NW., Washington, D.C. 20585, (202) 376–1651.

Richard F. Kessler (Office of General Counsel), U.S. Department of Energy, Mail Station 3228, 20 Massachusetts Avenue NW., Washington, D.C. 20585.

Issued in Washington, D.C., February 20, 1980.

Kelly C. Sandy III,

Executive Director, Conservation and Solar Energy.

City	Hearing date	Location	Requests to speak to be submitted by—	Speakers selected notified by—
Washington, D.C.	Mar. 24, 25, and 26, 1980	Georgetown University, Hall of Nations, 36th and Prospect Sts. NW., Washington, D.C. 20008.	Mar. 12, 1980	Mar. 19, 1980.
Atlanta, Ga	Apr. 14, 15, and 16, 1980	Atlanta Civic Center, 395 Piedmont Ave. NE., Atlanta, Ga. 30308.	Mar. 12, 1980	Mar. 19, 1980.
Kansas City, Mo.	Apr. 14, 15, and 16, 1980	Sheraton Downtown, 6th and Main Sts., Kansas City, Mo. 64106.	Mar. 12, 1980	Mar. 19, 1980.
Los Angeles, Calif.	Apr. 21, 22, and 23, 1980	Holiday Inn, Convention Center, 1020 South Figueroa St., Los Angeles, Calif. 90015.	Mar. 12, 1980	Mar. 19, 1980.
Boston, Mass.	Apr. 21, 22, and 23, 1980	J. W. McCormack, Post Office and Courthouse Building, Post Office Square, Boston, Mass. 02102.	Mar. 12, 1980	Mar. 19, 1980.
Seattle, Wash.	Apr. 24 and 25, 1980	Federal Building, South Auditorium, 915 Second Ave., Seattle, Wash. 98174.	Mar. 12, 1980	Mar. 19, 1980.

[FR Doc. 80-5912 Filed 2-26-80; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 561 and 563

[No. 80-104]

Federal Savings and Loan Insurance Corporation; Reserve Requirements

February 21, 1980.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Board proposes to amend its reserve requirements for institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, by: (1) designating Net Worth as the statutory "reserve" account and eliminating the separate designation of the Federal Insurance Reserve subaccount; (2) changing the reserve calculation period from the end of the year to the beginning of the year; and (3) providing for extension of the period of time allowed for meeting the one-time reserve requirement, to a maximum of 30 years from the granting of insurance, on an application basis. The Board believes that these actions would aid its supervisory efforts by reflecting a more accurate picture of an institution's financial position, while continuing to maintain the safety and soundness of institutions by providing an adequate reserve for losses.

DATE: Comments must be received by: April 28, 1980.

ADDRESS: Send comments to the Office of the Secretary, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

FOR FURTHER INFORMATION CONTACT: Nancy L. Feldman, Associate General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552 (202) 377-6440.

SUPPLEMENTARY INFORMATION: Subsection 403(b) of the National Housing Act, as amended (12 U.S.C. 1727), requires the Federal Savings and Loan Insurance Corporation, operated by the Board, to promulgate regulations providing for loss reserves. At present, §§ 563.11, 563.12, 563.13, and 563.14 of the rules and regulations for Insurance of Accounts (12 CFR 563.11-563.14) require insured institutions to establish a separate account for this purpose, designated by the Board as the Federal Insurance Reserve (FIR).

The FIR serves as a component of net worth, as defined and regulated by the Board. However, it is the net worth calculation, and not the FIR alone, which the Board believes is a useful regulatory barometer. The proposal therefore would eliminate the statutory reserve as a separate account, while continuing to include the items constituting the FIR as part of the net worth calculation. The Board believes that this change would simplify its examination and supervision of institutions, by providing clarification of an institution's ability to absorb losses. Elimination of the separate FIR account, which has been restricted to absorption of capital losses, would mean that all losses would be chargeable to the net worth account. Eliminating artificial distribution of losses among different accounting structures will enable the Board to more easily review the effect of such losses on an institution's financial capacity, and would remove the need for applications to earmark funds temporarily to the FIR account, which currently are required to be processed by Board staff.

The proposed regulation would provide explicitly in § 563.13(a) that compliance with the net worth requirements, with certain adjustments, satisfies the statutory reserve requirement. For purposes of fulfilling the statutory requirement, certain items includable in present net worth calculations would be excluded; these are: (1) Subordinated debentures, (2) capital stock subject to mandatory retirement or redemption provisions, (3) specific loss reserves, and (4) any other items the Board determines are not available for absorption of losses. Subsection 403(b) indicates that the reserves specified are reserves for losses, and on that basis the listed items are currently excluded from FIR calculations; thus, the proposal would continue the regulatory *status que* in respect to the items that may be included to meet the statutory requirement.

Review of the appropriateness of the present exclusions from a loss reserve, and the substance of the net worth requirements of the present regulation, are not within the scope of this proposal. The Board is considering a number of possible changes in these areas, and expects to invite public comment on them at a later date.

Subsection 403(b) further provides that reserves shall be built up to reach a level of five percent of insured accounts, within a 20-year period, or up to a 30-year period in the case of any insured institution if the FSLIC determines such action to be necessary to meet mortgage needs. Current § 563.13(a) extends the period to 26 years for all institutions. The proposal would provide a reversion to the 20 year period (with a grandfathering of institutions now insured from 18 to under 26 years, at the 26-year level), and an application process for extensions up to 30 years in individual cases where mortgage needs would be better served. The proposal would further amend the provision to limit the five-percent test to "insured" accounts, to more accurately follow the statutory language. The Principal Supervisory Agent in the institution's Federal Home Loan Bank district would have delegated authority to approve extensions of the time period; denials would be referred to the Board for final decision. Comment is specifically solicited on the proposed standards to be used in making a determination of "mortgage needs", in connection with applications for extension: the proposal would allow approval of an extension if the PSA determined that the institution has the opportunity and willingness to make additional mortgage loans but that, because of rapid growth or other factors, not including losses or poor business practices, it would be difficult to do so without an extension.

Present § 563.13 requires the reserve test to be calculated on the basis of account balances existing at the annual closing date. The Board has become aware of the difficulty, particularly in times of money market volatility, of "meeting a moving target", i.e. not knowing until the end of the year what the reserve requirements are and whether they have been met. The Board therefore proposes to change the regulation so that the reserve requirement for a given year is calculated at the beginning of such year, with compliance required by the end of that year. The proposed revision appears at § 563.13(b)(1).

Proposed § 563.14, regarding payment of dividends to insured members, restates current implementation of statutory requirements, but would delete the present reference to "interest", which is not contained in Section 403(b). Paragraph (a) of proposed § 563.14 provides that dividends to insured members may not be paid out of the statutory reserve. This provision is now found in § 563.11(a). The proposed provision would separate out that part of the net worth formula attributable to the present FIR component for purposes of the statutory test.

Paragraph (b) of proposed § 563.14 maintains the present regulatory implementation of the section 403(b) statutory requirement that FSLIC approval be granted before dividends may be paid, in the event that losses are chargeable to the reserve. The provision is contained in present § 563.14.

Accordingly, the Board hereby proposes to amend Parts 561 and 563 by amending § 561.13, deleting §§ 563.11

and 563.12, and revising §§ 563.13 and 563.14, to read as set forth below.

Rules and Regulations for Insurance of Accounts

PART 561—DEFINITIONS

§ 561.13 [Amended]

1. Amend § 561.13 (the definition of "net worth") by changing the phrase "annual closing net worth requirement" in the second and third sentences of that section to read "annual net worth requirement".

PART 563—OPERATIONS

§§ 563.11 and 563.12 [Deleted]

2. Delete §§ 563.11 and 563.12.

3. Amend § 563.13 by revising the title and paragraphs (a) and (b) and amending paragraph (c) thereof, to read as set forth below.

§ 563.13 Reserve accounts.

(a) *Statutory reserve requirement.* Compliance with the net worth requirements of paragraph (b) of this section shall constitute compliance with the reserve requirements of subsection 403(b) of the National Housing Act of 1934 as amended, with the following limitations:

(1) For purposes of meeting the statutory reserve requirement, net worth shall not include any portion of—

(i) Subordinated debt securities,

(ii) Capital stock accounts which contain mandatory retirement or redemption provisions,

(iii) Specific loss reserves, and

(iv) Any other items which the Corporation determines are not available for absorption of losses.

(2)(i) Effective (effective date of regulation), each institution shall, at any one annual closing date not later than the twentieth anniversary of insurance of accounts, have net worth equal to five percent of its insured account balances on such date, except that institutions which have been insured from 18 to fewer than 26 years from the above date shall meet this requirement within 26 years of the date of insurance. (ii) Institutions may apply to the Corporation for extension of the time periods, up to a maximum of the thirtieth anniversary, on the grounds that such action is necessary for the institution to meet mortgage needs. The Principal Supervisory Agent of the institutions's Federal Home Loan Bank district is hereby delegated authority to approve such applications, upon a determination that the institution has the opportunity and willingness to make additional mortgage loans but, because of the institution's rapid growth or other factors, not including losses or poor business practices, it finds it difficult to do so without the applied-for extension. If approval is denied, the application shall be forwarded for review and final decision by the Corporation.

(3) Payment of dividends and interest on savings accounts must be made in accordance with § 563.14.

(b) *Net worth requirements*—(1) *Calculation period.* The annual net worth requirement, as set forth in paragraph (b)(2) of this section, shall be established at the beginning of each year, and shall be met as of the end of the year. "Year" refers to the period beginning after an institution's annual closing date following each anniversary of the date of insurance of accounts.

(2) *Minimum required amount.* (i) The following table shall be used in calculating net worth requirements:

Anniversary:	Percentage
2	0.50
3	0.75
4	1.00
5	1.25
6	1.50
7	1.75
8	2.00
9	2.25
10	2.50
11	2.75
12	3.00
13	3.25
14	3.50
15	3.75
16	4.00
17	4.25
18	4.50
19	4.75
20 and thereafter	5.00

(ii) Net worth shall be at least equal to the greater of:

(*a*) An amount equal to the sum of:

(*1*) The amount obtained by multiplying the percentage corresponding to the anniversary date, as set forth in the table above, by either the amount of the institution's checking and savings account balances on such date, or the average of such account balances on such date and on one or more of the four immediately preceding annual dates, provided all such dates are consecutive, (*2*) an amount equal to 20 percent of the institution's scheduled items, and (*3*) the additional amount required by paragraph (b)(4) of this section; or

(*b*) The amount determined under the Asset Composition and Net Worth Index set forth in paragraph (b)(3) of this section, as adjusted by multiplying such amount by a fraction of which the numerator is the applicable percentage (from the table set forth above) and the denominator is 5.00, plus the additional amount required by paragraph (b)(4) of this section.

(3) *Asset Composition and Net Worth Index.* (i) the Index referred to above is as follows: * * *

* * * * *

(c) *Failure to meet net worth requirements.* If any insured institution fails to meet the net worth requirements set forth in paragraph (b) of this section, the Corporation may, whether through enforcement proceedings (as provided in Parts 565 and 566 of this subchapter) or otherwise, require such institution to take one or more of the following corrective actions:

* * * * *

4. Revise § 563.14 to read as follows:

§ 563.14 Payment of dividends from net worth.

(a) No institution may pay dividends to insured members from its net worth, as determined pursuant to § 563.13(b) unless the balance of the net worth account, after deduction of such payments and the items listed in § 563.13(a)(1) (i) through (iv), will be at least equal to the amount required under § 563.13(b)(2)(ii)(*a*)(*1*).

(b) No institution which has recognized losses of any kind chargeable to its net worth account, may pay dividends to insured members unless (1) its net worth account, after deduction of such losses, is at least equal to the amount required under § 563.13(b), or (2) prior written approval is obtained from the Corporation. The Corporation hereby approves, for any such insured institution which has been insured for a period of 20 years or more and, prior to the charging of such losses, met the five-percent requirement of § 563.13(a)(2), the declaration of dividends to insured members, if such insured institution provides not less than 25 percent of its net income (as defined in § 572.3 of this subchapter) for the affected distribution period to the restoration of its reserve capacity.

(Secs 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730). Sec. 5A, 47 Stat. 727, as amended by sec. 1, 64 Stat. 256, as amended, sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1425a, 1437). Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464). Reorg. Plan No. 3 of 1947, 172 FR 4891, 3 CFR, 1943-48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 80-6053 Filed 2-26-80; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 419

Games of Chance in the Food Retailing and Gasoline Industries: Proposed Amendment of Posting and Reporting Requirements

AGENCY: Federal Trade Commission.

ACTION: Publication of Staff Report.

SUMMARY: The Federal Trade Commission's Bureau of Consumer Protection has released to the public a staff report that summarizes and analyzes the evidence in the Commission's rulemaking proceeding regarding the amendment to the Trade Regulation Rule for Games of Chance in the Food Retailing and Gasoline Industries. (44 FR 51826, September 5, 1979; 45 FR 4363, January 22, 1980.) The Staff report includes its recommendation to the Commission regarding final action on the proposed amendment. The staff report and the recommended amendment have been placed on the public record.

DATES: Members of the public are invited to comment on the staff report and the recommended rule amendment. Comments will be accepted until March 28, 1980.

ADDRESSES: Requests for copies of the staff report should be sent to: Public Reference Branch, Room 130, Federal Trade Commission, 6th Street at Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Comments should be sent to: Secretary, Federal Trade Commission, 6th Street at Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION, CONTACT: Noble F. Jones, Consumer Protection Specialist, Cleveland Regional Office, Federal Trade Commission, 118 St. Clair Avenue, Suite 500, Cleveland, Ohio 44114. Telephone: (216) 522-4207.

SUPPLEMENTARY INFORMATION: Copies of the staff report and recommended amendment may be obtained from: Public Reference Branch, Room 130, Federal Trade Commission, 6th Street at Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Comments, which will be accepted until March 28, 1980, should be identified as "Comment on Staff Report—Games of Chance Rule, Posting and Reporting Amendment," and addressed to: Secretary, Federal Trade Commission, 6th Street at Pennsylvania Avenue, N.W., Washington, D.C. 20580.

The Commission cautions all concerned that the staff report has neither been reviewed nor adopted by the Commission and that its publication should not be interpreted as reflecting the present view of the Commission or any individual member thereof.

Issued: February 27, 1980.

By the Director of the Bureau of Consumer Protection.

Albert H. Kramer,

Director.

[FR Doc. 80-5907 Filed 2-26-80; 8:45 am]

BILLING CODE 6750-01-M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 212

Proposed Rules on Regulatory Impact

AGENCY: United States International Trade Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. International Trade Commission is issuing this notice to obtain public comments on its proposed rules on the regulatory impact of substantive rulemaking. These proposed rules are necessitated by the consideration by the Commission of proposed substantive rules under 19 U.S.C. 1337. These proposed rules on regulatory impact would establish the definition of significant regulations, the criteria and elements of regulatory analysis, the standards for review of existing regulations, and the procedures for public participation in the development of regulations.

DATE: Comments on this proposed rule must be received on or before March 28, 1980.

ADDRESS: Send comments to Jack Simmons, Office of the General Counsel, U.S. International Trade Commission, Washington, D.C. 20436. Copies of all written comments will be available for examination in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Write Jack Simmons at the above address or telephone 202-523-0345.

SUPPLEMENTARY INFORMATION:

I. Introduction.

II. Proposals for rules on regulatory impact.

I. Introduction

The Commission is a six-member independent agency with broad factfinding powers under the Tariff Act of 1930, the Agricultural Adjustment Act, the Trade Act of 1974, and the Trade Agreements Act of 1979. These statutes authorize the Commission to investigate factors relating to the foreign trade of the United States, with an emphasis on the competitive impact of imported products in the domestic markets of U.S. producers. The character of the Commission's investigative responsibility depends upon the specific statutory mandate. In some cases, the Commission's investigation consists of a purely informational study. In others, the statutes authorize the Commission to make final determinations on import injury to domestic industries.

Due to the primarily investigatory nature of its functions, the Commission has in the past done little rulemaking. Although the Commission does adjudicate cases involving unfair practices in the import trade, this jurisdiction has not yet resulted in significant regulatory activities. Such regulations as have been published relate to the procedural aspects of participating in the different types of Commission investigations, and have no significant impact on the economy. Consequently, there has been no need for the Commission to establish a formal process for developing regulations; the process has been *ad hoc*. The Commission, however, is now considering substantive rules which would define certain unfair methods of competition and unfair acts in the importation and sale of steel wire rope.

The Commission's regulations are found in 19 CFR Chapter II. These regulations are—

Part 200 Employee responsibilities and conduct.
Part 201 Rules of general application.
Part 202 Investigations of cost of production.
Part 204 Investigations of effects of imports on agricultural programs.
Part 205 Investigations to determine the probable economic effects on the economy of the U.S. of proposed modifications of duties or of any barrier to (or other distortion of) international trade or of taking retaliatory actions to obtain the elimination or unjustifiable or unreasonable foreign acts or policies which restrict U.S commerce.
Part 206 Investigations for relief from import injury or market disruption to domestic industries.
Part 207 Investigations of whether injury to domestic industries results from imports sold at less than fair value or from subsidized exports to the U.S.
Part 208 [Reserved.]
Part 209 [Reserved.]
Part 210 Investigations of alleged unfair practices in import trade.

II. Proposals for Rules on Regulatory Impact

It is proposed that the following amendment be made to 19 CFR Chapter II, Subchapter C—Adjudicative Investigations.

A new Part 212 would be added containing Subparts A and B as follows; Subpart A—General Provision for

Rulemaking Procedures and Subpart B—Rules.

PART 212—SUBSTANTIVE RULES FOR USE IN ADJUDICATIVE INVESTIGATIONS

Subpart A—General Provision for Rulemaking Procedures

Sec.
212.100–1 Purpose.
212.100–2 Scope.
212.100–3 Significant regulations.
212.100–4 Regulatory analysis.
212.100–5 Review of existing regulations.
212.100–6 Public participation in the development of regulations.

Authority: Sec. 335, Tariff Act of 1930 (19 U.S.C. 1335).

Subpart A—General Provision for Rulemaking Procedures

§ 212.100–1. Purpose.

This subpart establishes the impact analysis procedures which shall apply in the development of substantive rules proposed by the Commission.

§ 212.100–2. Scope.

(a) Except as provided in this section, this subpart applies to all regulations issued by the United States International Trade Commission published in the **Federal Register.**

(b) Unless specifically noted to the contrary, this subpart does not apply to:

(1) Regulations issued in accordance with the provisions for adjudications and formal rulemaking in the Administrative Procedure Act (5 U.S.C 556, 557);

(2) Matters related to agency management or personnel;

(3) Regulations related to Federal Government procurement;

(4) Regulations issued pursuant to statutory or judicial deadlines of less than 91 days or regulations that are issued in response to an emergency;

(5) Regulations establishing agency practices or procedures; and

(6) Any other matter exempted by the Commisison.

(c) In cases where the exemptions in paragraph (b) of this section apply, regulations will be developed, to the extent practicable, in accordance with the spirit and intent of this subpart.

§ 212.100–3 Significant regulations.

(a) The Commission shall identify a regulation to be significant if—

(1) The regulation bears an important relationship to Commission policy;

(2) A substantial number of individuals, businesses, and public or private organizations would be affected by the regulation; and

(3) Compliance with or reporting requirements of the regulations are likely to have a substantial impact on prices or other competitive conditions of the affected merchandise or industry.

(b) Before developing new significant regulations, the Commission shall review all issues to be considered; explore alternative approaches; prepare a plan for obtaining public comments; prepare a plan for consultation with other government agencies, if appropriate; and prepare a schedule for the completion of all necessary steps in the development of the regulation.

(c) The Commission shall approve all significant regulations before they are published in the **Federal Register.** Before approving significant regulations, the Commission must determine that—

(1) The regulation is necessary;

(2) The effects, direct and indirect, have been taken into account;

(3) Alternative approaches to the problems and various types of regulations have been considered and the least burdensome of the acceptable alternatives was chosen;

(4) Public comments have been considered;

(5) The regulation is written clearly and is understandable to those who must comply with it;

(6) The cost of the regulation to the Government and to the public has been estimated; and

(7) The name, address, and telephone number of a knowledgeable Commission official is included in the publication.

§ 212.100–4 Regulatory analysis.

(a) A regulatory analysis shall be required for each proposed significant regulation which could be reasonably expected:

(1) To result in increased costs to consumers, businesses, and Federal, state and local governments exceeding $100 million during any one (1) year of its existence;

(2) To result in increased costs to either consumers, businesses, or Federal, state, and local governments exceeding $25 million during any 1 year of its existence;

(3) To result in a large increase or decrease in costs or prices for the product(s) and/or service(s) affected by the proposed regulations; or

(4) To redirect large amounts of supplies of material, equipment, products, or services from one market to another.

(b) The General Counsel or the Director of Operations shall inform the Commission of each proposed regulation which, in his judgment, requires a regulatory analysis.

(c) A regulatory analysis shall also be prepared when the Commision determies that such an analysis should be performed.

(d) A regulatory analysis shall consist of an examination of alternative approaches in the decisionmaking process and shall inclued—but not be limited to—the following elements:

(1) A succinct statement of the situation;

(2) A description of the major alternative methods of dealing with the situation which were considered; and

(3) An analysis of the probable economic consequences of each of the major alternatives with an explanation of the reasons for choosing one alternative over the others.

(e) The notice of proposed rulemaking for each regulation for which a regulatory analysis is required shall include—

(1) An explanation of the regulatory approach that has been selected or favored by the Commisison;

(2) A summary describing the other alternatives which have been considered;

(3) The major reason(s) for selecting or favoring a particular alternative.

(f) The Commission shall consider public comments on each regulatory analysis and have a final regulatory analysis prepared to be made available when the final regulations are published. Significant public comments shall be summarized and responded to in the final regulation.

§ 212.100–5 Review of existing regulations.

(a) The Commission shall review all existing regulations administered by the Commission at least once every 4 years.

(b) The following criteria, among others, shall be considered in the review of existing regulations:

(1) The continued need for the regulation;

(2) The availability of alternative approaches to the regulation;

(3) Any complaints or suggestions received in connection with the regulation;

(4) Any burden imposed on those affected by the regulation;

(5) The cost to the government of the administration of the regulation;

(6) The desirability of revising the language of the regulation to simplify or clarify it; and

(7) The desirability of eliminating duplicative regulations.

§ 212.100–6 Public participation in the development of regulations.

(a) The Commission shall consider a variety of ways to provide the public with an early opportunity to participate in the development of the Commission's

regulations. Among the methods to be considered are—

(1) Publishing an advance notice of proposed rulemaking;

(2) Holding public hearings or open conferences;

(3) Mailing notices of proposed regulations to publications likely to be read by persons who might be affected by the regulations; and

(4) Providing for more than one cycle of public comments.

(b) When none of the methods listed in paragraph (a) of this section is used in a particular rulemaking covered by this subpart, the accompanying final regulation shall explain the reasons and indicate what other steps were taken to assure an adequate opportunity for public participation.

(c) The public shall be given at least 60 days to comment on all proposed significant regulations. Exceptions to this policy shall be granted only by the Commission and only when the Commission determines that it is not possible to comply. When an exception is made the regulation shall be accompanied by a brief statement of the reasons for the shorter time period.

Issued: February 20, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-6095 Filed 2-26-80; 8:45 am]

BILLING CODE 7020-02-M

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19 CFR Part 212

Proposed Rule Requiring Country-of-Origin Marking of Imported Steel Wire Rope

AGENCY: United States International Trade Commission.

ACTION: Proposed substantive rule under section 337.

SUMMARY: Comments are solicited on the general question of the promulgation of substantive rules by the United States International Trade Commission under 19 U.S.C. section 1337 and on the specific rule proposed requiring country-of-origin marking of imported steel wire rope. The Commission is considering the issuance of a substantive rule specifying the country-of-origin markings required in the sale and distribution of imported steel wire rope. Under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), the Commission is provided with the authority to take action against certain "unfair methods of competition and unfair acts in the importation of articles into the United States, or in the sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States." The proposed rule defines practices which would be deemed unfair methods of competition and unfair acts under section 337 with respect to the country-of-origin marking of imported steel wire rope. The term "steel wire rope" is broadly defined to encompass steel cordage products, except strand, and certain fabricated assemblies.

DATES: Comments on the proposed rule and on the promulgation of substantive rules by the Commission under section 337 must be received on or before April 28, 1980. If the Commission is convinced that the proposal has merit, a public hearing will be scheduled after the end of the period for public comment.

ADDRESS: Written comments and requests to participate in the oral hearing should be addressed to: Kenneth R. Mason, Secretary, U.S. International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436.

Copies of comments received are available for public inspection at the Secretary's Office, United States International Trade Commission.

FOR FURTHER INFORMATION CONTACT: Donald R. Dinan, Office of Legal Services, Room 321, U.S. International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436, Telephone: (202) 523-0488.

SUPPLEMENTARY INFORMATION:

Background

The United States International Trade Commission has been requested by the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers to promulgate a trade regulation rule defining what consititutes an unfair practice cognizable under section 337 of the Tariff Act of 1930 with respect to the importation and sale of steel wire rope. Such action by this Commission has been requested to correct and prevent alleged unfair practices relating to the country-of-origin labeling of imported steel wire rope.

The Commission's Office of Legal Services (OLS) has conducted an informal inquiry into marking practices in the sale of imported steel wire rope within the United States. This investigation has uncovered numerous instances of mismarking or failure to mark the country of origin on imported steel wire rope or on its containers or holders.

The OLS has also learned in its informal inquiry that a significant proportion of United States purchasers and users of steel wire rope normally believe that the steel wire rope which they purchase is of domestic manufacture unless it is otherwise marked. Although the initial purchaser from an importer might be orally advised that the steel wire rope is of foreign manufacture, such notice of origin is frequently not passed on to subsequent purchasers. Moreover, it has been alleged that many end users of steel wire rope have a clear preference for the domestically produced product because of perceived quality differences as well as differences in the handling of product liability claims and servicing subsequent to purchase.

Although it appears that upon importation there are country-or-origin tags attached to the reels of most foreign-produced steel wire rope, these tags are often subsequently either accidentally or intentionally removed. Furthermore, the common practice of respooling steel wire rope for distribution and sale in the United States after it has been imported often results in the rope being sold to subsequent purchasers without any indication of origin, since such marking was only on the original shipping reel. Steel wire rope is also sold in coils or lenghs that typically do not indicate the origin of the product.

Foreign produced steel wire rope is offered by importers and distributors and sold through the use of sales literature, such as price lists, which in many cases does not disclose the country of origin of the rope. Absent oral disclosure, there is no way of telling whether one is buying a foreign or domestically produced product. This problem is compounded by the fact that once the steel wire rope is received shipping documents such as invoices normally fail to indicate the place of manufacture of the rope.

Purchasers with a preference for domestically produced steel wire rope may try to avoid these problems by specifying that the steel wire rope they order be of domestic manufacture. It has been alleged that this practice of failure to indicate country of origin on the product itself or on its containers or holders has aided certain importers and distributors of imported steel wire rope in affirmatively deceiving these purchasers. The OLS has been advised of cases in which foreign produced steel wire rope allegedly has been offered for sale and sold as domestic rope. Other alleged intentional misrepresentations that have been reported include instances in which foreign steel wire rope has been purposely placed on

domestic manufacturers' reels and where falsified domestic mill certificates have been furnished with foreign produced steel wire rope.

Domestically produced steel wire rope usually contains a colored strand marker which is made by impregnating a strand of the rope with a colored grease. Most if not all, of these colored strand markers are registered trademarks of specific domestic steel wire rope manufacturers. Instances in which foreign produced steel wire rope containing colored strand markers similar, if not identical, to those of domestic manufacturers, have also been reported.

All of the above-mentioned examples of alleged unintentional and intentional misrepresentation may have the capacity, tendency and effect of misleading and deceiving purchasers and prospective purchasers. An affirmative indication of the origin of the product would thus appear to be the only means of informing purchasers and prospective purchasers as to the origin of the rope.

These instances which have been disclosed and investigated in the Commission's informal inquiry would, if proven to exist, constitute unfair methods of competition and unfair acts within the meaning of section 337(a) of the Tariff Act of 1930. Furthermore, in many instances such failure to inform purchasers and prospective purchasers of the origin of the product has resulted in lost sales of domestic steel wire rope. Therefore, it would appear that should such unfair acts and unfair methods of competition be proven it may be further shown that such practices would have the effect or tendency of causing injury to the domestic steel wire rope industry within the meaning of the statute. Moreover, such unfair behavior in the sale of imported steel wire rope constitutes a distortion of the competitive process and thus might be considered a restraint of trade and commerce in the United States under section 337.

Although substantive rulemaking is no longer a novelty in the practice of administrative law, this Commission has not previously employed it. The authority of the U.S. International Trade Commission to issue substantive rules is found in the Commission's general rulemaking statute, 19 U.S.C. 1335, which empowers the Commission to "adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties."

The proposed rule could be found necessary by the Commission to carry out its functions of investigating and remedying alleged violations of section 337, and would have the effect of substantive law. Thus, should a subsequent adjudicative determination under section 337 find that a respondent has committed acts or practices in violation of the rule, the respondent might be found in violation of section 337 and be subject to any or all of the remedies provided thereunder. A respondent in such an enforcement proceeding would nevertheless be given the opportunity to argue that the rule should not be applied to it under the particular facts of such case.

The Commission believes that the proposed rule could be found to be the most equitable, effective, and least burdensome way to remedy the alleged widespread problem of deceptive labeling of imported steel wire rope. The proposed rule is intended to provide a clear standard in the day-to-day sale, offer for sale, and distribution of imported steel wire rope. This may be a more efficient cost-effective remedy than case-by-case adjudication.

After review and analysis of the General Counsel's recommendations, the Commission determines that the proposed substantive rule is significant within the meaning of 19 CFR 212.100–3, proposed simultaneously herewith, because compliance with it is, by causing a shift in consumption to domestic products, likely to have a substantial impact on competitive conditions of imported steel wire rope. Absent a showing of such a substantial impact, it is unlikely that the petitioner will be able to comply with the injury or restraint of trade requirements of section 337. This proposed substantive rule does not require a regulatory analysis under proposed 19 CFR 212.100–4.

Proposed Rule

It is proposed that the following amendment be made to 19 CFR, Chapter II, Subchapter C—Adjudicative Investigations.

A new Part 212 would be added, containing subparts A and B as follows: Part 212—Substantive Rules for Use in Adjudicative Investigations, Subpart A—General Provision for Rulemaking Procedures [Proposed simultaneously herewith] and Subpart B—Rules.

PART 212—SUBSTANTIVE RULES FOR USE IN ADJUDICATIVE INVESTIGATIONS

Subpart B—Rules

Sec.

212.200 Country-of-Origin Marking of Imported Steel Wire Rope.
212.200–1 Scope.
212.200–2 Product definition.
212.200–3 Proscribed conduct.
212.200–4 Interpretation.
212.200–5 Amendment.
212.200–6 Violation.

Authority: Sec. 335, 337, Tariff Act of 1930 (19 U.S.C. 1335, 1337).

Subpart B—Rules

§ 212.200 Country-of-origin marking of imported steel wire rope.

§ 212.200–1 Scope.

(a) This rule is intended to have the effect of substantive law. If a subsequent adjudicative determination is made under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) that a respondent has committed an unfair practice in violation of this rule, respondent may be found in violation of section 337 and be subject to any or all of the statutory remedies provided by that section.

(b) The rule shall be interpreted to effectuate its remedial purpose, and in that regard, shall be interpreted to have a broad scope. All persons, firms, corporations, organizations and business entities which distribute or sell foreign-produced steel wire rope at all stages of commerce up to and including sale or distribution to the ultimate consumer of the product fall within this rule.

§ 212.200–2 Product definition.

Steel Wire Rope. Ropes, cables, and cordage (except strand), all the foregoing of iron or steel wire, whether or not cut to length, and whether or not fitted with hooks, swivels, clamps, clips, thimbles, sockets, rings, or other fittings, or made up into slings, cargo nets, or similar fabricated assemblies consisting primarily (by value, weight, or mass) of iron or steel wire rope or cable, and not covered with brass, or textile or other nonmetalic material.

§ 212.200–3 Proscribed conduct.

It shall be an unfair method of competition and an unfair act within the meaning of section 337 of the Tariff Act 1930:

(a) To fail to disclose the country of manufacture on any invoices, promotional materials, price lists, or other documents used in connection with sales, offers to sell, or distribution of foreign-produced steel wire rope in the United States.

(b) To fail to disclose the country of origin of foreign-produced steel wire rope on either the product itself or on the reel, spool or other holder or container of the product, when selling, offering for sale or distributing such product in the United States.

(c) To make any express or implied representation to any purchaser or prospective purchaser of steel wire rope in the United States that foreign-produced steel wire rope is of domestic origin.

(d) To import, sell, offer to sell, and/or distribute foreign-produced steel wire rope in the United States with a colored strand marker which infringes a registered United States trademark or otherwise has a tendency to mislead purchasers as to the origin of the product.

§ 212.200-4 Interpretation.

(a) This rule is to be interpreted as a whole. However, if any part is found invalid, it will not affect the validity of the other parts.

(b)(1) The United States International Trade Commission will aid in the interpretation of this rule by issuing advisory opinions when requested to do so. Advisory opinions may be relied upon by the person requesting such opinion until, if ever, such opinion is revoked.

(2) In amending or revoking advisory opinions issued hereunder the United States International Trade Commission will do so by rule pursuant to 5 U.S.C. section 553 (1976). If the Commission deems it necessary, it may afford the parties an opportunity to provide oral testimony.

§ 212.200-5 Amendment.

(a) Upon request of any party, or upon its own initiative, the United States International Trade Commission may initiate a rulemaking proceeding in conformity with 5 U.S.C. 553 and its own rules to modify, amend or revoke this rule.

(b) In considering whether to institute a rulemaking proceeding to amend, modify or revoke this rule, the Commission will consider the possible effects of the requested action on the overall purpose of the rule.

§ 212.200-6 Violation.

(a) Upon a complaint by any person alleging a violation of this rule and otherwise conforming with 19 CFR 210.20, or upon its own initiative, the Commission shall institute an investigation under section 337 of the Tariff Act of 1930, for the purpose of determining (1) whether there has been violation of this rule, and (2) whether the application of this rule to the particular facts of such case should be waived. Such investigation shall be conducted in accordance with the Rules of Practice and Procedure governing adjudicative investigations. (19 CFR Part 210).

(b) If a violation of the rule is found to exist by the Commission, it shall take such remedial action that it deems appropriate pursuant to subsections (d), (e) and/or (f) of section 337, unless, after considering the effect of such relief upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such remedy should not be ordered.

(c) Commission determinations of a violation of section 337 by reason of a violation of this rule and the action taken thereunder are subject to presidential review pursuant to subsection (g) of section 337, and are appealable to the Court of Customs and Patent Appeals pursuant to subsection (c) of section 337.

Issued: February 20, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-6094 Filed 2-26-80; 8:45 am]

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

Administrative Appeals Process Under Title II and Title XVI of the Social Security Act; Time Limitations for Holding Hearings, Issuing Hearing Decisions, and Actions by the Appeals Council

AGENCY: Social Security Administration, HEW.

ACTION: Notice of proposed rule making.

SUMMARY: We propose to revise the regulations on the administrative appeals process under title II (Federal Old-Age, Survivors and Disability Insurance) and title XVI (Supplemental Security Income for the Aged, Blind and Disabled) of the Social Security Act to provide specific time limits within which (1) a hearing will be held, (2) a hearing decision will be issued, and (3) the Appeals Council will act in response to a request for review of a hearing decision or dismissal, or after taking own motion review.

These changes will also have the effect of revising the regulations with respect to entitlement of claimants to hospital insurance benefits under title XVIII, Part A, and supplementary medical insurance benefits under title XVIII, Part B. For the Medicare program, the Office of Hearings and Appeals will therefore apply the time the limits to hearings and Appeals Council actions affecting those matters and, in addition, will apply those time limits to hearings and Appeals Council actions involving (1) the amount of health payments under title XVIII, Part A and (2) claimant appeals from PSRO's determinations under section 1159.

We are proposing that a hearing will be held within 90 days after a request for a hearing is made, and that a hearing decision will be issued within 30 days after the hearing. The Appeals Council will have 90 days to take a specific action after a request for Appeals Council review is filed. Where the Appeals Council reviews on its own motion it will have 30 days after the notice period has expired to take action. There are specific exceptions to these time frames which are discussed under Supplemental Information.

The proposed amendments will be effective for (1) hearing requests and requests for Appeals Council review filed, (2) Appeals Council remands issued and court remands received, and (3) Appeals Council reviews on its motion, after the date the final rule is published in the **Federal Register.**

DATES: Your comments will be considered if we receive them no later than April 28, 1980.

ADDRESSES: Send your written comments to: Commissioner of Social Security; Department of Health, Education, and Welfare; P.O. Box 1585; Baltimore, Maryland 21203.

Copies of all comments we receive can be seen at the Washington Inquiries Section; Office of Information; Social Security Administration; Department of Health, Education, and Welfare; North Building, Room 1169; 330 Independence Avenue, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Beatrice Squire, Chief, Program Development Branch; Office of Hearings and Appeals; Room 106, Webb Building; 4040 N. Fairfax Drive; Arlington, Virginia 22203; (703) 235-8524.

SUPPLEMENTARY INFORMATION:

Introduction

Over the last several years concern has been expressed by the general public, representatives of individuals in social security matters, the Congress, and the courts over delays in holding hearings, issuing hearing decisions and the reviews of the decisions. As a result we have taken a number of administrative and managerial steps which have substantially reduced the hearing backlog that caused most of the

delays. Specifically, we have increased the number of Administrative Law Judges and now have more than 650 located throughout the country; we have assigned hearing and appeal analysts to assist Administrative Law Judges; we have appointed more than 250 staff attorneys to provide professional assistance to the Adminstrative Law Judges; and we have provided additional clerical employees in the hearing offices. Also, we have upgraded equipment in the hearing offices to expedite the issuance of decisions. In addition, we have installed a new case control and case locator system in the regional offices which provides better management control of the caseload.

The overall impact of these initiatives was a 43% national increase in the Administrative Law Judges' performance from the 4th quarter of fiscal year 1974 through the end of the first calendar quarter of fiscal year 1976. The level of productivity continues to increase, and currently averages 27 to 28 dispositions per ALJ for a 4 week period. Nationwide the average number of ALJ dispositions for a 4 week period in the fall of 1974 was 14.8. Also we are expediting claimants' requests for Appeals Council review of the hearing decisions. As a result of the steps we have taken, we have decreased the delays which previously occurred before a hearing is held, a hearing decision is issued or action is taken on a request for Appeals Council review of the decision.

However, in order to assure the public that there will not be excessive delays in holding hearings and Appeals Council reviews, we are establishing by regulation, specific time limits for the holding of hearings, issuance of hearing decisions, and reviews by the Appeals Council. This concept of having specific time limits has been endorsed by the Administrative Conference of the United States. The Administrative Conference recommended that "each affected agency adopt time limits or guidelines for the prompt disposition of its adjudicatory . . . actions, either by announcing schedules for particular agency proceedings or by adopting regulations that contain general timetables for dealing with categories of the agency's proceedings." The Administrative Conference believes that timetables or deadlines established by individual agenices to govern their own proceedings can be useful tools for reducing delays and are preferable to more rigid statutory time limits.

Some courts have issued decisions or orders mandating that hearings and other actions be held or completed within specific time limits. The court orders differ as to the specific time limits mandated and the types of cases covered. Compliance with these orders sometimes requires us to direct our staff to the jurisdiction affected and this decreases our staff available elsewhere. We believe that in a national program there should be a uniform level of service to the public. Thus, we believe that uniform time periods for holding hearings, issuing decisions, and reviewing decisions, will increase the efficiency of the administrative appeals process and eliminate the need that some courts have seen for intervening in this procedure.

Currently, under title II and title XVIII of the Social Security Act, there are no specific time limits within which a hearing must be held or a decision issued. The existing regulation provides only that an Administrative Law Judge shall issue a decision as soon as practicable after the close of a hearing (See 20 CFR 404.939). Similarly there are no specific time limits within which the Appeals Council must act on an individual's request for review of a hearing decision or dismissal of a request for hearing, or when the Appeals Council reviews on its own motion.

Under title XVI of the Social Security Act, there is a statutory requirement that a hearing be held and a decision be issued within 90 days after a hearing is requested in cases involving nondisability issues. This requirement is set out in current regulations as well as provisions for situations in which delays occur. (See 20 CFR 416.1455). These provisions will not be affected by the proposed regulations.

Current regulations in title XVI do not provide specific time limits within which a hearing must be held and a decision issued in disability cases. The regulations require only that the ALJ shall issue a decision as soon as practicable after the close of a hearing. (See 20 CFR 416.1457.) There are no specific time limits set out in the regulations within which the Appeals Council must act on an individual's request for review of a hearing decision or dismissal in either a disability or nondisability case, or when the Appeals Council reviews on its own motion.

Previously when the question of establishing time limits was addressed, the Social Security Administration indicated, in testimony before Congress, that the objective of the Social Security Administration would be to provide individuals with a hearing decision within 90 days of the request for hearing, excluding any delays caused by the individual or by the need for a consultative medical examination, two circumstances which will, by their nature, require more time. The 90 day time limit discussed at that time was a median time frame. It was not contemplated that every claimant who filed a request for hearing would be able to receive a hearing decision within 90 days of the request. Therefore, the time frames set out in these proposed regulations are compatible with SSA's earlier objective.

In the regulations, we are informing the public of the degree of service they can expect and are entitled to receive in all cases. We intend to handle cases faster, if possible.

In addition to hearings and Appeals Council actions under title II and title XVI of the Social Security Act, these time limits will also be applied to (1) claimant's appeals involving entitlement under the Medicare program, and the amount of health care payments under title XVIII, Part A of the Social Security Act, and (2) appeals by claimants from Professional Standards Review Organizations' determinations under section 1159 of title XI. The time limits will not apply to (1) appeals under section 1869(c) by health care facilities dissatisfied with adverse provider certification determinations, (2) appeals by certain other providers of services (42 CFR 405.1501) and (3) appeals by providers who disagree with the Secretary's refusal to waive the provisions of the Life Safety Code of the National Fire Protection Association (section 1861(j)(13) of the Act).

These proposed rules have been reviewed and approved as reasonable by the United States District Court, Western District of Kentucky, in *Blankenship* v. *Secretary of HEW*, CIV. No. C 75-0185-L(A), a proceeding in which the timing of SSA hearings was at issue.

Basic Rules

The proposed regulations set out time limits for holding hearings, issue decisions and receiving Appeals Council review. They provide:

(1) *Holding hearings and issuing hearing decisions.* Except under certain circumstances, a hearing will be held within 90 days after the date a person requests a hearing and a hearing decision will be issued within 30 days following the hearing. In cases remanded by a court to the Secretary of HEW, a hearing will be held within 90 days from the date of receipt of the remand by the Secretary, unless the court directs an earlier hearing. Court remanded cases will receive the highest priority. If a court in its remand order directs that this action be completed in less time we will endeavor to comply. If this is not possible we will, based on

standard practice, petition the court for an extension of time.

Specific rules are also provided to deal with situations in which delays are caused by the claimant and his or her representative of the Administrative Law Judge.

These regulations provide that a hearing will be held within 90 days after the request for hearing is filed. In deciding what time limit to set, several factors were taken into consideration. In many cases claimants who file a request for hearing do not have an attorney or other representative. The Social Security Office explains to claimants the right to be represented and also provides the names of organizations which can provide representation. It may take some time before claimants can obtain representation if they wish to be represented. It also takes time for claimants' representatives to become familiar with the case. In addition, the Administrative Law Judge and other hearing office personnel must also become familiar with the case prior to the hearing. While the regulations provide that we must give the claimant notice of the time and place of the hearing at least 10 days in advance, we try to provide 20 to 30 days notice to allow sufficient time to prepare for the hearing. Where medical advisors or vocational experts are needed, we must make arrangements to insure their availability on the date that the hearing is scheduled.

There were also a number of management considerations involved in arriving at the 90 day time frame. The claimant usually files the request for hearing at his local Social Security Office. The file upon which the prior determination was based and the request for hearing must be sent to the hearing office. This can take several days. Before an ALJ can schedule a hearing trip he or she must have a sufficient number of cases available to ensure the economical and efficient use of the ALJ's travel time. The ALJ must also ensure that space is available in the areas where he or she contemplates holding a number of hearings.

The regulations further provide that a hearing decision will be issued within 30 days following the hearings. Thirty days is needed for the ALJ to carefully study the record adduced at the hearing and to undertake any research required to arrive at a sound decision. The 30 day period also takes into consideration that an ALJ may be in travel status for several days and unable to work on the decisions on cases that have been heard. The time frame also takes into account time needed for typing the decision and the performance of other clerical functions. The 30 day time limit is a maximum time limit and it is expected that most decisions will be issued within two or three weeks after the hearing.

We believe the 90 day time limit for holding hearings and the 30 day time limit for issuing decisions are reasonable standards considering that they are to apply to all cases.

(a) *Claimant unavailable for hearing*—If a hearing is scheduled and the claimant or his or her representative is not available on that date, the claimant or the representative will notify the Administrative Law Judge when he or she will be available for a hearing. The hearing will be rescheduled and held within 45 days after the claimant or the representative becomes available for a hearing and so informs the Administrative Law Judge. If no hearings are scheduled to be held in the area of the claimant's residence within that 45-day period, the hearing will be scheduled for the next hearing trip the Administrative Law Judge makes to the area of the claimant's residence. If the claimant is willing to travel to the hearing office after the original hearing has been cancelled because of his or her unavailability, the hearing must be held within 60 days after the claimant notifies the hearing office of his or her availability.

(b) *Request for additional evidence*—The Administrative Law Judge may request additional evidence such as a medical examination in a disability case. The claimant also may be granted additional time to submit additional evidence or to obtain witnesses or representation. Where additional evidence is needed, the Administrative Law Judge will (1) request the evidence within 45 days after the request for hearing is filed and will hold the hearing within 30 days after the additional evidence is received or (2) if additional evidence is needed after the hearing is held, the Administrative Law Judge will issue the decision within 30 days after the additional evidence is received into the record.

(c) *Supplemental hearing*—If an Administrative Law Judge holds a supplemental hearing after receiving additional evidence, the hearing will be held within 30 days after the receipt of the additional evidence and a decision will be issued within 30 days after the supplemental hearing is held.

(d) *Uncontrollable circumstances*—Certain infrequent situations may occur where it may be impossible to meet the time requirements for holding a hearing or issuing a decision due to circumstances beyond the Department's control such as natural catastrophes, illness of the Administrative Law Judge, where the circumstances nor the delay resulting from the circumstances could have been avoided by the exercise of reasonable diligence. In these situations a reasonable extension of time may be granted to the Administrative Law Judge by the Chief Administrative Law Judge or the Chief Administrative Law Judge's delegate.

These exceptions, in most instances, will allow additional material evidence to be presented. As a result, some delays will occur. However, the alternative would be to deny claims on the basis that eligibility has not been established. Therefore, we believe it would be a disservice to claimants not to allow for exceptions even if some delays result. These proposed amendments are intended to provide a commitment to the public that prompt action will be taken on any appeal to an Administrative Law Judge or the Appeals Council.

(2) *Appeals Council actions.* The Appeals Council, within 90 days from the date of a request for review of a hearing decision or dismissal of a hearing request, will dismiss, deny or grant the request for review.

The 90 day time limit for action at the Appeals Council level is established in order to permit the Appeals Council to carefully consider complicated cases. These cases frequently require research, medical consultation and extensive discussions among members of the Appeals Council. It is recognized that the Appeals Council can act on the less complicated cases in considerably less than 90 days and will do so. However, to mandate that the Appeals Council act within a lesser time frame in all cases, including those which raise a significant problem or policy, would deny the claimants in those cases the careful consideration of their cases which the review process is intended to assure.

The regulations also provide that where the Appeals Council reviews a case it will take certain actions within 30 days. These time limits are also intended to insure careful review and preparation of a decision or remand order or other necessary action as required.

If the Appeals Council grants the request for review, or reviews on its own motion, it will issue a decision within 30 days after (1) the claimant has responded to the notice of proposed action or (2) the claimant's time for reply has expired, whichever is earlier. Where the Appeals Council grants a request for review and requests additional evidence, and the Appeals Council decides to issue a decision (rather than remand the case to an ALJ), it will do so

within 30 days after (1) the expiration of the period allowed for comment by the claimant on the additional evidence or (2) written comments or rebuttal evidence from the claimant are received, whichever is earlier.

Where the Appeals Council grants the request for review and remands a case to an Administrative Law Judge for further action (e.g., obtaining additional evidence, holding a hearing, issuing a new decision), the case will be remanded within 30 days of the granting of review and the time limits for actions by the Administrative Law Judge will then apply. If a claim is pending before the Appeals Council and the claimant requests time to review the record or submit additional evidence or a brief, the time period for action by the Appeals Council will be extended by 30 days or the period of the delay, whichever is greater.

In cases remanded to the Secretary of HEW by a court, the Appeals Council, within 30 days of receipt of the court's remand order, will decide to issue a decision or remand the case to an Administrative Law Judge for further action. If the Appeals Council decides to issue a decision without remanding the case, the time frames for issuing decisions and obtaining additional evidence by the Appeals Council will apply. If a court in its remand order directs that this action be completed in less time, we will endeavor to comply. If this is not possible we will, based on standard practice, petition the court for an extension of time.

Compliance

Administrative steps will be taken to comply with these time frames. These administrative steps may include additional training, reassignment of cases, and detail of additional Administrative Law Judges or supporting staff to the hearing office experiencing delays.

After final regulations are published, the Secretary will issue an annual report which will show our compliance with these rules and the administrative steps we have taken to assure our compliance.

The proposed amendments are to be issued under the authority contained in sections 205(a), 1102, 1159, 1631, 1869 and 1872 of the Social Security Act, as amended (53 Stat. 1368, 49 Stat. 647, as amended 86 Stat. 1439, 86 Stat. 1475, 79 Stat. 330, 79 Stat. 332, 42 U.S.C. 405(a), 1302, 1320c–8, 1383, 1395ff, 1395ii).

(Catalog of Federal Domestic Assistance Program Nos. 13.800 Health Insurance, Aged, Blind, and Disabled—13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.804 Social Security—Special Benefits for Persons Aged 72 and Over; 13.805 Social Security—Survivors' Insurance; 13.807—Supplemental Security Income.)

Dated: February 12, 1980.

William J. Driver,

Commissioner of Social Security.

Leonard D. Schaeffer,

Administrator, Health Care Financing Administration.

Approved: February 21, 1980.

Nathan J. Stark,

Acting Secretary of Health, Education, and Welfare.

It is proposed to amend Chapter III of title 20 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

1. Following § 404.923, a new § 404.923a is added to read as follows:

§ 404.923a Time limit for holding a hearing.

The Administrative Law Judge shall hold a hearing within 90 days after the date a request for a hearing is filed. The exceptions to this time limit are as follows:

(a) *Claimant unavailable for hearing.* (1) If a hearing is scheduled and the claimant or his or her representative is not available on that date, the claimant or the representative will notify the Administrative Law Judge when he or she will be available for a hearing. The hearing will be rescheduled and held within 45 days after the Administrative Law Judge is informed that the claimant or the representative (where there is one) becomes available for a hearing.

(2) If no hearings are scheduled to be held in the area of the claimant's residence within the 45-day period, the hearing will be scheduled for the next hearing trip the Administrative Law Judge makes to the area of the claimant's residence. If the claimant is willing to travel to the hearing office after the original hearing has been cancelled because of his or her unavailability, the hearing must be held within 60 days after the claimant notifies the hearing office of his or her availability.

(b) *Request for additional evidence prior to hearing.* If the Administrative Law Judge requests additional evidence prior to the hearing, he or she shall do so within 45 days after the request for the hearing is filed. The Administrative Law Judge shall hold a hearing within 30 days after the additional evidence is received.

(c) *Claimant requests additional time prior to hearing.* If the claimant requests additional time to submit more evidence, or to obtain witnesses or representation, the 90 day time period for holding the hearing may be extended to cover the additional time granted.

(d) *Uncontrollable circumstances.* If a hearing cannot be held within the specified time limits due to circumstances beyond the Department's control, such as natural catastrophe, or illness of the Administrative Law Judge, where neither the circumstances nor the delay resulting from the circumstances could have been avoided by the exercise of reasonable diligence, then the Administrative Law Judge may request an extension of time from the Chief Administrative Law Judge or his or her delegate who may grant an extension of up to 30 days.

2. Following § 404.939, new §§ 404.939a and 404.939b are added to read as follows:

§ 404.939a Time limit for issuing a hearing decision.

The Administrative Law Judge will issue a decision within 30 days after the hearing is held. The exceptions to this time limit are as follows:

(a) *Additional evidence.* If the Administrative Law Judge requests additional evidence he or she will do so within 30 days after the hearing is held and issue the hearing decision within 30 days after the additional evidence is received and the period for comment has ended, except as provided in paragraph (b) of this section. If the claimant wishes to submit additional evidence or written statements of fact or law, the hearing decision will be issued within 30 days after the written statements are received or the additional evidence is received and the period for comment has ended, except as provided in paragraph (b) of this section.

(b) *Supplemental hearing.* If on the basis of additional evidence the Administrative Law Judge decides a supplemental hearing is necessary, the supplemental hearing will be held within 30 days after the receipt of the additional evidence, and a decision will be issued within 30 days after the supplemental hearing is held.

(c) *Uncontrollable circumstances.* If the Administrative Law Judge cannot issue the decision within the specified time limits due to circumstances beyond the Department's control, such as natural catastrophes or illness of the Administrative Law Judge, where neither the circumstances nor the delay resulting from the circumstances could have been avoided by the exercise of reasonable diligence, then the Administrative Law Judge may request an extension of time from the Chief

Administrative Law Judge or his or her delegate who may grant an extension of up to 30 days. If an extension of time to issue the decision is not granted, the decision will be issued within five working days following the denial of the request for extension.

(d) *Reassignments.* If, after a hearing has been held, it is necessary to reassign a case to another Administrative Law Judge due to the unavailability of the original Administrative Law Judge (e.g., resignation, retirement, illness), the case will be promptly reassigned. A hearing decision will be issued within 30 days after the reassignment.

§ 404.939b Time limits for issuing a decision when a hearing is not held.

If a claimant waives his or her right to appear at a hearing (see § 404.934) and the Administrative Law Judge does not schedule the case for hearing, or the evidence in the record supports a favorable decision without a hearing (see § 404.934a), a decision will be issued as follows:

(a) The Administrative Law Judge will issue a decision within 90 days from the date the hearing request is filed.

(b) If the Administrative Law Judge requests additional evidence, it will be requested within 45 days of the filing of the request for hearing. A decision will be issued within 30 days after the additional evidence is received and the claimant comments on the evidence. If no comment is received, the decision will be issued within 30 days after the evidence is received and after the close of the comment period.

3. Following § 404.946, new §§ 404.946a and 404.946b are added to read as follows:

§ 404.946a Time limit for Appeals Council action on request for review.

Within 90 days from the date a request for review is filed, the Appeals Council will dismiss, deny or grant the request.

§ 404.946b Time limit for Appeals Council action after review is granted.

If the Appeals Council grants a request for review the following time limits apply:

(a) *The Appeals Council issues a decision.* The Appeals Council will issue a decision within 30 days after the claimant's reply to the Appeals Council's notice of proposed action is received. The notice of proposed action is sent with the Appeals Council notice granting review. If no reply is received, the Appeals Council will issue the decision within 30 days after the end of the period for reply.

(b) *Additional evidence is needed.* (1) If the Appeals Council requests additional evidence it shall do so within 45 days after it grants the request for review. If after it receives additional evidence the Appeals Council decides to issue a decision (rather than remand the case to an ALJ), the decision will be issued within 30 days after the claimant comments on the evidence. If no comment is received, the decision will be issued within 30 days after the end of the comment period.

(2) If after the evidence or comment are received, the Appeals Council determines still further evidence is neeeded, and then decides to issue a decision (rather than remand the case to an ALJ), the decision will be issued within 30 days after the claimant's comments are received on the additional evidence. If no comments are received, the decision will be issued within 30 days after the end of the comment period.

(c) *Remand to the Administrative Law Judge.* If the Appeals Council decides to remand a case to the Administrative Law Judge, the case will be remanded within 30 days from the date the Appeals Council grants the review. If the Appeals Council requests additional evidence and then decides to remand the case to the Administrative Law Judge, the case will be remanded within 30 days after the Appeals Council receives the evidence and the claimant's comments, if any.

4. Following § 404.950 new §§ 404.950a through 404.950d are added to read as follows:

§ 404.950a Time limits for hearings and decisions in cases remanded by the Appeals Council.

If the Appeals Council remands a case to the Administrative Law Judge, the following time limits apply (except for cases remanded by a court, see § 404.950b):

(a) If a hearing by the Administrative Law Judge is required, the hearing will be held within 90 days from the date of the Appeals Council's remand order. The hearing decision will be issued within 30 days after the hearing is held.

(b) If no hearing is required, a decision will be issued by the Administrative Law Judge within 90 days after the date of the Appeals Council's remand order.

(c) If no hearing is required but additional evidence is requested, a decision will be issued by the Administrative Law Judge within 30 days after the evidence and the claimant's comments on the evidence are received. If no comments are received, the decision will be issued within 30 days after the end of the comment period.

(d) The time limits in §§ 404.923a. 404.939a and 404.939b for holding a hearing after a request for additional evidence and for issuing a decision will apply when the Appeals Councils remands a case to the Administrative Law Judge.

§ 404.950b Time limits for hearings and decisions in cases remanded by a court.

If a court remands a case to the Secretary the following time limits will apply (except where the court sets other time limits):

(a) *Appeals Council issues decision.* If the Appeals Council determines that it can, from the evidence in the record, issue a decision, the decision will be issued within 30 days after the Secretary receives the court's remand order.

(b) *Appeals Council requests additional evidence.* If the Appeals Council decides additional evidence is needed, the Appeals Council shall request it within 30 days after the Secretary receives the court's remand order. The Appeals Council shall issue a decision within 30 days after the evidence is entered into the record.

(c) *Appeals Council remands case to Administrative Law Judge.* (1) If the Appeals Council decides to remand a case to an Administrative Law Judge, it will do so within 30 days after the Secretary receives the court's remand order. If the Administrative Law Judge can issue a recommended decision based on the record, the decision will be issued within 30 days the date of the Appeals Council remand.

(2) If the Administrative Law Judge requests additional evidence, a recommended decision will be issued within 30 days after (i) the evidence is received if the decision is fully favorable to the claimant or (ii) the end of the period for comment on the additional evidence.

(3) If a hearing is required, the hearing will be held within 90 days after the Secretary receives the court's remand order. A decision will be issued with 30 days after the close of the hearing.

(d) *Administrative Law Judge returns case to Appeals Council.* If the Administrative Law Judge recommends a decision, the Appeals Council shall issue a decision, adopting, modifying or rejecting the Administrative Law Judge's recommended decision within 30 days after the expiration of the time period within which the claimant may submit comments. If after receiving the recommended decision issued by the Administrative Law Judge the Appeals Council wishes to obtain additional

evidence, the time frames in § 404.946b will apply.

§ 404.950c Time limit for action by the Appeals Council if it reviews a hearing decision on its own motion or reopens a decision.

Where the Appeals Council reviews a decision on its own motion or reopen a decision it will—

(a) Issue a decision within 30 days after the expiration of the period for comment on the Appeals Council's notice to reopen or take own motion review; or

(b) Request any additional evidence within 45 days of granting the review or reopening a decision and issue its decision within 30 days after the end of the period for receiving comments on any additional evidence the Appeals Council requested; or

(c) Remand the case to the Administrative Law Judge within 30 days after it has notified the claimant that it is reviewing the decision or within 30 days after the receipt of additional evidence. In this case, the time limits in § 404.950a will apply.

§ 404.950d Exceptions to time periods for action by the Appeals Council.

If a claim is pending before the Appeals Council and the claimant requests time to review the record or submit additional evidence or a brief, the time period for action by the Appeals Council will be extended by 30 days or the period of delay, whichever is greater.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

5. Section 416.1455 is revised to read as follows:

§ 416.1455 Time limit for holding a hearing and issuing a decision in cases not involving the existence of disability.

(a) In cases not involving the existence of a disability the Administrative Law Judge shall hold a hearing and issue a decision within 90 days after the filing of a request for a hearing. (Where the matter in disagreement involves the existence of a disability see §§ 416.1455a and 416.1455b for the time limits for holding hearings and issuing decisions.)

(b) The Administrative Law Judge may not be able to issue the hearing decision within 90 days in some cases. Therefore, the 90-day time period may be extended for good cause as follows:

(1) *Claimant's actions.* Where delays are caused by the claimant or his or her representative, the time period for the decision may be extended by the total number of days of the delays. Examples of delays include, but are not limited to: The claimant's delay, or the delay of any other party in giving evidence, submitting briefs or other statements, and postponements or adjournment of the hearing at the claimant's request or the request of any other party.

(2) *Uncontrollable circumstances.* Where delays occur which are uncontrollable (e.g., natural catastrophes, illness of an Administrative Law Judge), these facts will be considered good cause for extending the time period for issuing the decision and the decision will be issued as soon thereafter as practicable.

6. After § 416.1455, new §§ 416.1455a, 416.1455b, and 416.1455c are added to read as follows:

§ 416.1455a Time limit for holding a hearing in disability cases.

In cases involving the existence of a disability, the Administrative Law Judge shall hold a hearing within 90 days after the date a request for a hearing is filed. The exceptions to these time limits are as follows:

(a) *Claimant unavailable for hearing.* (1) If a hearing is scheduled and the claimant or his or her representative is not available on that date, the claimant or the representative will notify the Administrative Law Judge when he or she will be available for a hearing. The hearing will be rescheduled and held within 45 days after the Administrative Law Judge is informed that the claimant or the representative (where there is one) becomes available for a hearing.

(2) If no hearings are scheduled to be held in the area of the claimant's residence within that 45-day period, the hearing will be scheduled for the next hearing trip the Administrative Law Judge makes to the area of the claimant's residence. If the claimant is willing to travel to the hearing office after the original hearing has been cancelled because of his or her unavailability, the hearing must be held within 60 days after the claimant notifies the hearing office of his or her availability.

(b) *Request for additional evidence prior to hearing.* If the Administrative Law Judge requests additional evidence prior to the hearing, he or she shall do so within 45 days after the request for the hearing is filed. The Administrative Law Judge shall hold a hearing within 30 days after the additional evidence is received.

(c) *Claimant requests additional time prior to hearing.* If the claimant requests additional time to submit more evidence, or to obtain witnesses or representation, the 90-day time period for holding the hearing may be extended to cover the additional time granted.

(d) *Uncontrollable circumstances.* If a hearing cannot be held within the specified time limits due to circumstances beyond the Department's control, such as natural catastrophes, or illness of the Administrative Law Judge, where neither the circumstances nor the delay resulting from the circumstances could have been avoided by the exercise of reasonable diligence, then the Administrative Law Judge may request an extension of time from the Chief Administrative Law Judge or his or her delegate who may grant an extension of up to 30 days.

§ 416.1455b Time limit for issuing a hearing decision in disability cases.

The Administrative Law Judge will issue a decision within 30 days after the hearing is held. The exceptions to this time limit are as follows:

(a) *Additional evidence.* If the Administrative Law Judge requests additional evidence he or she will do so within 30 days after the hearing is held and issue the hearing decision within 30 days after the additional evidence is received and the period for comment has ended except as provided in paragraph (b) of this section. If the claimant wishes to submit additional evidence or written statements of fact or law, the hearing decision will be issued within 30 days after the written statements are received or the additional evidence is received and the period for comment has ended, except as provided in paragraph (b) of this section.

(b) *Supplemental hearing.* If on the basis of additional evidence the Administrative Law Judge decides a supplemental hearing is necessary, the supplemental hearing will be held within 30 days after the receipt of the additional evidence, and a decision will be issued within 30 days after the supplemental hearing is held.

(c) *Uncontrollable circumstances.* If the Administrative Law Judge cannot issue the decision within the specified time limits due to circumstances beyond the Department's control such as national catastrophes or illness of the Administrative Law Judge, where neither the circumstances nor the delay resulting from the circumstances could have been avoided by the exercise of reasonable diligence, then the Administrative Law Judge may request an extension of time from the Chief Administrative Law Judge or his or her delegate who may grant an extension of up to 30 days. If an extension of time to issue the decision is not granted, the decision will be issued within five

working days following the denial of the request for extension.

(d) *Reassignments.* If after a hearing has been held, it is necessary to reassign a case to another Administrative Law Judge due to the unavailability of the original Administrative Law Judge, (e.g. resignation, retirement, illness) the case will be promptly reassigned. A hearing decision will be issued within 30 days after the reassignement.

§ 416.1455c Time limits for issuing a decision in disability cases when a hearing is not held.

If a claimant waives his or her right to appear at a hearing (see § 416.1446(b)) and the Administrative Law Judge does not schedule the case for hearing, or the evidence in the record supports a favorable decision without a hearing (see § 416.1447), a decision will be issued as follows:

(a) The Administrative Law Judge will issue a decision within 90 days from the date the hearing request is filed.

(b) If the Administrative Law Judge request additional evidence, it will be requested within 45 days of the filing of the request for hearing and a decision will be issued within 30 days after the claimant comments on the evidence. If no comment is received, the decision will be issued within 30 days after the evidence is received and after the close of the comment period.

7. Following § 416.1464 new §§ 416.1464a and 416.1464b are added to read as follows:

§ 416.1464a Time limit for Appeals Council action on request for review.

The Appeals Council within 90 days from the date a request for review is filed will dismiss, deny or grant the request.

§ 416.1464b Time limit for Appeals Council action after review is granted.

If the Appeals Council grants a request for review the following time limits apply:

(a) *The Appeals Council issues a decision.* The Appeals Council will issue a decision within 30 days after the claimant's reply to the Appeals Council's notice of proposed action is received. The notice of proposed action is sent with the Appeals Council notice granting review. If no reply is received, the Appeals Council will issue the decision within 30 days after the end of the period for reply.

(b) *Additional evidence is needed.* (1) If the Appeals Council requests additional evidence it shall do so within 45 days after it grants the request for review. If after it reviews additional evidence the Appeals Council decides to issue a decision (rather than remand the case to an ALJ), the decision will be issued within 30 days after the claimant comments on the evidence. If no comment is received, the decision will be issued within 30 days after the end of the comment period.

(2) If after the evidence or comments are received, the Appeals Council determines still further evidence is needed, and then decides to issue a decision (rather than remand the case to an ALJ), the decision will be issued within 30 days after the claimant's comments are received on the additional evidence. If no comments are received, the decision will be issued within 30 days after the end of the comment period.

(c) *Remand to the Administrative Law Judge.* If the Appeals Council decides the remand a case to the Administrative Law Judge, the case will be remanded within 30 days from the date the Appeals Council grants the review. If the Appeals Council requests additional evidence and then decides to remand the case to the Administrative Law Judge, the case will be remanded within 30 days after the Appeals Council receives the evidence and the claimant's comments, if any.

8. Following § 416.1467, new §§ 416.1467a, through 416.1467d are added to read as follows:

§ 416.1467a Time limits for hearings and decisions in cases remanded by the Appeals Council.

If the Appeals Council remands a case to the Administrative Law Judge, the following time limits apply (except for cases remanded by a court, see § 416.1467b):

(a) If a hearing by the Administrative Law Judge is required, the hearing will be held within 90 days from the date of the Appeals Council's remand order. The hearing decision will be issued by the Administrative Law Judge within 30 days after the hearing is held.

(b) If no hearing is required, a decision will be issued by the Administrative Law Judge within 90 days after the date of the Appeals Council's remand order.

(c) If no hearing is required but additional evidence is requested, a decision will be issued by the Administrative Law Judge within 30 days after the claimant's comments on the evidence are received. If no comments are received, the decision will be issued within 30 days after the end of the comment period.

(d) The time limits in §§ 416.1455a, 416.1455b and 416.1455c for extending the time for holding a hearing after a request for additional evidence and for issuing a decision will apply when the Appeals Council remands a case to an Administrative Law Judge.

§ 416.1467b Time limits for hearings and decisions in cases remanded by a court.

If a court remands a case to the Secretary the following time limits will apply (except where the court sets other time limits):

(a) *Appeals Council issues decision.* If the Appeals Council determines that it can, based on the evidence in the record, issue a decision, the decision will be issued within 30 days after the Secretary receives the court's remand order.

(b) *Appeals Council requests additional evidence.* If the Appeals Council decides additional evidence is needed, the Appeals Council shall request it within 30 days after the Secretary receives the court's remand order. The Appeals Council shall issue a decision within 30 days after the evidence is entered into the record.

(c) *Appeals Council remands case to Administrative Law Judge.* (1) If the Appeals Council decides to remand a case to an Administrative Law Judge, it will do so within 30 days after the Secretary receives the court remand order. If the Administrative Law Judge can issue a recommended decision based on the record, the decision will be issued within 30 days after the date of the Appeals Council remand.

(2) If the Administrative Law Judge requests additional evidence, a recommended decision will be issued within 30 days after (i) the evidence is received if the decision is fully favorable to the claimant or (ii) the end of the period for comment on the additional evidence.

(3) If a hearing is required, the hearing will be held within 90 days after the Secretary receives the court's remand order. A decision will be issued within 30 days after the close of the hearing.

(d) *Administrative Law Judge returns case to Appeals Council.* If the Administrative Law Judge recommends a decision, the Appeals Council shall issue a decision, adopting, modifying or rejecting the Administrative Law Judge's recommended decision within 30 days after the expiration of the time period within which the claimant may submit comments. If after receiving the recommended decision issued by the Administrative Law Judge the Appeals Council wishes to obtain additional evidence, the time frames in § 416.1464b will apply.

§ 416.1467c Time limit for action by the Appeals Council if it reviews a hearing decision on its own motion or reopens a decision.

Where the Appeals Council reviews a decision on its own motion or reopens a decision it will—

(a) Issue a decision within 30 days after the expiration of the period for comment on the Appeals Council's notice to reopen or take own motion review; or

(b) Request any additional evidence within 45 days of granting the review or reopening a decision and issue its decision within 30 days after the end of the period for receiving comments on any additional evidence the Appeals Council requested; or

(c) Remand the case to the Administrative Law Judge within 30 days after it has notified the claimant that it is reviewing the decision or within 30 days after the receipt of additional evidence. In this case, the time limits in 416.1467a will apply.

§ 416.1467d Exceptions to time periods for action by the Appeals Council.

If a claim is pending before the Appeals Council and the claimant requests time to review the record or submit additional evidence or a brief, the time period for action by the Appeals Council will be extended by 30 days or the period of delay, whichever is greater.

[FR Doc. 80-6173 Filed 2-26-80; 8:45 am]
BILLING CODE 4110-07-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-86-79]

Income Tax; Allowance of Deductions to Foreign Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations relating to the allowance of deductions to foreign corporations doing business in the United States. Presently, the rules for allocation and apportionment of deductions found in § 1.861–8 apply to the allowance of all deductions to these foreign corporations. Under these proposed regulations, the existing rules would continue to apply to foreign corporations, except with respect to deductions for interest expense. Separate rules under a new § 1.882–4(d) would be provided for the allowance of interest expense deductions. The proposed regulations would also permit the disallowance of claimed deducting of a foreign corporation if proper verification of those deductions is not furnished.

DATES: Written comments and requests for a public hearing must be delivered or mailed by April 28, 1980. These regulations are, in general, proposed to be effective on the date which is 30 days after publication of this regulation as a Treasury decision, or, at the option of the taxpayer, for taxable years beginning after December 31, 1976.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Herman B. Bouma of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202–566–3289, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 861 and 882 of the Internal Revenue Code of 1954.

These amendments are proposed under the authority contained in sections 882(c)(1)(A) and 7805 of the Internal Revenue Code of 1954 (80 Stat. 1556, 26 U.S.C. 882(c)(1)(A) and 68A Stat. 917, 26 U.S.C. 7805, respectively).

Explanation of Provisions

Under section 882(a)(1), a foreign corporation engaged in trade or business within the United States is taxed on its taxable income effectively connected with the conduct of a trade or business in the United States. In determining the amount of its effectively connected U.S. taxable income, the foreign corporation is allowed deductions from its effectively connected U.S. gross income, but only if and to the extent that the deductions are related to that U.S. gross income. At present, a foreign corporation must follow the rules set forth in § 1.861–8 to determine the deductions allowed to it under section 882(c). See § 1.861–8(f)(1)(iv). Proposed § 1.882–4(c)(1) provides that the rules in § 1.861–8 will continue to apply to foreign corporations, except with respect to the allowance of the interest expense deduction.

Proposed §1.882–4(c)(2) requires a foreign corporation to furnish, upon demand, information sufficient to verify any claimed deductions. If such information is not provided, the deductions may be disallowed.

Proposed §1.882–4(d) presents new rules for computing the interest expense deduction allowed to a foreign corporation. In general, a foreign corporation is given two alternative methods for determining the interest expense deduction—(1) the branch book/dollar pool method, and (2) the separate currency pools method.

Both methods require the initial determination of an average amount of liabilities attributable to the U.S. branch operation. The rules for computing this amount are contained in proposed § 1.882–4(d) (2) and (3). The amount of these attributed liabilities bears the same ratio to the amount of U.S. branch assets as corporate worldwide liabilities bear to worldwide assets.

Under the branch book/dollar pool method, described in proposed § 1.882–4(d)(4)(i), if the amount of attributed liabilities is less than (or equal to) the amount of U.S. branch book liabilities, the interest expense deduction is equal to the amount of attributed liabilities multiplied by the average U.S.-connected interest rate. If the amount of attributed liabilities exceeds the U.S. branch book liabilities, the interest expense deduction is equal to the sum of two amounts. The first amount is the total interest expense shown on the branch's books. The second amount is the difference between the attributed liabilities and U.S. branch book liabilities multiplied by the average interest rate on non-U.S.-connected, U.S. dollar liabilities.

Under the separate currency pools method, described in proposed § 1.882–4(d)(4)(ii), the interest expense deduction is equal to the sum of separate interest components for each currency in which the branch has incurred liabilities. Each component is computed by first multiplying the ratio of total attributed liabilities to total U.S. book liabilities by the ratio of U.S. branch book borrowings in the currency for which the interest component is being computed to worldwide borrowings in that currency. That product is in turn multiplied by the total interest expense incurred by the corporation with respect to borrowings in the particular currency. The result is the amount of the interest component for that currency. The computation must be made separately with respect to each separate currency in which the U.S. branch has borrowed.

Paragraphs (e)(2)(i) and (f)(1)(iv) of § 1.861–8 would be amended under the proposed regulations to provide cross-references to proposed § 1.882–4(d).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Regulatory Analysis

A draft regulatory analysis has been prepared with respect to these proposed regulations and is available for public inspection and copying at the Internal Revenue Service, Room 4317, 1111 Constitution Avenue, NW., Washington, D.C. 20224. The regulatory analysis discusses both the approach followed in the proposed regulations and an alternative regulatory approach. The alternative approach would have reflected in the foreign corporation's effectively connected taxable income an appropriate portion of the foreign corporation's exchange rate gains and losses attributable to foreign-currency borrowings, which are not so effectively connected under present law.

Drafting Information

The principal author of these proposed regulations is Herman B. Bouma of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. Paragraphs (e) (2) (i) and (f) (1) (iv) of § 1.861–8 are amended to read as follows:

§ 1.861–8 Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(e) Allocation and apportionment of certain deductions. * * *

(2) *Interest*—(i) *In general.* The method of allocation and apportionment for interest set forth in this paragraph (e)(2) is based on the approach that money is fungible and that interest expense is attributable to all activities and property regardless of any specific purposes for incurring an obligation on which interest is paid. This approach recognizes that all activities and property require funds and that management has a great deal of flexibility as to the source and use of funds. Normally, creditors of a taxpayer subject the money advanced to the taxpayer to the risk of the taxpayer's entire activities and look to the general credit of the taxpayer for payment of the debt. When money is borrowed for a specific purpose, such borrowing will generally free other funds for other purposes and it is reasonable under this approach to atrribute part of the cost of borrowing to such other purposes. For rules applicable to the allocation and apportionment of interest expenses of foreign corporations in determining the amount of deductions allowable for interest expenses under section 882, see § 1.882–4 (d).

* * * * *

(f) *Miscellaneous matters*—(1) *Operative sections.* * * *

(iv) *Effectively connected taxable income.* Nonresident alien individuals and foreign corporations engaged in trade or business within the United States, under sections 871(b) and 882, are taxable at ordinary rates, as provided in section 1 or 1201(b), and section 11 or 1201(a), on taxable income which is effectively connected with the conduct of a trade or business within the United States. Such taxable income is determined in most instances by initially determining, under section 864(c), the amount of gross income which is effectively connected with the conduct of a trade or business within the United States. Pursuant to sections 873 and 882 (c), this section is applicable for purposes of identifying the deductions from such gross income, other than the deduction for interest expenses allowed to foreign corporations under the rules of § 1.882–4(d), which are to be taken into account in determining such taxable income. See example (21) of paragraph (g) of this section.

* * * * *

Par. 2. Section 1.882–4 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 1.882–4 Allowance of deductions to foreign corporations.

* * * * *

(c) *Allocation of deductions*—(1) *In general.* In determining the taxable income of a foreign corporation which is effectively connected with the conduct of a trade or business in the United States, deductions are allowed only to the extent that they are connected with gross income which is effectively connected with the conduct of the trade or business in the United States. (See, however, section 882 (c) (1) (B) for the special rule allowing deduction in full of charitable contributions and gifts subject to section 170.) For this purpose, the proper allocation and apportionment of deductions, other than for interest expenses, to effectively connected gross income is determined in accordance with the rules of § 1.861–8. For the rules for allocation and apportionment of interest expenses of a foreign corporation, see paragraph (d) of this section.

(2) *Verification.* A foreign corporation claiming deductions from gross income which is effectively connected with the conduct of a trade or business in the United States must furnish, at the request of the Director of the Office of International Operations or any district director, information, including books and records, sufficient to establish that the taxpayer is entitled to the deductions in the amounts claimed. For the types of information including books and records which may support deductions, see § 1.861–8 (f) (5). See section 7602 and the regulations thereunder which generally provide for the examination of books and witnesses. All information must be furnished in a form and at a place suitable to permit verification of claimed deductions. In this regard, a certified translation must be furnished along with any materials furnished in a foreign language. If the taxpayer upon request fails to furnish sufficient information, including information requested pursuant to § 1.861–8 (f) (5), the Director of the Office of International Operations or any district director may in his discretion disallow in full or in part the taxpayer's claimed deductions to which the request relates.

(d) *Allocation of interest deductions*—(1) *In general.* (i) For periods after [date which is 30 days after publication of this regulation as a Treasury decision), or, at the option of the taxpayer, for taxable years beginning after December 31, 1976, the allocation and apportionment of the interest expenses of a foreign corporation to its effectively connected gross income is determined by the three-step process set forth in paragraph (d) (2), (3), and (4) of this section. For purposes of applying this process, classifications of items as assets or liabilities must be made on a consistent basis and in accordance with U.S. tax principles; any classification not consistently applied or not in accordance with those principles may be adjusted. In applying the three-step

process, asset receivables, liabilities, or interest expenses which result from loan transactions of any type between the separate trades or businesses (or offices or branches) of the foreign corporation are disregarded. Where the substance of a loan or other transaction differs from its form, the Commissioner or his delegate may make appropriate adjustments to reflect the transaction in accordance with its substance.

(ii) The operation of the preceding sentence may be illustrated by the following examples.

Example (1). Bank A's principal office and residence is located in country X. A also maintains branch banking offices in London and in New York. In 1981, A determines that its New York branch requires $100x funds for use in its business. Accordingly, A's London branch takes an unsecured loan of $100x from bank B located in country Y. The loan agreement identifies the borrower as "Bank A (London branch)". The London branch in form loans $100x to the New York branch on the same terms and conditions as the loan from bank B, except that the interest rate is 1/16 percent above the bank B loan rate. The 1/16-percent additional interest represents a fee paid to the London branch by the New York branch in consideration of the London branch's services in obtaining the loan from bank B. The loan from the London branch to the New York branch may be disregarded by the Commissioner or his delegate. Since the substance of the transaction is that the London branch has acted as agent or broker for the New York branch, the New York branch could be treated by the Commissioner or his delegate as having obtained the loan directly from bank B. The interest incurred by the New York branch on this loan would then not include the 1/16-percent inter-branch service fee but would include the remainder of the actual interest incurred by the New York branch with respect to the loan from bank B. (The rules of § 1.861–8 would apply in determining the deductibility of expenses incurred by bank A, including the London branch, in obtaining the loan from bank B.)

Example (2). The facts concerning bank A are the same as in example (1). In 1981, corporation M, doing business in country Y, applies to bank A's New York branch for a loan of $50x. Accordingly, A's New York branch in form lends $50x to A's London branch. The London branch lends $50x to M on the same terms and conditions as the inter-branch New York-to-London loan, except that the interest rate is 1/16 percent above the rate on the latter loan. The 1/16-percent difference in interest represents a fee paid to the London branch by the New York branch in consideration of the London branch's services in placing the loan to M. M pays interest to the London branch at the higher rate (*i.e.*, including the 1/16 percent). It is determined that the interest paid by M constitutes income from sources outside the United States which is effectively connected with the conduct of a trade or business in the United States by A's New York branch under section 864 (c). Since the substance of the transaction is that the London branch has acted as agent or broker for the New York branch, the New York branch may be treated by the commissioner or his delegate as having made a loan directly to M. The loan from the New York branch to the London branch may be disregarded.

(iii) The three-step process for allocation and apportionment of interest expenses is set forth in paragraph (d)(2), (3) and (4) of this section, as follows.

(2) *Step 1—Asset determination.* The average total value of all assets of the corporation from which the corporation derives or could reasonably be expected to derive income, gain, or loss effectively connected with the conduct of a trade or business in the United States must be determined for the taxable year (or applicable portion thereof). These assets may include both U.S. dollar-denominated and foreign currency-denominated assets. All assets must be consistently stated either in U.S. dollar equivalent amounts or in equivalent amounts of the currency of the country in which the head office or principal residence of the taxpayer is located. The average total value of all such assets is determined on the basis of the average of the values of all such assets at the most frequent, regular intervals (such as daily, weekly, monthly, or quarterly) reasonably available from the relevant records of the taxpayer. Valuation based on U.S. tax book values (original cost for U.S. tax purposes less depreciation allowed for U.S. tax purposes) must be used for this purpose.

(3) *Step 2—Liability determination.* (i) The average total amount of the liabilities of the corporation connected with the conduct of the trade or business in the United States must be determined for the taxable year (or applicable portion thereof). This average total amount of liabilities is determined by multiplying the average U.S. asset value determined in step 1, by the following fraction:

$$\frac{\text{Average total amount of corporate worldwide liabilities (including U.S. trade or business) for the year (or portion of the year)}}{\text{Average total value of corporate worldwide assets (including U.S. trade or business) for the year (or portion of the year)}}$$

These assets and liabilities include both U.S. dollar-denominated and foreign currency-denominated items. All such asset values and liability amounts must be consistently stated either in U.S. dollar equivalent amounts or in equivalent amounts of the currency of the country in which the head office or principal residence of the taxpayer is located. Average total amounts and values for the taxable year are determined on the basis of the average of the liability amounts and asset values at the most frequent, regular intervals (such as daily, weekly, monthly, or quarterly) reasonably available from the relevant records of the taxpayer. Any reasonable method of valuation may be used in determining total values of assets under this step 2. However, after a method of valuation is once used for a taxable year, it must be consistently applied in later years to all assets unless the consent of the Commissioner or his delegate to a change of method is obtained. Valuation based on fair market values or on U.S. tax book values (original cost for U.S. tax purposes less depreciation allowed for U.S. tax purposes) will ordinarily be considered to be reasonable methods.

(ii) If the amount of the foregoing fraction cannot be determined and an election is not in effect to use the separate currency pools method under paragraph (d)(4)(ii) of this section, then the average total amount of liabilities connected with the conduct of a trade or business in the U.S. is presumed, in the case of a U.S. banking business, to be nine-tenths (9/10) of the average value of assets used in the U.S. banking business or, in the case of a non-banking U.S. business, to be one-half (1/2) of the average value of assets used in the non-banking U.S. business. However, the average total amount of U.S.-connected liabilities determined by using the presumed fraction of 9/10 or 1/2 must in no case exceed the average total liabilities determined from the books of the U.S. trade or business.

(4) *Step 3—Interest deduction allowed.* On the taxpayer's return for its first taxable year (or portion thereof) after the applicable effective date determined under paragraph (d)(1)(i) of this section, the taxpayer must elect to use for that taxable year and later taxable years either the branch book/dollar pool method set forth in paragraph (d)(4)(i) of this section or the separate currency pools method set forth in paragraph (d)(4)(ii) of this section. However, the separate currency pools method may be used for a taxable year only if the step 2 liability determination for that year is made under paragraph (d)(3)(i), and not paragraph (d)(3)(ii), of this section. Once made, the election of one of the methods may not be changed for later taxable years without the consent of the Commissioner or his delegate. If the separate currency pools method has been elected and for the taxable year the step 2 liability determination can not be made under paragraph (d)(3)(i) by reason of a change of circumstances from the preceding taxable year and not

within the control of the taxpayer, then the Commissioner or his delegate will normally permit a change (for that taxable year and later taxable years) to the branch book/dollar pool method (thus allowing the step 2 determination under paragraph (d)(3)(ii)).

(i) *Branch book/dollar pool method.* (A) Under this method, the amount of the interest deduction allowed to the foreign corporation as effectively connected with the conduct of a trade or business in the United States is determined by multiplying the average total amount of U.S.-connected liabilities for the year, determined under step 2, times the average U.S.-connected interest rate. The average U.S.-connected interest rate is equal to the following fraction:

$$\frac{\text{Total amount of the interest expenses incurred by the U.S. trade or business for the year (or portion of the year)}}{\text{Average total amount of liabilities of the U.S. trade or business for the year (or portion of the year)}}$$

Both the numerator and the denominator of the foregoing fraction are determined from the records of the U.S.-trade or business and, in the case of the denominator, on the basis of the rules following the fraction in paragraph (d)(3) of this section.

(B) If, however, the average total amount of U.S.-connected liabilities determined under step 2 is greater than the denominator of the fraction in paragraph (d)(4)(i)(A) of this section, then the amount of the interest deduction allowed is equal to (*1*) the total amount of the interest expenses for the taxable year (or portion of the year) shown on the books of the United States trade or business, plus (*2*) the excess of the step 2 amount over the denominator multiplied by the average interest rate on U.S. dollar liabilities for the taxable year (or portion of the year) shown on the books of the trades or businesses of the foreign corporation which are outside the United States. This average interest rate on U.S. dollar liabilities on the books of non-U.S. branches may be determined under any method which reasonably approximates the actual average interest rate on these liabilities and which is consistently applied by the taxpayer from year to year. For example, reference to quoted London inter-bank interest rates may be appropriate where information providing the actual average interest rate cannot reasonably be obtained.

(ii) *Separate currency pools method.* Under this method, the amount of the interest deduction allowed to the foreign corporation as effectively connected with the conduct of a trade or business in the United States is determined by adding together separate amounts of interest expense for U.S. dollar liabilities and for foreign currency liabilities of the U.S. trade or business. The amount of separate interest expense for liabilities denominated in U.S. dollars and in each other separate currency is determined separately on the basis of each separate currency and is equal, in the case of each currency, to the product of the following three amounts:

(A) The ratio of the average total amount of liabilities for the taxable year (or portion of the year) connected with the conduct of the trade or business in the U.S., as determined under step 2, to the average total amount of branch book liabilities of the U.S. trade or business for the year (or portion of the year), multiplied by

(B) The ratio of the average total amount of branch book liabilities of the U.S. trade or business for the year (or portion of the year) denominated in the particular subject currency to the average total amount of book liabilities of the foreign corporation (including the U.S. trade or business) for the year (or portion of the year) denominated in that particular currency, multiplied by

(C) The total amount of the interest expense for the taxable yer (or portion of the year) incurred by the foreign corporation (including the U.S. trade or business) with respect to liabilities denominated in that particular currency.

(5) *Example.* The rules of this paragraph (d) may be illustrated by the following example:

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Example. (i) Facts. X, a U.S. branch office, and foreign corporation Y have the following average assets and liabilities for the taxable year:

X Branch

Assets		Liabilities	
Loans outside the foreign corporation	$ 125 (10%)	Borrowings from outside the foreign corporation (includes U.S. $80 at 9.0%)	$100 (9.5%)
Advances to other branches	50 (9%)		
		Advances from head office	100 (8.5%)
Other assets (used in U.S. business)	25		
Total assets	$ 200	Total liabilities	$200

Y Foreign Corporation
(includes all branches)

Assets		Liabilities	
U.S. dollar loans outside the foreign corporation	$200 (10.5%)	U.S. dollar borrowings from outside the foreign corporation	$190 (9.75%)
Foreign currency loans outside the foreign corporation	1,000 (8%)	Foreign currency borrowings from outside the foreign corporation	800 (7%)
Other assets	100	Total liabilities	$990
Total assets	$1,300	Net worth	$310
		Total	$1,300

Percentages in parentheses show average annual rates of interest received or paid on the corresponding assets or liabilities. Foreign currency amounts have been translated into U.S. dollars.

(ii) Step 1--Asset determination

X's loans outside of Y	$125
X's other assets used in U.S. business	25
X's U.S. asset values	$150

(iii) Step 2--Liability determination

X's U.S. asset values $150
Multiplied by the fraction:

$$\frac{\text{Y's liabilities}}{\text{Y's asset values}} = \frac{\$\ 990}{\$1,300} = 76.2\%$$

X's average U.S.-connected liabilities $114.30

(iv) Step 3--Interest deduction allowed--

Branch book/dollar pool method (illustrating paragraph (d) (4) (i) (B)).

X's interest expenses incurred outside of Y: $100 x 9.5% — $9.50

Excess of X's U.S. liabilities (under Step 2) over X's borrowings outside of Y: $114.30 - $100 = $14.30

Multiplied by average interest rate incurred on U.S. dollar liabilities by non-U.S. business:

$190		$80	
x 9.75%		x 9.0%	
$ 18.53	less	$ 7.20	= $11.33

Y's U.S. dollar borrowings	=	$190
Less: X's U.S. dollar borrowings	=	$ 80
Non-U.S. business dollar borrowings	=	$110

$\frac{\$11.33}{\$110.00} = 10.3\%$

[$14.30 x 10.3%] — 1.47

Interest deduction allowed — $10.97

Alternative:

(iv) Step 3--Interest deduction allowed--separate currency pools method. The facts are as set forth above but the liabilities of the foreign corporation Y and of the U.S. branch X are denominated in currencies as follows:

Type of Liability	Foreign Corporation Y			U.S. Branch X		
	Amount of Liability	Average Annual Rate of Interest	Amount of Interest	Amount of Liability	Average Annual Rate of Interest	Amount of Interest
U.S. dollar-denominated liability	$190	(9.75%) =	$18.53	$80	(9.0%) =	$7.20
Foreign currency A liability	$700	(6.0%) =	$42.00	$10	(8.0%) =	$ .80
Foreign currency B liability	$100	(14.0%) =	$14.00	$10	(15.0%) =	$1.50

The interest deduction allowed, equal to the sum of the three separate currency components, is determined as follows:

U.S. dollar interest expense = $\frac{\$114.30}{\$100.00} \times \frac{\$80}{\$190} \times \$18.53 = \$8.92$

Foreign currency A interest expense = $\frac{\$114.30}{\$100.00} \times \frac{\$10}{\$700} \times \$42.00 = \$ .69$

Foreign currency B interest expense = $\frac{\$114.30}{\$100.00} \times \frac{\$10}{\$100} \times \$14.00 = \$ 1.60$

Interest deduction allowed — $11.21

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc. 80-6106 Filed 226-80; 8:45 am]

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26 CFR Part 1

[LR-1947]

Income Tax; Soil and Water Conservation Expenditures

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the definition of the phrase "land used in farming" for purposes of determining whether soil and water conservation expenditures are deductible. The Internal Revenue Service has reconsidered its prior interpretation of that phrase in light of court decisions that found the interpretation overly restrictive. The regulations set forth a new interpretation of the phrase for the guidance of taxpayers making soil and water conservation expenditures.

DATES: Written comments and requests for a public hearing must be delivered or mailed by April 28, 1980. The amendments are proposed to be effective for taxable years beginning after 1953.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LT-1947), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Paul A. Francis of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-6640).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 175 of the Internal Revenue Code of 1954. These amendments are proposed to set forth a new interpretation of the phrase "land used in farming" for purposes of determining whether expenditures for soil and water conservation are deductible. These amendments, which reflect Service consideration of the decisions in *Estate of Straughn* v. *Commissioner*, 55 T.C. 21 (1970), acq., 1976-2 C.B. 3, and *Duda & Sons, Inc.* v. *United States*, 383 F. Supp. 1303 (M.D. Fla. 1974), rev'd on other grounds, 560 F. 2d 669 (5th Cir. 1977), are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Scope of Proposed Regulations

Ordinarily taxpayers are not permitted to deduct expenditures for capital improvements to property. Instead, taxpayers increase the basis of the property by the amount of the expenditures. Code section 175, however, permits current deduction of soil and water conservation expenditures, subject to certain conditions and limitations.

One of the conditions for deduction of soil and water conservation expenditures is that the expenditures be in respect of "land used in farming". Section 175(c)(2) defines "land used in farming" as land used (before or simultaneously with the expenditures) by the taxpayer or a tenant of the taxpayer for the production of crops, fruits or other agricultural products or for the sustenance of livestock.

The proposed regulations deal with two issues that have arisen with respect to the meaning of the phrase "land used in farming". The first issue is the application of section 175(c)(2) in the case of a taxpayer with newly acquired farmland. The second is the application of that provision to a tract of land only a part of which is actually used in farming.

Newly Acquired Farmland

Section 175(c)(2) makes no reference to a taxpayer who has newly acquired land which was used in farming by a predecessor. Existing § 1.175-4(a)(2) provides that such a taxpayer may deduct soil and water conservation expenditures made before the taxpayer actually begins to farm the land only if the use of the land by the taxpayer is substantially a continuation of the use by the predecessor.

In *Estate of Straughn* v. *Commissioner*, 55 T.C. 21 (1970), acq., 1976-2 C.B. 3, the Internal Revenue Service argued that a new owner could not deduct conservation expenditures because the use of the land by the new owner for growing grapes was not substantially a continuation of its prior use for growing wheat and cotton. The Tax Court rejected the distinction drawn by the Service between different types of agricultural products and held that the taxpayer could deduct the expenditures. The United States District Court for the Middle District of Florida found the *Straughn* decision persuasive and also permitted deductions in similar circumstances. *Duda & Son, Inc.* v. *United States*, 383 F. Supp. 1303 (M.D. Fla. 1974), rev'd on other grounds, 560 F. 2d 669 (5th Cir. 1977).

The proposed regulations provide that any type of farming use of the land by the taxpayer may satisfy the requirement that the use of the land be substantially a continuation of its prior use in farming. Thus, a taxpayer who plants crops on land previously used for grazing livestock would be entitled to deduct conservation expenditures if the other conditions of section 175 are met.

Part of Tract Used in Farming

In *Duda, supra*, and *Behring* v. *Commissioner*, 32 T.C. 1256 (1959), the taxpayer contended that use of any part of a tract of land in farming made the entire tract "land used in farming" within the meaning of section 175(c)(2). Under that view conservation expenditures in respect of a previously unfarmed part of a tract could be deductible if some other part of the tract was actually used in farming. The court in *Behring* accepted the taxpayer's theory, but the court in *Duda* rejected it and denied the claimed deductions.

The proposed regulations provide that conservation expenditures are deductible only to the extent that they are allocable to land actually used in farming. The proposed regulations provide rules for the allocation of conservation expenditures that benefit both land used in farming and other land of the taxpayer that does not qualify as "land used in farming".

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is Paul A. Francis of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

§ 1.175 [Deleted]

Paragraph 1. Section 1.175 is deleted.

Par. 2. Paragraph (a) (1) of § 1.175–2 is amended by adding at the end thereof the following new sentence:

§ 1.175–2 Definition of soil and water conservation expenditures.

(a) *Expenditures treated as a deduction.* (1) * * * For rules relating to the allocation of expenditures that benefit both land used in farming and other land of the taxpayer, see § 1.175–7.

* * * * *

Par. 3. Section 1.175–4 is amended to read as follows:

§ 1.175–4 Definition of "land used in farming."

(a) *Requirements.* For purposes of section 175, the term "land used in farming" means land which is used in the business of farming and which meets both of the following requirements:

(1) The land must be used for the production of crops, fruits, or other agricultural products, including fish, or for the sustenance of livestock. The term "livestock" includes cattle, hogs, horses, mules, donkeys, sheep, goats, captive fur-bearing animals, chickens, turkeys, pigeons, and other poultry. Land used for the sustenance of livestock includes land used for grazing such livestock.

(2) The land must be or have been so used either by the taxpayer or his tenant at some time before, or at the same time as, the taxpayer makes the expenditures for soil or water conservation or for the prevention of the erosion of land. The taxpayer will be considered to have used the land in farming before making such expenditure if he or his tenant has employed the land in a farming use in the past. If the expenditures are made by the taxpayer in respect of land newly acquired from one who immediately prior to the acquisition was using it in farming, the taxpayear will be cosnsidered to be using the land in farming at the time that such expenditures are made, if the use which is made by the taxpayer of the land from the time of its acquisition by him is substantially a continuation of its use in farming, whether for the same farming use as that of the taxpayer's predecessor or for one of the other uses specified in paragraph (a) (1) of this section.

(b) *Examples.* The provisions of paragraph (a) of this section may be illustrated by the following examples:

Example (1). A purchases an operating farm from B in the autumn after B has harvested his crops. Prior to spring plowing and planting when the land is idle because of the season, A makes certain soil and water conservation expenditures on this farm. At the time such expenditures are made the land is considered to be used by A in farming, and A may deduct such expenditures under section 175, subject to the other requisite conditions of such section.

Example (2). C acquires uncultivated land, not previously used in farming, which he intends to develop for farming. Prior to putting this land into production it is necessary for C to clear brush, construct earthern terraces and ponds, and make other soil and water conservation expenditures. The land is not used in farming at the same time that such expenditures are made. Therefore, C may not deduct such expenditures under section 175.

Example (3). D acquires several tracts of land from persons who had used such land immediately prior to D's acquisition for grazing cattle. D intends to use the land for growing grapes. In order to make the land suitable for this use, D constructs earthen terraces, builds drainage ditches and irrigation ditches, extensively treats the soil, and makes other soil and water conservation expenditures. Tha land is considered to be used in farming by D at the time he makes such expenditures, even though it is being prepared for a different type of farming activity than that engaged in by D's predecessors. Therefore, D may deduct such expenditures under section 175, subject to the other requisite conditions of such section.

(c) *Cross reference.* For rules relating to the allocation of expenditures that benefit both land used in farming and other land of the taxpayer, see § 1.175–7.

Par. 4. The following new section is added immediately after § 1.175–6:

§ 1.175–7 Allocation of expenditures in certain circumstances.

(a) *General rule.* If at the time the taxpayer paid or incurred expenditures for the purpose of soil or water conservation, or for the prevention of erosion of land, it was reasonable to believe that such expenditures would directly and substantially benefit land of the taxpayer which does not qualify as "land used in farming", as defined in § 1.175–4, as well as land of the taxpayer which does so qualify, then for purposes of section 175, only a part of the taxpayer's total expenditures is in respect of "land used in farming".

(b) *Method of allocation.* The part of expenditures allocable to "land used in farming" generally equals the amount which bears the same proportion to the total amount of such expenditures as the area of land of the taxpayer used in farming which it was reasonable to believe would be directly and substantially benefited as a result of the expenditures bears to the total area of land of the taxpayer which it was reasonable to believe would be so benefited. If it is established by clear and convincing evidence that, in the light of all the facts and circumstances, another method of allocation is more reasonable than the method provided in the preceding sentence, the taxayer may allocate the expenditures under that other method. For purposes of this section, the term "land of the taxpayer" means land with respect to which the taxpayer has title, leasehold, or some other substantial interst.

(c) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). A owns a 200-acre tract of land, 80 acres of which qualify as "land used in farming". A makes expenditures for the purpose of soil and water conservation which can reasonably be expected to directly and substantially benefit the entire 200-acre tract. In the absence of clear and convincing evidence that a different allocation is more reasonable, A may deduct 40 percent (80/200) of such expenditures under section 175. The same result would obtain if A had made the expenditures after newly acquiring the tract from a person who had used 80 of the 200 acres in farming immediately prior to A's acquisition.

Example (2). Assume the same facts as in example (1), except that A's expenditures for the purpose of soil and water conservation can reasonably be expected to directly and substantially benefit only the 80 acres which qualify as land used in farming; any benefit to the other 120 acres would be minor and incidental. A may deduct all of such expenditures under section 175.

Example (3). Assume the same facts as in example (1), except that A's expenditures for the purpose of soil and water conservation can reasonably be expected to directly and substantially benefit only the 120 acres which do not qualify as land used in farming. A may not deduct any of such expenditures under section 175. The same result would obtain even if A had leased the 200-acre tract to B in the expectation that B would farm the entire tract.

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc. 80–5967 Filed 2–26–80; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Parts 1 and 7

[LR–250–76]

Income Tax Credit for the Elderly

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the credit for the elderly. The Tax Reform Act of 1976 and the Revenue Act of 1978 amended the applicable tax law. The regulations would provide the public with the guidance needed to determine

eligibility for the credit and to compute the amount of the credit.

DATES: Written comments and requests for a public hearing must be delivered or mailed by April 28, 1980. The amendments generally are proposed to be effective for taxable years beginning after 1975.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention CC:LR:T (LR 250–76), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Paul A. Francis (202–566–6640)

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 37 of the Internal Revenue Code of 1954. The proposed amendments would supersede certain provisions of the Temporary Income Tax Regulations under the Tax Reform Act of 1976 (26 CFR Part 7), and those provisions would accordingly be deleted. These amendments are proposed to conform the regulations to section 503 (a) of the Tax Reform act of 1976 (90 Stat. 1559) and section 701 (a) of the Revenue Act of 1978 (92 Stat. 2897). These amendments are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

General Information About Credit

Like the former retirement income credit which it replaced, the credit for the elderly is designed to provide for certain taxpayers tax benefits roughly equivalent to those enjoyed by recipients of tax-exempt pensions or annuities, such as Social Security payments. Code section 37 prescribes rules relating to eligibility for the credit and computation of the credit for two groups of taxpayers; those who have attained the age of 65 and public retirees under age 65.

Taxpayers Age 65 and Over

Taxpayers age 65 and over begin computation of the credit for the elderly by determining the applicable "initial amount", or maximum credit base, under Code section 37(b). The "initial amount" varies according to filing status; the "initial amount" for joint return filers also depends upon whether only one spouse or both spouses have attained the age of 65.

These taxpayers must reduce the "initial amount" by the amount of certain tax-exempt pension income, such as Social Security payments. This reduction reflects the fact that the credit for the elderly is designed for taxpayers who derive little or no benefit from the favorable tax treatment of such income.

The next step in the computation of the credit for these taxpayers is to reduce the remaining potential credit base by one-half of the amount by which their adjusted gross income exceeds the applicable limit. The limit varies according to filing status. This reduction restricts the credit to taxpayers in the low- and middle-income range. The credit is equal to 15 percent of the resulting credit base.

Public Retirees Under Age 65

Code section 37 (e) provides special rules for any taxpayer under age 65 whose gross income includes a pension or annuity from a government retirement system which is attributable to services performed for the government by the taxpayer or a present of former spouse of the taxpayer. Section 37 (e) retains many of the features of the former retirement income credit.

Taxpayers computing a credit under section 37(e) first determine the applicable maximum credit base, which varies according to filing status. They reduce that base by the amount of certain tax-free pensions or annuities in the same manner as taxpayers age 65 and over. They reduce the potential credit base further if their earned income exceeds specified limits.

These taxpayers must then determine their retirement income. The age of the taxpayers determines what kinds of income are considered retirement income. Their credit is equal to 15 percent of either the remaining potential credit base or their retirement income, whichever is smaller.

The proposed regulations provide special rules for the treatment of disability annuity payments from a public retirement system for purposes of determining an individual's credit base. The payments to which these rules apply include payments to an individual who retired on partial or temporary disability. The characterization of disability annuity payments as either earned income or retirement income depends upon the individual's retirement status and the eligibility of the individual to exclude the payments as disability income under Code section 105.

The regulations explain in detail how taxpayers filing joint returns compute the credit provided under section 37(e). For taxable years beginning after 1977, joint return filers computing a credit under these provisions must disregard community property laws in allocating items of income.

Earned Income for the Self-Employed

The proposed regulations provide a new rule with respect to the amount of earned income to be taken into account for purposes of the credit computation under section 37(e). The earned income of a taxpayer from self-employment in a trade or business in which capital is not a material income-producing factor is limited to the taxpayer's share of the net profits from that trade or business. If capital is a material income-producing factor in the trade or business, the earned income is limited to 30 percent of the taxpayer's share of the net profits. This provision reflects the acquiescence of the Internal Revenue Service in *Miller* v. *Commissioner*, 51 T.C. 755 (1969), acq., 1977–1 C.B. 1.

Election by Certain Married Taxpayers

If a taxpayer who would otherwise qualify to compute a credit under section 37(e) is married to a spouse age 65 or over, the taxpayer may not take advantage of section 37(e) unless the spouse joins in an election to compute the credit under section 37(e). The proposed regulations provide that the spouses must make the election in accordance with the instructions for the return.

The proposed regulations relating to this election supersede the provisions of existing temporary regulation § 7.0 on the same matter. The proposed amendments include deletion of those provisions. The proposed regulations make no substantive change to the election rules provided in the temporary regulations.

Miscellaneous

The credit for the elderly is limited to the amount of the taxpayer's income tax for the year. The proposed regulations explain how this limitation applies to joint return filers who compute the credit under section 37(e).

Married taxpayers generally are eligible for the credit for the elderly only if they file joint returns. Married taxpayers who have lived apart for the entire year, however, may claim the credit on separate returns.

Nonresident aliens are ineligible for the credit unless they are treated as residents of the United States by reason of an election under Code section 6013 (g).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All

comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations was Paul A. Francis of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Parts 1 and 7 are as follows, effective for taxable years beginning after 1975 except as otherwise provided in proposed paragraph (f)(2) of § 1.37–3:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

§ 1.37 [Deleted]

Paragraph 1. Section 1.37 is deleted.

Par. 2. Section 1.37–1 is revised to read as follows:

§ 1.37–1 General rules for the credit for the elderly.

(a) *In general.* In the case of an individual, section 37 provides a credit against the tax imposed by chapter 1 of the Internal Revenue Code of 1954. This section and §§ 1.37–2 and 1.37–3 provide guidance in the computation of the credit for the elderly provided under section 37 for taxable years beginning after 1975. For rules relating to the computation of the retirement income credit provided under section 37 for taxable years beginning before 1976, see 26 CFR 1.37–1 through 1.37–5 (Rev. as of April 1, 1978). Note that section 403 of the Tax Reduction and Simplification Act of 1977 provides that a taxpayer may elect to compute the credit under section 37 for the taxpayer's first taxable year beginning in 1976 in accordance with the rules applicable to taxable years beginning before 1976.

(b) *Limitation on the amount of the credit.* The credit allowed by section 37 for a taxable year shall not exceed the tax imposed by chapter 1 of the Code for the taxable year (reduced, in the case of a taxable year beginning before 1979, by the general tax credit allowed by section 42).

(c) *Married couples must file joint returns.* If the taxpayer is married at the close of the taxable year, the credit provided by section 37 shall be allowed only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year. The preceding sentence shall not apply in the case of a husband and wife who are not members of the same household at any time during the taxable year. For the determination of marital status, see section 143 and § 1.143–1.

(d) *Nonresident aliens ineligible.* No credit is allowed under section 37 to a nonresident alien unless the nonresident alien is treated, by reason of an election under section 6013(g), as a resident of the United States for the taxable year for which the credit is sought.

Par. 3. Section 1.37–2 is revised to read as follows:

§ 1.37–2 Credit for individuals age 65 or over.

(a) *In general.* This section illustrates the computation of the credit for the elderly in the case of an individual who has attained the age of 65 before the close of the taxable year. This section shall not apply to an individual for any taxable year for which the individual makes the election described in section 37(e)(2) and paragraph (b) of § 1.37–3.

(b) *Computation of credit.* The credit for the elderly for an individual to whom this section applies equals 15 percent of the individual's "section 37 amount" for the taxable year. An individual's "section 37 amount" for a taxable year is the initial amount determined under section 37(b)(2), reduced as provided in section 37 (b)(3) and (c)(1).

(c) *Examples.* The computation of the credit for the elderly for individuals to whom this section applies may be illustrated by the following examples:

Example (1). A, a single individual who is 67 years old, has adjusted gross income of $8,000 for the calendar year 1977. A also receives social security payments of $1,450 during 1977. A does not itemize deductions. A's credit for the elderly is $120, computed as follows:

Initial amount under section 37(b)(2)		$2,500
Reductions required by section 37 (b)(3) and (c)(1):		
Social security payments	$1,450	
One-half the excess of adjusted gross income over $7,500	250	1,700
Section 37 amount		800
15 pct of $800		120

A's tax from the tax tables, which reflect the allowance of the general tax credit, is $662. Accordingly, the limitation of section 37(c)(2) and paragraph (b) of § 1.37–1 does not reduce A's credit for the elderly.

Example (2). H and W, who have both attained the age of 65, file a joint return for calendar year 1977. For that year H and W have adjusted gross income of $8,120; H also receives a railroad retirement pension of $1,550, and W receives social security payments of $1,200. H and W do not itemize deductions. The credit for the elderly allowed to H and W for 1977 is $139, computed as follows:

Initial amount under section 37(b)(2)		$3,750
Reductions required by section 37 (b)(3):		
Railroad retirement pension	$1,550	
Social Security payments	1,200	2,750
Section 37 amount		1,000
15 pct of $1,000		150
Limitation based upon amount of tax (derived from tables reflecting allowance of general tax credit).		$139

Since the adjusted gross income of H and W is not greater than $10,000, no reduction of the intitial amount is required under section 37 (c)(1).

Par. 4. Section 1.37–3 is revised to read as follows:

§ 1.37–3 Credit for individuals under age 65 who have public retirement system income.

(a) *In general.* This section provides rules for the computation of the credit for the elderly under section 37(e) in the case of an individual who has not attained the age of 65 before the close of the taxable year and whose gross income for the taxable year includes retirement income within the meaning of paragraph (d)(1)(ii) of this section (*i.e.*, under a public retirement system). If such an individual is married within the meaning of section 143 at the close of the taxable year and the spouse of the individual has attained the age of 65 before the close of the taxable year, this section shall apply to the individual for the taxable year only if both spouses make the election described in paragraph (b) of this section. If both spouses make the election described in paragraph (b) of this section for the taxable year, the credit of each spouse shall be determined under the rules of this section. See paragraph (f)(2) of this section for a limitation on the effects of community property laws in making determinations and computations under section 37(e) and this section.

(b) *Election by certain married taxpayers.* If a married individual under age 65 at the close of the taxable year has retirement income and the spouse of that individual has attained the age of 65 before the close of the taxable year, both spouses may elect to compute the credit provided by section 37 under the rules of section 37(e) and this section. The spouses shall signify the election on the return (or amended return) for the taxable year in the manner prescribed in the instructions accompanying the return. The election may be made at any

time before the expiration of the period of limitation for filing claim for credit or return for the taxable year. The election may be revoked without the consent of the commissioner at any time before the expiration of that period by filing an amended return.

(c) *Computation of credit.* The credit of an individual under section 37(e) and this section equals 15 percent of the individual's credit base for the taxable year. The credit base of an individual for a taxable year is the lesser of—

(1) The retirement income of the individual for the taxable year, or

(2) The amount determined under section 37(e)(5), as modified by section 37(e) (6) and (7).

(d) *Retirement income*—(1) *General Rule*—(i) *For individuals 65 or over.* Section 37(e)(4)(A) enumerates the kinds of income which may be treated as the retirement income of an individual who has attained the age of 65 before the close of the taxable year. They include income from pensions and annuities, interest, rents, dividends, certain bonds received under a qualified bond purchase plan, and certain individual retirement accounts or annuities.

(ii) *For individuals under 65.* In the case of an individual who has not attained the age of 65 before the close of the taxable year, retirement income consists only of income from pensions and annuities (including disability annuity payments) under a public retirement system which arises from services performed by that individual or by a present or former spouse of that individual. The term "public retirement system" means a pension, annuity, or retirement, or similar fund or system established by the United States, a State, a possession of the United States, any political subdivision of any of the foregoing, or the District of Columbia.

(2) *Rents.* For purposes of section 37(e)(4)(A)(iii), income from rents shall be the gross amount received, not reduced by depreciation or other expenses, except that beneficiaries of a trust or estate shall treat as retirement income only their proportionate shares, of the taxable rents of the trust or estate. In the case of an amount recived for board and lodging, only the portion of the amount received for lodging is income from rents.

(3) *Disability annuity payments received by individual under age 65.* Disability annuity payments received under a public retirement system by an individual under age 65 at the close of the taxable year shall not be treated as retirement income unless the payments are for periods after the date on which the individual reached minimum retirement age, that is, the age at which the individual would be eligible to receive a pension or annuity without regard to disability, and any of the following conditions is satisfied—

(i) The individual is precluded from seeking th benefits of section 105 (d) (relating to certain disability payments) for that taxable year by reason of an irrevocable election;

(ii) The individual was not permanently and totally disabled at the time of retirement (and was not permanently and totally disabled either on January 1, 1976, or on January 1, 1977, if the individual retired before the later date on disability or under circumstances which entitled the individual to retire on disability); or

(iii) The payments are for periods after the individual reached mandatory retirement age.

For purposes of this paragraph, disability annuity payments include payments to an individual who retired on partial or temporary disability.

(4) *Compensation for personal services rendered during taxable year.* Retirement income does not include any amount representing compensation for personal services rendered during the taxable year. For this purpose, amounts received as a pension shall not be treated as representing compensation for personal services rendered during the taxable year if the period of service during the taxable year is not substantial when compared with the total years of service. For example, an individual on the calendar year basis retires on November 30 after 5 years of service and receives a pension during the remainder of his taxable year. The pension is not treated as representing compensation for personal services rendered during such taxable year merely because it is paid by reason of the services of the individual for a period of 5 years which includes a portion of the taxable year.

(5) *Amounts not includible in gross income.* Retirement income does not include any amount not includible in the gross income of the individual for the taxable year. For example, if a portion of an annuity is excluded from gross income under section 72, relating to annuities, that portion of the annuity is not retirement income; similarly, the portion of dividend income excluded from gross income under section 116, relating to the partial exclusion of dividends received by individuals is not retirement income.

(e) *Earned income*—(1) *In general.* The term "earned income" in section 37 (e) (5) (B) generally has the same meaning as in section 911 (b), except that earned income does not include any amount received as a pension or annuity. See section 911 (b) and the regulations thereunder. Section 911 (b) provides, in general, that earned income includes wages, salaries, professional fees, and other amounts received as compensation for personal services rendered.

(2) *Earned income from self-employment.* For purposes of section 37(e)(5)(B), the earned income of a taxpayer from self-employment in a trade or business shall not exceed—

(i) The taxpayer's share of the net profits from the trade or business if capital is not a material income-producing factor in that trade or business; or

(ii) Thirty percent of the taxpayer's share of the net profits from the trade or business if capital is a material income-producing factor in that trade or business.

For other rules relating to the determination of earned income from self-employment in a trade or business, see section 911(b) and the regulations thereunder.

(3) *Disability annuity payments received by individuals under age 65.* Disability annuity payments received under a public retirement system by an individual under age 65 at the close of the taxable year shall be treated as earned income for purposes of section 37(e)(5)(B) unless the payments are treated as retirement income under paragraph (d)(3) of this section.

(f) *Computation of credit under section 37(e) in the case of joint returns*—(1) *In general.* In the case of a joint return of husband and wife, the credit base of each spouse under section 37(e) is computed separately. The spouses then combine their credit bases and compute a single credit. The limitation in section 37(c)(2) and paragraph (b) of § 1.37–1 on the amount of the credit is determined by reference to the joint tax liability of the spouses. Thus, regardless of whether a spouse would be liable for the tax imposed by chapter 1 of the Code if the joint return had not been filed, the credit base of that spouse is taken into account in computing the credit.

(2) *Community property laws.* For taxable years beginning after 1977, married individuals filing joint returns shall disregard community property laws in making any determination or computation required under section 37(e) or this section. Each item of income is attributed in full to the spouse whose income it would have been in the absence of community property laws. Thus, if a 67-year old individual files a joint return with a 62-year old spouse for 1979 and the only income of the couple

is from a public pension of the older spouse, that public pension is attributed in full to the older spouse for purposes of section 37(e) even though the applicable community property law may treat one-half of the pension as the income of the 62-year old spouse. Since the younger spouse consequently has no retirement income within the meaning of paragraph (d) of this section, the couple may not make the election described in paragraph (b) of this section.

(g) *Examples.* The computation of the credit for the elderly under section 37(e) and this section is illustrated by the following examples:

Example (1). B, who is 62 years old and single, receives a fully taxable pension of $2,400 from a public retirement system during 1977. B performed the services giving rise to the pension. During that year, B also earns $2,650 from a part-time job. B receives no tax-exempt pension or annuity in 1977. Subject to the limitation or annuity in 1977. Subject to the limitation of section 37(c)(2) and paragraph (b) of § 1.37–1, B's credit for the elderly for 1977 under section 37(e) is $195, computed as follows:

Maximum retirement income level under section 37(e)(5)		$2,500
Earned income offset under section 37(e)(5)(B)(ii):		
Earned income in excess of $1,700	$950	
One-half of earned income in excess of $1,200, but not in excess of $1,700	250	1,200
Amount determined under section 37(e)(5)		1,300
Retirement income		2,400
Credit for the elderly (15 pct. of $1,300)		195

Example (2). During 1978 H. who is 67 years old, has earnings of $1,300 and retirement income (rents, intersts, etc.) of $6,000. H also receives social security payments totalling $1,400. During 1978 W, who is 63 years old, earns $1,600 and receives a fully taxable pension of $1,400 from a public retirement system that constitutes retirement income. W performed the services giving rise to the pension. H and W file a joint return for 1978 and elect to compute the credit for the elderly under section 37(e). Under the applicable law these items of income are community income, and both spouses share equally in each item. Because H and W are filing a joint return, they disregard community property laws in computing their credit under section 37(e). The couple allocates $1,600 of the $3,750 referred to in section 37(e)(6) to W and $2,150 to H. Subject to the limitation of section 37(c)(2) and paragraph (b) of § 1.37–1, their credit for the elderly is $315, computed as follows:

Credit base of H:		
Amount allocated to H under section 37(e)(6)		$2,150
Reductions required by section 37(e)(5):		
Social security payments	$1,400	
One-half of excess of earnings over $1,200	50	1,450
Amount determined under section 37(e)(5)		700
Retirement income		6,000
Credit base of H		700
Credit base of W:		
Amount allocated to W under section 37(e)(6)		$1,600
Reduction required by section 37(e)(5)(B):		
One-half of excess of earnings over $1,200		$200
Amount determined under section 37(e)(5)		1,400
Retirement income		1,400
Credit base of W		1,400
Computation of credit:		
Credit base of H		700
Credit base of W		1,400
Combined crdit base		1,200
Credit for the elderly (15 pct. of $2,100)		315

Example (3). (a) Assume the same facts as in example (2) of this paragraph, except that H and W live apart at all times during 1978 and file separate returns. Under these circumstances, H and W must give effect to the applicable community property law in determining their credits under section 37 (e). Thus, each spouse must take into account one-half of each item of income.

(b) Subject to the limitation of section 37 (c)(2) and paragraph (b) of § 1.37–1, H's credit for the elderly is $157.50, computed as follows:

Maximum retirement income level under section 37(e)(7)		$1,875
Reductions required by section 37(e)(5):		
Social security payments	$700	
One-half of excess of earnings over $1,200 (taking into account one-half of combined earnings of $2,900)	125	825
Amount determined under section 37(e)(5)		1,050
Retirement income		3,700
Credit of H (15 pct of $1,050)		157.50

(c) Subject to the limitation of section 37(c)(2) and paragraph (b) of § 1.37–1, W's credit for the elderly is computed as follows:

Maximum retirement income level under section 37(e)(7)		$1,875
Reductions required by section 37(e)(5):		
Social security payments	$700	
One-half of excess of earnings over $1,200	125	825
Amount determined under section 37(e)(5)		1,050
Retirement income (limited to W's share of public pension)		700
Credit of W (15 pct of $700)		105

§ 1.37–4 [Deleted]

Par. 5. Section 1.37–4 is deleted.

§ 1.37–5 [Deleted]

Par. 6. Section 1.37–5 is deleted.

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

§ 7.0 [Amended]

Par. 7. Section 7.0 is amended by deleting paragraph (c)(2), by deleting "paragraph (c)(2) and" from the first sentence of paragraph (e)(1), and by deleting "other than the elections referred to in paragraph (c)(2) of this section," from the first sentence of paragraph (e)(2).

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc. 80–5968 Filed 2–26–80; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8F2085/; PP 8F2110/; FRL 1421–7]

Tolerance and Exemption From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Proposed Tolerance for the Pesticide Diclofop-Methyl

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that a tolerance be established for residues of the herbicide diclofop-methyl in or on barley grain, barley straw, wheat grain, wheat straw and soybean seed at 0.1 ppm. The proposal was submitted by American-Hoechst Corporation.

DATE: Comments must be received on or before March 13, 1980.

ADDRESS: Send comments to: Dr. Willa Garner, Product Manager (PM) 23, Registration Division (TS–767), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dr. Willa Garner, at the above address (202/755–1397).

Supplementary Information

Notices were given that American Hoechst Corporation, Agricultural Division, Somerville, New Jersey 08876, had filed the following pesticide petitions proposing the establishment of tolerances for combined residues of the herbicide diclofop-methyl (methyl 2-[4-(2,4-dichloro-phenoxy) phenoxy]propanoate) and it metabolites, 2-[4-(2,4-dichlorophenoxy)phenoxy]propanoic acid and 2-[4-(2,4-dichloro-5-hydroxyphenoxy)phenoxy]propanoic acid in or on the raw agricultural commodities:

Petition No.	Raw agricultural commodity	Tolerance in parts per million (ppm)	Publication date
8F2085	Barley grain	0.1	June 28, 1978.
	Barley straw	0.1	(43 FR 28036).
	Wheat grain	0.1	
	Wheat straw	0.1	
8F2110	Soybean seed	0.1	Sept. 29, 1978. (43 FR 44883).

No comments were received in response to this notice of filing.

The data submitted in the petitions and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances include a rat acute oral LD_{50} study with an LD_{50} of 557–580 milligrams/kilogram (mg/kg), a dominant lethal mutagenicity study (negative at 100 mg/kg/day (highest level fed)), a micronucleus mutagenicity study (negative at 100 mg/kg/day (highest level tested)), an Ames test (negative at 5.0 mg/plate (highest level treated)), a two-year rat feeding/oncogenic study with a no-observable effect level of 20 ppm, a two-year mouse feeding/oncogenic study with a NOEL of 2 ppm, a fifteen-month rat reproduction study with a NOEL of 8 ppm, a three-generation rat reproduction study with a NOEL of 30 ppm, a teratology rat study with a NOEL greater than or equal to 100 mg/kg.

Data considered desirable but lacking are a full exploration of oncogenic activity. Results of the two-year mouse feeding/oncogenic study show a statistically significant increase in the nodules in male mice exposed to 20 ppm diclofop-methyl for 24 months. There is some question whether the nodules observed represent a hyperplastic regenerative condition resulting from response by the liver to the toxic effects of diclofop-methyl or if they are hepatocellular carcinomas. The rat feeding study employing 20 ppm did not indicate an increase in nodule formation in either sex nor did the study where mice were fed 2.0 and 6.3 ppm diclofop-methyl. The issue should be resolved when all of the liver slides of the male mice and all liver slides of both sexes of rats are submitted and examined by EPA toxicologists. American Hoechst agreed to submit the slides and, if the risk criteria as specified in 40 CFR 162.11(a)(3)(ii)(A) are exceeded, to remove diclofop-methyl from the U.S. market.

Based on the above findings, a "worst case" assessment of the combined risk of cancer via dermal and inhalation exposure to diclofop-methyl would be one in one million for aerial applicators (pilots), fifty-nine in one million for grour.d applicators, and one in ten million for mixer-loaders. Since data indicate that there will be no detectable residues in feed or food crops, there should be essentially no risk through dietary exposure. It is concluded that full use of protective clothing and a respirator will minimize risks due to the use of the pesiticide. The product will be conditionally registered for one year while these uncertainties are resolved.

There are no permanent tolerances for diclofop-methyl. Based on the two-year mouse feeding NOEL of 2.0 ppm and a safety factor of 100 the allowable daily intake (ADI) is 0.008 mg/kg/day and the maximum permissible daily intake (MPI) is 0.18 mg/kg/day/60kg man. The requested tolerances will utilize 9.43% of the ADI.

There are no regulatory actions pending against registration of this chemical. The metabolism of diclofop-methyl is adequately understood and an analytical method (gas liquid chromatographic separation and electron-capture detector) is presently being validated. The proposed tolerances will not be established until the analytical method is proven adequate. No other considerations are involved in establishing these tolerances.

The proposed tolerances are adequate to cover residues occurring in barley grain, barley straw, soybean seed, wheat grain and wheat straw. There is no expectation of residues in meat, milk, poultry, or eggs because of a restriction against grazing and feeding of hay from treated fields. The tolerances will protect the public health.

Any person who has registered or submitted an application for the registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act, which contains any of the ingredients listed herein, may request on or before March 13, 1980, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition/document control number, "PP 8F2085/PP 8F2110". All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the office of PM 23, Room 351, East Tower, from 8:30 a.m to 4 p.m. Monday through Friday.

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". This proposed rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of the Executive Order 12044.

Dated: February 21, 1980.

Herbert S. Harrison,

Director, Registration Division (TS–767).

(Sec. 408(e), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)))

It is proposed that Part 180, Subpart C, section be added, as follows:

§ 180. Diclofop-methyl; tolerances for residues.

Tolerances are hereby established for the combined residues of the herbicide diclofop-methyl (methyl 2-[4-(2,4-dichlorophenoxy) phenoxy propanate) and its metabolites, 2-[4-(2,4-dichlorophenoxy)phenoxy] propanoic acid and 2-[4-(2,4-dichloro-5-hydroxyphenoxy)phenoxy] propanoic acid, in or on the raw agricultural commodities as follows:

Commodity	Parts per million
Barley, grain	0.1
Barley, straw	0.1
Soybean seed	0.1
Wheat, grain	0.1
Wheat, straw	0.1

[FR Doc. 80-6218 Filed 2-25-80; 3:18 pm]

BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration
Office of Child Support Enforcement

45 CFR 232, 233 and 302

Aid to Families With Dependent Children, Child Support Enforcement Program; Computing a Supplemental Payment in States Required To Do So by Section 402(a)(28) of the Social Security Act

Correction

In FR Doc 80–3775 appearing on page 8316 in the issue of Thursday, February 7, 1980, make the following changes:

(1) On page 8320, first column, in the table under the paragraph numbered 1, second line, the figure was omitted and should be "—150".

(2) On page 8321, second column, in the table under paragraph numbered 2, insert a [2] in front of the second footnote; third column, tenth line from the bottom, delete "a" and insert "the current".

BILLING CODE 1505-01-M

Office of Child Support Enforcement

45 CFR Part 305

Child Support Enforcement Program; Audit and Penalty

AGENCY: Office of Child Support Enforcement (HEW).

ACTION: Notice of decision to develop regulations.

SUMMARY: The Office of Child Support Enforcement (OCSE) is proposing to amend the regulations for the Child Support Enforcement Program (45 CFR Part 305) which specify the Secretary's criteria for an effective program. These regulations are the basis for Federal audit and for reduction of Federal funds for States that fail to have an effective program. OCSE plans to strengthen the audit criteria by establishing several minimum performance levels as objective measures of program effectiveness. OCSE anticipates that the revised audit regulations will be effective for the audit period beginning October 1, 1980. The Department has classified the proposed regulation changes as policy significant.

FOR FURTHER INFORMATION CONTACT:
Maurice Huguley, Office of Child Support Enforcement (HEW), 6110 Executive Blvd., Room 925, Rockville, MD 20852, (301) 443–5301.

Dated: February 6, 1980.

Approved:

William J. Driver.

Director, Office of Child Support Enforcement.

[FR Doc. 80–6027 Filed 2–26–80; 8:45 am]

BILLING CODE 4110–07–M

Notices

Federal Register
Vol. 45, No. 40
Wednesday, February 27, 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.

ADVISORY COMMITTEE ON FEDERAL PAY

Continuation of Committee; Public Inquiry

This is to request any expressions from the public as to the desirability of continuation of the Advisory Committee on Federal Pay.

The Advisory Committee on Federal Pay was established by the Federal Pay Comparability Act of 1970. It consists of three experts on pay and labor relations who are Federal employees only for the time that they serve on this Committee. The Committee serves as an independent third party in advising the President on salary adjustments for Federal white-collar employees. In making its recommendations on pay increases for these Federal employees, the committee considers pay in the private sector, the views of Federal employee organizations, government officials, and pay experts.

Any comments should be sent in writing to the Advisory Committee on Federal Pay, Suite 205, 1730 K Street, N.W., Washington, D.C. 20006, by March 20. Any such communications will be incoporated in the report that the Advisory Committee makes to the Administrator of GSA.

Jerome M. Rosow,
Chairman.

[FR Doc. 80-6009 Filed 2-26-80; 8:45 am]
BILLING CODE 6820-43-M

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

New House Park Critical Area Treatment R.C. & D. Measure, Pennsylvania

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION: Mr. Graham T. Munkittrick, State Conservationist, Soil Conservation Service, Federal Building and U.S. Court House, 228 Walnut Street, Harrisburg, Pennsylvania 17108, telephone 717-782-2202.

Notice: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the New House Park Critical Area Treatment R.C. & D. Measure, Westmoreland County, Pennsylvania.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Graham T. Munkittrick, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for critical area treatment. The planned works of improvement include conservation practices to stabilize a steep eroding bank and playing field. Practices include grading, shaping, installing a grassed waterway, and seeding with mulch.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Graham T. Munkittrick, State Conservationist, Soil Conservation Service, Federal Building and U.S. Courthouse, 228 Walnut Street, Harrisburg, Pennsylvania 17108, telephone 717-782-2202. The FNSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication.

Dated: February 19, 1980.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87–703, 16 U.S.C. 590a–f, q)

Edward E. Thomas,

Assistant Administrator for Land Resources.

[FR Doc. 80–5969 filed 2–26–80; 8:45 am]

BILLING CODE 3410–16–M

CIVIL AERONAUTICS BOARD

[Docket No. 37575]

Central Zone-Caracas/Maracaibo, Venezuela Case; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on March 31, 1980, at 10:30 a.m. (local time) in Room 1003, Hearing Room A, Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before me.

In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and six copies to the judge of (1) proposed statements of issues; (2) proposed stipulations; (3) proposed requests for information and for evidence; (4) statements of positions; and (5) proposed procedural dates. The Bureau of International Aviation will circulate its material on or before March 10, 1980, and the other parties on or before March 24, 1980. The submissions of the other parties shall be limited to points on which they differ with the Bureau, and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

Since all applications in this comparative selection route proceeding under subpart Q of the Board's Procedural Regulations must be processed simultaneously, the parties are hereby informed that the time period set forth for the conduct of hearings by section 401(c)(2) of the Federal Aviation Act will begin to run with the action consolidating applications which may be filed in the docket in response to Order 80–2–6. Accordingly, the eleventh day following an order of consolidation issued pursuant to delegation of authority at 14 CFR 385.11 shall be the first day of the statutory period provided for hearing and recommended decision in this comparative route award proceeding.

Consistent with the foregoing, to expedite the proceeding, the parties should be prepared at the conference to discuss the following tentative procedural schedule:

Information responses	April 30, 1980.
Direct cases	May 27, 1980.
Rebuttal cases	June 10, 1980.
Surrebuttal	June 21, 1980.
Hearing	June 30, 1980.
Briefs	Fourteen days after the close of the oral evidentiary hearing.

Dated at Washington, D.C., February 21, 1980.

Marvin H. Morse,

Administrative Law Judge.

[FR Doc. 80–6069 Filed 2–26–80; 8:45 am]

BILLING CODE 6320–01–M

[Docket No. 34271]

Davis Airlines, Inc., Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference will be held in the above-entitled matter on March 7, 1980, at 9:30 a.m. (local time), in Room 1003, Hearing Room D, North Universal Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., February 21, 1980.

Elias C. Rodriguez,

Administrative Law Judge.

[FR Doc. 80–6068 Filed 2–26–80; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping Hearing

A "Withholding of Appraisement Notice" in connection with the antidumping investigation of melamine in crystal form from Austria was signed on November 1, 1979, and published in the **Federal Register** on November 13, 1979 (44 FR 65517). Pursuant to section 102(b)(2) of the Trade Agreements Act of 1979 (19 U.S.C. 1671 note, 93 Stat. 189), in investigations where a preliminary determination, but not a final determination, was made prior to January 1, 1980, a preliminary determination under section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b, 93 Stat. 163), is deemed to have been made on January 1, 1980.

The "Withholding of Appraisement Notice" provided an opportunity to interested parties, pursuant to § 153.40 of the Customs Regulations (19 CFR 153.40), to present written views or arguments, or to request in writing an opportunity to present oral views. Pursuant to this notice, interested parties have requested opportunities to present their views orally.

Therefore, a public hearing in the matter of melamine in crystal form from Austria will be held at the U.S. Department of Commerce, Room 6802, 14th & Constitution Avenue, N.W., Washington, D.C. 20230, beginning at 10:00 a.m. on Wednesday, February 20, 1980. Interested persons other than those who already have requested an opportunity to present their views may appear at the hearing provided that a written request is filed with the Office of the Assistant Secretary for Trade Administration, Room 3826, U.S. Department of Commerce, Washington, D.C. 20230.

These requests shall contain: (1) the name, address and telephone number of the requester; and (2) the number of participants and reason for attending. All requests are subject to the approval of the Assistant Secretary, and must be received by 5:00 p.m. Friday, February 15, 1980.

Stanley J. Marcuss,

Acting Assistant Secretary for Trade Administration.

February 8, 1980.

[FR Doc. 80–6024 Filed 2–26–80; 8:45 am]

BILLING CODE 3510–22

Antidumping—Certain Steel I-Beams From Belgium

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of petition filed by an American manufacturer indicating a desire to contest a determination by the Secretary under 19 U.S.C. 160.

SUMMARY: This notice is to advise the public that the Secretary has received notification of an American manufacturer's desire to contest a determination made under the Antidumping Act of 1921, as amended, with respect to certain steel I-beams from Belgium.

EFFECTIVE DATE: February 27, 1980.

FOR FURTHER INFORMATION CONTACT:
James Lyons, Office of the General Counsel, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230 (202–566–5786).

SUPPLEMENTARY INFORMATION: On September 20, 1979, a "Determination of Sales at Not Less Than Fair Value" relating to certain steel I-beams from Belgium was published in the **Federal Register** (44 FR 54579). It was announced in that notice that certain steel I-beams from Belgium are not being sold to the United States at less than fair value within the meaning of the Antidumping Act of 1921, as amended (19 U.S.C. 160 *et seq.*)

Notification was received by the Secretary of the Treasury on October 19, 1979, that the Connors Steel Company, an American manufacturer of the same class or kind of merchandise as that described in the above determination, desired to contest the determination respecting certain steel I-beams from Belgium. The original petition was misplaced in the internal routing process, and consequently, the publication of this notice regrettably has been delayed.

Section 5(a)(1)(D) of Reorganization Plan No. 3 of 1979 (44 FR 69273, December 3, 1979) and Executive Order 12188 transfer to the Department of Commerce the authority for the issuance of notices relating to petitions of a desire to contest filed prior to January 1, 1980, pursuant to section 516.

In accordance with section 516 of the Tariff Act of 1930, as amended by the Trade Act of 1974 (19 U.S.C. 1516) and section 1002(b)(1) of the Trade Agreements Act of 1979, notice is hereby given that an American manufacturer has informed the Secretary that it desires to contest the antidumping determination with respect to certain steel I-beams from Belgium.

Approved: February 14, 1980.

John Greenwald,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 80-6015 Filed 2-26-80; 8:45 am]

BILLING CODE 3510-22-M

Countervailing Duties: Actions Regarding Waived Countervailing Duty Orders, Orders Published Between July 26, 1979, and January 1, 1980, and Certain Affirmative Preliminary Determinations

AGENCY: International Trade Administration.

ACTION: Actions Regarding Waived Countervailing Duty Orders, Orders Published Between July 26, 1979, and January 1, 1980, and Certain Affirmative Preliminary Determinations.

SUMMARY: This notice is to inform the public of actions taken under the transition rules of the Trade Agreements Act of 1979 with regard to certain countervailing duty orders and determinations. With regard to orders in effect on January 1, 1980, for which the imposition of countervailing duties has been waived and which apply to merchandise which is a product of a country between the United States and which the Agreement on Subsidies and Countervailing Measures applies ("agreement countries"), the waivers shall continue in effect until the U.S. International Trade Commission ("U.S.I.T.C.") makes its "material injury" determination. Waivers for non-agreement countries are revoked, and countervailing duties in the amount of the benefits found to constitute bounties or grants will be collected in addition to duties normally due on imports of such merchandise. With regard to countervailing duty orders published between July 26, 1979, and January 1, 1980, applicable to merchandise which is a product of an agreement country, the liquidation of entries of such merchandise shall be suspended pending the material injury determination by the U.S.I.T.C., and estimated duties shall be collected pending such determination. With regard to investigations in which an affirmative preliminary, but not a final, countervailing duty determination has been issued by December 31, 1979, the liquidation of entries of such merchandise shall be suspended pending either a negative final countervailing duty determination or a determination as to injury by the U.S.I.T.C. A cash deposit, bond or other security, as deemed appropriate, shall be required on all such merchandise at the time of entry or withdrawal from warehouse for consumption, in an amount equal to the estimated net subsidy.

EFFECTIVE DATE: January 1, 1980.

FOR FURTHER INFORMATION CONTACT:
Robert Robeson, Department of Commerce, Office of Policy, Office of the Assistant Secretary for Trade Administration; telephone: (202) 566–2323.

SUPPLEMENTARY INFORMATION: Section 104(a) of the Trade Agreements Act of 1979 (Pub. L. 96–39; 93 Stat. 144, 191; 19 U.S.C. 1671 note) ("the Act") provides that all countervailing duty orders in effect on January 1, 1980, for which the imposition of countervailing duties has been waived and which apply to merchandise which is a product of a country under the Agreement (as defined in section 701(b) of the Tariff Act of 1930, as amended by section 101 of the Act, 93 Stat. 151, 19 U.S.C. 1671(b)) shall be referred to the U.S.I.T.C. for a material injury determination. Under section 105 of the Act (93 Stat. 193, 19 U.S.C. 1303(d)(4)(B)) such waivers shall remain in effect until the date on which the U.S.I.T.C. makes the determination under section 104 of the Act, the determination is revoked, or a resolutiion of disapproval is adopted, whichever occurs first. Appendix I to this notice sets forth those orders for which waivers will be so continued.

With regard to countervailing duty orders in effect on January 1 for which the imposition of countervailing duties has been waived and which apply to merchandise which is the product of a country other than a country under the Agreement, such waivers were revoked, effective January 1, 1980, in accordance with section 303(d) of the Tariff Act of 1930, as amended by Public Law 96–6, 93 Stat. 10 (April 3, 1979), and as further amended by section 105 of the Act (93 Stat. 193). Since the Republic of Korea is not at this time a country under the Agreement, the waiver under section 303(d) with respect to Footwear from the Republic of Korea, as amended, T.D. 76–342 (published in the **Federal Register** on June 24, 1976, 41 FR 26035), is hereby revoked.

Accordingly, notice is hereby given that footwear from the Republic of Korea provided for in items 700.51, 700.52, 700.53, 700.54, 700.58 and 700.60 of the Tariff Schedules of the United States Annotated, imported directly or indirectly from Korea, if entered, or withdrawn from warehouse, for consumption on or after January 1, 1980, will be subject to payment of countervailing duties equal to the net amount of any bounty or grant ("subsidy") ascertained and determined or estimated to have been paid or bestowed.

The notice of final countervailing duty determinatioin on footwear from Korea, T.D. 76–13, published in the **Federal Register** on January 9, 1976 (41 FR 1588), stated that benefits constituting the payment or bestowal of a bounty or grant within the meaning of the Tariff Act of 1930, as amended (19 U.S.C. 1303), had been received by Korean manufacturers or exporters of footwear under the following practices: Preferential financing, tax benefits in the form of accelerated depreciation for

fixed assets directly used in the exportation of merchandise, income tax deferrals arising from the treatment of expenditures in overseas investments as losses, and special tax benefits provided to an enterprise located in the Masan Free Trade Zone.

In accordance with section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303), and until further notice, the net amount of such bounties or grants has been estimated to be 0.7 percent of the f.o.b. value of the merchandise.

Effective on or after January 1, 1980, and until further notice, upon the entry, or withdrawal from warehouse, for consumption of such footwear, imported directly or indirectly from Korea, which benefit from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount estimated in accordance with the above declaration. To the extent that it can be established to the satisfaction of the Secretary of Commerce that imports of footwear from Korea are benefiting from a bounty or grant smaller than the amount which otherwise would be applicable under the above declaration, the smaller amount so established shall be assessed and collected.

The Republic of Korea has recently provided information to the Department of Commerce showing that the benefits received by Korean rubber footwear manufacturers are *de minimis* in size. This submission is currently undergoing analysis by the Department of Commerce.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacture, production or exportation of footwear from Korea.

The table of countervailing duty orders currently in effect is hereby amended by inserting after the last entry for Korea, under the column headed "Commodity," the words "Rubber footwear," and the words "Waiver of countervailing duties revoked—new estimated rate declared" in the column headed "Action".

Under section 104(a)(1)(B) of the Act (93 Stat. 191, 19 U.S.C. 1671 note) countervailing duty orders in effect on January 1, 1980, which were published on or after July 26, 1979, and before January 1, 1980, and which apply to merchandise which is a product of a country under the Agreement, shall be referred to the U.S.I.T.C. for a material injury determination. Under section 104(a)(1)(C) the countervailing duty order involving frozen boneless beef from the European Communities, T.D. 76–109, published in the **Federal Register** on April 23, 1976 (41 F.R. 16931), also is being referred to the U.S.I.T.C. for a material injury determination. (Appendix II to this notice sets forth the affected orders.) Pending the determination by the U.S.I.T.C., liquidation shall be suspended, and estimated countervailing duties shall be collected, in the net amount of the bounty or grant ascertained and determined or estimated (in the final countervailing duty determination involving the affected merchandise) to be paid or bestowed, directly or indirectly, upon the manufacture, production or exportation of the merchandise subject to the affected orders set forth in Appendix II to this notice. The amount of estimated countervailing duties for merchandise subject to each affected order is set forth in Appendix II.

Accordingly, effective on January 1, 1980, and until further notice, liquidation shall be suspended and estimated countervailing duties in an amount equal to the estimated net bounty or grant shall be collected on all entries, or withdrawals from warehouse, for consumption of the merchandise set forth in Appendix II to this notice, imported directly or indirectly from the country where manufactured or produced, for which a countervailing duty order was published on or after July 26, 1979, and before January 1, 1980.

Section 102(a) of the Act (93 Stat. 189, 19 U.S.C. 1671 note) provides that on the effective date of the countervailing duty section of the Act (January 1, 1980) all countervailing duty investigations under section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303), then in progress, shall terminate. In investigations where a preliminary determination, but not a final determination, had been made under section 303, the matter is to be treated as if a preliminary determination under section 703 of the Tariff Act of 1930, as amended by section 101 of the Act (93 Stat. 152, 19 U.S.C. 1671(b)), had been made on January 1, 1980.

Section 703(d) of the Act provides that liquidation shall be suspended on all entries, or withdrawals from warehouse, for consumption of merchandise which is the subject of an affirmative preliminary countervailing duty determination. A cash deposit, bond or other security, as deemed appropriate, is required, pending either a negative final countervailing duty determination or a determination of injury by the U.S.I.T.C. (Injury determinations will be rendered on non-dutiable merchandise and on merchandise originating in a country which is a country under the Agreement.)

Appendix III to this notice sets forth those investigations pending on January 1, 1980, in which an affirmative preliminary, but not a final, determination has been made. In accordance with section 703(d) of the Tariff Act of 1930, as amended by section 101 of the Act (93 Stat. 153, 19 U.S.C. 1671(d)), the net amount of the subsidy provided, directly or indirectly, upon the manufacture, production or exportation of the merchandise set forth in Appendix III has been estimated, and the net amount for each of the products is as shown in that Appendix. Accordingly, effective on January 1, 1980, and until further notice, liquidation shall be suspended, and a cash deposit, bond or other security, as deemed appropriate, in an amount equal to the estimated net subsidy shall be collected on all entries or withdrawals from warehouse for consumption of the merchandise set forth in Appendix III to this notice, imported directly or indirectly from the country where manufactured or produced, which has been determined preliminarily to receive subsidies and which is subject to this notice.

Stanley Marcuss,

Acting Assistant Secretary for Trade Administration.

February 21, 1980.

Appendix I

Country	Product
European Communities (Ireland, United Kingdom, West Germany, France, Belgium, Luxembourg, the Netherlands, Denmark and Italy).	Dairy products (other than quota cheeses).
European Communities	Canned hams.
Denmark	Butter cookies.
Canada	Fish.
Brazil	Leather handbags.
Norway	Nonquota cheeses.

Appendix II

Country	Product
European Communities	Tomato products.
European Communities	Potato starch.
European Communities	Frozen boneless beef.

Appendix III

Country and product	Estimated duty
Japan: Scales	1% *ad valorem*.
Japan: Certain valves and parts thereof.	1% *ad valorem*.

Appendix III—Continued

Country and product	Estimated duty
Brasil: Certain firearms and parts thereof.	From Companhia Brasileira de Cartuchos, 1% *ad valorem;* Amadeo Rossi, S.A., 5.54% *ad valorem* E. R. Amantino & Cia, Ltda, 6.70% *ad valorem.*
Brasil: Certain ferroallys	From Alcan Aluminio do Brasil S.A., 1% *ad valorem;* Companhia Brasileira de Carbureto de Calcio, 1% *ad valorem;* Sibra-Electrosiderurgica S.A., 5.05% *ad valorem;* Cia. Paulista de Ferro-Ligas, 4.44% *ad valorem;* Cia. de Ferro Ligas da Bahia S.A.-Ferbasa, 11.22% *ad valorem.*
Italy: Valves of iron and steel	0.6% *ad valorem.*
European Communities: Dextrines and soluble or chemically treated starches derived from corn starch.	34.4% *ad valorem.*
Pakistan: Textiles	12% *ad valorem.*

[FR Doc. 80-6042 Filed 2-26-80; 8:45 am]

BILLING CODE 3510-22-M

National Bureau of Standards

Availability of Checklists for Verification Procedures for I/O Channel Level Interface Standards

On February 16, 1979, notice was given in the **Federal Register** (44 FR 10098–10101) that the Secretary of Commerce had approved three Federal Information Processing Standards: (1) I/O Channel Interface Standard, (2) Channel Level Power Control Interface Standard, and (3) Operational Specifications for Magnetic Tape Subsystems, designated Federal Information Processing Standards Publication (FIPS PUB) 60, FIPS PUB 61, and FIPS PUB 62, respectively. On August 27, 1979, notice was given in the **Federal Register** (44 FR 50078–50079) that the Secretary of Commerce had approved the Federal Information Processing Standard, Operational Specifications for Rotating Mass Storage Subsystems, designated FIPS PUB 63. These standards each include provison for verification of conformance to be made by demonstation or other means acceptable to the Government prior to acceptance of equipment having an interface required to conform.

On December 11, 1979, notice was given in the **Federal Register** (44 FR 71444–71445) announcing the intention of the National Bureau of Standards (NBS) to provide a verification service for I/O Channel Level Interface Standards. The December 11, 1979, notice described verification services for FIPS PUBS 60, 61, and 62. By this notice, NBS is announcing the extension of this verification service to also cover FIPS PUB 63. The initial means for verification will be by Government review of equipment interface documentation.

The National Bureau of Standards has prepared a checklist for each of FIPS PUBS 60, 61, 62, and 63. The review process will require the use of these checklists. The checklists will be provided upon request by the National Bureau of Standards to Suppliers of the equipment requiring interface verification. The suppliers are then to provide the appropriately completed checklists at the time that they submit their documentation for review. Copies of the checklists may be obtained by writing to the Director, Institute for Computer Sciences and Technology (ICST), Attention: Interface Standards Checklists, National Bureau of Standards (NBS), Washington, D.C. 20234.

Persons desiring any further information about this announcement may contact Mr. Steve A. Recicar, System Components Division, Center for Computer Systems Engineering, Institute for Computer Sciencss and Technology, National Bureau of Standards, Washington, D.C. 20234, (301) 921–3723.

Dated: February 21, 1980.

Ernest Ambler,

Director.

[FR Doc. 80-6011 Filed 2-26-80; 8:45 am]

BILLING CODE 3510-13-M

Changes Pertaining to the Interface Standards Exclusion List

In a notice published in the **Federal Register** on June 29, 1979 (44 FR 37968), the National Bureau of Standards announced the availability of an initial exclusion list pertaining to Federal Information Processing Standards Publication 60, I/O Channel Interface; Federal Information Processing Standards Publication 61, Channel Level Power Control Interface; and Federal Information Processing Standards Publication 62, Operational Specifications for Magnetic Tape Subsystems. The exclusion list also pertains to Federal Information Processing Standards Publication 63, Operational Specifications for Rotating Mass Storage Subsystems, approval of which by the Secretary of Commerce was announced in the **Federal Register** on August 27, 1979 (44 FR 50078). The June 29, 1979, notice solicited written comments or recommendations from interested parties regarding the initial exclusion list. Comments specifically identifying candidate systems which should be added or removed from the initial exclusion list were especially encouraged.

As a result of a review and analysis of comments received in response to that announcement, a notice was published in the **Federal Register** on December 11, 1979 (44 FR 71443), proposing additions to and a removal from the exclusion list. Interested parties were allowed until January 25, 1980, to submit written comments regarding the proposed changes.

No comments were received in response to the December 11, 1979, notice, and, accordingly, NBS has made a determination that the changes to the exclusion list will be as originally proposed. The following are additions to and a removal from the exclusion list:

Manufacturer	Model
Additions:	
NCR	System 15.
NCR	System 150.
Pertec	XL40 Series.
Pertec	XL20 Series.
Pertec	1800 Series.
Pertec	PCC 2000 Series.
Prime	450.
Prime	550.
Prime	650.
Prime	750.
Tektronix	4050 Series Graphic Computing System.
Tektronix	4052 Graphic Computing System.
Tektronix	4054 Graphic Computing System.
Tektronix	4080 Series Interactive Graphics Terminal.
Tektronix	MEG 121.
Tektronix	MEG 131.
Tektronix	WP1110 Digitizing Oscilloscope System.
Tektronix	WP1200 Digitizing Oscilloscope System.
Tektronix	WP2200 Transient Digitizer.
Tektronix	WP2250 Programmable Digitizer Systems.
Tektronix	S-3030 Automated Test System.
Tektronix	S-3270 Automated LSI System.
Tektronix	S3250 Automated LSI Test System.
Removal:	
Pertec	MITS/ALTAIR 8800B.

NBS is maintaining a mailing list of vendors, Federal agencies, and other interested parties to whom copies of the current exclusion list are sent on a regular basis. Parties on the mailing list will also be sent copies of proposed changes and the announcement of the determination on proposed changes. Those who wish to be included on the mailing list should send a written request to the Director, ICST, Attention: Interface Standards Exclusion List, National Bureau of Standards, Washington, D.C. 20234.

The exclusion list will be used in conjunction with the applicability provisions of the Federal I/O channel level interface standards. This list and the exclusion criteria are not a part of the standards themselves, but are provided for in the standards.

Dated: February 21, 1980.

Ernest Ambler,

Director.

[FR Doc. 80-6012 Filed 2-26-80; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Operational Land Remote Sensing Satellite Program; User Conference Announcement

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of User Conference Schedule.

SUMMARY: The Presidential decision to go forward with the development of an operational land remote sensing satellite program was announced in November, 1979. The National Oceanic and Atmospheric Administration (NOAA), in the Department of Commerce, was designated to manage the program through its National Environmental Satellite Service (NESS). Five one-day conferences will be held to inform users of land remote sensing satellite data of the program planning now underway, and to acquaint them with NOAA and NESS. These conferences will provide users and potential users with an opportunity to submit their known requirements for land remote sensing data and to develop mechanisms for continuing exchanges between these users and NOAA.

DATES AND ADDRESSES: The conferences will be held at the following locations:

March 14, 1980, The Seattle Center, Seattle, Washington; March 17, 1980, Continental Plaza Hotel, Chicago, Illinois; March 21, 1980, Florida State University, Tallahassee, Florida; March 25, 1980, Mayflower Hotel, Washington, D.C.; March 28, 1980, The Convention Center, Albuquerque, New Mexico.

FOR FURTHER INFORMATION:

To make reservations or to obtain further information, please call, toll free, 800-424-3738; or write to HRM, Inc., 1101 30th Street N.W., Suite 301, Washington, D.C. 20007.

Dated: February 22, 1980.

Francis J. Balint,

Acting Director, Office of Management and Computer Systems.

[FR Doc. 80-6018 Filed 2-26-80; 8:45 am]

BILLING CODE 3510-12-M

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Caribbean Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will hold its 28th regular meeting to consider: (1) Status reports on the following Fishery Management Plans (FMP's): Spiny Lobster, Shallow-Water Reef Fishes, Migratory Coastal Pelagics, Mollusks, Deep-Water Reef Fishes, and Billfishes; (2) Recommendations to the Southeast Fishery Center, National Marine Fisheries Service on research needs in the Council's area of jurisdiction; (3) Listing of species to be considered in a draft FMP for Bait Fishes; (4) Work Plans for: (a) Deep-Water Reef Fishes FMP and (b) Mollusks FMP (Conch and Whelk); and, (5) Other Council business.

DATES: The meeting will convene at 9 a.m. on Wednesday and Thursday, March 19-20, 1980, and will adjourn on Wednesday, March 19, 1980, at 5 p.m. and on Thursday, March 20, 1980, at approximately 12 noon. The meeting is open to the public.

ADDRESS: The meeting will take place at the Conference Room of the Hotel Pierre, Santurce, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building Hato Rey, Puerto Rico 00918, Telephone: (809) 753-4926

Dated: February 21, 1980.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 80-6061 Filed 2-26-80; 8:45 am]

BILLING CODE 3510-22-M

Delphinarium Hassloch; Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name Delphinarium Hassloch (P236).

b. Address 6733 Hasslock/Pflaz, West Germany.

2. Type of Permit: Public Displays.

3. Name and Number of Animals: Atlantic bottlenose dolphins (*Tursiops truncatus*)—2.

2. Type of Take: The dolphins will be captured and held permanently under the care and maintenance of the Applicant.

5. Location of Activity: Copano Bay, Rockport, Texas.

6. Period of Activity: 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register** the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before March 28, 1980. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

As a request for a permit to take living marine mammals to be maintained in areas outside the jurisdiction of the United States, this application has been submitted in accordance with National Marine Fisheries Service policy concerning such applications. (40 FR 11614, March 12, 1975). In this regard, the application:

(a) Was submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, through the Veterinardirektor, who is responsible for ensuring the suitable care of animals in captivity:

(b) Includes:

i. A verification of the information set forth in the application from the Veterinardirektor;

ii. A certification from the Veterinardirektor that the Government is prepared to monitor compliance with the terms and conditions of the permit, and will do so, if and when necessary; and

iii. A statement that the Veterinardirektor, will have no objection to a NMFS decision to amend, suspend, or revoke a permit.

In accordance with the above cited policy, the certification and statements of the Veterinardirektor, have been found appropriate and sufficient to allow consideration of this permit application.

All statements and opinion contained in this application are summaries of those of the Applicant and do not

necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3000 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, Duval Building, St. Petersburg, Florida 33702.

Dated: February 20, 1980.

William Aron,

Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 80-6070 Filed 2-26-80; 8:45 am]

BILLING CODE: 3510-22-M

Dolfinarium Harderwijk; Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name Dolfinarium Harderwijk BV (P237).

b. Address Standboulevard Oost 1, P.O. Box 114, 3840 A.C. Harderwijk, Netherlands.

2. Type of Permit: Public Display.

3. Name and Number of Animals:

California sea lions (Zalophus californianus)—2.

Atlantic bottlenose dolphins (Tursiops truncatus)—2.

4. Type of Take: The animals will be obtained from Mystic Marinelife Aquarium. The two dolphins and one sea lion are presently held by Mystic and are in excess of their needs. The other sea lion is a rehabilitated beached/stranded animal to be obtained from Marineland of the Pacific.

5. Period of Activity: 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register** the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before March 28, 1980. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

As a request for a permit to take living marine mammals to be maintained in areas outside the jurisdiction of the United States, this application has been submitted in accordance with National Marine Fisheries Service policy concerning such applications (40 FR 11614, March 12, 1975). In this regard, the application:

(a) Was submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, through the Ministry of Culture, Recreation and Social Welfare, that Department being responsible, among other things, for ensuring the suitable care of animals in captivity:

(b) Includes a statement that the Ministry:

i. Has verified the information set forth in the application;

ii. Will monitor compliance with the terms and conditions of the permit; and

iii. Will have no objection to a NMFS decision to amend, suspend, or revoke a permit.

In accordance with the above cited policy, the certification and statements of the Ministry of Culture, Recreation and Social Welfare have been found appropriate and sufficient to allow consideration of this permit application.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW, Washington, D.C.;

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731; and

Regional Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: February 22, 1980.

William Aron,

Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 80-6071 Filed 2-26-80; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Proposed Futures Contract; Notice of Availability

The Commodity Futures Trading Commission ("Commission") is making available and requesting public comment on a 90-Day U.S. Treasury Bill futures contract submitted by the MidAmerica Commodity Exchange. Copies of this proposed contract will be available at the Commission's offices in Washington, New York, Chicago, Minneapolis, Kansas City and San Francisco. The Commission will also furnish copies upon request made to the Executive Secretariat.

Any person interested in expressing views on the terms and conditions of this proposed contract should send comments by March 28, 1980, to Ms. Jane Stuckey, Executive Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, D.C. 20581. (202) 254–6314. Copies of all comments will be available for inspection at the Commission's Washington office.

Issued in Washington on February 22, 1980.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 80-5970 Filed 2-26-80; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on EMP Hardening of Aircraft; Meeting

The Defense Science Board Task Force on EMP Hardening of Aircraft will meet in closed session March 12–13, 1980 at the Headquarters, Defense Nuclear Agency, Alexandria, Va.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on overall research and engineering policy and to provide long-range guidance to the Department of Defense in these areas.

The Task Force will review hardening of U.S. aircraft against EMP and related subjects and will provide recommendations for appropriate actions.

In accordance with 5 U.S.C. App. I 10(d) (1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Service, Department of Defense.

February 21, 1980.

[FR Doc. 80-6010 Filed 2-26-80; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

Regulatory Reform Initiative No. 15; Communications Between DOE Employees and Persons Outside the Executive Branch in Connection With Inform Rulemaking

AGENCY: Department of Energy.

ACTION: Notice of adoption of Department of Energy policy with respect to communications between DOE employees involved or likely to be involved in rulemaking and persons outside the Executive Branch.

SUMMARY: The Department of Energy (DOE) is issuing this notice in response to Regulatory Reform Initiative Number 15 to inform interested persons of the adoption of a Departmental policy and the provision of guidance for DOE employees concerning communications between DOE employees involved or likely to be involved in rulemaking and persons outside the Executive Branch. This policy does not apply to the Federal Energy Regulatory Commission.

DATE: The memorandum to all DOE Assistant Secretaries, Assistants to the Secretary, Administrators, Directors, Inspector General, and Controller is effective immediately.

FOR FURTHER INFORMATION CONTACT: Thomas C. Newkirk, Deputy General Counsel for Regulations, Room 6A-099, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6732.

Regulatory Reform Initiative Number 15 proposed that DOE develop procedures to clarify those areas in which communications between DOE employees and members of the public should be limited during the development of a regulation.

The Secretary of Energy, prior to inclusion of Regulatory Reform Initiative Number 15 on the DOE agenda, provided guidance to all DOE employees limiting the circumstances in which DOE employees could provide persons with information concerning pending regulatory action before its general public availability. In response to Regulatory Reform Initiative Number 15, DOE undertook to have the General Counsel provide further guidance concerning communications with persons outside the Executive branch during informal rulemaking (as defined in 5 U.S.C. § 553). The General Counsel's memorandum to Assistant Secretaries, Assistants to the Secretary, Administrators, Directors, Inspector General, and Controller is attached as Appendix A.

In formulating this guidance, the General Counsel considered the judicial decisions involving informal communications, Recommendation 77-3 of the Administrative Conference of the United States, *see* 42 FR 54253 (1977), and the practices of other agencies. In addition, the General Counsel discussed this subject with and considered the views of representatives of Congress Watch, a public interest group. Finally, the General Counsel reviewed and considered the recommendations of DOE's Inspector General in the Executive Summary of Report of Investigation of "Intelligence Gathering" at the Department of Energy by the American Petroleum Institute.

DOE generally concurs in the recommendation of the Administrative Conference and accordingly does not believe that a prohibition against informal communications is appropriate or in the public interest.

The memorandum to Secretarial Officers generally follows the suggestions of Recommendation 77-3. Where that recommendation applied to informal communications from persons outside the agency, however, the DOE memorandum applies to informal communications from persons outside the Executive branch. Other agencies are normally not "parties" to DOE informal rulemakings (to the extent that there are ever "parties" in informal rulemaking), and there are substantial policy and legal reasons for not treating other agencies and the Executive Office of the President in the same manner as all other persons. Among these reasons are statutory provisions requiring consultation with other agencies in certain rulemakings.

Recommendation 77-3 invited agencies to experiment in appropriate situations with procedures governing oral, as opposed to written, informal communications. DOE seriously considered conducting various Department-wide experiments but has concluded that, for the present, the public interest would best be served by allowing components to experiment in light of their particular situations and circumstances. Certain DOE components are already experimenting with different means of dealing with oral informal communications. The memorandum does not affect those experiments.

The General Counsel's memorandum is intended to provide guidance as to the desirable manner of handling informal communications in informal rulemaking. It is not intended to impose any new, judicially-enforceable requirement upon the Department's informal rulemaking.

Issued in Washington, D.C., February 14, 1980.

Lynn R. Coleman,

General Counsel, Department of Energy.

Memorandum for Assistant Secretaries, Assistants to the Secretary, Administrators, Directors, Inspector General, Controller.

From: Lynn R. Coleman, General Counsel.

Subject: Informal Communications in Informal Rulemaking

This memorandum establishes the general policy of the Department of Energy (DOE), other than the Federal Energy Regulatory Commission, regarding informal communications received in connection with informal rulemaking by DOE. This memorandum supplements and in no way detracts from the Secretary's memorandum "Inappropriate Informal Disclosures Regarding Regulatory Policy Development" of September 29, 1978. As used herein, the term "informal communications" means any non-public communication or information, received by DOE or any of its officers or employees involved or likely to be involved in a rulemaking, which is not received in accordance with published procedures for commenting on the proposed rule.

It is the policy of DOE to encourage and facilitate full public participation in DOE rulemaking. In this regard, it is important that DOE not discourage informal comments on proposed rules. Many persons, for reasons of time, resources, or inclination, are unable or unwilling to participate in the formal comment and hearing proceedings. Nevertheless, they may have valuable information or views bearing on a proposed rule.

As a general matter, it is our view that there is no legal prohibition on the receipt of these informal comments, whether written or oral, and again, as a general matter, there is no specific legal requirement governing their treatment. Nevertheless, good administrative practice and the need to foster public confidence in the integrity of our

rulemaking processes counsel in favor of certain safeguards.

First, copies of all written informal communications which DOE receives from outside the Executive Branch after the Notice of Proposed Rulemaking (NOPR) concerning the proposed rule should be placed in the public file established for that rule, unless the communication contains information determined by the Secretarial officer responsible for the rule to be properly confidential, in which case either an expurgated copy of the communication or a notation that such communication exists should be placed in the public file. A communication is confidential if it would be exempt from mandatory disclosure under the Freedom of Information Act and discretionary disclosure would be inappropriate.

Second, with respect to oral informal communications, the appropriate safeguards are less clear and may depend on the particular circumstances or the particular rulemaking involved. Because of the potential for litigation in this area, employees involved in rulemakings should be encouraged to seek the advice of the General Counsel's office with respect to particular questions. As a general matter, at the beginning of a rulemaking the program office should discuss with the attorneys assigned to that rulemaking what procedures for dealing with oral informal communications would be most appropriate and prudent.

Persons should be encouraged to submit formal comments or to reduce their informal comments to writing so that their views may be incorporated and fully considered in the formal record. While there is no general requirement for DOE employees to memorialize oral informal communications, it will often be good practice to do so in particular rulemakings or circumstances. Secretarial officers who wish to experiment with various means of memorializing oral comments in different situations are encouraged to do so in coordination with the Office of General Counsel.

This memorandum is intended to provide guidance with respect to the desirable manner of handling informal communications. It is not intended to provide new grounds for judicial review of Department actions.

[FR Doc. 80-6204 Filed 2-26-80; 8:45 am]
BILLING CODE 6450-01-M

Economic Regulatory Administration

In the matter of Inter-City Minnesota Pipelines Ltd., Inc., ERA Docket No. 80-01-NG; Great Lakes Gas Transmission Co., ERA Docket No. 80-02-NG; Montana Power Co., ERA Docket Nos. 79-16-NG and 80-03-NG; Michigan Wisconsin Pipe Line Co., ERA Docket No. 80-04-NG; Northwest Pipeline Corp., ERA Docket No. 80-05-NG; Midwestern Gas Transmission Co., ERA Docket No. 80-06-NG; Pacific Gas Transmission Co., ERA Docket No. 80-07-NG; Northern Natural Gas Co., ERA Docket No. 78-002-NG; Columbia Gas Transmission Corp., ERA Docket No. 79-30-NG.

[DOE/ERA Opinion Order No. 14; ERA Docket No. 80-01-NG et al.]

Inter-City Minnesota Pipelines, Ltd., Inc. et al.; Order Authorizing on an Interim Basis the Importation of Canadian Natural Gas at the Newly Established Border Price and Denying Applications to Import New Volumes of Canadian Natural Gas

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I. Pricing of Existing Authorized Imports

A. Procedural History

On January 18, 1980, the Governor General in Council of the Government of Canada, acting upon the recommendation of the Minister of Energy, Mines, and Resources [1] issued an order which established a new border price of U.S. $4.47 per million British thermal units (MMBtu) (U.S. $4.17 per gigajoule (GJ)) which would be charged for the majority of all natural gas being exported to the United States beginning February 17, 1980. Exceptions were granted for peaking gas sold to Vermont Gas Systems, Inc. and St. Lawrence Gas Company where higher contract prices will prevail and for natural gas delivered to Inter-City Minnesota Pipelines under Canadian export license No. GL-29 where the new border price shall be U.S. $3.65 per MMBtu (U.S. $3.40 per GJ).

Subsequently, applications to amend existing import authorizations to allow the payment of the new border price were submitted to the Economic Regulatory Administration by the following applicants:

Inter-City Minnesota Pipelines Ltd., Inc. (Inter-City) on January 21, 1980—(ERA Docket No. 80-01-NG)
Great Lakes Gas Transmission Company (Great Lakes) on January 23, 1980—(ERA Docket No. 80-02-NG)
Montana Power Company (Montana) on January 23, 1980—ERA Docket No. 80-03-NG)
Michigan Wisconsin Pipe Line Company (Mich Wisc) on January 23, 1980—(ERA Docket No. 80-04-NG)
Northwest Pipeline Corporation (Northwest) on January 24, 1980—(ERA Docket No. 80-05-NG)
Midwestern Gas Transmission (Midwest) on January 24, 1980—(ERA Docket No. 80-06-NG)
Pacific Gas Transmission Company (PGT) on January 22, 1980—(ERA Docket No. 80-07-NG);
Northern Natural Gas Company (Northern) on February 1, 1980—(ERA Docket No. 78-002-NG);

Notices of receipt of all applications for amendment and opportunity to submit petitions for intervention and comments until February 14, 1980, except for ERA Docket No. 78-002-NG, were published in the **Federal Register** on February 11, 1980 (45 FR 9059-9062).

Because the order of the Governor General in Council provided less than one month's notice prior to implementation of the new price, ERA was able to provide only a short time period in which interested parties could respond. By means of this order, however, ERA will be extending the period during which potential interveners and commenters may prepare submissions.

ERA has, at this time, received one petition for intervention. On February 5, 1980, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) filed a joint petition to intervene in support in the application of Midwestern Gas Transmission Company, ERA Docket No. 80-06-NG.

[1] National Energy Board, *Report to the Governor in Council in the Matter of the Pricing of Natural Gas Being Exported Under Existing Licenses*, January 1980.

B. Rationale for the Uniform Border Price

The Canadian National Energy Board (NEB) has, since 1974, conducted a series of reviews of the price of natural gas being exported from Canada under existing licenses.

Beginning in July 1974 and continuing through April 1977, the NEB recommended to the Governor in Council four border price increases which in total increased the price from Canadian $1.00 per MMBtu (Canadian $0.93 per GJ) on November 1, 1974, to U.S. $2.16 per MMBtu (U.S. $2.01 per GJ) on September 21, 1977. Subsequent price increases followed establishment of a pricing formula by the NEB.

In 1976, the United States Government requested that Canada establish a uniform price at the International Boundary for natural gas being exported to the U.S. Effective with the September 21, 1977 increase, Canada established a formula whereby the border price would be equal to the substitution value of crude oil imported into Eastern Canada. This value is calculated by adding to the cost of imported oil at Montreal the transportation costs from Montreal to Toronto, deducting the cost of transporting natural gas from Alberta to Toronto, and adding the average cost of transporting Canadian gas to the International Boundary. This formula has been implemented by the Government of Canada for all natural gas exports with the exception of NEB License GL–29, where special circumstances prevail (as will be described below), and two contracts for small volume peaking service. The same formula was applied by the NEB in arriving at the $4.47 MMBtu price which is at issue here.[2]

C. Exceptions to the Uniform Canadian Border Price

1. Inter-City Minnesota Pipelines Ltd. NEB License GL–29 allows natural gas to be exported to Inter-City Minnesota Pipelines Ltd. for service principally to two U.S. industrial plants located on the U.S.-Canadian Border, although the pipeline system providing that service also delivers some gas for residential use both in the U.S. and Canada. The NEB, in recognizing that low cost coal is the alternate fuel in that industrial market, has historically recommended that natural gas in that market area be priced lower than the otherwise uniform border price in order to protect that market and to ensure the continued viability of the pipeline distribution system which serves both U.S. and Canadian markets.

2. St. Lawrence Gas and Vermont Gas Co. St. Lawrence Gas Company (St. Lawrence) and Vermont Gas Company, Inc. (Vermont), are intrastate gas distribution systems serving small markets in New York and Vermont, respectively, and are entirely dependent on Canadian imports. Neither company has access to domestic natural gas. Both pay the prevailing uniform border price for their base load gas supplies, and pay a higher price for peaking gas.

These two companies have not made application to ERA in the past for authority to pay the border price each time it was raised by the Canadian government. Due to the circumstances faced by each company—*i.e.*, they both are small intrastate distributors of natural gas and totally dependent on Canadian imports—ERA has not insisted that application be made, but rather has allowed the companies to rely on general authorizations granted for other importers of Canadian gas. In conjunction with the overall review of the need for and the pricing of imported Canadian natural gas, as described more fully below, ERA will now require that St. Lawrence and Vermont make application to ERA for authority both to pay the increased border price for their base volumes of natural gas as well as the price paid for natural gas peaking service.

3. Gas service, Inc. and Manchester Gas Co. DOE/ERA Opinion and Order No. 10 [3] authorized Gas Service, Inc., of Nashua, New Hampshire and Manchester Gas Company of Manchester, New Hampshire to import up to 71 MMcf per year of liquefied natural gas from Gaz Metropolitan, Montreal, Canada. The gas is to be delivered during the five-month peak heating season, November through March. The price for the LNG authorized in the order was the established border price (U.S. $3.45 per MMBtu) plus U.S. $1.30 for terminalling and liquefaction. Applicants have not filed any requests for a price increase with ERA. Until they do so, the price for this peaking gas will remain as authorized in Opinion No. 10.

4. Northern Natural Gas Company. DOE/ERA Opinion and Order No. 13 [4] recently authorized Northern Natural Gas Company (Northern) to purchase from Union Gas Company of Canada up to 10 Bcf per year of synthetic natural gas (SNG) produced in Canada and delivered to the U.S. by displacement. The gas would be delivered only during the five-month heating season. Additional volumes would be stored during the summer period for subsequent delivery to Northern, in connection with which Northern was authorized to pay a storage fee equivalent to that which Union is authorized by the government of the province of Ontario to charge its own customers plus an amount covering the Union's cost in carrying the gas inventory during the non-peak months.

Under the approved contract, Union would accept SNG produced by Petrosar, Ltd., in Ontario and, in turn, would allow equivalent volumes of natural gas from Alberta that would otherwise be delivered to Union to be delivered to Northern through the Great Lakes Gas Transmission System. The price for the gas was established in Opinion No. 13 at the uniform border price of U.S. $3.45 per MMBtu. The separate storage charge is currently about U.S. $0.40 per MMBtu.

While the ERA has approved the importation of this gas at the existing border price, the Federal Energy Regulatory Commission is conducting a further review of certain tariff aspects of the price flow through. The FERC has not yet completed this review and no gas has begun to flow under the January 15 ERA approval. Therefore, for all practical purposes the application by Northern for approval of a new price for the gas authorized in Opinion No. 13 to be imported is an application for authorization to import new volumes, rather than flowing volumes, and will be treated with other such cases in Section IV of this decision.

II. ERA's Responsibilities and Considerations on Review of Natural Gas Applications

Sections 301 and 402(f) of the Department of Energy Organization Act (P.L. 95–91) (DOE Act) give the Secretary of Energy the authority to authorize the import or export of natural gas pursuant to Section 3 of the NGA. The Secretary delegated this responsibility to the Administrator of the ERA on October 1, 1977.[5] Later, the Secretary has issued two delegation orders which redefine the areas of jurisdiction between ERA and FERC in deciding application to import natural gas.[6]

[2] *See* National Energy Board, *Report to the Governor in Council in the Matter of the Pricing of Natural Gas Being Exported Under Existing Licenses*, January 1980.

[3] *Gas Service Inc. and Manchester Gas Co.*, ERA Docket No. 78–006–LNG, Opinion and Order Approving Joint Application to Import Liquefied Natural Gas into the United States from Canada (November 9, 1979).

[4] *Northern Natural Gas Co. and Great Lakes Gas Transmission Co.*, ERA Docket Nos. 78–002–NG *et al.*, Opinion and Order on Rehearing Approving Application to Import Synthetic Natural Gas from Canada by Displacement (January 15, 1980).

[5] 42 FR 50726, November 29, 1977.

[6] DOE Delegation Order Nos. 0204–54 and 0204–55; 44 FR 56735, October 2, 1979.

Under the delegations, ERA must determine whether an import is not inconsistent with the public interest pursuant to Section 3 of the NGA. In applying ERA's delegation, the Administrator has the authority to review and determine certain issues, including, but not limited to, national need for the gas to be imported and the proposed price to be charged for the import.

III. Applications Requesting Approval of a Price Increase For Flowing Gas

A. Interim Authorization of the New Border Price

The applications of Inter-City Minnesota Pipelines Ltd., Great Lakes Gas Transmission Company, Montana Power Company, Michigan Wisconsin Pipeline Company, Northwest Pipeline Company, Midwestern Gas Transmission Company and Pacific Gas Transmission Company in Dockets 80–01–NG through 80–07–NG, respectively, all involve requests for approval of a price increase for currently flowing natural gas imports which have previously been authorized at the current price of U.S. $3.45 per MMBtu (with the exception of Inter-City Minnesota, where the current price under export license GL–29 discussed above is U.S. $3.15 per MMBtu). In addition, as noted above, gas currently being imported by St. Lawrence Gas Company and Vermont Gas Company is also subject to the increased Canadian border price, although by custom and practice these companies have not made separate application for approval of the price increase. The total volume of flowing gas at issue here is about 2.4 Bcf per day, or about five percent of the nation's total gas supply.

Canadian export prices for this gas have steadily increased over the past five years, as shown in the following table:

Export Price and Effective Date
$1.00/MMBtu (CA)—Nov. 1, 1974
$1.60/MMBtu (CA)—Nov.1, 1975
$1.94/MMBtu (CA)—Jan. 1, 1977
$2.16/MMBtu (US)—Sept. 21, 1977
$2.30/MMBtu (US)—May 1, 1979
$2.80/MMBtu (US)—Aug. 11, 1979
$3.45/MMBtu (US)—Nov. 3, 1979
$4.47/MMBtu (US) (Proposed)—Feb. 17, 1980

As can be seen, the border price increases have accelerated dramatically since May 1, 1979, rising more than 100 percent in less than a year, from U.S. $2.16 to the proposed U.S. $4.47 per MMBtu.

As noted, the price increase in each instance has been determined by the NEB on the basis of a formula which ties the price of gas to the cost of crude oil imported into eastern Canada. The most recent increase to U.S. $4.47 per MMBtu differs significantly, however, in the manner in which the formula has been applied. In all previous instances the new gas price became effective three to four months after the date on which crude oil prices were measured.[7] This lag had the effect of pricing the gas at a level which was generally competitive with prices being charged in the U.S. for residual fuel oil.

This coincidental effect was of great significance in prior decisions of ERA approving Canadian gas prices. The Canadian formula which bases export prices on the cost of imported crude oil has never been accepted in principle by U.S. regulatory agencies. Rather, it is well established in U.S. regulatory decisions that an import price will be found to be reasonable and consistent with the public interest only if it is in the competitive range of prices charged in the relevant U.S. market area for alternate fuels.[8] In most U.S. market areas, the principal alternate fuel is residual fuel oil.[9] The three or four month time lag between the date on which the NEB measured imported crude oil prices in eastern Canada and the date the new gas price became effective resulted in the new gas price being generally competitive with the price of residual fuel oil in the U.S. at the time the gas price became effective. In this manner the different tests applied by the NEB and the ERA had similar results.

This is not the case, however, with regard to the most recent increase. In applying its formula the NEB measured crude oil prices on January 1, 1980. The new gas price becomes effective on February 17, 1980, only one and one-half months later. The effect of this compression results in our not being able to reconcile the new gas export price with the test which, under our prior precedents and policy, we must apply to find that the Canadian price is in the public interest. Our preliminary analysis of residual fuel oil prices in several U.S. cities indicates that in February 1980 they averaged roughly U.S. $3.80–$4.00 per MMBtu, well below the Canadian gas price of $4.47 per MMBtu.

Thus, we cannot find that, standing alone, the proposed Canadian export price of U.S. $4.47 per MMBtu is at the present time reasonable and consistent with the public interest.

However, we are compelled to approve on an interim basis the continuation of current imports at the new price to avoid the serious hardships and dislocations that would occur if all Canadian gas supplies were to be terminated abruptly on February 17, 1980, which would be the effect if all applications for the increase were denied. As noted above, currently flowing Canadian gas constitutes about five percent of our national supply. However, this supply is heavily concentrated in western and northern states in the U.S. For example, Washington, Oregon and Idaho receive about 60 percent of their total gas supplies from Canada. California is 24 percent dependent on Canadian gas. Other states with a high degree of reliance on Canadian supplies include Nevada (29 percent), Montana (43 percent), Wyoming (24 percent), North Dakota (20 percent) and Wisconsin (15 percent). These flowing Canadian supplies are such a fundamental part of the energy infrastructure in each of these areas that they could not be replaced in a timely manner if they were abruptly terminated through denial of or failure to act on each of the pending applications, particularly during the winter heating season. Such abrupt termination would have a serious adverse impact on the public health, safety and welfare in the areas affected, and the U.S. companies that import Canadian gas could incur adverse financial consequences.

Thus, despite the fact that the price of U.S. $4.47 per MMBtu is not, in light of current prices for alternate fuels, reasonable when considered in the abstract, we feel compelled to conclude in the circumstances that the public interest is best served by temporarily approving the price increase, effective February 17, 1980 and terminating on May 15, 1980.

The fact that we have had (through no fault of the applicants) less than a month's notice of the price increase has prevented us from conducting the normal administrative proceeding in which the effects of the price increase and termination of these supplies can be determined. Therefore, as described more fully below, during the interim period in which the new export price of U.S. $4.47 per MMBtu (U.S. $3.65 under license GL–29) is in effect, we will develop an administrative record and make a considered judgment as to the terms and conditions under which Canadian natural gas may continue to

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[7] For example, the lag between date of measurement and effective date was 120 days in the case of the May 1, 1979 price increase, 133 days in the case of the August 11, 1979 increase, and 95 days in the case of the November 3, 1979 increase.

[8] *See, e.g.*, Opinion No. 11, *Columbia LNG Corp. et al.*, ERA Docket No. 79–14–LNG (December 29, 1979) and cases cited therein.

[9] *See e.g.*, Opinion No. 12, *Borders Gas, Inc.*, ERA Docket No. 79–31–NG (December 29, 1979), at 11.

be imported into the U.S. at the new price.

As noted above, this interim approval of the price increase applies only to those authorizations to import Canadian natural gas under which gas is currently flowing and (except for St. Lawrence and Vermont) for which applications for approval of the new price have been filed with ERA. It does not apply to volumes of gas flowing to Manchester Gas Company and Gas Service, Inc., which are currently importing Canadian gas but have not made application for continued imports at a price based on the new uniform border price.

B. Incremental Pricing

Sections 203(a)(5) and 207(b) of the Natural Gas Policy Act of 1978 (P.L. 95–621) (NGPA) require that certain first sale acquisition costs of volumes of non–LNG imported natural gas are subject to the passthrough requirements of the Federal Energy Regulatory Commission's (FERC's) incremental pricing rules issued under Title II of the NGPA. However, the only volumes which are automatically subject to the incremental pricing requirements are those which exceed both (1) the maximum delivery obligations, for the month in which the delivery of the natural gas occurs, which are specified in contracts entered into on or before May 1, 1978 and in effect when such delivery occurs; and (2) the volume of natural gas imported into the U.S. by the interstate pipeline or distribution company involved during any "corresponding period" (as defined by the FERC) of calendar year 1977. Those volumes which do not exceed 1977 base year volumes (the second criteria above) are totally exempt from incremental pricing. The remaining volumes (that is, the difference between 1977 actual import volumes and the maximum volumes that could be imported under contracts entered into on or before May 1, 1978) may be either subjected to or exempted from incremental pricing, at the discretion of the ERA. (*See* NGPA Section 207(c) (2).)

Given the substantial increase in the price of these flowing imports and the purposes that are intended to be served by incremental pricing, the public interest requires that all of that portion of Canadian gas imports which exceed 1977 base year volumes (as determined by the FERC) should be incrementally priced during the period that the interim approval of the new Canadian export price is in effect. Allowing the price to be rolled-in with other, cheaper domestic pipeline supplies would mask the true cost of the gas and would result, in effect, in a subsidization of the high-cost imported fuel. Such distortion would impact negatively on our overall energy policy by sending to low priority gas users a false signal as to the true cost of these supplies and postpone conversion to secure, domestic alternative fuels or other domestic sources of natural gas. Under Section 207(c)(2) of the NGPA, therefore, we conclude that the incremental pricing provisions of title II should apply to the projects authorized today to the extent that the approved volumes exceed the respective volumes imported by the companies involved during the 1977 base year.[10]

C. Further Proceedings

While the interim price is in effect, we will develop a thorough administrative record upon which a decision can be made as to whether, and, if so, on what terms and conditions, Canadian imports should be allowed after May 15, 1980.

In that regard, we are extending the period in which petitions to intervene may be submitted by interested parties. Such petitions are to be filed with the Import/Export Division, Office of Petroleum Operations, Economic Regulatory Administration, Room 4126, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with the requirements of the rules of practice and procedure (18 CFR 1.8). Petitions for intervention will be accepted for consideration if filed no later than 4:30 p.m., on March 15, 1980. Any party that requests an evidentiary hearing in this consolidated proceeding should so indicate in its petition for intervention.

Any person wishing to become a party to these proceedings must file a petition to intervene. Any person desiring to make any protest with reference to the petitions to intervene may file a protest with the ERA in the same manner as indicated above for petitions to intervene. All protests will be considered by ERA in determining the appropriate action to be taken on petitions to intervene but will not serve to make protestants parties to the proceeding.

All applicants in Docket Nos. 80–01–NG through 80–07–NG shall, by March 31, 1980, submit to ERA written comments showing why the ERA should extend approval of the new Canadian border price for flowing gas beyond May 15, 1980. Written comments may address any area of concern to the applicants but should specifically address the following matters:

1. The degree to which the service area of the applicant is dependent on Canadian natural gas and the effect on demand for the gas of the U.S. $4.47 border price.

2. The extent to which such service areas have access to current and future supplies of domestic natural gas.

3. The extent to which such service areas have access to alternate fuels, and the specific type and price of alternate fuels which could be used if the Canadian gas supplies were no longer available.

4. The extent to which each applicant plans to increase its supplies of natural gas from domestic sources.

5. Whether, as of May 15, 1980, the new Canadian export price will be competitive with the price of alternate fuels in the U.S.

6. Whether ERA should impose, as a condition to approval of the Canadian export price beyond May 15, 1980, that the applicants take affirmative and positive steps to reduce their dependence on Canadian natural gas.

All persons who have filed timely petitions for intervention are also invited to submit comments on these and other relevant issues by March 31. All submissions in individual dockets must be served on all the applicant and all persons who have filed timely petitions for intervention in that docket. A list of interveners and petitioners for intervention will be maintained by ERA's Import/Export Division at the address indicated above (telephone (202) 254–8202). Comments shall be filed with that office and shall conform to the provisions of the procedural rules applicable to written submissions.

Responses to comments submitted to ERA will be accepted through April 15, 1980.

ERA will determine, on the basis of requests therefore and a review of the written submissions, whether an evidentiary hearing is necessary and appropriate. If such a hearing is determined to be necessary, due notice will be given to all parties.

Copies of all applications, petitions for intervention and written submissions to ERA are available for public inspection and copying in Room 4126, 2000 M Street, N.W., Washington, D.C. 20461, between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday, except Federal holidays.

[10] *Cf.* Opinion No. 11, *supra*, at 54–57; Opinion No. 12, *supra*, at 12.

IV. Applications Seeking Authorization To Import New Volumes of Natural Gas From Canada

A. Description of the Specific Applications for Import Pending Before ERA

1. Columbia Gas Transmission Company ERA Docket No. 79–30–NG. On October 24, 1979, Columbia Gas Transmission Corporation (Columbia) filed an application with ERA to import from Canada quantities of natural gas not to exceed 41 MMcf per day, or 13.6 Bcf per year, for a period of fifteen years, commencing with first deliveries. Columbia intends to purchase the natural gas from Columbia Gas Development of Canada, Ltd. (Columbia Development) at the applicable Canadian border price at the existing interconnection of facilities of Westcoast Transmission Company Limited (Westcoast) near Sumas, Washington.

The application states that after Columbia Development completed arrangements with Westcoast Transmission Company for the processing and transportation of the gas to the international border at Sumas, Washington, the gas will be delivered to Northwest Pipeline Corporation and displaced to El Paso Natural Gas Company in LaPlata County, Colorado. Once delivered to El Paso, that company will deliver a similar quantity of gas from its supply in southern Louisiana to Columbia Gulf Transmission Company (Columbia Gulf), an affiliate of Columbia, and Columbia Gulf will deliver the gas to Columbia at existing points of deliver in Kentucky.

On January 3, 1980, the ERA issued a Notice of the filing of the October 24 application in this docket and invited petitions to intervene (45 FR 1778). Five petitions to intervene were received. Of these, four—the People's Counsel of Maryland (filed January 16, 1980), New York State Electric and Gas Corporation (filed January 17, 1980), Washington Gas Light Company (filed January 17, 1980), and the Public Service Commission of West Virginia (filed January 17, 1980)—stated their direct and immediate interest in this case. In addition, the People's Counsel of Maryland stated its belief that a hearing might be required, and reserved the right to request one after review of the application. People's Counsel of Maryland has, however, not requested a hearing.

On January 16, 1980, the Public Service Commission of the State of New York (NYPSC) filed a Notice of Intervention and Protest in which it stated that no showing has been made that the gas at issue in this proceeding is necessary to meet Columbia's need and that the primary effect of granting the application would be to increase unnecessarily the cost of gas to Columbia's customers.

On February 1, 1980, Columbia filed an answer to NYPSC's protest, alleging that its arguments concerning Columbia's lack of need for this gas supply are unsubstantiated.

2. Montana Power Company, ERA Docket No. 79–16–NG. On July 6, 1979, Montana Power Company (Montana), Butte, Montana filed an application with ERA requesting authorization to import up to approximately 1.06 MMcf per day, or about 365 MMcf per year, of natural gas from Canada into the United States. This application was supplemented on September 28, 1979, December 12, 1979, and January 18, 1980.

On August 17, 1979, a **Federal Register** notice was published (44 FR 48321), noting ERA receipt of Montana's application and inviting comments, petitions for intervention, and requests for hearing. No comments, petitions for intervention, or hearing requests were received in response to such notice.

Montana is a corporation organized under the laws of the State of Montana and with corporation headquarters in Butte, Montana. It operates as an electric and natural gas public utility.

In its application, Montana requests authorization to import natural gas from Canada over approximately a 14-year period, terminating December 31, 1993, at a point on the international boundary between the province of Alberta and the State of Montana.

The proposed natural gas to be imported is produced by seven Canadian companies.[11] Montana states that the gas will be gathered by a system owned by Universal Gas Company, Ltd. (Universal Gas) and sold to the Canadian-Montana Pipe Line Company (Canadian-Montana), a wholly-owned subsidiary of Montana. Canadian-Montana will construct and operate nearly one mile of approximately 4½ inch pipeline which will extend from the Universal Gas gathering system to the international border, where the gas will be delivered to Montana. Montana proposes to construct approximately one mile of 4½ inch pipeline from a point at the international boundary to a point in the State of Montana connecting with Montana's existing gathering system. The gas will then be transmitted through Montana's existing gathering system to its processing facilities, where it will be upgraded to pipeline quality specifications and then transmitted to Montana's distribution system for use by its customers.

The Agreement for Sale and Purchase of Natural Gas (Sales Agreement) between Montana and Canadian-Montana was executed on May 1, 1979. The Gas Purchase Contract (Purchase Contract) between Canadian-Montana and the seven Canadian producers was also executed on May 1, 1979. The latter contract contains a take-or-pay requirement, but provides that deficiencies in any year can be made up by purchases in excess of annual contract volumes in subsequent years. The NEB has already authorized Canadian-Montana to export subject volumes of natural gas in accordance with the contract terms. The export volumes are to be priced in accordance with the prevailing uniform export price approved by the Government of Canada.

3. Northern Natural Gas Company, ERA Docket No. 78–002–NG. As noted in Section III of this opinion, for all intents and purposes the application of Northern Natural Gas Company (Northern) in Docket No. 78–002–NG for approval of the import price increase to U.S. $4.47 per MMBtu should be treated as an application for approval of new gas volumes, because gas has not begun flowing under the approval granted by ERA on January 15, 1980 in Opinion No. 13. It therefore will be considered together with the applications of Columbia and Montana for new gas imports from Canada.

B. Reasonableness of the Proposed Import Price in the Context of the Applicants' Need for the Gas

Each of these applications for new imports of Canadian gas is subject to the U.S. $4.47 per MMBtu export price effective February 17, 1980. As we discussed in detail in Section III of this opinion, we have determined that this price is not reasonable and that it is consistent with the public interest to allow U.S. firms to temporarily import the gas at that price only if there is also a compelling showing that the gas is needed immediately to prevent a severe adverse impact on the public health, safety or welfare.

With respect to flowing gas we believe such a showing can be made, based upon the degree of dependence on Canadian supplies of the areas served by the applicants. The adverse consequences flowing from abrupt cessation of these supplies at the height of the winter heating season is obvious. However, we do not think such a compelling need can be shown with

[11] Canada Cities Service Ltd.; Canadian-Montana Gas Company, Ltd.; Denison Mines, Ltd.; Resman Holdings, Ltd.; Universal Exploration, Ltd.; Universal Drilling Fund (1976), Ltd.; and Universal Gas Company, Ltd.

respect to these three new import cases.[12] In each case the applicants state that the gas will become part of the overall gas supply available to meet projected long-term requirements of their customers, but in no case is there significant evidence demonstrating that the specific volumes requested are required to meet near-term customer requirements. We will discuss separately the evidence on this point for each application.

1. Columbia. In Columbia's case, not only is there no showing of near-term need for this gas, but there is abundant and uncontradicted evidence in another recent proceeding involving Columbia to the effect that it has gas surplus to its customers' estimated current and near-term future needs. On December 29, 1979, in Opinion No. 11, at page 42,[13] we found that:

> As Exhibit No. CGS–12 demonstrates, Columbia's gas surplus is expected to be 48.08 Bcf in 1979, 69.24 Bcf in 1980 and 51.20 Bcf in 1981.

In the same opinion we determined, on the basis of Columbia's own evidence, that:

> Columbia will be able to meet the market requirements of its customers at least through the contract year 1987, the last year of its projections.

While Columbia's projections included the volumes of gas at issue here, the volumes are not so significant as to make a material impact on the conclusions reached in Opinion No. 11.

2. Montana. In its application, Montana asserts that approval of the application will help it to meet the long-term requirements of its customers. It makes no assertion, however, that there is any compelling near-term need. Indeed, the evidence in the record demonstrates there is no such need. For example, we note that Montana has not been taking all of the gas it is authorized to import from Canada. In contract year 1979 (July 1, 1978 to June 30, 1979), it had authorization to import 39.2 Bcf from Canada, but imported only 30.1 Bcf. In the current contract year it has the same import authorization, which to date it has not been drawing down fully. Additionally, during 1979, total system requirements of Montana were 53.7 Bcf (of which 30.1 Bcf was imported from Canada and 23.6 Bcf was supplied from domestic sources). Of the total 53.7 Bcf, 4.6 Bcf was surplus to Montana's needs and was sold off-system. Montana's Business Plan 1980 Projections (Exhibit 8 enclosed with correspondence to ERA dated January 18, 1980) indicates a planned increase in market requirements for 1980 of only one percent and a steady decline in subsequent years. It is thus apparent that Montana can meet all near-term supply requirements by drawing upon other sources, including the Canadian contract volumes for which the new uniform border price was temporarily approved in ERA Docket No. 80–003–NG by Section III of this opinion, and that there is no need at this time for the additional contract volumes.

3. Northern. We recently had occasion to review Northern's current need for additional natural gas supplies in Opinion No. 13.[14] In that opinion we found that there was a need for the gas *at the then-current import price of $3.45 per MMBtu.* However, that need was not the same as the compelling need that exists for currently flowing gas. The record indicates that even under the most severe weather projections Northern's curtailments would not reach above priority 3 customers. The principal need shown in that proceeding for this gas supply was to displace high-priced and insecure supplies of imported oil by allowing industrial users with alternate fuel capability to substitute natural gas for fuel oil.

Thus, in each instance we believe there has not been a showing of compelling immediate need for these new gas supplies from Canada. This is not to say that the evidence before us would not permit a finding of need if the price were competitive with the price of residual fuel oil. But where, as here, that is not the case, a showing of an immediate and compelling need for the gas is necessary to overcome the fact that the price is, at least at the present time, well in excess of the cost of alternate fuels.

We recoginze that, if there are no further Canadian price increases, the new export price of $4.47 per MMBtu may in time be competitive with alternate fuel oil prices as the latter increase to reflect increasing crude oil costs. Therefore, the denial of Columbia's Montana's and Northern's applications for approval of new gas imports is without prejudice to refiling at such future time as the Canadian price is again consistent with alternate fuel prices.[15]

V. Order

For the reasons set forth above, ERA hereby orders that:

A. Pursuant to authority under Section 3 of the Natural Gas Act, orders previously granted to:

Midwestern Gas Transmission Company—ERA 79–23–NG
Great Lakes Gas Transmission Company—ERA 79–25–NG
Northwest Pipeline Corp.—ERA 79–28–NG
Montana Power Company—ERA 79–27–NG
Michigan Wisconsin Pipe Line Company—ERA 79–26–NG
Inter-City Minnesota Pipelines Ltd., Inc., Under Licenses GL–28 and GL–30—ERA 79–29–NG
Pacific Gas Transmission Company—FPC Docket No. G–17351
St. Lawrence Natural Gas Company
Vermont Gas System, Inc.

Authorizing the importation of natural gas from Canada are hereby temporarily amended to permit the import of previously authorized volumes at a price of U.S. $4.47 per MMBtu (U.S. $4.17 per GJ) effective February 17, 1980 and extending through May 15, 1980. This interim approval shall extend beyond March 1, 1980 for St. Lawrence Natural Gas Company and Vermont Gas System, Inc., only if those firms file applications for approval of the price increase by that date.

B. Pursuant to authority under Section 3 of the Natural Gas Act, the order previously authorizing Inter-City Minnesota Pipelines Ltd., Inc., to import natural gas from Canada under license GL–29 is hereby temporarily amended to permit the import of previously authorized volumes at a price of U.S. $3.65 per Mcf (U.S. $3.40 per GJ) effective February 17, 1980 and extending through May 15, 1980.

C. Pursuant to authority under Section 207(c)(2) of the Natural Gas Policy Act of 1978, the provisions of Section 203(a)(5) of the Natural Gas Policy Act of 1978 shall be applied by the Federal Energy Regulatory Commission to the passthrough of the first sale acquisition costs of those import volumes authorized herein which exceed the

[12] In contrast to the applications involving flowing gas, there is already a complete record in each of these new import cases, or in other recent proceedings involving the same applicants, on which need can be determined.

[13] *Columbia LNG Corp., Consolidated System LNG Co., and Southern Energy Co.*, ERA Docket No. 79–14–LNG, Opinion and Order Approving the Joint Application for Amendments to Previous Orders Authorizing Importation of Liquefied Natural Gas into the United States from Algeria, and for Amendments to Certain Related Contractual Provisions (December 29, 1979).

[14] Opinion and Order No. 13, *Northern Natural Gas Co., et al.*, ERA Docket Nos. 78–002–NG, *et al.* (January 15, 1980), at 9–10.

[15] We note that some of the new contracts for the importation of natural gas which have been disapproved herein because of the price also contain provisions which would require the importing companies to take certain minimum volumes and to pay for those volumes they do not take. To the extent that volumes are not taken on schedule, these provisions would have the effect of raising the unit cost of the imported gas even higher than the requested $4.47. Hence, while it is not necessary to decide this issue, we note that we have substantial reservations about whether these provisions are consistent with the public interest.

respective volumes of natural gas imported into the United States by the interstate pipelines and local distribution companies involved during any corresponding period (as shall be determined by the FERC) of calendar year 1977.

D. Except as modified by paragraph A, B and C, all other terms and conditions in outstanding orders of the ERA authorizing the importation of natural gas from Canada shall remain in effect.

E. Pursuant to Section 3 of the Natural Gas Policy Act, the applications of Columbia Gas Transmission Corporation in ERA Docket No. 79–30–NG, Montana Power Company in ERA Docket No. 79–27–NG, and Northern Natural Gas Company in ERA Docket No. 78–002–NG are hereby denied without prejudice.

F. The petitions for leave to intervene, as set forth in Appendix A, are hereby granted, in their respective dockets, subject to such rules of practice and procedure as may be in effect, provided that their participation shall be limited to matters affecting asserted rights and interests specifically set forth in their petitions for leave to intervene and that the admission of such interveners shall not be construed as recognition by ERA that they might be aggrieved because of any order issued by ERA in this proceeding.

Issued in Washington, D.C., February 16, 1980.

Douglas G. Robinson,

Acting Administrator, Economic Regulatory Administration.

Appendix

Company	ERA docket No.	Interveners
Inter-City Minnesota Pipeline Ltd.	80–01–NG	None.
Great Lakes Gas Transmission Co.	80–02–NG	Natural Gas Pipeline Co. of America.
Montana Power Co	80–03–NG	None.
Michigan Wisconsin Pipe Line Co.	80–04–NG	None.
Northwest Pipeline Corp.	80–05–NG	None.
Midwestern Gas Transmission Co.	80–06–NG	Northern States Power Co. (Minnesota) and Northern States Power Co. (Wisconsin) (joint). Natural Gas Pipeline Co. of America.
Pacific Gas Transmission Co.	80–07–NG	None.
Northern Natural Gas	78–002–NG	Union Gas Ltd.
Columbia Gas Transmission Company.	79–30–NG	People's Counsel of Maryland. Public Service Commission of the State of New York. New York State Electric and Gas Corp. Washington Gas Light Co.

Public Service Commission of the State of New York

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Federal Energy Regulatory Commission

[Docket No. EL79–8]

Central Power & Light Co., et al.; Order Denying Rehearing

Issued: February 13, 1980.

I. Introduction

Before the Commission is an application for rehearing of the Commission's October 3, 1979 order in this docket filed by the Central Southwest Companies [1] (CSW). CSW seeks rehearing of the portion of the October 3rd order which denied CSW's application for relief under Section 205(a) of the Public Utility Regulatory Policies Act (PURPA).[2] After considering the arguments in support of rehearing, we find no basis for granting rehearing of the denial of Section 205 relief to CSW.

II. Discussion

The Commission's October 3rd order denied the request for exemption from orders of the Texas Public Utility Commission (PUC) under Section 205(a) because the PUC orders at issue do not prevent voluntary coordination among the CSW companies in the manner contemplated by Section 205(a). Analyzing the legislative history and the language of Section 205, the Commission determined that Section 205(a) was intended to deal with only constitutionally permissible state regulations. While recognizing that there may be areas of constitutionally permissible state regulation which affect interstate commerce for which Section 205 relief is available, the Commission found that Section 205 relief was not available for the Texas PUC orders at issue here. These orders directly prohibit voluntary interstate coordination and, as such, do not fall with the area of constitutionally permissible state regulation.

In support of its November 1, 1979, application for rehearing of the denial of Section 205 relief, CSW argues that the Commission's interpretation of Section 205 violates well-established principles of statutory construction.

According to CSW, the "plain meaning" rule was violated by the Commission's reliance on legislative history and other extrinsic aids to construction to interpret the clear and unambiguous language of Section 205. We find this argument unconvincing. First, assuming arguendo the language of Section 205 is unambiguous, it is well-settled that available extrinsic interpretive aids may not be disregarded even though the statute appears to have a "plain meaning." *State Water Control Board* v. *Train*, 559 F.2d 921, 924 (4th Cir. 1977); *accord, Train* v. *Colorado Public Interest Research Group*, 426 U.S. 1, 10 (1976); quoting *United States* v. *American Trucking Association, Inc.*, 310 U.S. 534, 543–544 (1940). Reliance on extrinsic aids "is particularly necessary when a literal reading produces an anomalous result." *Federal Maritime Commission* v. *A. T. Desmedt*, 366 F.2d 464, 469–470 (2nd Cir. 1966), *cert. denied.* 385 U.S. 974 (1966).[3]

Thus, in deciding that Section 205(a) did not reach orders which prevented voluntary interstate coordination among private utilities, the Commission properly relied on the language and history of Section 205 and its analysis of the relationship between state and federal authority in the area of coordination of electric utilities. Further, such reliance results in an interpretation of the statute which avoids the anomalies which flow from CSW's interpretation. As explained in the October 3rd order, state laws that prevent voluntary interstate coordination have the effect of forbidding a form of interstate trade. Absent explicit authorization from Congress, protection of public health, safety, and welfare would never provide a justification for state laws placing an embargo on interstate commerce. Moreover, Part II of the Federal Power Act makes clear that Congress intended exclusive federal regulation of private interstate wholesale transactions involving electricity.

Under CSW's interpretation, Section 205(a) would reach state laws which prevent voluntary interstate

[1] The underlying application for relief in this docket as well as the application for rehearing now being considered were filed by Central Power and Light Company ("CPL"), Public Service Company of Oklahoma ("PSO"), Southwestern Electric Company ("SWEPCO") and West Texas Utilities Company ("WTU"). CPL, WTU, PSO and SWEPCO are all operating subsidiaries of a public utility holding company, Central and Southwest and will be collectively referred to herein as "CSW" or "the CSW companies."

The procedural history of this proceeding has been set out in the July 26, 1978, and October 3, 1979 orders in this docket.

[2] 16 U.S.C. 824, Public Law No. 95–617 (1978).

[3] It is permissible to adopt "a restricted rather than a literal or usual meaning of its words where acceptance of that meaning would lead to absurd results." *In Re Trans Alaska Pipeline Rate Cases*, 436 U.S. 631, 643 (1978); quoting *Commissioner* v. *Brown*, 380 U.S. 563, 571 (1965).

coordination. Under the terms of Section 205(a)(2), a showing that the state law was designed to protect public health, safety and welfare would prevent the Commission from exercising its authority to exempt utilities from state laws which prevent voluntary interstate coordination. Under CSW's interpretation of the statute, then, the following anomalous situation could occur. The Commission could be placed in the position of finding that the states' exercise of its police powers would provide a defense to a Section 205(a) exemption for state action which would be unconstitutional under both the supremacy clause and the commerce clause.

Under the Commission's interpretation of the statute, Section 205(a) does not reach state laws which prevent voluntary interstate coordination. Thus, the Section 205(a)(2) police power defense would never come into play to justify state action forbidden under both the commerce and supremacy clauses.

CSW also argues that the Commisson's interpretation of the statute creates an "exception" to Section 205 for orders preventing interstate coordination and, thus, violates the principle that when certain exceptions to a provision are specified no others are to be implied. Again, CSW's citation of this principle of construction provides no basis for rehearing. First, the Commission's determination that section 205 relief is not available for unconstitutional state regulation was not a "creation" of another "exception" to section 205; rather such determination was an interpretation of the reach of section 205(a) based on an analysis of all its provisions and an analysis of the limits of existing state and federal authority to regulate electric utility coordination.

Even if the Commission's interpretation could be characterized as creating an exception to section 205, the maxim cited by CSW would not bar the approach taken by the Commission in this case. This "rule" of construction is only an aid to statutory construction, not a rigid rule of law and is increasingly considered unreliable. *National Petroleum Refiners Association, et al.* v. *Federal Trade Commission*, 482 F.2d 672, 675–676 (D.C. Cir. 1973). The application of this aid is particularly inappropriate here where its adoption could lead to the results described above.

CSW also argues that the Commission's interpretation of section 205(a) unduly narrows the broad power congress intended to confer on the Commission in section 205. If the Commission dismisses a meritorious application because the orders from which exemption is sought appear unconstitutional but are later adjudicated valid, the argument continues, the policy behind section 205 would be frustrated. We are not convinced by CSW's argument. In the unlikely event a court determines that the PUC orders are valid and enforceable, CSW may simply reapply for relief under section 205. At that point, nothing would preclude the Commission from acting on the request.

Finally, whatever merit there may be to CSW's arguments, we, as the agency charged with the administration of PURPA, have determined that our interpretation of section 205 is consonant with the aims of that statute and the overall regulatory scheme.

The Commission orders:

(A) The Application for Rehearing filed by the Central and Southwest Companies is hereby denied.

(B) The Secretary shall promptly published this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-6033 filed 2-26-80; 8:45 am]

BILLING CODE 6450-85-M

[Dockets Nos. RP80-43 and TA80-1-43, et al.]

Cities Service Gas Co.; Proposed Changes in FERC Gas Tariff

February 19, 1980.

Take notice that Cities Service Gas Company (Cities Service) on February 12, 1980, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following: Original Sheet No. 78, Substitute Original Sheet Nos. 73 through 77, Substitute First Revised Sheet Nos. 61, 63, and 66, Second Substitute First Revised Sheet No. 64.

These tariff sheets were filed after meetings with the Commission Staff and a review of Order No. 49–A to clarify and supplement the incremental pricing provisions in Cities Service's FERC Gas Tariff.

The proposed effective date of these tariff sheets is December 1, 1979, the date originally established by Order No. 49.

Copies of this filing were served upon the Company's jurisdictional customers, interested state commissions and other affected customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D. C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before *February 28, 1980.* Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-6028 Filed 2-26-80; 8:45 am]

BILLING CODE 6450-85-M

[No. 149]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

February 12, 1980.

The Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

Florida Department of Natural Resources, Bureau of Geology, Oil and Gas Section

1. Control Number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or Block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80–13764
2. 09–113–20153–0000
3. 107 000 000
4. Exxon Corporation
5. St Regis Paper Co No 13–W
6. Blackjack Creek
7. Santa Rosa FL
8. 500.0 million cubic feet
9. January 29, 1980
10. St Regis Paper Co

Michigan Department of Natural Resources

1. Control Number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or Block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80–13763
2. 21–045–32784–0000
3. 102 000 000

4. Michigan Oil Company
5. Pierpont Unit #1-22
6.
7. Eaton MI
8. 350.0 million cubic feet
9. January 7, 1980
10. Consumers Power Company

New Mexico Department of Energy and Minerals, Oil Conservation Division

1. Control Number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or Block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80-13740
2. 30-025-26448-0000
3. 103 000 000
4. Gulf Oil Corporation
5. Central Drinkard Unit Well #429
6. Drinkard
7. Lea NM
8. .0 million cubic feet
9. January 29, 1980
10. El Paso Natural Gas

1. 80-13741
2. 20-025-26444-0000
3. 103 000 000
4. Gulf Oil Corporation
5. Central Drinkard Unit Well #425
6. Drinkard
7. Lea NM
8. .0 million cubic feet
9. January 29, 1980
10. El Paso Natural Gas

1. 80-13742
2. 30-025-00000-0000
3. 103 000 000
4. Yates Petroleum Corporation
5. Barbee LL No 1
6. Austin Mississippian
7. Lea NM
8. .0 million cubic feet
9. January 29, 1980
10.

1. 80-13743
2. 20-015-22720-0000
3. 103 000 000
4. Yates Petroleum Corporation
5. State JM Com No 1
6. Penasco Draw Morrow
7. Eddy NM
8. .0 million cubic feet
9. January 29, 1980
10. Transwestern Pipeline Company

1. 80-13744
2. 30-045-00000-0000
3. 108 000 000
4. Consolidated Oil & Gas Inc
5. Alberding No 1
6. Blanco Mesaverde
7. San Juan NM
8. 10.0 million cubic feet
9. January 29, 1980
10. El Paso Natural Gas Co

1. 80-13745
2. 30-025-26441-0000
3. 103 000 000
4. Texaco Inc
5. New Mexico G State No 3
6. Eumont (Queen) Sand
7. Lea NM
8. 109.5 million cubic feet
9. January 29, 1980
10. Northern Natural Gas Co

Oklahoma Corporation Commission

1. Control number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80-13690
2. 35-139-00000-0000
3. 108 000 000
4. Phillips Petroleum Company
5. Riffe—B No. 1
6. Guymon—Hugoton
7. Texas OK
8. 21.0 million cubic feet
9. January 29, 1980
10. Michigan Wisconsin Pipeline Co.

1. 80-13691/00415
2. 35-009-35438-0000
3. 108 000 000
4. El Paso Natural Gas Company
5. Vannerson #1
6. Erick South (Brown Dolomite)
7. Beckham OK
8. 42.0 million cubic feet
9. January 29, 1980
10. El Paso Natural Gas Company

1. 80-13692/00800
2. 35-107-00000-0000
3. 108 000 000
4. Vab Inc.
5. Dwiggins No. 2
6. Section 7-10N-12E
7. Okfuskee OK
8. 7.2 million cubic feet
9. January 29, 1980
10. Phillips Petroleum Company

1. 80-13693/03446
2. 35-137-21827-0000
3. 103 000 000
4. Arco Oil and Gas Company
5. East Velma W Blk Sims UT #423
6. Sho-Vel Tum
7. Stephens OK
8. 3.6 million cubic feet
9. January 29, 1980
10. Getty Oil Company

1. 80-13694/01471
2. 35-051-20673-0000
3. 102 000 000
4. LPCX Corporation
5. Anderson No. 1
6. North Alex
7. Grady OK
8. 180.0 million cubic feeet
9. January 29, 1980
10. Mobil Oil Corporation

1. 80-13695/01476
2. 35-055-20634-0000
3. 103 000 000
4. Crouch Petroleum Company
5. Kimbell 1
6. South Bloomington
7. Greer OK
8. 7.3 million cubic feet
9. January 29, 1980
10. Arkansas Louisiana Gas Company

1. 80-13696/01477
2. 35-055-20359-0000
3. 103 000 000
4. Crouch Petroleum Company
5. Reeves 1-30
6. South Bloomington
7. Greer OK
8. 5.1 million cubic feet
9. January 29, 1980
10. El Paso Natural Gas Company

1. 80-13697/01479
2. 35-055-20384-0000
3. 103 000 000
4. Crouch Petroleum Company
5. Burnett 1-22
6. South Bloomington
7. Greer OK
8. 1.8 million cubic feet
9. January 29, 1980
10. Arkansas Louisiana Gas Company

1. 80-13698/01474
2. 35-055-20356-0000
3. 103 000 000
4. Crouch Petroleum Company
5. Burcham #1
6. South Bloomington
7. Greer OK
8. 4.0 million cubic feet
9. January 29, 1980
10. Arkansas Louisiana Gas Company

1. 80-13699/01478
2. 35-055-00000-0000
3. 103 000 000
4. Crouch Petroleum Company
5. Graumann 1-22
6. South Bloomington
7. Greer OK
8. 12.0 million cubit feet
9. January 29, 1980
10. Arkansas Louisiana Gas Company

1. 80-13700/01475
2. 35-055-20365-0000
3. 103 000 000
4. Crouch Petroleum Company
5. Graumann 1-27
6. South Bloomington
7. Greer OK
8. 19.3 million cubic feet
9. January 29, 1980
10. Arkansas Louisiana Gas Company

1. 80-13701/01400
2. 35-119-20828-0000
3. 103 000 000
4. Ketal Oil Producing Co.
5. Dotter #2
6. Lost Creek
7. Payne OK
8. .0 million cubic feet
9. January 29, 1980
10. Sun Gas Company

1. 80-13702/01460
2. 35-049-20973-0000
3. 103 000 000
4. Cheyenne Petroleum Company
5. Bernice #1-5
6. S W Florence Chapel
7. Garvin OK
8. 1.8 million cubic feet
9. January 29, 1980
10. Warren Petroleum Company

1. 80-13703/01517
2. 35-027-00000-0000

3. 103 000 000
4. L O Ward
5. Fretwell #1
6. West Moore
7. Cleveland OK
8. 300.0 million cubic feet
9. January 29, 1980
10. Cities Service Gas company

1. 80–13704/00436
2. 35–009–35579–0000
3. 108 000 000
4. El Paso Natural Gas Company
5. State of Oklahoma #1
6. Erick South (Brown Dolomite)
7. Beckham OK
8. 49.0 million cubic feet
9. January 29, 1980
10. El Paso Natural Gas Company

1. 80–13705/01516
2. 35–027–00000–0000
3. 103 000 000
4. L O Ward
5. Fretwell #1
6. West Moore
7. Cleveland OK
8. 100.0 million cubic feet
9. January 29, 1980
10. Cities Service Gas Co.

1. 80–13706/00437
2. 35–009–35580–0000
3. 108 000 000
4. El Paso Natural Gas Company
5. Wallace A #1
6. Erick South (Brown Dolomite)
7. Beckham OK
8. 23.0 million cubic feet
9. January 29, 1980
10. El Paso Natural Gas Company

1. 80–13707/01234
2. 35–085–20302–0000
3. 103 000 000
4. Texaco Inc.
5. C P Gaither B No. 1
6. Enville SW
7. Love OK
8. 30.0 million cubic feet
9. January 29, 1980
10. Cimarron Transmission Co.

1. 80–13708/01248
2. 35–019–00000–0000
3. 108 000 000
4. Continental Oil Co.
5. R L Blair No. 1
6. Sholem Alechem
7. Carter OK
8. 14.8 million cubic feet
9. January 29, 1980
10. Aminoil USA Inc.

1. 80–13709/01284
2. 35–139–20379–0000
3. 108 000 000
4. Cabot Corporation
5. Casto #14
6. Hugoton
7. Texas OK
8. 11.0 million cubic feet
9. January 29, 1980
10. Northern Natural Gas Company

1. 80–13710/01279
2. 35–007–21514–0000
3. 102 000 000
4. Natural Gas Anadarko Inc.
5. Pan Mutual #1–20
6. Mocane Morrow
7. Beaver OK
8. 200.0 million cubic feet
9. January 29, 1980
10. Northern Natural Gas Company

1. 80–13711/01280
2. 35–007–21495–0000
3. 102 000 000
4. Natural Gas Anadarko Inc.
5. Cates #1–29
6. Mocane-Morrow
7. Beaver OK
8. 150.0 million cubic feet
9. January 29, 1980
10. Northern Natural Gas Company

1. 80–13712/01449
2. 35–049–21042–0000
3. 103 000 000
4. Jones & Pellow Oil Co.
5. Ringerwood 10–2
6. Eola
7. Garvin OK
8. 180.0 million cubic feet
9. January 29, 1980
10. Lone Star Gas Company

1. 80–13713/01408
2. 35–119–20766–0000
3. 103 000 000
4. Ketal Oil Producing Co.
5. Pope #1
6. Stillwater
7. Payne OK
8. 35.0 million cubic feet
9. January 29, 1980
10. Sun Gas Company

1. 80–13714/01403
2. 35–119–20808–0000
3. 103 000 000
4. Sun Oil Company (Delaware)
5. Stiles A No. 1
6. Broyles
7. Payne OK
8. 1.0 million cubic feet
9. January 29, 1980
10. Cities Service Company

1. 80–13715/01110
2. 35–103–00000–0000
3. 108 000 000
4. Austin & Austin
5. Brand #1
6. West Perry
7. Noble OK
8. 11.9 million cubic feet
9. January 29, 1980
10. Aminoil USA Inc.

Texas Railroad Commission, Oil and Gas Division

1. Control number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80–13609/05218
2. 42–233–00000–0000
3. 108 000 000
4. J. M. Huber Corporation
5. Stevenson A No. 15
6. Panhandle
7. Hutchinson, TX
8. .7 million cubic feet
9. January 28, 1980
10. Phillips Petroleum Company

1. 80–13610/05221
2. 42–233–00000–0000
3. 108 000 000
4. J. M. Huber Corporation
5. Stevenson A No. 21
6. Panhandle
7. Hutchinson, TX
8. .7 million cubic feet
9. January 28, 1980
10. Phillips Petroleum Company

1. 80–13611/05231
2. 42–233–00000–0000
3. 108 000 000
4. J. M. Huber Corporation
5. Stevenson A No. 5
6. Panhandle
7. Hutchinson, TX
8. .7 million cubic feet
9. January 28, 1980
10. Phillips Petroleum Company

1. 80–13612/05234
2. 42–233–00000–0000
3. 108 000 000
4. J. M. Huber Corporation
5. Stevenson A No. 2
6. Panhandle
7. Hutchinson, TX
8. .7 million cubic feet
9. January 28, 1980
10. Phillips Petroleum Company

1. 80–13613/05284
2. 42–233–00000–0000
3. 108 000 000
4. J. M. Huber Corporation
5. State AC No. 57
6. Panhandle
7. Hutchinson, TX
8. 1.7 million cubic feet
9. January 28, 1980
10. Phillips Petroleum Company

1. 80–13614/05300
2. 42–233–00000–0000
3. 108 000 000
4. J. M. Huber Corporation
5. State AC No. 54
6. Panhandle
7. Hutchinson, TX
8. 1.7 million cubic feet
9. January 28, 1980
10. Phillips Petroleum Company

1. 80–13615/05312
2. 42–233–00000–0000
3. 108 000 000
4. J. M. Huber Corporation
5. State AC No. 58
6. Panhandle
7. Hutchinson, TX
8. 1.7 million cubic feet
9. January 28, 1980
10. Phillips Petroleum Company

1. 80–13616/05367
2. 42–233–00000–0000
3. 108 000 000
4. J. M. Huber Corporation
5. Payne Herring No. 5
6. Panhandle
7. Hutchinson, TX
8. 3.2 million cubic feet
9. January 28, 1980
10. Phillips Petroleum Company

1. 80–13617/05972
2. 42–135–33070–0000
3. 103 000 000

4. Continental Oil Company
5. H. S. Foster A (16154) No. 17
6. Cowden South
7. Ector, TX
8. 3.6 million cubic feet
9. January 28, 1980
10. Phillips Petroleum Company

1. 80–13618/06290
2. 42–233–30607–0000
3. 103 000 000
4. Arco Oil and Gas Company
5. Ellis Cockrell No. 27
6. Panhandle Hutchinson
7. Hutchinson, TX
8. 11.0 million cubic feet
9. January 28, 1980
10. Getty Oil Company

1. 80–13619/09231
2. 42–235–31322–0000
3. 103 000 000
4. Tucker Drilling Company Inc
5. Frank Lindley A No. 2
6. Christi (Canyon 6800)
7. Irion, TX
8. 108.0 million cubic feet
9. January 28, 1980
10. CRA Inc.

1. 80–13620/09234
2. 42–235–31323–0000
3. 103 000 000
4. Tucker Drilling Company Inc
5. Hezzie Carson No. 3
6. Christi (Canyon 6800)
7. Irion, TX
8. 45.0 million cubic feet
9. January 28, 1980
10. CRA Inc.

1. 80–13621/09236
2. 42–383–31261–0000
3. 103 000 000
4. Union Oil Company of Calif.
5. University Blk 49–6 No. 1
6. Block 49 (2450)
7. Reagan, TX
8. 4.0 million cubic feet
9. January 28, 1980
10. Big Lake Gas Company

1. 80–13622/09237
2. 42–383–31330–0000
3. 103 000 000
4. Union Oil Company of Calif.
5. University 49–7 No. 1
6. Block 49 (2450)
7. Reagan, TX
8. 5.0 million cubic feet
9. January 28, 1980
10. Big Lake Gas Corporation

1. 80–13623/09241
2. 42–393–30672–0000
3. 103 000 000
4. Amarillo Oil Company
5. Flowers D No. 3–7
6. Mendota NW (Granite Wash SW)
7. Roberts, TX
8. 200.0 million cubic feet
9. January 28, 1980
10. Pioneer Natural Gas Company

1. 80–13624/09394
2. 42–481–31632–0000
3. 103 000 000
4. Goldston Oil Corporation
5. Lissie Gas Unit Well No. 1 81193
6. Lissie (Wilcox 9600)
7. Wharton, TX
8. 365.0 million cubic feet
9. January 28, 1980
10. Tennessee Gas Pipeline Company

1. 80–13625/10503
2. 42–483–00000–0000
3. 108 000 000
4. E. F. Troxell
5. Hall No. 2 02390
6. Panhandle
7. Wheeler, TX
8. 1.8 million cubic feet
9. January 28, 1980
10. Rael Gas Company

1. 80–13626/10504
2. 42–433–00000–0000
3. 108 000 000
4. E. F. Troxell
5. J. A. Hall No. 1 02390
6. Panhandle
7. Wheeler, TX
8. 1.8 million cubic feet
9. January 28, 1980
10. Rael Gas Company

1. 80–13627/10505
2. 42–433–00000–0000
3. 108 000 000
4. E. F. Troxell
5. Risk No. 1 40710
6. East Panhandle
7. Wheeler, TX
8. 7.3 million cubic feet
9. January 28, 1980
10. El Paso Natural Gas Company

Virginia Department of Labor and Industry, Division of Mines and Quarries

1. Control number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80–13628
2. 45–051–20315–0003
3. 103 000 000
4. Philadelphia Oil Company
5. P–89—Tarpon Coal & Coke Company
6. Nora
7. Dickenson, VA
8. 43.0 million cubic feet
9. January 28, 1980
10. Kentucky West Virginia Gas Company

West Virginia Department of Mines, Oil and Gas Division

1. Control Number (F.E.R.C./State)
2. API Well Number
3. Section of NGPA
4. Operator
5. Well Name
6. Field or OCS Area Name
7. County, State or Block No.
8. Estimated Annual Volume
9. Date Received at FERC
10. Purchaser(s)

1. 80–13638
2. 47–021–03370–0000
3. 108 000 000
4. Pennzoil Company
5. M D Allman #2
6. Troy
7. Gilmer, WV
8. 1.1 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13639
2. 47–021–03352–0000
3. 108 000 000
4. Pennzoil Company
5. C D Jefferies #1
6. Troy
7. Gilmer, WV
8. 1.2 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13640
2. 47–021–03354–0000
3. 108 000 000
4. Pennzoil Company
5. Lively Heirs #1
6. Troy
7. Gilmer, WV
8. 1.2 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13641
2. 47–021–03355–0000
3. 108 000 000
4. Pennzoil Company
5. Lively Heirs #2
6. Troy
7. Gilmer, WV
8. 1.2 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13642
2. 47–021–03356–0000
3. 108 000 000
4. Pennzoil Company
5. Lively Heirs #3
6. Troy
7. Gilmer, WV
8. 1.2 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13643
2. 47–027–03359–0000
3. 108 000 000
4. Pennzoil Company
5. Zeta O Lively #2
6. Troy
7. Gilmer, WV
8. 1.2 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13644
2. 47–021–03363–0000
3. 108 000 000
4. Pennzoil Company
5. Scott Mason #5
6. Troy
7. Gilmer, WV
8. 1.2 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13645
2. 47–021–03364–0000
3. 108 000 000
4. Pennzoil Company
5. Scott Mason #6
6. Troy
7. Gilmer, WV
8. 1.2 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13646

2. 47–021–03365–0000
3. 108 000 000
4. Pennzoil Company
5. Scott Mason #7
6. Troy
7. Gilmer, WV
8. 1.2 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13647
2. 47–033–00388–0000
3. 108 000 000
4. Pennzoil Company
5. Hallie S Haught #1
6. Buffalo
7. Harrison, WV
8. 1.9 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13648
2. 47–033–01304–0000
3. 108 000 000
4. Pennzoil Company
5. D W Rogers #1
6. Sardis
7. Harrison, WV
8. 3.9 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13649
2. 47–015–20206–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal #T–48
6. Pleasant
7. Clay, WV
8. 3.9 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13650
2. 47–015–20209–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal #T–49
6. Pleasant
7. Clay, WV
8. 3.9 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13651
2. 47–021–20019–0000
3. 108 000 000
4. Southeastern Gas Company
5. S A Hays #685
6. Center
7. Gilmer, WV
8. 1.0 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13652
2. 47–015–20843–0000
3. 108 000 000
4. Southeastern Gas Company
5. Mathews Scott & Price #T–126
6. Henry
7. Clay, WV
8. 6.6 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13653
2. 47–015–20838–0000
3. 108 000 000
4. Southeastern Gas Company
5. Mathews Scott & Price #T–125
6. Henry
7. Clay, WV
8. 6.6 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13654
2. 47–015–20831–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal #T–124
6. Pleasant
7. Clay, WV
8. 3.9 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13655
2. 47–015–20801–0000
3. 108 000 000
4. Southeastern Gas Company
5. Osman E Swartz #T–122
6. Union
7. Clay, WV
8. 12.7 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13656
2. 47–015–20757–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal #T–123
6. Pleasant
7. Clay, WV
8. 3.9 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13657
2. 47–015–20717–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal #T–121
6. Pleasant
7. Clay, WV
8. 3.9 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13658
2. 47–015–20707–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal #T–119
6. Pleasant
7. Clay, WV
8. 3.9 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13659
2. 47–015–20713–0000
3. 108 000 000
4. Southeastern Gas Company
5. G W Butcher #T–120
6. Henry
7. Clay, WV
8. 1.9 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13660
2. 47–015–20705–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal #T–118
6. Pleasant
7. Clay, WV
8. 3.9 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13661
2. 47–015–20680–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal #T–116
6. Pleasant
7. Clay, WV
8. 3.9 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13662
2. 47–015–20696–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal #T–117
6. Pleasant
7. Clay, WV
8. 3.9 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13663
2. 47–015–20181–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal #T–41
6. Pleasant
7. Clay, WV
8. 3.9 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13664
2. 47–015–20182–0000
3. 108 000 000
4. Southeastern Gas Company
5. Howard Arbogast #T–42
6. Pleasant
7. Clay, WV
8. 2.1 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13665
2. 47–015–20187–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal #T–43
6. Pleasant
7. Clay, WV
8. 3.9 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13666
2. 47–015–20156–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal #T–37
6. Pleasant
7. Clay, WV
8. 3.9 Million Cubic Feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13667
2. 47–015–20157–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal #T–36
6. Pleasant
7. Clay, WV
8. 3.9 million cubic feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13668
2. 47–015–20168–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal #T–39
6. Pleasant

7. Clay, WV
8. 3.9 million cubic feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13669
2. 47–015–20170–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal #T–40
6. Pleasant
7. Clay, WV
8. 3.9 million cubic feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13670
2. 47–015–20653–0000
3. 108 000 000
4. Southeastern Gas Company
5. Mathews Scott & Price #T–113
6. Henry
7. Clay, WV
8. 6.6 million cubic feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13671
2. 47–015–20671–0000
3. 108 000 000
4. Southeastern Gas Company
5. Wanita King #T–115
6. Henry
7. Clay, WV
8. 2.9 million cubic feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13672
2. 47–015–20223–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal #T–52
6. Pleasant
7. Clay, WV
8. 3.9 million cubic feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13673
2. 47–015–20144–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal #T–31
6. Pleasant
7. Clay, WV
8. 3.9 million cubic feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13674
2. 47–015–20148–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal #T–33
6. Pleasant
7. Clay, WV
8. 3.9 million cubic feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13675
2. 47–015–20149–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal #T–34
6. Pleasant
7. Clay, WV
8. 3.9 million cubic feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13676
2. 47–015–20150–0000
3. 108 000 000
4. Southeastern Gas Company
5. C E Lewis #T–35
6. Pleasant
7. Clay, WV
8. 4.9 million cubic feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13677
2. 47–015–20189–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal #T–44
6. Pleasant
7. Clay, WV
8. 3.9 million cubic feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13678
2. 47–015–20200–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal #T–45
6. Pleasant
7. Clay, WV
8. 3.9 million cubic feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13679
2. 47–015–20205–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal #T–47
6. Pleasant
7. Clay, WV
8. 3.9 million cubic feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13680
2. 47–015–20637–0000
3. 108 000 000
4. Southeastern Gas Company
5. Osman E Swartz #T–112
6. Henry
7. Clay, WV
8. 7.6 million cubic feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13681
2. 47–015–20251–0000
3. 108 000 000
4. Southeastern Gas Company
5. Mathews Scott & Price #T–54
6. Henry
7. Clay, WV
8. 6.6 million cubic feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13682
2. 47–015–20272–0000
3. 108 000 000
4. Southeastern Gas Company
5. Samuel King #T–55
6. Henry
7. Clay, WV
8. .3 million cubic feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13683
2. 47–015–20380–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal #T–65
6. Pleasant
7. Clay, WV
8. 3.9 million cubic feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13684
2. 47–015–20397–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal #T–67
6. Pleasant
7. Clay, WV
8. 3.9 million cubic feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13685
2. 47–015–20420–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal #T–69
6. Pleasant
7. Clay, WV
8. 3.9 million cubic feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13686
2. 47–015–20551–0000
3. 108 000 000
4. Southeastern Gas Company
5. H E Shadle #T–108
6. Henry
7. Clay, WV
8. 3.7 million cubic feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13687
2. 47–015–20560–0000
3. 108 000 000
4. Southeastern Gas Company
5. Ida Caldwell #T–110
6. Henry
7. Clay, WV
8. 2.5 million cubic feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13688
2. 47–015–20574–0000
3. 108 000 000
4. Southeastern Gas Company
5. Mathews Scott & Price #T–109
6. Henry
7. Clay, WV
8. 6.6 million cubic feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13689
2. 47–015–20611–0000
3. 108 000 000
4. Southeastern Gas Company
5. Mathews Scott & Price #T–111
6. Henry
7. Clay, WV
8. 6.6 million cubic feet
9. January 29, 1980
10. Consolidated Gas Supply Corp

1. 80–13790
2. 47–005–00432–0000
3. 108 000 000
4. Cameron Oil & Gas Company
5. George P Alderson #5
6.
7. Boone, WV
8. .5 million cubic feet
9. January 31, 1980
10. Columbia Gas Transmission Corp

1. 80–13791

2. 47–021–21577–0000
3. 108 000 000
4. R & S Gas Company
5. Frank Stalnaker No. 2
6. Troy District
7. Gilmer, WV
8. 12.0 million cubic feet
9. January 31, 1980
10. Equitable Gas Company

1. 80–13792
2. 47–109–00143–0000
3. 108 000 000
4. P & S Oil and Gas Corp
5. Crouch #2
6. Oceana
7. Wyoming, WV
8. 6.9 million cubic feet
9. January 31, 1980
10. Consolidated Gas Supply Corp

1. 80–13793
2. 47–021–22825–0000
3. 108 000 000
4. Doran & Associates Inc
5. Snodgrass K–H–6
6. Center
7. Gilmer, WV
8. 20.0 million cubic feet
9. January 31, 1980
10. Consolidated Gas Supply Corp

1. 80–13794
2. 47–087–20218–0000
3. 108 000 000
4. J C Liming Agent
5. Nancy A Tawney #1
6. Geary
7. Roane, WV
8. 1.2 million cubic feet
9. January 31, 1980
10. Columbia Gas Transmission Corp

1. 80–13795
2. 47–013–22564–0000
3. 108 000 000
4. Rockwell Petroleum Company
5. Stump I–97
6. Sherman
7. Calhoun, WV
8. 3.0 million cubic feet
9. January 31, 1980
10. Consolidated Gas Supply Corp

1. 80–13796
2. 47–021–21485–0000
3. 108 000 000
4. Jones Oil and Gas Company
5. Z V Jones No 1
6. Little Ellis
7. Gilmer, WV
8. 4.5 million cubic feet
9. January 31, 1980
10. Consolidated Gas Supply Corp

1. 80–13797
2. 47–021–20032–0000
3. 108 000 000
4. B & G Oil & Gas Company
5. Weaver #2
6. DeKalb
7. Gilmer WV
8. 2.0 million cubic feet
9. January 31, 1980
10. Consolidated Gas Supply Corporation

1. 80–13798
2. 47–021–21507–0000
3. 108 000 000
4. Ellyson Oil & Gas Co
5. Ellyson Oil & Gas Co No 2
6. DeKalb
7. Gilmer WV
8. 1.1 million cubic feet
9. January 31, 1980
10. Consolidated Gas Supply Corporation

1. 80–13799
2. 47–005–00463–0000
3. 108 000 000
4. Cameron Oil & Gas Company
5. George P Alderson #10–A
6.
7. Boone WV
8. 1.2 million cubic feet
9. January 31, 1980
10. Columbia Gas Transmission Corp

1. 80–13800
2. 47–005–00801–0000
3. 108 000 000
4. Cameron Oil & Gas Company
5. George P Alderson #7
6.
7. Boone WV
8. .5 million cubic feet
9. January 31, 1980
10. Columbia Gas Transmission Corp

1. 80–13801
2. 47–005–00814–0000
3. 108 000 000
4. Cameron Oil & Gas Company
5. George P Alderson #6
6.
7. Boone WV
8. .5 million cubic feet
9. January 31, 1980
10. Columbia Gas Transmission Corp

1. 80–13802
2. 47–021–21479–0000
3. 108 000 000
4. Denver D Roberts
5. Rex Frymyer
6. Troy
7. Gilmer WV
8. 1.2 million cubic feet
9. January 31, 1980
10. Equitable Gas Co

1. 80–13803
2. 47–021–20196–0000
3. 108 000 000
4. R & S Gas Company
5. L F Wolfe #1
6. Glenville District
7. Gilmer WV
8. 3.5 million cubic feet
9. January 31, 1980
10. Carnegie Natural Gas Company

1. 80–13804
2. 47–021–21876–0000
3. 108 000 000
4. R & S Gas Company
5. Frank Stalnaker No 3
6. Troy District
7. Gilmer WV
8. 12.0 million cubic feet
9. January 31, 1980
10. Equitable Gas Company

1. 80–13805
2. 47–013–22943–0000
3. 108 000 000
4. R & S Gas Company
5. Gainer-Hickman No 1
6. Sherman District
7. Calhoun WV
8. 8.0 million cubic feet
9. January 31, 1980
10. Cabot Corporation

1. 80–13806
2. 47–085–20870–0000
3. 108 000 000
4. R & S Gas Company
5. Elizabeth Campbell No 2
6. Murphy District
7. Ritchie WV
8. 4.0 million cubic feet
9. January 31, 1980
10. Cabot Corporation

1. 80–13807
2. 47–021–20975–0000
3. 108 000 000
4. R & S Gas Company
5. Edward Reynolds No 1
6. DeKalb District
7. Gilmer WV
8. 1.5 million cubic feet
9. January 31, 1980
10. Consolidated Gas Supply Corp

1. 80–13808
2. 47–021–21006–0000
3. 108 000 000
4. R & S Gas Company
5. Edward Reynolds No 3
6. DeKalb District
7. Gilmer WV
8. 1.5 million cubic feet
9. January 31, 1980
10. Consolidated Gas Supply Corp

1. 80–13809
2. 47–083–20182–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. J M Huber #29
6. Middle Fork
7. Randolph WV
8. 2.0 million cubic feet
9. January 31, 1980
10. Equitable Gas Co

1. 80–13810
2. 47–083–20183–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. J M Huber #30
6. Middle Fork
7. Randolph WV
8. 2.0 million cubic feet
9. January 31, 1980
10. Equitable Gas Co

1. 80–13811
2. 47–083–20185–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. J M Huber #37
6. Middle Fork
7. Randolph WV
8. 3.0 million cubic feet
9. January 31, 1980
10. Equitable Gas Co

1. 80–13812
2. 47–083–20184–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. J M Huber #31
6. Middle Fork
7. Randolph WV
8. 2.0 million cubic feet
9. January 31, 1980
10. Equitable Gas Co

1. 80–13813
2. 47–005–00025–0000
3. 108 000 000
4. Cameron Oil & Gas company
5. George P Alderson #13
6.

7. Boone WV
8. 1.2 million cubic feet
9. January 31, 1980
10. Columbia Gas Transmission Corp

1. 80–13814
2. 47–005–00026–0000
3. 108 000 000
4. Cameron Oil & Gas Company
5. George P Alderson #15
6.
7. Boone WV
8. 1.2 million cubic feet
9. January 31, 1980
10. Columbia Gas Transmission Corp

1. 80–13815
2. 47–005–00408–0000
3. 108 000 000
4. Cameron Oil & Gas Company
5. George P Alderson #4–A
6.
7. Boone WV
8. .5 million cubic feet
9. January 31, 1980
10. Columbia Gas Transmission Corp

1. 80–13816
2. 47–021–21951–0000
3. 108 000 000
4. Denver D Roberts
5. Frymyer Heirs
6. Troy
7. Gilmer WV
8. 12.0 million cubic feet
9. January 31, 1980
10. Equitable Gas Co

1. 80–13817
2. 47–021–21974–0000
3. 108 000 000
4. Denver D Roberts
5. C V Robbins #1
6. Troy
7. Gilmer WV
8. 5.5 million cubic feet
9. January 31, 1980
10. Equitable Gas Co

1. 80–13818
2. 47–097–21717–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. J M Huber #27
6. Banks
7. Upshur WV
8. 3.0 million cubic feet
9. January 31, 1980
10. Equitable Gas Co

1. 80–13819
2. 47–097–21720–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. J M Huber #25
6. Washington
7. Upshur WV
8. 2.0 million cubic feet
9. January 31, 1980
10. Equitable Gas Co

1. 80–13820
2. 47–097–21721–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. J M Huber #26
6. Washington
7. Upshur WV
8. 2.0 million cubic feet
9. January 31, 1980
10. Equitable Gas Co

1. 80–13821
2. 47–097–21749–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. J M Huber #33
6. Washington
7. Upshur WV
8. 5.0 million cubic feet
9. January 31, 1980
10. Equitable Gas Co

1. 80–13822
2. 47–097–21755–0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. J M Huber #36
6. Washington
7. Upshur WV
8. 2.0 million cubic feet
9. January 31, 1980
10. Equitable Gas Co

1. 80–13823
2. 47–043–00348–0000
3. 108 000 000
4. Cameron Oil & Gas company
5. George P Alderson #1
6.
7. Lincoln WV
8. .5 million cubic feet
9. January 31, 1980
10. Columbia Gas Transmission Corp

1. 80–13824
2. 47–021–20035–0000
3. 108 000 000
4. B & G Oil & Gas Company
5. Amos #2
6. DeKalb
7. Gilmer WV
8. 3.0 million cubic feet
9. January 31, 1980
10. Consolidated Gas Supply Corp

1. 80–13825
2. 47–035–01216–0000
3. 108 000 000
4. Devon Corporation
5. #801 K H Armentrout et al
6. North Ripley
7. Jackson WV
8. 7.5 million cubic feet
9. January 31, 1980
10. Columbia Gas Transmission Corp

1. 80–13826
2. 47–035–01002–0000
3. 108 000 000
4. Devon Corporation
5. #657 Florida Casto
6.
7. Jackson WV
8. 6.0 million cubic feet
9. January 31, 1980
10. Consolidated Gas Supply Corp

1. 80–13827
2. 47–007–20392–0000
3. 108 000 000
4. R & S Gas Company
5. C D Floyd No 2
6. Salt Lick District
7. Braxton WV
8. 2.0 million cubic feet
9. January 31, 1980
10. Equitable Gas Company

1. 80–13828
2. 47–043–00240–A000
3. 108 000 000
4. Cameron Oil & Gas Company
5. George P Alderson #3
6.
7. Lincoln WV
8. .5 million cubic feet
9. January 31, 1980
10. Columbia Gas Transmission Corp

1. 80–13829
2. 47–083–00024–0000
3. 108 000 000
4. Randolph Gas Co
5. Hutton #1
6. Middle Fork District
7. Randolph WV
8. 7.1 million cubic feet
9. January 31, 1980
10. Columbia Gas Transmission Co

1. 80–13830
2. 47–021–22002–0000
3. 108 000 000
4. Denver D Roberts
5. C S Despard #A–1
6. Troy
7. Gilmer WV
8. 2.5 million cubic feet
9. January 31, 1980
10. Equitable Gas Co

1. 80–13831
2. 47–041–21181–0000
3. 108 000 000
4. Denver D Roberts
5. John C & Ina T Hersman
6. Hackers Creek
7. Lewis WV
8. 8.2 million cubic feet
9. January 31, 1980
10. Columbia Gas Transmission Corp

1. 80–13832
2. 47–041–21197–0000
3. 108 000 000
4. Denver D Roberts
5. Enoch Hinzmans Heirs #1
6. Hackers Creek
7. Lewis WV
8. 1.7 million cubic feet
9. January 31, 1980
10. Columbia Gas Transmission Corp

1. 80–13833
2. 47–021–21293–0000
3. 108 000 000
4. Denver D Roberts
5. Fidler Heirs
6. Troy
7. Gilmer WV
8. 6.5 million cubic feet
9. January 31, 1980
10. Equitable Gas Company

1. 80–13834
2. 47–021–21532–0000
3. 108 000 000
4. Denver D Roberts
5. C S Despard #2
6. Troy
7. Gilmer WV
8. 9.7 million cubic feet
9. January 31, 1980
10. Equitable Gas Company

1. 80–13835
2. 47–021–21854–0000
3. 108 000 000
4. Denver D Roberts
5. Myrth Weaver #1
6. Dekale
7. Gilmer WV
8. 2.4 million cubic feet
9. January 31, 1980
10. Equitable Gas Company

1. 80–13836

2. 47-021-21250-0000
3. 108 000 000
4. Denver D Roberts
5. Stalmaker #1
6. Troy
7. Gilmer WV
8. 2.9 million cubic feet
9. January 31, 1980
10. Equitable Gas Company

1. 80-13837
2. 47-083-00120-0000
3. 108 000 000
4. Randolph Gas Co
5. Hutton #2
6. Middle Fork District
7. Randolph WV
8. 7.1 million cubic feet
9. January 31, 1980
10. Columbia Gas Transmission Co

1. 80-13838
2. 47-021-21232-0000
3. 108 000 000
4. Denver D Roberts
5. A E Teters #1
6. Troy
7. Gilmer WV
8. 1.5 million cubic feet
9. January 31, 1980
10. Equitable Gas Co

1. 80-13839
2. 47-005-00421-0000
3. 108 000 000
4. Cameron Oil & Gas Company
5. George P Alderson #2
6.
7. Boone WV
8. .5 million cubic feet
9. January 31, 1980
10. Columbia Gas Transmission Corp

U.S. Geological Survey, Metairie, La.

1. Control Number (F.E.R.C./State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or Block No.
8. Estimated Annual Volume
9. Date Received at FERC
10. Purchaser(s)

1. 80-13632/G9-965
2. 17-702-40484-0100-0
3. 102 000 000
4. Pennzoil Co
5. Pennzoil Company #A-7
6. West Cameron
7. 563
8. 1098.0 million cubic feet
9. January 28, 1980
10. Sea Robin Pipeline Company

1. 80-13633/G9-969
2. 17-709-40324-00D2-0
3. 102 000 000
4. Pennzoil Co
5. Pennzoil Company No A-2
6. Eugene Island
7. 256
8. 308.0 million cubic feet
9. January 28, 1980
10. United Gas Pipe Line Company Southern Natural Gas Co Sea Robin Pipeline Co Tenn Gas P/L; Texas Eastern

1. 80-13634/G9-972
2. 17-702-40449-0000-0
3. 102 000 000
4. Pennzoil Co
5. Pennzoil Company #A-1 Alt
6. West Cameron
7. 563
8. 417.8 million cubic feet
9. January 28, 1980
10. Sea Robin Pipeline Company

1. 80-13635/G9-974
2. 17-709-40349-0000-0
3. 102 000 000
4. Pennzoil Co
5. Pennzoil Company No A-5 Alt
6. Eugene Island
7. 256
8. .0 million cubic feet
9. January 28, 1980
10. United Gas Pipe Line Company Southern Natural Gas Co Sea Robin Pipeline Co Tenn Gas P/L; Texas Eastern

1. 80-13636/G9-989
2. 17-709-40321-00S1-0
3. 102 000 000
4. Pennzoil Co
5. Pennzoil Company No A-11
6. Eugene Island
7. 261
8. 33.0 million cubic feet
9. January 28, 1980
10. Sea Robin Pipeline Company United Gas Pipeline Co Southern Natural Gas; Trans Co Northern Natural; Sea Robin

1. 80-13750/G9-948
2. 17-720-40050-00D3-0
3. 102 000 000
4. Gulf Oil Corporation
5. OCS G-1101 #F-13D W D Blk 117
6. West Delta
7. 117
8. 16.0 million cubic feet
9. January 29, 1980
10. Texas Eastern Transmission Corp

1. 80-13752/G9-997
2. 17-709-40306-00D2-0
3. 102 000 000
4. Pennzoil Co
5. Pennzoil Co No A-8D
6. Eugene Island
7. 261
8. 776.0 million cubic feet
9. January 29, 1980
10. Sea Robin Pipeline Company United Gas Pipeline Southern Natural Gas Co Transcontinental; Northern Natural

1. Control Number (F.E.R.C./State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or Block No.
8. Estimated Annual Volume
9. Dated Received at FERC
10. Purchaser(s)

1. 80-13629/G9-786
2. 42-709-40270-0000-0
3. 102 000 000
4. Sun Oil Company
5. OCS-G-2694 #A-15
6. High Island-So Add
7. A-511
8. 365.0 million cubic feet
9. January 28, 1980
10. Trunkline Gas Co Natural Gas Pipeline Co Northern Natural Gas Co

1. 80-13630/G9-787
2. 42-709-40232-0000-0
3. 102 000 000
4. Sun Oil Company
5. OCS-G-2694 #A-10
6. High Island-So Add
7. A-511
8. 913.0 million cubic feet
9. January 28, 1980
10. Trunkline Gas Co Natural Gas Pipeline Co Northern Natural Gas Co

1. 80-13631/G9-788
2. 42-709-40267-0000-0
3. 102 000 000
4. Sun Oil Company
5. OCS-G-2694 #A-14
6. High Island-So Add
7. A-511
8. 365.0 million cubic feet
9. January 28, 1980
10. Trunkline Gas Co Natural Gas Pipeline Co Northern Natural Gas Co

1. 80-13637/G9-999
2. 42-711-40440-0000-0
3. 102 000 000
4. Aminoil Development Inc
5. OCS-G-3286 No B-12
6. West Cameron
7. 613
8. 5475.0 million cubic feet
9. January 28, 1980
10. Natural Gas Pipeline Company of Ame National Fuel Gas Supply Corp United Gas P/L; Transco Tenn Gas P/L; Mich Wisc P/L

1. 80-13746/G9-944
2. 42-711-40327-0002-0
3. 102 000 000
4. Mesa Petroleum Co
5. High Island Blk A-313 A-10
6. High Island
7. A-313
8. 2190.0 million cubic feet
9. January 29, 1980
10. Michigan-Wisconsin Pipeline Company Transco Gas Supply Co Transcontinental Gas Pipeline Corp United Gas Pipeline Co

1. 80-13747/G9-945
2. 42-711-40367-00S1-0
3. 102 000 000
4. Mesa Petroleum Co
5. High Island Blk A-313 #A-4
6. High Island
7. A-313
8. 3285.0 million cubic feet
9. January 29, 1980
10. Michigan-Wisconsin Pipeline Company Transco Gas Supply Co Transcontinental Gas Pipeline Corp United Gas Pipeline Co

1. 80-13748/G9-946
2. 42-711-40363-01S1-0
3. 102 000 000
4. Mesa Petroleum Co
5. High Island Blk A-313 #A-6
6. High Island
7. A-313
8. 1460.0 million cubic feet
9. January 29, 1980
10. Michigan-Wisconsin Pipeline Company Transco Gas Supply Co Transcontinental Gas Pipeline Corp United Gas Pipeline Co

1. 80-13749/G9-947
2. 42-711-40387-00S1-0
3. 102 000 000
4. Mesa Petroleum Co
5. High Island Blk A-313 #A-8

6. High Island
7. A–313
8. 1460.0 million cubic feet
9. January 29, 1980
10. Michigan-Wisconsin Pipeline Company Transco Gas Supply Co Transcontinental Gas Pipeline Corp United Gas Pipeline Co

1. 80–13751/G9–963
2. 42–711–40327–00D1–0
3. 102 000 000
4. Mesa Petroleum Co
5. High Island Blk A–313 #A–1
6. High Island
7. A–313
8. 3285.0 million cubic feet
9. January 29, 1980
10. Michigan-Wisconsin Pipeline Company Transco Gas Supply Co Transcontinental Gas Pipeline Corp United Gas Pipeline Co

1. Control Number (F.E.R.C./State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or Block No.
8. Estimated Annual volume
9. Dated Received at FERC
10. Purchaser(s)

1. 80–13716/NM–4585–79
2. 30–045–20942–0000–0
3. 108 000 000
4. Amoco Production Company
5. Ute Mountain Tribal D #3
6. Ute Dome Dakota
7. San Juan NM
8. 1.4 million cubic feet
9. January 29, 1980
10. El Paso Natural Gas Company

1. 80–13717/NM–4588–79
2. 30–039–22016–0000–0
3. 103 000 000
4. Palmer Oil & Gas Company
5. Apache–JVA #7
6. Blanco-Mesaverde
7. Rio Arriba NM
8. 140.0 million cubic feet
9. January 29, 1980
10. Northwest Pipeline Corporation

1. 80–13718/NM–4593–79
2. 30–005–60490–0000–0
3. 102 000 000
4. Depco Inc
5. Sundance Federal A #1
6. Wildcat
7. Chaves NM
8. 182.0 million cubic feet
9. January 29, 1980
10.

1. 80–13719/NM–4594–79
2. 30–043–20372–0000–0
3. 103 000 000
4. Southland Royalty Company
5. Jicarilla 443 #1
6. Undesignated Pictured Cliffs
7. Sandoval NM
8. 75.0 million cubic feet
9. January 29, 1980
10. El Paso Natural Gas Company

1. 80–13720/NM–4596–79
2. 30–015–22749–0000–0
3. 103 000 000
4. Perry R Bass
5. Big Eddy Unit No 68
6. Wildcat Morrow
7. Eddy County NM
8. 271.6 million cubic feet
9. January 29, 1980
10. Natural Gas Pipeline Company of Ame

1. 80–13721/NM–4597–79
2. 30–015–22859–0000–0
3. 103 000 000
4. Perry R Bass
5. Big Eddy Unit No 72
6. Wildcat Morrow
7. Eddy County NM
8. 404.0 million cubic feet
9. January 29, 1980
10. Natural Gas Pipeline Company of Ame

1. 80–13722/NM–4604–79
2. 30–025–24789–0000–0
3. 108 000 000
4. Conoco Inc
5. Jack A–20 No 10
6. NMFU–Jalmat Tansill Yates 7 Rivers
7. Lea NM
8. 4.0 million cubic feet
9. January 29, 1980
10. El Paso Natural Gas Co

1. 80–13723/NM–4605–79
2. 30–015–00828–0000–0
3. 108 000 000
4. Arco Oil and Gas Company
5. West Red Lake Unit #18
6. Red Lake
7. Eddy NM
8. 8.0 million cubic feet
9. January 29, 1980
10. Phillips Petroleum Co

1. 80–13724/NM–4606–79
2. 30–005–20153–0000–0
3. 108 000 000
4. Arco Oil and Gas Company
5. Winkler Federal Well #8
6. Cato
7. Chaves NM
8. 3.6 million cubic feet
9. January 29, 1980
10. Cities Service Company

1. 80–13725/NM–4607–79
2. 30–005–20189–0000–0
3. 108 000 000
4. Arco Oil and Gas Company
5. Winkler Federal Well #11
6. Cato
7. Chaves NM
8. 2.4 million cubic feet
9. January 29, 1980
10. Cities Service Company

1. 80–13726/NM–4608–79
2. 30–005–20126–0000–0
3. 108 000 000
4. Arco Oil and Gas Company
5. Winkler Federal Well #1
6. Cato
7. Chaves NM
8. 12.0 million cubic feet
9. January 29, 1980
10. Cities Service Company

1. 80–13727/NM–4609–79
2. 30–005–20190–0000–0
3. 108 000 000
4. Arco Oil and Gas Company
5. Winkler Federal Well #12
6. Cato
7. Chaves NM
8. 2.4 million cubic feet
9. January 29, 1980
10. Cities Service Company

1. 80–13728/NM–4610–79
2. 30–005–20141–0000–0
3. 108 000 000
4. Arco Oil and Gas Company
5. Winkler Federal Well #4
6. Cato
7. Chaves NM
8. 3.0 million cubic feet
9. January 29, 1980
10. Cities Service Company

1. 80–13729/NM–4611–79
2. 30–005–20188–0000–0
3. 108 000 000
4. Arco Oil and Gas Company
5. Winkler Federal Well #10
6. Cato
7. Chaves NM
8. .2 million cubic feet
9. January 29, 1980
10. Cities Service Company

1. 80–13730/NM–4612–79
2. 30–005–20140–0000–0
3. 108 000 000
4. Arco Oil and Gas Company
5. Winkler Federal Well #3
6. Cato
7. Chaves NM
8. 3.6 million cubic feet
9. January 29, 1980
10. Cities Service Company

1. 80–13731/NM–4613–79
2. 30–005–20152–0000–0
3. 108 000 000
4. Arco Oil and Gas Company
5. Winkler Federal Well #7
6. Cato
7. Chaves NM
8. 2.4 million cubic feet
9. January 29, 1980
10. Cities Service Company

1. 80–13732/NM–4614–79
2. 30–005–20150–0000–0
3. 108 000 000
4. Arco Oil and Gas Company
5. Winkler Federal Well #5
6. Cato
7. Chaves NM
8. 1.2 million cubic feet
9. January 29, 1980
10. Cities Service Company

1. 80–13733/NM–4615–79
2. 30–005–20151–0000–0
3. 108 000 000
4. Arco Oil and Gas Company
5. Winkler Federal Well #6
6. Cato
7. Chaves NM
8. 1.2 million cubic feet
9. January 29, 1980
10. Cities Service Company

1. 80–13734/NM–4622–79
2. 30–005–60551–0000–0
3. 103 000 000
4. Depco Inc
5. Exxon Federal Com #1
6. Wildcat
7. Chaves NM
8. 182.0 million cubic feet
9. January 29, 1980
10. El Paso Natural Gas Company

1. 80–13735/NM–4623–79
2. 30–025–00000–0000–0
3. 108 000 000
4. Conoco Inc
5. Ascarate C–24 #1
6. NMFU-Jalmat Tansill Yates 7 Rivers

7. Lea NM
8. 3.0 million cubic feet
9. January 29, 1980
10. El Paso Natural Gas Co
1. 80–13736/NM–4624–79
2. 30–015–22726–0000–0
3. 102 000 000
4. Mesa Petroleum Co
5. Wells Federal #1
6.
7. Eddy NM
8. 1000.0 million cubic feet
9. January 29, 1980
10. Northern Natural Gas Company
1. 80–13737/NM–4626–79
2. 30–045–23491–0000–0
3. 103 000 000
4. Tenneco Oil Company
5. Vandewart B–2
6. Basin Dakota
7. San Juan NM
8. 250.0 million cubic feet
9. January 29, 1980
10. El Paso Natural Gas Company
1. 80–13738/NM–4627–79
2. 30–045–23434–0000–0
3. 103 000 000
4. Tenneco Oil Company
5. Case A–2
6. Basin Dakota
7. San Juan NM
8. 250.0 million cubic feet
9. January 29, 1980
10. El Paso Natural Gas Company
1. 80–13739/NM–4628–79
2. 30–045–23344–0000–0
3. 103 000 000
4. Tenneco Oil Company
5. Wilch #2
6. Basin Dakota
7. San Juan NM
8. 250.0 million cubic feet
9. January 29, 1980
10. El Paso Natural Gas Company
1. 80–13762/NM–3435–79
2. 30–039–05937–0000–0
3. 108 000 000
4. AMOCO Production Company
5. Jicarilla Contract 148 #8
6. South Blanco-Pictured Cliffs
7. Rio Arriba NM
8. 6.0 million cubic feet
9. January 30, 1980
10. Northwest Pipeline
1. 80–13765/NM–4517–79
2. 30–039–20841–0000–0
3. 103 000 000
4. El Paso Natural Gas Company
5. San Juan 28–6 Unit #210
6. Basin Dakota
7. Rio Arriba NM
8. 110.0 million cubic feet
9. January 31, 1980
10. El Paso Natural Gas Company
1. 80–13766/NM–4516–79
2. 30–039–21873–0000–0
3. 103 000 000
4. El Paso Natural Gas Company
5. San Juan 28–6 Unit #2A
6. Blanco Mesaverde
7. Rio Arriba NM
8. 120.0 million cubic feet
9. January 31, 1980
10. El Paso Natural Gas Company
1. 80–13767/NM–4515–79
2. 30–039–21948–0000–0
3. 103 000 000
4. El Paso Natural Gas Company
5. San Juan 28–7 Unit #50A
6. Blanco Mesaverde
7. Rio Arriba NM
8. 160.0 million cubic feet
9. January 31, 1980
10. El Paso Natural Gas Company
1. 80–13768/NM–4514–79
2. 30–025–26304–0000–0
3. 103 000 000
4. Zia Energy Inc
5. Federal No 1
6. Eumont
7. Lea NM
8. 109.5 million cubic feet
9. January 31, 1980
10. El Paso Natural Gas Company
1. 80–13769/NM–4513–79
2. 30–045–22345–0000–0
3. 103 000 000
4. Tenneco Oil Company
5. Pritchard 3–A
6. Blanco Pictured Cliffs
7. San Juan NM
8. 90.0 million cubic feet
9. January 31, 1980
10. El Paso Natural Gas Company
1. 80–13770/NM–4512–79
2. 30–025–26335–0000–0
3. 103 000 000
4. Lewis B Burleson Inc
5. Federal #1
6. Jalmat Oil
7. Lea NM
8. 108.0 million cubic feet
9. January 31, 1980
10. El Paso Natural Gas Co
1. 80–13771/NM–4511–79
2. 30–039–21765–0000–0
3. 103 000 000
4. Jerome P McHugh
5. Chris #4
6. Blanco Mesaverde
7. Rio Arriba NM
8. 63.0 million cubic feet
9. January 31, 1980
10. Northwest Pipeline Corp
1. 80–13772/NM–4508–79
2. 30–039–21755–0000–0
3. 103 000 000
4. Jerome P McHugh
5. Jer #2
6. Choza Mesa Pictured Cliffs
7. Rio Arriba NM
8. 12.0 million cubic feet
9. January 31, 1980
10. El Paso Natural Gas Company
1. 80–13773/NM–4507–79
2. 30–045–22959–0000–0
3. 103 000 000
4. Jerome P McHugh
5. Chaco Plant #35
6. Nipp Pictured Cliffs Extension
7. San Juan NM
8. 34.0 million cubic feet
9. January 31, 1980
10. El Paso Natural Gas Company
1. 80–13774/NM–4506–79
2. 30–045–22161–0000–0
3. 103 000 000
4. Jerome P McHugh
5. Chaco Plant #20
6. WAW Fruitland PC
7. San Juan NM
8. 14.0 million cubic feet
9. January 31, 1980
10. El Paso Natural Gas Company
1. 80–13775/NM–4498–79
2. 30–045–22649–0000–0
3. 108 000 000
4. Southland Royalty Company
5. Cooper #9
6. Fulcher Kutz Pictured Cliffs
7. San Juan NM
8. 9.0 million cubic feet
9. January 31, 1980
10. Southern Union Gathering Company
1. 80–13776/NM–4497–79
2. 30–039–21945–0000–0
3. 103 000 000
4. El Paso Natural Gas Company
5. San Juan 28–7 Unit #21A
6. Blanco Mesaverde
7. Rio Arriba NM
8. 130.0 million cubic feet
9. January 31, 1980
10. El Paso Natural Gas Company
1. 80–13777/NM–4496–79
2. 30–039–21946–0000–0
3. 103 000 000
4. El Paso Natural Gas Company
5. San Juan 28–7 Unit #24A
6. Blanco Mesaverde
7. Rio Arriba NM
8. 75.0 million cubic feet
9. January 31, 1980
10. El Paso Natural Gas Company
1. 80–13778/NM–4495–79
2. 30–045–22811–0000–0
3. 103 000 000
4. El Paso Natural Gas Company
5. Vandewart A #6A
6. Blanco Mesaverde
7. San Juan NM
8. 260.0 million cubic feet
9. January 31, 1980
10. El Paso Natural Gas Company
1. 80–13779/NM–4494–79
2. 30–045–23373–0000–0
3. 103 000 000
4. El Paso Natural Gas Company
5. Bolin No. 1A
6. Blanco Mesaverde
7. San Juan, NM
8. 160.0 million cubic feet
9. January 31, 1980
10. El Paso Natural Gas Company
1. 80–13780/NM–4493–79
2. 30–045–23150–0000–0
3. 103 000 000
4. El Paso Natural Gas Company
5. Hughes A No. 1A
6. Blanco Mesaverde
7. San Juan, NM
8. 180.0 million cubic feet
9. January 31, 1980
10. El Paso Natural Gas Company
1. 80–13781/NM–4492–79
2. 30–045–23374–0000–0
3. 103 000 000
4. El Paso Natural Gas Company
5. Bolin A No. 1A
6. Blanco Mesaverde
7. San Juan, NM
8. 130.0 million cubic feet
9. January 31, 1980
10. El Paso Natural Gas Company
1. 80–13782/NM–4491–79

2. 30-045-23151-0000-0
3. 103 000 000
4. El Paso Natural Gas Company
5. Hughes A No. 4A
6. Blanco Mesaverde
7. San Juan, NM
8. 180.0 million cubic feet
9. January 31, 1980
10. El Paso Natural Gas Company

1. 80-13783/NM-4490-79
2. 30-045-23152-0000-0
3. 103 000 000
4. El Paso Natural Gas Company
5. Jones No. 2A
6. Blanco Mesaverde
7. San Juan, NM
8. 220.0 million cubic feet
9. January 31, 1980
10. El Paso Natural Gas Company

1. 80-13784/NM-4489-79
2. 30-045-22835-0000-0
3. 103 000 000
4. El Paso Natural Gas Company
5. Sunray B No. 2A
6. Blanco Mesaverde
7. San Juan, NM
8. 220.0 million cubic feet
9. January 31, 1980
10. El Paso Natural Gas Company

1. 80-13785/NM-4488-79
2. 30-039-00000-0000-0
3. 103 000 000
4. El Paso Natural Gas Company
5. San Juan 28-7 Unit No. 261
6. Basin Dakota
7. Rio Arriba, NM
8. 70.0 million cubic feet
9. January 31, 1980
10. El Paso Natural Gas Company

1. 80-13786/NM-4487-79
2. 30-039-21681-0000-0
3. 103 000 000
4. El Paso Natural Gas Company
5. San Juan 28-7 Unit No. 253
6. Basin Dakota
7. Rio Arriba, NM
8. 40.0 million cubic feet
9. January 31, 1980
10. El Paso Natural Gas Company

1. 80-13787/NM-4486-79
2. 30-039-21664-0000-0
3. 103 000 000
4. El Paso Natural Gas Company
5. San Juan 28-7 Unit No. 100
6. Basin Dakota
7. Rio Arriba, NM
8. 40.0 million cubic feet
9. January 31, 1980
10. El Paso Natural Gas Company

1. 80-13788/NM326-78B
2. 30-015-22355-0000-0
3. 103 000 000
4. Harvey E. Yates Company
5. Travis Deep Com No. 3
6. Travis Upper Pen (Canyon Completion)
7. Eddy, NM
8. 80.0 million cubic feet
9. January 31, 1980
10. El Paso Natural Gas Company

1. 80-13789/NM-4510-79
2. 30-039-21391-0000-0
3. 103 000 000
4. Jerome P. McHugh
5. Chris No. 3
6. Blanco Mesaverde
7. Rio Arriba, NM
8. 65.0 million cubic feet
9. January 31, 1980
10. Northwest Pipeline Corp.

U.S. Geological Survey, Casper, Wyo.

1. Control Number (FERC/State)
2. API Well Number
3. Section of NGPA
4. Operator
5. Well Name
6. Field or OCS area name
7. County, State or Block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80-13754/CC-68-9
2. 05-103-07993-0000-0
3. 103 000 000
4. Mobil Oil Corporation
5. Piceance Creek Unit No. T73-7G
6. Piceance Creek
7. Rio Blanco, CO
8. 335.0 million cubic feet
9. January 29, 1980
10. Northwest Pipeline Corporation

1. 80-13755/CC-73-9
2. 05-103-08075-0000-0
3. 103 000 000
4. Mobil Oil Corporation
5. Piceance Creek Unit No. T73-13G
6. Piceance Creek
7. Rio Blanco, CO
8. 335.0 million cubic feet
9. January 29, 1980
10. Northwest Pipeline Corporation

1. 80-13756/CC-80-9
2. 05-103-08179-0000-0
3. 103 000 000
4. Mobil Oil Corporation
5. Piceance Creek Unit No. T81-2G
6. Piceance Creek
7. Rio Blanco, CO
8. 335.0 million cubic feet
9. January 29, 1980
10. Northwest Pipeline Corporation

1. 80-13757/CC-81-9
2. 05-103-08178-0000-0
3. 103 000 000
4. Mobil Oil Corporation
5. Piceance Creek Unit No. T81-18G
6. Piceance Creek
7. Rio Blanco, CO
8. 335.0 million cubic feet
9. January 29, 1980
10. Northwest Pipeline Corporation

1. 80-13761/UC784-9
2. 43-013-30424-0000-0
3. 103 000 000
4. Santa Fe Energy Company
5. Tribal Federal No. 1-4
6. Starvation (Wasatch)
7. Duchesne, UT.
8. 260.0 million cubic feet
9. January 29, 1980
10.

1. 80-13753/W 65-9
2. 49-035-20480-0000-0
3. 103 000 000
4. Mobil Oil Corporation
5. Tip Top Unit No. F21-29G
6. Tip Top Unit (Frontier)
7. Sublette, WY
8. 190.0 million cubic feet
9. January 29, 1980
10. Northwest Pipeline Corp.

1. 80-13758/W 86-9
2. 49-005-24597-0000-0
3. 103 000 000
4. Mesa Petroleum Co.
5. 4-30 Powell Federal
6. Hartzog Draw Shannon Sand
7. Campbell, WY
8. 9.0 million cubic feet
9. January 29, 1980
10. Panhandle Eastern Pipeline Co.

1. 80-13759/W 101-9
2. 49-009-21179-0000-0
3. 103 000 000
4. Inexco Oil Company
5. Skyline Federal 1-30
6. Well Draw-Teapot
7. Converse, WY
8. 33.0 million cubic feet
9. January 29, 1980
10. Inexco Gasoline Plant

1. 80-13760/W 638-9
2. 49-029-20707-0000-0
3. 103 000 000
4. Marathon Oil Company
5. Frisby A No. 18
6. Oregon Basin Field
7. Park, WY
8. 250.0 million cubic feet
9. January 29, 1980
10. Husky Oil Company

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before March 13, 1980.

Please reference the FERC control number in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-6034 Filed 2-26-80; 8:45 am]

BILLING CODE 6450-85-M

[No. 148]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

February 12, 1980.

The Federal Energy Regulatory Commission received notices from the Jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

Kansas Corporation Commission

1. Control number (F.E.R.C/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80–13411/K–79–0776
2. 15–025–20184–0000
3. 102 000 000
4. Wainoco Oil & Gas Company
5. M C Harper et al #1
6. Snake Creek
7. Clark, KS
8. 318.0 million cubic feet
9. January 24, 1980
10. Northern Natural Gas Company

1. 80–13412/K–79–0785
2. 15–129–20361–0000
3. 102 000 000
4. Cities Service Co
5. Winter C–2
6. Winter-Marmaton
7. Morton, KS
8. 54.4 million cubic feet
9. January 24, 1980
10. Colorado Interstate Gas Co

1. 80–13413/K–79–0784
2. 15–129–20361–0000
3. 102 000 000
4. Cities Service Co
5. Winter C–2
6. Winter-Lower Morrow
7. Morton, KS
8. 62.0 million cubic feet
9. January 24, 1980
10. Colorado Interstate Gas Co

1. 80–13414/K–79–0437
2. 15–047–20299–0000
3. 102 000 000
4. F G Holl
5. Mundhenke No 1–30
6. Mundhenke
7. Edwards, KS
8. 60.0 million cubic feet
9. January 23, 1980
10. Kansas-Nebraska Natural Gas Company

1. 80–13415/K–79–0441
2. 15–047–20342–0000
3. 102 000 000
4. F G Holl
5. Grybowski-Martin No 1
6. Wayne, NW
7. Edwards, KS
8. 73.0 million cubic feet
9. January 23, 1980
10. Kansas-Nebraska Natural Gas Company Inc

Mississippi Oil and Gas Board

1. Control number (F.E.R.C/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80–13464/106–79–119
2. 23–091–00000–0000
3. 102 000 000
4. Pennzoil Producing Company
5. Morris A–1
6. Dexter
7. Marion and Walthall, MS
8. 1000.0 million cubic feet
9. January 24, 1980
10. Southern Natural Gas Company

1. 80–13465/109–79–448
2. 23–091–20077–0000
3. 102 000 000
4. Sonat Exploration Company
5. J W Hart #1
6. West Sandy Hook
7. Marion, MS
8. 554.0 million cubic feet
9. January 24, 1980
10. Transcontinental Gas Pipe Line, Southern Natural Gas Company

1. 80–13466/112–79–483
2. 23–087–20029–0000
3. 102 000 000
4. Elf Aquitaine Inc
5. Ralph E Williamson No 1–33
6. Caledona
7. Lowndes, MS
8. 730.0 million cubic feet
9. January 24, 1980
10. Tennessee Gas Pipeline Company

1. 80–13606/105–79–486
2. 23–077–20027–0000
3. 107 000 000
4. Tomlinson Interests Inc
5. Robert H Myers No 1
6. West Oakvale
7. Lawrence, MS
8. 2300.0 million cubic feet
9. January 24, 1980
10.

1. 80–13607/102–79–56
2. 23–095–20225–0000
3. 102 000 000
4. The Louisiana Land & Exploration Co
5. Margaret Hartwell Watkins Maute Well
6. Aberdeen Field
7. Monroe, MS
8. 172.0 million cubic feet
9. January 24, 1980
10. Texas Eastern Transmission Corp

Montana Board of Oil and Gas Conservation

1. Control number (F.E.R.C/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80–13467/12–79–312
2. 25–071–21675–0000
3. 103 000 000
4. Falcon-Colorado Exploration Inc
5. #1–25 Yanchek
6. Swanson Creek
7. Phillips, MT
8. 6.7 million cubic feet
9. January 24, 1980
10. Montana-Dakota Utilities Co

1. 80–13468/12–79–311
2. 25–071–21679–0000
3. 103 000 000
4. Falcon-Colorado Exploration Inc
5. #1–27 Kern
6. Swanson Creek
7. Phillips, MT
8. 19.8 million cubic feet
9. January 24, 1980
10. Montana-Dakota Utilities Co

Nebraska Oil and Gas Conservation Commission

1. Control Number (F.E.R.C./State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or Block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80–13608
2. 26–105–21789–0000
3. 103 000 000
4. Brownlie Wallace Armstrong and Band
5. Olsen #3
6. Jade
7. Kimball NB
8. 14.5 million cubic feet
9. January 25, 1980
10. Kansas-Nebraska Natural Gas Co

New Mexico Department of Energy and Minerals, Oil Conservation Division

1. Control Number (F.E.R.C./State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or Block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80–13451
2. 30–025–08731–0000
3. 108 000 000
4. Warren Petroleum Co A Div of Gulf Oil
5. H T Mattern (NCT–F) #1
6. Arrowhead Grayburg
7. Lea NM
8. 2.0 million cubic feet
9. January 24, 1980
10. El Paso Natural Gas

1. 80–13452
2. 30–025–06937–0000
3. 108 000 000
4. Warren Petroleum Co A Div of Gulf Oil
5. W T McComack Well #8
6. Penrose Skelly Grayburg
7. Lea NM
8. 8.5 million cubic feet
9. January 24, 1980
10. El Paso Natural Gas

1. 80–13453
2. 30–025–06935–0000
3. 108 000 000
4. Warren Petroleum Co A Div of Gulf Oil
5. W T McComack #6
6. Penrose Skelly Grayburg
7. Lea NM
8. 9.0 million cubic feet
9. January 24, 1980
10. El Paso Natural Gas

1. 80–13454/H–134
2. 30–025–06933–0000

3. 108 000 000
4. Warren Petroleum Co A Div of Gulf Oil
5. W T McComack Well #4
6. Penrose Skelly Grayburg
7. Lea NM
8. 6.0 million cubic feet
9. January 24, 1980
10. El Paso Natural Gas

1. 80–13455
2. 30–025–00000–0000
3. 108 000 000
4. Conoco Inc
5. State D No 7
6. Arrowhead E–M–E
7. Lea NM
8. 3.0 million cubic feet
9. January 24, 1980
10. Warren Petroleum

1. 80–13457
2. 30–025–23134–0000
3. 108 000 000
4. Phillips Petroleum Company
5. Leamex No 14
6. Maljamar Grayburg/San Andres
7. Lea NM
8. 2.0 million cubic feet
9. January 24, 1980
10. El Paso Natural Gas

1. 80–13458
2. 30–025–00000–0000
3. 108 000 000
4. Amerada Hess Corporation
5. E W Walden #7 (Dual Gas Well)
6. Eunice
7. Lea NM
8. .8 million cubic feet
9. January 24, 1980
10. Northern Natural Gas Company

1. 80–13459
2. 30–025–11910–0000
3. 108 000 000
4. Gulf Oil Corporation
5. Arnott-Ramsay (NCT–F) #12
6. Justis Blinebry
7. Lea NM
8. 12.1 million cubic feet
9. January 24, 1980
10. El Paso Natural Gas

1. 80–13460
2. 30–025–10315–0000
3. 108 000 000
4. Warren Petroleum Co A Div of Gulf Oil
5. R E Cole (NCT–A) #3
6. Penrose Skelly Grayburg
7. Lea NM
8. 6.5 million cubic feet
9. January 24, 1980
10. El Paso Natural Gas

1. 80–13461
2. 30–025–00000–0000
3. 108 000 000
4. Gulf Oil Corporation
5. R R Bell (NCT–A) #1
6. Eunice Monument Grayburg San Andres
7. Lea NM
8. 2.0 million cubic feet
9. January 24, 1980
10. Phillips Petroleum Company

1. 80–13462
2. 30–025–10261–0000
3. 108 000 000
4. Warren Petroleum Co a Div of Gulf Oil
5. Hugh #5
6. Drinkard
7. Lea NM
8. 8.9 million cubic feet
9. January 24, 1980
10. El Paso Natural Gas

1. 80–13463
2. 30–045–07705–0000
3. 108 000 000
4. Amoco Production Company
5. State Gas Com O No 1
6. Blanco-Mesaverde
7. San Juan NM
8. 21.0 million cubic feet
9. January , 1980
10. El Paso Natural Gas

1. 80–13489
2. 30–045–23495–0000
3. 103 000 000
4. Lynco Oil Corporation
5. Schumacher #1A
6. Blanco Mesaverde
7. San Juan NM
8. 80.0 million cubic feet
9. January 28, 1980
10. El Paso Natural Gas

1. 80–13490
2. 30–045–23786–0000
3. 103 000 000
4. Manana Gas Inc
5. Aunt Maggie #2
6. Bloomfield Farmington
7. San Juan NM
8. .0 million cubic feet
9. January 28, 1980
10. El Paso Natural Gas

1. 80–13491
2. 30–045–23555–0000
3. 103 000 000
4. Manana Gas Inc
5. Mary Ackroyd #2—Aztec Pictured Cliffs
6. Aztec P C Extension
7. San Juan NM
8. .0 million cubic feet
9. January 28, 1980
10. El Paso Natural Gas

1. 80–13492
2. 30–025–00000–0000
3. 108 000 000
4. W K Byrom
5. Cooper #3
6. Eumont Queens
7. Lea NM
8. 4.6 million cubic feet
9. January 28, 1980
10. El Paso Natural Gas

New Mexico Department of Energy and Minerals, Oil Conservation Division

1. Control number (F.E.R.C./State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State of block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80–13456
2. 30–015–01316–0000
3. 108 000 000
4. Supron Energy Corporation
5. Randel State No. 1
6. Vandergriff-Keyes
7. Eddy NM
8. 4.6 million cubic feet
9. January 24, 1980
10. Phillips Petroleum Company

West Virginia Department of Mines, Oil and Gas Division

1. Control number (F.E.R.C./State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State of block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80–13494
2. 47–043–20115–0000
3. 108 000 000
4. Cumberland Gas Company
5. W W Reynolds #BR–105
6. Carroll
7. Lincoln WV
8. .5 million cubic feet
9. January 28, 1980
10. Columbia Gas Trans Corp.

1. 80–13496
2. 47–043–20214–0000
3. 108 000 000
4. Cumberland Gas Company
5. H H & Mollie Scites #BR–32
6. Union
7. Lincoln WV
8. .2 million cubic feet
9. January 28, 1980
10. Columbia Gas Trans Corp.

1. 80–13498
2. 47–015–20799–0000
3. 108 000 000
4. Cumberland Gas Company
5. Osman E Swartz #CCL–1
6. Union
7. Clay WV
8. 4.6 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13500
2. 47–015–20832–0000
3. 108 000 000
4. Cumberland Gas Company
5. Osman E Swartz #CCL–4
6. Union
7. Clay WV
8. 4.6 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13493
2. 47–015–20798–0000
3. 108 000 000
4. Cumberland Gas Company
5. Osman E Swartz #CCL–2
6. Pleasant
7. Clay WV
8. 4.6 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13495
2. 47–043–20066–0000
3. 108 000 000
4. Cumberland Gas Company
5. Isaac Dillon #BR–107
6. Carroll
7. Lincoln WV
8. .5 million cubic feet
9. January 28, 1980
10. Columbia Gas Trans Corp.

1. 80–13497

2. 47–043–20234–0000
3. 108 000 000
4. Cumberland Gas Company
5. Rosetta Adkins #BR–49
6. Union
7. Lincoln WV
8. 1.6 million cubic feet
9. January 28, 1980
10. Columbia Gas Trans Corp.

1. 80–13499
2. 47–015–20818–0000
3. 108 000 000
4. Cumberland Gas Company
5. Osman E Swartz #CCL–2
6. Union
7. Clay WV
8. 4.6 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13501
2. 47–015–20842–0000
3. 108 000 000
4. Cumberland Gas Company
5. Osman E Swartz #CCL–2
6. Union
7. Clay WV
8. 4.6 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13502
2. 47–015–20845–0000
3. 108 000 000
4. Cumberland Gas Company
5. Osman E Swartz #CCL–6
6. Pleasant
7. Clay WV
8. 4.6 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13503
2. 47–702–10338–3000
3. 108 000 000
4. Pacific States Gas & Oil Inc
5. G S Andrews #1
6. Glenville
7. Gilmer WV
8. 16.0 million cubic feet
9. January 28, 1980
10. Equitable Gas Company

1. 80–13504
2. 47–702–10322–9000
3. 108 000 000
4. Pacific States Gas & Oil Inc
5. Radcliff/Skidmore #1
6. Glenville
7. Gilmer WV
8. 20.0 million cubic feet
9. January 28, 1980
10. Equitable Gas Company

1. 80–13505
2. 47–039–00978–0000
3. 108 000 000
4. Pennzoil Company
5. Coalburg Colliery Co #9
6. Cabin Creek
7. Kanawha WV
8. 3.5 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13506
2. 47–039–00985–0000
3. 108 000 000
4. Pennzoil Company
5. Coalburg Colliery Co #10
6. Cabin Creek
7. Kanawha WV
8. 2.7 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13507
2. 47–039–00989–0000
3. 108 000 000
4. Pennzoil Company
5. R O Baillie #6
6. Cabin Creek
7. Kanawha WV
8. .0 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13508
2. 47–039–00990–0000
3. 108 000 000
4. Pennzoil Company
5. R O Baillie #7
6. Cabin Creek
7. Kanawha WV
8. 4.5 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13509
2. 47–033–01546–0000
3. 108 000 000
4. Pennzoil Company
5. H K McCoy #1
6. Clay
7. Harrison WV
8. 9.6 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13510
2. 47–033–01245–0000
3. 108 000 000
4. Pennzoil Company
5. Geo Franklin #3
6. Clay
7. Harrison WV
8. 9.6 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13511
2. 47–033–01764–0000
3. 108 000 000
4. Pennzoil Company
5. J L Hall #3
6. Clay
7. Harrison WV
8. 9.6 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13512
2. 47–033–01775–0000
3. 108 000 000
4. Pennzoil Company
5. W L Lowe #1
6. Clay
7. Harrison WV
8. 6.3 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13513
2. 47–033–01776–0000
3. 108 000 000
4. Pennzoil Company
5. W L Lowe #3
6. Clay
7. Harrison WV
8. 6.3 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13514
2. 47–033–01805–0000
3. 108 000 000
4. Pennzoil Company
5. B F Nuzum #2
6. Clay
7. Harrison WV
8. 9.6 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13515
2. 47–033–01814–0000
3. 108 000 000
4. Pennzoil Company
5. Stephen Pitts #4
6. Union
7. Harrison WV
8. 4.7 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13516
2. 47–033–01818–0000
3. 108 000 000
4. Pennzoil Company
5. G R Rinehart #1
6. Clay
7. Harrison WV
8. 9.6 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13517
2. 47–033–01819–0000
3. 108 000 000
4. Pennzoil Company
5. G R Rinehart #2
6. Clay
7. Harrison WV
8. 9.6 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13518
2. 47–033–01842–0000
3. 108 000 000
4. Pennzoil Company
5. H E Swiger #1
6. Clay
7. Harrison WV
8. 9.6 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13519
2. 47–033–01853–0000
3. 108 000 000
4. Pennzoil Company
5. J H Thompson #4
6. Clay
7. Harrison WV
8. 9.6 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13520
2. 47–039–00007–0000
3. 108 000 000
4. Pennzoil Company
5. Chesapeake Mining Co #1
6. Cabin Creek
7. Kanawha WV
8. 9.0 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13521
2. 47–039–00917–0000
3. 108 000 000
4. Pennzoil Company
5. Coalburg Colliery Co #8
6. Cabin Creek

7. Kanawha WV
8. 9.5 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13522
2. 47–017–02261–0000
3. 108 000 000
4. Pennzoil Company
5. S W Stout No 9
6. Southwest
7. Doddridge WV
8. .8 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13523
2. 47–017–02197–0000
3. 108 000 000
4. Pennzoil Company
5. J A Bode No 9
6. Cove
7. Doddridge WV
8. .5 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13524
2. 47–033–01487–0000
3. 108 000 000
4. Pennzoil Company
5. Minnie Anderson No 2
6. Clay
7. Harrison WV
8. 3.0 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13525
2. 47–033–01906–0000
3. 108 000 000
4. Pennzoil Company
5. M M Janes #2
6. Clay
7. Harrison WV
8. 9.6 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13526
2. 47–021–03335–0000
3. 108 000 000
4. Pennzoil Company
5. H I Allman #3
6. Troy
7. Gilmer WV
8. 1.5 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13527
2. 47–083–20149–0000
3. 108 000 000
4. Petro-Lewis Corp
5. Frazee Lumber #4
6. Roaring Creek District
7. Randolph WV
8. 1.0 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp

1. 80–13528
2. 47–083–20150–0000
3. 108 000 000
4. Petro-Lewis Corp
5. Frazee Lumber #5
6. Roaring Creek District
7. Randolph WV
8. 2.8 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp

1. 80–13529
2. 47–087–21205–0000
3. 108 000 000
4. Petro-Lewis Corp
5. Nichols #1 Buford
6. Spencer District
7. Roane WV
8. 2.9 million cubic feet
9. January 28, 1980
10. Columbia Gas Trans Corp

1. 80–13530
2. 47–087–21352–0000
3. 108 000 000
4. Petro-Lewis Corp
5. Lowe #1 Luther
6. Spencer District
7. Roane WV
8. 2.1 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp

1. 80–13531
2. 47–087–21404–0000
3. 108 000 000
4. Petro-Lewis Corp
5. Lowe #2 Luther
6. Spencer District
7. Roane WV
8. 2.1 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp

1. 80–13532
2. 47–097–20438–0000
3. 108 000 000
4. Petro-Lewis Corp
5. Zickefoose #1
6. Washington District
7. Upshur WV
8. 6.7 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp

1. 80–13533
2. 47–097–20833–0000
3. 108 000 000
4. Petro-Lewis Corp
5. Murphy #1 Hoy
6. Warren District
7. Upshur WV
8. 2.4 million cubic feet
9. January 28, 1980
10. Columbia Gas Trans Corp

1. 80–13534
2. 47–097–20834–0000
3. 108 000 000
4. Petro-Lewis Corp
5. Eurit #1
6. Warren
7. Upshur WV
8. 4.4 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp

1. 80–13535
2. 47–097–20542–0000
3. 108 000 000
4. Petro-Lewis Corp
5. Colerider #2
6. Union District Upshur
7. Upshur WV
8. 5.2 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission

1. 80–13536
2. 47–097–21127–0000
3. 108 000 000
4. Petro-Lewis Corp
5. Lamb #1
6. Union District
7. Upshur WV
8. .4 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp

1. 80–13537
2. 47–097–21129–0000
3. 108 000 000
4. Petro-Lewis Corp
5. Yoakum #1
6. Union District
7. Upshur WV
8. 1.1 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp

1. 80–13538
2. 47–097–21130–0000
3. 108 000 000
4. Petro-Lewis Corp
5. Nitz #1
6. Union District
7. Upshur WV
8. 5.0 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp

1. 80–13539
2. 47–097–21133–0000
3. 108 000 000
4. Petro-Lewis Corp
5. Bessie #1
6. Union District
7. Upshur WV
8. 12.2 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission

1. 80–13540
2. 47–097–21172–0000
3. 108 000 000
4. Petro-Lewis Corp
5. Avington #1
6. Union District
7. Upshur WV
8. 7.1 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp

1. 80–13541
2. 47–097–21173–0000
3. 108 000 000
4. Petro-Lewis Corp
5. Musgrave #1
6. Union District
7. Upshur WV
8. 12.8 million cubic feet
9. January 28, 1980
10. Columbia Gas Trans Corp

1. 80–13542
2. 47–097–21175–0000
3. 108 000 000
4. Petro-Lewis Corp.
5. Wagner #1
6. Union District
7. Upshur, WV
8. 4.7 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp.

1. 80–13543
2. 47–097–21176–0000
3. 108 000 000
4. Petro-Lewis Corp.
5. Raymond
6. Union District
7. Upshur, WV
8. 15.0 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp.

1. 80–13544

2. 47-097-21177-0000
3. 108 000 000
4. Petro-Lewis Corp.
5. Bernice #1
6. Union District
7. Upshur, WV
8. 5.2 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp.

1. 80-13545
2. 47-097-21180-0000
3. 108 000 000
4. Petro-Lewis Corp.
5. Herbert #1
6. Union District
7. Upshur, WV
8. 6.1 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp.

1. 80-13546
2. 47-097-21181-0000
3. 108 000 000
4. Petro-Lewis Corp.
5. Caynor #1
6. Union District
7. Upshur, WV
8. 8.6 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp.

1. 80-13547
2. 47-097-21190-0000
3. 108 000 000
4. Petro-Lewis Corp.
5. Casto #1
6. Union District
7. Upshur, WV
8. 4.4 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp.

1. 80-13548
2. 47-097-21186-0000
3. 108 000 000
4. Petro-Lewis Corp.
5. Thelma #1
6. Union District
7. Upshur, WV
8. 4.9 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp.

1. 80-13549
2. 47-097-21191-0000
3. 108 000 000
4. Petro-Lewis Corp.
5. Avington #2
6. Union District
7. Upshur, WV
8. 7.6 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp.

1. 80-13550
2. 47-097-21192-0000
3. 108 000 000
4. Petro-Lewis Corp.
5. Ice #1
6. Union District
7. Upshur, WV
8. 6.4 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp.

1. 80-13551
2. 47-097-21198-0000
3. 108 000 000
4. Petro-Lewis Corp.
5. Avington
6. Union District
7. Upshur, WV
8. 2.3 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp.

1. 80-13552
2. 47-083-20136-0000
3. 108 000 000
4. Petro-Lewis Corp.
5. Watts #1
6. Roaring Creek District
7. Randolph, WV
8. 14.7 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp.

1. 80-13553
2. 47-083-20137-0000
3. 108 000 000
4. Petro-Lewis Corp.
5. Watts #2
6. Roaring Creek District
7. Randolph, WV
8. 14.7 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp.

1. 80-13554
2. 47-083-20139-0000
3. 108 000 000
4. Petro-Lewis Corp.
5. Moss #6
6. Roaring Creek District
7. Randolph, WV
8. 5.9 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp.

1. 80-13555
2. 47-083-20140-0000
3. 108 000 000
4. Petro-Lewis Corp.
5. McNeal #1
6. Roaring Creek District
7. Randolph, WV
8. 3.3 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp.

1. 80-13556
2. 47-083-20141-0000
3. 108 000 000
4. Petro-Lewis Corp.
5. McNeal #2
6. Roaring Creek District
7. Randolph, WV
8. 3.3 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp.

1. 80-13557
2. 47-083-20142-0000
3. 108 000 000
4. Petro-Lewis Corp.
5. Koon #1
6. Roaring Creek District
7. Randolph, WV
8. 6.5 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp.

1. 80-13558
2. 47-083-20143-0000
3. 108 000 000
4. Petro-Lewis Corp.
5. Stanton #1
6. Roaring Creek District
7. Randolph, WV
8. 1.5 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp.

1. 80-13559
2. 47-083-20144-0000
3. 108 000 000
4. Petro-Lewis Corp.
5. Moss #7
6. Roaring Creek District
7. Randolph, WV
8. 9.6 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp.

1. 80-13560
2. 47-083-20145-0000
3. 108 000 000
4. Petro-Lewis Corp.
5. Moss #8
6. Roaring Creek District
7. Randolph, WV
8. 0.3 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp.

1. 80-13561
2. 47-083-20147-0000
3. 108 000 000
4. Petro-Lewis Corp.
5. Shreve B
6. Roaring Creek District
7. Randolph, WV
8. 2.7 million cubic feet
9. January 28, 1980
10. Columbia Gas Transmission Corp.

1. 80-13562
2. 47-041-21705-0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co.
5. Gaylord Armstrong #1
6. Collins Settlement
7. Lewis WV
8. 1.0 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corporation

1. 80-13563
2. 47-097-21545-0000
3. 108 000 000
4. Seneca-Upshur Petroleum Co
5. Jefferson A Kelley #1
6. Washington
7. Upshur WV
8. 0.3 million cubic feet
9. January 28, 1980
10. Equitable Gas Co

1. 80-13564
2. 47-011-20017-0000
3. 108 000 000
4. Southeastern Gas Company
5. R T Markin #F-13
6. McComas
7. Cabell WV
8. 11.9 million cubic feet
9. January 28, 1980
10. Columbia Gas Trans Corp

1. 80-13565
2. 47-015-20057-0000
3. 108 000 000
4. Southeastern Gas Company
5. D N Schoonover #T-24
6. Henry
7. Clay WV
8. 3.9 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80-13566
2. 47-005-00127-0000
3. 108 000 000
4. Southeastern Gas Company
5. Mary Jane Miller #706
6. Washington

7. Boone WV
8. 0.4 million cubic feet
9. January 28, 1980
10. Southern Public Service Co

1. 80–13567
2. 47–015–20369–0000
3. 108 000 000
4. Southeastern Gas Company
5. Porter Creek Coal & Coke #804
6. Union
7. Clay WV
8. 6.0 million cubic feet
9. January 28, 1980
10. Columbia Gas Trans Corp

1. 80–13568
2. 47–015–20454–0000
3. 108 000 000
4. Southeastern Gas Company
5. Porter Creek Coal & Coke #809
6. Union
7. Clay WV
8. 6.0 million cubic feet
9. January 28, 1980
10. Columbia Gas Trans Corp

1. 80–13569
2. 47–039–21988–0000
3. 108 000 000
4. Southeastern Gas Company
5. Payne-Gallatin Mining Co #CC–1
6. Cabin Creek
7. Kanawha WV
8. 5.2 million cubic feet
9. January 28, 1980
10. Columbia Gas Trans Corp

1. 80–13570
2. 47–039–22006–0000
3. 108 000 000
4. Southeastern Gas Company
5. Payne-Gallatin Mining Co #CC–3
6. Cabin Creek
7. Kanawha WV
8. 5.2 million cubic feet
9. January 28, 1980
10. Columbia Gas Trans Corp

1. 80–13571
2. 47–079–20009–0000
3. 108 000 000
4. Southeastern Gas Company
5. G R Byrnside #R–16
6. Curry
7. Putnam WV
8. 1.4 million cubic feet
9. January 28, 1980
10. Columbia Gas Trans Corp

1. 80–13572
2. 47–013–20517–0000
3. 108 000 000
4. Southeastern Gas Company
5. Hilda Shock No. 789
6. Sherman
7. Calhoun, WV
8. .2 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13573
2. 47–015–20143–0000
3. 108 000 000
4. Southeastern Gas Company
5. Thompson Land & Coal No. T–30
6. Pleasant
7. Clay WV
8. 3.9 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13574
2. 47–015–20076–0000
3. 108 000 000
4. Southeastern Gas Company
5. J S Chochran No. T–29
6. Henry
7. Clay, WV
8. 5.3 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13575
2. 47–015–20072–0000
3. 108 000 000
4. Southeastern Gas Company
5. C E Lewis No. T–27
6. Pleasant
7. Clay, WV
8. 4.9 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13576
2. 47–005–00124–0000
3. 108 000 000
4. Southeastern Gas Company
5. Mary Jane Miller No. 682
6. Washington
7. Boone, WV
8. .4 million cubic feet
9. January 28, 1980
10. Southern Public Service Co.

1. 80–13577
2. 47–015–20068–0000
3. 108 000 000
4. Southeastern Gas Company
5. Minne Lewis No. T–28
6. Henry
7. Clay, WV
8. 1.2 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13578
2. 47–015–20067–0000
3. 108 000 000
4. Southeastern Gas Company
5. Osman E Swartz No. T–26
6. Henry
7. Clay, WV
8. 3.9 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13579
2. 47–005–00126–0000
3. 108 000 000
4. Southeastern Gas Company
5. Mary Jane Miller No. 690
6. Washington
7. Boone, WV
8. .4 million cubic feet
9. January 28, 1980
10. Southern Public Service Co.

1. 80–13580
2. 47–011–20019–0000
3. 108 000 000
4. Southeastern Gas Company
5. Effie G. Hassie No. F–16
6. Grant
7. Cabell, WV
8. 11.9 million cubic feet
9. January 28, 1980
10. Columbia Gas Trans. Corp.

1. 80–13581
2. 47–011–20023–0000
3. 108 000 000
4. Southeastern Gas Company
5. William Sunderland No. Z–52
6. Grant
7. Cabell, WV
8. 3.1 million cubic feet
9. January 28, 1980
10. Columbia Gas Trans. Corp.

1. 80–13582
2. 47–011–20029–0000
3. 108 000 000
4. Southeastern Gas Company
5. A A Swann No. P–86
6. Grant
7. Cabell, WV
8. 5.0 million cubic feet
9. January 28, 1980
10. Columbia Gas Trans. Corp.

1. 80–13583
2. 47–011–20256–0000
3. 108 000 000
4. Southeastern Gas Company
5. Fred Carter No. P–27
6. Grant
7. Cabell, WV
8. .8 million cubic feet
9. January 28, 1980
10. Columbia Gas Trans. Corp.

1. 80–13584
2. 47–055–00048–0000
3. 108 000 000
4. Texas International Petroleum Corp
5. Pocahontas Land Corp No. B–21
6. Rock
7. Mercer, WV
8. 11.0 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13585
2. 47–055–00045–0000
3. 108 000 000
4. Texas International Petroleum Corp
5. Pocahontas Land Corp No. D–1
6. Rock
7. Mercer, WV
8. 10.1 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13586
2. 47–109–00766–0000
3. 108 000 000
4. Texas International Petroleum Corp
5. Pocahontas Land Corp No. B–24
6. Barkers Ridge
7. Wyoming, WV
8. 16.6 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13587
2. 47–109–00764–0000
3. 108 000 000
4. Texas International Petroleum Corp
5. Pocahontas Land Corp No. B–20
6. Barkers Ridge
7. Wyoming, WV
8. 16.6 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13588
2. 47–109–00763–0000
3. 108 000 000
4. Texas International Petroleum Corp
5. Pocahontas Land Corp No. B–19
6. Barkers Ridge
7. Wyoming, WV
8. 16.6 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13589

2. 47–109–00762–0000
3. 108 000 000
4. Texas International Petroleum Corp
5. Pocahontas Land Corp No. B–18
6. Barkers Ridge
7. Wyoming, WV
8. 16.6 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13590
2. 47–109–00760–0000
3. 108 000 000
4. Texas International Petroleum Corp
5. Pocahontas Land Corp No. B–17
6. Barkers Ridge
7. Wyoming, WV
8. 20.2 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13591
2. 47–055–00064–0000
3. 108 000 000
4. Texas International Petroleum Corp
5. Pocahontas Land Corp No. D–25
6. Rock
7. Mercer, WV
8. 7.7 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13592
2. 47–055–00059–0000
3. 108 000 000
4. Texas International Petroleum Corp
5. Pocahontas Land Corp No. D–26
6. Rock
7. Mercer, WV
8. 7.7 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13593
2. 47–055–00058–0000
3. 108 000 000
4. Texas International Petroleum Corp
5. Pocahontas Land Corp No. D–11
6. Rock
7. Mercer, WV
8. 8.0 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13594
2. 47–055–00042–0000
3. 108 000 000
4. Texas International Petroleum Corp
5. Pocahontas Land Corp No. B–3
6. Rock
7. Mercer, WV
8. 11.0 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13595
2. 47–055–00041–0000
3. 108 000 000
4. Texas International Petroleum Corp
5. Pocahontas Land Corp No. B–2
6. Rock
7. Mercer, WV
8. 11.0 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13596
2. 47–055–00040–0000
3. 108 000 000
4. Texas International Petroleum Corp
5. Pocahontas Land Corp No. B–1
6. Rock
7. Mercer, WV
8. 11.0 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13597
2. 47–055–00039–0000
3. 108 000 000
4. Texas International Petroleum Corp
5. Pocahontas Land Corp No. B–5
6. Rock
7. Mercer, WV
8. 11.0 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13598
2. 47–047–00732–0000
3. 108 000 000
4. Texas International Petroleum Corp
5. Pocahontas Land Corp No. A–33
6. North Fork
7. McDowell, WV
8. 16.6 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13599
2. 47–047–00677–0000
3. 108 000 000
4. Texas International Petroleum Corp
5. Pocahontas Land Corp No. A–8
6. North Fork
7. McDowell, WV
8. 16.8 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13600
2. 47–047–00676–0000
3. 108 000 000
4. Texas International Petroleum Corp
5. Pocahontas Land Corp No. A–9
6. North Fork
7. McDowell, WV
8. 16.8 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13601
2. 47–047–00674–0000
3. 108 000 000
4. Texas International Petroleum Corp
5. Pocahontas Land Corp No. A–7
6. North Fork
7. McDowell, WV
8. 16.8 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp.

1. 80–13602
2. 47–109–00781–0000
3. 108 000 000
4. Texas International Petroleum Corp
5. Pocahontas Land Corp #A–31
6. Barkers Ridge
7. Wyoming, WV
8. 16.6 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13603
2. 47–109–00780–0000
3. 108 000 000
4. Texas International Petroleum Corp
5. Pocahontas Land Corp #A–32
6. Barkers Ridge
7. Wyoming, WV
8. 16.6 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13604
2. 47–109–00779–0000
3. 108 000 000
4. Texas International Petroleum Corp
5. Pocahontas Land Corp #A–30
6. Barkers Ridge
7. Wyoming, WV
8. 16.6 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

1. 80–13605
2. 47–109–00768–0000
3. 108 000 000
4. Texas International Petroleum Corp
5. Pocahontas Land Corp #B–22
6. Barkers Ridge
7. Wyoming, WV
8. 20.0 million cubic feet
9. January 28, 1980
10. Consolidated Gas Supply Corp

U.S. Geological Survey, Albuquerque, N. Mex.

1. Control Number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80–13469/NM–2179–79–2
2. 30–039–20233–0000–0
3. 108 000 000
4. El Paso Natural Gas Company
5. Klein #10
6. Otero-Chacra Gas
7. Rio Arriba, NM
8. 20.8 million cubic feet
9. January 25, 1980
10. El Paso Natural Gas Company

1. 80–13470/NM–3014–79
2. 30–015–04314–0000–0
3. 108 000 000
4. Windfohr Oil Company
5. Jackson B #12
6. Fren Severn Rivers
7. Eddy, NM
8. 1.0 million cubic feet
9. January 25, 1980
10. Continental Oil Company

1. 80–13471/NM–3015–79
2. 30–015–04328–0000–0
3. 108 000 000
4. Windfohr Oil Company
5. Jackson B #8
6. Grayburg Jackson Queen GRB SA
7. Eddy, NM
8. 1.0 million cubic feet
9. January 25, 1980
10. Continental Oil Company

1. 80–13472/NM–3017–79
2. 30–015–04320–0000–0
3. 108 000 000
4. Windfohr Oil Company
5. Jackson "B" #24
6. Jackson ABO
7. Eddy, NM
8. 2.0 million cubic feet
9. January 25, 1980
10. Phillips Petroleum Company

1. 80–13473/NM–3021–79
2. 30–015–10123–0000–0
3. 108 000 000

4. Windfohr Oil Company
5. Jackson B #25
6. Grayburg Jackson Queen GRB SA
7. Eddy, NM
8. 1.0 million cubic feet
9. January 25, 1980
10. Continental Oil Company

1. 80–13474/NM–3024–79
2. 30–015–04308–0000–0
3. 108 000 000
4. Windfohr Oil Company
5. Jackson B #16
6. Fren Severn Rivers
7. Eddy, NM
8. 1.0 million cubic feet
9. January 25, 1980
10. Continental Oil Company

1. 80–13475/NM–4387–79
2. 30–015–04318–0000–0
3. 108 000 000
4. Windfohr Oil Company
5. Jackson "B" #22
6. Jackson ABO
7. Eddy, NM
8. 2.0 million cubic feet
9. January 25, 1980
10. Phillips Petroleum Company

1. 80–13476/NM–4389–79
2. 30–015–04315–0000–0
3. 108 000 000
4. Windfohr Oil Company
5. Jackson "B" #13
6. Fren
7. Eddy, NM
8. .0 million cubic feet
9. January 25, 1980
10. Continental Oil Company

1. 80–13477/NM–4476–79
2. 30–045–23172–0000–0
3. 103 000 000
4. El Paso Natural Gas Company
5. Atlantic #18
6. Blanco Pictured Cliffs
7. San Juan, NM
8. 70.0 million cubic feet
9. January 25, 1980
10. El Paso Natural Gas Company

1. 80–13478/NM–4477–79
2. 30–045–23061–0000–0
3. 103 000 000
4. El Paso Natural Gas Company
5. Riddle C #1A
6. Blanco Mesaverde
7. San Juan, NM
8. 150.0 million cubic feet
9. January 25, 1980
10. El Paso Natural Gas Company

1. 80–13479/NM–4478–79–A
2. 30–045–23157–0000–0
3. 103 000 000
4. El Paso Natural Gas Company
5. Riddle B #1A (MV)
6. Blanco Mesaverde
7. San Juan, NM
8. 110.0 million cubic feet
9. January 25, 1980
10. El Paso Natural Gas Company

1. 80–13480/NM–4478–79–B
2. 30–045–23157–0000–0
3. 103 000 000
4. El Paso Natural Gas Company
5. Riddle B #1A (PC)
6. Aztec Pictured Cliffs
7. San Juan, NM
8. 40.0 million cubic feet
9. January 25, 1980
10. El Paso Natural Gas Company

1. 80–13481/NM–4479–79
2. 30–045–23165–0000–0
3. 103 000 000
4. El Paso Natural Gas Company
5. Sunray E #2A
6. Blanco Mesaverde
7. San Juan, NM
8. 120.0 million cubic feet
9. January 25, 1980
10. El Paso Natural Gas Company

1. 80–13482/NM–4480–79
2. 30–045–22989–0000–0
3. 103 000 000
4. El Paso Natural Gas Company
5. Atlantic B #3A
6. Blanco Mesaverde
7. San Juan, NM
8. 220.0 million cubic feet
9. January 25, 1980
10. El Paso Natural Gas Company

1. 80–13483/NM–4481–79–A
2. 30–045–22988–0000–0
3. 103 000 000
4. El Paso Natural Gas Company
5. Atlantic B #2A (MV)
6. Blanco Mesaverde
7. San Juan, NM
8. 110.0 million cubic feet
9. January 25, 1980
10. El Paso Natural Gas Company

1. 80–13484/NM–4481–79–B
2. 30–045–22988–0000–0
3. 103 000 000
4. El Paso Natural Gas Company
5. Atlantic B #2A (PC)
6. Blanco Pictured Cliffs
7. San Juan, NM
8. 70.0 million cubic feet
9. January 25, 1980
10. El Paso Natural Gas Company

1. 80–13485/NM–4482–79
2. 30–045–22860–0000–0
3. 103 000 000
4. El Paso Natural Gas Company
5. San Juan #1A
6. Blanco Mesaverde
7. San Juan, NM
8. 200.0 million cubic feet
9. January 25, 1980
10. El Paso Natural Gas Company

1. 80–13486/NM–4483–79
2. 30–039–21678–0000–0
3. 103 000 000
4. El Paso Natural Gas Company
5. San Juan 28–7 Unit #260
6. Basin Dakota
7. Rio Arriba, NM
8. 90.0 million cubic feet
9. January 25, 1980
10. El Paso Natural Gas Company, Northwest Pipeline Corp

1. 80–13487/NM–4484–79
2. 30–039–20840–0000–0
3. 103 000 000
4. El Paso Natural Gas Company
5. San Juan 28–6 Unit #104
6. Basin Dakota
7. Rio Arriba, NM
8. 80.0 million cubic feet
9. January 25, 1980
10. El Paso Natural Gas Company, Northwest Pipeline Corp

1. 80–13488/NM 4485–79
2. 30–0039–21874–0000–0
3. 103 000 000
4. El Paso Natural Gas Company
5. San Juan 28–6 Unit No. 44A
6. Blanco Mesaverde
7. Rio Arriba, WV
8. 220.0 million cubic feet
9. January 25, 1980
10. El Paso Natural Gas Company

U.S. Geological Survey, Casper, Wyo.

1. Control Number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80–13422/CC1141–9
2. 05–103–08329–0000–0
3. 103 000 000
4. Chancellor & Ridegway
5. No. 33–3 Federal
6. Cathedral SW NE sec 33–T2S–R101W
7. Rio Blanco, CO
8. 90.0 million cubic feet
9. January 23, 1980
10. Western Slope Gas Company

1. 80–13423/CC1142–9
2. 05–103–08328–0000–0
3. 103 000 000
4. Chancellor & Ridegway
5. No. 4–1 Federal
6. Cathedral SW NE sec 4–T3S–R101W
7. Rio Blanco, CO
8. 120.0 million cubic feet
9. January 23, 1980
10.

1. 80–13427/CC1147–9
2. 05–103–07704–0000–0
3. 108 000 000
4. Northwest Exploration Company
5. Philadelphia Creek No. 1
6. Cathedral
7. Rio Blanco, CO
8. 21.0 million cubic feet
9. January 23, 1980
10. Northwest Pipeline Corporation

1. 80–13430/CC1165–9
2. 05–045–06168–0000–0
3. 103 000 000
4. Palmer Oil & Gas Company
5. Federal No. 12–6
6. Twin Buttes Area
7. Garfield, CO
8. 188.0 million cubic feet
9. January 23, 1980
10. Northwest Pipeline Corporation

1. 80–13431/CC1166–9
2. 05–045–06166–0000–0
3. 103 000 000
4. Palmer Oil & Gas Company
5. Federal No. 29–5
6. South Canyon
7. Garfield, CO
8. 124.0 million cubic feet
9. January 23, 1980
10. Southwest Gas Corporation

1. 80–13432/CC1167–9
2. 05–077–08170–0000–0
3. 103 000 000
4. Palmer Oil & Gas Company

5. Federal No. 18–13
6. South Canyon
7. Mesa, CO
8. 91.0 million cubic feet
9. January 23, 1980
10. Southwest Gas Corporation

1. 80–13435/CC1171–9
2. 05–045–06187–0000–0
3. 103 000 000
4. Palmer Oil & Gas Company
5. Federal No. 17–10
6. South Canyon
7. Garfield, CO
8. 55.0 million cubic feet
9. January 23, 1980
10. Western Slope Pipeline Company

1. 80–13438/CC1185–9
2. 05–103–08116–0000–0
3. 103 000 000
4. Mountain Fuel Supply Company
5. Mesco 35–1
6. Big Horse Draw (Cathedral)
7. Rio Blanco, CO
8. 26.0 million cubic feet
9. January 23, 1980
10. Mountain Fuel Resources Inc.

1. 80–13439/CC1186–9
2. 05–103–08110–0000–0
3. 103 000 000
4. Mountain Fuel Supply Co.
5. Federal well No. 3–1
6. Cathedral
7. Rio Blanco, CO
8. 120.0 million cubic feet
9. January 23, 1980
10. Mountain Fuel Resources Inc.

1. 80–13440/CC1187–9
2. 05–103–08112–0000–0
3. 103 000 000
4. Mountain Fuel Supply Company
5. Big Horse Draw Federal No. 26–2
6. Big Horse Draw (Cathedral)
7. Rio Blanco, CO
8. 82.0 million cubic feet
9. January 23, 1980
10. Mountain Fuel Resources, Inc.

U.S. Geological Survey, Casper, Wyo.

1. Control number (FERC/state)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80–13416/ND–1120–9
2. 33–053–00051–0000–0
3. 102 000 000
4. Terra Resources Inc
5. Federal 1–12
6. Bicentennial
7. Golden Valley, ND
8. 110.0 million cubic feet
9. January 23, 1980
10.

1. 80–13418/W1133–9
2. 33–053–00882–0000–0
3. 102 000 000
4. Pennzoil Company
5. Pennzoil-Depco Federal #17–33
6. Mon Dak
7. McKenzie, ND
8. .0 million cubic feet
9. January 23, 1980
10. Montana-Dakota utilities

1. 80–13424/ND1143–9
2. 33–053–00881–0000–0
3. 103 000 000
4. Marshall and Winston Inc
5. Spring Creek Federal #1–X
6. Mon Dak
7. McKenzie, ND
8. 110.0 million cubic feet
9. January 23, 1980
10. Montana-Dakota utilities

1. 80–13450/ND1222–9
2. 33–053–00890–0000–0
3. 102 000 000
4. Exeter Exploration Company
5. Federal 7–2X
6. Mon Dak
7. McKenzie, ND
8. 50.0 million cubic feet
9. January 23, 1980
10. Montana-Dakota utilities

1. Control number (FERC/state)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80–13417/UC1124–9
2. 43–047–30421–0000–0
3. 103 000 000
4. Bow Valley Petroleum Inc
5. Ute 1–27–A–1–E
6. East Bluebell
7. Uintah, UT
8. 30.0 million cubic feet
9. January 23, 1980
10. Gary Energy Corporation

1. 80–13433/UC1169–9
2. 43–019–30468–0000–0
3. 103 000 000
4. Palmer Oil & Gas Company
5. Federal #13–9
6. San Arroyo
7. Grand, UT
8. 25.0 million cubic feet
9. January 23, 1980
10. Southwest Gas Corporation

1. 80–13434/UC1170–9
2. 43–019–30462–0000–0
3. 103 000 000
4. Palmer Oil & Gas Company
5. Federal #6–14
6. San Arroyo
7. Grand, UT
8. 254.0 million cubic feet
9. January 23, 1980
10. Southwest Gas Corporation

1. Control number (FERC/state)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80–13419/W1136–9
2. 49–037–20845–0000–0
3. 102 000 000
4. Michigan Wisconsin Pipe Line Company
5. Red Desert #1–4
6. Red Desert
7. Sweetwater County, WY
8. 600.0 million cubic feet
9. January 23, 1980
10. Michigan Wisconsin Pipe Line Company, Colorado Interstate Gas Co

1. 80–13420/W1138–9
2. 49–009–21427–0000–0
3. 103 000 000
4. Mitchell Energy Corporation
5. Federal 2–4 W–33295
6. Mikes Draw
7. Converse, WY
8. 9.5 million cubic feet
9. January 23, 1980
10. Liquid Energy Corporation, United Gas Pipeline Co.

1. 80–13421/W1140–9
2. 49–007–20373–0000–0
3. 103 000 000
4. Sinclair Oil Corporation
5. Hamilton Federal 23–1
6. Blue Gap
7. Carbon, WY
8. .0 million cubic feet
9. January 23, 1980
10. Colorado Interstate Gas Company

1. 80–13425/W1144–9
2. 49–035–05755–0000–0
3. 108 000 000
4. Belco Petroleum Corporation
5. C 1–23 05755
6. Big Piney—Labarge
7. Sublette Co, WY
8. 1.8 million cubic feet
9. January 23, 1980
10. Northwest Pipeline Corporation

1. 80–13426/W1146–9
2. 49–013–20712–0000–0
3. 107 000 000
4. Michigan Wisconsin Pipe Line Company
5. Lysite #1–12
6. Lysite
7. Fremont County, WY
8. 3000.0 million cubic feet
9. January 23, 1980
10. Michigan Wisconsin Pipe Line Company, Colorado Interstate Gas Co.

1. 80–13428/W1159–9
2. 49–037–21411–0000–0
3. 103 000 000
4. Cotton Petroleum Corporation
5. Garbarino Federal #24–1
6. Wild Rose
7. Sweet Water, WY
8. 360.0 million cubic feet
9. January 23, 1980
10. Colorado Interstate Gas Company

1. 80–13429/W1160–9
2. 49–019–20485–0000–0
3. 102 000 000
4. Davis Oil Comapny
5. American Federal #1
6. Table Mountain
7. Johnson, WY
8. 12.0 million cubic feet
9. January 23, 1980
10.

1. 80–13436/W1178–9
2. 49–037–21216–0000–0
3. 103–000–000

4. Samedan Oil Corporation
5. Federal No 1–22
6. Siberia Ridge
7. Sweetwater, WY
8. 550.0 million cubic feet
9. January 23, 1980
10. Colorado Interstate Gas Company
1. 80–13437/W1180–9
2. 49–013–20799–0000–0
3. 107–000–000
4. Monsanto Company
5. Flatt #1–28
6. Long Butte-Cody
7. Fremont, WY
8. 600.0 million cubic feet
9. January 23, 1980
10. Michigan Wisconsin Pipe Line Company, Colorado Interstate Gas Co
1. 80–13441/W1198–9
2. 49–009–21526–0000–0
3. 103–000–000
4. Inexco Oil Company
5. Inexco Federal 4–7
6. Well draw
7. Converse, WY
8. 55.0 million cubic feet
9. January 23, 1980
10. Inexco Gasoline Plant, Panhandle Eastern Pipeline Co, Phillips Petroleum Co
1. 80–13442/W1207–9
2. 49–037–21013–0000–0
3. 102–000–000
4. Davis Oil Company
5. Storm Shelter No 10
6. Storm Shelter
7. Sweetwater, WY
8. 15.0 million cubic feet
9. January 23, 1980
10. Panhandle Eastern Pipeline Company
1. 80–13443/W1208–9
2. 49–037–21048–0000–0
3. 102–000–000
4. Davis Oil Company
5. Storm Shelter No 11
6. Storm Shelter
7. Sweetwater, WY
8. 33.0 million cubic feet
9. January 23, 1980
10. Panhandle Eastern Pipeline Company
1. 80–13444/W1209–9
2. 49–037–21291–0000–0
3. 102–000–000
4. Davis Oil Company
5. Hay Reservoir No 37
6. Hay Reservoir
7. Sweetwater, WY
8. 53.0 million cubic feet
9. January 23, 1980
10. Panhandle Eastern Pipeline Company
1. 80–13445/W1210–9
2. 49–037–21303–0000–0
3. 102–000–000
4. Davis Oil Company
5. Hay Reservoir No 34
6. Hay Reservoir
7. Sweetwater, WY
8. 63.0 million cubic feet
9. January 23, 1980
10. Panhandle Eastern Pipeline Company
1. 80–13446/W1211–9
2. 49–037–21335–0000–0
3. 102–000–000
4. Davis Oil Company
5. Hay Reservoir No 27
6. Hay Reservoir
7. Sweetwater, WY
8. 200.0 million cubic feet
9. January 23, 1980
10. Panhandle Eastern Pipeline Company
1. 80–13447/W1215–9
2. 49–023–20202–0000–0
3. 102–000–000
4. Amoco Production Company
5. Whiskey Buttes Unit Well #6
6. Whiskey Buttes Unit
7. Lincoln, WY
8. 240.0 million cubic feet
9. January 23, 1980
10. Cities Service Gas Company, Stauffer Chemical Co.
1. 80–13448/W1219–9
2. 49–037–21330–0000–0
3. 107–000–000
4. Texaco Inc
5. Table Rock Unit No 30
6. Table Rock Unit
7. Sweetwater, WY
8. 1500.0 million cubic feet
9. January 23, 1980
10. Colorado Interstate Gas Company
1. 80–13449/W1221–9
2. 49–009–21515–0000–0
3. 102–000–000
4. Exeter Exploration Company
5. Federal 1–32
6. Scott
7. Converse, WY
8. 35.0 million cubic feet
9. January 23, 1980
10.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before March 13, 1980.

Please reference the FERC control number in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-6036 Filed 2-26-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA80-1-23 (PGA80-3, IPR80-2 and DCA80-1)]

Eastern Shore Natural Gas Co.; Tariff Filing

February 19, 1980.

Take notice that Eastern Shore Natural Gas Company (Eastern Shore) on Feb. 12, 1980, tendered for filing the following revised tariff sheets to Original Volume No. 1 of Eastern Shore's FERC Gas Tariff:

To Be Effective March 1, 1980

Fourteenth Revised Sheet No. 5.
Fourteenth Revised Sheet No. 6.
First Revised Sheet No. 7.
Fourteenth Revised Sheet No. 10.
Fourteenth Revised Sheet No. 11.
Fourteenth Revised Sheet No. 12.

Eastern Shore states that the purpose of the filing is to reflect a Purchased Gas Cost Current Adjustment including a PGA Reduction due to Incremental Pricing Surcharges, to reflect a Demand Charge Adjustment, to reflect a Deferred Gas Cost Adjustment and to calculate the projected Incremental Pricing Surcharges. This filing is being made in accordance with Sections 20 and 21 of Eastern Shore's FERC Gas Tariff and the Purchased Gas Cost Adjustment reflects rates payable to Eastern Shore's suppliers during the period March 1, 1980 through August 31, 1980.

Eastern Shore states that copies of the filing have been mailed to each of its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before 2/26/80. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-6029 filed 2-26-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA80-1-45 (PGA80-1)]

Inter-City Minnesota Pipelines, Ltd., Inc.; Filing to Track Canadian Supplier Rate Increase

February 15, 1980.

Take notice that on February 6, 1980, Inter-City Minnesota Pipelines Ltd., Inc. (Minnesota Pipelines) tendered for filing Thirteenth Revised Sheet No. 4 to the F.E.R.C. Gas Tariff, Original Volume No. 1, to be effective February 17, 1980. Minnesota Pipelines states that the purpose of the revised tariff sheet is to reflect in its rates to jurisdictional customers an increase in the rates

charged to Minnesota Pipelines by its Canadian pipeline supplier.

Minnesota Pipelines states that Thirteenth Revised Sheet No. 4 reflects a Current Purchased Gas Cost Rate Adjustment pursuant to § 154.38(d)(4) of the Commission's Rules and Regulations and to Section 18.2 of Minnesota Pipelines' published F.E.R.C. Gas Tariff, Original Volume No. 1. Minnesota Pipelines further states that the increase is based on a corresponding increase, effective February 17, 1980, in the border price of Canadian natural gas from U.S. $3.45 per MMBtu to U.S. $4.47 per MMBtu under Minnesota Pipelines' Licenses Nos. GL28 and GL30, and from U.S. $3.15 per MMBtu to U.S. $3.65 per MMBtu under Minnesota Pipelines' License No. GL29. Minnesota Pipelines states that these increases are not yet approved for payment by the Economic Regulatory Administration and makes its filing condition on such approval.

Minnesota Pipelines requests a waiver of the November 1st date of annual adjustment established for its PGA filings by Section 154.38(d)(4)(iv)(a) of the Commission's regulations and that the Commission permit the PGA surcharge to become effective on February 17, 1980. Minnesota Pipelines submits that this waiver is requested on the grounds that deferred collection of the increased border price will demonstrate work a severe hardship on the company. Minnesota Pipelines further represents that the increased charges are necessary and appropriate in light of the border price increases and that the prompt recovery of these amounts is essential.

Minnesota Pipelines further requests that the Commission waive the applicable notice requirement and permit an effective date of February 17, 1980 or, in the alternative, that the request be permitted to be effective following a one day suspension.

Minnesota Pipelines states that copies of the filing have been mailed to all of its jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 1.8 and Section 1.10 of the Commission's Rules of Practice and procedure (18 CFR § 1.8, 1.10). All such petitions or protests should be filed on or before February 28, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-6035 Filed 2-26-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. E-9206]

McDowell County Consumers Council, Inc. v. American Electric Power Company, Inc., et al.; Order Requiring Certification of the Record in This Proceeding

Issued: February 14, 1980.

On July 29, 1975 the Federal Power Commission [1] commenced an investigation in this proceeding regarding certain coal procurement and management practices of the American Electric Power Company, Inc. (AEP) and some 30 subsidiaries in the AEP holding company system.[2] This case was initiated by the complaint of McDowell County Consumers Council, Inc., that the fuel coal procurement practices of Appalachian Power Company (Appalachian), an AEP subsidiary, unreasonably inflated the cost of electric service passed on to retail consumers by means of Appalachian's fuel adjustment clause. These practices allegedly included the procurement of excessively-priced coal from both affiliate and non-affiliate coal companies,[3] and the redistribution of coal between Appalachian and its affiliated operating electric utilities.

At the request of certain intervenors,[4] the scope of the proceeding was expanded to include the coal procurement and management parties of the entire AEP system. However, the investigation was limited to the effects of these practices on wholesale electric rates.

Since this proceeding was commenced, the Commission Staff has conducted an extensive analysis of the issues set for investigation. Staff reports were issued in 1978 and 1979, with final recommendations submitted on November 14, 1979. AEP submitted a response and a "post-investigation memorandum" on January 31, 1980. A Staff response to AEP's filing is due to be submitted on February 14, 1980, to the administrative law judge who has set the procedural ground rules for the investigation.[5]

Before additional procedures are established, we shall direct the judge to certify the entire record to us on February 15, 1980, for a determination of the future course of this proceeding. We plan to review the Staff reports, the AEP response and any response Staff may file on February 14, 1980, to pinpoint the issues of this case and develop the most expeditious methods for resolving them.

The Commission orders:

(A) The presiding judge shall immediately certify to the Commission the entire record of this proceeding, including any response the Staff may file on or before its February 14, 1980 deadline.

(B) The procedural schedule in Docket No. E-9206 is hereby placed in abeyance, pending further directive of the Commission.

(C) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-6037 Filed 2-26-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP80-74]

Michigan Wisconsin Pipe Line Co.; Petition for Issuance of an Order

February 19, 1980.

Take notice that on February 1, 1980, pursuant to Section 1.8 of the Commission's Rules of Practice and Procedure, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) filed a petition to terminate the contingent refund obligation imposed by the Commission in Docket No. RP71-112 relative to an advance payment made by Michigan Wisconsin to Imperial Oil Limited ("Imperial") in order to acquire volumes of natural gas supplies in the Mackenzie Delta Area of the Northwest Territories of Canada.

The petition states that Michigan Wisconsin's March 24, 1972 advance payment agreement with Imperial has been substantially modified, that

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[1] Responsibility for this case was assumed by the Federal Energy Regulatory Commission upon its creation on October 1, 1977. As used herein the term "Commission" refers to the Federal Power Commission or the Federal Energy Regulatory Commission, depending upon whether events referred to occurred before or after October 1, 1977.

[2] AEP is a registered public utility holding company under the Public Utility Holding Company Act of 1935.

[3] Among the respondents in this proceeding are several AEP subsidiaries which mine coal and sell their product exclusively to AEP system operating utilities.

[4] Richmond Power & Light of the City of Richmond, Indiana, Environmental Action Foundation and the State of Michigan.

[5] By order of February 11, 1980 the presiding judge extended the time for submission of any final comments the Staff might wish to present. Under the procedures we adopt herein, Staff need not submit final comments.

Michigan Wisconsin has removed the Imperial advance from its rate base, and that a review of the situation shows the advance was made consistent with Commission policy and with the reasonable expectation that substantial gas would be received. The petition asks that the Commission relieve Michigan Wisconsin of its contingent obligation to refund associated carrying charges, said to be $2,491,446, collected from customers relative to the Imperial advance.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 25, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-6030 filed 2-26-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. GP80-15]

Michigan Wisconsin Pipe Line Co.; Further Notice of Third-Party Protests [1]

February 15, 1980.

Take notice that in accordance with the procedures established by the Federal Energy Regulatory Commission (Commission) in Order No. 23-B [2], and "Order on Rehearing of Order No. 23-B," [3] the Staff of the Commission on February 1, 1980, protested the assertion by the Michigan Wisconsin Pipe Line Company (Mich-Wisc) and certain producers that the contracts identified in Staff's protest constitute contractual authority for the producers to charge and collect any applicable maximum lawful price under the Natural Gas Policy Act of 1978 (NGPA).

Staff stated that the contracts identified in Appendix A of this notice do not constitute the contractual authorization for the producers to increase prices to the extent claimed by Mich-Wisc in its evidentiary submission.

(On December 27, 1979, and January 7 and 15, 1980, Mich-Wisc supplemented its evidentiary submission. Staff's protests to the contracts listed in Appendix A to this notice are allegedly a result of these supplements by Mich-Wisc. Staff previously protested certain contracts listed in Mich-Wisc's original evidentiary submission. See "Commission Staff Protest of Alleged Contractual Authority To Charge NGPA Rates," filed in this docket by Staff on December 21, 1979. These earlier protests were listed in Appendix A of the "Notice of Third-Party Protests", issued by the Commission in this docket on February 1, 1980.)

Any person, other than the pipeline and the seller, desiring to be heard or to make any response with respect to these protests should file with the Commission, on or before March 3, 1980, a petition to intervene in accordance with 18 CFR § 1.8. The seller need not file for intervention because under 18 CFR § 154.94(j)(4)(ii), the seller in the first sale is automatically joined as a party.

Kenneth F. Plumb,

Secretary.

Appendix A

Producer	Rate schedule No. or contract date.	Mich-Wisc sequence No.
Gulf Oil Corp	5	405
Samson Resource Co	9/20/78	1069
Diamond Production Corp	2/22/78	360
Atlantic Richfield Co	712	131
Tenneco Oil Co	401	141
Conoco, Inc	439	322
Heimrich & Payne, Inc	40	561
Mid-Continent Energy Corp	8/4/78	825
Phillips Petroleum Corp	7/13/78	999
Amoco Production Co	792	71
Petroleum International, Inc	5/1/79	1349

[FR Doc. 80-6038 Filed 2-26-80; 8:45 am]

BILLING CODE 6450-85-M

[Dockets Nos. RP73-64; RP80-25]

Southern Natural Gas Co.; Proposed Changes in FPC Gas Tariff

February 19, 1980.

Take notice, that Southern Natural Gas Company (Southern) on February 11, 1980 tendered for filing proposed changes in its FPC Gas Tariff, Sixth Revised Volume No. 1 to become effective January 1, 1980. Southern states that the revised Tariff sheets are being submitted to comply with the Federal Energy Regulatory Commission's (Commission) Order of November 30, 1979 in Docket No. RP80-25, and the provisions of DOE/ERA Opinion No. 11 issued December 29, 1979 in Columbia LNG Corporation, et al., ERA Docket No. 79-14-LNG requiring LNG imported by Southern to be subject to the provisions of Section 203(a)(4) of the Natural Gas Policy Act of 1978 (Title II Incremental Pricing). In addition, the revised Tariff sheets reflect the interest compounding requirements of Commission Order No. 47.

Southern says that the changes proposed in the revised Tariff sheets do not alter current rates for jurisdictional sales in effect on Janaury 1, 1980.

Copies of the filing are being served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 28, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-6031 Filed 2-26-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. RP71-41, et al.]

United Gas Pipe Line Co., et al.; Filing of Pipeline Refund Reports and Refund Plans

February 19, 1980.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before February 28, 1980. Copies of the respective filings are on file with the

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[1] The term "third-party protests" refers to a protest filed by a party who is not a party to the contract which is protested.

[2] "Order Adopting Final Regulations and Establishing Protest Procedure," Docket No. RM79-22, issued June 21, 1979.

[3] Docket No. RM79-22, issued August 6, 1979.

Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix

Filing date, company and docket No.	Type filing
Jan. 14, 1980, United Gas Pipe Line Company, Report. RP71-41, *et al.*	
Jan. 24, 1980, Texas Eastern Transmission Corpo- ration, RP80-73.	Plan.

[FR Doc. 80-6032 Filed 2-26-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. SA80-81]

Valero Transmission Co. (formerly Lo-Vaca Gathering Co.); Application

February 15, 1980.

Take notice that on February 1, 1980, Valero Transmission Company (Applicant), formerly Lo-Vaca Gathering Company, filed in Docket Nos. ST80-12 and ST80-42 a statement of position that Applicant's rates for the transportation of natural gas pursuant to section 311(a)(2) of the Natural Gas Policy Act of 1978 come within the election set forth in § 284.123(b)(1)(ii) of the regulations. Alternatively, in the event the Commission determines that § 284.123(b)(1)(ii) is unavailable, Applicant requests that its filing be treated as an application for an adjustment under section 502(c) of the NGPA and § 1.41 of the general regulations.

Applicant states that the transportation rate utilized in its interstate transportation arrangements pursuant to Section 311(a)(2) of the NGPA is a formula rate filed with the Railroad Commission of Texas as a change in rates under Section 43(a) of the Public Utility Regulatory Act, Art. 1446c, Tex. Rev. Civ. Stat. (Supp. 1979). The filing with the Texas Public Utilities Commission was docketed as "GUD-1739", and the Railroad Commission initially suspended the rates under its procedures. The suspension order was subsequently lifted, the rates were allowed to become effective and were approved under Section 43(d) of the Public Utility Regulatory Act of Texas.

Any person desiring to participate in this proceeding shall file a petition to intervene in accordance with the provisions of the regulations and/or § 1.41. All petitions to intervene must be filed on or before March 13, 1980.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-6039 Filed 2-26-80; 8:45 am]

BILLING CODE 6450-85-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51026; FRL 1420-3]

Copolymer of Methacrylic Acid and Diacetone Acrylamide; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import. Section 5(d)(2) requires EPA to publish in the **Federal Register** within 5 working days, after receipt, certain information about each PMN the Agency receives. This Notice announces receipt of a PMN on the chemical substance copolymer of methacrylic acid and diacetone acrylamide and provides a summary of certain information provided in the PMN.

DATE: Written comments by March 29, 1980.

ADDRESS: Written comments to: Documents Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202-755-8050.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Smith, Premanufacturing Review Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202-426-8815.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of Availability of the Initial Inventory was published in the **Federal Register** of May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for a commercial purpose became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** of January 10, 1979 (44 FR 2242). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in Section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and uses of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic, name, the generic use, and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

Once received, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must

report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, EPA is issuing the PMN set forth below.

PMN 80–21.

Close of Review Period. April 28, 1980.

Manufacturer's Identity. Polaroid Corp., 575 Technology Square-9, Cambridge, MA 02139.

Specific Chemical Identity. Copolymer of methacrylic acid and diacetone acrylamide.

Data. The following summary is taken from data submitted by the manufacturer in support of claims made in the application.

Use. SX–70 photographic film component. Polaroid Corp. estimates an annual production of 1,000–100,000 kilograms (kg) during each of the first three years.

Test.

Oral LD (male and female rats): Over 5g/kg of body weight (bw).

Skin irritation (albino rabbits): Non-irritant.

Eye irritation (albino rabbits): Non-irritant.

Physical Chemical Properties.

Molecular weight: Minimum estimated to be above 10,000.

Appearance: White waxy solid.

Vapor pressure: Nil at 20°C.

Solubility in water: Nil at 20°C.

Exposure

Activity and type of exposure	Exposure routes	Maximum number persons exposed	Maximum duration		Concentration	
			Hour/day	Day/year	Average	Peak
Manufacturing	Dermal, inhalation.	20	24	75	0–1 mg/m³	0–1 mg/m³.
Processing	Dermal, inhalation.	10	24	100	0–1 mg/m³	0–1 mg/m³.
Use	Dermal, inhalation.	20	24	335	0–1 mg/m³	0–1 mg/m³.

Exposure will occur at the Polaroid Corp.'s plant at 1265 Main Street, Waltham, Middlesex, Mass. 02154. Physical states of the new chemical substance to which workers may be exposed: Solid, liquid solution, or colloidal mixture.

Environmental Release: Yearly Amount of Possible Releases of New Chemical

Process stage	Air	Landfill	P.O.T.W. [2]	Characterization of release
Batch polymerization and isolation	NA[1]	Nil (>10 kg/yr)	Nil (>10 kg/yr)	Small amounts from cleaning, incidental spills and leaks.
Processing of chemical into a coating mixture	NA	Nil (>10 kg/yr)	Nil (>10 kg/yr)	Small amounts from cleaning, incidental spills and leaks.
Coating of chemical as part of a layer on inert polyester base.	NA	Minor (>100 kg/yr)	Nil (>10 kg/yr)	Process wastes are segregated and concentrated where possible before disposal in secure chemical landfill or thermal oxidizer.
Mechanical assembly of SX–70 article	NA	Nil (>10 kg/yr)	NA	Film units processed for silver recovery, where possible.
Consumer use of SX–70	NA	NA	NA	No intentional consumer photographic waste.

[1] Not applicable.

[2] Publicly Owned Treatment Works.

Interested persons may, on or before March 29, 1980, submit to the Document Control Officer (TS–793), Rm. E–447, Office of Pesticides and Toxic Substances, 401 M St., SW, Washington, DC 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–51026]". Comments received may be seen in the above office between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: February 21, 1980.

John P. DeKany,

Deputy Assistant Administrator for Chemical Control.

[FR Doc. 80–6092 Filed 2–26–80; 8:45 am]

BILLING CODE 6560–01–M

[OPTS–51030; FRL 1420–7]

Monosubstituted-4,5-Dimethoxy Benzyl Chloride; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or imports a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import. Section 5(d)(2) requires EPA to publish in the **Federal Register** within 5 working days, after receipt, certain information about each PMN the Agency receives. This Notice announces receipt of a PMN on the chemical substance monosubstituted-4,5-dimethoxy benzyl chloride and provides a summary of certain information provided in the PMN.

DATE: Written comments by March 21, 1980.

ADDRESS: Written comments to: Documents Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202–755–8050.

FOR FURTHER INFORMATION CONTACT: Mr. George Bagley, Premanufacturing Review Division (TS–794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202–426–3936.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first

published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** of May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for a commercial purpose became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** of January 10, 1979 (44 FR 2242). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in Section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and uses of the substance, as well as a description of any test data submitted under section 5(c). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d) (2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use, and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

Once received, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review poeriod ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, EPA is issuing the PMN set forth below.

PMN 80–12.

Closed of Review Period. April 20, 1980.

Manufacturer's Identity. E. I. du Pont de Nemours & Co., 1007 Market St., Wilmington, DE 19898.

Specific Chemical Identity. Claimed confidential. Generic name provided: Monosubstituted-4,5-dimethoxy benzyl chloride.

Data. The following summary is taken from data submitted by the manufacturer in support of claims made in the application.

Use. Chemical intermediate.

Production Estimates.

Production year	Kilograms	
	Minimum	Maximum
First year	100	250
Second year	375	750
Third year	500	1,000

Physical/Chemical Properties.

Melting point.—79–81°C.

Minimum purity.—80 percent.

Physical state.—Yellow-tan solid.

Reactions.—Stable to ambient conditions. Unstable at temperature above 80°C.

Test Data. Results of the following tests performed on the PMN substance were supplied.

Mutagenicity—Ames test.

Primary skin irritation and sensitization tests on guinea pigs.

Eye and skin irritation tests on rabbits.

Rat oral lethal dose (LD_{50} (9,215 mg/kg).

Occupational Exposure and Disposal.

Site	Exposure route(s)	No. of employees exposed	Maximum duration of exposure
Wilmington, DE.	Inhalation	2	16 hr/da; 93 da/yr.
	Dermal	2	16 hr/da; 93 da/yr.

Disposal. The following methods of disposal will occur incidental to manufacture, processing, or use of the substance.

Primary method: Destruction by incineration.

Minimal release to the air and water.

Interested persons may, on or before March 21, 1980, submit to the Document Control Officer (TS–793), Rm. E–447, Office of Pesticides and Toxic Substances, 401 M St., SW, Washington, DC 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–51030]". Comments received may be seen in the above office between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: February 21, 1980.

John P. DcKany,

Deputy Assistant Administrator for Chemical Control.

[FR Doc. 80–6088 Filed 2–26–80; 8:45 am]

BILLING CODE 6560–01–M

[OPTS-51029; FRL 1420-6]

Monosubstituted-4,5-Dimethoxy Phenyl Ethanol; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import. Section 5(d)(2) requires EPA to publish in the **Federal Register** within 5 working days, after receipt, certain information about each PMN the Agency recieves. This Notice announces receipt of a PMN on the chemical substance monosubstituted-4,5-dimethoxy phenyl ethanol and provides a summary of certain information provided in the PMN.

DATE: Written comments by March 21, 1980.

ADDRESS: Written comments to: Documents Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202–755–8050.

FOR FURTHER INFORMATION CONTACT: Mr. George Bagley, Premanufacturing Review Division (TS–794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202–426–3936.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** of May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for a commercial purpose became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** of January 10, 1979 (44 FR 2242). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in Section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and uses of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use, and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

Once received, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, EPA is issuing the PMN set forth below.

PMN 80–11.

Close of Review Period. April 20, 1980.

Manufacturer's Identity. E. I. du Pont de Nemours & Co., 1007 Market St., Wilmington, DE 19898.

Specific Chemical Identity. Claimed confidential. Generic name provided: Monosubstituted-4,5-dimethoxy phenyl ethanol.

Data. The following summary is taken from data submitted by the manufacturer in support of claims made in the application.

Use. Chemical intermediate.

Production Estimates.

Production year	Kilograms	
	Minimum	Maximum
First year	100	250
Second year	375	750
Third year	500	1,000

Physical/Chemical Properties.

Melting point.—124–125° C.

Minimum purity.—99%.

Physical state.—Yellow solid.

Reaction.—Stable to ambient conditions.

Test Data. Results of the following tests performed on the PMN substance were supplied.

Mutagenicity—Ames test.

Primary skin irritation and sensitization tests on guinea pigs.

Eye and skin irritation tests on rabbits.

Rat oral lethal dose (LD_{50} 6,615 mg/kg).

Occupational Exposure and Disposal.

Site	Exposure route(s)	No. of employees exposed	Maximum duration of exposure
Wilmington, DE.	Inhalation	2	16 hr/da; 43 da/yr.

Disposal. The following methods of disposal will occur incidental to manufacture, processing, or use of the substance.

Primary method: Destruction by incineration.

Minimal release to the air and water.

Interested persons may, on or before March 21, 1980, submit to the Document Control Officer (TS–793), Rm. E–447, Office of Pesticides and Toxic Substances, 401 M St., SW, Washington, DC 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be

identified with the document control number "[OPTS–51029]". Comments received may be seen in the above office between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: February 21, 1980.

John P. DeKany,

Deputy Assistant Administrator for Chemical Control.

[FR Doc. 80–6089 Filed 2–26–80; 8:45 am]

BILLING CODE 6560–01–M

[OPTS–51027; FRL 1420–4]

Polymer of Dehydrated Castor Oil, Trimethylolethane, Phthalic Anhydride, and Benzoic Acid; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import. Section 5(d)(2) requires EPA to publish in the **Federal Register** within 5 working days, after receipt, certain information about each PMN the Agency receives. This Notice announces receipt of a PMN on the chemical substance polymer of dehydrated castor oil, trimethylolethane, phthalic anhydride, and benzoic acid and provides a summary of certain information provided in the PMN.

DATE: Written comments by March 28, 1980.

ADDRESS: Written comments to: Documents Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202–755–8050.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Zemrose, Premanufacturing Division (TS–794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 202–426–3980.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** of May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for a commercial purpose became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** of January 10, 1979 (44 FR 242). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in Section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and uses of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use, and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

Once received, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, EPA is issuing the PMN set forth below.

PMN No. 80–7.

Close of Review Period. April 28, 1980.

Manufacturer's Identity. International Minerals & Chemical Corp., 2315 Sanders Road, Northbrook, IL 60062.

Specific Chemical Identity. Polymer of dehydrated castor oil, trimethylolethane, phthalic anhydride, and benzoic acid.

Data. The submitter claims that no test data are available and that health and environmental effects are not known or reasonably ascertainable.

International Minerals and Chemical Corp. states that approximately 150,000 pounds of this substance will be manufactured annually. The manufacturer states further that two to three employees will be exposed to the substance for about one-half to two hours incidental to the manufacturing process.

Interested persons may, on or before March 28, 1980, submit to the Document Control Officer (TS–793), Rm. E–447, Office of Pesticides and Toxic Substances, 401 M St., SW, Washington, DC 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–51027]". Comments received may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: February 21, 1980.

John P. DeKany,

Deputy Assistant Administrator for Chemical Control.

[FR Doc. 80–6091 Filed 2–26–80; 8:45 am]

BILLING CODE 6560–01–M

[80T-8; FRL 1421-2]

Polymer of Epichlorohydrin; Bisphenol A; N-Methyl Morpholine; Acetic Acid; and Linseed Fatty Acid; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import. Section 5(d)(2) requires EPA to publish in the **Federal Register** within 5 working days, after receipt, certain information about each PMN the Agency receives. This Notice announces receipt of a PMN on the chemical substance polymer of: epichlorohydrin; bisphenyl A; N/methyl morpholine; acetic acid; and linseed fatty acid and provides a summary of certain information provided in the PMN.

DATE: Written comments by April 4, 1980.

ADDRESS: Written comments to: Documents Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202-755-8050.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Smith, Premanufacturing Review Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202-426-8815.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** of May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for a commercial purpose became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** of January 10, 1979 (44 FR 2242). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in Section 5(d)(1) of TSCA. under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and uses of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use, and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

Once received, EPA has 90 says to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, EPA is issuing the PMN set forth below.

PMN 80-22.

Close of Review Period. May 4, 1980.

Manufacturer's Identity. Grow Group Inc., 3155 W. Big Beaver Road, Troy, MI 48084.

Specific Chemical Identity. Polymer of: Epichlorohydrin; bisphenol A; *N*-methyl morpholine; acetic acid; and linseed fatty acid.

Data. The following summary is taken from data submitted by the manufacturer in support of claims made in the application.

Use. Water reducible paint.

Physical/Chemical Properties.

Weight/gal.—8.9-9.0.

Amine value.—34-36.

Solids.—69/71%.

Volatility.—No volatility.

Production Estimates.

Production year	Kilograms	
	Minimum	Maximum
1980	40,000	50,000
1981	50,000	250,000
1982	100,000	250,000

Exposure.

Activity	Exposure routes	Maximum No. persons exposed	Maximum duration	
			Hr/da.	Da/yr.
Manufacture	Inhalation	2	2	30
	Dermal	2	2	30
Processing	Inhalation	1	3	30
	Dermal	1	3	30

Fumes will escape into the atmosphere during filling in of drums with finished polymer. Potential skin contact to workers if not wearing gloves, as required, during paint processing equipment loading and filling in of drums with finished product.

Discharge to land or water would be due to accidental spill.

Interested persons may, on or before April 4, 1980, submit to the Document Control Officer (TS-793), Rm. E-447, Office of Pesticides and Toxic Substances, 401 M St., SW, Washington, DC 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[80T-8]". Comments received

may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: February 21, 1980.

John P. DeKany,

Deputy Assistant Administrator for Chemical Control.

[FR Doc. 80-6082 Filed 2-26-80; 8:45 am]

BILLING CODE 6560-01-M

[OPTS-59006; FRL 1421-3]

Substituted Ketone Pyran; Premanufacture Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1)(A) of the Toxic Substances Control Act (TSCA) requires any person intending to manufacture or import a new chemical substance for a commercial purpose in the United States to submit a premanufacture notice (PMN) to EPA at least 90 days before he commences such manufacture or import. Under section 5(h) the Agency may, upon application, exempt any person from any requirement of section 5 to permit such person to manufacture or process a chemical for test marketing purposes. Section 5(h)(6) requires EPA issue a notice of receipt of any such application for publication in the **Federal Register**. This notice announces receipt of an application for an exemption from the premanufacture reporting requirements for test marketing purposes and requests comments on the appropriateness of granting the exemption.

DATES: The Agency must either approve or deny this application by March 6, 1980. Persons should submit written comments on the application no later than March 13, 1980.

ADDRESS: Written comments should bear the identifying notation "OPTS-59006", and should be submitted in triplicate, if possible, to the: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Paige Beville, Premanufacturing Review Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Washington, D.C. 20460, (202-426-8815).

SUPPLEMENTARY INFORMATION: 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 notice to EPA before manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the Inventory of existing chemical substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** on May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

Section 5(a)(1) requires each PMN to be submitted in accordance with section 5(d) and any applicable requirement of section 5(b). Section 5(d)(1) defines the contents of a PMN. Section 5(b)(1) contains additional reporting requirements for chemical substances that are subject to testing rules under section 4. Section 5(b)(2) requires additional information in PMN's for substances which EPA, by rules under section 5(b)(4), has determined may present unreasonable risks of injury to health or the environment.

Section 5(h), "Exemptions," contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirement of section 5(a) or section 5(b) to permit the persons to manufacture or process a chemical substance for test marketing purposes. To grant such an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and the Agency must publish a notice of its disposition in the **Federal Register**. If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

Under section 5(h)(6), EPA must publish in the **Federal Register** a notice of receipt of an application under section 5(h)(1) immediately after the Agency receives the application. The notice identifies and briefly describes the application (subject to section 14 confidentiality restrictions) and gives interested persons an opportunity to comment on it and whether EPA should grant the exemption. Because the Agency must act on the application within 45 days, interested persons should provide comments within 15 days after the notice appears in the **Federal Register**. (March 13, 1980)

EPA has proposed Premanufacture Notification Requirements and Review Procedures published in the **Federal Register** of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764) containing proposed premanufacture rules and notice forms. Proposed 40 CFR 720.15 (44 FR 2268) would implement section 5(h)(1) concerning exemptions for test marketing and includes proposed 40 CFR 720.15(c) concerning the section 5(h)(6) **Federal Register** notice. However, these requirements are not yet in effect. In the meantime, EPA has published a statement of Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) which applies to PMN's submitted prior to promulgation of the rules and notice forms.

Test Marketing Exemption Application No. 5AHQ-0180-0122.

Close of Application Review Period. March 6, 1980.

Applicant's Identity. E. I. du Pont de Nemours & Co., Inc., Wilmington, DE 19898.

Chemical Identity. Claimed confidential.

Proposed Generic Name. Substituted ketone pyran.

Use Information. Chemical intermediate.

Data. The following data and information were submitted by the company in support of the test marketing exemption application request: an Ames test for mutagenicity, primary skin irritation and sensitization tests on guinea pigs, eye and skin irritation tests on rabbits and a rat oral lethal dose (LD_{50}) test. Physical and Chemical Properties:

Melting point.—35–38° C.

Boiling point.—127–128° C (mm).

Specifications.—Minimum purity of 98 percent.

Description.—Crystalline solid.

Reactivity.—Stable under ambient conditions.

The manufacturer claims that the chemical is classified as nonhazardous based on Dept. of Transportation criteria and will be shipped by barge vessel into the United States and by truck from the site of import (New York) to the site of processing. Maximum amount to be transported by any mode of transportation: 100kg.

Production. The substance will be supplied to a total of 29 customers during the second, third, and fourth quarters of 1980 for test marketing. Information concerning production volume during the test marketing phase was claimed confidential.

All comments submitted and other nonconfidential information in the public record are available for public inspection from 9:00 a.m. to 4:00 p.m., Monday through Friday (excluding

holidays), in Rm. 447, East Tower, at the address above.

Dated: February 21, 1980.

John DeKany,

Deputy Assistant Administrator for Chemical Control.

[FR Doc. 80-6081 Filed 2-26-80; 8:45 am]

BILLING CODE 6560-01-M

[OPTS-51032; FRL 1422-1]

Substituted Ketone Pyran; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import. Section 5(d)(2) requires EPA to publish in the **Federal Register** within 5 working days, after receipt, certain information about each PMN the Agency receives. This Notice announces receipt of a PMN on the chemical substance substituted ketone pyran and provides a summary of certain information provided in the PMN.

DATE: Written comments by March 21, 1980.

ADDRESS: Written comments to: Documents Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington DC 20460, 202-755-8050.

FOR FURTHER INFORMATION CONTACT: Ms. Paige Beville, Premanufacturing Review Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202-426-8815.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** of May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for a commercial purpose became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** of January 10, 1979 (44 FR 2242). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in Section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and uses of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any informaiton submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use, and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provide, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

Once received, EPA has 90 dyas to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, EPA is issuing the PMN set forth below.

PMN 80-10.

Close of Review Period. April 20, 1980.

Manufacturer's Identity. E. I. du Pont de Nemours & Co., 1007 Market St., Wilmington, DE 19898.

Specific Chemical Identity. Claimed confidential. Generic name provided: Substituted ketone pyran.

Data. The following summary is taken from data submitted by the manufacturer in support of claims made in the application.

Use. Chemical intermediate.

Production Estimates.

Production year	Kilograms	
	Minimum	Maximum
First year	8	20
Second year	31	61
Third year	41	82

Physical/Chemical Properties.

Melting point.—35-38°C.

Boiling point.—127-128°C (13 torr).

Minimum purity.—98%.

Physical state.—Crystalline solid.

Reactivity.—Stable under ambient conditions.

Test Data. Results of the following tests performed on the PMN substance were supplied.

Mutagenicity—Ames test.

Primary skin irritation and sensitization tests on guinea pigs.

Eye and skin irritation tests on rabbits.

Rat oral lethal dose test (LD_{50} 2,647 mg/kg).

Occupational Exposure During Processing. (The PMN substance will be imported).

Site	Exposure routes	No. of employees exposed	Maximum duration of exposure
Wilmington, DE.	Inhalation	2	15 hr/da; 16 da/yr.
	Dermal	2	15 hr/da; 16 da/yr.

Disposal. The following methods of disposal will occur incidental to processing or use of the substance.

Primary method: Destruction by incineration.

Minimal release to the air and water.

Interested persons may, on or before March 21, 1980, submit to the Document Control Officer (TS–793), Rm. E–447, Office of Pesticides and Toxic Substances, 401 M St., SW, Washington, DC 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–51032]". Comments received may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: February 21, 1980.

John P. DeKany,

Deputy Assistant Administrator for Chemical Control.

[FR Doc. 80–6087 Filed 2–26–80; 8:45 am]

BILLING CODE 6560–01–M

[OPTS–59004; FRL 1421–5]

Substituted N-Alkylquinoline; Premanufacture Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1)(A) of the Toxic Substances Control Act (TSCA) requires any person intending to manufacture or import a new chemical substance for a commercial purpose in the United States to submit a premanufacture notice (PMN) to EPA at least 90 days before he commences such manufacture or import. Under section 5(h) the Agency may, upon application, exempt any person from any requirement of section 5 to permit such person to manufacture or process a chemical for test marketing purposes. Section 5(h)(6) requires EPA issue a notice of receipt of any such application for publication in the **Federal Register.** This notice announces receipt of an application for an exemption from the premanufacture reporting requirements for test marketing purposes and requests comments on the appropriateness of granting the exemption.

DATES: The Agency must either approve or deny this application by March 6, 1980. Persons should submit written comments on the application no later than March 13, 1980.

ADDRESS: Written comments should bear the identifying notation "OPTS–59004", and should be submitted in triplicate, if possible, to the: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Paige Beville, Premanufacturing Review Division (TS–794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Washington, D.C. 20460 (202–426–8815).

SUPPLEMENTARY INFORMATION: 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 notice to EPA before manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the Inventory of existing chemical substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** on May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

Section 5(a)(1) requires each PMN to be submitted in accordance with section 5(d) and any applicabale requirement of section 5(b). Section 5(d)(1) defines the contents of a PMN. Section 5(b)(1) contains additional reporting requirements for chemical substances that are subject to testing rules under section 4. Section 5(b)(2) requires additional information in PMN's for substances which EPA, by rules under section 5(b)(4), has determined may present unreasonable risks of injury to health or the environment.

Section 5(h), "Exemptions," contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirement of section 5(a) or section 5(b) to permit the persons to manufacture or process a chemical substance for test marketing purposes. To grant such an exemption, the Agency must find that the test marketing activities will not present any unreasonabale risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and the Agency must publish a notice of its disposition in the **Federal Register.** If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

Under section 5(h)(6), EPA must publish in the **Federal Register** a notice of receipt of an application under section 5(h)(1) immediately after the Agency receives the application. The notice identifies and briefly describes the application (subject to section 14 confidentiality restrictions) and gives interested persons an opportunity to comment on it and whether EPA should grant the exemption. Because the Agency must act on the application within 45 days, interested persons should provide comments within 15 days after the notice appears in the **Federal Register.** (March 13, 1980)

EPA has proposed Premanufacture Notification Requirements and Review Procedures published in the **Federal Register** of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764) containing proposed premanufacture rules and notice forms. Proposed 40 CFR 720.15 (44 FR 2268) would implement section 5(h)(1) concerning exemptions for test marketing and includes proposed 40 CFR 720.15(c) concerning the section 5(h)(6) **Federal Register** notice. However, these requirements are not yet in effect. In the meantime, EPA has published a statement of Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) which applies to PMN's submitted prior to promulgation of the rules and notice forms.

Test Marketing Exemption Application No. 5AHQ–0180–0120.

Close of Application Review Period. March 6, 1980.

Applicant's Identity. E.I. du Pont de Nemours & Co., Wilmington, DE 19898.

Chemical Identity. Claimed confidential.

Proposed Generic Name. Substituted *N*-alkylquinoline.

Use Information. Photographic products.

Data. The following data and information were submitted by the company in support of the test marketing exemption application request: an Ames test for mutagenicity, primary skin irritation and sensitization tests on guinea pigs, eye and skin irritation tests on rabbits, and a rat oral lethal dose (LD_{50}) test.

Physical and Chemical Properties:

Melting point.—88–92°C.

Specifications.—Minimum purity of 98 percent.

Description.—Orange-colored.

Reactivity.—Stable under ambient conditions.

Production. The substance will be supplied to a total of 29 customers during the second, third, and fourth quarters of 1980 for test marketing. Information concerning production volume during the test marketing phase was claimed confidential.

All comments submitted and other nonconfidential information in the

public record are available for public inspection from 9:00 a.m. to 4:00 p.m., Monday through Friday (excluding holidays), in Rm. 447, East Tower, at the address above.

Dated: February 21, 1980.

John DeKany,

Deputy Assistant Administrator for Chemical Control.

[FR Doc. 80-6086 Filed 2-26-80; 8:45 am]

BILLING CODE 6560-01-M

[OPTS-51028; FRL 1420-5]

Substituted-N-Alkylquinoline; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import. Section 5(d)(2) requires EPA to publish in the **Federal Register** within 5 working days, after receipt, certain information about each PMN the Agency receives. This Notice announces receipt of a PMN on the chemical substance substituted-N-alkylquinoline and provides a summary of certain information provided in the PMN.

DATE: Written comments by March 21, 1980.

ADDRESS: Written comments to: Documents Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20560, 202-755-8050.

FOR FURTHER INFORMTATION CONTACT: Ms. Paige Beville, Premanufacturing Review Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202-426-8815.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** of May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for a commercial purpose because effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** of January 10, 1979 (44 FR 2242). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in Section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and uses of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use, and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

Once received, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, EPA is issuing the PMN set forth below.

PMN 80-8.

Close of Review Period. April 20, 1980.

Manufacturer's Identity. E. I. du Pont de Nemours & Co., 1007 Market St., Wilmington, DE 19898.

Specific Chemical Identity. Claimed confidential.

Generic name provided: Substituted-*N*-alkylquinoline.

Data. The following summary is taken from data submitted by the manufacturer in support of claims made in the application.

Use. Photo products.

Production Estimates

Production year	Kilograms	
	Minimum	Maximum
First year	10	25
Second year	38	75
Third year	50	100

Physical/Chemical Properties.

Melting point.—88-92° C.

Minimum purity.—98 percent.

Physical state.—Orange-colored solid.

Reactivity.—Stable under ambient conditions.

Test Data. Results for the following tests performed on the PMN substance were supplied.

Mutagenicity—Ames test.

Primary skin irritation and sensitization tests on guinea pigs.

Eye and skin irritation tests on rabbits.

Rat oral lethal dose test (LD_{50}>13,000 mg/kg).

Occupational/Exposure

Site	Exposure routes	No. of employees exposed	Maximum duration of exposure
Wilmington, DE.	Inhalation	2	16 hr/da; 15 da/yr.
	Dermal	2	16 hr/da; 15 da/yr.
Towanda, PA.	Inhalation	8	16 hr/da; 7 da/yr.
	Dermal	8	16 hr/da; 7 da/yr.

Disposal. The following methods of disposal will occur incidental to

manufacture, processing, or use of the substance.

Primary method: Destruction by incineration.

Minimal release to the air and water.

Interested persons may, on or before March 21, 1980, submit to the Document Control Officer (TS–793), Rm. E–447, Office of Pesticides and Toxic Substances, 401 M St., SW., Washington, DC 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–51028]". Comments received may be seen in the above office between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604).)

Dated: February 21, 1980.

John P. DeKany,

Deputy Assistant Administrator for Chemical Control.

[FR Doc. 80–6090 Filed 2–26–80; 8:45 am]

BILLING CODE 6560–01–M

[OPTS–51034; FRL 1421–1]

Tetrasubstituted-N-Alkyl Quinoline; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import. Section 5(d)(2) requires EPA to publish in the **Federal Register** within 5 working days, after receipt, certain information about each PMN the Agency receives. This Notice announces receipt of a PMN on the chemical substance tetrasubstituted-*N*-alkyl quinoline and provides a summary of certain information provided in the PMN.

DATE: Written comments by March 21, 1980.

ADDRESS: Written comments to: Documents Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202–755–8050.

FOR FURTHER INFORMATION CONTACT: Ms. Paige Beville, Premanufacturing Review Division (TS–794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202–426–8815.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** of May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for a commercial purpose became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** of January 10, 1979 (44 FR 2242). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in Section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and uses of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use, and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

Once received, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, EPA is issuing the PMN set forth below.

PMN 80–14.

Close of Review Period. April 20, 1980.

Manufacturer's Identity. E. I. du Pont de Nemours & Co., 1007 Market St., Wilmington, DE 19898.

Specific Chemical Identity. Claimed confidential Generic name provided: Tetrasubstituted-*N*-alkyl quinoline.

Data. The following summary is taken from data submitted by the manufacturer in support of claims made in the application.

Use. Chemical intermediate.

Production Estimates.

Production year	Kilograms	
	Minimum	Maximum
First year	7	17
Second year	26	32
Third year	35	70

Physical/Chemical Properties.

Boiling point.—160–162° C (0.45 torr).

Minimum purity.—58%.

Physical state.—Dark-colored liquid.

Reactivity.—Stable under ambient conditions.

Test Data. Results of the following tests performed on the PMN substance were supplied.

Mutagenicity—Ames test.

Primary skin irritation and sensitization tests on guinea pigs.

Eye and skin irritation tests on rabbits.

Rat oral lethal dose test (LD_{50} 4,387 mg/kg).

Occupational Exposure.

Site	Exposure routes	No. of employees exposed	Maximum duration of exposure
Wilmington, DE.	Inhalation.....	2	16 hr/da; 8 da/yr.
	Dermal.....	2	16 hr/da; 8 da/yr.

Disposal. The following methods of disposal will occur incidental to manufacture, processing, or use of the substance.

Primary method: Destruction by incineration.

Minimal release to the air and water.

Interested persons may, on or before March 21, 1980, submit to the Document Control Officer (TS–793), Rm. E–447, Office of Pesticides and Toxic Substances, 401 M St., SW, Washington, DC 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–51034]". Comments received may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: February 21, 1980.

John P. DeKany,

Deputy Assistant Administrator for Chemical Control.

[FR Doc. 80–6083 Filed 2–26–80; 8:45 am]

BILLING CODE 6560–01–M

[OPTS–590010; FRL 1421–4]

Tetrasubstituted N-Alkylquinoline; Premanufacture Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1)(A) of the Toxic Substances Control Act (TSCA) requires any person intending to manufacture or import a new chemical substance for a commercial purpose in the United States to submit a premanufacture notice (PMN) to EPA at least 90 days before he commences such manufacture or import. Under section 5(h) the Agency may, upon application, exempt any person from any requirement of section 5 to permit such person to manufacture or process a chemical for test marketing purposes. Section 5(h)(6) requires EPA issue a notice of receipt of any such application for publication in the **Federal Register.** This notice announces receipt of an application for an exemption from the premanufacture reporting requirements for test marketing purposes and requests comments on the appropriateness of granting the exemption.

DATES: The Agency must either approve or deny this application by March 6, 1980. Persons should submit written comments on the application no later than March 13, 1980.

ADDRESS: Written comments should bear the identifying notation "OPTS–590010", and should be submitted in triplicate, if possible, to the: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Paige Beville, Premanufacturing Review Division (TS–794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Washington, D.C. 20460, (202–426–8815).

SUPPLEMENTARY INFORMATION: 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 notice to EPA before manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the Inventory of existing chemical substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** on May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

Section 5(a)(1) requires each PMN to be submitted in accordance with section 5(d) and any applicable requirement of section 5(b). Section 5(d)(1) defines the contents of a PMN. Section 5(b)(1) contains additional reporting requirements for chemical substances that are subject to testing rules under section 4. Section 5(b)(2) requires additional information in PMN's for substances which EPA, by rules under section 5(b)(4), has determined may present unreasonable risks of injury to health or the environment.

Section 5(h), "Exemptions," contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirement of section 5(a) or section 5(b) to permit the persons to manufacture or process a chemical substance for test marketing purposes. To grant such an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and the Agency must publish a notice of its disposition in the **Federal Register.** If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

Under section 5(h)(6), EPA must publish in the **Federal Register** a notice of receipt of an application under section 5(h)(1) immediately after the Agency receives the application. The notice identifies and briefly describes the application (subject to section 14 confidentiality restrictions) and gives interested persons an opportunity to comment on it and whether EPA should grant the exemption. Because the Agency must act on the application within 45 days, interested persons should provide comments within 15 days after the notice appears in the **Federal Register.**

EPA has proposed Premanufacture Notification Requirements and Review Procedures published in the **Federal Register** of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764) containing proposed premanufacture rules and notice forms. Proposed 40 CFR 720.15 (44 FR 2268) would implement section 5(h)(1) concerning exemptions for test marketing and includes proposed 40 CFR 720.15(c) concerning the section 5(h)(6) **Federal Register** notice. However, these requirements are not yet in effect. In the meantime, EPA has published a statement of Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) which applies to PMN's submitted prior to promulgation of the rules and notice forms.

Test Marketing Exemption Application No. 5AHQ–0180–0126.

Close of Application Review Period. March 5, 1980.

Applicant's Identity. E. I. du Pont de Nemours & Co., Inc., Wilmington DE 19898.

Chemical Identity. Claimed confidential.

Proposed Generic Name. Tetrasubstituted *N*-alkylquinoline.

Use Information. Chemical intermediate.

Data. The following data and information were submitted by the company in support of the test marketing exemption application request: an Ames test for mutagenicity, primary skin irritation and sensitization tests on guinea pigs, eye and skin irritation tests on rabbits, and an oral lethal dose (LD_{50}) test.

Physical and Chemical Properties:

Boiling point.—160–162°C (0.45 mm).

Specifications.—Minimum purity of 58 percent.

Description.—A dark, colored liquid containing 58 percent product, 10 percent methylene chloride, 22 percent solvent, and 10 percent acetic acid.

Reactivity.—Stable under ambient conditions.

Production. The substance will be supplied to a total of 29 customers during the second, third, and fourth quarters of 1980 for test marketing. Information concerning production volume during the test marketing phase was claimed confidential.

All comments submitted and other nonconfidential information in the public record are available for public inspection from 9 a.m. to 4 p.m., Monday through Friday (excluding holidays), in Rm. 447, East Tower, at the address above.

Dated: February 21, 1980.

John DeKany,

Deputy Assistant Administrator for Chemical Control.

[FR Doc. 80-6080 Filed 2-26-80; 8:45 am]

BILLING CODE 6560-01-M

[OPTS-51033; FRL 1420-8]

Tetrasubstituted Quinoline; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import. Section 5(d)(2) requires EPA to publish in the **Federal Register** within 5 working days, after receipt, certain information about each PMN the Agency receives. This notice announces receipt of a PMN on the chemical substance tetrasubstituted quinoline and provides a summary of certain information provided in the PMN.

DATE: Written comments by March 21, 1980.

ADDRESS: Written comments to: Documents Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202-755-8050.

FOR FURTHER INFORMATION CONTACT: Ms. Paige Beville, Premanufacturing Review Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202-426-8815.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** of May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for a commercial purpose became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** of January 10, 1979 (44 FR 2242). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in Section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and uses of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use, and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

Once received, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, EPA is issuing the PMN set forth below.

PMN 80-13.

Close of the Review Period. April 20, 1980.

Manufacturer's Identity. E. I. du Pont de Nemours & Co., 1007 Market St., Wilmington, DE 19898.

Specific Chemical Identity. Claimed confidential. Generic name provided: Tetrasubstituted quinoline.

Data. The following summary is taken from data submitted by the manufacturer in support of claims made in the application.

Use. Chemical intermediate

Production Estimates.

Production year	Kilograms	
	Minimum	Maximum
First year	8	20
Second year	30	59
Third year	39	78

Physical/Chemical Properties.

Boiling point.—88–91°C (1.1 torr).

Minimum purity.—99%.

Reactivity.—Stable under ambient conditions.

Test Data. Results of the following tests performed on the PMN substance were supplied.

Mutagenicity—Ames test.
Primary skin irritation and sensitization tests on guinea pigs.
Eye and skin irritation tests on rabbits.
Rat oral lethal dose test (LD_{50} 1,177 mg/kg).
Occupational Exposure.

Site	Exposure routes	No. of employees exposed	Maximum duration of exposure
Wilmington, DE.	Inhalation.....	2	16 hr/da; 15 da/yr.
	Dermal.....	2	16 hr/da; 15 da/yr.

Disposal. The following methods of disposal will occur incidental to manufacture, processing, or use of the substance.
Primary method: Destruction by incineration.
Minimal release to the air and water.
Interested persons may, on or before March 21, 1980, submit to the Document Control Officer (TS–793), Rm. E–447, Office of Pesticides and Toxic Substances, 401M St., SW, Washington, DC 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identifed with the document control number "[OPTS–51033]". Comments received may be seen in the above office between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604)).

Dated: February 21, 1980.

John P. DeKany,

Deputy Assistant Administrator for Chemical Control.

[FR Doc. 80–6084 Filed 2–26–80; 8:45 am]

BILLING CODE 6560–01–M

[OPTS–59009; FRL 1421–6]

Tetrasubstituted Quinoline; Premanufacture Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1)(A) of the Toxic Substances Control Act (TSCA) requires any person intending to manufacture or import a new chemical substance for a commercial prupose in the United States to submit a premanufacture notice (PMN) to EPA at least 90 days before he commences such manufacture or import. Under section 5(h) the Agency may, upon application, exempt any person from any requirement of section 5 to permit such person to manufacture or process a chemical for test marketing purposes. Section 5(h)(6) requires EPA issue a notice of receipt of any such application for publication in the **Federal Register**. This notice announces receipt of an application for an exemption from the premanufacture reporting requirements for test marketing purposes and requests comments on the appropriateness of granting the exemption.

DATES: The Agency must either approve or deny this application by March 6, 1980. Persons should submit written comments on the application no later than March 13, 1980.

ADDRESS: Written comments should bear the identifying notation "OPTS–59009", and should be submitted in triplicate, if possible, to the: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Paige Beville, Premanufacturing Review Division (TS–794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Washington, D.C. 20460, (202–426–8815).

SUPPLEMENTARY INFORMATION: 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 notice to EPA before manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the Inventory of existing chemical substances compiled by EPA under section 8(b) of TSCA. EPA first published the initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** on May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

Section 5(a)(1) requires each PMN to be submitted in accordance with section 5(d) and any applicable requirement of section 5(b). Section 5(d)(1) defines the contents of a PMN. Section 5(b)(1) contains additional reporting requirements for chemical substances that are subject to testing rules under section 4. Section 5(b)(2) requires additional information in PMN's for substances which EPA, by rules under section 5(b)(4), has determined may present unreasonable risks of injury to health or the environment.

Section 5(h), "Exemptions," contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirement of section 5(a) or section 5(b) to permit the persons to manufacture or process a chemical substance for test marketing purposes. To grant such an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and the Agency must publish a notice of its disposition in the **Federal Register**. If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

Under section 5(h)(6), EPA must publish in the **Federal Register** a notice of receipt of an application under section 5(h)(1) immediately after the Agency receives the application. The notice identifies and briefly describes the application (subject to section 14 confidentiality restrictions) and gives interested persons an opportunity to comment on it and whether EPA should grant the exemption. Because the Agency must act on the application within 45 days, interested persons should provide comments within 15 days after the notice appears in the **Federal Register** (March 13, 1980).

EPA has proposed Premanufacture Notification Requirements and Review Procedures published in the **Federal Register** of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764) containing proposed premanufacture rules and notice forms. Proposed 40 CFR 720.15 (44 FR 2268) would implement section 5(h)(1) concerning exemptions for test marketing and includes proposed 40 CFR 720.15(c) concerning the section 5(h)(6) **Federal Register** notice. However, these requirements are not yet in effect. In the meantime, EPA has published a statement of Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) which applies to PMN's submitted prior to promulgation of the rules and notice forms.

Test Marketing Exemption Application No. 5AHQ–0180–0125.

Close of Application Review Period. March 6, 1980.

Applicant's Identity. E. I. du Pont de Nemours & Co., Inc., Wilmington, DE 19898.

Chemical Identity. Claimed confidential.

Proposed Generic Name. Tetrasubstituted quinoline.

Use Information. Chemical intermediate.

Data. The following data and information were submitted by the company in support of the test marketing exemption application

request: an Ames test for mutagenicity, primary skin irritation and sensitization tests on guinea pigs, eye and skin irritation tests on rabbits, and a rat oral lethal dose (LD_{50}) test. Physical and Chemical Properties:

Boiling point.—88–91° C (1.1 mm).

Specifications.—Minimum purity of 99 percent.

Reactivity.—Stable under ambient conditions.

Production. The substance will be supplied to a total of 29 customers during the second, third, and fourth quarters of 1980 for test marketing. Information concerning production volume during the test marketing phase was claimed confidential.

All comments suomitted and other nonconfidential information in the public record are available for public inspection from 9 a.m. to 4 p.m., Monday through Friday (excluding holidays), in Rm. 447, East Tower, at the address above.

Dated: February 21, 1980.

John DeKany,

Deputy Assistant Administrator for Chemical Control.

[FR Doc. 80-6085 Filed 2-26-80; 8:45 am]

BILLING CODE 6560-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Notice of Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on February 15, 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 receipts.

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 NRC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before March 17, 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.

Nuclear Regulatory Commission

The NRC requests an extension-without-change clearance of Form NRC–4, Occupational External Radiation Exposure History. Form NRC–4 is provided for use by NRC licensees to record an employee's radiation exposure history. As required by 10 CFR 20.102, it must be completed whenever the licensee proposes to expose an employee to a dose exceeding the limits of 10 CFR 20.101(a). The occupational exposure data on Form NRC–4 are maintained by licensees. NRC estimates that 600 licensees prepare and maintain on file, subject to inspection, an average of four forms per licensee annually and that preparation time averages one hour per form.

The NRC requests an extension-without-change clearance of Form NRC–5, Current Occupational External Radiation Exposure. Form NRC–5 is used by licensees to record the radiation exposures of all individuals for whom personnel monitoring is required under 10 CFR 20.202. The doses entered on the form are for periods of time not exceeding one calendar quarter. The exposure data on Form NRC–5 are maintained by the licensees. NRC estimates that 6,475 licensees provide personnel monitoring to about 313,000 individuals annually and that each entry on the form requires 1 minute.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 80-5971 Filed 2-26-80; 8:45 am]

BILLING CODE 1610-01-M

Regulatory Reports Review; Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on February 20, 1980 (ICC), and February 22, 1980 (FTC). 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 receipts.

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 FTC and ICC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before March 17, 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 Trade Commission

The FTC requests clearance of revisions to Corporate Structure Schedule (Forms CS–1, CS–2) and Nature of Business (Forms NB–1, NB–2) which are sent to companies introduced into the Quarterly Financial Report survey. The CS–1 and NB–1 forms are sent to manufacturing companies, while the CS–2 and NB–2 forms are sent to the retail trade, wholesale trade and mining companies. The purpose of the CS and NB forms are to (1) identify the proper reporting unit; (2) determine intercorporate relationships; (3) eliminate possible double counting of multi-corporate enterprises; (4) ascertain which segments of multi-corporate enterprises should be consolidated and which should not be included; (5) insure that each reporting unit has a known chance of having been drawn into the sample; and (6) classify each reporting unit in its proper industry. The FTC states that the revisions to the forms are minor editorial changes and a more substantial change stating on the form that all information received will be afforded confidential status. The FTC estimates that respondents for Forms C–1 and C–2 will number approximately 400 and that reporting time will average 15 minutes per response; and that respondents for Forms NB–1 and NB–2 will number approximately 5,600 and that reporting time will average 1 hour per response.

Interstate Commerce Commission

The ICC requests an extension-without-change clearance of Annual Report, Form W–3, required to be filed by some 99 Class III carriers by water having annual carrier operating revenues of less than $100,000 by order of 49 CFR 1250.30. Data collected by Form W–3 are used for economic regulatory purposes. Reports are mandatory and available for use by the public. The ICC estimates that reporting

burden for carriers will average four hours per annual report.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 80-6062 Filed 2-26-80; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPR 41]

Federal Procurement; Basic Agreements With Educational Institutions and Nonprofit Organizations, Fiscal Year 1980

February 4, 1980.

To: Heads of Federal agencies.

Subject: List of basic agreements available for use by executive agencies.

1. *Purpose.* This bulletin lists the current basic agreements of executive agencies that are available for use in the acquisition of research and development from educational institutions and nonprofit organizations in fiscal year 1980.

2. *Expiration date.* The information contained in this bulletin is of a continuing nature and will remain in effect until canceled.

3. *Background.*

(a) This bulletin, and predecessor bulletins, represents the implementation of recommendation B-11 of the Commission on Government Procurement which provided as follows: "Encourage the use of master agreements of the grant and contract types, which when executed should be used on a work order basis by all agencies and for all types of performers."

(b) Section 1-3.410-2(e) of the FPR now provides for the publication of FPR bulletins listing the basic agreements of executive agencies on a fiscal year basis as reported by those agencies. This is the fourth listing of these agreements.

4. *Guidance.* Attachment A contains a current list of institutions and organizations that have entered into basic agreements with executive agencies. Each institution is listed alphabetically together with a code number that identifies the agency concerned. Attachment B lists agency contact points that may be used to obtain copies of and information concerning the current applicability of the various basic agreements.

5. *Cancellation.* This bulletin cancels GSA Bulletin FPR 36, dated January 30, 1979.

Gerald McBride,

Assistant Administrator for Acquisition Policy.

Attachment A.—Basic Agreements With Educational Institutions and Nonprofit Organizations, Fiscal Year 1980

Note.—Where a specific basic agreement number and/or date is cited, the buying office should verify its current applicability. For a copy of or information concerning a particular basic agreement, identify the contractor and its code number and locate the contact point on Attachment B.

Contractor	Basic agreement No. and date	Code
Akron, University of, Akron, Ohio.	N00014-79-H-0142 January 1, 1979.	1
Alabama, University of, Huntsville, Alabama.	N00014-79-H-0167 January 1, 1979.	1
Alabama, University of, University, Alabama.	N00014-79-H-0130 January 1, 1979.	1
Alaska, University of, Fairbanks, Alaska.	N00014-79-H-0002 January 1, 1979.	1
Allan M. Voorhees Associates, Inc., McLean, Virginia.	DOT-FH-9530 September 29, 1979.	3
*American Institute of Biological Sciences, Arlington, Virginia.	N00014-79-H-0003 January 1, 1979.	1
American University, Washington, DC.	N00014-79-H-0073 January 1, 1979.	1
Arizona Board of Regents, Arizona State University, Tempe, Arizona.	N00014-79-H-0093 January 1, 1979.	1
Arizona Board of Regents, University of Arizona, Tuscon, Arizona.	N00014-79-H-0030 January 1, 1979.	1
Arkansas, University of, Board of Trustees, Fayetteville, Arkansas.	N00014-79-H-0151 January 1, 1979.	1
Auburn University, Auburn, Alabama.	N00014-79-H-0141 January 1, 1979.	1
Beth Israel Medical Center, New York, New York.	N00014-79-H-0085 January 1, 1979.	1
Bishop College, Dallas, Texas	N00014-79-H-0106 January 1, 1979.	1
Boston College, Trustees of Chestnut Hill, Massachusetts.	N00014-79-H-0117 January 1, 1979.	1
Boston University, Boston, Massachusetts.	N00014-79-H-0137 January 1, 1979.	1
Brandeis University, Waltham, Massachusetts.	N00014-79-H-0182 January 1, 1979.	1
Brigham Young University, Provo, Utah.	N00014-79-H-0174 January 1, 1979.	1
Brown University, Providence, Rhode Island.	N00014-79-H-0042 January 1, 1979.	1
California Institute of Technology, Pasadena, California.	N00014-79-H-0005 January 1, 1979.	1
California Institute of Technology, Pasadena, California.	14-08-0001-16850 April 15, 1978.	5
California State University Foundation, Northridge, Northridge, California.	N00014-79-H-0095 January 1, 1979.	1
California State University, Long Beach Foundation, Long Beach, California.	N00014-79-H-0084 January 1, 1979.	1
California State University, Los Angeles Foundation, Los Angeles, California.	N00014-79-H-0001 January 1, 1979.	1
California, The Regents of the University of, Berkeley, California.	N00014-79-H-0004 January 1, 1979.	1
Carnegie-Mellon University, Pittsburgh, Pennsylvania.	N00014-79-H-0063 January 1, 1979.	1
Case Western Reserve University, Cleveland, Ohio.	N00014-79-H-0034 January 1, 1979.	1
Catholic University of America, Washington, DC.	N00014-79-H-0074 January 1, 1979.	1
*Charles Stark Draper Laboratory, Cambridge, Massachusetts.	N00014-79-H-0007 January 1, 1979.	1
Chicago, University of, Chicago, Illinois.	N00014-79-H-0035 January 1, 1979.	1
Children's Hospital Medical Center, Boston, Massachusetts.	N00014-79-H-0132 January 1, 1979.	1
Cincinnati, University of, Cincinnati, Ohio.	N00014-79-H-0147 January 1, 1979.	1
Clarkson College of Technology, Potsdam, New York.	N00014-79-H-0043 January 1, 1979.	1
Clemson University, Clemson, South Carolina.	N00014-79-H-0116 January 1, 1979.	1
Colorado School of Mines, Golden, Colorado.	N00014-79-H-0180 January 1, 1979.	1
Colorado State University, Fort Collins, Colorado.	N00014-79-H-0036, January 1, 1979.	1
Colorado, The Regents of the University of Boulder, Colorado.	N00014-79-H-0018, January 1, 1979.	1
Colorado, University of Boulder, Colorado.	14-08-0001-17647, October 1, 1978.	5
Columbia University, New York, New York.	14-08-0001-16851, July 14, 1978.	55
Columbia University, The Trustees of, New York, New York.	N00014-79-H-0006, January 1, 1979.	1
Connecticut Health Center, University of, Farmington, Connecticut.	N00014-79-H-0150, January 1, 1979.	1
Connecticut, University of, Storrs, Connecticut.	N00014-79-H-0066, January 1, 1979.	1
Cornell University, Ithaca, New York.	N00014-79-H-0044, January 1, 1979.	1
Dartmouth College, Hanover, New Hampshire.	N00014-79-H-0121, January 1, 1979.	1
Dayton, University of, Dayton, Ohio.	N00014-79-H-0157, January 1, 1979.	1
Delaware, University of, Newark, Delaware.	N00014-79-H-0103, January 1, 1979.	1
Denver, University of, (Colorado Seminary), Denver, Colorado.	N00014-79-H-0125, January 1, 1979.	1
Drexel University, Philadelphia, Pennsylvania.	N00014-79-H-0045, January 1, 1979	1
Duke University, Durham, North Carolina.	N00014-79-H-0071, January 1, 1979.	1
Emmanuel College, The Trustees of, Boston, Massachusetts.	N00014-79-H-0153, January 1, 1979.	1
Emory University, Atlanta, Georgia.	N00014-79-H-0081, January 1, 1979.	1
*Environmental Research Institute of Michigan, Ann Arbor, Michigan.	N00014-79-H-0172, January 1, 1979.	1
Florida A&M University, Tallahassee, Florida.	N00014-79-H-0170, January 1, 1979.	1
Florida Institute of Technology, Melbourne, Florida.	N00014-79-H-0171, January 1, 1979.	1
Florida State University, Tallahassee, Florida.	N00014-79-H-0082, January 1, 1979.	1
Florida, University of, Gainesville, Florida.	N00014-79-H-0080, January 1, 1979	1
*Franklin Institute Research Laboratories, Philadelphia, Pennsylvania.	N00014-79-H-0184, January 1, 1979.	1
George Washington University, Washington, DC.	N00014-79-H-0075, January 1, 1979.	1
Georgetown University, Washington, DC.	N00014-79-H-0076, January 1, 1979.	1
Georgia State University, Atlanta, Georgia.	N00014-79-H-0079, January 1, 1979.	1
Georgia Tech Research Institute, Atlanta, Georgia.	N00014-79-H-0108, January 1, 1979.	1
Georgia, University of, Athens, Georgia.	N00014-79-H-0152, January 1, 1979.	1
Hahnemann Medical College, Philadelphia, Pennsylvania.	N00014-79-H-0046, January 1, 1979.	1
Harvard College, President and Fellows of, Cambridge, Massachusetts.	N00014-79-H-0028, January 1, 1979.	1
Hawaii, University of, Honolulu, Hawaii.	N00014-79-H-0008, January 1, 1979.	1
Houston, University of, Houston, Texas.	N00014-79-H-0068, January 1, 1979.	1
Howard University, Washington, DC.	N00014-79-H-0077, January 1, 1979.	1
Idaho, University of, Moscow, Idaho.	N00014-79-H-0164, January 1, 1979.	1
Illinois, Board of Trustees of the University of, Urbana, Illinois.	N00014-79-H-0009, January 1, 1979.	1
Indiana University Foundation, Bloomington, INdiana.	N00014-79-H-0089, January 1, 1979.	1

Contractor	Basic agreement No. and date	Code
Iowa State University of Science and Technology, Ames, Iowa.	N00014-79-H-0173, January 1, 1979.	1
Iowa, University of, Iowa City, Iowa.	N00014-79-H-0037, January 1, 1979.	1
John Carroll University, Cleveland, Ohio.	N00014-79-H-0094, January 1, 1979.	1
Johns Hopkins University, Baltimore, Maryland.	N00014-79-H-0061, January 1, 1979.	1
Kansas State University, Manhattan, Kansas.	N00014-79-H-0121, January 1, 1979.	1
Kansas, University of, Lawrence, Kansas.	N00014-79-H-0065, January 1, 1979.	1
Kentucky Research Foundation, University of, Lexington, Kentucky.	N00014-79-H-0146, January 1, 1979.	1
KLD Associates, Huntington, New York.	DOT-FH-9609, July 17, 1979.	3
Lehigh University, Bethlehem, Pennsylvania.	N00014-79-H-0047, January 1, 1979.	1
Leland Stanford Junior University, The Board of Trustees of, Stanford, California.	N00014-79-H-0029, January 1, 1979.	1
Louisiana State University And Agriculture and Mechanical College, Board of Supervisors of the, Baton, Rouge, Louisiana.	N00014-79-H-0072, January 1, 1979.	1
Louisville Foundation, University of, Louisville, Kentucky.	N00014-79-H-0148, January 1, 1979.	1
Loyola University, Chicago, Illinois.	N00014-79-H-0175, January 1, 1979.	1
Maryland, University of, College Park, Maryland.	N00014-79-H-0096, January 1, 1979.	1
Massachusetts General Hospital, Boston, Massachusetts.	N00014-79-H-0133, January 1, 1979.	1
Massachusetts Institute of Technology, Cambridge, Massachusetts.	N00014-79-H-0049, January 1, 1979.	1
Massachusetts Institute of Technology, Cambridge, Massachusetts.	14-08-0001-16852, July 14, 1978.	5
Massachusetts, University of, Amherst, Massachusetts.	N00014-79-H-0048, January 1, 1979.	1
Miami, University of, Coral Gables, Florida.	N00014-79-H-0010, January 1, 1979.	1
Michigan State University, East Lansing, Michigan.	N00014-79-H-0087, January 1, 1979.	1
Michigan Technological University, Houghton, Michigan.	N00014-79-H-0140, January 1, 1979.	1
Michigan, The Regents of the University of, Ann Arbor, Michigan.	N00014-79-H-0011, January 1, 1979.	1
Minnesota, the Regents of the University of, Minneapolis, Minnesota.	N00014-79-H-0012, January 1, 1979.	1
Missouri University Hall, The Curators of, Columbia, Missouri.	N00014-79-H-0070, January 1, 1979.	1
Montana State University, Bozeman, Montana.	N00014-79-H-0159, January 1, 1979.	1
Montana, University of, Missoula, Montana.	N00014-79-H-0162, January 1, 1979.	1
*National Academy of Sciences, Washington, DC.	N00014-79-H-0013, January 1, 1979.	1
*National Academy of Sciences, Washington, DC.	79-02701, October 1, 1978.	2
*National Academy of Sciences, Washington, DC.	DOT-OS-90007, January 1, 1979.	3
Nevada System, University of Desert Research Institute, Reno, Nevada.	N00014-79-H-0119, January 1, 1979.	1
New Hampshire, University of, Durham, New Hampshire.	N00014-79-H-0050, January 1, 1979.	1
New Mexico Institute of Mining and Technology, Socorro, New Mexico.	N00014-79-H-0031, January 1, 1979.	1
New Mexico State University Physical Science Lab., Las Cruces, New Mexico.	N00014-79-H-0032, January 1, 1979.	1
New Mexico University, Regents of University Hill, Albuquerque, New Mexico.	N00014-79-H-0136, January 1, 1979.	1
New York City University, Research Foundation on behalf of City College, New York, New York.	N00014-79-H-0056, January 1, 1979.	1
New York State University, Research Foundation of, Albany, New York.	N00014-79-H-0057, January 1, 1979.	1
New York University, New York, New York.	N00014-79-H-0014, January 1, 1979.	1
New York University Medical Center, New York, New York.	N00014-79-H-0102, January 1, 1979.	1
North Carolina at Chapel Hill, University of, Chapel Hill, North Carolina.	N0014-79-H-0101, January 1, 1979.	1
North Carolina at Charlotte, University of, Charlotte, North Carolina.	N0014-79-H-0144, January 1, 1979.	1
North Carolina at Wilmington, University of, Wilmington, North Carolina.	N0014-79-H-0131, January 1, 1979.	1
North Carolina State University at Raleigh, Raleigh, North Carolina.	N0014-79-H-0097, January 1, 1979.	1
North Dakota, University of, Grand Forks, North Dakota.	N0014-79-H-0114, January 1, 1979.	1
Northeastern University, Boston, Massachusetts.	N0014-79-H-0051, January 1, 1979.	1
Northwestern University, Evanston, Illinois.	N0014-79-H-0038, January 1, 1979.	1
Notre Dame Du Lac, University of, Notre Dame, Indiana.	N0014-79-H-0143, January 1, 1979.	1
Nova University, Fort Lauderdale, Florida.	N0014-79-H-0067, January 1, 1979.	1
Oakland University, Rochester, Michigan.	N0014-79-H-0139, January 1, 1979.	1
Ohio State University Research Foundation, Columbus, Ohio.	N0014-79-H-0039, January 1, 1979.	1
Ohio University Research Institute, Athens, Ohio.	N0014-79-H-0017, January 1, 1979.	1
Oklahoma State University of Agriculture and Applied Science, Stillwater, Oklahoma.	N0014-79-H-0166, January 1, 1979.	1
Oklahoma, University of, Norman, Oklahoma.	N0014-79-H-0138, January 1, 1979.	1
Old Dominion University Research Foundation, Norfolk, Virginia.	N0014-79-H-0127, January 1, 1979.	1
Oregon Graduate Center for Study and Research, Beaverton, Oregon.	N0014-79-H-0165, January 1, 1979.	1
Oregon State University, The State of Oregon Acting by and through the State Department of Higher Education on Behalf of, Corvallis, Oregon.	N0014-79-H-0015, January 1, 1979.	1
Oregon, University of, The State of Oregon Acting by and through the State Board of Higher Education on Behalf of, Eugene, Oregon.	N0014-79-H-0163, January 1, 1979.	1
Pennsylvania State University, University Park, Pennsylvania.	N0014-79-H-0052, January 1, 1979.	1
Pennsylvania, The Trustees of the University of, Philadelphia, Pennsylvania.	N0014-79-H-0018, January 1, 1979.	1
Pittsburgh, University of, Pittsburgh, Pennsylvania.	N0014-79-H-0053, January 1, 1979.	1
Polytechnic Institute of New York, Brooklyn, New York.	N0014-79-H-0054, January 1, 1979.	1
Princeton University, The Trustees of, Princeton, New Jersey.	N0014-79-H-0018, January 1, 1979.	1
Purdue Research Foundation, West Lafayette, Indiana.	N0014-79-H-0019, January 1, 1979.	1
Regis College, Weston, Massachusetts.	N0014-79-H-0181, January 1, 1979.	1
Rensselaer Polytechnic Institute, Troy, New York.	N0014-79-H-0055, January 1, 1979.	1
Rhode Island, University of, Kingston, Rhode Island.	N0014-79-H-0058, January 1, 1979.	1
Rochester, University of, Rochester, New York.	N0014-79-H-0145, January 1, 1979.	1
Rutgers, the State University, New Brunswick, New Jersey.	N0014-79-H-0064, January 1, 1979.	1
Saint Louis University, St. Louis, Missouri.	N0014-79-H-0158, January 1, 1979.	1
San Diego State University Foundation, San Diego, California.	N0014-79-H-0021, January 1, 1979.	1
San Jose State University Foundation, San Jose, California.	N0014-79-H-0040, January 1, 1979.	1
Seattle University, Seattle, Washington.	N0014-79-H-0078, January 1, 1979.	1
*Smithsonian Institution, Washington, DC.	N00014-79-H-0123 January 1, 1979.	1
South Dakota School of Mines and Technology, Rapid City, South Dakota.	N00014-79-H-0088 January 1, 1979.	1
South Florida, University of, Tampa, Florida.	N00014-79-H-0069 January 1, 1979.	1
Southern California, University of, Los Angeles, California.	N00014-79-H-0022 January 1, 1979.	1
Southern California, University of, Los Angeles, California.	14-08-0001-16854 April 15, 1978.	5
Southern Methodist University Research Administration, Dallas, Texas.	N00014-79-H-0115 January 1, 1979.	1
*Southwest Research Institute, San Antonio, Texas.	DOT-FH-11-9486 September 20, 1979.	3
*Stanford Research Institute International, Menlo Park, California.	N00014-79-H-0168 January 1, 1979.	1
Stevens Institute of Technology, The Trustees of, Hoboken, New Jersey.	N00014-79-H-0059 January 1, 1979.	1
Syracuse University, Syracuse, New York.	N00014-79-H-0154 January 1, 1979.	1
Tennessee, University of, Knoxville, Tennessee.	N00014-79-H-0098 January 1, 1979.	1
Texas A&M Research Foundation, College Station, Texas.	N00014-79-H-0024 January 1, 1979.	1
*Texas A&M University, College Station, Texas.	DOT-FH-11-9845 September 20, 1979.	3
Texas Christian University, Fort Worth, Texas.	N00014-79-H-0169 January 1, 1979.	1
Texas System, University of, Austin, Texas.	N00014-79-H-0023 January 1, 1979.	1
Texas Technological University, Lubbock, Texas.	N00014-79-H-0135 January 1, 1979.	1
Tufts University, Medford, Massachusetts.	N00014-79-H-0155 January 1, 1979.	1
Tulane University, New Orleans, Louisiana.	N00014-79-H-0107 January 1, 1979.	1
Tuskegee Institute, Tuskegee, Alabama.	N00014-79-H-0149 January 1, 1979.	1
Union College, Schenectady, New York.	N00014-79-H-0126 January 1, 1979.	1
*University of Michigan, College of Architecture and Urban Planning, Ann Arbor, Michigan.	GS-BC-90410 September 27, 1976.	4
Utah State University, Logan, Utah.	N00014-79-H-0160 January 1, 1979.	1
Utah, University of, Salt Lake City, Utah.	N00014-79-H-0033 January 1, 1979.	1
Vermont, University of, Burlington, Vermont.	N00014-79-H-0134 January 1, 1979.	1
Virginia Commonwealth University, Richmond, Virginia.	N00014-79-H-0104 January 1, 1979.	1
Virginia Polytechnic Institute and State University, Blacksburg, Virginia.	N00014-79-H-0099 January 1, 1979.	1
Virginia State College, Petersburg, Virginia.	N00014-79-H-0129 January 1, 1979.	1
Virginia, The Reactor and Visitors of the University of, Charlottesville, Virginia.	N00014-79-H-0025 January 1, 1979.	1
Wake Forest University (Bowman Gray School of Medicine), Winston-Salem, North Carolina.	N00014-79-H-0083 January 1, 1979.	1
Washington State University, Pullman, Washington.	N00014-79-H-0091 January 1, 1979.	1
Washington, The Board of Regents of the University of, Seattle, Washington.	N00014-79-H-0026 January 1, 1979.	1
Washington University, St. Louis, Missouri.	N00014-79-H-0124 January 1, 1979.	1
Washington, University of, Seattle, Washington.	14-08-0001-17794 April 15, 1978.	5
Wayne State University, Detroit, Michigan.	N00014-79-H-0105 January 1, 1979.	1
Wentworth Institute of Technology, Inc., Boston, Massachusetts.	N00014-79-H-0156 January 1, 1979.	1
West Virginia Board of Regents on behalf of West Virginia University, Morgantown, West Virginia.	N00014-79-H-0100 January 1, 1979.	1
William and Mary, College of, Williamsburg, Virginia.	N00014-79-H-0110 January 1, 1979.	1
William Marsh Rice University, Houston, Texas.	N00014-79-H-0062 January 1, 1979.	1

Contractor	Basic agreement No. and date	Code
Wisconsin System, Board of Regents of the University of, Madison, Wisconsin.	N00014-79-H-0041 January 1, 1979.	1
*Woods Hole Oceanographic Institution, Woods Hole, Massachusetts.	N00014-79-H-0183 January 1, 1979.	1
Worcester Polytechnic Institute, Worcester, Massachusetts.	N00014-79-H-0128 January 1, 1979.	1
Wyoming, University of, Laramie, Wyoming.	N00014-79-H-0122 January 1, 1979.	1
Yale University, New Haven, Connecticut.	N00014-79-H-0027 January 1, 1979.	1
Yeshiva University, New York, New York.	N00014-79-H-0060 January 1, 1979.	1

* Nonprofit Organization.

Attachment B—Contact Points for Information on the Basic Agreements With Educational Institutions and Nonprofit Organizations Fiscal Year 1980

Contact points	Code
Mr. Ken Popham, Office of Naval Research (Code 611), 800 North Quincy Street, Arlington, VA 22217 (202) 696-4605	1
Mr. Herbert Wolff, Supervisory Grant & Contract Specialist, Division of Grants and Contracts, National Science Foundation, Washington, DC 20550 (202) 632-5900	2
Miss Margarita Moncada, Procurement Analyst, Office of the Secretary, Department of Transportation, Washington, DC 20590 (202) 426-4237	3
Mr. Thomas McNamara, Chief, Professional Support Section of Professional Services Branch, Construction Management Division (5PC), Public Buildings Service, General Services Administration, Chicago, IL 60604 (312) 353-1575	4
Mr. William Opdyke, Acting Chief, Division of Procurement and Grants, Office of Administrative and Management Policy, Department of Interior, Washington, DC 20240 (202) 343-5914	5

[FR Doc. 80-5972 Filed 2-26-80; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

Epidemiologic and Services Research Review Committee; Meeting Change

In FR Doc. 80-3867 appearing on page 8358 in the issue of Thursday, February 7, 1980, meeting dates of the Epidemiologic and Services Research Review Committee have been changed from March 3-5 to March 3-6. On March 3, the meeting will be open to the public from 4:00 to 5:00 p.m. instead of 9:00 to 10:00 a.m. All other arrangements remain as announced February 7, 1980.

Dated: February 22, 1980.

Elizabeth A. Connolly,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 80-6047 Filed 2-26-80; 8:45 am]

BILLING CODE 4110-88-M

Health Resources Administration

Health Systems Agency Application Information

Pursuant to section 1515 of the Public Health Service Act notice is hereby given that application materials are available in DHEW Regional Office IX for entities interested in applying for designation as the health systems agency (HSA) for Arizona Health Service Area 5. This health systems agency will be responsible for health planning for the health service area and for the promotion of the development of health services, manpower and facilities which meet identified needs, reduce documented inefficiencies and implement the health plans of the agency.

There presently is a conditionally designated health systems agency, a public regional planning body, for this health service area. However, this agency has not been able to develop the required Joint Powers Agreement among the local governmental entities in the health service area. Therefore, the current HSA does not meet the legal structure requirements of section 1512(b)(1)(B) of the Public Health Service Act. Therefore, we are seeking applications for a new agency.

Those entities interested in applying for designation must file a letter of intent to apply for such designation with DHEW Regional Office, IX by March 21, 1980, and an application by April 21, 1980.

Application materials and further information may be obtained from the Regional Health Administrator, DHEW Regional Office IX, 50 United Nations Plaza, San Francisco, California 94102.

Once the health systems agency is designated it will be entitled to receive a planning grant under section 1516 of the Act. The amount of the planning grant will be determined in accordance with a formula set forth in the regulations governing this program (42 CFR Part 122, Subpart C), and will be based, in part, upon a determination by the Secretary of the population of the health service area. Section 122.204 of the governing regulations provides that the Secretary will determine the populations of such areas based upon the latest available estimate from the Department of Commerce and will publish annually in the **Federal Register** a list of all health service areas and their populations.

Dated: February 12, 1980.

Henry A. Foley,

Administrator, Health Resources Administration.

[FR Doc. 80-5973 Filed 2-26-80; 8:45 am]

BILLING CODE 4110-83-M

Application Announcement for Curriculum Development Grants

The Bureau of Health Manpower, Health Resources Administration, announces that applications for fiscal year 1980 Curriculum Development Grants will be accepted under the authority of section 788(d) of the Public Health Service Act, as amended by the Health Professions Educational Assistance Act of 1976 (Pub. L. 94-484). Application materials are expected to be available on or about February 11, 1980.

Section 788(d) authorizes the award of grants to any health profession, allied health profession, or nurse training institution, or any other public or nonprofit entity for health manpower projects. Funds are available in fiscal year 1980 to support the development and implementation of curriculums in environmental health and humanistic health care, with support in environmental health limited to schools of medicine and osteopathy.

The overall purposes of these grants are either:

(1) To increase the awareness of future primary care physicians of the role that occupational and environmental factors play in causing diseases and provide instruction in the diagnosis, treatment, and prevention of these diseases, or

(2) To support projects in humanistic health care which train and motivate health professions students to provide health services in a more effective manner through improvement of the affective relationships between health practitioners and patients.

Requirements for applications in humanistic health care:

(1) Projects must develop, expand, or improve training programs in humanistic health care for students who are pursuing undergraduate or graduate health professional degrees.

(2) Projects must provide training for students from at least three disciplines which provide direct patient care.

(3) Educational experiences must build upon an appropriate knowledge base and:

(a) Provide affective training in conjunction with direct patient care activities.

(b) Increase the awareness and understanding of the psychological,

social, and cultural implications of humanistic health care.

(c) Enable students to assess the impact of their interpersonal relationships upon patients and their families and upon co-workers.

(d) Provide training in communication skills.

Requirements for applications in environmental health:

(1) Have an individual with relevant experience or training, who may be the program director, be responsible for curriculum development and evaluation.

(2) Develop and/or implement the teaching of new course materials designed to improve medical students understanding of disease caused by common harmful environmental factors. These new materials should include instruction in the etiology of the disease, history taking to identify potential exposures, diagnosis, treatment, and prevention. They should be produced and implemented as early as possible in the project period.

Preference will be given to humanistic health care applications that:

(1) Provide training to students of medicine or osteopathic medicine.

(2) Provide experiential training in one or more of the following clinical settings: health maintenance organizations, hospices, and Area Health Education Centers. (AHECs are projects funded, at least in part, through provisions of Section 781, Title VII of the Public Health Service Act.)

(3) Demonstrate a preexisting institutional activity and commitment to humanistic health care teaching and practice.

Requests for application materials [1] and questions regarding grants policy should be directed to: Grants Management Officer (D–31), Bureau of Health Manpower, Health Resources Administration, Center Building, Room 4–27, 3700 East-West Highway, Hyattsville, Maryland 20782; phone (301) 436–6098.

To be considered for fiscal year 1980 funding, applications must be received by the Grants Management Officer, Bureau of Health Manpower, at the above address no later that April 7, 1980. Approximately $1,715,000 is expected to be available for competitive grants in fiscal year 1980 and will be allocated in the following manner:

Environmental Health	$1,215,000
Humanistic Health Care	500,000

Additional programmatic information concerning grants in humanistic health care can be received from: Chief, Interdisciplinary Programs Branch; Division of Associated Health Professions, Bureau of Health Manpower, Health Resources Administration, Center Building, Room 5–41, 3700 East-West Highway, Hyattsville, Maryland 20782, phone: (301) 436–6607.

Additional programmatic information concerning grants in environmental health can be received from: Chief, Multidisciplinary Systems and Programs Branch, Division of Medicine, Bureau of Health Manpower, Health Resources Administration, Center Building, Room 3–27; 3700 East-West Highway, Hyattsville, Maryland 20782, phone: (301) 436–6436.

Dated: February 11, 1980.

Henry A. Foley,

Administrator.

[FR Doc. 80–5974 filed 2–26–80; 8:45 am]

BILLING CODE 4110–83–M

[1] Application materials will be mailed to the deans of all schools which may apply for grants in the area of environmental health.

Graduate Medical Education National Advisory Committee; Announcement of Meeting; Change in Meeting Date

In FR Doc. 80–5082 appearing at page 10903 in the issue for Tuesday, February 19, 1980, the March 17–21 meeting of the "Graduate Medical Education National Advisory Committee" has been changed to March 18–21, 1980. All other information is correct as appears.

Dated: February 20, 1980.

James A. Walsh,

Associate Administrator for Operations and Management.

[FR Doc. 80–6049 Filed 2–26–80; 8:45 am]

BILLING CODE 4110–83–M

Office of Human Development Services

Administration for Children, Youth, and Families; Head Start: Announcement of Program Funding Levels in States for Fiscal Year 1980

AGENCY: Office of Human Development Services, DHEW.

ACTION: Notice of Funding Levels to States.

SUMMARY: The Administration for Children, Youth, and Families announces the amount of funds which will be awarded to Head Start agencies within each State during Fiscal Year 1980. The amount of funds to be expended in each State is determined in accordance with provisions governing the distribution of funds in Section 513(a) Title V, Headstart-Follow Through Act, Public Law 95–568.

FOR FURTHER INFORMATION CONTACT: James L. Robinson, Associate Director, Head Start Bureau, Administration for Children, Youth and Families, Office of Human Development Services, Department of Health, Education, and Welfare, Washington, D.C. 20201 (202/755–7782).

SUPPLEMENTAL INFORMATION: The fiscal year 1980 appropriation for Head Start is $735 million, an increase of $55 million over the Fiscal Year 1979 funding level. This increase will be used primarily to provide existing grantees with additional funds to aid in offsetting higher operating costs.

Approximately $691 million of the $735 million appropriation will be used to fund local Head Start agencies. The remaining $44 million will support training and technical assistance, research, demonstration and evaluation activities, special projects for handicapped children, and special awards to improve facilities in local programs.

Region I:	
Connecticut	$6,441,506
Maine	2,831,557
Massachusetts	16,212,218
New Hampshire	1,365,108
Rhode Island	2,289,826
Vermont	1,456,983
Region II:	
New Jersey	20,796,869
New York	49,761,930
Puerto Rico	27,534,914
Virgin Islands	1,526,481
Region III:	
Delaware	1,507,961
Dist. of Col.	4,839,817
Maryland	9,135,911
Pennsylvania	30,068,515
Virginia	9,266,877
West Virginia	6,420,935
Region IV:	
Alabama	15,010,357
Florida	17,914,521
Georgia	16,013,474
Kentucky	14,399,044
Mississippi	43,535,089
North Carolina	15,252,240
South Carolina	9,280,290
Tennessee	12,837,022
Region V:	
Illinois	35,651,070
Indiana	9,029,021
Michigan	27,672,106
Minnesota	6,937,601
Ohio	28,418,826
Wisconsin	9,707,102
Region VI:	
Arkansas	7,617,778
Louisiana	13,628,586
New Mexico	3,938,943
Oklahoma	9,286,748
Texas	28,940,195
Region VII:	
Iowa	4,691,779
Kansas	4,483,894
Missouri	12,930,787
Nebraska	2,848,432
Region VIII:	
Colorado	7,054,149
Montana	1,811,820
North Dakota	907,833
South Dakota	1,452,937
Utah	2,564,857
Wyoming	958,143
Region IX:	
Arizona	5,777,119
California	64,655,214
Hawaii	2,654,966
Nevada	928,995
Outer Pacific Islands	1,928,287

Region X:	
Alaska	1,742,947
Idaho	1,822,118
Oregon	5,612,228
Washington	7,355,026
Programs serving Native American children and children of migratory farm workers	41,891,770
Grand total	690,600,722

(Catalog of Federal Domestic Assistance Program Number 13.600—Administration for Children, Youth and Families—Head Start)

Dated: February 13, 1980.

Herschel Saucier,

Acting Commissioner for Children, Youth and Families.

Approved: February 21, 1980.

Manuel Carballo,

Acting Assistant Secretary for Human Development Services.

[FR Doc. 80-6018 Filed 2-26-80; 8:45 am]

BILLING CODE 4110-92-M

Office of Education

National Advisory Council on the Education of Disadvantaged Children; Meeting

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, Section 10(a)(2), notice is hereby given of the meeting of the National Advisory Council on the Education of Disadvantaged Children on Wednesday, March 12 (Committee on Special Projects), and Friday and Saturday, March 14 and 15, 1980. The Committee meeting on March 12 will be held at the NACEDC office located at 425-13th St., N.W., Suite 1012, Washington, D.C., from 2:30-6:30 p.m. The Council will meet on March 14 at the Hubert H. Humphrey Building, Room 703A-705A, 200 Independence Avenue, S.W., Washington, D.C., from 8:30 a.m. until 5:30 p.m. The March 15 meeting will be held at the NACEDC office from 9:00 a.m.-1:00 p.m.

The meeting shall be open to the public on Wednesday, Friday and Saturday. However, if required, under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463), and under the exemptions contained in the Government Sunshine Act (Pub. L. 94-409), § 552b(c)(2) and (6), Title 5, U.S. Code, the meeting will be closed to the public from 4:30-5:30 p.m. on Friday, March 14, for a review and discussion of personal document on applicants being considered for the position of Executive Director. The discussion will involve issues of a personal nature, which, if discussed in open session, would be a clearly unwarranted invasion of personal privacy.

The National Advisory Council on the Education of Disadvantaged Children is established under section 148 of the Elementary and Secondary Education Act (20 U.S.C. 2852) to advise the President and the Congress on the effectiveness of compensatory education to improve the education of disadvantaged children.

The purpose of the three-day meeting will be for Council to review and adopt the Committee draft report on Federal Administration, to hear briefings on migrant education programs, and to further discuss issues for the coming year.

Records shall be kept of all Council proceedings and shall be available for public inspection at the office of the National Advisory Council on the Education of Disadvantaged Children located at 425 13th Street, N.W., Suite 1012, Washington, D.C., 20004. A summary of activities at the partially closed meeting will be available to the public within 14 days of the closed portion consistent with 5 USC 552b.

Signed at Washington, D.C. on February 22, 1980.

Gloria B. Strickland,

Acting Executive Director.

[FR Doc. 80-6023 Filed 2-26-80; 8:45 am]

BILLING CODE 4110-02-M

Office of the Secretary

Ethics Advisory Board Meeting

Notice is hereby given that the Ethics Advisory Board will hold a meeting on March 14-15, 1980, in Wilson Hall, Building 1 of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland, 20205. The meeting will begin at 9 a.m. on both days and will be open to the public subject to limitations of available space.

Topics to be discussed will include the NIH request for a limited exemption from the Freedom of Information Act, and a preliminary draft report on a similar request from the Center for Disease Control.

Requests for information should be directed to Ms. Amanda F. MacKenzie, Westwood Building, Room 125, 5333 Westbard Avenue, Bethesda, Maryland, 20016; telephone 301-496-7776.

Dated: February 19, 1980.

Barbara Mishkin,

Staff Director, Ethics Advisory Board.

[FR Doc. 80-6073 Filed 2-26-80; 8:45 am]

BILLING CODE 4110-08-M

Public Health Service

Select Panel for the Promotion of Child Health; Meeting

Notice is hereby given, pursuant to Pub. L. 92-463, that the Select Panel for the Promotion of Child Health, established pursuant to section 211 of the Health Services and Centers Amendments of 1978 (Pub. L. 95-626), will meet on Thursday and Friday, March 6 and 7, at 9:00 a.m. in Room 703A, on the seventh floor of the Hubert H. Humphrey Building, Third Street and Independence Avenue, S.W., Washington, D.C. The Panel has responsibility for the formulation of national goals with respect to the promotion of the health status of children and expectant mothers, the development of a comprehensive national plan for the achievement of these goals and otherwise promoting the health of children in the United States, and, the transmittal of a report to the Secretary and the Congress detailing the comprehensive national plan and recommendations for administrative, legislative, and other actions necessary to implement this plan and to otherwise promote the health of children in the United States. This meeting of the Panel will be devoted to a preliminary discussion of recommendations on health protection, health promotion, and nutrition. Meetings of the Panel are open for public observation.

Further information on the Panel may be obtained by contacting John A. Butler, Staff Director, Select Panel for the Promotion of Child Health, Room 711, Riviere Building, 1832 M Street, N.W., Washington, D. C. 20036, telephone (202) 634-4805.

Dated: February 15, 1980.

John A. Butler,

Staff Director, Select Panel for the Promotion of Child Health.

[FR Doc. 80-6126 Filed 2-26-80; 8:45 am]

BILLING CODE 4110-85-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[U-16391]

Utah; Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

The Department of the Army, Sacramento District, Corps of Engineers, on September 20, 1971, filed application Serial No. U-16391 for a withdrawal of the following described lands in Grand County, Utah:

Salt Lake Meridian, Utah

T. 21 S., R. 16 E.,
Sec. 23, SW¼, W½SE¼, SE¼SE¼;
Sec. 25, W½, SE¼;
Sec. 26, all;
Sec. 27, lot 5, SE¼SE¼;
Sec. 34, lots 5, 6, NE¼NE¼;
Sec. 35, N½, N½S½, S½SE¼.

The area described contains 2,139.50 acres.

The applicant desires that the lands be withdrawn from location and entry under the General Mining Laws, and reserved for the use of the Corps of Engineers, Department of the Army, in connection with construction, operation, and maintenance of the Pershing-Green River Launch Facility. A notice of the proposed withdrawal was published in the **Federal Register** on October 6, 1971, Volume 36, No. 194.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754, notice is hereby given that an opportunity for a public hearing is afforded in connection with the pending withdrawal application. All interested persons who desire to be heard on the proposed withdrawal must file a written request for a hearing with the State Director, Bureau of Land Management, at the address shown below, on or before April 21, 1980. Notice of the public hearing will be published in the **Federal Register**, giving the time and place of such hearing. The hearing will be scheduled and conducted in accordance with BLM Manual Sec. 2351.16B. All previous comments submitted in connection with the withdrawal application have been included in the record and will be considered in making a final determination on the application.

In lieu of or in addition to the attendance at a scheduled public hearing, written comments or objections to the pending withdrawal application may be filed with the undersigned authorized officer of the Bureau of Land Management on or before April 21, 1980.

The above described lands are temporarily segregated from location and entry under the mining laws, subject to valid existing rights, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. In accordance with section 204(g) of the Federal Land Policy and Management Act of 1976 the segregative effect of the pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications in connection with this pending withdrawal application should be addressed to the undersigned officer, Bureau of Land Management, Department of the Interior, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

Dated: January 23, 1980.

Gary J. Wicks,

State Director, Utah.

[FR Doc. 80-5977 Filed 2-26-80; 8:45 am]

BILLING CODE 4310-84-M

[U-45311]

Utah; Order Providing for Opening of Lands in Utah

By virtue of the authority contained in section 24 of the Act of June 10, 1920 (41 Stat. 1075) as amended 16 U.S.C. 818 (1970) and pursuant to the determination of the Federal Energy Regulatory Commission in DA 197 Utah April 2, 1973, it is ordered as follows:

1. In DA 197 Utah, The Federal Energy Regulatory Commission determined that the following described power project No. 290 (U-43006), is no longer needed for power purposes and is vacated in its entirety. Under the authority delegated by the Bureau of Land Management Order No. 701 dated July 23, 1964 (29 FR 10526), as amended, the segregative effect of said withdrawal is hereby lifted, effective upon publication of this order:

Salt Lake Meridian, Utah

T. 16 S., R. 7 E.,
Sec. 27, NE¼E¼ (now Lots 1-12).
T. 16 S., R. 8 E.,
Sec. 31, Lot 3 (now Lots 13, 14);
Sec. 31, Lot 4 (now Lots 8-12).

The area aggregates approximately 132 acres in Emery County, Utah.

2. All of the above described lands are within Powersite Reserve No. 363. Any use of these lands will be subject to the provision of this existing powersite withdrawal.

Dated: February 14, 1980.

Gary J. Wicks,

State Director.

[FR Doc. 80-5976 Filed 2-26-80; 8:45 am]

BILLING CODE 4310-84-M

[U-11464]

Utah; Termination of Proposed Withdrawal and Reservation of Lands

Notice of an application filed by the Forest Service, U.S. Department of Agriculture, U-11464, for withdrawal and reservation of Forest Service lands was published as FR Doc. 70-5698 on pages 7315 and 7316 of the issue for May 9, 1970. The Forest Service has canceled its application involving the lands described in the **Federal Register** publication referred to above. Therefore, pursuant to the regulations contained in 43 CFR 2091.2-5(b)(1) such lands will be relieved of the segregative effect of the above-mentioned application at 10:00 a.m. on March 31, 1980.

Dated: February 15, 1980.

Lexie S. Pollick,

Acting Chief, Lands and Minerals Operations.

[FR Doc. 80-5975 Filed 2-26-80; 8:45 am]

BILLING CODE 4310-84-M

Office of Surface Mining Reclamation and Enforcement

Determination of Completeness for Permanent Program Submission From the State of Louisiana

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

ACTION: Notice of Determination of Completeness of Submission.

SUMMARY: On January 3, 1980, the State of Louisiana submitted to OSM its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This notice announces the Regional Director's determination as to whether the Louisiana program submission contains each required element specified in the permanent regulatory program regulations. The Regional Director has concluded a review and has determined that the program submission is incomplete.

ADDRESSES: Written comments on the Louisiana program and a summary of the public meeting are available for public review, 8 a.m.-4 p.m., Monday through Friday, excluding holidays at:

Office of Surface Mining Reclamation and Enforcement, Region IV, 5th Floor, Scarritt Bldg., 818 Grand Avenue, Kansas City, Mo. 64106.

Copies of the full text of the proposed Louisiana program are available for review during regular business hours at the OSM regional office above and at the following offices of the State regulatory authority:

Office of Conservation, Department of Natural Resources, 625 N. 4th, Baton Rouge, Louisiana 70804.
Office of Conservation, Monroe District, Room 214, 122 St John St., Monroe, Louisiana 71201.
Office of Conservation, Shreveport District, 960 Jorden Street, P.O. Box 3250, Shreveport, Louisiana 71103.

FOR FURTHER INFORMATION CONTACT: Richard Rieke, Assistant Regional Director, Office of Surface Mining Reclamation and Enforcement, Scarritt Bldg., 818 Grand Avenue, Kansas City, MO 64106, Telephone: (816) 374-3920.

SUPPLEMENTARY INFORMATION: On January 3, 1980, OSM received a

proposed permanent regulatory program from the State of Louisiana. Pursuant to the provisions of 30 CFR Part 732, "Procedures and Criteria for Approval or Disapproval of State Program Submissions" (44 FR 15326–15328, March 13, 1979), the Regional Director, Region IV, published notice of receipt of the program submission in the **Federal Register** of January 9, 1980, (45 FR 1949–1950) and in the following newspapers of general circulation within Louisiana:

The State Times, Baton Rouge.
Times-Picayune, New Orleans.
Shreveport Journal, Shreveport.

The January 9, 1980, notice set forth information concerning public participation pursuant to 30 CFR 732.11. This information included a summary of the program submission, announcement of a public review meeting on February 14, 1980, in Shreveport, Louisiana, to discuss the submission and its completeness, and announcement of a public comment period until February 14, 1980, for members of the public to submit written comments relating to the program and its completeness. Further information may be found in the permanent regulatory program regulations and **Federal Register** notice referenced above.

This notice is published pursuant to 30 CFR 732.11(b), and constitutes the Regional Director's decision on the completeness of the Louisiana program. Having considered public comments, testimony presented at the public review meeting and all other relevant information, the Regional Director has determined that the Louisiana submission does not fulfill the content requirements for program submission under 30 CFR 731.14 and is therefore incomplete.

In accordance with 30 CFR 731.11(c) the Regional Director has determined that the following required elements are missing from the proposed Louisiana regulatory program:

1. A copy of Act #553, enacted in 1977, amending the Louisiana Surface Mining and Reclamation Act of 1978, as required by 30 CFR 731.14(a).
2. A copy of the Louisiana Code of Civil Procedure as required by 30 CFR 731.14(b).

It should be noted that the Louisiana Administrative Procedure Act (49 L.R.S. 951–968) was mistakenly included in that part of the program submission narrative relating to 30 CFR 731.14(g)(15). It should have been included in that portion of the program submission relating to 30 CFR 731.14(b). However, since the Act is included, the program submission is complete as to that element.

Louisiana may submit appropriate additions to remedy the incomplete elements identified by the completeness review and any other modifications of the proposed Louisiana program until April 15, 1980. If the state fails to supply the missing elements by that deadline, its program will be initially disapproved by the Secretary as set forth in 30 CFR 732.11(d). The Regional Director's determination that the proposed program is complete with respect to the remaining elements required by 30 CFR 731.14 does not mean that those elements are substantially adequate.

No later than April 21, 1980, the Regional Director will publish a notice in the **Federal Register** and in the following newspapers of general circulation in Louisiana initiating substantive review of the program submission:

The State Times, Baton Rouge.
Times—Picayune, New Orleans.
Shreveport Journal, Shreveport.

The review will include a formal public hearing and written comment period. Procedures will be detailed in that notice. Further information concerning how that substantive review will be conducted may be found in 30 CFR 732.12.

The Office of Surface Mining is not preparing an environmental impact statement with respect to the Louisiana regulatory program, in accordance with Section 702(d) of SMRCA (30 U.S.C. § 1292(d)) which states that approval of State programs shall not constitute a major action within the meaning of Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Dated: February 21, 1980.

Raymond L. Lowrie,

Regional Director.

[FR Doc. 80-6058 Filed 2-26-80; 8:45 am]
BILLING CODE 4310-05-M

Receipt of Permanent Program Submission from the State of Arkansas

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

ACTION: Notice of receipt of program submission from the State of Arkansas and procedures for public participation in review for determination of completeness of submission.

SUMMARY: On February 19, 1980, the State of Arkansas submitted to OSM its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM is seeking public comments on the completeness of the State Program.

DATES: A public review meeting to discuss completeness of the submission will be held on March 31, 1980, from 1:30 p.m. to 4:30 p.m. and 7:00 p.m. to 8:00 p.m. or until all discussion has been completed. Written comments must be received on or before 8:00 p.m., March 31, 1980.

ADDRESSES: The public review meeting will be held at the Little Rock Hilton, 925 South University, Little Rock, Arkansas 72204. Copies of the full text of the proposed Arkansas program are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Region IV, 5th Floor, Scarritt Building, 818 Grand, Kansas City, Missouri 64106.
Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72219.
Clark County Library, 609 Caddo, Arkadelphia, Arkansas.
Public Library of Camden and Ouachita County, 120 Harrison Avenue SW, Camden, Arkansas.
Barton Library, East Fifth and North Jefferson, Eldorado, Arkansas.
Ozarks Regional Library Headquarters, 217 E. Dickson, Fayetteville, Arkansas.
Fort Smith Public Library, 61 S. Eighth, Fort Smith, Arkansas.
Crowley Ridge Regional Library, 315 W. Oak, Jonesboro, Arkansas.
Magnolia Public Library, 220 E. Main, Magnolia, Arkansas.
Ozark Public Library, 407 W. Market, Ozark, Arkansas.
Pope County Library, 114 E. Third, Russellville, Arkansas.

Written comments should be sent to:

Raymon L. Lowrie, Regional Director, Office of Surface Mining, Scarritt Building, 818 Grand, Kansas City, Missouri 64106.

Written comments will be available for public review at the OSM Region IV Office above, on Monday through Friday, 8 a.m.–4 p.m., excluding holidays.

FOR FURTHER INFORMATION CONTACT: Richard Rieke, Assistant Regional Director, Office of Surface Mining, Scarritt Building, 818 Grand, Kansas City, Missouri 64106, Telephone (816) 374–3920.

SUPPLEMENTARY INFORMATION: On February 19, 1980, OSM received a proposed permanent regulatory program from the State of Arkansas. The purpose of this submission is to demonstrate both the State's intent and its capability to assume responsiblity for administering and enforcing the provisions of SMCRA and the permanent regulatory program (30 CFR

Chapter VII), as published in the **Federal Register** on March 13, 1979 (44 FR 15311–15463).

This notice describes the nature of Arkansas' proposed program and sets forth information concerning public participation in the Regional Director's determination of whether or not the submission is complete. The public participation requirements for the consideration of a permanent State program are found in 30 CFR Sections 732.11 and 732.12 (44 FR 15326–15327). Additional information may be found under corresponding sections of the preamble to OSM's permanent program regulations (44 FR 14959–14960).

The receipt of the Arkansas submission is the first step in a process which will result in the establishment of a comprehensive program for the regulation of surface coal mining and reclamation operations and coal exploration in Arkansas.

If the submission is approved by the Secretary of the Interior, the State of Arkansas will have primary jurisdiction for the regulation of coal mining and reclamation and coal exploration on non-Federal lands in Arkansas. If the program is disapproved, a Federal program will be implemented and OSM will have primary jurisdiction for the regulation of those activities.

Before OSM and the Secretary formally begin consideration of the substance of the program, the Regional Director must determine that the submission is complete. If the Regional Director determines the submission to be complete, consideration of the adequacy of the program will begin and the public will be informed of the decision and have the right to submit comments on the adequacy of the submission. If the submission is determined to be incomplete, the State will be given the opportunity to submit additional material. If the State fails to provide the missing elements, or the submission is otherwise determined to be inadequate, the program will be initially disapproved. After initial disapproval the State may revise the program. If the resubmitted program is also found to be incomplete after opportunity for supplementing it has passed or is otherwise deficient, the State program will be given a final disapproval, and a Federal program will be implemented.

At this time, OSM is primarily concerned with whether the proposed program constitutes a complete submission. The decision on completeness will be made by Raymond L. Lowrie, Regional Director, OSM Region IV. To assist in obtaining information on the completeness of the Arkansas submission, the Regional Director is requesting written comments from the public and will hold a public review meeting on the issue of completeness.

The public review meeting on completeness will be conducted by the Regional Director and will be informal. This will provide members of the public, State and OSM opportunity to openly exchange thoughts concerning program completeness outside the more rigid structure of formal public hearing proceedings. Specific format procedures will be at the discretion of the Regional Director.

Written comments may supplement or be submitted in lieu of oral presentation at the public review meeting. All written comments must be mailed or hand-carried to the Regional Director's Office above or may be hand-carried to the public review meeting at the address above and submitted as exhibits to the proceeding. The comment period will close at the conclusion of the public review meeting or at 8:00 p.m. on March 31, 1980, whichever is later.

Comments received after that time will not be considered in the Regional Director's completeness determination. Representatives of OSM Region IV will be available to meet between February 29, 1980, and March 31, 1980, at the request of the public to receive their advice and recommendations concerning the completeness of the proposed program.

Persons wishing to meet with representatives of OSM, Region IV during this period may place such a request with Kerry Cartier, Public Information Officer, Telephone (816) 374–3490, at the Regional Director's Office above.

Meetings may be scheduled between 9 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding holidays at the Regional Director's Office.

No Environmental Impact Statement is being prepared in connection with the process leading to the approval or disapproval of the proposed Arkansas program. Under Section 702(d) of SMCRA (30 U.S.C. Section 1292(d)), approval of State programs does not constitute a major action within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

The following constitutes a summary of the contents of the Arkansas submission.

The Department of Pollution Control and Ecology, has been designated by the Governor of Arkansas to implement and enforce the Arkansas Surface Coal Mining and Reclamation Act of 1979 in accordance with the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87). The Department of Pollution Control and Ecology has developed State regulations to carry out the State mandate.

Contents of the State Program Submission include:

(a) State Laws and Regulations.

(b) Other Related State Laws and Regulations.

(c) Letter of Legal Authority: State/Federal Law and Regulation Comparison.

(d) Regulatory Authority Designation.

(e) Structural Organization—Staffing Functions.

(f) Supporting Agreements Between Agencies.

(g) Narrative Description for:

(1) Issuing Exploration and Mining Permits.

(2) Assessing Permit Fees.

(3) Bonding—Insurance.

(4) Inspecting and Monitoring.

(5) Enforcing the Administrative, Civil and Criminal Sanctions.

(6) Assessing and Collecting Civil Penalties.

(7) Issuing Public Notices and Holding Public Hearings.

(8) Coordinating with Other Agencies.

(9) Consulting with Other Agencies.

(10) Designating Lands Unsuitable for Surface Mining.

(11) Restricting Financial Interests.

(12) Training, Examining and Certifying Blasters.

(13) Providing for Public Participation.

(14) Providing Administrative and Judicial Review.

(15) Providing a Small Operator Assistance Program (S.O.A.P.).

(h) Statistical Information.

(i) Summary of Staff with Titles, Functions, Job Experience and Training.

(j) Description of Staffing Adequacy.

(k) Projected Use of Other Professional and Technical Personnel.

(l) Budget Information.

(m) Physical Resources Information.

(n) Other Programs Administered by the Regulatory Authority.

Dated: February 21, 1980.

Raymond L. Lowrie,

Regional Director.

[FR Doc. 80-6059 Filed 2-26-80; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL COMMUNICATION AGENCY

Private Sector Grant Program

The International Communication Agency announces a program providing selective assistance, encouragement and grant support to non-profit activities of

U.S. organizations outside the Federal Government. The primary purpose of the program, administered by the Agency's Office of Private Sector Programs, is to support the enhancement of Americans' competence in world affairs through greater understanding of other societies—their peoples, values, cultures and aspirations. Project proposals submitted by qualified organizations will be periodically considered for grant support by an International Communication Agency review panel, the first of which will meet soon after April 1, 1980. For further information concerning the program, including grant application procedures, contact the Office of Private Sector Programs, Associate Directorate for Educational and Cultural Affairs, International Communication Agency, 1776 Pennsylvania Avenue, NW, Washington, DC 20547.

John E. Reinhardt,

Director, International Communication Agency.

[FR Doc. 80-6072 Filed 2-26-80; 8:45 am]

BILLING CODE 8230-01-M

INTERSTATE COMMERCE COMMISSION

[Notice No. 170]

Assignment of Hearings

February 20, 1980.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 65916 (Sub-19F), Ward Trucking Corporation, transferred to Modified Procedure.

MC 114552 (Sub-M1F), now assigned for hearing on April 22, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 2900 (Sub-355F), Ryder Truck Lines, Inc., now assigned for continued hearing on March 17, 1980 (3 days) at Phoenix, AZ, in Room 235, Federal Building and Post Office, 522 North Central Avenue.

MC 146583 (Sub-2F), Terrain Tamers, Inc., now being assigned for hearing on April 7, 1980 at Portland, OR location of hearing room will be by subsequent notice.

MC 8457 (Sub-10F), Milwaukee Transfer & Fuel Co. and also No. MC 123061 (Sub-124F), Leatham Brothers, Inc., now being assigned for hearing on April 9, 1980 (3 days) at Portland, OR location of hearing room will be designated later.

MC 141532 (Sub-37F), Pacific States Transport, Inc., now being assigned for hearing on April 14, 1980 (3 days) at Portland, OR location of hearing will be designated later.

MC 15975 (Sub-12F), Buske Lines, Inc., No. MC 42261, (Sub-144F), Langer Transport, Corp., MC 95540 (Sub-1072F), Watkins Motor Lines, Inc., MC 115311 (Sub-327F), J & M Transportation Co., Inc., MC 119632 (Sub-99F), Reed Lines, Inc., MC 119726 (Sub-157F), N.A.B. Trucking Co., Inc., MC 128272 (Sub-331F), Midwestern Distribution, Inc., MC 141124 (Sub-36F), Evangelist Commercial Corporation, MC 142259 (Sub-82F), Brooks Transportation, Inc., and MC 145152 (Sub-43F), Big Three Transportation, Inc., now assigned for continued hearing on February 25, 1980 at the Offices of the Interstate Commerce Commission, Washington, DC.

AB-9 (Sub-13F), St. Louis-San Francisco Railway Company Abandonment near Wister and Antlers in (LeFlore and Pushmataha Counties), OK, now assigned for hearing on March 4, 1980 (9 days) at Antlers, OK in the Library Community Room, 200 South West 2d.

MC 85970 (Sub-20F), Sartain Truck Line, Inc., now being assigned for hearing on April 15, 1980 (2 weeks) at St. Louis, MO location of hearing room will be designated later.

MC 108119 (Sub-109F), E. L. Murphy Trucking Company, now being assigned for hearing on April 15, 1980 (9 days) at Seattle, WA location of hearing room will be designated later.

MC 111545 (Sub-270F), Home Transportation Co., Inc., now being assigned for hearing on April 16, 1980 (3 Days), at Fort Worth, TX in a hearing room to be designated later.

MC 31462 (Sub-26F), Paramount Movers, Inc., now being assigned for hearing on April 21, 1980 (5 Days) at Fort Worth, TX in a hearing room to be designated later.

MC 103926 (Sub-91F), W. T. Mayfield Sons Trucking Co., now being assigned for hearing on May 1, 1980 (1 Day), at Atlanta, GA in a hearing room to be designated later.

MC 125777 (Sub-243F), Jack Gray Transport, Inc., now being assigned for hearing on May 2, 1980 (1 Day), at Atlanta, GA in a hearing room to be designated later.

MC 124154 (Sub-75F), Wingate Trucking Company, Inc., now being assigned for hearing on May 5, 1980 (5 Days), at Atlanta, GA in a hearing room to be designated later.

MC F 12184, Nebraska-Iowa-Xpress, Inc.,—Control—Chappell Freight Lines, Inc., now a discontinue proceeding.

MC 147907 F, White's Garage, Inc., now assigned for hearing on March 10, 1980 will be held in Room No. 2308, John F. Kennedy Building, Government Center, Boston, MA.

MC 108633 (Sub-16F), Barnes Freight Line, Inc., now assigned for continued hearing on March 11, 1980 will be held in the G.S.A.-Conference Room No. 430, U.S. Courthouse & Post Office, 1800—5th Avenue North, Birmingham, AL.

MC 99096 (Sub-2F), Fillmore Freight Lines, Inc., now assigned for hearing on March 19, 1980 will be held in Room No. 426, Old Federal & U.S. Courthouse, 85 Marconi Bldg., Columbus, OH.

MC 139395 (Sub-3F), Bulk Transit Corporation, now assigned for hearing on March 18, 1980 will be held in Room No. 426, Old Federal & U.S. Courthouse, 85 Marconi Bldg., Columbus, OH.

MC 146968F, J. L. Coats, now assigned for hearing on March 24, 1980 will be held in Room No. 426, Old Federal & U.S. Courthouse, 85 Marconi Bldg., Columbus, OH.

MC 144092 (Sub-1), Transportation Enterprises, Inc., now assigned for hearing on March 18, 1980 will be held in Room No. 600—4th Floor, 411 West 7th Street, Neil P. Anderson Bldg., Fort Worth, TX.

MC 31533 (Sub-15F), South Bend Freight Line, Inc., transferred to Modified Procedure.

MC 121060 (Sub-81F), Arrow Truck Lines, Inc., now assigned for continued hearing on March 11, 1980 at the Offices of the Interstate Commerce Commission in Washington, DC.

MC 125708 (Sub-167F), Thunderbird Motor Freight Lines, Inc., now being assigned for hearing on April 15, 1980 (1 Day), at Fort Worth, TX in a hearing room to be designated later.

MC 144678 (Sub-8F), American Freight System, Inc., is transferred to Modified Procedure.

MC 107295 (Sub-909F), Pre-Fab Transit Company, is transferred to Modified Procedure.

MC 94201 (Sub-164), Bowman Transportation, Inc., is transferred to Modified Procedure.

MC 141804 (Sub-199F), Western Express, Division of Interstate Rental, Inc., is transferred to Modified Procedure.

MC 146690 (Sub-1F), Northeast Towing, Inc., now assigned for hearing on March 27, 1980 is canceled and transferred to Modified Procedure.

MC 133485 (Sub-26F), International Detective Service, Inc., now assigned for hearing on March 19, 1980 will be held in the Conference Room No. 234, John O. Pastore, Federal Building & Post Office, 37 Exchange Towers, Providence, RI.

MC 30521 (Sub-1F), H & L Bloom, Inc., now assigned for hearing on March 24, 1980 will be held in the Conference Room No. 234, John O. Pastore, Federal Building & Post Office, 37 Exchange Towers, Providence, RI.

MC 120364 (Sub-18F), A & B Freight Line, Inc., now assigned for hearing on March 10, 1980 will be held in Room No. 134, U.S. Forest Product Laboratory, North Walnut Street, Madison, WI.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-6019 Filed 2-26-80; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs

Decided: February 20, 1980.

In our decision of February 12, 1980, a 12.5-percent surcharge was authorized on all owner-operator traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation at this level.

Although the weekly figures set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 12.8-percent, we are authorizing that the 12.5-percent surcharge for this traffic remain in effect. All owner-operators are to receive compensation at the 12.5-percent level. At the same time, a 2.2-percent surcharge is authorized on less-than-truckload (LTL) traffic performed by carriers not utilizing owner-operators, and a 4.8-percent surcharge is authorized for the bus carriers.

Notice shall be given to the general Public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commissions or Boards of each State having jurisdiction over transportation, by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection, and by delivering a copy to the Director, Office of the Federal Register for publication therein.

It is ordered: This decision shall become effective Friday, 12:01 a.m., February 22, 1980.

By the Commission. Division 1 Commissioners Gresham, Clapp, and Gaskins.

Agatha L. Mergenovich,

Secretary.

Appendix.—*Fuel Surcharge*

Base date and price per gallon (including tax)

January 1, 1979 ..... 63.5¢

Date of current price measurement and price per gallon (including tax)

February 19, 1980 ..... 111.5¢

	(1) From transportation performed by owner-operators [1]	(2) Other [2]	(3) Bus carriers
Average percent: Fuel expenses (including taxes) of total revenue	16.9	2.9	6.3
Percent surcharge developed	12.8	2.2	4.8
Percent surcharged allowed	12.5	2.2	4.8

[1] Apply to all truckload rated traffic.
[2] Including less-truckload traffic.

Issuance of Mass Temporary Authority Decisions

Effective February 4, 1980, the Commission delegated authority to act on temporary authority applications to six regional motor carrier boards. However, a large number of applications are still pending with the Commission's Motor Carrier Board in Washington, DC.

To expedite the processing of certain unopposed temporary authority applications, the Motor Carrier Board in Washington will not issue separate decisions in these cases. Rather, if the Board grants the authority, a mass decision will be issued on several applications, indicating that all applicants listed have been granted 180-day temporary authority for the commodities and territories specified in the **Federal Register** publication. The decision will indicate the date notice of each application was published.

For further information contact: Charles L. Renninger, (202) 275–6001.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-6020 Filed 2-26-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Applications

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Republication: MC 147383 (Sub-1TA), Applicant: WARREN E. JACKSON & ROCCI L. STEWART d.b.a. R & G CARRIERS, P.O. Box 1154, Glendale Heights, IL 60137. Representative: Anthony T. Thomas, 6017 Cermak Road, Cicero, IL 60650. Notice of this application was published in the **Federal Register** on August 22, 1979. That notice failed to show that applicant proposed to serve both United States Waco Corporation and Chicago Stage Contractors, Inc., as a contract carrier. By decision dated February 20, 1980, the Commission's Motor Carrier Board in Washington, D.C. granted the authority as sought. Petitions for reconsideration may be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423 within 20 days from the date of this publication.

Republication: MC 75406 (Sub-TA), filed September 1979. Applicant: SUPERIOR FORWARDING COMPANY, INC., 2600 South Fourth Street, St. Louis, Missouri 63118. Representative: Joseph E. Rebman, 314 North Broadway, Suite 1330, St. Louis, Missouri 63102. Authority sought to operate as a common carrier, by motor vehicle, 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 commodities requiring special equipment), (1) between jct. U.S. Highways 67/167 and U.S. Highway 64, one the one hand, and, on the other, Conway, AR and points in its commercial zone, over U.S. Highway 64 serving no intermediates points; and (2) between North Little Rock, AR, and Conway, AR, and its commercial zone, over U.S. Highway 65 and Interstate Highway 40, serving all intermediate points for 180 days. Note: Applicant proposes to tack the authority in routes 1 and 2 with its existing authority and to

interline with other carriers. There are 20 supporting shippers whose Certificates of Support can be viewed at the Field Office in St. Louis, MO. Send Protests to: Peter E. Binder, District Supervisor, Interstate Commerce Commission, 210 North 12th Street, St. Louis, Missouri 63101.

Notice No. F–4

February 22, 1980.

The following applications were filed in the Atlanta Regional Office. Send protests to: ICC, P.O. Box 7520, Atlanta, GA 30309.

MC 150007 (Sub-3–1TA), filed February 6, 1980. Applicant: NACHMAN TRANSPORTATION, INC., 6544 Warren Drive, P.O. Box 1084, Norcross, GA 30093. Applicant's representative: Robert E. Born, Suite 508, 1447 Peachtree Street, N.E., Atlanta, GA 30309. Temporary authority sought for 180 days to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting (1) *wire, wire products, wire racks, metal fabrications, mattress spring assemblies, box spring assemblies, furniture spring assemblies, and furniture grid assemblies;* and (2) *materials, equipment and supplies used in the manufacture of the commodities named in paragraph (1)* between facilities of the Nachman Corporation and its subsidiaries Voyager Products, Inc.; Merit Steel Company, Inc.; and Fisher-Haynes Corporation of Georgia located at or near Chicago, IL; Edwardsburg, MI; High Point, NC; Mason, OH; Tupelo, MS; Elkhart, IN; Kouts, IN and Norcross, GA, on the one hand, and, on the other, points in the United States located in and east of ND, SD, NE, CO and NM, under a continuing contract with Nachman Corporation and its subsidiaries Voyager Products, Inc.; Merit Steel Company, Inc. and Fisher-Haynes Corporation of Georgia. An underlying ETA has been filed. Supporting Shipper: Nachman Corporation, 2600 River Road, Des Plaines, IL 60018.

MC 138157 (Sub-3–1TA), filed February 6, 1980. Applicant's name: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT. Applicant's representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. (1) Such commodities as are dealt in and distributed by grocery, hardware and drug stores; (2) Cleaning and building maintenance materials and supplies; (3) Swimming pool, spa and hot tub products; (4) Chemicals; and (5) Materials, equipment and supplies used in the manufacture, sale and distribution of the commodities named in (1) through (4) above. Between Marion, OH on the one hand, and on the other, points in the United States in and east of MT, WY, CO & NM. Restrictions: Restricted against the transportation of commodities in bulk. Further restricted to traffic originating at or destined to the facilities of Purex Corporation. Supporting shipper: Purex Corporation, 24600 S. Main St., Carson, DA 90749.

MC 123371 (Sub-No 3–1TA), filed February 6, 1980. Applicant: EDLIN BROS., INC., Route 2, New Haven, KY 40051. Representative: Herbert D. Liebman, P.O. Box 478, Frankfort, KY 40602. Authority sought to operate and a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Alcoholic beverages and materials used in the distribution of alcoholic beverage products,* restricted to movements in TOFC service and restricted against commodities in bulk, in tank trailers, between railroad ramping and deramping points in the city of Louisville, KY, and its commercial zone, on the one hand, and, on the other hand, points in Jefferson, Nelson, Bullitt and Franklin Counties, KY under a continuing contract with Hiram Walker and Sons, Incorporated, P.O. Box 479, Peoria, Illinois 61651.

MC 139958 (Sub-No 3–1TA), filed February 6, 1980. Applicant: R. T. TRUCK SERVICE, INC., 4319 Campground Road, Louisville, Kentucky 40216. Representative: Rudy Yessin, 314 Wilkinson Street, Frankfort, Kentucky 40601. Temporary authority sought to operate as a common carrier, by motor vehicle, over regular routes, transporting: *General Commodities* (except those of unusual value, Class A & B explosives, livestock, household goods as defined by the Commission, commodities in bulk and those requiring special equipment.): Between the junction of IN Hwy. 62 and IN Hwy. 56 and the Jefferson Proving Ground, Jefferson County, IN, located on U.S. Hwy. 421, as an extension to applicant's existing Certificate No. MC–139958, Sub 1. Supporting Shipper: Dellon E. Coker, Chief, Regulatory Law Office, U.S. Army Legal Services Agency, Rm. 422, Nassif Bldg., Falls Church, VA 22041.

MC 56679 (Sub-No 3–1TA), filed February 6, 1980. Applicant: BROWN TRANSPORT CORP., 352 University Ave., SW., Atlanta, Georgia 30310. Representative: David L. Capps (same as applicant). *Empty metal containers, covers, bails and can ears; and tin plate, lithographed, printed, plain, lacquered, or painted,* from Hubbard, OH to points in NJ, KY, and TX for 180 days. Supporting shipper: Rancis J. Candiott, The Sherwin Williams Co., Caroline & Myron Sts., Hubbard, OH 44425.

MC 112617 (Sub-No 3–1TA), filed February 6, 1980. Applicant: LIQUID TRANSPORTERS, INC., 1292 Fern Valley Road, P.O. Box 21395, Louisville, Kentucky 40221. Representative: Larry W. Thompson, Traffic Manager, Liquid Transporters, Inc., P.O. Box 21395, Louisville, Kentucky 40221. Petroleum and Petroleum Products, in bulk, in tank vehicles from Amoco Chemicals' plant site at Wood River, IL to points in AL, AR, FL, GA, IN, KY, LA, MA, MD, MI, MS, NJ, NY, OH, PA, RI, SC, TX, VA, and WV. Supporting shipper: Thomas N. Russell, Amoco Chemcals Corp., 200 E. Randolph Drive, Chicago, IL 60680.

MC 52704 (Sub-3–1), filed February 6, 1980. Applicant: GLENN McGLENDON TRUCKING, INC., Post Office Drawer "H", LaFayette, AL 36862. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper or pulpwood articles, and cones or tubes, paper or pulpwood,* from the facilities of Sonoco Products at or near Arlington, Houston and Longview, TX, to points in AR, LA, MS and OK, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Sonoco Products Company, North 2nd Street, Hartsville, SC 29550.

MC 111214 (Sub-3–1TA), filed February 6, 1980. Applicant: GREENWOOD STORAGE & TRUCKING CO., INC., P.O. Box 943, Greenwood, MS 38930. Representative: Harold H. Mitchell, Jr., Wynn, Bogen & Mitchell, P.O. Box 1295, Greenville, MS 38701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel and iron and steel articles and materials, equipment, and supplies* (except in bulk) *used in the manufacture and distribution of iron and steel and iron and steel articles* between the facilities of Atlas Steel and Wire Corporation located at or near Harahan, LA on the one hand, and, on the other, points in AL, AR, KY, LA, MS, OK, TN and TX, under continuing contract or contracts with Atlas Steel and Wire Corporation, for 180 days. Corresponding ETA for 90 days sought concurrently.

MC 143276 (Sub-3–1), filed February 6, 1980. Applicant: WEAVER TRANSPORTATION COMPANY, 5452 Oakdale Road, Smyrna, GA 30080. Representative: James L. Brazee, Jr., P.O. Box 32309, Decatur, GA 30032. (404) 524–

4566. Supporting shipper: Martin Marietta Cement, Daniel Building, 15 South 20th Street, Birmingham, AL 35233. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, in the temporary transportion of *portland cement, masonry mortar mix, chemical hydrated lime, white cement, and materials incidental to the manufacture thereof* between the facilities of Martin Marietta Cement Company located in Fulton County, GA, on the one hand, and all points and places in the States of AL, FL, NC, SC, and TN on the other hand.

MC 96770 (Sub-3–1TA), filed February 6, 1980. Applicant: FLORIDA TERMINALS & TRUCKING COMPANY, P.O. Box 13606, Orlando, FL 32859. Representative: Edward G. Villalon, 1032 Pennsylvania Building, Pennsylvania Ave. & 13th St., N.W., Washington, D.C. 20004. General commodities, except items of unusual value, commodities in bulk, Classes A and B explosives and household goods as defined by the Commission between points in Orange, Duval, Volusia, Marion, Flagler, Putnam, St. John, Clay and Nassau Counties, FL, for 180 days. There are 25 supporting shippers. Applicant proposes to join this authority with its existing authority.

MC 149217 (Sub-3–2TA), filed February 5, 1980. Applicant: BOB BENNETT TRUCKING CO.—SPECIAL COMMODITIES DIVISION, INC., 966 Ashby Street, Atlanta, Georgia 30318. *Contract Carrier.* (1) *Synthetic Yarns* and *Fibers, Plastic Material O/T Expanded, Resin, Polyester Chips*, and *Non-Woven Synthetic Fabrics* between Spartanburg, SC on the one hand, and, on the other, points in TN, KY, MS, AR, LA, and TX, for 180 days. Supporting shipper: Hoechst Fibers Industries, P.O. Box 5887, Spartanburg, SC.

MC 121142 (Sub-3–1TA), filed February 5, 1980. Applicant: J & G EXPRESS, INC., P.O. Box 1637, Jackson, MS 39205. Representative: John S. Murphey, Jr. (same as applicant). Common Carrier: *Regular Route: General Commodities*, except those of unusual value, Class A & B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment, between Drew, MS and Forrest City, AR, traversing highways as follows: US 49W, US 49, US 61, US 49 and AR 1 and return over the same route, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: ITT United Plastics Div., Production Control Manager, P.O. Box 129, Drew, MS.

Note.—Restricted to traffic moving to and from the facilities of ITT United Plastic Industries at Drew, MS, and Sanyo Mfg. Corp., Forrest City, AR.

MC 126736 (Sub-3–1), filed February 5, 1980. Applicant: Florida Rock & Tank Lines, Inc., 155 East 21st Street, Jacksonville, FL 32206. Representative: L. H. Blow, Director of Traffic & Commerce, P.O. Box 1559, Jacksonville, FL 32201. *Fertilizer and Fertilizer Compounds*, in bulk, from Jericho, SC to points in the states of FL and GA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Stoller MII, Div. of Stoller Chemical Co., P.O. Box 5, Jericho, SC 29454.

MC 143008 (Sub-3–1TA), filed February 5, 1980. Applicant: ITG TRUCKING COMPANY, INC., P.O. Box 2823, Jacksonville, FL 32203. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. *Contract carrier*: irregular routes: *Cigars* from Jacksonville, FL to Los Angeles and Oakland, CA, for the account of JNO. H. Swisher & Son, Inc., for 180 days. Supporting shipper(s): JNO. H. Swisher & Son, Inc., P.O. Box 2230, Jacksonville, FL 32202.

MC 93980 (Sub-3–2TA), filed February 5, 1980. Applicant: VANCE TRUCKING CO., P.O. Box 1119, Henderson, NC 27536. Representative: Edward G. Villalon, Suite 1032 Pennsylvania Bldg., Pennsylvania Ave. & 13th St., NW., Washington, DC 20004. *Roofing and building materials* from Manville, NJ to VA, NC, SC, GA, FL, OH, WV, KY, and TN, for 180 days. Supporting shipper: Johns Manville Sales, Inc., 200 N. Main St., Manville, NJ 08835.

MC 93980 (Sub-3–1TA), filed February 5, 1980. Applicant: VANCE TRUCKING CO., P.O. Box 1119, Henderson, NC 27536. Representative: Edward G. Villalon, Suite 1032 Pennsylvania Bldg., Pennsylvania Ave. & 13th St., NW., Washington, DC 20004. *Boards, building wall or insulating viz, Fibre Board or Pulpboard made of vegetable wood and/or mineral fibre* from Manville, NJ, to FL, SC, NC, VA, WV, OH, TN, and KY, for 180 days. Supporting shipper: Johns Manville Sales, Inc., 200 N. Main St., Manville, NJ 08835.

MC 121821 (Sub-3–1TA), filed February 5, 1980. Applicant: TENNESSEE MOTOR LINES INC., 402 Maplewood Ave., Nashville, TN 37210. Representative: Edward C. Blank, II, P.O. Box 1004, Columbia, TN 38401. *Iron and Steel articles* from the warehouses and storage facilities of Nashville River Terminal, Inc., Nashville, TN, to all points in TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper: Nashville River Terminal, Inc., P.O. Box 8119, Nashville, TN 37207.

Note.—Restricted to iron and steel articles having a prior or subsequent movement by rail or water from the warehouses and storage facilities of Nashville River Terminal, Inc., Nashville, TN.

MC 138308 (Sub-3–1TA), filed February 5, 1980. Applicant: KLM, INC., Old Highway 49 South, P.O. Box 6098, Jackson, MS 39208. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. *Insulated wire* from the facilities of or utilized by General Cable Company—a Division of GK Technologies Incorporated located in Hinds and Rankin Counties, MS to points in the United States (except AK and HI) for 180 days. Supporting shipper(s): General Cable Company—a Division of GK Technologies Incorporated, P.O. Box 847, Brandon, MS 39042.

MC 124835 (Sub-3–1TA), filed February 6, 1980. Applicant: PRODUCERS TRANSPORT CO., P.O. Box 4022, Chattanooga, TN 37405. Representative: David K. Fox, P.O. Box 4022, Chattanooga, TN 37405. *Asphalt and asphalt products*, in bulk, in tank vehicles, from Wilmongton, NC to Chattanooga, TN. Supporting shipper: Edw. J. Dieter, The Gilman Company, Inc., P.O. Box 1257, Chattanooga, TN 37401.

MC 138308 (Sub-3–2), filed February, 5 1980 Applicant: KLM, INC., Old Highway 49 South, P.O. Box 6098, Jackson, MS 39208 Applicant's Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. Part 1, *mops, brooms and sponges* from the facilities of Mississippi Industries for the Blind located in Jackson, MS to points in AZ, CA, and WA; Part 2, *mop yarn and cloth* from GA, NC and SC to the facilities of Mississippi Industries for the Blind located in Jackson, MS; Part 3, *sponges* from Tonawanda, NY to the facilities of Mississippi Industries for the Blind located in Jackson, MS for 180 days. Supporting shipper(s): Mississippi Industries for the Blind, P.O. Box 4417, Jackson, MS 39216.

MC 150016 (Sub-3–1TA), filed February 4, 1980. Applicant: ATLANTIC GOOD SERVICES, INC., 2711 Red Rd., Coral Gables, FL 33155. Representative: John P. Bond, Esq., 2766 Douglas Rd., Miami, FL 33133. *Contract Carrier;* irregular routes: *Cloth, cotton and synthetic fibre combined*, unfinished, in wrapped rolls in boxes, actual density 8 pounds per cubic foot or greater; and *cloth, cotton and synthetic fibre* combined, finished, cut, in boxes, actual

density 8 pounds per cubic foot or greater, under contract with DAMA's PAJAMA CORP., from shipper's plant site at or near McKenzie, TN to the Miami International Airport, Miami, FL; and from the Miami International Airport, Miami, FL to the plant site at or near McKenzie, TN, restricted to shipments having a prior or subsequent movement by air in foreign commerce. Supporting Shipper: Damas Pajama Corp., P.O. Box M, Humacao, Puerto Rico 00661.

MC 35807 (Sub-3–1), filed February 4, 1980. Applicant: Wells Fargo Armored Service Corporation, P.O. Box 4313, Atlanta, Georgia 30302. Applicant's Representative: Francis J. Mulcahy (same address as applicant). Authority sought as a *contract carrier* by motor vehicle over irregular routes in the transportation of *coin, currency securities, jewelry and other high value cargo between Savannah, GA, on the one hand, and, on the other, points in Allendale County, SC.* Supporting shipper: Carolina Commercial Bank, Allendale, SC 29810.

MC 148423 (5TA) (Sub-34), filed February 4, 1980. Applicant: AVANT TRUCKING CO., INC., P.O. Box 216, Gray, GA 31032. Applicant's representative: R. Napier Murphy, 700 Home Federal Building, Macon, GA 31201. *Agricultural Lime, Including Filler,* from points in Taylor County, FL, to points in GA. If a hearing is deemed necessary, applicant requests it be held at either Atlanta, Georgia, or Macon, Georgia. Supporting shipper: Farmers Dolomite Lime Co., Moultrie, GA 317687.

Note.—Applicant holds motor contract carrier authority in No. MC–140541 (Sub No. 1) and therefore dual operations may be involved.

MC 144337 (Sub-3–1TA), filed February 4, 1980. Applicant: KENNETH HENDERSON TRUCKING, CO., INC., Route 66, Cullowhee, NC 28723. Applicant representative: Eric Meierhoefer, Suite 423, 1511 K Street, N.W., Washington, DC 20005. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *bottled water (in plastic and glass containers),* from the facilities of Whitewater Mountain Products, Inc., located at or near Cashiers, NC, to points in FL, GA, AL, VA, SC, and LA, under continuing contract(s) with Whitewater Mountain Products, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Whitewater Mountain Products, Inc., Box 837, Cashiers, NC 28717.

MC 119777 (Sub-3–3TA), filed February 4, 1980. Applicant: LIGON SPECIALIZED HAULER, INC., Highway 85–East, Madisonville, KY 42431. Representative: Carl U. Hurst, P. O. Drawer "L", Madisonville, KY 42431. (1) *Fiberglass, fiberglass articles, materials* and *supplies, building materials,* and (2) *materials, equipment,* and *supplies* used in the manufacture or distribution of commodities in (1) above, between Ennis, TX, on the one hand, and, on the other, Birmingham and Tuscaloosa, AL; Stephens and Little Rock, AR; and Memphis, TN, for 180 days. Supporting shipper: Elk Corp. of Texas, Old Highway 75 and County Road, Ennis, TX 75119.

MC 119777 (Sub-3–1TA), filed February 4, 1980. Applicant: LIGON SPECIALIZED HAULER, INC., Highway 85–East, Maidsonville, KY 42431. Representative: Carl U. Hurst, P. O. Drawer "L", Madisonville, KY 42431. *Fencing* and *materials* used in the installation thereof, from Longwood, Perry and Lake City, FL to points in TN, VA, NC, SC, GA, AL and MS, for 180 days. Supporting shipper: American Wood Products, Inc., 200 Marvin Avenue, Longwood, FL 32750.

MC 119777 (Sub-3–2TA), filed February 4, 1980. Applicant: LIGON SPECIALIZED HAULER, INC., Highway 85–East, Madisonville, KY 42431. Representative: Carl U. Hurst, P. O. Drawer "L", Madisonville, KY 42431. *Timber* and *timber products,* from Lady Lake, FL to points in GA, AL, MS, LA, TN, VA, NC, SC, KY, IN, IL and WV, for 180 days. Supporting shipper: South Eastern Timber Corp., P. O. Box 9334, Ft. Lauderdale, FL 33310.

MC 119777 (Sub-3–4TA), filed Februrary 4,1980. Applicant: LIGON SPECIALIZED HAULER, INC., Highway 85—East, Madisonville, KY, 42431. Representative: Carl U. Hurst, P.O. Drawer "L", Madisonville, KY, 42431. (1) *non-ferrous metals, alloys, molybenum, ores, concentrates, copper* and *copper crystals;* and (2) *materials, equipment* and *supplies* used in the production and mining of commodities in (1) above, between Pima County, AZ, on the one hand, and , on the other, points in KY, MD, TX, AL, PA, OH, IL, MI, MO, IN, CA, WI, MN, NJ, OR and NY, for 180 days. Supporting shipper: Duval Sales Corporation, P.O. Box 2967, Houston, TX, 77001.

MC 145721 (Sub-3–1), filed February 4, 1980. Applicant: STEWART TRANSPORTATION SERVICES, INC., P.O. Box 926, Melbourne, FL 32901. Applicant's Representative: Elbert Brown, Jr., Post Office Box 1378, Altamonte Springs, FL 32701. *General Commodities (except Commodities in Bulk, those requiring Special Equipment, Household Goods, and Classes A & B Explosives,)* restricted to shipments having a prior or subsequent movement by Air, between Melbourne Regional Airport, Orlando International Airport, Palm Beach International Airport, Fort Lauderdale International Airport and Miami International Airport, FL, on the one hand, and, on the other, points in Okeechobee, St. Lucie, Martin, Palm Beach, Broward, Dade, Collier, Glades, Hendry, and Monroe Counties, FL. Supporting Shippers: There are eight supporting shipper statements attached to this application.

MC 117416 (Sub-3–3TA), filed Februrary 4, 1980. Applicant: NEWMAN AND PEMBERTON CORPORATION, 2007 University Avenue, NW, Knoxville, TN 37921. Applicant's representative: Herbert Alan Dubin, Baskin and Sears, 1320 Fenwick Lane, Silver Spring, MD 20910. Limestone and alumina trihydrate, in bags, from the facilities of A. B. Wood Chemical Co., Inc. located at or near Campobello, SC to points in IN and OH. Supporting shippper: A. B. Wood Chemical Co. Inc., P.O. Box 428, Campobello, SC 29322.

MC 148903 (Sub-3–2) filed February 8, 1980. Applicant: J. & M. TANK LINES, INC., P.O. Box 488, Milledgeville, Georgia 31061. Representative: Paul P. Waktins, Sr., P.O. Box 872, Atlanta, Georgia 30301. (1) dry fertilizer and fertilizer materials, in bulk, in tank vehicles, between points in AL and GA on the one hand, and, on the other, points in AL, FL, GA, and SC an (2) sand in bags, from the facilities of Crawford County Mining Company, Crawford County GA to points in AL, FL, SC, NC, TN, and KY.

MC 144026 (Sub-3–1), filed February 11, 1980. Applicant: WILLIAMS CARTAGE COMPANY, INC., P.O. Box 897, Hartsville, South Carolina 29550. Applicant's representative: Robert L. McGeorge, Webster, Johnston & McGeorge, 2550 M Street, NW, Suite 520, Washington, DC 20037. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *iron and steel articles* between the facilities of SoCar, Inc., at or near Florence, South Carolina, on the one hand, and on the other, points in the States of AL, AR, CT, DE, FL, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, PA, RI, TN, VT, VA, WV, WI and DC; (2) between the facilities of SoCar, Inc., at or near Continental, Ohio, on the one hand, and on the other, points in the States of AL, AR, CT, DE, FL, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, PA, RI, SC, TN, VT, VA, WV,

WI and DC, under continuing contracts in (1) and (2) above with SoCar, Inc.

MC 150073 (Sub-3–1TA), filed February 11, 1980. Applicant: CHEROKEE TRUCK LINES, INC., 390 Merrimon Avenue, Asheville, NC 28801. Applicant's representative: Eric Meierhoefer, Suite 423, 1511 K Street, N.W., Washington, DC 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *iron stoves and fireplaces*, from Asheville, NC to points in its commercial zone to points in the United States under a continuing contract(s) with Pioneer Metal Products, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Pioneer Metal Products, Inc., 1122 Sweeten Creek Road, Asheville, NC

MC 91306 (Sub-3–1TA), filed February 11, 1980. Applicant: JOHNSON BROTHERS TRUCKERS, INC., 1858 9th Avenue, NE, Hickory, NC 28601. Applicant's representative: Eric Meierhoefer, Suite 423, 1511 K Street, N.W., Washington, DC 20005. *Plastic tips and holders used in the manufacture of cigars*, from Gastonia, NC, and points in its commercial zone to Kingston, PA, and points in its commercial zone. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: General Cigar and Tobacco Company, P.O. Box 2000, Dayton, NJ 08810.

MC 145726 (Sub-3–1TA), filed February 7, 1980. Applicant: G. P. THOMPSON ENTERPRISES, INC., P.O. Box 146, Midway, AL 36053. Representative: Terry P. Wilson, 420 South Lawrence Street, Montgomery, AL 36104. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: 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 hides and commodities in bulk, in tank vehicles from those points in the United States in and east of MS, TN, KY, IL, and WI to the facilities of Wayne Pultry, a division of Allied Mills, Inc., in Riviera Beach, FL.

MC 121654 (Sub-3–1TA), filed February 8, 1980. Applicant: COASTAL TRANSPORT & TRADING CO., P.O. Box 7438, Savannah, GA 31408. Applicant's representative: Alan E. Serby, Esq., Serby & Mitchell, P.C., 3390 Peachtree Road, N.E., 5th Floor—Lenox Towers South, Atlanta, GA 30326. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, in the transportation of *such commodities as are dealt in or used by wholesale and retail grocery houses* from facilities used by Savannah Foods & Industries, Inc., and Transales Corporation in Chatham County, GA to points in FL for 180 days. Supporting shipper: Savannah Foods & Industries, Inc., P.O. Box 339, Savannah, GA 31402.

MC 146256 (Sub-3–1TA), filed February 7, 1980. Applicant: SHORT LINE TRUCKING CO., INC., P.O. Box 20026, Louisville, KY 40220. Applicant's representative: Lavern R. Holdeman, Peterson, Bowman & Johanns, 521 S. 14th St., Suite 500, P.O. Box 81849, Lincoln, NE 68501. *Fireplaces and fireplaces accessories*, from the facilities of Marco Manufacturing, Inc., at or near Louisville, KY, to points in the U.S. in and east of MN, IA, NE, KS, MO, AR and LA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days operating authority. Supporting shipper: Marco Manufacturing, Inc., Allan Parnell, Plant Manager, 8191 National Turnpike, Louisville, KY, 40214.

MC 75840 (Sub-3–1TA), filed February 11, 1980. Applicant: MALONE FREIGHT LINES, INC., P.O. Box 11103, Birmingham, AL 35202. Applicant's representative: Frank D. Hall, Postell & Hall, P.C., Suite 713, 3384 Peachtree Rd., N.E., Atlanta, GA 30326. (1) Non woven material (textiles), from the facilities of Berkley Mills, located at or near Balfour, NC, to points in NJ, NY, PA, VA and MD; (2) Mica, clay, in bags (clay group), from the facilities of English Mica Company, located at or near Kings Mountain, NC, to points in PA, NY and NJ; (3) Paper bags and related articles, from the facilities of Hudson Pulp and Paper, Division of Georgia Pacific, located at or near Hamlet, NC, to points in NY, NJ and PA; (4) Plastic art, from the facilities of Genpak Corporation, located at or near Forest City, NC, to points in VA, PA, NY and NJ; (5) Pillows and comforters, from the facilities of Kinmont Industries, located at or near Kings Mountain, NC, to points in NY, NJ and MD; (6) Textile products, from the facilities of Pharr Yarns, Inc., located at or near McAdenville, NC, to New York, NY; (7) chemicals, NOI, from the facilities of Prior Chemical, located at or near Kings Mountain, NC, to points in NY, NJ, MD, VA, WV, OH, PA, DE, and DC; (8) Christmas decorations, from the facilities of Rauch Industries, located at or near Gastonia, NC, to points in PA, MD, NY, NJ, VA, and OH; and, (9) Plywoods, from the facilities of Vanply Corporation, located at or near Charlotte, NC, to points in NY, NJ, PA, MD and VA.

MC 56799 (Sub-3–1TA), filed February 11, 1980. Applicant: CLAXON TRUCK LINES, INC., P.O. Box 678, Frankfort, KY 40602. Applicant's representative: Fred F. Bradley, P.O. Box 773, Frankfort, KY 40602. 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 Frankfort, KY and Cincinnati, OH. From Frankfort, KY over U.S. Hwy. 60 to junction with U.S. Hwy. 25 and/or I–75, then over U.S. Hwy. 25 and/or I–75 to Cincinnati, OH, and return over the same route, serving all intermediate points except those between the junction of U.S. Hwy. 25 and/or I–75 with KY Hwy. 32, and Cincinnati, OH.

MC 150072, (Sub-3–1TA), filed February 8, 1980. Applicant: DEWEY ENTERPRISES, INC., 3320 New South Province Blvd., Ft. Myers, FL 33907. Applicant representative: Bruce A. Dewey (same address as applicant). *Contract carrier:* irregular routes: *Malt Beverages, wine and advertising materials*, from Perry, GA and Chicago, IL to the facilites of Cronin Distributors at Ft. Myers, FL for 180 days. Supporting shipper: Cronin Distributors, 3544 Work Drive, Ft. Myers, FL 33901.

MC 150075 (Sub-3–1TA), filed January 29, 1980. Applicant: ROWE WILLIAM LEDFORD, P.O. Box 531, Waynesville, North Carolina 28786. Applicant representative: Richard L. Hollow, 2021 United American Plaza, P. O. Box 550, Knoxville, Tennessee 37901. To operate as a *contract* carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting: *olivine*, from the facilities of National Olivine Company at or near Dillsboro, NC, to points in AL, AR, DE, FL, GA, IL, IN, KY, MD, MI, MS, MO, NJ, OH, OK, PA, TN, TX, VA, WV, SC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): National Olivine Company, P. O. Box 180, Dillsboro, NC 28725.

MC 138157 (Sub-2TA), filed. February 11, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC. d.b.a. SOUTHWEST MOTOR FREIGHT. Applicant's representative: Patrick E. Quinn, P. O. Box 9596, Chattanooga, TN 37412. Household appliances and materials, equipment and supplies used in the manufacture, production and distribution of household appliances, from the facilities of Modern Maid Co. at Chattanooga, TN to points in the United States in and east of MT, WY, CO & NM. Supporting shipper: Modern

Maid Co., Main & Holtzclaw Sts., Chattanooga, TN 37404.

Note.—Applicant holds contract carrier authority in MC–134150 and subs thereunder, therefore, dual operations may be involved.

MC 145610 (Sub-3–1), Applicant: TRUCK AIR OF GEORGIA, INC., 576 Lake Mirror Road, College Park, GA 30349. Applicant's representative: Robert E. Born, Suite 508, 1447 Peachtree Street, N.E., Atlanta, GA 30309. *Shoes, handbags and shoe and handbag supplies* between Atlanta, Ga on the one hand, and, on the other, Birmingham, Decatur, Florence, Huntsville and Montgomery, AL; between Birmingham, AL on the one hand, and, on the other, Decatur, Florence, Huntsville and Montgomery, AL. Restriction: Restricted to traffic having an immediately prior or subsequent movement in interstate commerce originating at or destined to the facilities of Hahn's Shoes, Inc. at Landover, MD. An underlying ETA has been filed. Supporting shipper: Hahn's Shoes, Inc., 7600 Jefferson Avenue, Landover, MD 20785.

MC 95540 (Sub-3–1TA), filed February 4, 1980. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Rd., P.O. Box 1636, Lakeland, FL 33802. *Common carrier. Wooden windows, sliding glass doors, wood folding doors and partitions, parts and accessories,* between the facilities of Rolscreen Company located at Pella, IA, on the one hand, and, on the other, points in the United States for 180 days. Supporting shipper: Rolscreen Company, 102 Main Street, Pella, IA 50219.

MC 148695 (Sub-3–1TA), filed February 2, 1980. Applicant: BOB BENNETT ENTERPRISES, INC., d.b.a. BOB BENNETT TRUCKING CO.—SPECIAL COMMODITIES DIVISION, 966 Ashby Street, Atlanta, Georgia 30318. *Contract carrier.* (1) *Wheat flour breadons* and *white* and *black pepper* between Chicago, IL, and Dallas, TX to Atlanta, GA and return for 180 days. Supporring shipper: Stange Company, 5820 Tulane Drive, Atlanta, Georgia 30336.

MC 149249 (Sub-3–1TA), filed February 8, 1980. Applicant: JOHNNY WALKER SERVICE, INC., Route 1, Box 167, Clinton, KY 42031. Representative: Roland M. Lowell, 618 United American Bank Building, Nashville, Tennessee 37219. *(1) Wrecked, disabled, stolen, repossessed and abandoned motor vehicles, in truckaway service and (2) replacement vehicles for motor vehicles named in (1) above,* between points in KY on and west of U.S. Highway 41 and points in Hopkins County, KY, on the one hand, and, on the other, points in the United States for 180 days. Nine (9) supporting shippers: There are nine (9) certificates of support filed with the Application.

MC 121600 (Sub-3–1TA), filed February 7, 1980. Applicant: AVERITT EXPRESS, INC., P.O. Box 273, Livingston, TN 38570. Representative: Henry E. Seaton, 929 Pennsylvania Building, 425 13th Street, NW., Washington, DC 20004. Authority sought to operate as a *common carrier* by motor vehicle, over regular routes, in the transportation of *General Commodities (except articles of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment)* serving the facilities of Big Dollar Warehouse near Cookeville, TN as an off route point in connection with the carrier's otherwise authorized regular route operations. *Applicant intends to interline at authorized service points. Supporting shipper: Big Dollar Warehouse, Highway 42, Sparta, TN 38583. For 180 days.

MC 128720 (Sub-3–1TA). Applicant: MERCHANTS FREIGHT LINES, P.O. Box 7280, Nashville, TN 37210. Applicant's representative: Henry E. Seaton, 929 Pennsylvania Building, 425 13th Street, N.W., Washington, D.C. 20004. Authority sought to operate as a *common carrier* by motor vehicle, over regular routes, in the transportation of *General commodities (except articles of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment)* serving the facilities of Big Dollar Warehouse near Cookeville, TN as an off route point in connection with the carrier's otherwise authorized regular route operations. *Applicant intends to interline at authorized service points. Supporting shipper: Big Dollar Warehouse, Highway 42, Sparta, TN 38583. For 180 days.

MC 108651 (Sub-3–1). Applicant: ROY B. MOORE, INC., P.O. Box 628, Kingsport, TN. Applicant's representative: Daniel H. Moore (same address as applicant). *Such commodities as are dealt in or used by a manufacturer of photographic products,* between Kingsport, TN, and the facilities of Eastman Kodak Company at or near Leroy, NY.

MC 36448, filed February 7, 1980. Applicant: MURFREESBORO FREIGHT LINES CO., P.O. Box 1113, Murfreesboro, TN 37130. Applicant's representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., N.W., Washington, D.C. 20004. Common carrier: regular routes: *General commodities,* except classes A & B explosives, commodities in bulk and those requiring special equipment, between Atlanta, GA, and Memphis, TN, and points in their respective commercial zones, serving intermediate points in Rutherford County, TN, from Atlanta over US Hwy 41 to junction U.S. Hwy 70, then over U.S. 70 to Memphis and return for a period of 180 days.

Note.—Applicant seeks authority to interline at the respective terminals. There are approximately 54 supporting shipper statements attached to this application.

MC 115841 (Sub-3–1), filed February 4, 1980. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., 9041 Executive Park Drive, Suite 110, Building 100, Knoxville, TN 37919. Representative: D. R. Beeler, 9041 Executive Park Drive, Suite 110, Building 100, Knoxville, TN 37919. *Liquid and dry plastics materials—non-hazardous,* from the plantsite and facilities utilized by ICI Americas, Inc., located at or near Linden and Bayonne, NY and Westchester, PA, to points in NC, AR, TN, and AL for 180 days. Suporting shipper: ICI Americas, Inc. Wilmington, DE 19897.

MC 111302 (Sub-No. 3–1). Applicant: HIGHWAY TRANSPORT, INC., P.O. Box 10108, Knoxville, Tennessee 37919. Applicant's representative: David A. Petersen, P.O. Box 10108, Knoxville, Tennessee 37919. Liquid Chemicals, In bulk, in tank vehicles. Between Greenville, South Carolina and several states and cities.

The following applications were filed in the Chicago Regional Office. Send protests to: ICC, Dirksen Bldg., 219 S. Darborn St., Room 1386, Chicago, IL 60604.

MC 123272 (Sub-1TA), filed February 4, 1980. Applicant : FAST FREIGHT, INC., 9651 S. Ewing Avenue, Chicago, IL 60617. Applicant's representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. *Clay and clay products,* from points in Hardeman County, TN to points in and east of MT, WY, CO and NM. An underlying ETA seeks 90 days authority. Supporting shipper: Maltan, Inc., P.O. Box 9, Middleton, TN 38052.

MC 123407 (Sub-6TA), filed February 4, 1980. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Rt. 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr. (same address as applicant). *Plastic bottles* from Ligonier, IN, Clifton and Bloomfield, NJ, to GA, IL, IA, LA, MN, NE, NY, OH, PA, TX. Supporting shipper: Monsanto Company, 800 N. Lindbergh Blvd., St. Louis, MO 63166.

MC 123407 (Sub-7TA), filed February 4, 1980. Applicant: SAWYER

TRANSPORT, INC., Sawyer Center, Rt. 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr. (Same address as applicant). *Metal containers and ends* from the facilities of Heekin Can Divisions of Diamond International Corporation at Augusta, WI, to Columbus, OH. Supporting shipper: Heeking Can Div., Diamond International Corp., 429 New Street, Cincinnati, OH 45202.

MC 24379 (Sub-1TA), filed February 8, 1980. Applicant: LONG TRANSPORTATION CO., 14650 West Eight Mile Road, Oak Park, MI 48237. Applicant's representative: Donald G. Hichman (same address as applicant). *Department store merchandise* between Columbus, OH, on one hand, and, on the other, Ottawa, IL; Clarksville, Greenwood and Indianapolis, IN; Covington and Louisville, KY; Irvington and Little Ferry, NJ; Newburgh, NY; Goldsboro, Lexington, Monroe and Rockingham, NC; Altoona, Chambersburg, Erie, Hanover and Johnstown, PA; and Danville, Harrisonburg, Martinsville and Petersburg, VA. Supporting shipper: Play & Sports Distributors, Inc., 1951 Galaxie Dr., Columbus, OH 43207.

MC 105501 (Sub-1TA), filed February 8, 1980. Applicant: TERMINAL WAREHOUSE CO., 1851 Raddison Road, N.E., Blaine, MN 55434. Applicant's representative: Anthony C. Vance, Esq., 1307 Dolley Madison Blvd., McLean, VA 22101. *Bleaches and cleaning, softening, sizing, scouring, finishing and bluing products,* from the facilities of Hilex Corporation, a Division of Purex Corporation, at or near St. Paul, MN, to IA, WI, and ND. Supporting shipper: Hilex Corporation, Div. of Purex Corporation, 4120 North Detroit St., Toledo, OH 43612.

MC 123407 (Sub-5TA), filed February 4, 1980. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Rt. 1, Chesterton, IN 46304. Applicant's representative: H. E. Miller, Jr. (same address as applicant). *Flat glass* from the facilities of PPG Industries at Kebert Park, PA, to the facilities of PPG Industries at Evansville, IN. Supporting shipper: PPG Industries, Inc., One Gateway Center, Pittsburgh, PA 15222.

MC 107012 (Sub-1TA), filed February 5, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Applicant's representative: David D. Bishop, P.O. Box 988, Fort Wayne, IN 46801, (219) 429–2110. *Barbecue grills and parts and accessories,* from the facilities of Metal Engineering Corporation at or near Greeneville, TN to all points in the United States (except AK and HI). An underlying ETA seeks 90 days authority. Supporting shipper: Metals Engineering Corporation, Forest Hills Drive, Greeneville, TN 37743.

MC 143436 (Sub-1TA), filed February 6, 1980. Applicant: CONTROLLED TEMPERATURE TRANSIT, INC., 8328 Hill Gail Drive, P.O. Box 41228, Indianapolis, IN 46241. Applicant's representative: Stephen M. Gentry, 1500 Main St., Speedway, IN 46224. *Such merchandise as is dealt in by retail department, drug stores and hardware stores and materials and supplies used in the manufacture and distribution of such merchandise,* between the facilities of Drackett Products Company at or near Urbana, OH on the one hand, and, on the other, points in IN and KY. Supporting shipper: Drackett Products Company, P.O. Box 32114, Cincinnati, OH 45232.

The following protests were filed in the Fort Worth Regional Office. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, 411 West 7th Street—Suite 600, Fort Worth, TX 76102.

MC 134142 (Sub-5–1TA), filed February 4, 1980. Applicant: BROWN REFRIGERATED EXPRESS, INC., P.O. Box 603, Fort Scott, KS 66701. Applicant's representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. Potatoes, cooked and flaked, from Rupert, ID to Birmingham, AL; Phoenix, AZ; So. Anaheim, CA; Miliptas, CA; Denver, CO; Jacksonville, FL; Forest Park, GA; Chicago, IL; Charlotte, NC; Columbus, OH; Maple Heights, OH; Milwaukie, OR; Memphis, TN; and Dallas, TX, under a continuing contract, or contracts, with Borden Foods, Division of Borden, Inc., for 180 days. Supporting shipper(s): Borden Foods, Division of Borden, Inc., 180 E. Broad Street, Columbus, OH 43215.

MC 117119 (Sub-5–1TA), filed February 4, 1980. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Applicant's representative: L. M. McLean (same address as applicant). Draperies and bedspreads from Evergreen, AL to Sparks, NV.

MC 148832 (Sub-5–1TA), filed February 4, 1980. Applicant: DELTA MOTOR FREIGHT, INC., 1616 Rowe Boulevard, P.O. Box 1083, Poplar Bluff, MO 63901. Applicant's representative: Frank W. Taylor, Jr., 1221 Baltimore Ave., Suite 600, Kansas City, MO 64105. Authority sought to operate as a common carrier, by motor vehicle, over regular routes, in interstate commerce, transporting general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, those requiring special equipment and those injurious to other lading), between Memphis, TN and Poplar Bluff, MO, seeking to serve Poplar Bluff as a point of joinder only: (1) from Poplar Bluff over U.S. Hwy 67 to its junction with U.S. Hwy 63; then over U.S. Hwy 63 to its junction with Interstate Hwy 55; then over Interstate Hwy 55 to Memphis, and return over the same route; (2) from Poplar Bluff over MO Hwy 53 to its junction with MO Hwy 25; then over MO Hwy 25 to its junction with MO Hwy 84; then over MO Hwy 84 to its junction with Interstate Hwy 55; then over Interstate Hwy 55 to Memphis, and return over the same route, for 180 days.

MC 125299 (Sub-5–1TA), filed February 4, 1980. Applicant: WITTE BROTHERS EXCHANGE, INC., 690 E. Cherry Street, Troy, MO 63379. Applicant's representative: Herman W. Huber, 101 East High Street, Jefferson City, MO 65101. *Foodstuffs* (except in bulk) from Houston, TX to Hutchison, KS, Scott City, Sikeston, and St. Louis, MO., Anderson and Indianapolis, IN and Waukesha, WI. An underlying ETA seeks 90 days authority. Supporting shipper: Dana Brown Private Brands, Inc., 4907 West Pine Boulevard, St. Louis, MO 63108.

MC 144622 (Sub-5–1TA), filed February 5, 1980. Applicant: GLENN BROS., TRUCKING., INC., P.O. Box 9343, Little Rock, AR 72219. Applicant's representative: Phillip G. Glenn (same address as applicant); and Attorney: Robert D. Gisvold, 1000 First National Bank Bldg., Minneapolis, MN 55402. *(a) household appliances and (b) parts and accessories for household applicances* between the facilities of the General Electric Co. at Little Rock, AR on the one hand, and the facilities of the General Electric Co. in Louisville, KY, Chicago, IL, Milwuakee, WI, Columbia, MD, Columbia, TN, Decatur, AL and Bloomington, IN on the other. Also from the facilities of the General Electric Co. at Little Rock, AR to all points in the states of LA, MS, OK, and TX, over irregular routes.

MC 145715 (Sub-5–2TA), filed February 4, 1980. Applicant: BELL TRUCKING, INC., 2504 Industrial Park Road, Van Buren, AR 72756. Applicant's representative: Elaine M. Conway, Sullivan & Assocates, Ltd., 10 S. LaSalle St., Chicago, IL 60603. *Such commodities* as are dealt in or used by chain grocery and food business houses, (except commodities in bulk in tank vehicles),

from points in the United States to the facilities of Griffin Grocery Corporation located at Van Buren, AR. Restriction: Restricted to traffic originating and destined to the above-named points.

MC 145715 (Sub-5–2TA), filed February 4, 1980. Applicant: BELL TRUCKING, INC., 2504 Industrial Park Road, Van Buren, AR 72765. Applicant's representative: Elaine M. Conway, Sullivan & Assocates, Ltd., 10 S. LaSalle St., Chicago, IL 60603. *Meat, meat products, meat by-products and articles distributed by meat packinghouses,* from the facilities of Land O'Frost, Inc. located at Chicago and Lansing, IL to points in ND and SD. Restriction: Restricted to traffic originating and destined to the above-named points.

MC 114211 (Sub-5–1TA), filed February 4, 1980. Applicant: WARREN TRANSPORT, INC., PO Box 420, Waterloo, Iowa 50704. Representative: Kurt E. Vragel, Jr., (same as applicant). (1) such commodities as are manufactured, dealt in, distributed, or used by manufacturers, dealers, or distributors of material handling equipment, self-propelled articles, and attachments, parts, and accessories therefor, between Winona, Mississippi, on the one hand, and, on the other, points in Texas, Oklahoma, Louisiana, Arkansas, Mississippi, Alabama, Georgia, Florida, Tennessee, Kentucky, Missouri, Kansas, Iowa, Wisconsin, Illinois, Indiana, Michigan, and Ohio, and (2) experimental, show and display material handling equipment, self-propelled articles, and attachments, parts and accessories therefor, and incidental paraphernalia, which at the time of movement is being transported for display or experiment, between points in Texas, Oklahoma, Louisiana, Arkansas, Mississippi, Alabama, Georgia, Florida, Tennessee, Kentucky, Missouri, Kansas, Iowa, Wisconsin, Illinois, Indiana, Michigan, and Ohio. Restriction: Restricted in (2) above to transportation of shipments moving between sites of plants, sales branches, warehouses, experimental stations, exhibits, field demonstrations, or shows owned, operated, or used by Lull Corporation.

MC 135070 (Sub-5–1TA), filed February 4, 1980. Applicant: JAY LINES, INC., P.O. Box 30180, Amarillo, TX 79120. Applicant's representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. Petroleum products and lubricating oils, NOI, (except in bulk), automobile parts and accessories, and such commodities as are used or dealt in by retail fuel stations and automobile service centers, between the facilities of Exxon Company, U.S.A., at or near Bayonne and Bayway, NJ; Baton Rouge, LA; Baytown, TX; and Pittsburgh, PA, on the one hand, and, on the other, all points in the United States (except AK and HI), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days operating authority. Supporting shipper: Exxon Company, U.S.A., T.A. Ellaby, Traffic Advisor, P.O. Box 2180, Houston, TX.

The following protests were filed in the San Francisco Regional Office. Send protests to: ICC, P.O. Box 7413, San Francisco, CA 94120.

MC 128102 (Sub-6–1TA), filed January 24, 1980. Applicant: STATE MOTOR FREIGHT, 3905 E.A., Pasco, WA. 99301. Representative: Boyd Hartman, Attorney at Law, P.O. Box 3641, Bellevue, WA 98009. *Fertilizer and Fertilizer Ingredients in bulk* from Finley Hedges, Washington, to points in Montana and from Three Forks, Montana to Finley Hedges, Washington for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Chevron Chemical Corporation, P.O. Box 6148, Kennewick, WA 99336.

MC 128114 (Sub-6–1TA), filed January 10, 1980. Applicant: SAVAGE & SONS, INC., P.O. Box 23422, Pasco, WA 99302. Representative: Boyd Hartman, Attorney at Law, P.O. Box 3641, Bellevue, WA 98009. Fertilizer and Fertilizer Ingredients in bulk from Finley Hedges, Washington, to points in Montana and from Three Forks, Montana to Finley Hedges, Washington for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Chevron Chemical Corporation, P.O. Box 6148, Kennewick, WA 99336.

MC 135082 (Sub-6–1TA), filed February 8, 1980. Applicant: ROADRUNNER TRUCKING, INC., 4100 Edith Boulevard N.E., P.O. Box 26748, Albuquerque, NM 87125. Representative: Randall R. Sain (same address as applicant). Ceramic tile and commodities used in the installation thereof, from El Paso, TX to points in the United States (other than Alaska and Hawaii) restricted to traffic moving for the account of Inter Ceramic, Inc.

MC 148857 (Sub-6–1TA), filed February 12, 1980. Applicant: CHILD TRUCK LINE, INC., 711 South Third Street, Chowchilla, CA 93610. Representative: Robert Fuller, 13215 E. Penn St., Suite 310, Whittier, CA 90602. Insulation materials and materials and supplies used in the installation of insulation materials from the facilities of Johns-Manville Sales Corporation at or near Willows, CA to points and places in ID, OR and WA. Supporting shipper: Johns-Manville Sales Corp., 2600 Campus Drive, San Mateo, CA 94403.

MC 123061 (Sub-6–1TA), filed February 12, 1980. Applicant: LEATHAM BROTHERS, INC., 46 Orange St., Salt Lake City, UT 84116. Representative: H. D. Pugsley, 1283 E. So. Temple No. 501, Salt Lake City, UT 84102. Masonry Products from Weber and Salt Lake Counties, UT to NV, CA, OR, WA and ID for 180 days. Supporting shipper: Miller Brick Sales, Inc., 5250 So. 100 West, Salt Lake City, UT.

MC 150061 (Sub-6–1TA), filed February 12, 1980. Applicant: TONY'S EXPRESS, INC., 907 Flower Street, P.O. Box 3215, Glendale, CA 91201. Representative: Daniel W. Baker, Handler, Baker, Greene & Taylor, P.C., 100 Pine Street, Suite 2550, San Francisco, CA 94111. Materials, supplies equipment and merchandise dealt in by a manufacturer and distributor of cosmetics and toilet preparations for the account of Max Factor & Co., and its subsidiaries, between points in Los Angeles, Orange, San Diego and Ventura Counties and points in Riverside County on and west of Interstate Hwy. 15–E and points in San Bernardino County, CA, south and west of a boundary line commencing at the Los Angeles County line, then easterly along CA Hwy. 30 to Interstate Hwy. 10 and southerly along Interstate Hwy. 10 to Riverside County line. Supporting shipper: Max Factor & Co. and its subsidiaries, 1655 N. McCadden Place, Hollywood, CA 90028.

MC 141804 (Sub-6–4TA), filed February 12, 1980. Applicant: WESTERN EXPRESS, Division of Interstate Rental, Inc., 4015 Guasti Road, P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same as applicant). *Lighting fixtures, and accessories and parts for lighting fixtures and equipment materials and supplies used in the manufacturing of lighting fixtures,* between the facilities of Lithonia Lighting, Inc., Division of National Service Industries, Inc. at or near Conyers, and Cochran, GA and Crawfordsville, IN on the one hand, and on the other, points in the U.S. in and east of ND, SD, NE, KS, OK, TX, and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Alan M. Whitten, Lithonia Lighting, Inc., Division of National Service Industries, Inc., P.O. Box A, Conyers, GA 30207.

MC 147701 (Sub-6–1TA), filed February 13, 1980. Applicant: JOCELYNE EUBANK d.b.a., CALIF. CARRIERS EXPRESS, 1228 So. Wright St., Santa Ana, CA 92705. Representative: Jocelyne Eubank (same address as above). Contract carrier; irregular routes: Plastic articles and

materials, supplies and machinery used in conjunction therewith (except commodities in bulk); between Los Angeles and Orange Counties, CA, on the one hand, and, on the other, Phoenix, AZ, Albuquerque, NM, Reno, NV, Dallas, TX, Oklahoma City, OK for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Bobco Marketing, 1228 S. Wright St., Santa Ana, CA 92705.

MC 52709 (Sub-6-1TA), filed February 14, 1980. Applicant: RINGSBY TRUCK LINES, INC., P.O. Box 7240, 3980 Quebec St., Denver, CO 80207. Representative: Rick Barker (address same as applicant). Electrical applicance, from Lenexa, KS to Minneapolis and St. Paul, MN. Supporting shipper: General Electric, 13900 W. 101st, Lenexa, KS 66215.

MC 139887 (Sub-6-1TA), filed February 15, 1980. Applicant: G. E. BAXTER TRANSPORT, INC., 2714 North Compton Avenue, Compton, California 90222. Representative: David P. Christianson of Knapp, Grossman & Marsh, 707 Wilshire Boulevard, Suite 1800, Los Angeles, California 90017, (213) 627-8471. G. E. Baxter Transport, Inc. seeks temporary authority as a *contract* carrier by motor vehicle over irregular routes in the transportation of: *Trailers (other than those designed to be drawn by passenger automobiles), chassis, cargo containers, trailer parts, and materials, supplies and equipment utilized in the manufacture of trailers,* between Adams County, IN; Columbia County, Montour County, Bucks County and Lackawanna County, PA; and Orange County, NY, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii), under a continuing contract or contracts with Strick Corporation located at Fort Washington, PA.

MC 144621 (Sub-6-2TA), filed February 15, 1980. Applicant: CENTURY MOTOR LINES, INC., P.O. Box 15246, 1720 East Garry Avenue, Santa Ana, CA 92705. Representative: Charles J. Kimball, Kimball, Williams & Wolfe, P.C., 350 Capitol Life Center, 1600 Sherman Street, Denver, Colorado 80203, (303) 839-5856. Candy and confectionery products, in vehicles equipped with mechanical refrigeration, from the facilities of Schrafft Candy Company, at or near Boston and Woburn, MA and West Reading, PA, to points in OH, IN, MI, IL, TX, CA, WA, and OR, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Schrafft Candy Company, 529 Main Street, Charlestown, MA, 02129.

MC 144621 (Sub-6-3TA), filed February 15, 1980. Applicant: CENTURY MOTOR LINES, INC., P.O. Box 15246, 1720 East Garry Avenue, Santa Ana, CA 92705. Representative: Charles J. Kimball, Kimball, Williams & Wolfe, P.C., 350 Capitol Life Center, 1600 Sherman Street, Denver, Colorado 80203, (303) 839-5856. Candy and confectionery products, requiring refrigeration while in transit, from the facilities of M & M/Mars, a Division of Mars, Inc. at or near Chicago, IL, to points in MA, RI, CT, NH, CA, OR, WA, AZ, and UT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: M & M/Mars, a Division of Mars, Inc., High Street, Hackettstown, NJ 07840.

MC 42487 (Sub-6-3TA), filed February 15, 1980. Applicant: CONSOLIDATED FREIGHTWAYS, corporation of Delaware, 175 Linfield Drive, Menlo Park, CA 94025. Representative: V. R. Oldenburg, Commerce Supervisor, P.O. Box 3062, Portland, OR 97208. Authority is sought to operate as a *common carrier* by motor vehicle, over regular routes transporting: *General commodities, (except those of unusual value, household goods as defined by the Commission, commodities in bulk and commodities requiring special equipment):* (1) Between Perry, GA and Ocala, FL, serving the intermediate points of Valdosta, GA and Lake City and Gainesville, FL and serving Cordele and Tifton, GA for purpose of joinder only: From Perry over U.S. Hwy 41 to Lake City, FL, then over U.S. Hwy 441 to Ocala, and return over the same route. (2) Between Gainesville, FL and Waldo, FL, serving no intermediate points: From Gainesville over FL Hwy 24 to Waldo, and return over the same route. (3) Between Macon, GA and Monticello, FL, serving the intermediate points of Americus, Albany and Thomasville, GA, and serving the junction of Hwy 80 and U.S. Hwy 19 for purpose of joinder only: From Macon over U.S. Hwy 80 to junction U.S. Hwy 19, then over U.S. Hwy 319 near Thomasville, GA, then over U.S. Hwy 319 to Thomasville, GA, then over Business U.S. Hwy 19 to junction U.S. Hwy 19 near Thomasville, GA, then over U.S. Hwy 19 to Monticello, FL, and return over the same route. (4) Between Americus, GA and Cordele, GA, serving no intermediate points, serving Cordele, GA for purpose of joinder only: From Americus over U.S. Hwy 280 to Cordele, and return over the same route. (5) Between Albany, GA and Tifton, GA, serving no intermediate points, serving Tifton, GA for purpose of joinder only: From Albany over U.S. Hwy 82 to Tifton, and return over the same route. (6) Between Dothan, AL and Valdosta, GA, serving the intermediate point of Thomasville, GA: From Dothan, AL over U.S. Hwy 84 to Valdosta, and return over the same route. (7) Between Thomasville, GA and Tifton, GA, serving no intermediate points and serving Tifton, GA, for purpose of joinder only: From Thomasville over U.S. Hwy 319 to Tifton, and return over the same route. (8) Between Atlanta, GA and junction U.S. Hwy 80 and U.S. Hwy 19, serving the intermediate points of La Grange and Columbus, GA: From Atlanta, over U.S. Hwy 29 to La Grange, GA, then over U.S. Hwy 27 to Columbus, GA, then over U.S. Hwy 80 to junction U.S. Hwy 80 and U.S. Hwy 19, and return over the same route. (9) Between La Grange, GA and Opelika, AL, serving the intermediate points of West Point, GA and Lanett, Shawmut, Langdale and Fairfax, AL: From Columbus over U.S. Hwy 280 to Opelika, and return over the same route. (10) Between Columbus, GA and Opelika, AL, serving no intermediate points: From Columbus over U.S. Hwy 280 to Opelika and return over the same route. (11) Between Valdosta, GA and Savannah, GA, serving the intermediate point of Waycross, GA: From Valdosta over U.S. Hwy 84 to Waycross, GA then over U.S. Hwy 82 to junction U.S. Hwy 17, then over U.S. Hwy 17 to Savannah, and return over the same route. (12) Between Griffin, GA and junction U.S. Hwy 19 and U.S. Hwy 80, serving no intermediate points: From Griffin, GA, over U.S. Hwy 19 to junction U.S. Hwy 19 and U.S. Hwy 80, and return over the same route. Serving Byron, Fort Valley, Reynolds and Thomaston, GA as off-route points in connection with routes described above. the proposed authority will also tack at Monticello, FL with authority Applicant will seek in another application to be filed within a few weeks if we are successful in both applications. Supporting shipper(s): There were approximately 266 shipper support statements filed with this application which may be inspected at the offices of the Interstate Commerce Commission, Washington, D.C. or at the District Office named below:

Note.—Applicant intends to tack the authorities described above. Applicant also intends to tack to its existing authority and any authority it may acquire in the future. The proposed authority will tack with present authority of Applicant at Atlanta, Macon, Perry, Columbus, Griffin and Waycross, GA, Ocalla and Waldo, FL and Dothan, AL. Present authority at these points is found in Docket No. MC 42487 Subs 744 and 872 and in authority Applicant acquired from Eastern Express, Inc., under Docket No. MC-F-13295. A certificate covering this authority has not yet been issued in Applicant's name. These authorities, in turn, will be joined with other authorities of Applicant at common service

points to permit service throughout the United States. Applicant also filed an application on January 25, 1980 which would grant authority to serve Savannah, GA. The proposed authority would join with that authority at Savannah, GA if we are successful in both applications.

Note.—Applicant proposes to interline traffic with its present connecting carriers at authorized interline points throughout the United States as provided in tariffs on file with the Interstate Commerce Commission.

MC 42487 (Sub-6–4TA), filed February 15, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, California 94025. Representative: V.R. Oldenburg, P.O. Box 3062, Portland Oregon 97208. Authority is sought to operate as a common carrier by motor vehicle, over regular routes transporting: *General commodities, (except those of unusual value, household goods as defined by the Commission, commodities in bulk and commodities requiring special equipment),* (1) Between South Bend, IN and St. Joseph, MI, serving the intermediate point of Niles, MI: From South Bend over U.S. Hwy 33 to St. Joseph, and return over the same route. (2) Between Niles, MI and the junction U.S. Hwy 12 and Interstate Hwy 69 near Coldwater, MI, serving the intermediate points of White Pigeon, Sturgis and Coldwater, MI, and serving the junction U.S. Hwy 12 and U.S. Hwy 131 for purpose of joinder only: From Niles over Business Route U.S. Hwy 12 to junction U.S. Hwy 12, then over U.S. Hwy 12 to the junction U.S. Hwy 12 and Interstate Hwy 69 near Coldwater, MI and return over the same route. (3) Between the junction U.S. Hwy 12 and Interstate Hwy 69 near Coldwater, MI and Marshall, MI, serving the junction of Interstate Hwy 69 and MI Hwy 60 for purpose of joinder only: From the junction U.S. Hwy 12 and Interstate Hwy 69 near Coldwater, MI, over Interstate Hwy 69 to junction unnumbered Hwy near Marshall, MI, (formerly portion U.S. Hwy 12), then over unnumbered Hwy to Marshall, and return over the same route. (4) Between Niles, MI and the junction MI Hwy 60 and Interstate Hwy 69, serving the intermediate point of Three Rivers, MI, the off-route point of Dowagiac, MI and serving the junction MI Hwy 60 and U.S. Hwy 131 for purpose of joinder only: From Niles over Business Route U.S. Hwy 12 to junction MI Hwy 60, then over MI Hwy 60 to the junction MI Hwy 60 and Interstate Hwy 69, and return over the same route. (5) Between the junction U.S. Hwy 20 and IN Hwy 13 near Middlebury, IN and Kalamazoo, MI, serving the intermediate point of Constantine, MI and serving the junction U.S. Hwy 12 and U.S. Hwy 131 and the junction MI Hwy 60 and U.S. Hwy 131 for purpose of joinder only: From the junction U.S. Hwy 20 and IN Hwy 13 near Middlebury, IN over IN Hwy 13 to the MI–IN state line, then over U.S. Hwy 131 to Kalamazoo, and return over the same route. Applicant seeks to serve all points in the Commercial Zones of points of service authorized herein. Supporting shipper(s): There were approximately 37 Certificates of Support filed with this application which may be examined at the Interstate Commerce Commission Headquarters, Washington, D.C. or at the office listed below.

Note.—Applicant intends to tack the authorities described above. Applicant also intends to tack to its existing authority and any authority it may acquire in the future. The proposed authority will tack with present authority of Applicant at South Bend, IN and the junction U.S. Hwy 20 and IN Hwy 13 near Middlebury, IN found in Docket No. MC 42487 Sub 578. Also the proposed authority will tack with present authority of Applicant at St. Joseph, Marshall and Kalamazoo, MI found in Docket No. MC 42487 Sub 712. These authorities, in turn, will be joined with other authorities of Applicant at common service points to permit service throughout the United States.

Note.—Applicant proposes to interline traffic with its present connecting carriers at authorized interline points throughout the United States as provided in tariffs on file with the Interstate Commerce Commission.

MC 124679 (Sub-6–1TA), filed February 15, 1980. Applicant: C. R. ENGLAND & SONS, INC., 975 West 2100 South, Salt Lake City, Utah 84119. Representative: Daniel E. England, 975 West 2100 South, Salt Lake City, Utah 84119. *Foodstuffs* from Philadelphia, Pennsylvania, New York City, New York, Baltimore, Maryland, Boston, Massachusetts and points in New Jersey to points in Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, Tennessee and Texas.

Note.—Applicant holds motor contract carrier authority in number MC–128813 and sub numbers thereunder, therefore dual operations may be involved.

MC 125433 (Sub-6–4TA), filed February 15, 1980. Applicant: F–B TRUCK LINE COMPANY, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same as applicant). *Paints, stains, varnishes, lacquers, resins, adhesives and paint related items,* from Riverside, CA to points in the United States (except AK and HI). Restricted to traffic originating at the facilities utilized by Devoe & Raynolds, Inc. and further restricted against the transportation of commodities in bulk.

MC 125433 (Sub-6–5TA), filed February 15, 1980. Applicant: F–B TRUCK LINE COMPANY, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same as applicant). *Beverage preparation agents and citrus powders (except commodities in bulk in tank vehicles),* from Corona, CA to Chicago, IL; Berwick, PA; Jersey City, NJ, Forest Park, GA; and Jacksonville, FL.

MC 143503 (Sub-6–2TA), filed February 15, 1980. Applicant: MERCHANTS HOME DELIVERY SERVICE, INC., P.O. Box 5067, Oxnard, CA 93031. Representative: T. M. Brown, P.O. Box 1540, Edmond, OK 73034. *New furniture, furnishings, and appliances* between the facilities of Boston Furniture, Inc., at or near Haverhill, MA to points in RI; Chesire, Hillsboro, Rockingham, Strafford, Belknap, Merrimack and Sullivan counties, NH; and York and Cumberland counties, ME for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Boston Furniture Inc., 16 Walnut Street, Haverhill, Maine.

MC 143503 (Sub-6–3TA), filed February 15, 1980. Applicant: MERCHANTS HOME DELIVERY SERVICE, INC., P.O. Box 5067, Oxnard, CA 93031. Representative: T. M. Brown, P.O. Box 1540, Edmond, OK 73034. *New furniture, furnishings and appliances* from the facilities of Gallahan Furniture & Appliances, Inc., at or near Fredericksburg, VA, to points in MD; DE; DC; Franklin, Adams, York, Lancaster and Chester Counties, PA; and Greenbrier, Pendleton, Hampshire, Berkeley, Pocahontas, Hardy, Morgan, and Jefferson Counties, WV. An underlying ETA seeks 90 days authority.

MC 150083 (Sub-6–1TA), filed February 15, 1980. Applicant: OUTDOOR ADVENTURES U.S.A. CORPORATION, 5540 College Ave., Oakland, CA 94618. Representative: Outdoor Adventures USA–A.R. Wolfe (same as applicant). *Passengers and their baggage, camping equipment and cooking equipment,* between points in CA on the one hand, and on the other points in NV, AZ, NM, CO and UT.

MC 13651 (Sub-6–1TA), filed February 15, 1980. Applicant: PEOPLES TRANSFER, INC., 1430 West 11th Street, Long Beach, CA 90813. Representative: E. J. Hegarty, J. H. Gulseth, Loughran & Hegarty, 100 Bush St., 21st Floor, San Francisco, CA 94104. *Junk, salvage, scrap or waste materials,* between points in AZ, CA, CO, ID, LA, MT, NV, NM, OK, OR, TX, WA and WY for 180 days. (Hearing site: San Francisco or Los Angeles, CA.) An underlying ETA seeks 90 days authority. Supporting Shipper: There are 7 statements in

support of the application which may be examined at the ICC office listed below.

MC 148083 (Sub-1–TA), filed February 15, 1980. Applicant: SELLARS TRANSPORT SERVICE, 1620 Parnell Drive, Eugene, OR 97402. Representative: Robert W. Sellars, 1620 Parnell Drive, Eugene, OR 97402. Pneumatic filter systems, bins and conveyors, veneer stackers, pipe and other parts and accessories. From facilities of Clarke Sheet Metal Inc., at Eugene, OR to points in the United States (Excluding Alaska and Hawaii).

MC 138875 (Sub-6–1TA), filed February 15, 1980. Applicant: SHOEMAKER TRUCKING COMPANY, an Idaho corporation, 11900 Franklin Road, Boise, Idaho 83709. Representative: E. L. Sigloh (as above). *Hardwood* from Shawano, WI to CA, OR and WA. An underlying ETA seeks 90 days authority. Supporting shipper: Leroy L. Hall, General Manager, Interior Wood Products, 18657 72nd Ave. South, Kent, WA 98031.

MC 138875 (Sub-6–2TA), filed February 15, 1980. Applicant: SHOEMAKER TRUCKING COMPANY, an Idaho corporation, 11900 Franklin Road, Boise, Idaho 83709. Representative: F. L. Sigloh (as above). *Pipe and pipe fittings (except commodities as described in MERCER EXTENSION COMMODITIES 74 MCC 459 and 103 MCC 823),* from the facilities of Kroy Industries, Inc. located at or near Garden City, KS and York, NE to points in AZ, CA, CO, ID, MT, ND, NM, NV, OK, OR, SD, TX, UT, WA and WY. An underlying ETA seeks 90 days authority. Supporting shipper(s): Dan Stanton, Assistant Manager, Kroy Industries, Inc., P.O. Box 309, York, NE 68467.

MC 138875 (Sub-6–3TA), filed February 15, 1980. Applicant: SHOEMAKER TRUCKING COMPANY, an Idaho corporation, 11900 Franklin Road, Boise, Idaho 83709. Representative: F. L. Sigloh (as above). (1) *Building and construction materials;* and (2) *materials and supplies used in the manufacture and distribution of construction materials (except in bulk),* between the facilities of The Celotex Corporation at or near Tracy, CA, on the one hand, and, on the other, those points in the United States in and west of MN, IA, MO, AR, and LA. Supporting shipper(s): Carl T. Meyer, Supervisor-Claims and Services, Jim Walter Corporation, 1500 North Dale Mabry Highway, Tampa, FL 33607.

MC 110325 (Sub-6–27TA), filed February 15, 1980. Applicant: TRANSCON LINES, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, Esq., Midland Building, 1221 Baltimore Avenue, Kansas City, MO 64105. Authority sought to operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities,* (except Classes A and B explosives, those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the plantsite of Delta Faucet Co., at or near Decatur, MI, as an off-route point in connection with carrier's otherwise regular route operations. NOTE: Applicant proposes to tack the authority sought with its authority in MC–110325 and Subs thereto, and proposes to interline with other other carriers. Supporting shipper: Delta Faucet Co., Greensburg, IN. The statement of support may be examined at the Interstate Commerce Commission Headquarters.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-6022 Filed 2-26-80; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[603-TA-5]

Calcium Pantothenate From Japan; Preliminary Investigation

Notice is hereby given that on February 12, 1980, the United States International Trade Commission voted to institute a preliminary investigation under section 603 of the Trade Act of 1974 (19 U.S.C. 2482) to investigate whether imports of calcium pantothenate from Japan are the subject of:

(a) A combination, contract or conspiracy to restrain trade and commerce in the United States; or

(b) A Scheme to monopolize the d-calcium pantothenate and/or dl-calcium pantothenate submarkets in the United States.

Specifically, among other issues, the Commission staff has been directed to investigate the following questions raised by the amended complaint filed on October 24, 1979, by Syntex Agribusiness, Inc.:

(1) The identities of any and all participants in the d-calcium pantothenate and dl-calcium pantothenate markets in the United States and their respective market shares;

(2) The relationship among certain Japanese manufacturers or importers of calcium pantothenate;

(3) Any attempts by certain Japanese manufacturers or importers to absorb the amount of any antidumping duties imposed on these imported products;

(4) Prices charged by the certain Japanese manufacturers to U.S. importers and prices charged by U.S. importers to U.S. consumers for calcium pantothenate;

(5) Cost of production for calcium pantothenate manufactured in Japan.

The Commission staff has been directed to submit a report on the above matters to the Commission no later than August 11, 1980.

Issued: February 20, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-6076 Filed 2-26-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-79]

Certain Cathode Sputter Coated Glass Transparencies; Investigation

Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 14, 1980, and amended on February 12, 1980, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of PPG Industries, Inc., One Gateway Center, Pittsburgh, Pennsylvania 15272, alleging that unfair methods of competition and unfair acts exist in the importation into the United States of certain cathode sputter coated glass transparencies, or in their sale, because such cathode sputter coated glass transparencies are allegedly prepared by a process covered by claims 1–11 of U.S. Letters Patent 4,094,763. The complaint alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

Complainant requests that the Commission order permanent exclusion of the imports after a full investigation has been conducted.

Having considered the complaint, the Commission, on February 12, 1980, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, (19 U.S.C. 1337), and pursuant to 19 U.S.C. 1337(a), an investigation be instituted to determine whether there is a violation of subsection (a) of this section in the unauthorized importation of certain cathode sputter coated glass

transparencies or in their sale, because of the alleged preparation of such cathode sputter coated glass transparencies by a process covered by claims 1–11 of U.S. Letters Patent 4,094,763, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of this investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

PPG Industries, Inc., One Gateway Center, Pittsburgh, Pennsylvania 15272.

(b) The respondents are the following companies alleged to be engaged in the unauthorized importation of certain cathode sputter coated glass transparencies, into the United States, or in their sale, and are parties upon which the complaint is to be served:

Triplex Safety Glass Co., Ltd., 1 Eckersall Road, Kings Norton, Birmingham B38 8SR, England (UK).

British Aerospace, Inc., 13850 McClearen Road, Dallas Industrial Aerospace Park, Herndon, Virginia 22070.

(c) Wilhelm A. Zeitler, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, is hereby named Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Chief Administrative Law Judge, Donald K. Duvall, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's rules of practice and procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommeded determination and a final determination containing such findings.

The complaint is available for inspection by interested persons at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, and in the Commission's New York City office, 6 World Trade Center, New York, New York 10048.

Issued: February 22, 1980.
By order of the Commission.

Kennth R. Mason,

Secretary.

[FR Doc. 80-6077 Filed 2-26-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-78]

Certain Poultry Disk Picking Machines and Components Thereof; Investigation

Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 8, 1980, and amended January 21, 1980, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Stork-Gamco, Inc., Airport Parkway, SW., P.O. Box 1258, Gainesville, Georgia 30501, alleging that unfair methods of competition and unfair acts exist in the importation into the United States of certain poultry disk picking machines, or in their sale, because such poultry disk picking machines are allegedly covered by claims 3, 6, and 8 of U.S. Letters Patent 3,197,809. The complaint alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

Complainant requests that, after a full investigation has been conducted, exclusion of the imports in question and such other and further relief as the Commission deems appropriate be ordered by the Commission.

Having considered the complaint, the Commission, on February 5, 1980, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), an investigation be instituted to determine whether there is a violation of subsection (a) of this section in the unauthorized importation of certain poultry disk picking machines, and components thereof, into the United States, or in their sale, because of the alleged infringement by such poultry disk picking machines of claims 3, 6, and 8 of U.S. Letters Patent No. 3,197,809, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

(2) For the purpose of this investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Stork-Gamco, Inc., Airport Parkway, SW., P.O. Box 1258, Gainesville, Georgia 30501.

(b) The respondents are the following companies alleged to be engaged in the unauthorized importation of certain poultry disk picking machines or components thereof, into the United States, or in their sale, and are parties upon which the complaint is to be served:

(1) Meyn USA, Inc., P.O. Box 627, Cornelia, Georgia 30531.

(2) Machinefabriek Meyn B.V., Postbus 16, Nordeinde 68, 1510 AA Oostzaan, Holland.

(c) David J. Dir, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, is hereby named Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Chief Administrative Law Judge, Donald K. Duvall, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

The phrase "and components thereof" has been added to paragraph (1) above on the basis of the informal investigative activities by the Commission investigative attorney which revealed that the poultry disk picking machines of the type alleged to infringe claims 3, 6, and 8 of U.S. Letters Patent 3,197,809 have been and can be imported in component parts rather than entirely assembled.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's rules of practice and procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter

both a recommended determination and a final determination containing such findings.

The complaint is available for inspection by interested persons at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, and in the Commission's New York City office, 6 World Trade Center, New York, New York 10048.

Issued: February 14, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-6075 Filed 2-26-80; 8:45 am]

BILLING CODE 7020-02-M

[303-TA-13 (Preliminary)]

Certain Public Works Castings From India; Institution of Preliminary Countervailing Duty Investigation and Scheduling of Conference

Investigation instituted. Following receipt of a petition on February 19, 1980, filed by Pinkerton Foundry, Inc., Lodi, California, a domestic producer of cast gray-iron articles, the United States International Trade Commission on February 21, 1980, instituted a preliminary countervailing duty investigation under section 303 of the Tariff Act of 1930, as amended by section 103(b) of the Trade Agreements Act of 1979, to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of allegedly subsidized imports from India of manhole covers and frames, catch basin grates and frames, and cleanout covers and frames, provided for in item 657.09 of the Tariff Schedules of the United States. This investigation will be subject to the provisions of Part 207 of the Commission's rules of practice and procedure (19 CFR 207, 44 FR 76457) and, particularly, Subpart B thereof, effective January 1, 1980.

Written submissions. Any person may submit to the Commission on or before March 20, 1980, a written statement of information pertinent to the subject matter of the investigation. A signed original and nineteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All the written submissions, except for confidential business data, will be available for public inspection.

Conference. The Director of Operations of the Commission has scheduled a conference in connection with the investigation for 10 a.m., e.s.t., on Monday, March 17, 1980, at the U.S. International Trade Commission Building, 701 E. Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the senior investigator for the investigation, Mr. Thomas St. Maxens (202-523-0267). It is anticipated that parties in support of the petition for countervailing duties and parties opposed to such petition will each be collectively allocated one hour within which to make an oral presentation at the conference. Further details concerning the conduct of the conference will be provided by the senior investigator.

Inspection of petition. The petition filed in this case is available for public inspection at the Office of the Secretary, U.S. International Trade Commission, and at the New York City office of the U.S. International Trade Commission located at 6 World Trade Center.

Issued: February 22, 1980.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-6079 Filed 2-26-80; 8:45 am]

BILLING CODE 7020-02-M

[731-TA-8 (Preliminary), 731-TA-9 (Preliminary), 731-TA-10 (Preliminary), and 731-TA-11 (Preliminary)]

Sodium Hydroxide, in Solution (Liquid Caustic Soda), Provided for Under Item No. 421.08 of the Tariff Schedules of the United States From the Federal Republic of Germany, France, Italy, and the United Kingdom; Determinations of "No Reasonable Indication of Material Injury"

On the basis of the record developed during the course of investigations Nos. 731-TA-8 (Preliminary), 731-TA-9 (Preliminary), 731-TA-10 (Preliminary), and 731-TA-11 (Preliminary), undertaken by the United States International Trade Commission under section 733(a) of the Tariff Act of 1930, as added by title I of the Trade Agreements Act of 1979, the Commission has determined unanimously that there is no reasonable indication that an industry in the United States is materially injured, threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Federal Republic of Germany, France, Italy, or the United Kingdom of sodium hydroxide, in solution (liquid caustic soda), provided for under item No. 421.08 of the Tariff Schedules of the United States, which are allegedly sold at less than fair value.

Section 102(b)(1) of the Trade Agreements Act of 1979 requires the Commission to conduct preliminary antidumping investigations in cases where, on January 1, 1980, the Secretary of the Treasury (the Administering Authority prior to January 1, 1980), had begun an investigation, but had not yet made a preliminary determination under the Antidumping Act, 1921, as to the question of less-than-fair-value sales. On January 7, 1980, the commission received advice from the Department of Commerce (the Administering Authority effective January 1, 1980), that such investigations had been instituted prior to January 1, 1980, with respect to sodium hydroxide imported from the Federal Republic of Germany, France, Italy, and the United Kingdom. Accordingly, effective January 1, 1980, the Commission instituted preliminary antidumping investigations under section 733(a) of the Tariff Act of 1930, as amended, to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise from the four countries.

Notice of the institution of the Commission's investigations and of the conference to be held in connection therewith was published in the **Federal Register** of January 14, 1980 (45 FR 2715). On January 31, 1980, a public conference was held in Washington, D.C., and all persons requesting the opportunity were permitted to appear in person or by counsel.

Statement of Chairman Catherine Bedell and Commissioners George M. Moore, Paula Stern and Michael J. Calhoun in Support of the Determinations in the Investigations Nos. 731-TA-8 (Preliminary), 731-TA-9 (Preliminary), 731-TA-10 (Preliminary), and 731-TA-11 (Preliminary): Sodium Hydroxide From the Federal Republic of Germany, France, Italy and the United Kingdom

On the basis of the best information available to the Commission in these investigations, nos. 731-TA-8, 9, 10, 11 (Preliminary), we determine that there is no reasonable indication that an

industry in the United States is materially injured, threatened with material injury, or the establishment of an industry in the United States is materially retarded [1], by reason of imports from the Federal Republic of Germany, France, Italy, or the United Kingdom, of sodium hydroxide, in solution (liquid caustic soda), provided for under item no. 421.08 of the Tariff Schedules of the United States, which are allegedly sold at less than fair value.

The following findings and conclusions, based on the record in this investigation, support our determination.

I. No Reasonable Indication of Material Injury

A. Volume of Imports

1. Levels of imports from these countries increased from 77,536 short tons in 1976 to 161,188 short tons in 1978, but levels for the interim period of January-October decreased from 132,921 short tons in 1978 to 79,587 short tons in 1979.

2. The ratio of imports from the four countries to U.S. consumption has remained at low levels, increasing from 0.85 percent in 1976 to 1.74 percent in 1978, then decreasing from 1.78 percent in January-October 1978 to 0.87 percent in January-October 1979.

B. Effect of Imports on U.S. Prices

3. The alleged less than fair value (LTFV) margins indicated in Treasury's file were substantial. However, the best information available on pricing indicates that in the Northeast area of the United States, where imports are concentrated, the lowest prices for the bulk of sodium hydroxide sales made by suppliers to distributors are on those sales made by large U.S. producers that supply the area from their domestic production facilities. This situation, in which both imports and the smaller U.S. producers are substantially undersold in the Northeast area by their larger domestic competitors, indicates that any price suppression or price depression that may have occurred is not a result of alleged LTFV imports.

C. Impact on Affected Industry

4. Petitioner Linden Chemicals and Plastics, Inc., represents only a minimal percentage of total domestic production of merchandise that is the subject of these investigations, and was not joined in its complaint by any other U.S. producers.

5. Total U.S. production of sodium hydroxide in solution increased from 10.0 million short tons in 1976 to 10.7 million short tons in 1978. Total U.S. production increased from 8.8 million short tons in January–October 1978 to 10.2 million short tons in January–October 1979.

6. Available data show that total shipments by reporting U.S. producers increased from 3.3 million short tons in 1976 to 4.9 million short tons in 1978. Total shipments by U.S. producers increased from 4.4 million short tons in January–November 1978 to 5.1 million short tons in January–November 1979.[2]

7. Data obtained by questionnaires, although incomplete, indicate that the overall total for domestic sales of all grades of sodium hydroxide increased, in terms of quantity, from 1976 to 1978, and in the first 11 months of 1979 compared with the corresponding period in 1978.

8. From January–November 1978 to the corresponding period of 1979, the aggregate net profit of those firms providing complete financial data to the Commission increased substantially.[3]

9. Domestic capacity utilization decreased from 1976 to 1977 but has increased since 1977 to 81.3% in 1979, a level higher higher than in any of the preceding years examined.

10. Consideration of material injury as to producers in the Northeast region as a separate regional industry is inappropriate in this case. (See the definition of "regional industries" in Sec. 771(4)(C) of the Tariff Act of 1930, as amended, 19 U.S.C. 1677(4)(C).) Demand in that market is supplied to a substantial degree by producers located elsewhere in the U.S., primarily in the Gulf Coast States.[4]

11. Notwithstanding its claim of injury from alleged LTFV imports, Linden Chemicals and Plastics, during the period under investigation, purchased three new production facilities for sodium hydroxide, one of which is located in the Northeast area which Linden asserts is subject to the greatest impact from the alleged LTFV imports.

An evaluation of these relevant factors reveals no reasonable indication of material injury to the affected industry.

II. No Reasonable Indication of Threat of Material Injury

12. In providing guidance to the Commission with regard to the standard for finding a threat of material injury, Congress has indicated the following: An affirmative determination shall be based on evidence showing that the threat is real and imminent. Consideration should be given to such trends as the rate of increase of dumped exports to the U.S. market, capacity in the exporting country to generate exports, and the availability of other export markets.[5]

13. Imports from the four countries involved in this investigation decreased in 1979, both absolutely and relative to U.S. consumption. (See paragraph 1, above.)

14. Recent trends, noted in paragraphs 5 through 9 above, are generally favorable to the domestic industry.

15. No evidence has been presented to the Commission regarding capacity in the exporting countries or availability of other export markets.

An evaluation of these relevant factors reveals no "real and imminent" threat of material injury to the affected industry.

Additional Views of Commissioner Stern on the Question of Regional Industry

The petitioner asserted that these investigations should be decided on a regional industry basis. The Trade Agreements Act of 1979 amended the Tariff Act of 1930 to include specific conditions for the treatment of producers in a geographical area as a separate regional industry within the meaning of the law.[6] The domestic producers must sell all or almost all of their production in the area *and* the

[1] The question of the material retardation of the establishment of an industry in the United States was not raised as an issue in this investigation.

[2] Commissioner Stern notes that no data were made available for 1976 or 1977 for Dow Chemical U.S.A., the largest domestic producer. She did not find the absence of complete data on Dow decisive because: (a) The data that were submitted by Dow do not indicate injury; (b) Dow neither supported the petition nor alleged injury; and (c) the data on the remainder of the industry do not support an affirmative finding. The statute states in Sec. 771(7)(e)(ii) that: "The presence or absence of any factor which the Commission is required to evaluate under paragraph (c) * * * shall not necessarily give decisive guidance with regard to the determination by the Commission of material injury."

[3] Commissioner Stern notes that because there has been no withholding of appraisement in this case following the submission of the petition, it seems appropriate to compare the 1979 data to those of earlier periods.

[4] See additional views of Commissioner Stern on page 7.

[5] See H.R. Rep. No. 96–317 on the Trade Agreements Act of 1979, at page 47. See also § 207.26(d) of the Commission rules, 19 CFR 207.26(d).

[6] Subparagraph (C) of 19 U.S.C. 1677 states:

"In appropriate circumstances, the United States, for a particular product market, may be divided into 2 or more markets and the producers within each market may be treated as if they were a separate industry if—

"(i) The producers within such market sell all or almost all of their production of the like product in question in that market, and

"(ii) The demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States"

demand for the product in that area cannot be supplied to any significant degree from the United States producers not located there. Both conditions must be met.

The Northeast area, where all the petitioner's production facilities were located until recently and where all the petitioner's sales as well as the sales of the alleged LTFV imports are concentrated, does not qualify as a regional market within the meaning of the antidumping statute because it is served to a large extent by U.S. producers whose production facilities are located outside the region, primarily in the Gulf Coast States. In 1976, total reported domestic sales in the Northeast area exceeded local productive capacity by 299,000 short tons, in 1977 by 46,000 short tons, and in 1978 by 96,000 short tons. In 1979, due to rapid local expansion, capacity may for the first time exceed domestic sales in the area.

Views of Vice Chairman Bill Alberger

Having considered the record in investigations Nos. 731–TA–8 (Preliminary) through 731–TA–11 (Preliminary), I determine that there is no reasonable indication that an industry in the United States is materially injured, threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Federal Republic of Germany, France, Italy, or the United Kingdom, of sodium hydroxide in solution (liquid caustic soda), provided for under item number 421.08 of the Tariff Schedules of the United States which are allegedly sold at less than fair value.

I adopt in full findings 1 through 10 of the attached "Supporting Statement by the Director of Operations for a Negative Determination * * *." This statement is a part of the record[7] and accurately analyzes the factors which we are required by the statute to consider. In addition, I add the following findings which I believe are relevant to my determination:

(1) The import penetration levels for France, Italy, and the United Kingdom have each remained at less than 1 percent of U.S. consumption during the 1976–78 period. The ratio of imports from the Federal Republic of Germany increased during this same period, but in 1978 amounted to only slightly over 1 percent.[8] When these figures are compared with the continued increase in U.S. productive capacity of sodium hydroxide since 1976,[9] it is evident that there is no reasonable indication of injury to the domestic industry by reason of these imports.

(2) It is my practice to vote separately by country in Commission meetings since separate case numbers are assigned. It is an obligation of each Commissioner to carefully consider "material injury * * * by reason of * * *" questions for each country separately and in various combinations. It is my view after review of the entire record that these imports from these four countries are not causing the requisite degree of injury whether the countries are considered separately or in combination.

Supporting Statement by the Director of Operations for a Negative Determination in Sodium Hydroxide, in Solution (Liquid Caustic Soda), From the Federal Republic of Germany (No. 731–TA–8 (Preliminary)), France (No. 731–TA–9 (Preliminary)), Italy (No. 731–TA–10 (Preliminary)), and the United Kingdom (No. 731–TA–11 (Preliminary))

1. Notwithstanding the relatively high LTFV margins that were found for all four countries in Treasury's initial investigatory activities, the best information available on pricing indicates that in the Northeast area of the United States, where imports are concentrated, by far the lowest priced suppliers to distributors of 50 percent solution sodium hydroxide are large U.S. producers that supply the region from their domestic production facilities. This situation, in which both imports and the smaller U.S. producers are undersold by large amounts by their larger domestic competitors in the Northeast region indicates that any price suppression or price depression that may have occurred has not occurred as a result of alleged LTFV imports.

2. The ratio of imports from the four countries to U.S. consumption remained at low levels, increasing from 0.85 percent in 1976 to 1.74 percent in 1978. The ratio dropped from 1.78 percent in January-October 1978 to 0.87 percent in January-October 1979.

3. Available data show that total shipments by reporting U.S. producers increased from 3.3 million short tons in 1976 to 4.9 million short tons in 1978. In addition, total shipments by U.S. producers increased from 4.4 million short tons in January-November 1978 to 5.1 million short tons in January-November 1979.

4. Total U.S. production of sodium hydroxide in solution increased from 10.0 millions short tons in 1976 to 10.7 million short tons in 1978. Total U.S. production increased from 8.8 million short tons in January-October 1978 to 10.2 million short tons in January-October 1979.

5. From January–November 1978 to the corresponding period in 1979 the aggregate net profit of those firms providing complete financial data to the Commission increased substantially.

6. Available data show that the overall total for domestic sales of all grades of sodium hydroxide increased from 1976 to 1977.

7. Domestic capacity utilization decreased from 1976 to 1977 but increased since 1977 to a level in 1979 higher than that of any of the preceding years examined.

8. Although the complainant asserted that these investigations should be decided on a regional market basis, I have found that the Northeast area, where all the complainants' production facilities were, until recently, located, and where all of the complainants' sales as well as sales of alleged LTFV imports are concentrated, does not qualify for the definition of a regional market under the antidumping statutes because it is served to a large extent by U.S. producers whose production facilities are located outside the region, primarily in the Gulf Coast States.

9. The complainant, Linden Chemicals & Plastics, Inc., represents only a minimal percentage of total domestic production of merchandise that is the subject of these investigations, and was joined in its complaint by no other U.S. producers.

10. Notwithstanding its claim of injury from alleged LTFV imports, Linden Chemicals & Plastics, Inc., during the period under investigation, purchased three new production facilities for sodium hydroxide, one of which is located in the Northeast area that Linden asserts is subject to the greatest impact from the subject imports.

11. *Conclusion*—On the basis of the above, I recommend a negative determination as to whether there is a reasonable indication of injury with respect to sodium hydroxide in solution which is alleged to be sold at less than fair value from the countries concerned.

Issued: February 22, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80–6078 Filed 2–26–80; 8:45 am]

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[7] The statement was submitted to the Commission as Action Jacket No. OP1–80–013.

[8] Table 26 of the Report.

[9] Table 4 of the Report.

[701-TA-21 (Preliminary)]

Fresh Cut Roses From the Netherlands; Determination of No Reasonable Indication of Material Injury, Threat of Material Injury, or Material Retardation of the Establishment of an Industry

On the basis of the record in investigation No. 701-TA-21 (Preliminary), the Commission unanimously determines that there is no reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of the importation from the Netherlands of fresh cut roses, provided for in item 192.19 of the Tariff Schedules of the United States, upon which subsidies are allegedly provided by the government of the Netherlands.

On January 3, 1980, a petition was properly filed alleging that subsidies are being provided by the governments of the Netherlands and Israel upon roses exported to the United States. On January 11, 1980, the Commission instituted a preliminary countervailing duty investigation under section 703(a) of the Tariff Act of 1930 only with respect to roses from the Netherlands because Israel is not a "country under the agreement," as defined by section 701(b) of the Tariff Act of 1930, and thus imports therefrom are not subject to an injury requirement.

Notice of the institution of the Commission's investigation and of the public conference to be held in connection therewith was duly given by posting copies of the notice at the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and at the Commission's office in New York City and by publishing the notice in the Federal Register of January 17, 1980 (45 FR 3399 and 3400). The conference was held in Washington, D.C., on January 31, 1980; all persons requesting the opportunity were permitted to appear in person or by counsel.

Views of Chairman Catherine Bedell and Commissioners George Moore, Paula Stern, and Michael Calhoun, in Support of the Negative Determination in Investigation No. 701-TA-21 (Preliminary): Fresh Cut Roses From the Netherlands

On the basis of the record in this investigation, we determine that there is no reasonable indication that an industry in the United States is materially injured or is threatened with material injury, or the establishment of an industry is materially retarded,[1] by reason of the importation of fresh cut roses from the Netherlands,[2] provided for in item 192.19 of the Tariff Schedules of the United States, which were allegedly being subsidized by the government of the Netherlands.

In order for the Commission to find in the affirmative in a preliminary antidumping injury determination under Section 733 of the Tariff Act of 1930 (19 U.S.C. 1673(b)), it is necessary to find that sufficient information has been presented to show that there is a reasonable indication that (1) an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, and (2) that injury is by reason of the allegedly subsidized imports.

The Tariff Act of 1930 (Sec. 703(a)) directs the Commission to "make a determination based upon the best information available to it at the time of the determination * * *." Section 771(7)(B) of the Act requires the Commission to consider (i) the volume of subject imports, (ii) their effect on the domestic price of the like product, and (iii) their impact on the domestic producers of the like product. In Sec. 771(7)(C), the Act further specifies a series of economic facts that the Commission must include in these considerations.

The petitioner in this case claimed that imports of roses from the Netherlands were increasing rapidly and that such imports are concentrated during important flower holidays in the months of February, May and June. It was alleged that these imports suppressed U.S. producers' prices for roses and thereby injured the domestic rose growing industry. We have concluded that although the domestic rose industry may be experiencing problems, there is no reasonable indication of material injury or threat of such injury to this industry due to the subject imports.

State of the Domestic Industry

(1) U.S. production of fresh cut roses, as measured by sales, remained relatively stable during 1975-79 at about 464 million blooms per year.

(2) Profits of all U.S. rose growers declined from $3.2 million in 1974 to a loss of $0.2 million in 1975. Profits increased to $3.7 million in 1976 and then declined to $0.7 in 1978.

(3) No information was obtained on return on investment, ability to raise capital, employment or wages. The absence of this information was not decisive. Capacity utilization and inventories were not found to be meaningful indicators because of the nature of the industry.[3]

Impact of the Subject Imports

(4) Imports from the Netherlands declined from 1,656,000 blooms in 1978 to 1,353,000 blooms in 1979.

(5) During the period 1975-79, the Netherlands' share of U.S. apparent consumption of fresh cut roses increased from 0.2 percent to 0.3 percent while the share supplied by other foreign sources increased from 0.7 percent to 6.9 percent.

(6) The increase in the volume of imports of fresh cut roses from the Netherlands was 537,000 blooms from 1975 to 1979. During the same period imports of fresh cut roses from other sources increased by 30,596,000 blooms. As a share of total U.S. imports of fresh cut roses, imports from the Netherlands declined from over 19 percent in 1975 to less than four percent in 1979.

(7) There was no evidence of price suppression or depression or of any price undercutting. Indeed, during the period 1975-79, the average unit values (cents per bloom) of U.S. grower's shipments of hybrid tea roses increased at an estimated average annual rate of 8.6 percent while the unit values of sweetheart roses increased at a rate of 9.1 percent during 1975-78. The average annual increase in crop prices received by farmers during this period was 3.8 percent.

(8) Quoted prices for California-grown and Netherlands-grown roses in the Philadelphia wholesale market in 1979, based on *Federal-State Market News Reports* of U.S. Department of Agriculture, indicate that Netherlands-grown roses at the wholesale level are

[1] The question of the material retardation of the establishment of an industry in the United States was not raised as an issue in this investigation.

[2] The petition which led to the institution of this investigation, filed with the Commission on January 3, 1980, named both Israel and the Netherlands as subsidizing exports of roses. The Commission instituted the investigation only with respect to the Netherlands because Israel is not "a country under the agreement," as defined by Section 701(b) of the Tariff Act of 1930.

[3] The Tariff Act of 1930, Sec. 771(7)(C) mandates the Commission to examine material injury by evaluating "all relevant economic factors * * * including, but not limited to, * * *" output, sales, market share, profits, productivity, return on investment, capacity utilization, factors, influencing domestic prices, cash flow, inventories, employment, wages, growth, ability to raise capital, and investment. However, Sec. 771(7)(E)(ii) states that the "presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) * * * shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury." See 19 U.S.C. 1677.

either priced higher or equal to the prices of California-grown roses.

(9) Unrebutted testimony by an owner of several retail florist shops and part owner of a wholesale cut flower business in New York City stated that the price of imported roses is not a consideration in his decision to purchase imports and that imported roses are used to supplement domestic rose supplies whenever they are insufficient to meet market demand.

(10) None of the factors examined in this investigation indicate a threat of material injury due to the subject imports. In particular, we found that:

(a) Imports from the Netherlands are concentrated primarily in February, May, and June when the domestic supplies of fresh cut roses frequently are not adequate to meet the demand in the U.S. market.

(b) There is no indication that the Netherlands intends to divert its shipments of fresh cut roses to the United States from its traditional markets, primarily the European Community.

On the basis of the above considerations, we conclude that there is no reasonable indication of injury or threat of injury to the domestic industry producing fresh cut roses by reason of allegedly subsidized imports of such merchandise from the Netherlands.

Views of Vice Chairman Bill Alberger

Having considered the record in investigation number 701–TA–21 (Preliminary), I determine that there is no reasonable indication that an industry in the United States is materially injured or is threatened with material injury, or that the establishment of an industry is materially retarded,[4] by reason of the importation of fresh cut roses from the Netherlands, provided for in item 192.19 of the Tariff Schedules of the United States, which are allegedly being subsidized by the government of the Netherlands.[5]

I adopt in full findings 2 through 9, 11 and 12 of the attached "supporting Statement by the Director of Operations for a Negative Determination. . . ." This statement is part of the record [6] and accurately analyzes the factors which we are required by the statute to consider. In addition, I would substitute the following amended version of the Director's finding number 10, and also add a new finding number 13 which I believe is relevant to my determination:

(10) Unrebutted testimony by an owner of several retail florist shops and part owner of a wholesale cut flower business in New York City stated that the price of imported roses is not a consideration in his decision to purchase imports, and that imported roses are used to supplement domestic rose supplies whenever domestic supplies are insufficient to meet market demand. (Report at A–23; the Director's Recommended Determination finding No. 10; staff briefing.)

(13) No information was obtained on return on investment, ability to raise capital, employment or wages. Given the circumstances of this case, such information would not have changed the decision. Capacity utilization and inventories were not found to be meaningful indicators because of the nature of the industry.[7]

Supporting Statement by the Director of Operations for a Negative Determination on Fresh Cut Flowers From the Netherlands (Inv. No. 701–TA–21 (Preliminary))

1. Counsel for the petitioners, Roses Incorporated, alleged that imports of roses from the Netherlands were increasing rapidly and that such imports are concentrated in the months of February, May, and June. It was further alleged that these imports suppressed U.S. producers' prices for roses and thereby injured the domestic rose growing industry.

According to the petitioner the imports from the Netherlands benefit from subsidies from the Government of the Netherlands which are equal to about 6 percent of the export value of the roses.

2. U.S. production of fresh cut roses remained relatively stable during 1975–79 at about 464 million blooms per year.

3. According to information furnished by Roses Incorporated profits of U.S. rose growers declined from $3.2 million in 1974 to a loss of $0.2 million in 1975. Profits increased to $3.7 million in 1976 and then declined to $0.7 in 1978.

4. The increase in the volume of imports of fresh cut roses from the Netherlands was 537,000 blooms from 1975 to 1979. In contrast, during the same period imports of fresh cut roses from other sources increased by 30,596,000 blooms. As a share of total U.S. imports of fresh cut roses, imports from the Netherlands declined from over 19 percent in 1975 to less than 4 percent in 1979.

5. Imports from the Netherlands declined from 1,656,000 blooms in 1978 to 1,353,000 blooms in 1979.

6. During the period 1975–79, the Netherlands' share of U.S. apparent consumption of fresh cut roses increased from 0.2 percent to 0.3 percent while the share supplied by other foreign sources increased from 0.7 percent to 6.9 percent.

7. Imports from the Netherlands are concentrated in February, May, and June when domestic supplies of fresh cut roses frequently are not sufficient to meet the demand in the U.S. market.

8. Quoted prices for California-grown and Netherlands-grown roses in the Philadelphia wholesale market in 1979, based on Federal-State Market News Reports of U.S. Department of Agriculture, show that Netherlands-grown roses at the wholesale level are either priced higher or equal to the prices of California-grown roses.

9. The average unit values (cents per bloom) of U.S. growers' shipments of hybrid tea roses increased at an estimated average annual rate of 8.6 percent during 1975–79. Prices of sweetheart roses are believed to have increased at a somewhat higher rate. The average annual increase in crop prices received by farmers during this period was 3.8 percent.

10. Mr. Louis Battinelli, owner of several retail florist shops and part owner of a wholesale cut flower business in New York City, testified that the price of imported roses is not a consideration in his decision to purchase imported roses. Mr. Battinelli stated that the imported roses are used to supplement domestic rose supplies whenever domestic supplies are not sufficient to meet market demand.

11. The Netherlands is the world's largest producer of fresh cut roses. However, there is no evidence that the Netherlands intends to divert its shipments of fresh cut roses from its traditional markets, primarily the European Community, to the United States.

12. I therefore conclude that if there is a reasonable indication of injury or threat of injury to the domestic industry producing fresh cut roses it is not by reason of allegedly subsidized imports

[4] The question of the material retardation of the establishment of an industry in the United States was not raised as an issue in this investigation.

[5] The petition which led to the institution of this investigation, filed with the Commission on January 3, 1980, named both Israel and the Netherlands as subsidizing exports of roses. The Commission instituted the investigation only with respect to the Netherlands because Israel is not a "country under the agreement," as defined by section 701(b) of the Tariff Act of 1930.

[6] The statement was submitted to the Commission as Action Jacket No. OP1–80–16, February 11, 1980.

[7] The Tariff Act of 1930, Sec. 771(7)(C) mandates the Commission to examine material injury by evaluating "all relevant economic factors * * * including, but not limited to, * * * " output, sales, market share, profits, productivity, return on investment, capacity utilization, factors, influencing domestic prices, cash flow, inventories, employment, wages, growth, ability to raise capital, and investment. However, Sec. 771(7)(E)(ii) states that the "presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) * * * shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury." See 19 U.S.C. 1677.

of such merchandise from the Netherlands. Consequently, it is my opinion that the Commission should make a negative determination.

Issued: February 15, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-6093 Filed 2-26-80; 8:45 am]

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DEPARTMENT OF JUSTICE

U.S. Circuit Judge Nominating Commission; Eighth Circuit Panel; Meeting

February 20, 1980.

The first meeting of the nominating panel for the Eighth Circuit of the United States Circuit Judge Nominating Commission will be held on Friday, March 21, 1980, at 8:30 a.m., Marriott Hotel, One Broadway, St. Louis, Missouri. The purpose of this meeting is to review applications for the judgeship vacancy on the Federal Court of Appeals in the Eighth Circuit. The meeting will be closed to the public pursuant to Pub. L. 92-463, Section 10(d) as amended. (5 U.S.C. 552b(c)(6))

Phillip B. Cover,

Advisory Committee Control Officer.

[FR Doc. 80-6044 Filed 2-26-80; 8:45 am]

BILLING CODE 4410-01-M

United States Circuit Judge Nominating Commission; Eighth Circuit Panel

February 21, 1980.

The Eighth Circuit Panel (Chairman: Lawrence J. Hayes) of the United States Circuit Judge Nominating Commission will hold its second meeting at the Marriott Hotel, One Broadway, St. Louis, Missouri on Thursday, April 10, 1980, at 8 a.m. and continuing on Friday, April 11, 1980, if necessary.

The purpose of this meeting is to conduct interviews for filling the vacancy in the Eighth Circuit. The meeting will be closed to the public pursuant to Pub. L. 92-463, Section 10(d) as amended. (5 U.S.C. 552b(c)(6).)

Phillip B. Cover,

Advisory Committee, Control Officer.

[FR Doc. 80-6045 Filed 2-26-80; 8:45 am]

BILLING CODE 4410-01-M

National Institute of Justice

Jail Pretrial Release Recommendation/Decision System; Competitive Research Cooperative Agreement Program; Solicitation

The National Institute of Justice announces a competitive research cooperative agreement program to evaluate Jail Pretrial Release Recommendation/Decision Systems. The purpose of this evaluation award is to assess the operations and effectiveness of these systems. Key research questions in this evaluation are:

1. Have Jail Pretrial Release Recommendation/Decision Systems been effective and, if so, what factors have contributed to their effectiveness?
2. Are Jail Pretrial Release Recommendation/Decision Systems able to impact jail population levels?
3. Are Jail Pretrial Release Recommendation/Decision Systems cost effective?

The solicitation asks for the submission of draft proposals. A formal application will be requested following a peer review process in accordance with the criteria set forth in the solicitation. In order to be considered, all papers must be postmarked no later than April 1, 1980. This cooperative agreement is planned for award in June, 1980 with funding support not to exceed $300,000 or 18 months in duration for individual grants. To maximize competition for the award, both profit-making and non-profit organizations are eligible to apply; however, a fee will not be paid.

Further information and copies of the solicitation can be obtained by contacting Richard S. Laymon, Office of Program Evaluation, NIJ, 633 Indiana Avenue, N.W., Washington, D.C. 20531 (301) 492-9085.

Dated: February 13, 1980.

Harry M. Bratt,

Primary and Principal Assistant to the Acting Director, NIJ.

[FR Doc. 80-5978 Filed 2-26-80; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (80-14)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee; Meeting

The Informal Advisory Subcommittee on Avionics, Controls and Human Factors will meet on March 24-25-26, 1980, in Building 240, Room 202, Ames Research Center, Moffett Field, California. The meeting will be open to the public up to the seating capacity of the room (about 30 persons including Subcommittee members and participants).

The Subcommittee was established to review the NASA Avionics, Controls and Human Factors programs. The Chairperson is Mr. Duane McRuer, and there are 14 members on the Subcommittee. Following is the approved agenda for the meeting.

Agenda

March 24, 1980

8:30 a.m.—Chairperson's Remarks
9:00 a.m.—Executive Secretary's Report on Avionics, Controls and Human Factors Planning
10:00 a.m.—Review of NASA Avionics and Controls Research and Technology Programs
5:00 p.m.—Adjourn

March 25, 1980

8:30 a.m.—Review of NASA Human Factors Research and Technology Programs
4:30 p.m.—Adjourn

March 26, 1980

8:30 a.m.—Define and Discuss Simulation Validation Issues
10:30 a.m.—Subcommittee Deliberation
12:00 noon—Adjourn

For further information, contact Herman A. Rediess, Executive Secretary, NASA Headquarters, Code RTE-6, Washington, DC 20546. Telephone 202/755-2243.

Russell Ritchie,

Deputy Associate Administrator for External Relations.

February 20, 1980.

[FR Doc. 80-5979 Filed 2-26-80; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Panel (Grants to Dance Companies); Meeting

Pursuant to section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Grants to Dance Companies) to the National Council on the Arts will be held March 15, 1980 from 9:00 a.m.-6:00 p.m.; March 16, 1980, from 9:00 a.m.-6:00 p.m.; March 17, 1980, from 9:00 a.m.-6:00 p.m.; March 18, 1980, from 9:00 a.m.-6:00 p.m.; and March 19, 1980, from 9:00 a.m.-6:00 p.m., Room 1422, Columbia Plaza Office Complex, 2401 E St., N.W., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of March 17, 1977, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9 (B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

John H. Clark,

Director, Office of Council and Panel Operation, National Endowment for the Arts.

February 19, 1980.

[FR Doc. 80-6046 Filed 7-26-80; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[NUREG-75/087]

Proposed Revision to the Standard Review Plan; Notice of Availability

As a part of the continual maintenance of the Standard Review Plan (SRP), the Nuclear Regulatory Commission's Office of Nuclear Reactor Regulation proposes to revise SRP Section 4.2, "Fuel System Design." A value-impact statement has also been prepared in support of this proposed change.

Public comments on this revision to the SRP, and the supporting value-impact statement are solicited. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

This proposed revision, the supporting value-impact statement, and all comments that have been received by April 28, 1980, will be considered by the Regulatory Requirements Review Committee (RRRC). A summary of the RRRC meeting at which this change is considered, the committee recommendations, and all of the associated documents and comments considered by the committee will be made publicly available prior to a decision by the Director of the Office of Nuclear Regulatory Regulation on whether to implement these changes.

Copies of this proposed revision to the SRP and the supporting value-impact statement will be available for public inspection at the NRC Public Document Room at 1717 H Street NW., Washington, D.C. 20555. Requests for single copies of this material or for placement on an automatic distribution list for single copies of future proposed revisions to the SRP should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control.

Dated at Bethesda, Md., this 13th day of February 1980.

For the U.S. Nuclear Regulatory Commission.

Roger J. Mattson,

Director, Division of Systems Safety.

[FR Doc. 80-5900 Filed 2-26-80; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Ad Hoc Subcommittee on Three Mile Island, Unit 2 Accident Implications; Addition to Agenda

The March 5, 1980 meeting of the ACRS Ad Hoc Subcommittee on Three Mile Island, Unit 2 Accident Implications will consider additional engineered safety features including the possible installation of molten core crucibles under the Indian Point 2 & 3 and the Zion 1 & 2 Reactors. Notice of this meeting was published February 19, 1980 (45 FR 10989). All other items remain the same as announced at that time.

Dated: February 21, 1980.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 80-6063 Filed 2-26-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-289]

Metropolitan Edison Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 52 to Facility Operating License No. DPR–50, issued to Metropolitan Edison Company, Jersey Central Power and Light Company, and Pennsylvania Electric Company for operation of the Three Mile Island Nuclear Station, Unit No. 1 (the facility) located in Londonderry Township, Dauphin County, Pennsylvania. The amendment is effective within 60 days from its date of issuance.

The amendment revises the license to incorporate monitoring conditions for secondary water chemistry.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated October 11, 1979, (2) Amendment No. 52 to License No. DPR–50, 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, DC and at the Government Publications Section, State Library of Pennsylvania, Education Building, Harrisburg, Pennsylvania. A copy of items (2) and (3) may be obtained upon request address to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 20th day of February.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Operating Reactors Branch No. 4 Division of Operating Reactors.

[FR Doc. 80-6064 Filed 2-26-80; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the

staff in its review of applications for permits and licenses.

Regulatory Guide 5.58, Revision 1, "Considerations for Establishing Traceability of Special Nuclear Material Accounting Measurements," presents conditions and procedural approaches acceptable to the NRC staff for complying with the Commission's regulations for establishing and maintaining traceability of special nuclear material control and accounting measurements. Traceability means the ability to relate individual measurement results to the national standards of measurement through an unbroken chain of comparison with reference standards. This guide was revised as a result of public comment and additional staff review.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies of active guides may be purchased at the current Government Printing Office price. A subscription service for future guides in specific divisions is available through the Government Printing Office. Information on the subscription service and current prices may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Attention: Publications Sales Manager.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 19th day of February 1980.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Standards Development.

[FR Doc. 80-6066 Filed 2-26-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-244]

Rochester Gas & Electric Corp.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 31 to Provisional Operating License No. DPR-18, to Rochester Gas and Electric Corporation (the licensee), which revised the license for operation of the R. E. Ginna Plant (facility) located in Wayne County, New York. The amendment is effective as of its date of issuance.

The amendment authorizes the licensee to receive and store four (4) mixed oxide fuel assemblies. The amendment also approves the additional security measures required for storage of unirradiated mixed oxide fuel assemblies outside the plant containment.

The application for the amendment and the licensee's security filing comply 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 amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The licensee's filing dated December 14, 1979, is being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated December 14, 1979 (transmitted by letter dated December 20, 1979), (2) Amendment No. 31 to License No. DPR-18, including the Commission's letter of transmittal, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Rochester Public Library, 115 South Avenue, Rochester, New York 14627. 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 13th day of February 1980.

For the Nuclear Regulatory Commission.

Dennis L. Ziemann,

Chief, Operating Reactors Branch #2, Division of Operating Reactors.

[FR Doc. 80-6065 Filed 2-26-80; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 21443; 70-6418]

Central & South West Corp.; Proposed Charter Amendment To Increase Authorized Common Stock; Order Authorizing Solicitation of Proxies in Connection Therewith

February 21, 1980.

Notice is hereby given that Central and South West Corporation ("CSW"), 2700 One Main Place, Dallas, Texas 75250, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7 and 12(e) of the Act and Rules 62 and 65 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

CSW proposes to amend its Restated Certificate of Incorporation, as heretofore amended, to increase its authorized common stock, par value $3.50, from 80,000,000 shares to 120,000,000 shares. Proceeds from the sale of such additional shares will be used to help finance planned construction requirements of approximately $43,693,000,000 for 1980-1984. As of December 31, 1979, CSW had 71,770,571 shares outstanding. CSW proposes to submit the amendment to its stockholders at its annual meeting to be held on April 17, 1980. CSW proposes to solicit proxies from its shareholders, through the use of proposed soliciting material, to obtain the required approval of the proposed amendment, to elect directors and to select auditors. An affirmative vote of the holders of a majority of the outstanding shares of common stock issued and entitled to vote at the annual meeting is required for adoption of the amendment.

Information regarding the fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment. It is stated that no state commission and no federal commission, other than this Commission has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than March 17, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any

such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

It appearing to the Commission that the declaration, insofar as it proposes the solicitation of proxies from CSW's stockholders, should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered that the declaration, regarding the proposed solicitation of proxies of CSW's stockholder be, as it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-6055 Filed 2-26-80; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 11055, 812-4482]

MFS Managed Municipal Bond Trust and Massachusetts Financial Services Co.; Filing of Application

February 21, 1980.

Notice is hereby given that MFS Managed Municipal Bond Trust ("Trust"), 200 Berkeley Street, Boston, Massachusetts 02116 registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, and Massachusetts Financial Services Company ("Adviser"), the Trust's investment adviser and principal underwriter (hereinafter, the Trust and the Adviser are collectively referred to as "Applicants"), filed an application on May 29, 1979, and an amendment thereto on January 14, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicants from the provisions of Section 22(d) of the Act to permit the sale by Applicants of shares of the Trust at net asset value plus a reduced sales charge of 0.4%, pursuant to reinvestment programs to be offered to unitholders of past and future series of certain unit investment trusts registered under the Act with portfolios consisting of debt securities issued by or on behalf of states, territories and possessions of the United States, the District of Columbia, and their political subdivisions, agencies or instrumentalities, the interest on which is exempt from federal income tax ("municipal bonds") and whose sponsors agree to offer unitholders the proposed reinvestment programs (All such series of the unit investment trusts which may offer the proposed reinvestment program are hereinafter referred to as "Funds"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that the Trust's investment objective is to provide as high a level of current income exempt from federal income taxes as is considered consistent with prudent investing while seeking protection of shareholders' capital. The application further states that, in seeking this objective, the Trust, under normal market conditions, invests substantially all (at least 90%) of its portfolio assets in municipal bonds, but that as a defensive measure during times of adverse market conditions, up to 50% of the Trust's portfolio assets may be invested in various types of short-term debt obligations. Applicants state that the Trust's portfolio is fully managed. According to the application, shares of the Trust are offered for sale to the public at their net asset value plus a sales charge which varies from 4.75% (as a percentage of the offering price) on purchases of less than $10,000, to 1.50% on purchases of $1,000,000 or more. The application further states that the Trust has no minimum investment requirement and presently has no power to redeem any shareholder's shares without his consent.

According to the application and as noted above, each of the Funds will be a unit investment trust registered under the Act with a portfolio consisting of municipal bonds. Applicants assert that the investment objective of each Fund will be substantially the same as that of the Trust: interest income exempt from federal income taxation and preservation of capital. The application states that while the portfolios of the Funds and the Trust both will consist of municipal bonds, the portfolio of the Trust is managed, and therefore subject to change, while under ordinary circumstances the portfolio of each of the Funds will remain unchanged. Applicants state that, notwithstanding these differences between the Funds and the Trust, each is simply a different vehicle for an investor to achieve the same investment objective and that it is this common investment objective which enables the Trust to offer the proposed reinvestment programs to Fund unitholders at a reduced sales load.

According to the application, the Trust proposes to permit unitholders of the Funds to purchase shares of the Trust at net asset value per share plus a 0.4% sales charge solely by reinvesting their distributions of interest or other distributions, including capital gains and principal distributions, from the Funds. The application states that all unitholders of the Funds will be eligible to participate in the proposed reinvestment programs and will be required to reinvest the entire amount of all interest and other distributions from any series of the Funds. Applicants state that unitholders of outstanding and future series of the Funds will be notified of the existence of the reinvestment privilege and that unitholders indicating an interest in participating in the program will be sent a current prospectus of the Trust, together with an authorization form. Applicants further state that if the form is executed and returned it will entitle the unitholder to receive distributions from those series of the Funds designated by him in full and fractional shares of the Trust, purchased at the net asset value thereof in effect at the close of business on the distribution date of such unitholder's Fund, plus the 0.4% sales charge. Applicants state that participants will receive confirmations of all such transactions made for their respective accounts and will receive each year the current prospectus of the Trust. The application states that the authorization form will provide that any election to receive distributions from any series of the Funds in shares of the Trust will be effective until the unitholder revokes such election by written notice to the Trustee of such series.

Applicants state that expenses of offering the reinvestment programs to unitholders of the Funds will be borne by the Adviser and that, once a unitholder has elected to participate in the proposed reinvestment program, his

account will be handled, and the expenses thereof will be borne, in the same manner as the account of any other shareholder of the Trust. Applicants believe that the sales charge of 0.4% will be sufficient to offset the expenses of the proposed reinvestment programs to the Adviser, and state that the Adviser will retain the entire charge. According to the application, once a unitholder of the Funds has elected to participate in the reinvestment program and becomes a shareholder in the Trust, he will be entitled to all rights of any shareholder of the Trust with regard to his interest.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company shall sell any redeemable security issued by it except either to or through a principal underwriter for distribution or at a current public offering price described in the prospectus, and, if such class of security is being currently offered to the public by or through an underwriter, no principal underwriter of such security and no dealer shall sell any such security to any person except a dealer, a principal underwriter or the issuer, except at a current public offering price described in the prospectus. Applicants request an exemption from the provisions of Section 22(d) of the Act to permit the sale by Applicants of shares of the Trust at net asset value per share plus a reduced sales charge of 0.4% to holders of units issued by past and future series of the Funds pursuant to the proposed reinvestment programs.

Section 6(c) of the Act provides that the Commission may, upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants submit that the requested exemption from the provisions of Section 22(d) of the Act would be in the public interest, beneficial to the investors in the Trust and the Funds, and consistent with the purposes of Section 22(d). Applicants assert that the largest portion of the cost associated with sales of shares of an open-end, management investment company such as the Trust is attributable to soliciting an investor and ascertaining his financial requirements. Applicants state that in this case, unitholders of the Funds will already have made their initial investments, have had their financial requirements determined and have paid any applicable sales charges attributable to initial investments. Applicants submit that permitting such unitholders to reinvest their Fund distributions in shares of the Trust is little different from permitting existing shareholders of the Trust to reinvest their distributions, and that what slight sales cost exists will be offset by the 0.4% sales charge that will be imposed. Applicants submit that Fund investors, rather than the Adviser, should receive the benefit of the lower sales costs associates with the proposed reinvestment programs.

Applicants further submit that the proposed reinvestment programs will not result in any dilution in the equity of existing shareholders of the Trust because the Trust will receive the net asset value of the shares sold. They further submit that the proposed reinvestment programs will increase the Trust's asset base and, because its operating expenses will not increase concurrently with asset size, the per share cost of operations borne by the Trust's shareholders will be reduced. In addition, Applicants state that if a significant number of unitholders of the Funds participate in the proposed reinvestment programs, such unitholders will provide ready cash to be invested by the Trust and thereby help to assure the Trust of a positive cash flow, permitting it to meet redemptions without disturbing investments, to decrease assets held as cash reserves and to build-up its investment positions.

Notice is further given that any interested person may, not later than March 17, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–6056 Filed 2–26–80; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 21446; 70–6047]

The Southern Co., et al.; Proposal by Holding Company System To Allocate its Consolidated Income Tax Liability in a Manner Differing From That Excepted by Rule 45(b)(6)

February 21, 1980.

In the matter of The Southern Company, 64 Perimeter Center East, P.O. Box 720071, Atlanta, Georgia 30346; Alabama Power Company, Alabama Property Company, Southern Electric Generating Company, 600 North 18th Street, P.O. Box 2641, Birmingham, Alabama 35291; Georgia Power Company, Piedmont-Forrest Corporation, 270 Peachtree Street, N.W., P.O. Box 4545, Atlanta, Georgia 30302; Gulf Power Company, 75 North Pace Boulevard, P.O. Box 1151, Pensacola, Florida 32520; Mississippi Power Company, 2992 West Beach, P.O. Box 4079, Gulfport, Mississippi 39501; Southern Company Services, Inc., 800 Shades Creek Parkway, P.O. Box 2625, Birmingham, Alabama 35202.

Notice is hereby given that The Southern Company ("Southern"), a registered holding company, and its above-named wholly-owned subsidiary companies (collectively, with Southern, "The Southern System") have filed a joint declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 12(b) of the Act and Rule 45 promulgated thereunder as applicable to the proposed transaction.

All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Southern and its subsidiaries join annually in the filing of consolidated Federal income tax returns. The consolidated Federal income tax liabilities are allocable among the members of The Southern System in accordance with the provisions of Section 1522 of the Internal Revenue

Code of 1954 and other applicable requirements of Rule 45(b)(6) under the Act as modified by the Commission's orders of December 4, 1958 (HCAR No. 13876), March 2, 1961 (HCAR No. 14382), April 26, 1963 (HCAR No. 14860), March 15, 1976 (HCAR No. 19429), February 4, 1977 (HCAR No. 19873), June 7, 1978 (HCAR No. 20582), April 30, 1979 No. 21033).

Under Section 1552(a)(1) as modified by orders of the Commission dated April 26, 1963, and March 15, 1976, (i) the tax (28%) on consolidated net long-term capital gain is apportioned among the group members in accordance with the ratio which that portion of the consolidated net long-term capital gain attributable to each member of the group having net long-term capital gain bears to the consolidated net long-term capital gain, (ii) the tax and surtax (46%) on ordinary income is apportioned in accordance with the ratio which that portion of the consolidated ordinary taxable income attributable to each member of the group having ordinary taxable income bears to the consolidated ordinary taxable income, and (iii) investment tax credits allowable to the group are allocated to those members whose investments generated the credits. Under the circumstances hereinafter described, certain inequities and distortions will result if the allocation of the group's consolidated income tax liabilities for 1979 is effected pursuant to the provisions of Rule 45(b)(6) as set forth above.

Set forth below are the estimated 1979 separate taxable incomes and losses of the members of The Southern System (adjusted to take into account the consolidation and, thus, comprising in the aggregate the consolidated net taxable income).

Company	Estimated taxable income (loss)
The Southern Company	$(7,129,000)
Alabama Power Company	(43,651,466)
Alabama Property Company	.....
Georgia Power Company	89,984,426
Piedmont-Forrest Corporation	306,422
Gulf Power Company	1,954,924
Mississippi Power Company	9,769,850
Southern Electric Generating Company	10,651,344
Southern Company Services, Inc.	(108,652)
Consolidated	$61,777,848

The estimated consolidated income tax before investment tax credits is $28,129,179 (excluding the estimated minimum tax). In order to allocate such consolidated tax liability equitably, The Southern System proposes as an exception from the provisions of Rule 45(a)(6), that (i) the reduction in the consolidated tax liabilities arising from the net operating losses contributed to the consolidated tax returns by Alabama Power Company ("Alabama") be allocated in their entirety to Alabama (but that each other operating company be allowed to offset its liability to Alabama by its full investment credits earned), and (ii) that in years when Alabama has taxable income and may be entitled to tax credits under the operating loss carryback and carryover provisions of Section 172(b) of the 1954 Internal Revenue Code, in order to comply with the separate return limitations required by Rule 45(b)(6), any tax credits remitted to Alabama as a result of the exception from the rule herein requested shall be applied to reduce any credits in future years to which Alabama may otherwise be entitled under any separate return limitations of Rule 45(b)(6). This method of allocation would, of course, continue to be subject to the provision contained in sub-paragraph (6)(ii) of Rule 45(b) that the aggregate tax liability allocated to each subsidiary company should not exceed the amount of tax of such company based upon a separate return computed as if such company had always filed its tax return on a separate return basis.

A comparison of the taxes allocated under the method prescribed by Rule 45(b)(6) and under the proposed method is as follows:

	(Before investment tax credits)	
	Under Rule 45	Under requested method
The Southern Company	.....	.....
Alabama Power Company	.....	$(20,079,674)
Alabama Property Company	.....	.....
Georgia Power Company	$22,544,405	38,588,767
Piedmont-Forrest Corporation	.....	.....
Gulf Power Company	487,933	840,492
Mississippi Power Company	2,438,415	4,200,306
Southern Electric Generating Company	2,658,426	4,579,288
Southern Company Services, Inc	.....	.....
	$28,129,179	$28,129,179

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $4,500, including legal fees of $1,500. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Notice is furhter given that any interested person may, not later than March 19, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 6057 Filed 2-26-80; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1979 Rev., Supp. No. 14]

Surety Companies Acceptable on Federal Bonds; Atlanta International Insurance Co.; Change of Name

Drake Insurance Company of New York, a New York corporation, has formally changed its name to Atlanta International Insurance Company, effective January 1, 1980. The company was last listed as an acceptable surety on Federal bonds at 44 FR 38090 June 29, 1979.

A certificate of authority as an acceptable surety on Federal bonds, dated January 1, 1980, is hereby issued under Sections 6 to 13 of Title 6 of the United States Code to Atlanta International Insurance Company, New York, New York. This new certificate replaces the certificate of authority issued to the company under its former name, Drake Insurance Company of New York. The underwriting limitation of $803,000 established for the company as of July 1, 1979, remains unchanged.

The change in name of Drake Insurance Company of New York does not affect its status or liability with respect to any obligation in favor of the United States or in which the United States has an interest, which it may have undertaken pursuant to the certificate of authority issued by the

Treasury. Therefore, Federal bond-approving officers need take no action with respect to bonds accepted prior or subsequent to the change in the company's name. They may, however, annotate their reference copies of Treasury Circular 570, 1979 Revision at page 38090 to reflect the change.

Certificates of authority expire on June 30 each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Copies of the circular, when issued, may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226.

Dated: February 19, 1980.

D. A. Pagliai,

Commissioner, Bureau of Government Financial Operations.

[FR Doc. 80-6048 Filed 2-26-80; 8:45 am]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

Ambulatory Care Addition, VAMC, Bath, N.Y.; Notice of Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may result from the construction of a two story Ambulatory Care addition (10–15,000 gross square feet) to the Main Hospital, Building 76, at the Veterans Administration Medical Center (VAMC), Bath, New York.

Development of the project will have impacts on the human and natural environment as if affects surface runoff, erosion and landscaping. Additionally, construction noise, fumes, dust, odors and visual impacts will exist during construction of the project.

Mitigating actions include compatible architectural, landscaping and open space design; control of erosion, dust and fumes; and noise abatement techniques is conformance to Federal, State and local specifications.

The Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, Sections 1501.3 and 1508.9, Title 40, Code of Federal Regulations. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, Director, Office of Environmental Affairs (004A), Room 1018, Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420, (202–389–2526). Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: February 20, 1980.

By direction of the Administrator.

Maury S. Cralle, Jr.,

Assistant Deputy Administrator for Financial Management and Construction.

[FR Doc. 80-6017 Filed 2-26-80; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 40
Wednesday, February 27, 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).

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	Items
Commodity Futures Trading Commission	1
Consumer Product Safety Commission	2
Export-Import Bank	3
Federal Home Loan Bank Board	4
Federal Reserve System	5

1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., Friday, March 7, 1980.

PLACE: 2033 K Street NW., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-382-80 Filed 2-25-80; 2:50 pm]

BILLING CODE 6351-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION.

Agenda

TIME AND DATE: Commission Meeting, Thursday, February 28, 1980, 10 a.m.

LOCATION: Room 456 Westwood Towers, 5401 Westbard Ave., Bethesda, Maryland.

STATUS: Part Open, Part Closed.

MATTERS TO BE CONSIDERED:

Open to the Public

1. Meeting Policy

The staff will brief the Commission on possible revisions to the Commission policy on meetings (16 CFR 1012).

2. Petition Policy

The staff will brief the Commission on possible revisions to the Commission policy on petitioning (16 CFR 1110).

3. Commission Opinions

The staff will brief the Commission on various options related to the issuance of formal opinions.

Closed to the Public

4. Criminal Enforcement Policy

The staff will brief the Commission on issues related to Commission criminal enforcement activities and policy.

5. Sears, Vernco, Fans: Corrective Action (ID 78-108, 109)

The Commission will consider whether to accept corrective action plans which Sears, Roebuck & Co. and the Vernco Division, Emerson Electric Co. have implemented to deal with a possible substantial product hazard associated with electric fans manufactured by Vernco and sold by Sears and Vernco.

Agenda approved February 15, 1980.

CONTACT PERSON: Sheldon D. Butts, Assistant Secretary, Suite 300, 1111 — 18th St., NW., Washington, D.C. 20207, (202) 634-7700.

[S-381-80 Filed 2-25-80; 11:49 am]

BILLING CODE: 6355-01-M

3

EXPORT-IMPORT BANK OF THE UNITED STATES.

Pursuant to the provisions of the "Government in the Sunshine Act", 5 U.S.C. 552b, notice is hereby given that the Board of Directors of the Export-Import Bank of the United States will meet in open session on Friday, March 7, 1980, at 10 a.m., to consider the following matters:

Foreign currency guarantee program; Quarterly interest rate review; trends in the direct credit programs.

The meeting will be held in room 1143 at 811 Vermont Avenue, N.W., Washington, D.C.

The documents in connection with the matters to be discussed at this meeting will be available on February 29, 1980, in the Office of the Secretary, room 1012, and the Office of Public Affairs, room 1167, at the above address.

Requests for information concerning this meeting may be directed to Warren W. Glick, General Counsel, telephone 202-566-8334.

Dated: February 26, 1980.

Warren W. Glick,

General Counsel, Export-Import Bank of the United States.

[S-384-80 Filed 2-25-80; 2:50 pm]

BILLING CODE 6690-01-M

4

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., March 3, 1980.

PLACE: 1700 G Street NW., Sixth Floor, Washington, D.C.

STATUS: Open Meeting.

CONTACT PERSONS FOR MORE INFORMATION:
Mr. Marshall (202-377-6677).

MATTERS TO BE CONSIDERED:

Application for Branch Office—Mission Federal Savings and Loan Association, Santa Barbara, California.

Application for Branch Office—Atlantic Federal Savings and Loan Association of Fort Lauderdale, Fort Lauderdale, Florida.

Application for Branch Office—Kankakee Federal Savings and Loan Association, Kankakee, Illinois.

Application for Branch Office—Phenix Federal Savings and Loan Association, Phenix City, Alabama.

Application for Branch Office—Midwest Federal Savings and Loan Association of Minot, Minot, North Dakota.

Concurrently Submitted Branch Office Applications—Home Federal Savings and Loan Association, Palm Beach, Florida and First Federal Savings and Loan Association of Martin County, Stuart, Florida.

Application for Limited Facility—First Federal Savings and Loan Association of Crookston, Crookston, Minnesota.

Application for Service Corporation—First Federal Savings and Loan Association of Dearborn, Dearborn, Michigan.

Merger—First Federal Savings and Loan Association of Clifton Forge, Clifton Forge, Virginia into American Federal Savings and Loan Association, Lynchburg, Virginia.

Application for Bank Membership—Mutual Bank for Savings, Newton Centre, Massachusetts.

Application for Bank Membership and Insurance of Accounts—Standard Savings and Loan Association, Grundy, Virginia.

Withdrawal from Bank Membership—Chestnut Hill Co-operative Bank, Brookline, Massachusetts.

Preliminary Application for Conversion to Federal Mutual Charter—Home Savings and Loan Association, Galesburg, Illinois.

Appeal for Reduction of Liquidity Deficiency Penalty—American Savings and Loan Association, Salt Lake City, Utah.

No. 319, February 25, 1980.

[S-383-80 Filed 2-25-80; 2:50 pm]

BILLING CODE 6720-01-M

5

FEDERAL RESERVE SYSTEM (Board of Governors).

TIME AND DATE: 10 a.m., Monday, March 3, 1980.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. 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: February 22, 1980.

Griffith L. Garwood,

Deputy Secretary of the Board.

[S–380–80 Filed 2–25–80; 9:42 am]

BILLING CODE 6210–01–M

federal register

Wednesday
February 27, 1980

Part II

Department of Energy

Industrial Energy Conservation Program; Final Reporting Forms

DEPARTMENT OF ENERGY

10 CFR Part 445

[Docket No. CAS-RM-79-302]

Industrial Energy Conservation Program; Final Reporting Forms

AGENCY: Department of Energy.

ACTION: Final Plant, Corporate, and Sponsor Reporting Forms.

SUMMARY: The Department of Energy (DOE) hereby issues Forms CS-189-P, CS-189-C, and CS-189-S for the collection of plant, corporate, and sponsor data, respectively, on industrial energy efficiency and utilization of energy-saving recovered materials under its Industrial Energy Conservation Program (program). DOE has prepared these reporting forms pursuant to the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act. DOE has recently issued final comprehensive regulations for the operation of the program (45 FR 10194, February 14, 1980) which set forth the reporting requirements and make reference to the forms. The final forms set out in Appendices I, II, and III of this notice are for (1) plant reporting by corporations required to report under the program (identified corporations); (2) aggregated corporate reporting by identified corporations to DOE or DOE-approved third-party sponsors; and (3) third-party sponsor reporting to DOE.

EFFECTIVE DATE: March 28, 1980.

FOR FURTHER INFORMATION CONTACT:

Tyler E. Williams, Jr., Office of Industrial Programs, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 252-2371.

Pamela M. Pelcovits, Office of General Counsel, U.S. Department of Energy, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585 (202) 376-4616.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Discussion of Comments:
A. Introduction.
B. General.
C. Consumption Adustment Factors.
D. Base/Reference Year.
E. Conversion Factors.
F. Plant Form.
G. Other.
III. Summary of Changes:
A. Plant Reporting.
B. Corporate Reporting.
C. Sponsor Reporting.

I. Background.

The Federal Energy Administration (FEA) and its successor, the Department of Energy (DOE), implemented the Industrial Energy Conservation Program (program) in accordance with Part D of Title III of the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6341-6346). A description of the development and operation of the program is provided in the preamble to the proposed rule for the program issued by DOE on June 1, 1979 (44 FR 33344, June 8, 1979). The forms proposed as the data-collecting medium for the future operation of the program under the rule were issued for comment by DOE on July 12, 1979 (44 FR 41652, July 17, 1979). Included in that notice is the background relating to the plant, corporate, and sponsor reporting as required by the EPCA, as amended by the National Energy Conservation Policy Act (NECPA). The final program rule was issued February 6, 1980 (45 FR 10194, February 14, 1980), including a description of the handling of comments and the basis and justification used in developing the final recovered materials utilization targets.

II. Discussion of Comments

A. Introduction

On July 12, 1979, DOE issued a notice proposing forms CS-189-P, CS-189-C, and CS-189-S for plant, corporate and sponsor reporting, respectively, under DOE's Industrial Energy Conservation Program. The notice invited the oral and written presentation of comments on the proposed forms by interested persons. DOE held three public hearings on the forms in Washington, D.C. (August 27, 1979), Chicago, IL, (August 29, 1979), and San Francisco, CA, (August 31, 1979). In response a total of 22 oral statements were presented at the three public hearings and 113 written statements were received. DOE invited and received comment on all aspects of the proposed forms and the accompanying instructions. Although DOE received 135 multi-subject statements, most of the comments addressed the same major subjects. The following discussion of the comments is organized by significant categories designed to cover the major thrusts of public concern, but does not specifically address each individual comment. The specific changes in the forms and instructions resulting from the comments are summarized in section III of this preamble. As stated previously, the final forms are set out in the appendices to this notice.

B. General

A majority of the comments received requested that DOE simplify its reporting forms by revising various facets of the forms and their instructions. The suggested revisions encompassed many categories. However, the commenters generally felt that an undue reporting burden was generated by various requirements in the proposed forms. Those items identified as constituting a "burden" included, among other things, requiring narrative input from plants which might lack the administrative capability to respond and failing to devise a logical method for aggregation of narrative plant responses at the corporate and sponsor levels.

After reviewing these comments, DOE recognizes the efficacy of many of the commenters' arguments. DOE is directed to design the reporting forms to avoid imposing an undue burden on reporting corporations pursuant to section 375(d) of the EPCA, and, therefore, has revised the forms in order to reduce the reporting burden on all program participants. This reduction results in part from the provision in the final program rule (§ 445.21(b)(2)) which allows the use of alternative forms for plant reporting. In addition, there has been a substantial reduction in the amount and complexity of information required on all the forms issued today in response to the comments which questioned the ability of plants and corporations to generate meaningful information and the usefulness of such information to DOE in fulfilling its statutory obligation to report to the Congress and the President.

Entries for identification in Part 1 of all the forms have been deleted or relocated in order to reduce the burden on participants. The separate reporting of waste used as fuel in item 3.21 of all forms has been deleted as unnecessary since any participant wishing to report information of this type may include it under Part 4B of the final forms.

The number of narrative commentaries in all the forms has been significantly decreased and the content simplified in response to numerous critical comments. The narrative commentary under Part 3B has been deleted from all forms as DOE has determined that the necessarily subjective responses would not be useful to DOE. The narrative commentary on factors affecting consumption accompanying Part 4 of the proposed forms is deleted as discussed below. The narrative commentary under Part 5B has been simplified. The narrative commentary has also been deleted from Section C on recovered materials utilization.

In addition, although plant level reporting on the use of recovered materials is not required by the EPCA, DOE proposed a form for this purpose to encourage corporations to monitor use of recovered materials at the plant level.

DOE has determined (based on the comments received) that this "optional" form was confusing and has deleted Section C in the final plant reporting form.

One general comment was received criticizing the burden imposed by the reporting program and asserting that the program did not significantly affect conversation in light of the economic incentive provided by the free market. DOE is required to implement this reporting program pursuant to the EPCA, as amended, in order to collect data on industrial energy conservation for Congress and the President.

C. Consumption Adjustment Factors

Another area which attracted the attention of a majority of the commenters concerned the requirement for providing detailed information at the plant level (aggregated in corporate and third-party sponsor reports) on the factors extraneous to conservation which affect the consumption of energy. The commenters were almost universally opposed to the inclusion of this reporting requirement in the program at any level. Various comments describing Part 4 of the forms included: "imprecise," "most burdensome and least factual," "excessively expensive," "not quanitifiable," and "a gross estimate at best."

After thoughtful consideration of information requirements of DOE and the realities of industrial reporting capabilities, DOE has determined that this detailed information would not effectively contribute to its report to the Congress and has decided to eliminate this requirement. However, the topic of factors affecting consumption has been retained in a simplified form in the narrative commentary in Part 4B of the final corporate and sponsor forms.

D. Base/Reference Year

Since the inception of the Industrial Energy Conversation Program, calendar year 1972 has been used as the base or reference year in the reporting of industry's progress in energy efficiency improvement. The energy efficiency improvement targets developed pursuant to section 374 of the EPCA in 1976 for the 10 most energy-consumptive manufacturing industries used 1972 as the base year. The program has now progressed well beyond 1972 and pursuant to the NECPA has increased its participants both within the 10 industries and into the other 10 manufacturing industries. Many commenters expressed their concern over the availability and reliability of 1972 base year information for submission by corporations and comparison by DOE with current information. Some commenters indicated that 1972 information is no longer available in either their own records or their energy suppliers'. In lieu of 1972 as the base year, these commenters have suggested: (1) More relevant and reliable years subsequent to 1972; (2) the year any particular reporter chooses to use; (3) the year immediately preceding each reporting period; or (4) drop base year comparisons altogether.

DOE has reviewed the comments in this area and recognizes that difficulties may arise in producing accurate 1972 consumption and efficiency data, particularly for new participants in the reporting program. In order to provide consistency in the data and still provide for the problems faced by individual reporters, DOE has decided upon two alternative reference years in the revised program. All corporations which report in industries for which efficiency targets have been set and have or can develop reasonably reliable 1972 data shall use 1972 as their reference year. All corporations which report in targeted industries and do not have or cannot develop reasonably reliable 1972 data and all corporations which report in industries for which efficiency targets have not been set shall use 1978 as their reference year. DOE believes that this procedure will provide the most accurate, reliable, and up-to-date measurement of progress being made in industrial energy efficiency improvement.

E. Conversion Factors

A significant number of commenters addressed the use of various conversion factors for electricity within their various reporting programs. Predictably, there was not a consensus of opinion supporting any particular approach. DOE has been aware since the program's inception of the arguments concerning the various possible conversion factors for electricity consumed by industry. They range from approximately 3400 Btu's/kWh to over 12,000 Btu's/kWh. The low end of the range is used to rate the usable work which can be obtained from the power received from an electricity utility. The upper values of this range are used to rate the total energy used to generate the power at an electric utility. While each factor is valid within its own context, the use of a particular factor is usually a policy decision. FEA decided in its development of the energy efficiency improvement targets to use 10,000 Btu's/kWh for SIC's 28 and 29, and 3412 Btu's/kWh for all other industries. Since DOE will continue to report industry's progress against these targets until their expiration, the original conversion factors for electricity will continue to be used to insure consistency. Once the targets expire in 1981, DOE may consider revising these factors if appropriate.

Some commenters addressed various other conversion factors seeking to be allowed more flexibility in the choices made within their companies. Since it was DOE's intent to allow corporations to use their own conversion factors, when available and reliable, the instructions concerning the conversion factors have been revised to better reflect this flexibility.

F. Plant Form

A significant number of commenters objected to the requirement for a formal certification of the plant form by the plant manager and the inclusion of the statement concerning sanctions for making false statements to the Government as contained in section 1001 of Title 18 of the U.S. Code. Commenters found the requirement for the plant manager to sign and certify the plant reporting form unworkable, since in numerous plants the plant manager is not responsible for the collection and reporting of energy information. The commenters also characterized the inclusion of Title 18 references on an intra-corporate report as unnecessary and inappropriate. DOE received similar comments to the proposed program rule which required the plant reporting form to be completed at the plant level. In response to these comments, DOE revised the plant reporting requirements to permit flexibility as to where and by whom the plant reporting form is completed. The final plant reporting form has been revised to reflect the changes in the final program rule.

After analyzing the additional arguments presented in response to the proposed forms, DOE has revised the plant form by omitting these items. However, the plant form must still be signed by an identified submitting official and the certification of the corporation report requires the certifying official to certify that all information used in preparing the corporate report (including plant reports) is true and accurate to the best of his ability.

G. Other

Various other areas of interest were addressed by the commenters which may or may not have resulted in revisions being made by DOE.

Several commenters objected to the requirement that plants submit both the information in Part 3A of the form and

the worksheet used to derive that information. Since the worksheet was intended simply to convert physical energy units to Btu's, DOE found that it could be eliminated by requiring both physical units and Btu's to be reported in Part 3. Therefore, the worksheet has been deleted and Part 3 of the plant reporting form has been appropriately revised.

Several commenters suggested reporting millions vs. billions of Btu's on the plant reporting form. DOE has found that if a plant rounds its figures to the nearest tenth of a billion Btu's (one decimal place), it is possible for a plant to show consumption of as little as *9* barrels of oil equivalent per year of any energy source. Since DOE does not believe that the collection and reporting of consumption information below this level would be cost effective, it does not feel plant reporting in millions of Btu's is necessary.

Comment was received that the inclusion of the recovered materials reporting form together with the energy efficiency reporting form was confusing to corporations which need not complete this form. Accordingly, Section C of the corporate and sponsor reporting forms addressing recovered materials utilization has been revised as a separate booklet.

Several commenters objected to the separate aggregation of information in the sponsor reports for identified and non-identified corporations. They strongly felt that this segregation could likely result in discouraging the significant participation in the program by voluntarily reporting corporations. Since DOE stated in the final program rule its desire to encourage non-identified corporations to report to third-party sponsors, the appropriate revisions have been made in the sponsor report form to allow the inclusion of data from such reports in sponsor reports. However, as stated in § 445.23(c) of the program rule, such reports may be included only to the extent that the reports from non-identified corporations meet the requirements for corporate reporting under the program. If DOE should determine a need for data from sponsors on the performance of identified corporations alone, it may use the verification authority available to it under Section 376 of the EPCA.

Several commenters were confused by the provision in all the forms requiring the resubmission of a revised form if errors are found or new information is received. DOE has clarified this instruction so that a revised report is submitted only if significant changes are identified and has provided further instructions.

Several commenters suggested that the information required by this program be obtained from the Bureau of the Census through its Annual Survey of Manufacturers. While DOE agrees that Census receives extensive energy information on its MA–100 forms, this information covers only purchased energy and is not available on a sufficiently timely basis to meet the needs of this program.

Finally, DOE has made minor technical changes to the forms and accompanying instructions, particularly the definitions, to conform to the final program rule discussed above.

III. Summary of Changes

This section delineates by plant, corporate and sponsor reporting the changes which were made by DOE in the forms and their instructions.

A. Plant Reporting

- In Part 1 of the form, "Identification and Other Information," item 1.1B, 1.2, 1.3, 1.6 and 1.7 were either deleted or relocated.
- As previously discussed, Part 2, "Submitting Official", has been simplified by removing the certification requirement and the reference to Title 18 sanctions.
- Part 3A, "Energy Consumption Data", has been revised to reflect the elimination of the worksheet.
- The separate reporting of waste used as fuel item 3.21 has been deleted.
- Part 3B, "Narrative Commentary", has been deleted.
- Parts 4A and 4B, "Evaluation of Factors Affecting Energy Use During the Reporting Period" and "Narrative Commentary", have been deleted.
- In Part 5A (now Part 4A on the final form), "Energy Efficiency Improvement", item 5.4 has been deleted since it derived from Part 4 of the proposed form.
- Part 5B (now Part 4B on the final form), "Narrative Commentary", has been simplified.
- Section C of the proposed form concerning recovered materials utilization has been deleted in the final form.
- Instruction F (now E) has been changed so that revised reports are submitted only if *significant* changes have occurred.
- The definitions were adjusted to conform with those published in the final program rule. In addition, those dealing solely with recovered materials were deleted.
- Instruction L (now K) on Part 3 has been revised to more closely conform with the handling of energy consumption data in the final program rule.
- The remaining instructions have been revised or deleted to account for the aforementioned revisions in the final plant reporting form.

B. Corporate Reporting

- In Part 1 of the form, "Identification and Other Information", items 1.3, 1.4, 1.6, 1.9, 1.10, and 1.11 were either deleted or relocated.
- As in the plant form, the separate reporting of waste used as fuel in item 3.21 has been deleted.
- As in the plant form, Part 3B, "Narrative Commentary" has been deleted.
- As in the plant form, Parts 4A and 4B, "Evaluation of Factors Affecting Energy Use During the Reporting Period" and "Narrative Commentary", have been deleted as requirements in the final form.
- As in the plant form, item 5.4 has been deleted since it derived from Part 4 of the proposed form.
- Part 5B (now Part 4B on the final form), "Narrative Commentary", has been revised.
- Section C of the form concerning recovered materials utilization has been revised as a separate booklet.
- Part 6B, "Narrative Commentary on Recovered Materials Utilization", has been deleted.
- Instruction C (now B) has been revised to June 1 to reflect the requirement in the final program rule.
- Instruction F (now E) has been changed so that revised reports are submitted only if *significant* changes have occurred.
- The definitions were adjusted to conform with those published in the final program rule. In addition, those dealing solely with recovered materials were relocated with the instructions for Section C.
- Instruction N on Part 3 has been revised to reflect the alternative reference years.
- The remaining instructions have been revised or deleted to account for the aforementioned revisions in the final corporate reporting form.

C. Sponsor Reporting

- In Part 1A of the form, "Sponsor Identification and Other Information", items 1.2, 1.3, 1.5, and 1.8 were either deleted or relocated.
- Part 1B of the form, "Listing of Participating Corporations and Other Information", has been revised to reflect changes in the corporate form and revisions to Instruction I, "Aggregation of Corporate Reports".

• Part 3A of the form, "Energy Consumption Data", has been revised to allow for sponsor reporting of information from corporations using either reference year. Also, separate reporting of waste used as fuel in item 3.21 has been deleted.

• As in the corporate form, Parts 3B, 4A, 4B, and 6B and item 5.4 have been deleted from the final sponsor form.

• Part 5A (now Part 4A on the final form), "Energy Efficiency Improvement", has been revised to reflect the use of either reference year by the participating corporations.

• Part 5B (now Part 4B on the final form), "Narrative Commentary", has been revised to reflect the changes in the final corporate form.

• As in the corporate form, Section C has been revised as a separate booklet.

• Instruction C (now B) has been revised to June 1 to reflect the requirement in the final program rule.

• Instruction F (now E) has been changed so that revised reports are submitted only if *significant* changes have occurred.

• The definitions were adjusted to conform with those published in the final program rule. In addition, those dealing solely with recovered materials were relocated with the instructions for Section C.

• Instruction J (now I) has been revised to reflect the decision not to aggregate information from identified corporations separately from that of non-identified corporations. This instruction also relates how sponsors should aggregate corporate responses to question 2 in Part 4B of the final form.

• The remaining instructions have been revised or deleted to account for the aforementioned revisions in the final sponsor reporting form.

(Energy Policy and Conservation Act (Pub. L. 94–163), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619); Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended; E.O. 11790 (39 FR 238185); the Department of Energy Organization Act (Pub. L. 95–91); E.O. 12009 (42 FR 46267).)

Issued in Washington, D.C., February 19, 1980.

Thomas E. Stelson,

Assistant Secretary, Conservation and Solar Energy.

Appendix I

Department of Energy,
Conservation and Solar Energy, Office of Industrial Programs, Washington, D.C.

Industrial Energy Conservation Program for Energy Efficiency Improvement and Recovered Materials Utilization

Plant Reporting Form CS 189–P, Sections A and B, and Instructions

Under the provisions of the Energy Policy and Conservation Act (Pub. L. 94–163), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619) (together referred to as the Act), certain corporations in major energy consuming industries are required to report data on energy efficiency improvement and on recovered materials utilization to the Department of Energy (DOE). The regulations governing the identification of corporations required to report and establishing the reporting requirements are contained in Title 10 of the Code of Federal Regulations (CFR), Part 445, entitled "Industrial Energy Conservation Program."

This booklet contains the forms and instructions for the reporting of data on energy efficiency improvement by plants of identified corporations. Energy efficency improvement data reported by identified corporations must include data aggregated from plant reports. A report on each plant of an identified corporation must be completed on the progress the plant has made during the reporting period in improving its energy efficiency in each energy-consuming industry within which the corporation is identified.

Contents

General Instructions
Section A, General Information
  Part 1: Identification and Other Information
  Part 2: Submitting Official
Section B, Energy Consumption and Efficiency Improvement
  Part 3: Energy Consumption Data
  Part 4A: Energy Efficiency Improvement
  Part 4B: Narrative Commentary

General Instructions

A. Who Must Submit This Form

Pursuant to Section 375(b) of the Act, energy efficiency improvement reports by identified corporations must include data aggregated from plant reports. Plant reports must be completed for each plant of an identified corporation. Form CS–189–P is provided by DOE for such plant reports. Alternatively, plant reports may be made on any form providing equivalent information.

Plant reports are to be completed by the person responsible for the energy conservation efforts of the plant.

B. When To Submit This Form

Plant reports must cover the period January 1 through December 31 of the preceding year and should be at the corporate headquarters by a time set by the corporation to allow it to meet its obligation to report to the DOE by June 1.

C. Where To Send This Form

Plant reports and worksheets are to be collected at the headquarters, in the United States, of the identified corporation of which the plant is a part. Identified corporations must provide plants submitting reports with the appropriate filing address.

D. Data Retention and Verification Requirements

The plant reports and worksheets are not to be filed with DOE. However, reports, worksheets and any other data required to allow for verification, and used by an identified corporation in preparing reports under this program must be retained by the corporation for at least five years from the filing date. Such information must be made available to DOE promptly upon request for verification.

E. Revision of Reports

If significant new information is received or significant errors are found in the original report, plants must submit a revised form with revisions noted to their parent corporation. If a numerical revision will result in a number being changed by more than 10 percent, it should be considered a significant change.

F. Authority To Collect

The requirement that plants provide this information is made pursuant to section 375(c) of the Act; Section 376(b) of the Act; and Section 13(b), 5(b)(7) and 5(a)(3) of the Federal Energy Administration Act (15 U.S.C. 772 *et. seq.).*

G. Definitions

For the purposes of all sections of this form:

"Act"—the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619, 92 Stat. 3207).

"Btu"—British thermal unit.

"Commercial quality production"—the manufacture of products suitable for shipment and/or sale.

"Corporation"—a person as defined in section 3(2)(B) of the Act (any corporation, company, association, firm, partnership, society, trust, joint venture or joint stock company) and includes any person which controls, is controlled by, or is under common control with such person.

"DOE"—the Department of Energy.

"Energy efficiency"—the amount of energy in Btu's consumed per unit of production.

"Energy source"—electricity, purchased steam, natural gas, bituminous coal, anthracite, coke, ethane, propane, LPG, natural gasoline, gasoline (including aviation), special naphtha, kerosene, distillate fuel oil (including diesel), still gas, petroleum coke, residual fuel oil, crude oil, and any other material consumed as a fuel in manufacturing.

"Exempt corporation"—an identified corporation which DOE determines, pursuant to 10 CFR 445.37, is not required to report directly to DOE.

"Feedstock"—petroleum products, natural gas or coal used as a raw material which is processed to become a part of the chemical composition of a manufactured product other than an energy source.

"Identified corporation"—a corporation identified by DOE in accordance with 10 CFR 445.15. A corporation is an identified corporation for the year in which it consumed, in accordance with 10 CFR 445.13, at least one trillion Btu's.

"Major energy-consuming industry"—an industry listed in 10 CFR 445.5(a). An industry is a major energy-consuming industry if it can be classified by one of the twenty 2-digit SIC codes within the manufacturing sector.

"Manufacturing"—the mechanical or chemical transformation of materials or substances into new products, as described on page 57 of the Office of Management and Budget Standard Industrial Classification Manual (1972).

"Plant"—an economic unit of a corporation at a single physical location where manufacturing is performed.

"Plant Report"—a duly completed report on the form provided by DOE for plant reporting in accordance with Section 375(c) of the Act or on such form as provides equivalent information to that required to be reported on the form provided by DOE.

"Product"—an item or grouping of items (separate parts of, or all of a product line) that is the production of a manufacturing corporation that is classified within a major energy-consuming industry.

"Production"—the quantity of a corporation's product output, throughput, or activity.

"Program"—the Industrial Energy Conservation Program.

"Reference year"—1972 or 1978.

"SIC"—the Standard Industrial Classification system described in the Office of Management and Budget Standard Industrial Classification Manual (1972).

"United States"—each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

H. How To Use This Booklet

Remove the perforated forms (colored pages), and the worksheet behind the report form, from this booklet. This will allow you to follow the instructions as you fill out the form. Complete all requests for required information. Print clearly or type all entries other than the request for signature. Part 4B requests respondents to provide a narrative commentary. Submit responses on supplemental sheets, and identify each such sheet with the following heading:

Plant_____SIC_____Reporting Year_____Page_____of_____Pages

ENERGY EFFICIENCY IMPROVEMENT AND RECOVERED MATERIALS
UTILIZATION REPORT

PLANT REPORTING FORM
SUPPLEMENTAL SHEET

In addition, identify each line addressed, e.g. Line 3.12.

Instructions for Section A

I. Submit only one Section A for all SIC codes being reported for energy efficiency improvement. Enter information as requested in Parts 1 and 2 of the form.

Instructions for Section B

J. Complete a separate set of Parts 3 and 4 for each two-digit SIC code for which a plant report is completed. Enter the plant, SIC code and year on the top of each page of each set of forms. Forms in this booklet may be reproduced as required.

K. Part 3: Energy Consumption Data. Provide energy consumption data for the current reporting period and the reference year for the listed energy sources. Energy consumed by the plant which applies across two-digit SIC codes should be allocated among the specific SIC codes by the plant in a reasonable manner. Where energy is consumed in one SIC code for the purposes of manufacturing an end product in another SIC code and such energy cannot be separately identified, report the energy consumed in the SIC code of the end product.

To avoid double-counting in the case of thermally self-generated and/or cogenerated electricity, plant electricity consumption shall be comprised only of purchased electricity and self-generated hydropower. For example, where a plant consumes coal in the thermal generation and/or cogeneration of electricity for its own use, the Btu's of coal, but not the Btu's of the electricity, shall be included. Any such electricity sold may be deducted from the overall plant energy consumption at the actual energy conversion factor involved in its generation. Any self-generated hydropower sold may be deducted at the value shown in the table below.

In determining energy consumption, respondents must report all energy used or included in:

—Direct manufacturing activities;

—Thermal self-generation of electricity;
—Heating, ventilating and air conditioning of manufacturing buildings and plant offices as well as manufacturing services such as shop, cafeteria, other plant personnel services, and plant chemical and analytical laboratories;
—In-plant transportation, such as lift-trucks, conveyors, cranes and railroads;
—Transportation on a manufacturer's property between mining operations and manufacturing facilities;
—Raw material storage;
—Services for finished product warehouses within a plant fence if directly related to manufacturing activities.

Where energy use is metered separately or can otherwise be identified, the plant report should exclude the following energy use:
—All uses of electricity self-generated by thermal means;
—Services for corporate and divisional offices not contiguous to a plant;
—Services for basic research not contiguous to a plant;
—Services for regional distribution centers;
—Fuel for corporate aircraft, salesmen's cars and over-the-highway trucks;
—By-product fuels sold and shipped or stored for sale;
—Facility start-up energy (to point of initial commercial quality production);
—Waste used as fuel;
—Transport of intermediate product to another producer for finishing within the same two-digit industry;
—Fuels received for storage and later disposition;
—Feedstocks.

Energy consumption is to be based on the higher heating value of the fuel consumed. Where the Btu content of a plant's energy sources (except electricity) can be measured or reliably estimated, energy consumed must be determined by reference to those Btu contents. Where the Btu content of a plant's energy sources cannot be measured or reliably estimated, and in the case of electricity, the following conversion factors must be used:

Energy source	Conversion factor (Btu's per energy unit)
Electricity, except for SIC codes 28 and 29 (per kilowatt-hour)	3,412
Electricity, for SIC codes 28 and 29 (per kilowatt-hour)	10,000
Natural gas (per cubic foot)	1,020
Bituminous coal (per short ton)	22,565,000
Anthracite (per short ton)	25,400,000
Coke (per short ton)	26,000,000
Petroleum coke (per short ton)	30,120,000
Ethane (per gallon)	73,380
Propane (per gallon)	91,620
LPG (per gallon)	95,500
Natural gasoline (per gallon)	110,000
Gasoline (including aviation) (per gallon)	124,950
Special naphtha (per gallon)	124,950
Kerosene (per gallon)	135,000
Distillate fuel oil (including diesel) (per gallon)	138,690
Still gas (per gallon)	142,860
Residual fuel oil (per gallon)	149,690
Crude oil (per gallon)	138,100
Other energy sources (including purchased steam)	(1)

[1] To be determined by calorimetric measurement or engineering standard as appropriate for consuming corporations.

Complete Part 3 of the form as follows:

Lines 1 through 15. Enter in column A energy consumption data for the current reporting period by energy source. Enter the reference year selected by your corporation for use in this report in the heading of column B and in column B itself energy consumption data for the reference year. When the data to be reported in column B would be unchanged from that previously reported, enter in the column "same as previously reported."

Where a plant was not in operation producing commercial quality production during the entire reference year, data for column B should be that recorded for the first year of commercial quality production.

Line 16. Compute the total energy consumption in billions of Btu's for both columns A and B.

All Btu figures in this part should be rounded to the nearest tenth of a billion or one decimal place (e.g., 548 million = .5 billion).

L. Part 4A: Energy Efficiency Improvement

Perform energy efficiency improvement calculations for each identified two-digit industry in which a plant report is completed. Develop this data on the Worksheet for Part 4A: Energy Efficiency Data, and transfer the information from that worksheet to Part 4A of the form, where the calculation is then performed. Submit the worksheet with the plant report form.

The following example is provided to illustrate the use of this worksheet and demonstrate an energy efficiency improvement calculation.

Energy Efficiency Data:

Col. A	Col. B	Col.C	Col. D	Col. E	Col. F
Product	Production Measure (unit)	1972 Energy Efficiency (Btu/Unit)	Current reporting period production (quantity of units)	Calculated consumption based on 1972 efficiency (Col. C x Col. D)	Current consumption (billion Btu)
A	ton	600,000	1,600,000	960.0 billion	900.0
B	lbs	100,000	1,000,000	100.0 billion	90.0
C	ft^3	45,000	1,000,000	45.0 billion	36.0
D	bbl	200,000	100,000	20.0 billion	17.5
E	piece	400,000	50,000	20.0 billion	17.5
Totals				1145.0	1061.0

Enter on line 4.2

Enter on line 4.1. Check with line 3.16A.

To derive the entries for the worksheet perform the following steps:

Step 1, Product (Column A). Enter each product or group of products in commercial quality production in the plant within a two-digit SIC code industry which can be represented by a single, common, energy-efficiency figure.

Step 2, Production measure (Column B). Enter the units of production used in the calculation of energy efficiency. Such units may be physical (pounds, gallons, square feet of floor space, etc.) or abstract (dollars of value added, labor hours, etc.). They are best selected from the plant's experience as to what unit of reference most appropriately represents the production of the product in question for the purpose of apportioning energy consumption to that product.

Step 3, Reference year energy efficiency (Btu's/unit) (Column C). Enter the reference year energy-efficiency for each product entered in Column A, that is the energy in Btu's attributable to a unit of production.

If the commercial quality production of any product began after the reference year the plant must enter the energy efficiency of the first year's such production of that product as the reference year energy efficiency.

Step 4, Current reporting period production (Column D). Enter the totals of current production using units that are consistent with the units selected for each energy-efficiency ratio calculation in Column C.

Step 5, Calculated energy consumption based on reference year efficiency (Column E). Calculate the energy (in Btu's) that would have been required for the manufacture of each product during the current reporting period based on reference year energy efficiency. Multiply the production level of each product in its respective units (as entered in Column D) by the corresponding energy-efficiency (as entered in Column C). Record the numbers in Column E. The total of Column E should be entered on line 2 of Part 4A of the form.

Step 6, Current consumption (Column F). Enter the energy in Btu's required for the manufacture of each product during the current reporting period in Column F. Add the numbers in Column F and enter on line 1 of Part 4A of the form. The total of Column F must equal the entry on line 3.16A. If energy consumption cannot be assigned by product, simply enter the total on the bottom line of Column F.

Step 7, Energy efficiency improvement calculation. Enter on line 3 of Part 4A the performance improvement, rounded to one decimal place, as calculated by the method shown on the form. In the event that the result is negative the improvement figure will be preceded by a minus sign.

M. Part 4B: Narrative Commentary

Provide the information requested on separate sheets as indicated in instruction H.

BILLING CODE 6450-01-M

OMB Approval
No. 38-R0449
Expires July 1981

Energy Efficiency Improvement and Recovered Material Utilization Report
U.S. Department of Energy

PLANT REPORTING FORM

DOE FORM CS 189-P

REPORTING YEAR _____ **PAGE 1 OF** _____

THE REPORT IS MANDATORY UNDER PUBLIC LAWS 95-619 94-163 AND 93-275

SECTION A: GENERAL INFORMATION

Part 1: Identification and Other Information

A. What is the name and address of your plant? _____

_____

_____

_____

B. Who is the contact person for energy data?

Name _____

Title _____

Telephone No. _____

C. Enter "X" if this is a revised report ☐

Part 2: Submitting Official

A. Name: _____

Title: _____ Phone: _____

Signature: _____ Date: _____

Energy Efficiency Improvement and Recovered Material Utilization Report
U.S. Department of Energy

PLANT REPORTING FORM

DOE FORM CS 189-P

PLANT _____ **SIC** _____ **REPORTING YEAR** _____ **PAGE** _____ **OF** _____

SECTION B: ENERGY CONSUMPTION AND EFFICIENCY IMPROVEMENT

Part 3

A. Energy Consumption Data

For each energy source below, enter the consumption data requested	(A) Current Reporting Period		(B) Reference Year _____	
	Quantity Consumed (Unit)	Consumption (Billion Btus)	Quantity Consumed	Consumption (Billion Btus)
1. Electricity (Kwh)				
2. Natural gas (Cu Ft)				
3. Propane (gal)				
4. LPG (gal)				
5. Bituminous coal (short ton)				
6. Anthracite coal (short ton)				
7. Coke (short ton)				
8. Gasoline (gal)				
9. Distillate fuel oil (gal)				
10. Residual fuel oil (gal)				
11. Petroleum coke (short ton)				
12. Purchased steam (lbs)				
13. Other (specify)				
14. Other (specify)				
15. Other (specify)				
16. TOTAL ENERGY CONSUMPTION				

Part 4

A. Energy Efficiency Improvement

1. Energy consumption during current reporting period (enter from Worksheet Col. F) _____ Billions of Btu
2. Calculated consumption based on reference year energy efficiency (enter from Worksheet Col. E) _____ Billions of Btu
3. Energy efficiency improvement relative to the reference year =

$$\frac{(\text{line 2}) - (\text{line 1}) \times 100}{(\text{line 2})} = \text{_____ \%}$$

B. Narrative Commentary

Provide the information requested below on separate sheet(s), as indicated on the instructions to this form.

1. What significant energy conservation measures have been adopted in this reporting period and have contributed to the improvement shown on line 3 above?
2. Provide any other comments desired.

Energy Efficiency Improvement and Recovered Material Utilization Report
U.S. Department of Energy

PLANT REPORTING FORM

PLANT _____ SIC _____ REPORTING YEAR _____

WORKSHEET FOR PART 4A: ENERGY EFFICIENCY DATA

Col. A	Col. B	Col. C	Col. D	Col. E	Col. F
Product	Production Measure (Unit)	Reference Year Energy Efficiency (Btu's/Unit)	Current Reporting Period Production (Quantity of Units)	Calculated Consumption Based on Reference Year Efficiency (Col. C x Col. D)	Current Consumption (Billion Btu)
TOTALS					
				Enter on line 2	Enter on line 1 Check with Part 3, line 16.

BILLING CODE 6450-01-C

Appendix II.—Industrial Energy Conservation Program for Energy Efficiency Improvement and Recovered Materials Utilization; Corporate Reporting Form CS 189–C, Sections A and B, and Instructions

Under the provisions of the Energy Policy and Conservation Act (Pub. L. 94–163), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619) (together referred to as the Act), certain corporations in major energy consuming industries are required to report data on energy efficiency improvement and on recovered materials utilization to the Department of Energy (DOE). The regulations governing the identification of corporations required to report and establishing the reporting requirements are contained in Title 10 of the Code of Federal Regulations (C.F.R.), Part 445, entitled "Industrial Energy Conservation Program."

This booklet contains the form and instructions for reporting by identified corporations of data on energy efficiency improvements. Energy efficiency improvement data reported by identified corporations must include data aggregated from plant reports.

A separate booklet is provided for the use of corporations reporting data on recovered materials utilization. Recovered materials utilization data are to be reported by corporations which are identified within SIC codes 22, 26, 30, or 33. This booklet contains optional section C of the corporate reporting form and supplemental instruction for such reporting. Non-identified corporations are also encouraged to report on recovered materials utilization.

The data reported by the identified corporations will allow DOE to monitor the progress in energy efficiency improvement and the increased use of recovered materials by industry. DOE will, in turn, report that progress to the Congress and to the President as required by the Act.

Contents

Item

General Instructions
Section A, General Information
Part 1: Identification and Other Information
Part 2: Certification
Section B, Energy Consumption and Efficiency Improvement
Part 3: Energy Consumption Data
Part 4A: Energy Efficiency Improvement
Part 4B: Narrative Commentary

General Instructions

A. Who Must Submit This Form

Pursuant to section 375(b) of the Act, the chief executive officer (or individual designated by such officer) of each identified corporation is required to report annually on the progress the corporation has made in improving its energy efficiency in each major energy consuming industry within which the corporation is identified, including data aggregated from plant reports.

It is the obligation of each identified corporation to collect the appropriate plant reports for all its plants, including plants of corporations under the control (including joint and common control) of the identified corporation.

In addition, pursuant to Section 374 A(e) of the Act, the chief executive officer (or person designated by such officer) of each corporation identified within any of SIC codes 22, 26, 30 or 33, also is required to report annually on the progress the corporation has made to increase its utilization of recovered materials in each of these four industries within which the corporation is identified, with one exception. A corporation identified in SIC code 30 whose operations within that industry are contained solely in the industry sector classified by SIC code 3079, is not required to report on recovered materials utilization in that industry (10 CFR § 445.22d). Recovered materials utilization data is to be reported in Section C provided in the recovered material utilization supplementary booket.

These reports must be submitted either directly to DOE or, for an exempt corporation, to a sponsor of an adequate reporting program. The procedures for becoming an exempt corporation are contained in Title 10 C.F.R. Section 445.34. Identified corporations which are *not* exempt corporations must complete Form CS 189–C Sections A and B. Exempt corporations must complete either Form CS 189–C Sections A and B or an alternate corporate reporting form, which provides equivalent information to Form CS 189–C Sections A and B, together with the certification statement contained in Part 2 of Section A. Failure to report may result in criminal fines, civil penalties, or other sanctions as provided by law (10 CFR 207.7).

B. When To Submit This Form

Reports must be received by June 1, and must cover the period January 1 through December 31 of the preceding year. Where a corporation reports through a sponsor, the sponsor will require an earlier submission of this report to allow time for its own aggregation procedures; contact the sponsor for the exact date.

C. Where To Send This Form

Exempt corporation should submit completed forms to their sponsor. All other identified corporations must submit completed Form CS 189–C to: U.S. Department of Energy, Office of Industrial Programs, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Additional copies of the reporting form may be obtained from the above address. Respondents may make duplicates and reports made on such duplicates will be accepted by DOE.

D. Data Retention and Verification Requirements

Copies of data used by an identified corporation in preparing this report must be retained by the corporation for at least five years from the filing date and must be made available to DOE promptly upon request for verification.

All reports submitted by an exempt corporation to a sponsor under this program must be retained by the exempt corporation for at least five years from the filing date. Upon request for verification the reports must be made available promptly to DOE by the corporation.

E. Revision of Reports

If significant new information is received, or significant errors are found in the original report, corporations must submit a revised report with revisions noted to DOE (or to their sponsor). If a numerical revision will result in a number being changed by more than ten percent, it should be considered a significant change.

F. Confidentiality of Information

A corporation which believes that any information provided to DOE is a trade secret or commercial or financial information that is privileged or confidential within the meaning of the Freedom of Information Act (FOIA) exemption in 5 U.S.C. 552(b)(4), and that disclosure of this information would cause significant corporate competitive damage to it, must so inform DOE. Each corporation making such a claim shall submit with its report a detailed item-by-item explanation of whether the information is customarily treated as confidential by the corporation and the industry, and a detailed explanation of the anticipated competitive damage which would result from public disclosure. The handling of information contained in Form CS 189–C will be governed by DOE's Industrial Energy Conservation Program regulations, 10 CFR § 445.4.

G. Authority To Collect

The requirement that corporations provide this information is made pursuant to section 375 (a) and (b) of the Act; section 374(A)(e) of the Act; Section

376(b) of the Act; and sections 13(b) 5(b)(7) and 5(a)(3) of the Federal Energy Administration Act (15 U.S.C. 772 *et. seq.*).

H. Definitions

For the purposes of all sections of this form:

"Act"—the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619, 92 Stat. 3207).

"Adequate reporting program"—a reporting program which collects data from one or more corporations and which has been determined by DOE to be "adequate" for the purposes of the program, pursuant to 10 CFR Section 445.37.

"Btu"—British thermal unit.

"Chief Executive Officer"—within a corporation or a sponsor, the chief executive officer or other individual who is in charge of the corporation or sponsor.

"Commercial quality production"—the manufacture of products suitable for shipment and/or sale.

"Control"—the ability to direct or cause the direction of the management and policies of a corporation. Whether control is present involves a question of fact to be determined from such criteria as degree of ownership (especially of voting shares), contractual arrangements, and other means of influence, such as ability to appoint a majority of corporation's board of directors, whether by sufficient stock ownership or other means.

"Corporation"—a person as defined in Section 3(2)(B) of the Act (any corporation, company, association, firm, partnership, society, trust, joint venture or joint stock company) and includes any person which controls, is controlled by, or is under common control with such person.

"DOE"—the Department of Energy.

"Energy efficiency"—the amount of energy in Btu's consumed per unit of production.

"Energy source"—electricity, purchased steam, natural gas, bituminous coal, anthracite, coke, ethane, propane, LPG, natural gasoline, gasoline (including aviation), special naphtha, kerosene, distillate fuel oil (including diesel), still gas, petroleum coke, residual fuel oil, crude oil, and any other material consumerd as a fuel in manufacturing.

"Exempt Corporation"—an identified corporation which DOE determines, pursuant to 10 CFR § 445.37, is not required to report directly to DOE.

"Feedstock"—petroleum products, natural gas or coal used as a raw material which is processed to become a part of the chemical composition of a manufactured product other than an energy source.

"Identified corporation"—a corporation identified by DOE in accordance with 10 CFR § 445.15. A corporation is an identified corporation for the year in which it consumed, in accordance with 10 CFR § 445.13, at least one trillion Btu's.

"Major energy-consuming industry"—an industry listed in 10 CFR § 445.5(a). An industry is a major energy-consuming industry if it can be classified by one of the twenty 2-digit SIC codes within the manufacturing sector.

"Manufacturing"—the mechanical or chemical transformation of materials or substances into new products, as described on page 57 of the Office of Management and Budget Standard Industrial Classification Manual (1972).

"Plant"—an economic unit of a corporation at a single physical location where manufacturing is performed.

"Product"—an item or grouping of items (separate parts of, or all of a product line) that is the production of a manufacturing corporation that is classified within a major energy-consuming industry.

"Production"—the quantity of a corporation's product output, throughput, or activity.

"Program"—the Industrial Energy Conservation Program.

"Recovered materials"—any of the following energy-saving recovered materials: aluminum, copper, lead, zinc, iron, steel, paper and allied paper products, textiles, and rubber, recovered from solid wastes.

"Reference year"—1972 or 1978.

"SIC"—the Standard Industrial Classification system described in the Office of Management and Budget Standard Industrial Classification Manual (1972).

"Sponsor"—a trade association or other person who operates or intends to operate a reporting program which collects data from one or more corporations.

"United States"—each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

I. How To Use This Booklet

Remove the perforated report form (colored pages), and the worksheet behind the report form, from this booklet. This will allow you to follow the instructions as you fill out the form. Complete all entries by printing or typing. Part 4B requests respondents to provide a narrative commentary. Submit responses on supplemental sheets, and identify each such sheet with the following heading:

Corporate EIN _____ SIC _____ Reporting Year _____ Page ____ of ____ Pages

ENERGY EFFICIENCY IMPROVEMENT AND RECOVERED MATERIALS
UTILIZATION REPORT

CORPORATE REPORTING FORM
SUPPLEMENTAL SHEET

In addition, identify each line addressed, e.g. Line 3.12

Instructions for Section A

J. Submit only one Section A for all SIC codes being reported for both energy efficiency improvement and recovered materials utilization.

K. PART 1: Identification and Other Information

Enter the information requested.

L. Certification

All identified corporations must complete Part 2 of Form CS 189–C. If an exempt corporation is filing a report form other than CS 189–C, the signed certification should be attached to the form submitted.

This part must be completed each time this report is submitted or revised. Enter the name and title of the individual who has signed the certification and the date of the signature in the spaces provided. The individual who signs and certifies this form must be the chief executive officer of the identified corporation (or individual designed by such officer).

Instructions for Section B

M. Complete a separate set of Parts 3 and 4 for each 2-digit SIC code for which a corporation is reporting. Enter the corporate EIN, SIC code and reporting year on the top of each page of each set of forms.

N. PART 3: Energy Consumption Data

Provide energy consumption data for the current reporting period and the reference year for the listed energy sources from comparable entries in plant reports. Energy consumed by the corporation which applies across two-digit SIC codes should be allocated among the specific SIC codes by the corporation in a reasonable manner. Where energy is consumed in one SIC code for the purposes of manufacturing an end product in another SIC code and such energy cannot be separately identified, report the energy consumed in the SIC code of the end product.

Where a corporation controls a joint venture, that corporation shall include the energy consumed by the plants of the joint venture in its energy consumption. Where more than one corporation controls a joint venture, each controlling corporation shall include in its energy consumption an equal percentage of the energy consumed by the plants of the joint venture during the reporting year.

Where a corporation is under common control, each controlling corporation shall include in its energy consumption an equal percentage of the energy consumed by the plants of the corporation under common control.

Complete Part 3 of the form as follows:

Lines 1 through 15 On a separate page for each SIC code, enter in column A the total energy consumption data by energy source for all plants in your corporation during the current reporting period.

Enter the reference year in the heading of column B. The reference year is to be either 1972 or 1978; the selection between the two alternatives is to be made as follows.

1. Where corporations are to report in two-digit SIC codes for which energy efficiency targets have been set and;

(a) such corporations have or can develop reasonably reliable 1972 data, they shall use 1972 as the reference year, or

(b) such corporations do not have or can not develop reasonably reliable 1972 data they shall use 1978 as the reference year for each report.

2. Where corporations report in two-digit SIC codes for which targets have *not* been set, they shall use 1978 as the reference year for each report.

The reference year selected is then to be used through all portions of the report. The same reference year must be used in all plant reports in order to assure comparability of data.

Enter in column B the energy consumption data for the reference year comparable to that entered in column A.

Line 16 Compute the total energy consumption in billions of Btu's for both Columns A and B.

All Btu figures in this part should be rounded to the nearest tenth of a billion or one decimal place (e.g., 113.65 billion=113.7 billion).

O. Part 4A: Energy Efficiency Improvement

Perform energy efficiency improvement calculations for each identified two-digit industry in which a corporation is reporting. Develop this data on the worksheet for Part 4A: Corporate Energy Efficiency Data.

Use this worksheet to aggregate plant data. Note that worksheets must be retained by the identified corporation for verification.

Take the entries for the worksheets for corporate energy efficiency data directly from the plant reports as indicated. This procedure automatically limits the corporation's report to the plants that are in operation within the corporation during the reporting period. Enter the totals from columns B and C on lines 2 and 1 respectively of the corporate report. The entry on line 1 must agree with the entry in part 3 on line 16.

Energy Efficiency Improvement Calculation Enter on line 3 the performance improvement, rounded to one decimal place, calculated by the method shown on the form. In the event that the result is negative, the improvement figure will be preceded by a minus sign.

P. Part 4B: Narrative Commentary

Provide the information requested on separate sheets as indicated in instruction I.

BILLING CODE 6450-01-M

Energy Efficiency Improvement and Recovered Material Utilization Report
U.S. Department of Energy

OMB Approval
No. 38-R0291
Expires July 1981

CORPORATE REPORTING FORM

DOE FORM CS 189-C

REPORTING YEAR _____ PAGE 1 OF _____

THIS REPORT IS MANDATORY UNDER PUBLIC LAWS 95-619, 94-163 AND 93-275
FAILURE TO REPORT MAY RESULT IN CRIMINAL FINES, CIVIL PENALTIES, OR OTHER SANCTIONS AS PROVIDED BY LAW
SEE GENERAL INSTRUCTION F ON CONFIDENTIALITY OF INFORMATION

SECTION A: GENERAL INFORMATION

Part 1: Identification and Other Information

A. What is the name and address of your corporation? _____

_____

_____

_____

If any of the above information has changed since your last report, enter previous information below

_____

_____

_____

B. Enter corporate Employer Identification Number (EIN) as used for reporting to the Internal Revenue Service

☐☐☐☐☐☐☐☐☐

C. Who are the contact persons

1. For Energy Data: Name _____
   Title _____
   Telephone No. _____
2. For Recovered Materials Data (if different from 1)
   Name _____
   Title _____
   Telephone _____

D. Enter X if this is a revised report. ☐

Part 2: Certification

I certify that data on energy efficiency improvement in this report is prepared with data aggregated from the plant reports of each of the plants of this corporation, as required in Title 10 of the Code of Federal Regulations (C.F.R.)§445.21.

I certify the information herein and appended hereto is true, accurate and complete to the best of my knowledge.

Name _____ Title _____

Signature _____ Date _____

Title 18 USC 1001 makes it a criminal offense for any person knowingly and willfully to make to any Agency or Department of the United States any false, fictitious or fraudulent statements as to any matter within its jurisdiction.

Energy Efficiency Improvement and Recovered Material Utilization Report
U.S. Department of Energy

CORPORATE REPORTING FORM

DOE FORM CS 189-C

CORPORATE EIN _____ **SIC** _____ **REPORTING YEAR** _____ **PAGE** _____ **OF** _____

SECTION B: ENERGY CONSUMPTION AND EFFICIENCY IMPROVEMENT

Part 3

A. Energy Consumption Data

For Each Energy Type Below, Enter The Consumption Data Requested	(A) Current Reporting Period Consumption (Billion Btus)	(B) Reference Year (_____) Consumption (Billion Btus)
1. Electricity		
2. Natural gas		
3. Propane		
4. LPG		
5. Bituminous coal		
6. Anthracite coal		
7. Coke		
8. Gasoline		
9. Distillate fuel oil		
10. Residual fuel oil		
11. Petroleum coke		
12. Purchased steam		
13. Other (specify _____)		
14. Other (specify _____)		
15. Other (specify _____)		
16. TOTAL ENERGY CONSUMPTION		

Part 4

A. Energy Efficiency Improvement

1. Energy consumption during current reporting period (enter from Worksheet Col. C) _____ Billions of Btu
2. Calculated consumption based on reference year energy efficiency (enter from Worksheet Col. B) _____ Billions of Btu
3. Energy efficiency improvement relative to the reference year

$$\frac{(\text{line 2}) - (\text{line 1})}{(\text{line 2})} \times 100 = \text{_____ \%}$$

B. Narrative Commentary

Provide the information requested below on separate sheet(s), as indicated on the instructions to this form.

1. What significant energy conservation measures have been adopted in this reporting period and have contributed to the improvement shown on line 3 above?
2. Signify by checking the appropriate box the effect each of the following factors had on your energy use when compared to your reference year use:

	(1) Increase	(2) Decrease	(3) Unknown
a. Capacity Utilization	☐	☐	☐
b. Fuel Switching	☐	☐	☐
c. Governmental Regulations	☐	☐	☐
d. Product Mix	☐	☐	☐
e. Product Quality	☐	☐	☐
f. Raw Material & Feedstock Changes	☐	☐	☐
g. Weather	☐	☐	☐
h. Other—Specify _____	☐	☐	☐

3. Provide any other comments desired.

Energy Efficiency Improvement and Recovered Material Utilization Report
U.S. Department of Energy

CORPORATION REPORTING FORM

CORPORATE EIN _____ SIC _____ REPORTING YEAR _____

WORKSHEET FOR PART 4A: CORPORATE ENERGY EFFICIENCY DATA

Col. A	Col. B	Col. C
Plants	Calculated Consumption Based on Reference Year (_____) Efficiency (Plant Report Part 4, Line 2)	Current Consumption (Plant Report Part 4, Line 1)

TOTALS [ ] [ ]

Enter on Line 2

Enter on Line 1
Check with Part 3, Line 16

BILLING CODE 6450-01-C

Industrial Energy Conservation Program for Energy Efficiency Improvement and Recovered Materials Utilization; Supplementary Booklet for Recovered Materials Utilization Reporting Containing Section C of Corporate Reporting Form CS 189–C and Instructions—Supplemental Instructions

A. Purpose of This Booklet

This booklet supplements the information on corporate reporting with regard to the use of Section C of Form CS 189–C for reporting recovered materials utilization data.

B. Who Must Submit Section C of Form CS 189–C

Pursuant to Section 374 A(e) of the Act, the chief executive officer (or individual designated by such officer) of each corporation identified within any of SIC codes 22, 26, 30 or 33, is required to report annually on the progress the corporation has made to increase its utilization of recovered materials in each of these four industries, with one exception. As pointed out in General Instruction A, a corporation identified in SIC code 30 whose operations within that industry are contained solely in the industry sector classified by SIC code 3079, is not required to report on recovered materials utilization in that industry (10 CFR 445.22d).

These reports are to accompany the energy efficiency improvement reports also required of such identified corporations.

Section C Form CS 189–C is filed together with Sections A and B of the Form in accordance with the general instructions accompanying those Sections.

C. Definitions Pertaining Specifically to Recovered Materials Utilization Reporting

"Manufacturing operation"—the mechanical or chemical transformation of materials or substances into a product classified within SIC codes 22, 26, 30, or 33; which is measured in a single unit of production. Manufacturing operations include, but are not limited to, the production of iron, steel, aluminum, copper, lead, zinc, wood pulp, paper, spun textile goods, woven textile goods, felt textile goods, non woven textile goods, tires and tire products, rubber footwear, and industrial rubber products.

"Obsolete scrap"—recovered materials created by the use and subsequent discard of a product. Examples are discarded tires, automobiles, and newspapers. This includes recovered materials from outside the United States which are used in manufacturing operations in the United States.

"Prompt industrial scrap"—recovered materials generated by an industrial process and used as input to a manufacturing operation other than the industrial process which generated it. An example is metal fabrication stamping waste which is used in manufacturing steel. This includes recovered materials from outside the United States which are used in manufacturing operations in the United States.

"Recovered materials"—any of the following energy-saving recovered materials: aluminum, copper, lead, zinc, iron, steel, paper and allied paper products, textiles and rubber, recovered from solid waste.

"Waste"—any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining, and agricultural operations, and from community activities; but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation flows, or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

Instructions for Section C

D. Corporations identified in any of SIC codes 22, 26, 30, or 33, which are filing Form CS 189–C, must complete a separate Section C for each manufacturing operation performed in each of these industries in which the corporation is identified. Enter the corporate EIN, SIC code and reporting year on the top of each page.

E. Part 5: Current Use of Recovered Materials

Provide the following information.

Line 1. Enter the manufacturing operation performed within the SIC code during the year indicated.

Line 2. For each manufacturing operation identify the physical unit in which production is measured (e.g., tons of product or pounds of input materials).

Line 3. For each manufacturing operation list the amount of production within the United States for the reporting period.

Line 4. For each manufacturing operation list the amount of virgin materials used within the United States for the reporting period.

Line 5. Identify the types of recovered materials utilized in the manufacturing operation using as many columns as necessary. In SIC 26, wood waste may be included as a recovered material but must be listed separately. Only recovered materials which have the effect of reducing the amount of virgin material required by a manufacturing operation are to be included. For example, waste rubber used to manufacture carbon black should be included; while waste paper or rubber which is burned for its energy content should not be included. Complete lines 6 and 7 for each recovered material listed on line 5.

Line 6 and 7 are self-explanatory. The quantities should be reported in units which are consistent with the units of production reported on line 2.

BILLING CODE 6450-01-M

Energy Efficiency Improvement and Recovered Material Utilization Report
U.S. Department of Energy

CORPORATION REPORTING FORM

DOE FORM CS 189-C

CORPORATE EIN _____ **SIC** _____ **REPORTING YEAR** _____ **PAGE** _____ **OF** _____

SECTION C: RECOVERED MATERIALS UTILIZATION*

Part 5

A. Current Use of Recovered Materials

1. Enter the manufacturing operation performed for the SIC and year indicated above. _____

2. What was the unit of production in this operation? _____

3. What was the amount of production in this operation? _____

4. How much virgin material was used in this operation? _____

	(A)	(B)	(C)
5. What recovered materials were used in this operation?			
6. How much of each recovered material was prompt industrial scrap?			
7. How much of each recovered material was obsolete scrap?			

*For use by Corporations identified in SIC Codes 22, 26, 30, and 33.

BILLING CODE 6450-01-C

Appendix III.—Industrial Energy Conservation Program for Energy Efficiency Improvement and Recovered Materials Utilization; Sponsor Reporting Form CS 189–S, Sections A and B, and Instructions

Under the provisions of the Energy Policy and Conservation Act (Pub. L. 94–163), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619) (together referred to as the Act), certain corporations in major energy consuming industries are required to report data on energy efficiency improvement and on recovered materials utilization to the Department of Energy (DOE). The regulations governing the identification of corporations required to report and establishing the reporting requirements are contained in Title 10 of the Code of Federal Regulations (CFR), Part 445, entitled "Industrial Energy Conservation Program." These regulations provide for reporting to DOE by approved third-party sponsors.

This booklet contains the form and instructions for sponsors to report the data submitted by participating corporations. The sponsor report must be submitted on either DOE Form CS 189–S, included in this booklet, or on a sponsor reporting form supplied by the sponsor to DOE in its submission under 10 CFR 445.36, accompanied by the certification in Part 2 of Form CS 189–S.

A separate booklet is provided for sponsors reporting data on recovered materials utilization. This booklet contains Section C of the sponsor reporting form and supplemental instructions for such reporting. Recovered materials utilization data are to be reported by sponsors which are reporting within SIC codes 22, 26, 30 or 33.Non-identified corporations are also encouraged to report on recovered materials utilization.

Sponsors are encouraged to use Form CS 189–S also to report compatible data from non-identified corporations participating in their voluntary reporting programs. Information from such corporations may be aggregated with information submitted by identified corporations as the instructions for Form CS 189–S provide.

The data reported by corporations directly and by corporations through sponsors will allow DOE to monitor the progress in energy efficiency improvement and the increased use of recovered materials by industry. DOE will, in turn, report that progress to the Congress and to the President as required by the Act.

Contents

Item

General Instructions
Section A: General Information
Part 1A: Sponsor Identification and Other Information
Part 1B: Listing of Participating Corporations and Other Information
Part 2: Certification
Section B: Energy Consumption and Efficiency Improvement
Part 3: Energy Consumption Data
Part 4A: Energy Efficiency Improvement
Part 4B: Narrative Commentary

General Instructions

A. Who Must Submit This Form

Pursuant to Section 374A(e), 375(a) and 376(g) of the Act, the chief executive officer (or individual designated by such officer) of each sponsor of an adequate reporting program is required to report annually as follows:

(1) On the progress the corporations which participate in the sponsors program have made in improving their energy efficiency; and

(2) For each of SIC codes 22, 26, 30 and 33, on the progress the corporations which participate in the program have made in increasing their utilization of recovered materials. However, as pointed out in the corporate reporting form, a corporation identified in SIC code 30 with operations solely within SIC 3079 need not report on its utilization of recovered materials in that industry.

This report must be submitted by sponsors to DOE on either DOE Form, CS 189–S (Section A and B included in this booklet; Section C is included in the recovered materials booklet for sponsors) or on a sponsor reporting form, supplied by the sponsor to DOE in its submission under 10 C.F.R. Section 445.35, accompanied by the certification in Part 2 of Form CS 189–S. Failure to report may result in criminal fines, civil penalties, or other sanctions as provided by law (10 CFR 207.7).

B. When To Submit This Form

Reports, must be received by DOE by June 1, and must cover the period January 1 through December 31 of the preceding year.

C. Where To Send This Form

Sponsors should submit completed forms to: U.S. Department of Energy, Office of Industrial Programs, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Additional copies of the reporting form may be obtained from the above address or respondents may duplicate the form.

D. Data Retention and Verification Requirements

Reports, worksheets and any other data required for verification, other than corporate reports, used in preparing reports submitted to DOE by a sponsor under 10 CFR 445.23 must be retained by the sponsor for at least five years from the filing date and must be made available to DOE promptly upon request for verification.

E. Revision of Reports

If significant information is received or significant errors are found in the original report, sponsors must submit a revised form to DOE with revisions noted. If a numerical revision will result in a number being changed by more than ten percent, it should be considered a significant change.

F. Confidentiality of Information

The handling of information contained in Form CS 189–S will be governed by DOE's Industrial Energy Conservation Program regulations, 10 CFR 445.4.

G. Authority To Collect

The requirement that sponsors provide this information is made pursuant to section 374A(e), 375(a) and 376(g) of the Act; section 376(b) of the Act; and sections 13(b), 5(b)(7) and 5(a)(3) of the Federal Energy Administration Act (15 U.S.C. 772 *et. seq.*).

H. Definitions

For the purposes of all Sections of this form:

"Act"—the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619, 92 Stat. 3207).

"Adequate reporting program"—a reporting program which collects data from one or more corporations and which has been determined by DOE to be "adequate" for the purposes of the program, pursuant to 10 CFR 445.37.

"Btu"—British thermal unit.

"Chief Executive Officer"—within a corporation or a sponsor, the chief executive officer or other individual who is in charge of the corporation or sponsor.

"Commercial quality production"—the manufacture of products suitable for shipment and/or sale.

"Corporation"—a person as defined in Section 3(2)(B) of the Act (any corporation, company, association, firm, partnership, society, trust, joint venture or joint stock company) and includes any person which controls, is controlled by, or is under common control with such person.

"DOE"—the Department of Energy.

"Energy efficiency"—the amount of energy in Btu's consumed per unit of production.

"Energy source"—Electricity, purchased steam, natural gas, bituminous coal, anthracite, coke, ethane, propane, LPG, natural gasoline, gasoline (including aviation), special naphtha, kerosene, distillate fuel oil (including diesel), still gas, petroleum coke, residual fuel oil, crude oil, and any other material consumed as a fuel in manufacturing.

"Exempt corporation"—an identified corporation which DOE determines, pursuant to 10 CFR 445.37, is not required to report directly to DOE.

"Feedstock"—petroleum products, natural gas or coal used as a raw material which is processed to become a part of the chemical composition of a manufactured product other than a energy source.

"Identified corporation"—a corporation identified by DOE in accordance with 10 CFR 445.15. A corporation is an identified corporation for the year in which it consumed, in accordance with 10 CFR 445.13, at least one trillion Btu's.

"Major energy-consuming industry"—an industry listed in 10 CFR 445.5(a). An industry is a major energy-consuming industry if it can be classified by one of the twenty 2-digit SIC codes within the manufacturing sector.

"Manufacturing"—the technical or chemical transformation of materials or substances into new products, as described on page 57 of the Office of Management and Budget Standard Industrial Classification Manual (1972).

"Plant"—an economic unit of a corporation at a single physical location where manufacturing is performed.

"Product"—an item or grouping of items (separate parts of, or all of a product line) that is the production of a manufacturing corporation that is classified within a major energy-consuming industry.

"Production"—the quantity of a corporation's product output, throughput, or activity.

"Program"—the Industrial Energy Conservation Program.

"Recovered materials"—any of the following energy-saving recovered materials: aluminum, copper, lead, zinc, iron, steel, paper and allied paper products, textiles, and rubber, recovered from solid waste.

"Reference year"—1972 or 1978.

"SIC"—the Standard Industrial Classification system described in the Office of Management and Budget Standard Industrial Classification Manual (1972).

"Sponsor"—a trade association or other person who operates or intends to operate a reporting program which collects data from one or more corporations.

"United States"—each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

I. Aggregation of Corporate Reports

Sponsor must aggregate the reports of the corporations participating in their reporting program. In the case of energy consumption data reported, for example, in *Part 3*, the data reported by the sponsors are to be derived directly from corporate reports by summing comparable entries in the corporate reporting Form CS 189–C. For the aggregation of corporate responses to the narrative commentaries in Part 4B, the following guidelines are provided.

In question 1 of Part 4B, a sponsor should categorize responses and report the total number of corporations reporting in each category. A sponsor could choose to list the responses on the basis of "types" of measures (e.g., heat recovery systems, improved maintenance measures, better combustion control, etc.) and thus provide the total number of measures reported by the corporations in each category. Sponsors should include a description of their rationale with the aggregated narrative data. Where no aggregation is deemed possible, the sponsor must report all responses received from participating corporations, deleting any material identifying specific corporations.

In question 2 of Part 4B, a sponsor should simply numerically aggregate all corporate responses for each factor category and denote the total number of responses in each; e.g.,

	Increased	Decreased	Unknown
Weather	[15]	[7]	[20]

Finally, sponsors are encouraged to add their own comments in order to assist in the interpretation of the data reported in Form CS 189–S.

J. How To Use This Booklet

Remove the perforated report form (colored pages), and the worksheet behind the report form from this booklet. This will allow you to follow the instructions as you fill out the form. Complete all entries by printing or typing. Part 4B requests respondents to provide a narrative commentary. Submit responses on supplemental sheets and identify each such sheet with the following heading:

Sponsor_____SIC_____Reporting Year_____Page_____of_____Pages

ENERGY EFFICIENCY IMPROVEMENT AND RECOVERED MATERIALS
UTILIZATION REPORT

SPONSOR REPORTING FORM
SUPPLEMENTAL SHEET

Instructions for Section A

K. Submit only one Section A for all SIC codes being reported for both energy efficiency improvement and recovered materials utilization.

L. Part 1A: Sponsor Identification and Other Information

Enter the information requested.

M. Part 1B: Listing of Participating Corporations and Other Information

Enter the required information from the corporate reports using a supplementary sheet(s).

N. Part 2: Certification

This part must be completed each time this report is submitted or revised. Enter the name and title of the individual who has signed the certification and the date of the signature in the spaces provided. The individual who signs and certifies this form must be the sponsor's chief executive officer (or person designated by such officer).

Instructions for Section B

O. Complete a separate set of Parts 3 and 4 for each two-digit SIC code covered by the sponsor's reporting program. Enter the sponsor's name, SIC code and reporting year on the top of each page of each set of forms. Use supplemental sheet if necessary (see instruction J).

P. Part 3: Energy Consumption Data

Aggregate energy consumption data on separate pages for each two-digit SIC code, from comparable entries by energy sources on the corporate reports.

Lines 1 through 15 For corporations using 1972 as a reference year, enter in column A aggregated energy consumption data for the current reporting period. Enter in column B the energy consumption data for 1972.

For corporations using 1978 as a reference year, enter the appropriate data in columns C and D.

Line 16 Enter the total energy consumption for each column.

Q. Part 4A: Energy Efficiency Improvement

Perform energy efficiency improvement calculations for each identified two-digit industry in which a sponsor is reporting. The worksheet for Part 4A: Energy Efficiency Data may be used to aggregate corporate data. Completed worksheets must be retained by the sponsor for verification. Corporate names may be coded to preserve confidentiality if the sponsor desires.

Separate worksheets and calculations must be completed for corporations using 1972 as the reference year as well as for corporations using 1978 as the reference year.

The entries for the sponsors worksheets are derived directly from the corporate reporting forms. From each worksheet enter the totals from columns B and C on lines 2 and 1, respectively, of the sponsors reporting form. The entry on line 1 must agree with the entry in Part 3 line 16.

Energy Efficiency Improvement Calculation. Enter on line 3 the performance improvement, rounded to one decimal place, of the aggregate of corporations in your program for each two-digit SIC code for each reference year calculated by the method shown on the form. In the event the result is negative, the improvement figure will be preceded by a minus sign.

R. Part 4B: Narrative Commentary

Provide the information requested on separate sheets as indicated in instruction J (see also instruction I).

BILLING CODE 6450-01-M

OMB Approval
No. 38-R0450
Expires July 1981

Energy Efficiency Improvement and Recovered Material Utilization Report
U.S. Department of Energy

SPONSOR REPORTING FORM

DOE FORM CS-189-S

REPORTING YEAR _____ **PAGE 1 OF** _____

THIS REPORT IS MANDATORY UNDER PUBLIC LAWS 95-619, 94-163 AND 93-275.
FAILURE TO REPORT MAY RESULT IN CRIMINAL FINES, CIVIL PENALTIES, OR OTHER SANCTIONS AS PROVIDED BY LAW
SEE GENERAL INSTRUCTION F ON CONFIDENTIALITY OF INFORMATION

SECTION A: GENERAL INFORMATION

Part 1

A. Sponsor Identification and Other Information

1. What is the name and address of your organization? _____

_____

_____

_____

If any of the above information has changed since your last report, enter previous information below:

_____

_____

_____

2. Who are the contact persons

a. For Energy Data: Name _____
Title _____
Telephone No _____

b. For Recovered Materials Data (if different from a):
Name _____
Title _____
Telephone _____

3. Enter "X" if this is a revised report. ☐

B. Listing of Participating Corporations and Other Information

1. Enter on a separate page a list of each corporation, its Employer Identification Number (EIN), and the SIC codes included in this report in the format below. Enter "X" under each SIC code in which the corporation is reporting on its energy efficiency improvement and under each SIC code it is reporting on its recovered materials utilization, if applicable.

Corporation Name	EIN	SIC Codes					Recovered Materials			
		___	___	___	___	___	22	26	30	33
		___	___	___	___	___	___	___	___	___
		___	___	___	___	___	___	___	___	___

Part 2: Certification

I certify that this report is prepared from reports received from the corporations listed and meets the requirements of 10 C.F.R. §445.23

I further certify the information herein and appended hereto is true, accurate and complete to the best of my knowledge.

Name: _____ Title: _____
Signature: _____ Date: _____

Title 18 USC 1001 makes it a criminal offense for any person knowingly and willfully to make to any Agency or Department of the United States any false, fictitious or fraudulent statements as to any matter within its jurisdiction.

Energy Efficiency Improvement and Recovered Material Utilization Report
U.S. Department of Energy

SPONSOR REPORTING FORM

DOE FORM CS 189-S

SPONSOR _____ SIC _____ REPORTING YEAR _____ PAGE _____ OF _____

SECTION B: ENERGY CONSUMPTION AND EFFICIENCY IMPROVEMENT

Part 3

A. Energy Consumption Data

For Each Energy Source Below, Enter The Consumption Data Requested	For Corporations Using 1972 as the Reference Year		For Corporations Using 1978 as the Reference Year	
	(A) Current Reporting Period Consumption (Billion Btus)	(B) 1972 Consumption (Billion Btus)	(C) Current Reporting Period Consumption (Billion Btus)	(D) 1978 Consumption (Billion Btus)
1. Electricity				
2. Natural gas				
3. Propane				
4. LPG				
5. Bituminous coal				
6. Anthracite coal				
7. Coke				
8. Gasoline				
9. Distillate fuel oil				
10. Residual fuel oil				
11. Petroleum coke				
12. Purchased steam				
13. Other (specify)				
14. Other (specify)				
15. Other (specify)				
16. TOTAL ENERGY CONSUMPTION				

Part 4

A. Energy Efficiency Improvement

	For Corporations Using 1972 as the Reference Year	For Corporations Using 1978 as the Reference Year
1. Energy consumption during current reporting period (enter from Worksheet Col. C)	_____ Billions of Btu	_____
2. Calculated consumption based on reference year energy efficiency (enter from Worksheet Col. B)	_____ Billions of Btu	_____
3. Energy efficiency improvement relative to reference year $\frac{(\text{line 2}) - (\text{line 1}) \times 100}{(\text{line 2})}$	_____ %	_____ %

Energy Efficiency Improvement and Recovered Material Utilization Report
U.S. Department of Energy

SPONSOR REPORTING FORM

DOE FORM CS 189-S

SPONSOR _____ **SIC** _____ **REPORTING YEAR** _____ **PAGE** _____ **OF** _____

B. Narrative Commentary

Provide the information requested below on separate sheet(s), as indicated on the instructions to this form.

1. What significant energy conservation measures have been adopted in this reporting period and have contributed to the improvement shown on line 3 above?

2. Signify the aggregate effect each of the following factors had on your respondents' energy use when compared to their reference year use:

	(1) Increase	(2) Decrease	(3) Unknown
a. Capacity Utilization	☐	☐	☐
b. Fuel Switching	☐	☐	☐
c. Governmental Regulations	☐	☐	☐
d. Product Mix	☐	☐	☐
e. Product Quality	☐	☐	☐
f. Raw Material & Feedstock Changes	☐	☐	☐
g. Weather	☐	☐	☐
h. Other—Specify _____	☐	☐	☐

3. Provide any other comments desired.

Energy Efficiency Improvement and Recovered Material Utilization Report
U.S. Department of Energy

SPONSOR REPORTING FORM

SPONSOR _____ SIC _____ REPORTING YEAR _____

WORKSHEET FOR PART 4A: ENERGY EFFICIENCY DATA

Col. A	Col. B	Col. C
Corporations Included in the Sponsor's Program	Calculated Consumption Based on Reference Year (_____) Efficiency (Corporate Report Part 4, Line 2)	Current Consumption (Corporate Report Part 4, Line 1)
TOTALS		

Enter on Line 2

Enter on Line 1
Check with Part 3, Line 16

BILLING CODE 6450-01-C

Industrial Energy Conservation Program for Energy Efficiency Improvement and Recovered Materials Utilization; Supplementary Booklet for Recovered Materials Utilization Reporting Containing Section C of Sponsor Reporting Form CS 189–S and Instructions—Supplemental Instructions

A. Purpose of This Booklet

This booklet supplements the information on sponsor reporting with regard to the use of Section C of Form CS 189–S for reporting recovered materials utilization data.

B. Who Must Submit Section C of Form CS 189–S

Pursuant to Section 374A(e), 375(a) and 376(g) of the Act, the chief executive officer (or individual designated by such officer) of each sponsor of an adequate reporting program is required to report annually for each of SIC codes 22, 26, 30 and 33, on the progress the corporations have made to increase their utilization of recovered materials with one exception. As stated in General Instruction A, a corporation identified in SIC code 30 with operations solely within SIC code 3079 need not report on its utilization of recovered materials in that industry.

Section C of Form CS 189–S is filed together with Sections A and B of the Form in accordance with the general instructions accompanying those Sections.

C. Definitions Pertaining Specifically to Recovered Materials Utilization Reporting

"*Manufacturing operation*"—the mechanical or chemical transformation of materials or substances into a product classified within SIC codes 22, 26, 30, or 33; which is measured in a single unit of production. Manufacturing operations include, but are not limited to, the production of iron, steel, aluminum, copper, lead, zinc, wood pulp, paper, spun textile goods, woven textile goods, felt textile goods, non woven textile goods, tires and tire products, rubber footwear, and industrial rubber products.

"*Obsolete scrap*"—recovered materials created by the use and subsequent discard of a product. Examples are discarded tires, automobiles, and newspapers. This includes recovered materials from outside the United States which are used in manufacturing operations in the United States.

"*Prompt industrial scrap*"—recovered materials generated by an industrial process and used as input to a manufacturing operation other than the industrial process which generated it. An example is metal fabrication stamping waste which is used in manufacturing steel. This includes recovered materials from outside the United States which are used in manufacturing operations in the United States.

"*Recovered materials*"—any of the following energy-saving recovered materials: aluminum, copper, lead, zinc, iron, steel, paper and allied paper products, textiles and rubber, recovered from solid waste.

"*Waste*"—any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining, and agricultural operations, and from community activities; but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation flows, or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

Instructions for Section C

D. Sponsors of programs in any of SIC codes 22, 26, 30, or 33, must complete a separate Section C for each of the manufacturing operations reported by its participating corporations. Enter sponsor name, SIC code and reporting year on top of each page. If Section C of corporate form CS 189–C was completed, the information reported will correspond directly with that requested in this Part.

E. Part 5: Current Use of Recovered Materials

Provide the following information aggregated from corporate reports.

Line 1. Enter the manufacturing operation performed within the SIC code during the year indicated.

Line 2. For each manufacturing operation identify the physical unit in which production is measured (e.g., tons of product or pounds of input materials).

Line 3. For each manufacturing operation aggregate the amount of production for the reporting period from the corporate reports.

Line 4. For each manufacturing operation aggregate the amount of virgin material used for the reporting period from the corporate reports.

Line 5. Aggregate from the corporate reports the types of recovered materials utilized in the manufacturing operation using as many columns as necessary. Complete lines 6 and 7 for each recovered material listed on line 5.

Lines 6 and 7 are self-explanatory. Aggregated from the corporate reports, the quantities should be reported in units which are consistent with the units of production reported on line 2.

BILLING CODE 6450-01-M

Energy Efficiency Improvement and Recovered Material Utilization Report
U.S. Department of Energy

SPONSOR REPORTING FORM

DOE FORM CS 189-S

SPONSOR _____ SIC _____ REPORTING YEAR _____ PAGE _____ OF _____

SECTION C: RECOVERED MATERIALS UTILIZATION

Part 5

A. Current Use of Recovered Materials

1. Enter the manufacturing operation performed for the SIC and year indicated above. _____

2. What was the unit of production in this operation? _____

3. What was the amount of production in this operation? _____

4. How much virgin material was used in this operation? _____

	(a)	(b)	(c)
5. What recovered materials were used in this operation?			
6. How much of each recovered material was prompt industrial scrap?			
7. How much of each recovered material was obsolete scrap?			

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Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Conditional Approval of the Texas Proposed Permanent Regulatory Program

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Conditional Approval of the Permanent Program; Submission from the State of Texas Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final Rule; Conditional Approval of the Texas Proposed Permanent Regulatory Program.

SUMMARY: On July 20, 1979, the State of Texas submitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 ("SMCRA"). The purpose of the submission is to demonstrate the State's intent and the capability to administer and enforce the provisions of "SMCRA" and permanent regulatory program regulations, 30 CFR Chapter VII. After opportunity for public comment and thorough review of the program submission, the Secretary of the Interior has determined that the Texas program meets the minimum requirements of SMCRA and the Federal permanent program regulations, except for minor deficiencies discussed below under "Supplementary Information". Accordingly, the Secretary of the Interior has conditionally approved the Texas program. A new Part 943 is being added to Title 30 of the Code of Federal Regulations to reflect this conditional approval.

EFFECTIVE DATE: This conditional approval is effective February 16, 1980 and will terminate on June 15, 1980 unless the deficiencies identified in 30 CFR 943.11, adopted below, have been corrected before that date.

FOR FURTHER INFORMATION CONTACT: Mr. Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone (202) 343–4225.

ADDRESSES: Copies of the Texas program and the administrative record on the Texas program, including the letter from the Texas Railroad Commission agreeing to correct the deficiency which resulted in the conditional approval, are available for public inspection and copying during business hours at:

Texas Railroad Commission, Surface Mining and Reclamation Division, Field Office, Suite 125, 1121 East SW Loop 323, Tyler, Texas 75703.

Texas Railroad Commission, Surface Mining and Reclamation Division, Field Office, Shank Office Building, 1419 3rd Street, Floresville, Texas 78114.

The Office of Surface Mining Reclamation and Enforcement, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106, Telephone (816) 374–3920.

Office of Surface Mining, Room 135, Interior South Building, 1951 Constitution Avenue, Washington, D.C. 20240, Telephone (202) 343–4728.

SUPPLEMENTARY INFORMATION:

General Background on the Permanent Program

The environmental protection provisions of SMCRA are being enacted in two phases—the initial program and the permanent program—in accordance with Sections 501–503 of SMCRA. 30 U.S.C. 1251–1253. The initial program has been in effect since December 13, 1977, when the Secretary of the Interior promulgated interim program rules, 30 CFR Parts 710–725 and 795, 42 FR 62639.

The permanent program will become effective in each State upon the approval of a State program by the Secretary of the Interior or implementation of a Federal program within the State. If a State program is approved, the State will be the primary regulator of activities subject to SMCRA, rather than the Federal government.

The Federal rules for the permanent program, including procedures for States to follow in submitting State programs, and minimum standards and procedures the State programs must include to be eligible for approval, are found in 30 CFR Parts 700–707 and 730–865. Part 705 was published October 20, 1977 (42 FR 56064). Parts 795 and 865 (originally Part 860) were published December 13, 1977 (42 FR 62639). The other permanent program regulations were published at 44 FR 15385–15393 (March 13, 1979). Corrections were published at 44 FR 15485 (March 14, 1979), 44 FR 49673–49687 (August 24, 1979), 44 FR 53507–53509 (September 14, 1979) and 44 FR 66195 (November 19, 1979). Amendments to the rules have been published at 44 FR 60969 (October 22, 1979), as corrected at 44 FR 75143 (December 19, 1979), at 44 FR 75302 (December 19, 1979), 44 FR 77440–77447 (December 31, 1979) and 45 FR 2626–2629 (January 11, 1980). Portions of these rules have been suspended, pending further rulemaking. See 44 FR 67942 (November 27, 1979), 44 FR 77447–77454 (December 31, 1979) and 44 FR 77454–77455 (December 31, 1979).

General Background on State Program Approval Process

Any State wishing to assume primary jurisdiction for the regulation of coal mining under SMCRA may submit a program for consideration. The Secretary of the Interior has the responsibility to approve or disapprove the submission.

The Federal rules governing State program submissions are found at 30 CFR Parts 730–732. After review of the submission by OSM and other agnecies, opportunity for the State to make additions or modifications to the program, and opportunity for public comment, the Secretary may either approve the program unconditionally, approve it conditioned upon minor deficiencies being corrected in accordance with a timetable set by the Secretary, or disapprove the program in whole or in part. If the program is disapproved, the State may submit a revision of the program to correct the items which needed change to meet the requirement of SMCRA and the applicable Federal regulations. If this revised program is also disapproved, the SMCRA requires the Secretary of the Interior to establish a Federal program in that State. The State may again request approval to assume primary jurisdiction after the Federal program is implemented.

The Secretary, in reviewing State programs, is complying with the provisions of Section 503 of SMCRA, 30 U.S.C. 1253, and 30 CFR 732.15. With respect to the Texas program, the Secretary has used as criteria the Federal rules as corrected, amended, and suspended in the Federal Register notices cited above under "General Background on the Permanent Program."

State programs must contain provisions which regulate coal mining in accordance with the requirements of the Federal Surface Mining Act and consistent with the Secretary's regulations. The requirements under SMCRA and 30 CFR Chapter VII for special bituminous coal mines in Wyoming and anthracite mines in Pennsylvania are inapplicable in Texas.

With respect to suspended regulations, the following standards are being applied in reviewing State program submissions:

1. A State program need not contain provisions to implement a suspended regulation and no State program will be disapproved for failure to contain a suspended regulation.

2. A State program must be able to implement all provisions in the Surface Mining Act which are part of the regulation of coal mining during the

permanent program, including those provisions of the Surface Mining Act upon which the suspended regulations were based.

3. A State program may not contain any provision which is inconsistent with a provision of the Surface Mining Act. A State program may not include provisions implementing a suspended regulation if that regulation was suspended because it was inconsistent with the Surface Mining Act. There were two such suspensions, relating to 30 CFR 805.13(d) and 808.12(c). Although the Texas submission contained both these provisions, they have been repealed by operation of the provision on page I–44 of the Texas submission, which automatically repeals provisions of the Texas program which correspond to sections of the Federal rules which may be deleted.

4. Subject to public comment and agency analysis in the context of a particular State program, it would appear that any other suspended provisions, if included in a State program, could probably be characterized as more stringent than the Secretary's remaining rules. Accordingly, its inclusion in the State program could not ordinarily be grounds for disapproval under Section 503 of the Surface Mining Act, 30 U.S.C. 1253. Alternatively, a State may delete or suspend its corresponding regulation so long as standard 2 was met.

5. Upon promulgation of new regulations to replace those which have been suspended, the Secretary will afford States which do not have approved programs a reasonable opportunity to amend their programs, as appropriate. In general, we expect that the provisions of 30 CFR 732.17 will govern this process for States with approved programs.

To codify decisions on State programs, Federal programs, and other matters affecting individual States, OSM has established a new Subchapter T of 30 CFR Chapter VII. Subchapter T will consist of Parts 900 through 950. Provisions relating to Texas will be found in 30 CFR Part 943.

Background on the Texas Program Submission

On July 20, 1979, OSM received a proposed regulatory program from the State of Texas. The program was submitted by the Texas Railroad Commission, the agency which will be the primary regulatory authority under the Texas permanent program. Notice of receipt of the submission initiating the program review was published in the July 27, 1979, **Federal Register** (44 FR 44281–44283) and in newspapers of general circulation within the State. The announcement noted information for public participation in the initial phase of the review process, relating to the Regional Director's determination of whether the submission was complete.

On September 5, 1979 a public review meeting on the program and its completeness was held by the Regional Director in Austin, Texas. September 5, 1979 was also the close of the public comment period on completeness, which had begun July 27, 1979.

On September 17, 1979, the Regional Director published notice in the **Federal Register** announcing that he had determined the program to be incomplete (44 FR 53813). The notice specified that the submission was missing a section-by-section comparison of SMCRA and the Federal regulations with the Texas regulations, as required by 30 CFR 731.14(c).

On November 13, 1979, the Texas Railroad Commission submitted an amended program submission containing the missing section-by-section comparison, in addition to a number of substantive and non-substantive modifications.

On November 20, 1979, the Regional Director published notice in the **Federal Register** (44 FR 66764–66766) and in newspapers of general circulation within the State that the amended Texas submission was complete. The notice set forth procedures for the public hearing and comment period on the substance of the Texas program.

On December 19 and 20, 1979, a public hearing on the Texas submission was held in Austin, Texas, by the Regional Director.

On December 20, 1979, the Texas Railroad Commission submitted a four page document, proposing for discussion (but not adopting) certain amendments to its regulations, and amending the program submission. The proposed regulation changes, which appear on page one and the first six lines of page two of the document, did not constitute changes to the program, and are not part of the program being approved today. The program changes, beginning on the seventh line of the second page of the document and continuing to the end of the document, are part of the program being approved today.

On December 21, 1979, the Regional Director published notice in the **Federal Register** extending until December 28, 1979, the public comment period on the Texas program, to enable the public to review and comment on matters discussed at the public hearing on December 20 and 21, 1979 (44 FR 75733–75734). The amendments submitted by the Texas Railroad Commission on December 20, 1979, were discussed and distributed at the public hearing.

On December 31, 1979, the Texas Railroad Commission submitted new information to the Regional Director in response to certain of the public comments received during the re-opened comment period.

On January 7, 1980, the Regional Director submitted to the Director of OSM, his recommendation that the Texas program be conditionally approved, together with copies of the transcript of the public meeting and the public hearing, written presentations, exhibits, copies of all public comments received, and other documents comprising the administrative record.

On January 17, 1980, the Director published a notice in the **Federal Register** re-opening the public comment period until January 22, 1980, to allow the public to review and comment upon the new information submitted by the Texas Railroad Commission on December 31, 1979. (45 FR 3398.)

On January 25, 1980, the Director recommended to the Secretary that the Texas program be conditionally approved.

On January 28, 1980, the Administrator of the Environmental Protection Agency transmitted his written concurrence on the Texas program.

On February 1, 1980, the OSM published in the **Federal Register** a notice of the availability of the views on the Texas program submitted by the Administrator of the Environmental Protection Agency, the Secretary of Agriculture through the Soil Conservation Service, the U.S. Forest Service, the Fish and Wildlife Service, the Heritage Conservation and Recreation Service, the U.S. Bureau of Mines, the U.S. Geological Survey and the Advisory Council on Historic Preservation.

Secretary's Findings

1. In accordance with Section 503(a) of SMCRA, the Secretary finds that Texas has, subject to the exception in finding 4(k) below, the capability to carry out the provisions of SMCRA and to meet its purposes in the following ways:

(a) The Texas Surface Coal Mining and Reclamation Act (Texas SCMRA), the regulations adopted thereunder, and the Administrative Procedures and Texas Register Act, provide for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands in Texas in accordance with SMCRA;

(b) The Texas SCMRA provides sanctions for violations of Texas laws, regulations or conditions of permits

concerning surface coal mining and reclamation operations, and these sanctions meet the requirements of SMCRA, including civil and criminal actions, forfeiture of bonds, suspensions, revocations, and withholding of permits, and the issuance of cease-and-desist orders by the Texas Railroad Commission or its inspectors;

(c) The Texas Railroad Commission has sufficient administrative and technical personnel, and sufficient funds to enable Texas to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA;

(d) Texas law provides for the effective implementation, maintenance, and enforcement of a permit system that meets the requirements of SMCRA for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands within Texas;

(e) Texas has established a process for the designation of areas as unsuitable for surface coal mining in accordance with Section 522 of SMCRA;

(f) Texas has established for the purpose of avoiding duplication, a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with other Federal and State permit processes applicable to the proposed operations;

(g) Texas has fully enacted regulations consistent with regulations issued pursuant to SMCRA, subject to the exception discussed below in finding 4(k);

2. As required by Section 503(b)(1)–(3) of SMCRA, 30 U.S.C. 1253(b)(1)–(3), and 30 CFR 732.11–732.13, the Secretary has, through OSM:

(a) Solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed Texas program;

(b) Obtained and disclosed the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the Texas program which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151–1175), and the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*); and

(c) Held a public review meeting in Austin, Texas, on September 5, 1979, to discuss the Texas program submission and its completeness and held a public hearing in Austin, Texas, on December 19 and 20, 1979 on the substance of the Texas program submission;

3. In accordance with Section 503(b)(4) of SMCRA, 30 U.S.C. 1253(b)(4), the Secretary finds that the State of Texas has the legal authority and qualified personnel necessary for the enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII.

4. In accordance with 30 CFR 732.15, the Secretary finds, on the basis of information in the Texas program submission, including the side-by-side comparison of the Texas law and regulations with SMCRA and 30 CFR Chapter VII, public comments, testimony and written presentations at the public hearings, and other relevant information, that:

(a) The Texas program provides for Texas to carry out the provisions and meet the purposes of SMCRA and 30 CFR Chapter VII, and that Texas has not proposed any alternative approaches to the requirements of 30 CFR Chapter VII pursuant to 30 CFR 731.13;

(b) The Texas Railroad Commission has the authority under Texas laws and regulations to implement, administer, and enforce all applicable requirements consistent with 30 CFR Chapter VII, Subchapter K, and the Texas program includes provisions to do so. The Texas law and regulations on performance standards are consistent with SMCRA and 30 CFR Chapter VII, Subchapter K. Special performance standards for concurrent surface and underground mining, mountaintop removal and operations on steep slopes are not included in the Texas law or regulations. These performance standards are not applicable to Texas because these types of mining are not now conducted and are not expected to be conducted in Texas. Texas has stated, on page I–44 of its program submission, that it will not issue permits for these types of mining without first adopting and having approved appropriate regulatory provisions;

(c) The Texas Railroad Commission has the authority under Texas laws and regulations and the Texas program includes provisions to implement, administer and enforce a permit system consistent with 30 CFR Chapter VII, Subchapter G. The Texas program includes no detailed requirements for concurrent surface and underground mining, mountaintop removal and operations on steep slopes. These permit requirements are not applicable to Texas because these types of mining are not now conducted and are not expected to be conducted in Texas. Texas has stated, on page I–44 of its program submission, that it will not issue permits for these types of mining without first adopting and having approved appropriate regulatory provisions. Section 11 of the Texas SCMRA provides the authority for Texas to prohibit surface coal mining and reclamation operations without a permit issued by the Texas Railroad Commission;

(d) Section 27 of the Texas SCMRA and Part 776 of the Texas regulations provide the Texas Railroad Commission with the authority to regulate coal exploration consistent with 30 CFR Parts 776 and 815 and to prohibit coal exploration that does not comply with 30 CFR Parts 776 and 815, and the Texas program includes provisions to do so;

(e) The Texas Railroad Commission has the authority under Texas laws and the Texas program includes provisions to require that persons extracting coal incidental to government-financed construction maintain information on site consistent with 30 CFR Part 707. The provisions of 30 CFR Part 707 are incorporated within Part 707 of the Texas regulations;

(f) The Texas Railroad Commission has the authority, under Section 29 of the Texas SCMRA and in Part 840 of the Texas regulations, and the Texas program includes provisions to enter, inspect, and monitor all coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal land within Texas.

(g) The Texas Railroad Commission has the authority under Texas laws and the Texas program includes provisions to implement, administer, and enforce a system of performance bonds and liability insurance, or other equivalent guarantees, consistent with 30 CFR Chapter VII, Subchapter J. The performance bond and liability insurance provisions of Sections 507(f), 509, 510, and 519 of SMCRA and 30 CFR Chapter VII, Subchapter J are incorporated in Sections 24, 25, and 26 of the Texas SCMRA and in Subchapter J of the Texas regulations. The informal conference provided in 30 CFR 807.11(e) has been replaced by a more formal public hearing subject to the Administrative Procedures and Texas Register Act (APTRA). The informal conference provided for in Section 519(g) of SMCRA is at the discretion of the regulatory authority and, accordingly, is not necessarily available in each case. Accordingly, the public hearing, even though it is formal rather than informal, assures more opportunity for citizen participation than is required under the Federal Act because it is a hearing which is available as a matter of right, not at the discretion of the

regulatory authority. (See Section .312(e) of the Texas regulations.)

(h) The Texas Railroad Commission has the authority, under Section 30 of the Texas SCMRA, and the Texas program includes provisions to provide for civil and criminal sanctions for violation of Texas law, regulations and conditions of permits and exploration approvals including civil and criminal penalties in accordance with Section 518 of SMCRA and consistent with 30 CFR Part 845, including the same or similar procedural requirements. Section 30 of the Texas SCMRA requires that the interest rate paid by Texas on money to be returned to operators is to be calculated at the prevailing United States Department of the Treasury rate rather than the prevailing Department of Treasury rate or 6 percent, whichever is greater, as provided in Section 518(c) of SMCRA. This difference and its counterpart in Part 845 of the Texas regulations are acceptable because they only potentially decrease amounts being returned to operators and they do not lessen the amounts to be paid by operators for violations. The civil penalty provisions of 30 CFR Part 845 are contained in Part 845 of the Texas regulations. The Texas regulations do not contain the procedural requirement of 30 CFR 845.19(a) that the fact of the violation may not be contested, if it has been decided in a formal review. However, this is merely a procedural requirement, not a substantive one. This difference is acceptable because the Texas procedures for imposing civil penalties are, in general, similar to the Federal provisions, and the difference neither impairs Texas authority to impose civil and criminal sanctions for violations nor lessens the stringency of those sanctions. The criteria for evaluating procedural aspects of a State program's penalty provisions are that they must be the same as, or similar to, those at the Federal level. See 30 CFR 840.13 and Section 518(i) of SMCRA, 30 U.S.C. 1268(i);

(i) The Texas Railroad Commission has the authority under Texas laws, and the Texas program contains provisions, to issue, modify, terminate and enforce notices of violation, cessation orders and show-cause orders in accordance with Section 521 of SMCRA and with 30 CFR Chapter VII, Subchapter L, including the same or similar procedural requirements. The enforcement authorities in Section 521 of SMCRA are contained in Section 32 of the Texas SCMRA. The applicable provisions of 30 CFR Chapter VII, Subchapter L are contained in Parts 840 and 843 of the Texas regulations with two exceptions. The first exception is the omission of § 843.17, "Failure to give notice and lack of information." This difference is acceptable because Texas does not need to rely on prior information to have the authority to conduct an inspection and take enforcement actions. The authority to conduct inspections and to take enforcement actions contained in Sections 29 and 32 of the Texas SCMRA is not restricted. Accordingly, these potential grounds for vacating a notice under the Federal scheme would not constitute legally sufficient grounds under the Texas program, so no provision is required declaring these grounds insufficient. The second exception is that review of notices of violation and cessation orders are subject to the Administrative Procedures and Texas Register Act (APTRA) rather than a counterpart of 43 CFR Part 4. This difference is acceptable because the APTRA, in conjunction with the General Rules of Procedure of the Texas Railroad Commission, provides all the essential rights and protections contained in 43 CFR Part 4;

(j) The Texas Railroad Commission has the authority, under Section 33 of the Texas SCMRA and in Subchapter F of the Texas regulations and the Texas program contains provisions to designate areas as unsuitable for surface coal mining consistent with 30 CFR Chapter VII, Subchapter F;

(k) The Texas Railroad Commission has the authority under Texas laws and the Texas program contains provisions to provide for public participation in the development and revision of Texas regulations and the Texas program consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII. Texas also has the authority to provide for public participation in the enforcement of its laws and regulations, with one exception. The Texas program does not provide for award of costs in accordance with 43 CFR 4.1290, *et seq.* This issue is discussed further in paragraph 44 under "Disposition of Comments," below. The Texas program does adequately provide for public participation in the permitting process, in requesting and conducting inspections, and in review of enforcement orders. The program also provides for citizen suits corresponding to Section 520 of SMCRA.

(l) The Texas Railroad Commission has the authority under Texas laws and the Texas program includes provisions to monitor, review, and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of the Texas Railroad Commission consistent with 30 CFR Part 705. The prohibitions against financial interests in coal mining operations are contained in Section 29(f) of the Texas Surface Coal Mining and Reclamation Act. These provisions of 30 CFR Part 705 are incorporated in Part 705 of the Texas Regulations.

(m) The Texas Railroad Commission has the authority under Texas laws to require the training, examination, and certification of persons engaged in, or responsible for blasting and the use of explosives in accordance with Section 719 of SMCRA.

Texas has no regulations on the training, examination, and certification of persons engaged in blasting because 30 CFR 732.15(b)(12) does not require a State to implement regulations governing certification and training of persons engaged in blasting until six months after Federal regulations for these provisions have been promulgated. The Federal regulations have not been promulgated at this time;

(n) The Texas Railroad Commission has the authority under Texas laws and the Texas program contains provisions to provide small operator assistance consistent with 30 CFR Part 795. The small operator assistance provisions are contained in Section 19 of the Texas SCMRA and in Part 795 of the Texas regulations.

(o) The Texas Railroad Commission has the authority under Texas laws and the Texas program contains provisions to provide protection of employees of the Texas Railroad Commission in accordance with the protection afforded Federal employees under Section 704 of SMCRA. Although Texas has not enacted a law equivalent to Section 704, the program submission indicates that the Texas Railroad Commission will, as a condition of each permit for surface coal mining issued under an approved State program, include the following:

> Any person who shall, except as permitted by law, willfully resist, prevent, impede, or interfere with the Commission or any of its agents in the performance of duties pursuant to the 'Surface Coal Mining and Reclamation Act' shall be subject to a fine of not more than $10,000 or by imprisonment for not more than one year, or both!

This language specifically ties in Section 30 (e) and (g) of the Texas Act, which provide criminal penalties for violation of a permit condition. These penalties are as severe as those provided in Section 704 of SMCRA. This scheme will provide protection to State employees comparable to that provided Federal employees by Section 704 of SMCRA, except that persons who are not employees of a permittee will not be subject to criminal penalties. The

Secretary does not believe that any material risk exists of interference with government employees from "wildcatters" or others, in light of the information on the nature of the Texas lignite industry in the program submission and the absence of any public comments on this issue. The Secretary is able to approve this element of Texas program in light of this permit term requirement.

(p) Texas has the authority under its laws and the Texas program contains provisions to provide for administrative and judicial review of State program actions in accordance with Sections 525 and 526 of SMCRA and 30 CFR Chapter VII, Subchapter L. The review provisions of Section 525 of SMCRA are contained in Section 32(c) of the Texas SCMRA except that Section 32(c)(1) provides that hearings shall be subject to APTRA rather than 5 U.S.C. 554. The APTRA, in conjunction with General Rules of Procedure of the Texas Railroad Commission, provides all the essential rights and protections contained in 5 U.S.C. 554;

(q) The Texas Railroad Commission has the authority under Texas laws and the Texas program contains provisions to cooperate and coordinate with and provide documents and other information to the Office of Surface Mining under the provisions of 30 CFR Chapter VII. The provisions for cooperation, coordination, and provision of documents are contained in Section .672 of the Texas regulations;

(r) The Texas Surface Coal Mining Act and regulations adopted thereunder, and the Administrative Procedure and Texas Register Act, Art. 6252–13(a), Vernon's Annotated Texas Civil Statutes, the State Water Administration Water Code Section 26.0001–.268 and regulations adopted thereunder, the Texas Clean Air Act, Art. 4477–5, Vernon's Annotated Texas Civil Statutes, as amended, and regulations adopted thereunder, the General Procedures of the Texas Railroad Commission and the other laws and regulations of Texas do not contain provisions which would interfere with or preclude implementation of the provisions of SMCRA and 30 CFR Chapter VII. Accordingly, there are no Texas laws inconsistent with SMCRA that are being set aside in this approval;

(s) The Texas Railroad Commission and other agencies having a role in the program have sufficient legal, technical, and administrative personnel and sufficient funds to implement, administer, and enforce the provisions of the program, the requirements of 30 CFR 732.15(b), and other applicable State and Federal laws.

Disposition of Comments

The comments received on the Texas program during the public comment periods raised the issues listed below, which were considered in the Secretary's evaluation of the Texas program as indicated.

1. The Texas Agricultural Experiment Station said that the soil series descriptions of the National Cooperative Soil Survey should not be used for on-site soil descriptions because of the general nature of these descriptions.

Texas regulations specify that soil series descriptions may be used only with the approval of the Commission. The Secretary believes that the use of existing soil series descriptions should not be categorically denied because there may be those situations where site-specific soil surveys would not be necessary. In those cases, the Commission needs the flexibility to accept soil series descriptions.

2. The Texas Agricultural Experiment Station also suggested that the definition of topsoil should be expanded to include "other materials as approved and recommended by a certified professional soil scientist."

The Texas regulations allow for other materials to be used as topsoil or subsoil under the appropriate conditions, the suggested change in the definition is not necessary.

3. The Texas Agricultural Experiment Station said that the tolerance value of 0.1 for moist bulk density in reclaimed soils is unreasonable.

The Federal performance standard on moist bulk density has been suspended. Accordingly, Texas may retain its regulation on moist bulk density or may amend its program to delete the standard. If the Secretary promulgates a new performance standard on moist bulk density, then Texas may be required to amend its program.

4. The Texas Agricultural Experiment Station also offered a more comprehensive definition of the term "soil survey."

The Texas definition is identical to the Federal definition for the portion of the definition that the commenter suggests should be changed. Therefore, the Secretary believes that changing the definition is not necessary for Texas to meet the requirements for approval of a State program.

5. A commenter said that it was impractical to use a rigid depth in defining topsoil to be removed in thin topsoil situations. (See .335(c) of the Texas regulations). As an alternative, the commenter suggested that the determination of topsoil quality and thickness to be removed, segregated and redistributed should be made by a certified professional soil scientist on a site-specific basis.

The Texas regulations are identical to the Federal regulations and do not prohibit site-specific determinations. The Texas Railroad Commission has the authority to approve variations on topsoil removal, segregation and redistribution on a site-specific basis. (See .334, .335, .336, .337, and .338 of the Texas regulations).

6. The Soil Conservation Service (SCS) commented that consideration should be given to requiring additional soil resource information in the form of a description of the chemical and physical properties of the soil.

The Texas regulations are identical to the Federal regulations with regard to soil resource information requirements. The Secretary believes that the regulations will provide the regulatory authority with sufficient information to evaluate the soil resource when the applicant plans to segregate and replace the topsoil. Section .134 of the Texas regulations requires that the applicant provide chemical, physical, and other information if the applicant proposes to use overburden material as a substitute for topsoil. The Secretary believes this additional information is sufficient for the Commission in determining if the applicant's request to use substitute soil material should be approved.

7. Several commenters noted that soil testing should be carried out in a qualified laboratory under the direction or supervision of a certified professional soil scientist and that judgments concerning soils, soil substitutes, and soil fertility analyses should be made by a certified professional soil scientist.

The Secretary believes that if the surveys are prepared according to the procedures and standards of the National Cooperative Soil Survey and in accordance with procedures set forth in USDA Handbook 436 (Soil Taxonomy) and 18 (Soil Survey Manual), then uniformity and high standards will be achieved. Texas regulation .335(e) requires that laboratories conducting soil analyses must be approved by the Commission. The Secretary assumes that the Commission will require reasonable professional standards of these laboratories.

8. One commenter indicated that the Texas submission does not adequately address means of protecting water tables and aquifers and of enforcing the protection that exists.

The Secretary believes that the detailed performance standards on protecting surface and groundwater in Parts 816 and 817 and the inspection and enforcement provisions of Parts 840 and

843 accomplish the results sought by the commenter.

9. EPA suggested that the Texas program should indicate how Texas will handle water quality and effluent limitations soon to be promulgated by EPA (Best Available Technology Economically Achievable (BAT) regulations). Since these regulations have not yet been promulgated by EPA, Texas need not address this issue at this time.

10. Two commenters believed that the effluent limitation for total suspended solids was too stringent for Texas streams, and one commenter suggested that the allowable total suspended solids levels should be raised to between 300–500 mg/l.

The proposed limitations are identical to those already established by U.S. EPA, OSM regulations, and the Texas Water Resources Commission. The Texas Railroad Commission adopted the standard based upon Section 23(b)(10)(B)(i) of the Texas Surface Coal Mining and Reclamation Act which states in part, ". . . but in no event shall contributions be in excess of requirements set by applicable State or Federal law." The Texas Railroad Commission could not set any less stringent standards than those already set.

11. A commenter stated that no mention is made in the Texas program submission of National Pollutant Discharge Elimination System (NPDES) compliance review and enforcement.

Texas does not have jurisdiction over NPDES. However, the Commission is required to enforce the effluent standards in the Texas regulations at Section .340 which are the same as the NPDES effluent limitations. This is consistent with and at least as stringent as SMCRA.

12. A commenter suggested that the regulations should provide for the quantification of emissions from mining operations, particularly fugitive dust particulates, and that this quantification should be done in a consistent manner. The commenter also requested that the emissions information should be made accessible to the Prevention of Significant Deterioration (PSD) program.

To avoid conflict with the Clean Air Act program for prevention of significant deterioration and protection of nonattainment areas, the Secretary has decided not to require separate demonstrations of compliance with these Clean Air programs beyond the requirement of Section 508(a)(9) of the Act. The Texas regulations are the same as the Federal regulations. EPA has concurred in the Texas program's air quality provisions.

13. The Texas Agricultural Experiment Station expressed concern that there is a conflict in the interpretations of how introduced grass species affect the land use of an area in defining prime farmland and in determining the period of liability for bonding.

The Secretary believes there is no conflict; even though Bermuda grass requires periodic maintenance, such maintenance is not considered to be augmented by seeding, fertilizing, irrigation, or other work that would result in re-starting the period of liability as required in Section .036(b) of the Texas regulations.

14. Several commenters, including SCS, expressed concern about the definition of prime farmland at Section 3 (15) of the Texas Act and Section .008 of the regulations, and the alternative to separate soil horizon removal and stockpiling spelled out at Section .623 of the regulations. The general concern is that the Texas provisions do not provide the same degree of protection for prime farmlands as do the Federal Act and regulations. It is the Secretary's view that the Texas provisions contain precisely the same protections as the Federal provisions. The expanded language of the Texas provisions reflects OSM's interpretation of the Federal regulations on the specific matters addressed in the Texas language. This language has been previously accepted by OSM in the context of the settlement of a lawsuit brought by the State of Texas (*State of Texas* v. *Andrus*, U.S.D.C., Western District of Texas, Case #78–CA–35). None of the commenters offered evidence or arguments showing that prime farmland will not be protected by the Texas program in a manner consistent with SMCRA and the Federal regulations. Therefore, no change is required for these provisions to comply with the criteria for State program approval.

15. The SCS commented that the alternative soil handling regulations provide no assurance that the productivity of prime farmland will be restored after mining.

A typographical error in the draft of the Texas regulations that the SCS reviewed greatly distorted the intended meaning of this section. That error has been corrected in the final version, and the Secretary believes that Section .623 now provides adequate assurance that the productivity of prime farmland will be restored after mining.

16. One commenter pointed out that prime farmland is a term referring to the quality of the soil resource, that prime farmland is a land used term, and that soil surveys map prime farmland soils, not prime farmland.

SMCRA requires that the regulations promulgated by OSM and Texas adopt the definition of prime farmland established by the Secretary of Agriculture in 4 CFR Part 657. The definition as prescribed by the Secretary of Agriculture established the relationship between prime farmlands and prime farmland soils and the Texas regulations adopt and use that relationship.

17. One commenter suggested that the state plan should specify the method of reclamation to be used to protect prime farmland, with organic topsoil on top.

The Secretary believes the Texas regulations are adequate because they require a reconstructed soil of equal or greater productive capacity than exists on surrounding prime farmland. For example, Texas regulation .624(e) requires that the A horizon be replaced as the final soil layer unless other materials are specifically approved.

18. One commenter was concerned that the Texas program submission inhibited field employees from carrying out their enforcement requirements.

The Secretary believes that the Texas Act, regulations, and narrative are consistent and clear that the authorized representatives of the Texas Railroad Commission have the authority and are required to take enforcement actions when a violation is observed. See Section 32 of the Texas Act, Section .680 of the regulations, and the narrative for 731.14(g)(5) on page VII–25 of the program submission.

19. One commenter requested that the Texas program specifically state that cost to the operator is not a consideration in the imposition of affirmative obligations. The commenter accurately pointed out that costs are not a consideration at the Federal level. (Also see the preamble to the Secretary's Permanent Program Rules at 44 FR 15301, March 13, 1979.)

The Secretary agrees with the commenter that cost may not be a consideration in imposing affirmative obligations. However, nothing in the Texas program submission gives any reason to believe that the Commission intends to consider costs in imposing affirmative obligations and therefore the Secretary understands that costs will not be considered.

20. The League of Women Voters of Texas suggested that the Soil Conservation Service (SCS) should approve the reclamation plans before the permit is granted. However, the Texas program submission provides for consultation with Federal, State, and local agencies. Review and consultation

procedures with the Secretary of Agriculture are in Section .395 and .560 of the Texas regulations. This meets the requirements of SMCRA and 30 CFR Title VII for involvement of SCS in permit application review.

21. The U.S. Fish and Wildlife Service commented that the Texas program should describe the process the Commission will use to consult with other agencies on permit review and approval. More specifically, the commenter wanted to be consulted prior to the application process to determine the level of fish and wildlife information that will be required.

Texas regulation .133(c) provides that the State and Federal agencies having responsibilities for fish and wildlife or their habitats will be consulted in determining the level of fish and wildlife information that is required. Additionally, Texas regulation .215 requires the Commission to consult with State and Federal fish and wildlife agencies in determining the adequacy of fish and wildlife information as part of the permit review process. Accordingly, the Texas program meets the minimum requirements for coordination with the Fish and Wildlife Service, as found in SMCRA and 30 CFR Chapter VII, the criteria by which the Secretary is evaluating the program.

22. One commenter suggested that the State official responsible for the Land and Water Conservation Fund should be identified in the Texas regulations. The Texas regulations, Section .207(c) (1) and (2), provide that Federal, State, and local government agencies, including agencies responsible for historic preservation and public recreation, will be notified of the filing of permit applications. Identification of particular officials is not required under the Federal rules, and accordingly will not be a condition of the Secretary's approval.

23. The SCS commented that where the SCS is the USDA agency to be contacted, USDA should be written as USDA, Soil Conservation Service.

The Texas regulations are identical to the Federal regulations in regard to the terminology used. The Secretary believes that the role of the SCS in making prime farmland determinations is clear and a change in wording is not necessary.

24. Two commenters suggested that experimental practices supported by government, State or university groups should not have to comply with permitting requirements of paragraph (b), Section .200.

Texas has followed the OSM regulations with regard to permitting experimental practices. Furthermore, the change that is suggested could result in a less enforceable requirement. Thus, the Secretary believes that the Texas program with regard to permitting experimental practices is acceptable.

25. One commenter suggested that sand, silt, and clay mineralogy be included as part of the Geologic Description required by .173 of the Texas regulations.

The Texas regulations equal the requirements of 779.14 of the Federal regulations. The Secretary believes that Texas cannot be required to adopt regulations that are more stringent than the Federal regulations.

26. A commenter stated that the 30-day period for other agencies to review permit applications is inadequate.

The 30-day period for permit review is imposed by Texas regulation on all State agencies and is applicable to interagency coordination in virtually all programs, not just Surface Mining. The Texas program requests, but does not require, Federal agencies to review and respond within the same time period.

The Secretary believes that, although the permit applications will contain very detailed technical information, an agency that is responsible for reviewing part of a permit application will be able to review the portion of the application that is within its area of responsibility within 30 days.

27. A commenter requested that the language of Sections .226(a)(1) and .226(e) be clarified regarding when a change to a permit area would require a new permit, rather than merely a revision to a permit.

The Secretary will not require such a change, because Texas has, as required by 30 CFR 788.12, provided in Section .226(a)(1) guidelines on which to base decisions concerning what changes are significant departures. The Secretary believes that the guidelines identified are adequate to guide the Commission's decisions on this matter.

28. One commenter suggested that the State should address Federal lands coordination.

The Secretary believes that the Texas program does not need to address Federal lands coordination at this time because Texas has not sought a cooperative agreement. If Texas wishes to assume jurisdiction for regulation of surface coal mining on Federal lands in Texas, a cooperative agreement may be prepared and the issue of coordination would more properly be addressed in that event.

29. The U.S. Forest Service requested that it be added to the list on Page 107 of the Texas program submission to ensure notification when National Forest land in the State of Texas is affected.

Texas has not made provisions for a Federal lands program in its present State program submission. Texas will not process an application for surface coal mining on Federal land within a National Forest boundary but will forward the application to the Regional Director of the Office of Surface Mining for processing. (See Texas program .072(c) Page 30.) Upon receipt of an application for operations on National Forest system lands, the Regional Director of OSM will follow the procedure established in 30 CFR 741.20 and transmit a copy of the complete application to the Chief, U.S. Forest Service, for review, consent, and approval by the Secretary of Agriculture. This procedure will ensure the notification that the U.S. Forest Service has requested.

30. One commenter suggested, without providing any specific rationale, that 30 CFR 771.15 and 771.17 (the latter erroneously identified as § 771.16 by commenter) be included in the Texas program. These sections concern continuing operations under Federal or State permits.

These sections are only applicable if a Federal program is implemented in Texas, and in that case, the Federal regulations would apply. Therefore, these sections are not required in the Texas regulations.

31. U.S. EPA, Region VI, felt that a Memorandum of Understanding (MOU) should be developed to cover the Underground Injection Control Program pursuant to the Safe Drinking Water Act.

Since the Underground Injection Control Program has not been implemented, the Secretary feels it premature to require such an MOU.

32. The U.S. EPA, Region VI, stated that apparently the State cannot deny a surface mining permit on the basis of Clean Air Act related requirements. This is a misreading of the Texas law and regulations. See Sections .143 (Air Pollution Control Plan), .379 (Air Resources Protection), and .216 (Criteria for Permit Approval or Denial). This commenter also notes that the Texas Railroad Commission does not have the authority to litigate and set fines outside of those administratively applied by the Commission itself, specifically that the Commission does not have the authority to take as stringent an enforcement action as the EPA under the Clean Air Act. The Texas program does contain enforcement powers at least as stringent as SMCRA for air quality violations, and this is the only requirement for program approval on this particular issue. Whether the State of Texas has otherwise complied with the Clean Air

Act is beyond the scope of this approval and is not an appropriate matter for consideration. The U.S. EPA has concurred in the Texas program's provisions relating to the Clean Air Act and regulations issued under it.

33. U.S. EPA, Region VI, noting that the proposed Texas program does not require operators to comply with the Hazardous Waste Regulations proposed under the Resource Conservation and Recovery Act (RCRA), suggested that the Texas program should consider the requirements of that Act and make provisions to incorporate the applicable U.S. EPA regulations when they become effective. Since the RCRA regulations are not yet effective and there has been no agreement between EPA and the Department of the Interior on procedures for handling RCRA issues, it would be premature to expect Texas to provide for these matters. It is possible that Texas may have to revise its program at some future time to incorporate RCRA considerations.

34. The Advisory Council on Historic Preservation sought additional information to determine the extent that the proposed regulatory program is in compliance with Section 106 of the National Historic Preservation Act (NHPA). Information needed concerns the requirements of NHPA for written comments from the State Historic Preservation Officer (SHPO) and an independent determination by OSM's Regional Director as to the likelihood that the State program will adversely affect properties included in, or eligible for inclusion in, the National Register of Historic Places.

The Texas regulations provide for the coordination and consultation with SHPO in Sections .072, .074, and .083 of the Texas regulations. If the State of Texas includes in its regulations language suggested by the commenter, the coordination process would be presented in more detail. The Texas regulations, as presented in the submission, are in compliance with SMCRA. Adoption of the suggested language by the State of Texas is not required at this time. However, once the Secretary promulgates new rules to replace regulations concerning historic preservation suspended November 27, 1979 (44 FR 67942), Texas will have an opportunity to amend its program to be consistent with these new rules.

35. The Advisory Council also suggested additional language for the State of Texas to consider including in its proposed regulatory program. The language was suggested as a means for Texas to comply with the intent of Section 106 of the National Historic Preservation Act (NHPA). The proposed language would: (1) Provide for a system for consulting with State and Federal agencies having responsibility for the protection or management of historic, cultural, and archeological resources; (2) provide for coordination of review of permits with the applicable requirements of NHPA; and (3) provide procedures and criteria for identifying and protecting properties under the provisions of NHPA.

The Texas program has adopted the language of 30 CFR 761.12(f) in Sections .072, .074, and .083 of the Texas regulations, and has established a procedure for coordination and consultation with State and Federal agencies that could directly or indirectly affect the permit process. See the narrative for § 731.14(g)(9)(10)(11) for a discussion of that procedure.

The Texas program contains provisions to meet the intent of SMCRA and NHPA. The language proposed by the commenter is considerably more detailed and could be adopted by the State of Texas if it so chooses. The language proposed is more stringent and, therefore, the Secretary believes it cannot be required in the Texas program.

36. A commenter stated that the Texas program should specify the priority in which the processing of the applications will be handled so that early in the process, areas unsuitable for surface mining will be reviewed and applications infringing thereon will be eliminated during the review process.

The Texas program specifies a process to review applications that includes a check within the first 30 days for lands unsuitable for surface mining. This process is described on pages VII–1 through VII–4 of the Texas program submission. This process meets the requirements of SMCRA and 30 CFR Chapter VII.

37. A commenter suggested that Texas regulation .075(a) should be clarified by adding after the phrase "if the Commission determines that reclamation is not technologically and economically feasible", the words "under the Act and this Chapter." The commenter thought this addition would clarify the source of the criteria for the evaluation of feasibility.

Section 33(b) of the Texas Act clearly states that no mining will occur where "reclamation pursuant to the requirements of this Act is not technologically and economically feasible." Based on this, it is clear that the requirements of the Act are the source of the criteria for the evaluation of feasibility.

38. U.S. EPA, Region VI, wanted the narrative about reporting systems to include Discharge Monitoring Reports and other reviews associated with the National Pollutant Discharge Elimination System (NPDES) permit enforcement.

Discharge Monitoring Reports and other reviews done as part of the NPDES permit enforcement are not within the jurisdiction of the Commission, and the State of Texas does not administer NPDES requirements. Accordingly, the requested additions to the narrative are inapplicable in Texas and unrelated to SMCRA requirements.

39. The EPA, Region VI, also suggested that the narrative about inspecting and monitoring should identify activities associated with an NPDES compliance inspection.

The Commission does not have and will not have authority to enforce the NPDES program unless that authority is granted by the EPA. The details of NPDES compliance inspections would be specified in any future agreement between EPA and Texas that grants NPDES authority to Texas.

40. A commenter objected that Texas has substituted a formal public hearing for the informal hearing provided in 30 CFR 786.14 on permit applications. The commenter's concern is that the more formal procedure will discourage public participation because many persons are reluctant to enter into formal hearings without a lawyer. Although Section .211(a) of the Texas regulations does provide that any adversely affected person may request a formal hearing on a permit application, paragraph (b) of that section provides that any affected person may request informal consideration of objections in accordance with Section 13 of the Administrative Procedure and Texas Register Act. In view of these provisions, the Secretary believes that the proposed Texas program provides ample opportunity for public participation in this phase of the permitting process.

41. The National Wildlife Federation stated that the Texas program msut be revised to provide for judicial review of rulemaking in accordance with Section 526 of SMCRA, with its provision for challenging regulations. It is the Secretary's view that the State's obligation to afford judicial review of its actions, including rulemaking, is contained solely in Section 526(e) of the Act, which simply provides that State agency action shall be subject to judicial review in accordance with State law. Judicial review of rulemaking in Texas is governed by the APTRA. The State is not required to adopt the standards and

procedures for review of Federal rulemaking contained in Section 526.

42. The National Wildlife Federation argued that the Texas program should be revised to provide for formal administrative review of agency decisions that are not required by the Texas SCMRA to be determined by formal adjudication under APTRA. Such a provision would correspond to 43 CFR 4.1280 and 4.1281. The Secretary believes that the procedures for appeal set forth in 43 CFR 4.1280, *et seq.*, are not required in a State program. Section 4.1281 provides that a person adversely affected by a written decision of the Director or his delegate may appeal to the Board of Surface Mining and Reclamation Appeals only *where the decision itself specifically grants such right of appeal.* In other words, this "right" is completely dependent upon the discretion of the Director. It is, in fact, not a right of appeal, but simply an administrative mechanism providing the Director with discretion to authorize an appeal to the Board when that is desirable as a matter of administrative policy. SMCRA does not require a State to provide a similar system.

43. The National Wildlife Federation also stated that prior to program approval, Texas should be required to affirm its intention that its statutory provisions regarding awards of costs and expenses in court proceedings are subject to the same interpretation as the counterpart Federal provision. The commenter believes this is necessary to ensure that the Texas provisions, Section 31(e) and 32(c)(5), will be interpreted to mean that costs and expenses may be assessed against citizens only where it is established that the citizen brought or pursued the litigation in bad faith or solely to harass or embarrass the defendant.

Since Texas has adopted statutory authority identical to SMCRA on these points, the Texas program satisfies the requirements of SMCRA. Texas cannot be required to revise its program because of the possibility that a State court will interpret Sections 31(e) and 32(c)(5) in a manner inconsistent with SMCRA and Federal case law. The National Wildlife Federation has provided no basis on which to expect Texas courts to make a different interpretation of the language than Federal Courts. The Secretary's approval presumes that a State court will look to and follow the intent of Congress where, as here, its State legislature has enacted statutory provisions pursuant to the mandate of, and identical to, Federal statutes. Therefore, the Secretary believes that this aspect of the proposed Texas program complies with the requirements of SMCRA.

44. The National Wildlife Federation also pointed out that Texas has no statutory or regulatory provision corresponding to 43 CFR 4.1290 regarding the award of costs and expenses, including attorneys fees, in administrative proceedings. Although Texas has enacted the basic authority for the award of costs and expenses, this commenter believes that SMCRA and the Secretary's regulations require that the State program include the regulations which detail such matters as who may file, contents of a petition, and who may receive an award. The commenter cites 44 FR 15297 which states in part, "The Office believes that a State program must meet the following minimum criteria with respect to citizen participation: * * * (3) It must authorize award of costs and expenses in administrative and judicial proceedings provided under Section 520(d) and (f) and 525(e) of the Act *and 43 CFR Part 4."* (emphasis added). In light of this specific language, the Secretary believes that a State program must include provisions similar to 43 CFR 4.1290. Texas has agreed to adopt provisions implementing these requirements by June 15, 1980. The approval of the Texas program is conditioned on such provisions being adopted.

45. The National Wildife Federation stated that the Texas submission does not provide as liberal standards for citizen intervention in administrative proceedings as the Federal regulations and that, therefore, citizens have less access to the State administrative proceedings. Neither the Texas Surface Coal Mining and Reclamation Act (TSCMRA) nor the Administrative Procedure and Texas Register Act (APTRA) contains a provision dealing specifically with rights of intervention in administrative proceedings. However, the program submission does include, at Chapter VII, page 32, the relevant provisions of the General Procedural Rules of the Texas Railroad Commission. Paragraph 10(d), chapter VII, page 35, states that any person or agency interested in any proceeding before the Commission may appear formally before the Commission by simply filing a notice with the Commission five days before the hearing date, and may present any relevant and proper testimony and evidence bearing upon the issues involved in the particular proceeding. Contrary to the National Wildlife Federation contention in its comment dated January 21, 1980, this intervention provision appears to be at least as liberal as that contained in 43 CFR Part 4.

46. The National Wildlife Federation stated that the discovery provisions beginning at 43 CFR 4.1130 should be included in the Texas program. The Secretary agrees that liberal discovery provisions are essential to meaningful citizen participation in the administrative process. Section 14(a) of the APTRA essentially says that the Commission may allow broad discovery upon motion of any party. The commenter objects that under this provision, all discovery is subject to the apparently unlimited discretion of the Commission, and this discretion could be exercised to deny citizens effective access to the administrative process, contrary to the Secretary's regulations. See 44 FR 15297. The Secretary's approval of this provision is based on the understanding that the Commission will exercise its discretion in this regard in a manner consistent with SMCRA and the Secretary's regulations. If events prove otherwise, the Secretary's authority could be used to correct the problem.

47. The Mine Safety and Health Administration (MSHA) commented on the narrative for § 731.14(g)(13) pertaining to the content of a course for use in training, examining, and certifying blasters on safety procedures.

These comments pertain to a part of the Texas program that is not required until six months after the Federal regulations on training, examining, and certifying blasters are promulgated. (See § 732.15(b)(12)). The narrative provided is used by the Commission only as a guideline for inspectors and does not impose training or safety requirements on operators. Upon adoption of the Federal regulations, the Texas provisions will again be reviewed by the Secretary, and any necessary changes can be required at that time.

48. MSHA also suggested some changes in the outline of the Proposed Training Criteria.

The Secretary notes, initially, that MSHA commented, "We do not find any conflicting requirements in the proposed Texas State program that might present hazards to miners." Texas Admin. Record Control No. TX–53 and TX–108.) The Secretary believes that the training outline is not now essential. Training criteria will need to be developed after regulations on blaster training and certification are promulgated.

49. The Environmental Policy Institute noted that although 30 CFR 764.17(a) and Section .081 of the Texas regulations pertaining to hearing requirements for "unsuitability

provisions" are identical, the section-by-section comparison states that the APTRA is applicable to such hearings. Since the APTRA is in some respects inconsistent with Section .081, the commenter was concerned that this would lead to confusion and ambiguity. The Secretary believes the section-by-section language (Chapter III, page 178) means simply that where the APTRA is not inconsistent with Section .081, the APTRA applies. This is not inconsistent with SMCRA.

50. One commenter stated that the absence from the Texas Surface Coal Mining and Reclamation Act of a provision comparable to Section 514(d) of SMCRA makes the Texas program inconsistent with SMCRA. Section 514(d) provides that the Secretary or State regulatory authority may grant temporary relief under certain conditions when a hearing is requested on a permit application decision. Although Texas has not included a provision corresponding to Section 514(d) in its Act, the State regulation, Section .222, does include the exact language of that section.

51. Another commenter suggested that Section 682(d) of the Texas regulations be revised to spell out what is "appropriate notice" of a show-cause hearing, similar to 30 CFR 843.13(d). The program submission spells out in Chapter VII, page 31, the specifics of appropriate notice. Those specifics are consistent with, and even go beyond, the Federal notice provision.

52. A commenter said that there is no administrative adjudicatory body within the Texas Railroad Commission which is independent of the Commission's regulatory functions. This commenter argues that an independent adjudicator is required by 30 CFR 732.15(b)(15), which refers to Section 525 of SMCRA, which in turn refers to the Federal APA (5 U.S.C. 554), which allegedly contains the actual requirement. It is the Secretary's view that the APA does not require the degree of independence urged by the commenter and that the administrative adjudicatory system proposed in the Texas program complies with the requirements of the APA. All the essential rights and protections of the APA are contained in the Texas system, and interested citizens are provided an opportunity for a fair and impartial hearing. The National Wildlife Federation, in its comment dated January 21, 1980, felt that persons who had participated in development of general policy positions should not participate in particular proceedings in which the policy might be applicable. The Secretary does not believe that either SMCRA or the APA requires all administrative reviewers to be free of contacts with general decisions made by the regulatory authority and which might be applicable in the case. Accordingly, the Texas program is acceptable on this point.

53. A commenter states that Section 14 of the APTRA explicitly allows *ex parte* contact between decision makers and the enforcement arm of the agency at any stage of adjudication, except where an employee of the agency participated in a hearing on a case. The commenter believes this to be inconsistent with the Administrative Procedure Act (5 U.S.C. 554) and therefore, unacceptable in a State program. The Secretary has been assured by the Commission that it interprets Section 17 to preclude *ex parte* contacts between decision makers and hearing examiners, as well as between either decision makers or examiners and any person in any way involved in any hearing, including persons such as technical staff or inspectors. (See letter from J. Randel Hill to Raymond L. Lowrie, December 31, 1979.) With this assurance, the Secretary believes the Texas program is acceptable in this regard. In its comments upon the letter from J. Randel Hill dated December 31, 1979, the National Wildlife Federation asserted, without basis, that examiners should have no contact whatsoever with any employee of the regulatory authority, whether or not the employee had any contact with the matter being decided. The Secretary believes this is not required under the law, and should not be made a condition of approval of a State program, since it might unnecessarily restrict examiners, without providing any additional protection against improper influence on decisions.

54. The U.S. Fish and Wildlife Service recommended that the Texas Railroad Commission make greater use of the expertise of other agencies through cooperative agreements, personnel transfers or other appropriate measures rather than relying on interagency permit review alone.

The Secretary believes that the Texas Railroad Commission has sufficient technical staff to implement the provisions of the permanent program. The Secretary also believes that the provisions the Commission has made for inter-agency review are adequate.

55. The U.S. Environmental Protection Agency, Region VI, suggested that all executed agreements and Memorandums of Understanding (MOUs) relative to the permanent program, and in particular the MOU between the Commission and the Texas Department of Water Resources, should be included in the Texas program submission.

The amended Texas program submission contains a copy of the transfer of jurisdiction for the regulation of surface coal mining on State-owned lands from the General Land Office to the Texas Railroad Commission. (See page VI–10). An MOU between the Texas Department of Water Resources and the Commission regarding coordination of water quality-related regulation of surface coal mining and reclamation activities is on pages VI–2 through VI–10.

56. One commenter wondered what the role of the General Land Office was in administering the Texas State regulatory program.

A letter dated August 21, 1979, from the General Land Office of the Texas Railroad Commission (See page VI–1 of the Texas program) transferred jurisdiction over coal surface mining on State-owned lands to the Commission. The narrative for § 731.14(e) of the program submission indicates that the General Land Office, Mining Division, will continue to serve in an advisory capacity to the Texas Railroad Commission on issues relevant to mining.

57. The Texas Chapter of the Sierra Club commented that the Texas Railroad Commission had not met its obligation to provide meaningful public participation in the development of the State program. The Secretary finds this allegation not to be supported in the record. In Attachment S to the program submission, the Railroad Commission showed how the public had been informed of the pending program development by means of newspaper announcements. On May 1, 1979, the official State Register carried notice of a June 7, 1979 hearing to be held on the program by the Railroad Commission. (See Attachment T to the Texas submission.) A copy of the transcript of the hearing was submitted as Attachment V to the program submission. The Secretary finds that Texas adequately involved the public in development of its program.

Conditional Approval

As indicated above under Secretary's Finding 4(k), there was only one minor deficiency which the Secretary requires be corrected. In all other respects, the Texas program meets the criteria for approval. The deficiency is an absence of regulatory provisions providing for recovery of costs and expenses, including attorneys fees, in accordance with 43 CFR 4.1290–4.1296. Given the

nature of this deficiency and its magnitude in relation to all the other public participation provisions of the Texas program, the Secretary of the Interior has determined this to be a minor deficiency. Accordingly, the program is eligible for conditional approval under 30 CFR 732.13(i), because:

1. The deficiency is of such a size and nature as to render no part of the Texas program incomplete since all other aspects of public participation in the program meet the requirements of SMCRA and 30 CFR Chapter VII and this deficiency, which will be promptly corrected, will not directly affect environmental performance at coal mines;

2. Texas has initiated and is actively proceeding with steps to correct the deficiencies; and

3. Texas has agreed, by letter dated January 28, 1980, to correct the deficiency by June 15, 1980.

Accordingly, the Secretary is conditionally approving the Texas program. This approval shall terminate if regulations correcting the deficiency are not enacted by June 15, 1980.

This conditional approval is effective February 16, 1980. Beginning on that date, the Texas Railroad Commission shall be deemed the regulatory authority in Texas, and all Texas surface coal mining and reclamation operations and all coal exploration in Texas shall be subject to the permanent regulatory program. See 44 FR 77440 (December 31, 1979), in which the Department of Interior adopted rules making the permanent program applicable in a State on the date a State program is approved.

On non-Federal and non-Indian lands in Texas, the permanent regulatory program consists of the State program approved by the Secretary.

There are no coal-bearing Indian lands in Texas.

On Federal lands, the permanent regulatory program consists of the Federal rules made applicable under 30 CFR Chapter VII, Subchapter D—Parts 740–743. In addition, in accordance with Section 523(a) of SMCRA, 30 U.S.C. 1273(a), the Federal lands program in Texas shall include the requirements of the approved Texas permanent regulatory program.

The Secretary's approval of the Texas program relates at this time only to the permanent regulatory program under Title V of SMCRA. The approval does not constitute approval of any provisions related to implementation of Title IV under SMCRA, the abandoned mine lands reclamation program. In accordance with 30 CFR Part 884, Texas may submit a State Reclamation Plan now that its permanent program has been approved. At the time of such a submission, all provisions relating to abandoned mined lands reclamation will be reviewed by officials of the Department of the Interior.

The approval of the Texas program is effective February 16, 1980, in accordance with a stipulation entered between the Secretary and plaintiffs in *In re: Permanent Surface Mining Regulation* (D.D.C., Civ. Act. No. 79–1144). This stipulation afforded the plaintiffs 30 days notice and an opportunity to challenge before the District Court in the District of Columbia, the Secretary's approval. Hereafter, it is expected that State program approvals for other States will be effective on the date of the **Federal Register** notice announcing the approval, in accordance with 30 CFR 732.13(h).

Additional Findings

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this conditional approval.

The Secretary has determined that this document is not a significant rule under E.O. 12044 or 43 CFR Part 14, and no regulatory analysis is being prepared on this conditional approval.

Dated: February 7, 1980.

Cecil D. Andrus,

Secretary of the Interior.

A new Part, 30 CFR Part 943 is adopted to read as follows:

PART 943—TEXAS

Sec

943.1 Scope.
943.2–943.9 [Reserved]
943.10 State Program approval.
943.11 Conditions of State Program approval.

Authority: 30 U.S.C. 1253.

§ 943.1 Scope.

This part contains all rules applicable only within Texas which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§§ 943.2—943.9 [Reserved]

§ 943.10 State Program Approval.

The Texas State program, as submitted July 20, 1979 and amended November 13, 1979 and December 20, 1979 is approved, effective February 16, 1980. Copies of the approved program are available at:

Texas Railroad Commission, Surface Mining and Reclamation Division, Field Office, Suite 125, 1121 East SW Loop 323, Tyler, Texas 75703;

Texas Railroad Commission, Surface Mining and Reclamation Division, Field Office, Shank Office Building, 1419 3rd Street, Floresville, Texas 78114;

The Office of Surface Mining Reclamation and Enforcement, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106, telephone (816) 374–3920; and

Office of Surface Mining, Room 135, Interior South Building, 1951 Constitution Avenue, Washington, D.C. 20240, telephone (202) 343–4728.

§ 943.11 Conditions of State Program Approval.

The approval of the State program is subject to the following condition:

The approval found in § 943.10 will terminate on June 15, 1980, unless Texas submits to the Secretary, by that date, copies of fully implemented regulations containing provisions which are the same or similar to those in 43 CFR 4.1290–4.1296, relating to the award of costs, including attorneys fees, in administrative proceedings.

[FR Doc. 80-6115 Filed 2-26-80; 8:45 am]

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Wednesday
February 27, 1980

Part IV

Department of the Interior

Fish and Wildlife Service

Department of Commerce

National Oceanic and Atmospheric Administration

Rules for Listing Endangered and Threatened Species and Designating Critical Habitat

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 17, 402, and 424

Rules for Listing Endangered and Threatened Species, Designating Critical Habitat, and Maintaining the Lists

AGENCIES: Fish and Wildlife Service, Interior, and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Services issue final rules for revising and maintaining the Lists of Endangered and Threatened Wildlife and Plants and for determining listed species' Critical Habitats. Procedures for receiving and considering petitions to revise the lists and for conducting periodic reviews of species contained on the lists are also adopted. These final rules implement the listing requirements of section 4 of the Endangered Species Act of 1973, as amended.

DATES: This rule becomes effective March 28, 1980; the amendments to §§ 17.11 and 17.12 will become effective upon republication of the lists of species, but not sooner than March 28, 1980, nor later than June 1, 1980.

ADDRESS: Interested persons or organizations having questions concerning this action may address them to the Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2771).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, establishes a comprehensive program to conserve Endangered and Threatened species of fish and wildlife and plants. Section 4 of the Act, 16 U.S.C. 1533, sets forth procedures for listing species, designating their critical habitat, and maintaining the Lists of Endangered and Threatened Wildlife and Plants. The Act also authorizes the Departments of the Interior and Commerce to issue rules to carry out its purposes.

The section 4 requirements as originally enacted in 1973 were straightforward and did not require comprehensive implementing rules. As a result, the Services have previously implemented only limited portions of section 4. These rules are presently found at 50 CFR 17.11, 17.12, 17.13 and 402.05.

Congress enacted the Endangered Species Act Amendments of 1978 on November 10, 1978. Public Law 95–632, 92 Stat. 3751. These Amendments significantly modified the procedural requirements both for listing species and designating their Critical Habitat. The Services determined that comprehensive implementing regulations should be promulgated to insure full compliance with the section 4 requirements and to aid the public in understanding the rulemaking process, pursuant to which Endangered and Threatened species are protected.

Accordingly, on August 15, 1979, the Services proposed rules to implement the section 4 listing and Critical Habitat requirements. *See* 44 FR 47862–47868. In general, that document proposed how the Services would proceed in revising and maintaining the Lists of Endangered and Threatened Wildlife and Plants, designating Critical Habitat, reviewing petitions to revise the lists, and conducting periodic reviews of species.

Subsequent to the publication of the proposed rules, Congress enacted the Endangered Species Act Amendments of 1979. *See* Pub. L. 96–159. The Amendments to section 4 were generally modest. To the extent practicable, these changes have been incorporated into these final rules. However, in certain instances complete incorporation was impossible. For instance, the new amendments require that guidelines be developed on a number of points after public comment. (See 1979 Amendments, section 3[h]). These guidelines are being prepared and will be published in draft form in the near future.

The Services today issue comprehensive final rules interpreting and implementing the general requirements of section 4 of the Act. The final rules for the most part adopt the approach suggested in the proposal. Significant modifications are described below in the section-by-section analysis of the comments.

The Services are in the process of reorganizing Title 50, Chapter IV of the Code of Federal Regulations for the purposes of clarity. To begin implementing this policy, the rules proposed at Part 405 are being published in Part 424 of Title 50. The table below is provided to cross-reference the proposed and final sections to avoid confusion.

Final section	Proposed section
424.01	405.01
424.02	405.02
424.10	405.10
424.11(a)	405.11(a)
424.11(b)	405.11(b)
424.11(c)	405.11(c)
424.11(d)	405.11(a)
424.12(a)	405.12(a)
424.12(b)	405.12(b)
424.12(c)	405.12(c)
424.12(d)	405.12(d)
424.12(e)	405.12(e)
424.12(f)	405.12(f)
424.12(g)	N/A
424.12(h)	N/A
424.13	405.13
424.14	405.14
424.15	405.15(a)
424.16(a)	405.15(b)
424.16(b)	405.15(c)(1)–(5)
424.17(a)	N/A
424.17(b)	405.15(c)(1) and 405.15(c)(6)
424.18(a)	405.15(c)(6)(iii)(D)
424.18(b)	405.16(a)
424.18(c)	405.16(b)
424.18(d)	405.16(c)
424.18(e)	405.16(d)
424.19	405.17
424.20	405.18

Summary of Comments Received

The Services received 72 letters commenting on the August 15 proposal. The sources of these comments were as follows: one Member of Congress, 10 Federal agency offices, 22 State Governors or agencies, and 39 citizens, private firms, and interest groups. Significant issues discussed in the comments are summarized below in section order.

§ *17.11—Endangered and Threatened Wildlife*

One comment argued that the Services have no authority to list a species as Endangered or Threatened because of its similarity of appearance to a listed species or because it constitutes a captive population of otherwise protected species. The Services have clear authority to treat as Endangered or Threatened any species that is similar in appearance to a listed species. *See* section 4(e) of the Act and 50 CFR § 17.50 *et seq.* The Services also have authority to list and regulate Endangered or Threatened species held in captivity. *See Cayman Turtle Farm v. Andrus*, 478 F. Supp. 125 (D.D.C. 1979), and relevant statutory authority and legislative history cited therein. Further, subsequent to the promulgation of the proposed rules, the Fish and Wildlife Service adopted final rules (44 FR 54002–54008) for the protection of captive species and withdrew those relating to captive self-sustaining populations. This modification is reflected in the final rule.

Another comment suggested that Critical Habitat areas should be clearly delineated, and suggested that the map constitute the definition of the area's boundaries. The Services agree that Critical Habitat areas must be clearly defined, and intend to provide precise boundary information in rulemakings. *See* § 424.12(d). The Services will also include Critical Habitat maps that portray the Critical Habitat areas as precisely as possible. The description of the area will prevail over the area denoted by the map in the case of conflict.

Several commenters suggested that names used in listing be either those with widest currency for the species involved or those approved by appropriate professional societies. Scientific names used in the lists will be those most widely accepted by specialists in that group of taxa. In making this determination, the Services will rely to the extent practicable on the *International Code of Zoological Nomenclature* and the *International Code of Botanical Nomenclature.*

To avoid ambiguity in cases in which more than one name is commonly used for a taxon, synonyms will be provided. Such synonyms are expressed in parentheses with the name itself preceeded by an equal (=) sign.

One comment indicated that updating the "historic range" column of the table should occur only after a full rulemaking was completed. This information is not required by the Act (*See* section 4(c)(1)) and is intended only as an aid to interested persons. Therefore, the Services believe it unnecessary to engage in rulemaking to make the minor, technical changes contemplated.

§ *17.94—Critical Habitats*

One comment questioned the notion of "constituent elements" included in this section. The term is used to clarify that a Critical Habitat determination may impact only those activities that affect those aspects of the Critical Habitat essential to the conservation of the species. A partial listing of some of the primary constituent elements is found in § 424.12.

§ *424.02 Definitions*

The Services received a number of comments on the proposed definitions, as well as suggestions for defining additional terms.

"Conservation"

Several comments suggested that "conservation" be defined. This term is an essential one in interpreting both the Act and implementing rules and has been defined in this rule in the manner set out in the Act. *See* section 3(3), 16 U.S.C. 1532(3).

"Critical Habitat"

Two comments suggested that criteria be developed to identify areas "essential for the conservation of the species," a phrase taken from the definition. Although the precise biological factors essential for the conservation of a species will vary considerably from case to case, the Service has proposed the general biological requirements it will review in making this determination. *See* 44 FR 47864 and § 424.12(b) of these rules. Specific comments on these criteria are summarized below.

A number of comments expressed concern over the perceived possibility that Critical Habitat could be designated in an unwarranted manner for areas outside the geographical area occupied by the species at the time of listing. Several suggested that precise criteria should be developed to insure that these areas truly constitute Critical Habitat. This suggestion has not been accepted. The definition of "Critical Habitat" includes specific language directing the manner in which the Services will proceed in designating Critical Habitat areas outside the present range of species, and further criteria are unnecessary. The Services will closely scrutinize any area outside the geographical area occupied by a species before designating it Critical Habitat. Areas outside the geographical range of a species will be designated Critical Habitat only if necessary to ensure the conservation of the species. *See* § 424.12(e).

One comment suggested that the language contained in sections 3(5) (B) and (C) of the Act, 16 USC 1532(5) (B) and (C), should be included in the definition of "Critical Habitat" adopted in the final rule. Paragraph B authorizes the Services to designate Critical Habitat for species for which no Critical Habitat has been determined previously. Although the Services believe the rules as proposed would authorize designation of Critical Habitat for listed species, it has adopted this suggestion to avoid any ambiguity. Since the provision constitutes guidance on the application of the definition rather than a part of the definition itself, the operative language appears at § 424.12(g). The Services reject the suggestion that the definition specifically state that Critical Habitat shall not include the entire geographical area which can be occupied by the species "except in those circumstances determined by the Secretary." This provision is of sufficient clarity to permit proper administration of the Act without including it in these rules.

One comment suggested that reference to "special management considerations or protection" in the definition improperly emphasized management procedures over physical and biological features essential to the conservation of the species. Neither the Act nor the legislative history indicate that reading to be the correct one; both place strong emphasis on physical and biological features. As a result, the Services have made no modification in the definition.

One comment suggested that the definition should specify that a species be listed before Critical Habitat can be designated. The Act clearly provides that Critical Habitat shall be designated, to the maximum extent prudent, at the time the species is listed. *See* section 4(a) of the Act, 16 USC 1533(a). For this reason, the comment is rejected.

"Endangered Species"

Three comments pointed out that the proposed definition does not include the limitation on insect pests set out in the Act. *See* Section 3(6) of the Act, 16 USC 1532(6). The Services adopt this suggestion and include the appropriate statutory language in the definition of "species".

A number of groups commented on the "significant portion of its range" phrase of both this definition and that of "Threatened species"; all suggested further articulation of the term. One suggested that "range" be defined as that area normally inhabited by the species 30 years prior to the proposal as determined by a consensus of experts qualified in the study of that species. This suggestion is rejected. Not only is there no basis for arbitrarily establishing a 30-year base line to make such determinations, but the proposed requirement to reach a consensus of experts makes this suggestion administratively infeasible.

Another commenter suggested consideration of the number of individuals, their degree of productivity, and the geographical arrangement of populations in making this determination. The Services recognize a species should not be subject to the protection of the Act because a small proportion of individuals of the species are in danger of extirpation. However, what constitutes a significant portion of a species' range varies greatly from species to species. In light of this broad diversity and the guidance of both the Act and the legislative history, the Services find it inadvisable to establish new criteria as suggested. The Services will continue to consider this issue,

however, and will propose criteria at a later date, if warranted.

One comment suggested that the definition be limited to species formally listed by the Director. This suggestion has not been accepted since the regulations provide procedures pursuant to which a species is to be listed; the term indicates those species that may be listed under the Act.

One comment indicated that the proposed definitions of "Endangered species" and "Threatened species" were too nebulous and had been used in the past to list fish and wildlife for political rather than scientific reasons. The Services believe that the language is consistent with and specific enough to provide guidance in administering the Act, and reject the latter assertion.

"Public Meeting" and "Public Hearing"

A number of comments suggested that "public meeting" and "public hearing" be defined to clarify the distinction between the two. This suggestion has been accepted. A public meeting is a gathering to permit an informal *exchange* of information on a regulatory proposal rather than an informal presentation by the Services of all the evidence that supports the proposed rule. A public hearing provides the public a forum to comment in a more formal manner on a Critical Habitat proposal and, if appropriate, the accompanying listing proposal, since those comments will be transcribed by a reporter. *See* H. Rept. 95–1804, 95th Cong. 2d Sess. 27(1978), H. Rept. 96–697, 96th Cong. 2d Sess. 10–11 (1979).

"Special Management Considerations and Protection"

Most comments received on this definition were directed at one of two points. First, several comments suggested that the definition should focus on physical and biological features of the Critical Habitat rather than conservation of the species. Second, a few comments focused on the level of need for the special management considerations and protection.

The Services have accepted those comments on the first point, since that approach comports more closely with the language of the Act. The Services have also retained the conservation component of this definition since protection of physical or biological features is of utility only insofar as it aids in achieving the legislative policy of conserving listed species.

Comments on the second point were more diverse: suggestions ranged from requiring that special management considerations or protection be essential to that they be solely of aid to the species. Examination of the legislative history of the Critical Habitat definition provides little guidance on the meaning of this term, and the Services have turned to the expressed purpose of the Act to interpret it. The Services believe the policy of the Act is best satisfied if the term is interpreted as encompassing all methods or procedures useful in protecting physical or biological features for the conservation of the species. That formulation authorizes the Services to designate Critical Habitat even when existing management and protective schemes offer some level of protection to the species.

A few comments suggested that methods and procedures encompassed by the definition be limited to those which are "feasible" or "most effective". The Services intend to consider reasonable management options, and do not believe that addition of these words would clarify the definition.

One comment questioned the authority of the Services to define the term since there is no statutory definition. The Services, as the agencies designated to enforce the Act, have authority to interpret the Act within the constraints set out by Congress, as recognized in the Endangered Species Act. Interpretation of this term will aid both the public in understanding agency actions and the Services in administering the Act.

"Species"

A number of comments pointed out that the proposed language could be read to exclude fish or wildlife or plant species. Some suggested that the problem be rectified by using the word "includes" rather than "means" in the manner set out in the statutory definition; others that "species" be inserted after "means". The Services have clarified the scope of the definition by changing "means" to "includes". This formulation also authorizes the Services to list taxa at levels higher than species. However, the Services will list those taxa only if all component species are individually Endangered or Threatened. *See* § 424.11(a).

One comment suggested that the proposed "fish *and* wildlife" language be changed to "fish *or* wildlife", a term defined by the Act. This comment has been accepted. The commenter also suggested that the distinct population concept would be clarified if the term "subspecies" were deleted from the proposed language. The Services have also accepted this comment.

The Services rejected as unnecessary those comments suggesting that the definition mention invertebrates as well as vertebrates, require successful interbreeding to constitute a species, or specify that the distinct population concept be linked to the term "significant portion of its range" contained in the "Endangered species" definition. The present language of the final rule and the relevant legislative history indicate the scope of the definition on these points.

Two comments suggested that the proposed definition was not precise enough from a biological point of view but offered no suggested changes. The Services believe that the definition in this final rule adequately meets both legal and scientific requirements.

Other Comments

A few comments recommended that other terms be defined—"special rule", "federal agency," "irresolvable conflict," "permit or license applicant", or "state agency". Many of these terms are not used in the rules and are therefore not defined; the meaning of the others is sufficiently clear as not to require further definition. The Services have defined "plant" and "fish and wildlife" as suggested in the manner set out in the Act.

One comment noted that the Act's provisions speak in terms of actions of the appropriate Secretary rather than the respective Directors, and suggested that reference in the rules to the Director be changed to the Secretary. The Services believe that reference to the Director makes the rules clearer, since in both agencies appropriate authority has been delegated to that officer. The delegation has been undertaken pursuant to the Secretaries' authority, including 5 U.S.C. 302.

§ *424.10—General*

One comment suggested that the criteria for listing and delisting a species should be the same. This is the intent of the Services. Delisting procedures have been included in the final rule. *See* § 424.11(d).

§ *424.11—Factors for Listing, Reclassifying, or Removing Species*

§ *424.11(a).* Several comments either questioned the methods by which the Services would arrive at taxonomic distinctions, or suggested that the rules require the Services to consult appropriate professional societies in evaluating the taxonomic status of candidate species. The substance of this suggestion has been adopted. In deciding which of alternative taxonomic interpretations to accept, the Director will rely on the professional judgment available both within the Service and the scientific community and from the most recent taxonomic studies available

pertaining to the subject species. However, no criteria other than these very general ones can be established for acceptance of taxonomic treatments. As a matter of practice, the Services review current taxonomic literature in considering the appropriateness of present and proposed listings. Although professional societies maintain lists of accepted taxa for some taxonomic groups, this is not true for all groups. The Services will rely on generally accepted lists of taxa when they are available.

One comment questioned the Services' authority to list taxa of higher rank than species. There has been some confusion regarding the Services' use of the term "taxon", particularly regarding taxa of higher rank than species. It is not the Services' intent that such taxa be listed as Endangered or Threatened except on a finding that all known species included in the taxon of higher rank qualify individually for such listing. This position is consistent with the rules in their final form.

Another comment suggested that the Services be required to consult with all State and private wildlife agencies in determining a species' eligibility for listing. Before proposing a species for listing, the Services routinely seek information from many authorities on the species involved. As a matter of policy this practice will continue. However, difficulties involved in determining which States and private wildlife agencies might be appropriate and contacting them makes the proposal administratively infeasible.

§ *424.11(b).* One comment suggested that this subsection should be modified since it took a more mandatory position toward listing a species than required by the Act. This comment has not been accepted since the Act does mandate that all legitimately Endangered or Threatened species be listed.

One comment suggested that the information supporting a listing action be required to be "adequate" and that any deficiencies in supporting information be pointed out at the time of listing. The Services will base listing actions on the best scientific and commercial data available to the Director at the time of listing, which is "adequate" under the Act. Occasionally this may mean that some information regarding the life history and biology of a species is lacking at the time that it is listed, when such information is not necessary to establish that the species is Endangered or Threatened. Deficiencies in the supporting data base are inferable from the preamble of the proposed rule and this portion of the comment is thus rejected.

One comment pointed out that a number of the factors set out in subsection 424.11(b) were not identical to those contained in the Act and suggested that the proposed rules be modified accordingly. This suggestion has been rejected. The Services have not interpreted the statutory language in the manner set out in the final rules. For instance, the factor referring to the "inadequacy of regulatory mechanisms" requires the Services to make a finding which can be interpreted as suggesting that local, State, Federal or international protective schemes are improperly administered. The final rules clarify that, in determining whether regulatory mechanisms are "adequate," the Services will examine whether or not existing mechanisms prevent the decline of the species or the degradation of its habitat. Similarly, the Services have interpreted the biologically uncertain term "overutilization" of section 4(a) to mean utilization that has detrimentally affected the species. In both cases, it should be recognized that the statutory factors are open-ended. *See* Section 4(a)(1)(5) of the Act, 16 U.S.C. 1533(a)(1)(5). Further, the Services must still find the species to be "Endangered" or "Threatened" as those terms are defined by statute and in these rules.

A number of comments suggested that disease or predation not be considered a reason to list a species unless it seriously depletes a species' numbers or affects its productivity, or that only "detrimental" destruction of habitat or range be considered. These comments have been rejected. The touchstone for listing species is whether they are "Endangered" or "Threatened". Restricting the scope of the factors leading to that status could result in the anomalous situation of preventing the Director from listing an otherwise eligible Endangered or Threatened species.

Several commenters questioned the wisdom of attempting to save species in danger of extinction from natural causes. The Act does not differentiate between natural and other causes of Endangered or Threatened status. Further, in practical terms, it is usually not possible to distinguish natural from other factors operating on the species.

§ *424.11(c).* A large number of commenters interpreted the proposed language as absolutely mandating the listing of all species protected by international agreements. For this reason, some suggested deletion of the proposed section and one suggested that language be adopted indicating listings under international agreements should not in and of themselves constitute sole justification for listing species under the Act.

The Services did not intend the provision to *require* listing under the Act, and believe the proposed language has been misunderstood. The Services will independently examine whether the requirements for listing a species under the Endangered Species Act have been met. The language of this subsection has been clarified in the final rule.

Many comments were directed at the weight the Services should give international agreement listings in listing species under the Act. A number indicated that listings under these agreements, particularly on the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), had occurred for reasons other than scientific ones. Others suggested that CITES listings often included higher taxa and covered specific species ranges possibly inappropriate to an Endangered Species Act listing. For these reasons, they suggested the proposed provision be deleted or modified to provide that international agreement listings should not constitute substantial evidence for listing a species under the Act.

The Services agree that the scientific and commercial data relied upon by the signatory nations in protecting a species under international agreement varies from case to case. For instance, as a general rule, CITES listings made prior to the adoption of the Berne Criteria in 1976 have less supporting evidence than those occurring after that time. On the other hand, the fact that several nations have determined that international protection is necessary to conserve a species constitutes evidence that a species should be protected under the Act, although the weight of the evidence is unclear without examining the facts on a case-by-case basis. As a result, the Services included language in the preamble to the proposed rule to this effect. Similar language has been adopted in the final rule for purposes of clarity.

Another comment suggested that listing under the Act was unnecessary if a species was listed under an international agreement, since its protection was already mandated by law. The Services disagree with this view; protections afforded by international agreements are not identical with those provided by the Act.

A number of comments interpreted the proposed section as contradictory to the procedural and substantive requirements for listing species found in section 4 of the Act. This is not the Services' intent; all procedural and

substantive requirements of the Act must be complied with prior to listing a species. The Services also do not view this section as inconsistent with the requirements of section 4(a) as suggested by two comments, since listing on an international agreement indicates that one or more of these factors may have contributed to the decline of the species.

A final commenter suggested that the Services had exceeded the authority provided by section 4(b)(3) of the Act, 16 U.S.C. 1533(b)(3) since the proposed language was broader than the language appearing there. Although the language of the final rule is broader than that of the Act, it implements a number of sections and is well within the legal authority of the Services to adopt rules implementing the Act.

§ *424.11(d).* The Services have also adopted a provision articulating the manner in which they will proceed in deleting a species from the lists. This provision clarifies what was implicit in the proposed rule. The Services will evaluate on the basis of the best scientific and commercial data available to them whether the species is Endangered or Threatened. A species may be deleted if the Services determine that (1) it is extinct, (2) it has recovered to a point above that at which it would be listed as Threatened, or (3) the original data were in error.

§ 424.12—Criteria for Designating Critical Habitat

§ *424.12(a).* One comment suggested that subsection 424.12(a) be modified to clarify that Critical Habitat determinations are to be made by regulation at the same time a species is proposed for listing. This suggestion has not been accepted since the language conforms with that of section 4(a) of the Act, and requires contemporary designation of Critical Habitat when appropriate through the rulemaking process.

One commenter suggested that this section be modified to clarify that the Services could designate Critical Habitat within foreign countries. The Services have not accepted this comment since they have interpreted the Critical Habitat portion of section 7(b) as applicable only to areas under United States jurisdiction and the high seas. The Services do believe, however, that the "jeopardy" component of section 7(a) is applicable to the actions of United States federal agencies in foreign nations.

One comment suggested that the subsection be changed to clarify that Critical Habitat need be designated only when a species is listed and not when it is reclassified from Threatened to Endangered. This reading conforms with the language of the Act and has been accepted.

A number of general comments were received on the factors proposed for determining when the designation of Critical Habitat is not prudent. One comment suggested the factors should be extremely narrow since the designation of Critical Habitat brings into play the additional public notice requirements imposed by the Act and rules; another comment indicated that the factors should be broadened to permit the Services not to designate Critical Habitat when the action would not clearly benefit the species; and still another comment suggested the deletion of the factor of lack of benefit to the species.

The Services believe that interpretation of the "maximum extent prudent" language should be guided by the broad purpose of the Act to conserve Endangered and Threatened species. *See* Sections 2 (b) and (c) of the Act, 16 U.S.C. 1532. The legislative history of section 4(a) makes clear that Critical Habitat should be designated when in the "best interest of the species to do so." H. Rept. No. 95–1625, 95th Cong. 2d Sess. 16 (1978). The rules have thus been written to require the Services to designate Critical Habitat at the time of listing when that action would benefit the species. The Services believe that in most cases Critical Habitat designation will benefit the species; however, when that course would not benefit the species, the Services will not designate Critical Habitat.

The Services have adopted the suggestion that the proposed language be modified to clarify that the factors set out do not consititute the sole grounds for a determination that designating Critical Habitat would not be prudent. This change is advisable because circumstances that may make Critical Habitat designation inappropriate are varied and difficult to foresee, and the enumerated factors might be interpreted as foreclosing a determination of lack of prudence in some cases when it was justified.

Comments expressing conflicting points of view were also received on subsection 424.12(a)(1). One comment suggested that the language restricting the factor to species in need of immediate listing be broadened; another suggested that the factor is unnecessary because of the emergency listing provisions of the Act and regulations. The Services have deleted this provision because of the recently liberalized emergency listing rules. The Services also note that to the extent the species is not benefited by Critical Habitat designation, that action need not be taken.

One commenter suggested that the criteria for determining whether a Critical Habitat determination is not prudent should be addressed separately for plants and animals. The Services believe that tailoring these procedures to individual taxonomic groups is unnecessary and would cause confusion.

§ *424.12(b).* One commenter contended that it made little sense to specify physiological, behavioral, ecological and evolutionary requirements essential to the conservation of a species because such requirements were either responsive to external stimuli or undefinable as components of a Critical Habitat. The Services disagree that such requirements are either extrinsic or undefinable. These factors have been considered in previous Critical Habitat designations and have proven a useful administrative tool.

Several commenters suggested alternate wording for § 424.12(b) which would make it follow more closely the statutory definition of Critical Habitat. This subsection has been reworded to follow the statutory language more closely than did the proposal.

Two comments were received that questioned the appropriateness of the "special management considerations and protection" language in this subsection. This provision is taken from the definition of "Critical Habitat" found in the Act. *See* section 3(5) of the Act, 16 U.S.C. 1533(5). Further discussion of this provision appears above. See § 424.02.

One commenter suggested that § 424.12(b)(1), which describes requirements essential for the conservation of listed species as including "space for individual and population growth * * *", be applied only to determinations of Critical Habitat for stable populations. This suggestion has been rejected. Population growth is an essential component of the recovery of many listed species and is in keeping with the conservation policy of the Act.

One commenter suggested that § 424.12(b)(5) be entirely deleted because it is implicit in the definition of Critical Habitat. This comment is rejected. The Services believe that the material contained in the subject paragraph represents a useful clarification of the requirements for Critical Habitat.

One commenter suggested that the reference to "disturbances" in § 424.12(b)(5) be replaced by "destruction or adverse modification of constitutent elements." This latter

phrase, which appears in § 17.94(a), relates specifically to the responsibility of Federal agencies under section 7 of the Act with regard to Critical Habitats. "Disturbance," as used in § 424.12(b)(5), is intended to be broader.

One commenter suggested that the words "and ecological" be inserted in § 424.12(b) after "geographical". The Services accept this suggestion as a useful clarification in specifying Critical Habitat.

One commenter suggested alternate wording of this paragraph to make more explicit the list of constituent elements that should accompany the description of a Critical Habitat. The Services have substantially adopted the suggested alternate wording because it will produce added clarity.

One commenter suggested that protection from disturbances should not necessarily be an absolute requirement in considering areas for Critical Habitat designation and that emphasis should be placed on designating habitats protected from those disturbances that might be adverse or detrimental to the species in question. In considering protection from disturbance as one of these factors it should be understood that only those disturbances effecting the value of the habitat for the species under consideration will be taken into account. The Services consider this to be sufficiently clear, and no alteration of the proposed language is necessary.

§ *424.12(c).* One commenter argued that the Director's consideration of the ecomonic impacts of designating Critical Habitat is too narrowly confined to the impacts on property owners involved and that additional detail on all types of impacts should be provided. The Services did not adopt this comment, since the rule as written does not limit the economic impacts to only those which may affect the property owners; instead it covers significant economic impacts generally, which include regional and other impacts. Since the rules comprehensively include all economic and other impacts for consideration, the detailed application of this standard to particular factors is better left to a case-by-case analysis rather than placed in these general rules.

One comment suggested that the consideration given to economic effects is too broad, and could reduce the protection afforded listed species. The commenter noted that under the proposed rule, there could be a "step-by-step exclusion of a species' habitat from Critical Habitat" due to economic considerations which could reduce the Critical Habitat to the point at which the species is on the verge of extinction. The comment basically suggests that the rules should make explicit that the cumulative effects of incremental losses of Critical Habitat should be considered. The balancing approach in the present rules contains elements of such a consideration, since the less habitat there comes to be for any species, the more biologically important the remaining habitat becomes. The more biologically important a habitat portion is, the greater the degree of economic impact necessary to require exclusion of that habitat portion. However, the commenter is correct that decrease in Critical Habitat area size may result from the economic impact consideration; this result is a consequence of the present law, section 4(b)(4) of the Act, 16 U.S.C. 1533(b)(4).

One commenter argued that too broad a reach is given to the economic impact analysis requirement. The comment states: "since the duty imposed by section 7(a) to avoid jeopardizing the survival of listed species is independent of the duty to avoid destruction of critical habitat, an extensive and detailed economic analysis under section 4(b)(4) would neither be necessary nor of much consequence." The comment's suggestion would unreasonably limit the scope of an economic impact analysis to the point at which it is, as the commenter admits, inconsequential. The legislative history of this section is to the contrary, and indicates that Congress believed it was creating a substantive and important change in the Act which could significantly affect the scope of the requirement to designate Critical Habitat. The rules therefore indicate that all economic or other relevant impacts of section 7(a) involved in the designation of an area as Critical Habitat should be considered.

One comment proposed that only presently available information be considered in an economic analysis. Although an economic impact analysis can often be done by analyzing currently available information, occasionally raw data may have to be collected or processed to form meaningful information which the Services can consider. Therefore, this comment was not adopted.

One comment proposed that in the consideration of economic effects of a proposed Critical Habitat, that only "significant effects" on "major activities" planned or underway in the area should be considered. The Services believe a rule of reasonableness is to be applied in identifying activities which may be affected by Critical Habitat designation. In order to adversely affect a Critical Habitat area, an activity must significantly affect the area in a detrimental manner. In order to be potentially affected by Critical Habitat designation, an activity must also be a Federal action, or have Federal involvements. The Services have clarified the regulation to reflect this rule of reasonableness.

A commenter requested a clarification of whether areas into which listed species are transported or introduced can become Critical Habitat. As indicated in the preamble to the proposed regulations (44 FR 47862) the Services are considering a regulatory mechanism to provide flexible management for reintroduced populations of listed species. The Services have not yet determined the appropriate method for achieving that end.

One commenter suggested that this subsection be expanded to provide examples of the types of impacts, in addition to those of an economic nature, that would be considered in analyzing the effects of a Critical Habitat designation. In amending the Act to provide for analysis of the possible impacts of Critical Habitat designations, Congress specifically referred to economic impacts. Other types of impact, which may take many forms, will depend upon the specific circumstances surrounding a Critical Habitat designation, and are to a considerable extent unpredictable at this time. As a result, the Services have not adopted rule language on these other impacts. However, the Services intend to consider all identifiable relevant impacts on a case-by-case basis.

One commenter suggested that Critical Habitat designations be based only on biological considerations, and that economic factors should only be used in subsequent management decisions. The Act requires that economic factors be considered in the delineation of Critical Habitat. *See* section 4(b)(4); 16 U.S.C. 1533(b)(4).

§ *424.12(d).* Several commenters indicated that the proposed rule was not sufficiently clear in setting out the method by which Critical Habitat boundaries would be described, or that references to ephemeral features should be completely prohibited in describing Critical Habitat. The Services agree, and the final rule has been revised to clarify the method of description of Critical Habitat and prevent the use of ephemeral features in such descriptions. *See also* the discussion at § 17.94 above.

§ *424.12(e).* Many commenters objected to the possibility that an inclusive area might be designated as Critical Habitat when several suitable habitats are located in close proximity.

The allowance for the designation of an inclusive area as Critical Habitat is intended only to alleviate the potential problem of an unnecessarily complicated description of Critical Habitat that would result if a number of very local and disjunct habitats were to be designated individually. The Services intend to use this authority only in cases where suitable habitat areas are extremely close together.

§ *424.12(f).* This subsection implements the statutory requirement for designating as Critical Habitat an area outside the geographic range of the species. *See* the discussion at § 424.02 above.

§ *424.13. Sources of information and relevant data.* One commenter suggested that there be a specification that data reviewed consist of the best scientific and commercial data available. The Services will review the available data and make their determinations on proposed and final rules on the basis of the best scientific and commercial data available to them.

One commenter recommended that formal procedures for notification and a review and comment period be instituted in consideration of data supporting possible revisions of the lists. This recommendation is rejected. The Services believe that formal agency notification and review and comment properly follow the publication of a notice of review or proposed rule in the **Federal Register** as part of the normal rulemaking process. To require another round of notices and proposed rulemaking would provide only marginal benefits, as the Department of the Interior has determined in its rules implementing Executive Order 12044. *See* 43 CFR Part 14.

The Services have also implemented the requirement imposed by the Endangered Species Act Amendments of 1979 to conduct a review of the status of a species before proposing it for listing. The Services interpret this provision as requiring the preparation of a brief summary of information available on the status of the species. The status review will include as appropriate, a summary of major studies on the species and the views of experts on this group of taxa.

§ *424.14. Petitions.*

§ *424.14(a).* Several comments requested that the special procedures under the Act for reviewing a petition to list, reclassify or delist a species be applied to petitions requesting the Services to take other actions described in § 424.10, such as to designate or delete Critical Habitat. These special procedures require publication in the **Federal Register** of a notice when the director has found that substantial evidence supports the petition, and publication of a status review on the species involved within 90 days of receipt of the petition.

The Services have not accepted these suggestions. Section 4(c)(2) of the Act clearly states that the special procedures described above are applicable only for petitions to review the status of "any listed or unlisted species proposed to be removed from or added to either list". Furthermore, the 1978 amendments to the Endangered Species Act imposed comprehensive procedures for Critical Habitat rulemakings that provide for extensive public participation and are particularly suited for Critical habitat determinations. The Services also note that the petition procedures imposed by section 4(c)(2) of the Act, such as a status review of the species, are not particularly appropriate in Critical Habitat cases.

One comment suggested that a periodic listing of petitions received be published in the **Federal Register** for informational purposes. Since a notice must be published in the **Federal Register** whenever a petition has met the requirements of the Act and these rules, the Services consider a periodic listing to be unnecessary.

One commenter recommended that the scope of organizations from which petitions might be received be broadened. The Services desire to receive petitions from any interested person, group, or organization, as indicated in the original proposal.

One commenter recommended that the Services collect their own data before responding to petitions. The Services' duty with respect to processing petitions must be interpreted in a manner reflecting the short time frame (90 days) in which they are statutorily required to act. The Services will review published studies, reports, and other sources of information on the species when examining the petition, but the Services cannot conduct field studies in most cases because of the statutory deadline. The comment is therefore rejected.

§ *424.14(b).* One commenter suggested that petitions be reviewed to determine whether they were politically motivated or fabricated. The Services do not consider an examination of petitioners motivation to be appropriate in reviewing petitions. Review by the Services is primarily concerned with a petition's presentation of biological information. A petition found to be based on fabricated information would be denied as not presenting substantial evidence. This circumstance is adequately covered in the rules and no change has been made.

One commenter requested that the rule make clear whether the petitioner is responsible for providing data sufficient to form a basis for actions taken by the Services, or whether this responsibility lies elsewhere. The principal responsibility of a petitioner is to present substantial evidence relating to the status of the species. This may be less than that required to propose or finalize a listing. The Services intend to gather information from as many sources as are available before proposing an action, and bear the primary responsibility for gathering sufficient information on which to base such actions. The Services believe that this is clearly expressed in the rule.

Two commenters suggested that petitions requesting that species be removed from the lists should not be required to contain extensive background data regarding the species. The Services must make the same decision in the case of either listing or delisting—whether the species is Endangered or Threatened. The petition requirements are written consistent with this scheme.

One commenter suggested that this section presented an "impossible goal" for many species since in some cases past and present numbers and distribution of a species are unknown. The Services recognize that precise past and present numbers and distribution may not be available for many species, but are primarily concerned that whatever information is available be presented in a petition, even if such information is imprecise. It must be recognized that the Services are required to take action based on the best scientific and commercial data available at a given time and the rules are written to aid the Services in meeting this requirement.

A number of comments addressed the substantial evidence standard of § 424.14(b). One suggested that a significant evidence standard be adopted rather than a substantial evidence standard. This comment has been rejected since section 4(c)(2) of the Act, 16 U.S.C. 1533(c)(2), specifically imposes a substantial evidence standard.

One comment questioned the legal authority for the definition of "substantial evidence", and suggested that it be moved to the definitions section. The definition has been provided to clarify what evidence is needed to support a petition for purposes of the rules and section 4(c)(2) of the Act. The standard adopted is drawn from judicial decisions which

have interpreted the substantial evidence standard of the Administrative Procedure Act. The definition is not placed in the general definition section of these rules because it is a specific definition used only in this paragraph and is inapplicable to other uses of the term in the rules and in the Act.

Several comments addressed specific parts of the proposed definition. The word "quantum" was deemed inappropriate and has been changed to "amount" in the final rules; the "reasonable person" language has been retained since it constitutes an important component of the standard as interpreted by court decisions.

§ *424.14(c).* Two comments suggested that the rules establish a time limit for the Director to determine whether petitions include substantial evidence. The Services have adopted the suggestion; the final rules provide that the Services will make the substantial evidence determination within 90 days.

One comment suggested that there was an unclear distinction between the evidence considered sufficient to warrant the acceptance of a petition and that required as the basis of a proposed listing. The Services disagree with this view; a petition is complete if it presents substantial evidence, a proposed listing requires a preliminary determination by the Services that the species is either Endangered or Threatened.

Several comments recommended the rules require that a **Federal Register** notice that a petition is under review either lead to a proposed rule within a specified time or be withdrawn. Both the Act and these rules require the Services to conduct and publish a review of the status of a species that is the subject of the petition within 90 days. No other time limits are necessary. The information needed to propose a rule may require some time to obtain, particularly if further field research must be completed.

One commenter suggested that the Services be required to consult with State agencies before publication of a notice that a petition had been accepted. Given the short statutory time for dealing with petitions, a further requirement to this effect is impracticable. However, as a discretionary matter the Services may consult with State conservation agencies in some cases.

Two comments inquired whether the publication of a status review, required by this section, is equivalent to the publication of a notice of review. The status review for petitions imposed by the Act is not the same as a notice of review. The latter is a discretionary administrative tool for requesting further information.

§ *424.14(d).* One commenter recommended that the Services be required to inform a petitioner whose petition is denied of the reason for denial. This recommendation is in keeping with the intentions of the Services and has been adopted in the final rule.

One comment requested that a procedure be established so that a petitioner could administratively appeal from a denial of a petition by the Director. The comment suggests that the most appropriate body to carry out these responsibilities would be an outside technical panel. Establishing an elaborate administrative appeal system would be expensive and unnecessary in light of the infrequency of problems in this regard in the past. The Services, however, will consider informal requests to review the denial of a petition.

One comment suggested that a specific time limit be established for the disposition of petitions relating to Critical Habitat. This suggestion has been rejected since the requirements of the Administrative Procedure Act, 5 U.S.C. § 553, and respective Departmental regulations require that such petitions be processed in a timely and appropriate departmental regulation.

Section 424.15—Notice of Review. One comment suggested that the language of proposed § 405.15(a) be deleted because it would permit further consideration of petitions which are not supported by substantial evidence in a manner inconsistent with § 424.14. This comment has not been accepted. The notice of review provision is intended to be used primarily in cases other than petitions (which have their own specific procedures in § 425.14). This procedure provides the Services with a flexible management tool to gather necessary information, and also provides an added opportunity for public involvement before a formal proposed rulemaking. The Services believe this process is in keeping with the public involvement emphasis of the Act and Executive Order 12044.

Another comment suggested that private landowners should also be contacted in any notice of review. The Services have carefully considered this comment, but believe that such extensive notification procedures are not warranted at this early and tentative stage in the decision process. Often the tentative and broad nature of a notice of review would mean that no specific area involving the species could even be identified. Contacting local governments is required once Critical Habitat is proposed, and the Services believe this is the best time to do so. The Services also note that State Governors are free to contact State or local groups for their comments, whenever the Governors feel such action is appropriate.

One commenter recommended that the Services avoid lengthy periods of review for species under consideration as Endangered or Threatened but for which a proposed rule has not been published. The Services in all cases attempt to deal with species reviews in an expeditious manner. The requirement that the Services act only when they believe a species is Endangered or Threatened requires careful evaluation of data not always readily available. To impose a regulatory requirement on the length of reviews is unwise since the data readily available varies greatly from species to species.

One comment contended that this section provided insufficient detail regarding the procedures that would be followed in conducting a review of an action under consideration. This comment is rejected. Extensive procedures for gathering information and consulting interested private organizations and governmental entities are included in the rules. Further requirements along these lines are unnecessary.

One comment suggested that a period be set for receipt of comments solicited by a notice of intent or review to generate additional economic or other information. The Services have rejected this comment. The length of the comment period will vary from case to case, and this preliminary stage of the rulemaking process makes designation of a specific time undesirable. The desirability of maintaining broad flexibility at this stage of the rulemaking is reflected in the Interior Department regulations on rulemaking. *See* 43 CFR Part 14, implementing Executive Order 12044.

The Services have adopted the suggestion that the notice of review portion of this rule be made a separate section for clarity.

§ *424.16 Proposed Rules—General*

One comment suggested that notification procedures for proposed rules involving Critical Habitat should be applicable to proposed rules which do not designate Critical Habitat. The Services have not accepted this comment. Congress has carefully formulated different procedures for proposed rules involving Critical Habitat, procedures that are particularly useful to questions that may arise in that context. The Services do not believe that they should make such a significant

departure from the carefully formulated congressional scheme.

§ *424.16(b)(1) Content of Proposed Rule*

One comment suggested that a proposed rule be required to include a citation of appropriate information sources used in preparing the rule. The final rules have been revised to include this requirement.

Several commenters suggested that both supporting and contradictory data be summarized in a proposed rule. The Services agree with the comment, but believe modification of the final rule is unnecessary. The Services intend that proposed listings will contain a summary of all data on which they are based, including that which is contradictory.

The section has been modified slightly to bring it into conformance with the Act. As the final rule indicates, some points must be included in listing and Critical Habitat rulemaking, others for all Endangered Species Act rulemaking.

Section 424.16(b)(2). Several comments suggested that the public comment period on proposed rules be lengthened from 45 to 90 days. A number of comments pointed out that State Governors are afforded 90 days to comment, and the public should be given equal time to submit comments. Although Governors are authorized 90 days to comment on rules relating to resident species of fish and wildlife, section 4(b)(1)(C) of the Act authorizes this period to be shortened by agreement between the Service and the Governor. Because the Act itself establishes no specific comment period, the general provisions of the Administrative Procedure Act (APA) apply. Section 553 of the APA provides that the comment period is to remain open for a minimum of 30 days unless good cause is shown. The Services believe that this standard should be applied for proposed rules not listing species or designating Critical Habitat. For rules listing species or designating Critical Habitat, the Services believe a 60-day minimum standard should apply. The rule has been changed to reflect this view.

Section 424.16(b)(3). One commenter suggested that notifications to foreign countries be made specifically to the management authorities of such countries. In foreign species listings, notifications are made by the Services through the auspices of the Department of State by normal diplomatic channels. The Services consider it inappropriate to set forth the manner in which this notification should be made.

Several commenters suggested that more specific requirements be incorporated in this subsection for the notification of State and Federal agencies, interest groups and private individuals of proposed actions. The Services intend to disseminate notices of proposals as widely as is practical and appropriate in individual cases. The manner in which this process will be carried out varies with the situation and further standards are therefore unnecessary.

Section 424.16(b)(5). One comment suggested that the time within which one must request a public meeting or hearing should run from the date of newspaper notice rather than from publication in the **Federal Register**. This comment has not been accepted since section 4(f)(2)(B)(iv) (I) and (II) of the Act specifically provide that this period is to run from **Federal Register** publication.

§ *424.17 Proposed Rules—Additional Procedures for Critical Habitat*

For clarity the Services have adopted a separate section for the additional Critical Habitat requirements in the final rules.

One comment argued that an adjudicatory hearing must be provided upon request for proposed rules designating Critical Habitat. The Services disagree with this view. Although the Act in some cases calls for public hearings for proposed rules designating Critical Habitat, it does not specify that the hearing be "on the record after opportunity for an agency hearing". *See United States v. Florida East Coast Ry,* 410 U.S. 224 (1973) and *United States v. Allegheny-Ludlum Steel,* 406 U.S. 742 (1972). The Services also note that proposed Critical Habitat rules are prospective legislative type rules of general application rather than "quasi-judicial" proceedings to determine the specific rights of particular individuals or entities. The legislative history of the Act also makes clear that adjudicatory hearings are not required, since the Conference Report for the 1978 Amendments specifically provides that "the committee does not intend that either the meetings or hearings be full adversarial proceedings with all the inherent expenses to the parties and delays in carrying out a final regulation." *See* H. Rept. 95–1804, 95th Cong. 2d Sess. 27 (1978). *See also* H. Rept. 96–697, 96th Cong. 1st Sess. 10–11(1979).

A number of comments were received on the proposed timing of public meetings and the manner in which they are to be requested. One comment suggested that the public meeting and hearing be held on the same day. Another suggested that the public hearing should be held after the public meeting, since the meeting would provide the public with an opportunity to become fully informed about the proposal. The same comment objected to the proposed procedure of requiring an interested person to request a public hearing within 15 days of the public meeting.

In recent amendments to the Endangered Species Act, Congress has made clear that interested persons are to be afforded 15 days after the public meeting to request a public hearing. *See* section 4(f)(2)(B)(iv)(II). This provision has been implemented in the final rules. The legislative history of the amendments also indicates that Congress intends the public hearing to occur after the public meeting.

The Services retain discretion to conduct a public hearing even if one is not requested. This authority is specifically recognized in the final rules. In the exercise of this authority, the Service may in appropriate cases set a time and place for the public hearing at the same time the proposed rule is published in the **Federal Register**. The effect of this action would be to minimize the added expense of publication and to speed up the rulemaking process.

Another comment suggested that public meetings be held early in the comment period. The Services generally agree that the public meeting should occur early in rulemaking process, but the need for providing adequate notice of its time and location will necessarily result in some delay. For reasons expressed above, the Service also finds it undesirable to require an extended comment period.

One comment suggested that the section be changed to clarify that a public meeting on a Critical Habitat proposal could occur within or adjacent to the area determined as Critical Habitat. The language of the proposed rule is consistent with that of the Act, and has been retained. The Services interpret this provision, however, as authorizing them to conduct the meeting in close proximity to, but outside the Critical Habitat area, when adequate facilities are unavailable therein.

Another comment suggested that the Service establish procedures to ensure that an adequate administrative record is developed for rules. These rules contain numerous provisions implementing requirements intended by Congress to ensure that the Services make fully informed decisions. The Services will continue to compile complete administrative records on which they will base their judgments.

and further procedures are therefore unnecessary.

One comment suggested that Critical Habitat rule summaries be published in all general circulation newspapers in the area of the proposed Critical Habitat. This comment has not been accepted. Recent amendments to the Act specifically provide that publication should occur "in a newspaper of general circulation within or adjacent to such habitat". The Services also believe that benefits from the suggested approach are minimal and are outweighed by the high costs and administrative difficulties that would result if this approach were adopted.

The final rules provide that the Services must send the draft impact analysis to local governments along with the complete text of the proposed and NEPA documents. The intent of this provision is to provide local governments with all relevant data as quickly as possible in the rulemaking process.

Several comments objected to the language contained in the proposal which provides that "any accidental failure to provide actual notice to all such local governments will not invalidate any critical habitat determination." This language has been retained since it is identical to that found in the Act. *See* section 4(f)(2)(B) of the Act.

One comment questioned whether the "environmental document" referred to in this section was an environmental assessment or impact statement. The intent of the final rules is that any document prepared to carry out NEPA responsibilities will be sent to the appropriate local governments.

One comment suggested that the draft impact analysis should be prepared after the public meeting. The Services disagree with this view. Preparation of a draft impact analysis must occur early in the rulemaking process to ensure its timely availability to interested parties and its timely completion, as well as to aid the Director in reaching his decision to publish a proposed rule. For these reasons, the final rules indicate that the draft analysis will be completed prior to publication of the proposed rule.

Another comment suggested that a public hearing should be held after an impact analysis has been made public. As indicated above, a draft analysis will be completed and available to the public prior to any public hearing. The Services do not believe that the regulations should require that a final impact analysis be completed prior to a public hearing, since valuable information obtained at that time should be reflected in the final document. The Service will, however, complete a final analysis prior to the publication of a final rule.

One comment suggested that a notice of review be a mandatory step in gathering information concerning possible impacts of a Critical Habitat designation. This comment has been rejected, since the process set out in the rules insures sufficient public input. As noted above, the notice of review is a flexible management tool that should be used only when circumstances warrant. *See* 43 CFR Part 14.

One comment questioned the apparent reliance of the Services on other Federal agencies for information concerning economic and other impacts associated with designating Critical Habitat. The Services will rely on Federal agencies for this type of information, since those agencies are in the best position to know what future Federal activities may be affected by a Critical Habitat designation. The section has been changed, however, to clarify that relevant information will be gathered from appropriate Federal agencies and, to the extent practicable, other knowledgeable entities.

Another commenter requested that the required draft impact analysis should be published with the proposed rule. The Services have carefully considered this comment, but reject it at this time. Information from the draft will be used in the proposed rule itself, and it appears unnecessary to duplicate this information. The Services also note that the procedure adopted parallels the procedures taken for environmental documents prepared with a listing. Impact analyses are also available on request and will be provided to the Governors, local governments, and appropriate Federal agencies at the time of notification.

One commenter argued that the Services consider more than dollar benefits when designating Critical Habitat. The Services intend to do so in the manner the Act requires, and believe that the final rules express that intent.

§ *424.18—Final Rules*

One comment argued that formal rulemaking was required in certain circumstances and that the procedures for final rules set out in this section were inadequate. As the above discussion on public hearings indicates, rulemaking under the Endangered Species Act is informal rulemaking under the Administrative Procedure Act. Modification of the type suggested is therefore unnecessary as a legal matter, and the associated administrative expense and delay also militate against such procedures from a policy perspective.

One commenter suggested that a final rule be adopted only upon a finding that benefits deriving from its promulgation would outweigh benefits maintained if no action were taken, and in the event the rule were not adopted, the proposal upon which it was based would be withdrawn. The focus of a final rulemaking to list or delist a species is whether or not it is Endangered or Threatened. *See* section 4(a) of the Act. The Services also believe that the present statutory requirement to withdraw a proposal after two years adequately satisfies the intent of the commenter.

One comment suggested that "new information" should be clarified to include information that did not exist at the time of withdrawal or which had not been fully evaluated by the Service prior to withdrawal. The Services reject this comment; determinations of whether sufficient new information is available will vary considerable from case to case.

One commenter suggested that the two year deadline for finalization of a rule listing a species be applied to rules specifying Critical Habitat. The Services have retained the language of the proposed rules since it comports with that of the Act. The Services note, however, that in most cases Critical Habitat will be designated at the same time a species is listed.

One comment suggested that a final rule should become effective immediately upon its publication due to the threats facing Endangered and Threatened species. The Services have retained the proposed language consistent with section 553(d) of the Administrative Procedure Act 5 U.S.C. 553(d), which provide an effective date 30 days after publication of the final rule unless good cause is found and published with the rule. However, the Service will waive the 30-day period for good cause when warranted.

§ *424.19—Emergency Rules*

One comment suggested that the emergency rules section cover plants as well as fish and wildlife. At the time the proposed rules were promulgated, the Endangered Species Act authorized the use of emergency rules only for fish and wildlife. Recent (December, 1979) amendments to the Act have expanded this authority to include plants, and the final rules reflect this change.

In a similar vein, a comment suggested that the 120 days effective date for emergency rules was too short in light of the numerous requirements for proposing and finalizing rules, and should thus be deleted. This too, had been a statutory limitation. The recent

amendments have lengthened this period to 240 days, and the final rules reflect this change.

One Federal agency suggested that the Services should require prior notification of Federal action agencies before promulgating an emergency rule. The Services will make every effort to inform affected Federal agencies before issuing emergency rules. Additional procedural requirements could defeat the purpose of the emergency provisions of the Act and have therefore been rejected.

§ *424.20—Periodic Review*

Several commenters suggested that the reviews of listed species now required at five-year intervals be conducted more frequently, or that reviews be permitted at any time after listing. While the present rule requires reviews of listed species at *least* every five years in order to comply with provisions of the Endangered Species Act Amendments of 1978, more frequent reviews will be undertaken whenever warranted by new information regarding the status of a listed species. This point is clarified in the final rule.

One commenter recommended that this section require the Director to take action to remove a species from the lists or change its status if the review indicates that such change is warranted. The Services believe that the final rule makes clear the Directors' obligations to take action in those cases in which a review uncovers sufficient evidence supporting removal of a species from the lists or change in its status.

Two commenters requested that reviews required at five year intervals consider not only changes in the listing status of species, but also in any Critical Habitats of such species. This section implements section 4(c)(4) of the Act, which specifically addresses review of species for considering appropriate changes in listing status. However, if information indicating that a Critical Habitat area or boundary should be changed arises during the conduct of such a review, the Services will take appropriate action.

This rule is issued under the authority contained in the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Stat. 844, as amended). The primary authors of this final rule are John J. Fay and Jay M. Sheppard, Office of Endangered Species, U.S. Fish and Wildlife Service (703/235–1975), and Charles Kaiser and Byron Swift, Office of the Solicitor, U.S. Department of the Interior (202/343–2172).

Note.—The Department of the Interior, as the lead agency in development of these rules, has determined that this document is not a significant action and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Regulations Promulgation

Accordingly, Parts 17 and 402 are amended and a new Part 424 added to Title 50 of the Code of Federal Regulations as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. Amend §§ 17.11 and 17.12 to read as follows (exclusive of the actual lists of wildlife and plants):

§ 17.11 Endangered and threatened wildlife.

(a) The list in this section contains the names of all species of wildlife which have been determined by the Director to be Endangered or Threatened. It also contains the names of species of wildlife treated as Endangered or Threatened because they are sufficiently similar in appearance to Endangered or Threatened species (see § 17.50 *et seq.*).

(b) The columns entitled "Common Name", "Scientific Name", and "Vertebrate Population where Endangered or Threatened" define the species of wildlife within the meaning of the Act. Thus, differently classified geographic populations of the same vertebrate subspecies or species shall be identified by their differing geographic boundaries, even though the other two columns are identical. The term "Entire" means that all populations throughout the present range of a vertebrate species are listed. Although common names are included, they cannot be relied upon for identification of any specimen, since they may vary greatly in local usage. The Director shall use the most recently accepted scientific name. In cases in which confusion might arise, a synonym will be provided in parentheses. The Services shall rely to the extent practicable on the *International Code of Zoological Nomenclature.*

(c) In the "Status" column the following symbols are used: "E" for Endangered, "T" for Threatened, and "E [or T] (S/A)" for similarity of appearance species.

(d) For informational purposes only, the "Historic Range" indicates the general known distribution of the species or subspecies as reported in the scientific literature. This column does not imply any limitation on the application of the prohibitions in the Act or implementing rules. Such prohibitions apply to all individuals of the species, wherever found. When the list is updated annually any change in the range will be added.

(e) For informational purposes only, a footnote to the **Federal Register** publication(s) originally listing a species is provided under the column "When Listed." Footnote numbers to §§ 17.11 and 17.12 are in the same numerical sequence, since plants and animals may be listed in the same **Federal Register** document. That document includes a statement indicating the basis for the listing.

(f) The "Special Rules" and "Critical Habitat" columns provide a cross-reference to other sections in Part 17 or Parts 222, 226 or 227. The term "N/A" (not applicable) appearing in either of these two columns indicates that there are no special rules and/or Critical Habitat for that particular species. However, all other appropriate rules in Part 17 and Parts 217–227 and 402 still apply to that species. In addition, there may be other rules in this Title 50 that relate to such wildlife, e.g., port-of-entry requirements. It is not intended that the references in the "Special Rules" column list all the regulations of the two Services which might apply to the species or to the regulations of other Federal agencies or State or local governments.

(g) The listing of a particular taxonomic group includes all lower taxonomic groups. For example, the genus *Hylobates* [gibbons] is listed as Endangered for China, India, and SE Asia, consequently all species, subspecies, and populations of that genus are to be considered as Endangered. The species *Haliaeetus leucocephalus* [Bald Eagle] is listed as Threatened and the "Vertebrate Population where Endangered or Threatened" was defined in 1978 (43 FR 6230–6233) as "USA (WA, OR, MN, WI, MI)"; thus all individuals of the Bald Eagle found in those five States are considered listed as Threatened for the purposes of the Act.

(h) The "List of Endangered and Threatened Wildlife" is provided below:

List of Endangered and Threatened Wildlife (§ 17.11)

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						

§ 17.12 Endangered and threatened plants.

(a) The list in this section contains all species of plants which are determined by the Director to be Endangered or Threatened. It also contains species of plants treated as Endangered or Threatened because they are similar in appearance to an Endangered or Threatened species (see § 17.50 *et seq.*)

(b) The columns entitled "Scientific Name" and "Common Name" define a species of plant within the meaning of the Act. Although common names are usually included, they cannot be relied upon for identification of any specimen, since they may vary greatly with local usage. The Director will use the most recently accepted scientific name. In cases in which confusion might arise, a synonym will be provided in parentheses. The Services shall rely to the extent practical on the *International Code of Botanical Nomenclature.*

(c) In the "Status" column the following symbols are used: "E" for Endangered, "T" for Threatened, and "E [or T] (S/A)" for similarity of appearance species.

(d) For informational purposes only the "Historic Range" indicates the general known distribution of the species as reported in the scientific literature. This column does not imply any limitation of the application of the prohibitions in the Act or implementing rules. Such prohibitions apply to all individuals of the species, wherever found. When the list is updated annually, any change in the range will be added.

(e) For informational purposes only, a footnote to the **Federal Register** publication which originally listed the species is provided under the column "When Listed." Footnote numbers to § 17.12 and § 17.11 are in same numerical sequence since plants and animals may be listed in the **Federal Register** document. That document includes a statement indicating the basis for listing.

(f) The "Special Rules" and "Critical Habitat" columns provide a cross-reference to other sections in this Part 17 or Parts 222 or 227. The term "N/A" (not applicable) appearing in either of these two columns indicates that there are no special rules and/or Critical Habitat for that particular species. However, all other appropriate rules in this Part 17 still apply to that species. In addition, there may be other rules in this Title that relate to such plants, e.g., port-of-entry requirements. It is not intended that the references in the "Special Rules" column list all the regulations of the two Services which might apply to the plants in question or to the regulations of other Federal agencies or State or local governments.

(g) The listing of a particular taxonomic group includes all its lower taxonomic units [see § 17.11(g) for examples].

(h) The "List of Endangered and Threatened Plants" is provided below:

List of Endangered and Threatened Plants (§ 17.12)

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					

§ 17.13 [Deleted]

2. Delete the text and references in the table of sections for § 17.13 at 50 CFR and reserve this section for future rules.

3. Add a new § 17.94 to 50 CFR Part 17, including list of sections, as follows:

§ 17.94 Critical habitats.

(a) The areas listed in § 17.95 (fish and wildlife) and § 17.96 (plants) and referred to in the lists at §§ 17.11 and 17.12 have been determined by the Director to be Critical Habitat. All Federal agencies must insure that any action authorized, funded, or carried out by them is not likely to result in the destruction or adverse modification of the constituent elements essential to the conservation of the listed species within these defined Critical Habitats. (See Part 402 for rules concerning this prohibition; see also Part 424 for rules concerning the determination of Critical Habitat).

(b) The map provided by the Director does not, unless otherwise indicated, constitute the definition of the boundaries of a Critical Habitat. Such maps are provided for reference purposes to guide Federal agencies and other interested parties in locating the general boundaries of the Critical Habitat. Critical Habitats are described by reference to surveyable landmarks found on standard topographic maps of the area and to the States and county(ies) within which all or part of the Critical Habitat is located. Unless otherwise indicated within the Critical Habitat description, the State and county(ies) names are provided for informational purposes only.

(c) Critical Habitat management focuses only on the biological or physical constituent elements within the defined area of Critical Habitat that are essential to the conservation of the species. Those major constituent elements that are known to require special management considerations or protection will be listed with the description of the Critical Habitat.

(d) The sequence of species within each list of Critical Habitats in §§ 17.95 and 17.96 will follow the sequences in the lists of Endangered and Threatened wildlife (§ 17.11) and plants (§ 17.12). Multiple entries for each species will be alphabetic by State.

§§ 17.95 and 17.96 [Amended]

4. Amend §§ 17.95 and 17.96 by deleting the introductory paragraphs before paragraph (a). Further amend both sections by rearranging all species in the sequence followed in the Lists of Endangered and Threatened Wildlife (§ 17.11) and Plants (§ 17.12). This amendment does not contain the republication of these lists or Critical Habitats (§§ 17.95 and 17.96). Future republications and the annual revision of title 50 will reflect this resequencing of the Critical Habitats.

PART 402—INTERAGENCY COOPERATION

§ 402.05 [Deleted]

5. Delete § 402.05 entirely.

6. Add a new Part 424 as follows:

PART 424—LISTING ENDANGERED AND THREATENED SPECIES AND DESIGNATING CRITICAL HABITAT

Subpart A—General Provisions

Sec.

424.01 Scope and purpose.
424.02 Definitions.

Subpart B—Revision of the Lists

424.10 General.
424.11 Factors for listing, reclassifying, or removing species.
424.12 Criteria for designating Critical Habitat.
424.13 Sources of information and relevant data.
424.14 Petitions.
424.15 Notices of review.
424.16 Proposed rules—general.
424.17 Proposed rules—additional procedures for Critical Habitat.
424.18 Final rules.
424.19 Emergency rules.
424.20 Periodic review.

Authority: Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Subpart A—General Provisions

§ 424.01 Scope and purpose.

(a) This Part 424 provides rules for revising the Lists of Endangered and Threatened Wildlife and Plants and, where appropriate designating their Critical Habitats. Criteria for determining species to be Endangered or Threatened and for designating Critical Habitats are provided. Procedures for receiving and considering petitions to revise the lists and for conducting periodic reviews of species contained in the lists are also established.

(b) The purpose of this rule is to interpret and implement those portions of the Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 *et. seq.*), that pertain to the listing of species and the determination of Critical Habitats.

§ 424.02 Definitions.

(a) The definitions of terms in 50 CFR § 402.02 shall apply to this Part 424, except as otherwise stated.

(b) "Conservation," "conserve," and "conserving" mean to use and the use of all methods and procedures which are necessary to bring any Endangered species or Threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(c) "Critical Habitat" means (1) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (i) essential to the conservation of the species and (ii) which may require special management considerations or protection, and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination by the Director that such areas are essential for the conservation of the species.

(d) "Director" means the Director of the U.S. Fish and Wildlife Service, Department of Interior, or the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, as appropriate.

(e) "Endangered species" means a species which is in danger of extinction throughout all or a significant portion of its range.

(f) "List" or "lists" means the lists of Endangered or Threatened wildlife and plants found at 50 CFR 17.11 or 17.12.

(g) "Plant" means any member of the plant kingdom, including seeds, roots, and other parts thereof.

(h) "Public hearing" means an informal hearing to provide the public with the opportunity to give their comments on a proposal to designate Critical Habitat and, if appropriate, the accompanying proposal to list a species.

(i) "Public meeting" means an informal meeting between Service representatives and the public that permits an exchange of information on a proposed rule.

(j) "Special management considerations or protection" means any methods or procedures useful in protecting physical and biological features for the conservation of listed species.

(k) "Species" includes any species or subspecies of fish or wildlife or plant, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. Excluded are those species of the Class Insecta determined by the Director to constitute a pest whose protection under the provisions of the Act would present an overwhelming and overriding risk to man.

(l) "Threatened species" means any species which is likely to become an Endangered species within the foreseeable future throughout all or a significant portion of its range.

(m) "Wildlife" or "fish and wildlife" means any member of the Animal Kingdom, including without limitation, any vertebrate, mollusk, crustacean, arthropod or other invertebrate and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

Subpart B—Revision of the Lists

§ 424.10 General.

The Director may add a species to the lists or designate Critical Habitat, delete a species or Critical Habitat, change the listed status of a species, change the boundary of an area designated as Critical Habitat, or adopt or modify special rules (see 50 CFR 17.40–17.48 and Parts 222 and 227) applicable for an Endangered or Threatened species only in accordance with the procedures of this Part.

§ 424.11 Factors for listing, reclassifying, or removing species.

(a) Any species or taxonomic group of species (e.g., genus, subgenus) as defined in § 424.02 is eligible for listing under the Act. A taxon of higher rank than species will be listed only if all component species are individually Endangered or Threatened. In determining whether a particular taxon or population is a species for the purposes of the Act, the Director shall rely on standard taxonomic distinctions and the biological expertise of the Service and the scientific community concerned with that group of taxa.

(b) A species shall be listed if the Director determines on the basis of the best scientific and commercial data available to him after conducting a review of the species' status that the species is Endangered or Threatened because of any one or a combination of the following factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Utilization for commerical, sporting, scientific, or educational purposes at levels that detrimentally affect it;

(3) Disease or predation;

(4) Absence of regulatory mechanisms adequate to prevent the decline of a species or degradation of its habitat; and

(5) Other natural or manmade factors affecting its continued existence.

(c) The fact that a species of fish, wildlife, or plant is protected by the

Convention on International Trade in Endangered Species of Wild Fauna and Flora or similar international agreement on such species may constitute evidence that the species is Endangered or Threatened. The weight of the evidence will vary depending on the international agreement in question and the criteria pursuant to which the species was listed under the agreement. The Director shall give full consideration to any species protected by such an international agreement to determine whether the species is Endangered or Threatened.

(d) The factors for removing a species from the list are those in paragraph (b) of this section. The data to support such removal must be the best scientific and commercial data available to the Director to substantiate that the species is neither Endangered nor Threatened for one or more of the following reasons:

(1) *Extinction.* Unless each individual of the listed species was previously identified and located, a sufficient period of time must be allowed before delisting to clearly insure that the species is in fact extinct.

(2) *Recovery of the species.* The principal goal of the Services is to return listed species to a point at which protection under the Act is no longer required. A species may be delisted if the evidence shows that it is no longer Endangered or Threatened.

(3) *Original data for classification in error.* Subsequent investigations may produce data that show that the best scientific or commercial data available at the time that the species was listed were in error.

§ 424.12 Criteria for designating Critical Habitat.

(a) Critical Habitat shall be specified to the maximum extent prudent at the time a species is proposed for addition to the list. If the Director determines that the designation of Critical Habitat is not prudent, he will state the reasons for such determination in the proposed and final rules listing a species. Conditions under which a designation of Critical Habitat is not prudent include, but are not limited to, the following:

(1) When the species is threatened by taking or other human activity and identification of Critical Habitat can be expected to increase the degree of such threat to the species, or

(2) When such designation of Critical Habitat would not be beneficial to the species.

(b) The Director shall consider in determining what areas are Critical Habitat those physiological, behavioral, ecological, and evolutionary requirements essential to the conservation of the species and which may require special management considerations or protection. These requirements include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally,

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of listed species.

When considering the designation of Critical Habitat, the Director shall focus on the biological or physical constituent elements within the defined area that are essential to the conservation of the species. Known primary constituent elements shall be listed with the Critical Habitat description. Primary constituent elements which may be identified include, but are not limited to, the following: roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host animal or plant, pollinator, geological formation, vegetation type, tide, and specific soil types.

(c) The Director shall identify the significant activities which would both affect an area considered for designation as Critical Habitat and be likely to be affected by the designation, and shall consider the reasonably probable economic and other impacts of the designation upon such activities. The Director may exclude any such area from the Critical Habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying the area as part of the Critical Habitat. The Director shall not exclude any such area if he determines, based on the best scientific and commercial data available, that the failure to designate that area as Critical Habitat will result in the extinction of the species.

(d) Each Critical Habitat will be defined by specific prescribed limits using reference points and lines as found on standard topographic maps of the area. Each area will be referenced to the State, county(ies), or other local governmental units within which all or part of the Critical Habitat is located. Unless otherwise indicated within the Critical Habitat descriptions, the names of the State and county(ies) are provided for informational purposes only and do not constitute the boundaries of the area. Ephemeral reference points (e.g., trees, sand bars) shall not be used.

(e) When several suitable habitats are located in close proximity to one another, an inclusive area may be designated as Critical Habitat. Example: Several dozen or more small ponds, lakes, and springs are found in a small local area. The entire area could be designated Critical Habitat.

(f) The Director shall designate as Critical Habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.

(g) Critical Habitat may be established for those species previously listed as Threatened or Endangered for which no Critical Habitat has been previously established.

(h) Additional Critical Habitat may be added and existing ones may be modified or eliminated, as new data become available to the Director.

§ 424.13 Sources of information and relevant data.

When considering any revision of the lists, the Director shall consult as appropriate with the affected States, interested persons and organizations, other affected Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned are normally found or whose citizens harvest such species from the high seas. Data reviewed by the Director may include, but are not limited to, scientific or commercial publications, administrative reports, maps or other graphic materials, information received from persons expert on the subject, and comments from interested parti s. Prior to proposing a rule to list or remove a species, the Director shall conduct a review of the status of the species.

§ 424.14 Petitions.

(a) Any interested person may submit a petition to the Director to review the status of any species with a view to taking one of the actions described in § 424.10. Such petitions must be in writing, contain the date submitted, and the name, signature, address, telephone number, and the association, institution, or business, if any, represented by the petitioner. The Director shall acknowledge in writing receipt of the petition within 30 days.

(b) The Director shall determine whether substantial evidence has been presented in support of the measure recommended by a petitioner. "Substantial evidence" is that amount of evidence that would lead a reasonable

person to conclude that the measure proposed in the petition is warranted. In making this determination the Director shall consider whether the petition:

(1) Clearly indicates the administrative measure recommended, the scientific and any common name of the species involved, and if appropriate, the precise area recommended as Critical Habitat;

(2) Contains detailed narrative justification for the recommended measure, describing, based on available information, the past and present numbers and distribution of the involved species, the particular threats confronting the species, and the features and importance of any recommended Critical Habitat;

(3) Indicates any beneficial or adverse effect on the species of designating Critical Habitat;

(4) Provides information on the status of the species over a significant portion of its range; and

(5) Is accompanied by appropriate supporting documentation such as a list of bibliographic references, reprints of pertinent publications, copies of written reports or letters from authorities, and maps, as appropriate.

(c) If the Director finds that substantial evidence has not been presented, the petition shall be denied and the petitioner shall be so notified and advised of the reasons for denial within 90 days. If the petitioner proposes to list, delist, or change the status of a species and the Director finds that substantial evidence has been presented in such petition, the Director shall:

(1) Promptly publish a notice in the **Federal Register** announcing such determination, (2) conduct and publish in the **Federal Register** a status review of the species that is the subject of the petition within 90 days of receipt of the petition and (3) indicate at the time the status review is published how the Service intends to proceed with respect to the listing, delisting, or reclassifying of the species.

(d) If the petition relates only to Critical Habitat or a special rule for the conservation of a species, the Director will promptly conduct a review in accordance with the Administrative Procedure Act (5 U.S.C. 553) and respective departmental regulations and take appropriate action.

§ 424.15 Notices of review.

If the Director finds that one of the actions described in § 424.10 may be warranted, but that the available evidence is not sufficiently definitive to justify proposing the action, he may publish a notice of review in the **Federal Register.** The notice of review will describe the measure under consideration, briefly explain the reasons for considering the action, and solicit comments and additional information on the action under consideration. At the time of publication of the notice, notification in writing shall be sent to the Governors of any affected States and the governments of any foreign countries in which the subject species normally occurs. If a Critical Habitat area is involved in the review, notification will also be sent in writing to any Federal agencies and local governments with jurisdiction over lands or waters under consideration and to all general local governments within or adjacent to the potential Critical Habitat.

§ 424.16 Proposed rules—general.

(a) Based on the initial review conducted pursuant to § 424.14(c), § 424.15, § 424.20, or on other information that the Service has obtained, the Director may propose revising the lists as described in § 424.10.

(b) *Procedures.* (1) *Content of proposed rule.* A proposed rule promulgated to carry out the purposes of the Act will be published in the **Federal Register.** These proposals will include the complete text of the proposed rule, a summary of the data on which the proposal is based (including, when appropriate, citation of pertinent information sources), and the relationship of such data to the proposed rule. Rules proposing the listing, delisting or reclassifying of a species or the designation of Critical Habitat will also include a summary of factors affecting the species and a description of the anticipated effects of the rulemaking if finalized in proposed form.

(2) *Period for public comments.* At least 60 days will be allowed for public comment following publication in the **Federal Register** of a rule proposing the listing, reclassifying, or removal of a species. Except as provided under § 424.17(b)(2), all other proposed rules will be subject to a comment period of at least 30 days following the publication in the **Federal Register.**

(3) *Notification of and comment by governors of affected states and governments of foreign countires.* For proposed rules to list, delist or reclassify a species the Director shall give notice of any proposed rule in writing through the Department of State to the governments of any foreign countries in which the subject species normally occurs or whose citizens harvest such species from the high seas. With respect to resident species of fish and wildlife the Director shall give notice of any proposed rule in writing to the Governors of the States in which the subject species normally occurs. The Governor(s) so contacted will be allowed 90 days after notification to submit comments and recommendations on the proposed rule except to the extent that such period is shortened by agreement between the Director and Govenor(s) concerned.

(4) *Offer for publication.* For rules proposing the listing, delisting or reclassifying of species or designating Critical Habitat the Director shall offer the substance of the **Federal Register** notice proposing the rule for publication in appropriate journals or newsletters of the scientific community.

(5) *Public meetings on proposals not involving Critical Habitat.* If the rule proposes to list, delist or change the status of a species and does not specify Critical Habitat, the Director shall promptly hold a public meeting on the proposed rule within or adjacent to the area in which the species is located, if a request for such a meeting is made in writing by any person to the Director within 45 days after the date of publication of the proposal in the **Federal Register.** The specific locations and times of such meetings will be determined by the Director and published in the **Federal Register.**

§ 424.17 Proposed rules—additional procedures for Critical Habitat.

(a) In addition to the general procedures for proposed rules in § 424.16, there are additional requirements for proposals involving Critical Habitat.

(b) *Procedures.* (1) *Additional content of proposed rule.* The proposed rule will contain a map of the proposed Critical Habitat and will, to the maximum extent practicable, be accompanied by a brief description of those activities (whether public or private) that might occur in the area and in the opinion of the Director, may adversely modify such habitat or may be affected by designating the area as Critical Habitat.

(2) *Period for public comments.* At least 60 days will be allowed for public comment following publication in the **Federal Register** of a proposal involving Critical Habitat.

(3) *Public meetings or hearings.* If a proposed rule includes Critical Habitat, the Director shall hold a public meeting on the proposal within the area in which such Critical Habitat is located in each State. The specific locations and times of such meetings shall be determined by the director and published in the **Federal Register.** A public hearing shall be held after the public meeting in each State in

which such habitat is proposed, if requested in writing no later than 15 days after a scheduled public meeting. Requests for a public hearing must be addressed to the Director. A public hearing will be held promptly but not sooner than 15 days after notice of the hearing is given unless good cause is shown. The Director may conduct a public hearing on his own motion.

(4) *Other notifications and notices.* When the proposed rule involves Critical Habitat, the Director shall: (i) notify in writing any Federal agencies with jurisdiction over lands included in the area under consideration; (ii) publish a summary of the proposed rule (including a source of further information and a map of the Critical Habitat) in a newspaper of general circulation within or adjacent to such habitat within 30 days of the date of the proposal; and (iii) give actual notice of the proposed rule (including its complete text), draft National Environmental Policy Act documents, and impact analyses prepared on the proposed rule to all general local governments located within or adjacent to the proposed Critical Habitat within 30 days of the date of the proposal. However, any accidental failure to provide actual notice pursuant to paragraph (b)(4)(iii)(c) of this section to all such local governments will not invalidate any Critical Habitat determination.

(5) *Consideration of economic and other impacts.* (i) Upon determining that the proposal of a particular area as Critical Habitat is appropriate for biological reasons, the Director shall gather economic and other information on impacts associated with the Critical Habitat designation on significant activities in the area, contacting appropriate Federal agencies, States, and other knowledgeable entities.

(ii) The Service may publish a notice of intent or review in the **Federal Register** prior to proposal of a rule in order to receive additional economic or other relevant information from the public concerning the area that may be affected by the Critical Habitat designation (see § 424.15).

(iii) The Service shall prepare a draft impact analysis which will consider the beneficial or detrimental economic and other impacts of the Critical Habitat designation. This draft impact analysis is available to the public at the time the proposed rule is published in the **Federal Register.**

§ 424.18 Final rules.

(a) Prior to the time of a final rulemaking involving Critical Habitat in the proposal, the Service shall prepare a final impact analysis based upon information contained in the draft impact analysis and that received during the comment period, including information provided at public meetings and hearings. The final impact analysis will analyze and discuss both the beneficial and deterimental economic and other relevant impacts of possible Critical Habitat configurations on significant activities in the area. This analysis will form the basis for the Director's decision as to whether or not to exclude any area from the Critical Habitat. The Director may exclude an area from Critical Habitat upon determining that the benefits of excluding such an area from the Critical Habitat outweigh the benefits of specifying the area as part of the Critical Habitat. However, an area may not be excluded from Critical Habitat if the best scientific and commercial data available, show that the failure to designate that area as Critical Habitat will result in the extinction of the species.

(b) After consideration of public comments and the available data, the Director shall either publish a final rule or publish a notice of withdrawal of the proposal in the **Federal Register.**

(c) *Contents of the final rule.* A final rule promulgated to carry out the purposes of the Act will be published in the **Federal Register.** These proposals will include the complete text of the rule, a summary of the comments and recommendations received on the proposal (including any applicable public hearings), summaries of the data on which the rule is based and the relationship of such data to the final rule, and a description of the anticipated effects of the rulemaking. Final rules that list, delist or reclassify a species or designate Critical Habitat shall also provide a summary of factors effecting the species. A rule involving a Critical Habitat area will also contain a description of the boundaries of such area and a map of any designated Critical Habitat, and will, to the maximum extent practicable, be accompanied by a brief description of those kinds of activities (whether public or private) that might occur in the area and which, in the opinion of the Director, may adversely modify such habitat or be impacted by designation of the area as Critical Habitat.

(d) *Two-year limitation of proposal.* A final regulation adding a species to the lists shall be published in the **Federal Register** not later than two years after the date such rule was proposed. If a final rule is not adopted within this two-year period, the Director shall withdraw the proposed rule and will publish notice of such withdrawal in the **Federal Register** not later than 30 days after the end of such period. The Director shall not propose a regulation adding to the list any species for which a proposed regulation has been withdrawn under this section unless he determines that sufficient new information is available to warrant the proposal of a rule. Notwithstanding the above provision, the Director may withdraw a proposal voluntarily upon a determination that available information and data do not support the proposal.

(e) *Effective date of the final rule.* Final rules shall become effective not less than 30 days after their publication in the **Federal Register** except as otherwise provided for good cause found and published with the rule. A final rule shall become effective no sooner than 60 days after all of the following have occurred: (1) the last public meeting or hearing on the proposal, (2) general notice of the proposal was published in the **Federal Register,** and (3) notice was given to the general local governments and a summary published in a newspaper of local circulation, if Critical Habitat was part of the proposal.

§ 424.19 Emergency rules.

Sections 424.16, 424.17, and 424.18 notwithstanding, the Director may by regulation take any action described in § 424.10 if such a measure is warranted by the development of a significant risk to the well being of a species of fish or wildlife or plant. Such rules shall, at the discretion of the Director, be effective immediately on publication in the **Federal Register.** No such action that applies to resident species will be taken until the Director has notified the Governor of the State(s) within which such species is then known to occur. At the time of publication in the **Federal Register** of the emergency rule, the Director shall give detailed reasons why the rule is necessary. An emergency rule shall cease to have force and effect after 240 days unless the procedures described in §§424.16, 424.17 (where appropriate), and 424.18 have been complied with during that period. If at any time after issuing an emergency regulation the Director determines, on the basis of the best scientific and commercial data available to him, that substantial evidence does not exist to warrant such regulations, he shall withdraw it.

§ 424.20 Periodic review.

At least once every five years the Director shall conduct a review of each listed species to determine whether it should be removed from the list, be

changed from an Endangered to a Threatened status, or be changed from a Threatened to an Endangered status. Announcement of which species are under active review will be published in **Federal Register.** Notwithstanding this section's provisions, the Director may review any species at any time based upon a petition (see § 424.14) or other data available to the Service.

Dated: January 30, 1980.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

Jack W. Gehrinjer,

Acting Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

[FR Doc. 80-6130 Filed 2-26-80; 8:45 am]

BILLING CODES 4310-55, 3510-12-M

federal register

Wednesday
February 27, 1980

Part V

Department of Energy

Weatherization Assistance for Low-Income Persons; Interim Rule

DEPARTMENT OF ENERGY

10 CFR Part 440

Weatherization Assistance for Low-Income Persons; Amendment of Regulation and Request for Comments

AGENCY: Department of Energy.

ACTION: Interim rule with request for comments.

SUMMARY: The Department of Energy is adopting on an emergency basis, amendments to its program for Weatherization Assistance for Low-Income Persons to ameliorate severe hardships resulting from delays in delivery of weatherization assistance to low-income persons, especially the elderly and handicapped. Specifically, the amendment seeks to stimulate and increase production through changes including the following principal modifications:

—Permit payment to hire labor or engage contractors, if volunteers and labor funded in accordance with Comprehensive Employment and Training Act of 1973 are unavailable;

—Increase the maximum allowable expenditure per dwelling unit from $800 to $1,000, which amount may be increased up to $1,600 by the Regional Representative to redress severe shortages of labor;

—Allow the use of low cost/no cost energy conservation measures as an interim approach to weatherization;

—Instead of retaining the nationwide $240 ceiling on indirect costs, permit a State, with the approval of the Regional Representative, to establish ceilings for the State for weatherization materials, program support and labor;

—Establish greater flexibility for weatherizing rental dwelling units in a multifamily building; and

—Permit DOE to make tentative allocations among the States and to make adjustments based upon production.

DATES: Effective date: February 27, 1980.

HEARING DATES: Written comments must be received on or before April 28, 1980. Hearings shall be held on the dates and at the places indicated below, according to procedures set out in supplementary information.

ADDRESSES: All comments to Joanne Bakos, Conservation and Solar Energy, Department of Energy, Mail Stop 2221C, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

Carolyn M. Martin, Office of Weatherization Assistance, Department of Energy, 1000 Independence Avenue, S.W., Mail Stop 2H-027, Washington, D.C. 20585, (202) 252-2204.

Joanne Bakos, Hearings Management, Department of Energy, 20 Massachusetts Avenue, N.W., Mail Stop 2221C, Washington, D.C. 20585, (202) 376-1651.

Richard F. Kessler, Office of General Counsel, Department of Energy, 20 Massachusetts Avenue, N.W., Room 2109, Washington, D.C. 20585, (202) 376-4616.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Background of the Program
III. Changes to the Regulation:
A. Labor,
B. Allowable Expenditures and Program Support,
C. Allocation of Funds,
D. Low Cost/No Cost,
E. Rental Housing,
F. Improvements in Planning,
G. Weatherization Materials, and
H. Miscellaneous Changes.
IV. Procedural Requirements
V. Opportunity for Public Comment
VI. Environmental and Significance Review

I. Introduction

The Department of Energy ("DOE") is amending the regulation for the program for weatherization assistance for low-income persons ("program" or "weatherization program"), 10 CFR Part 440, under the Energy Conservation in Existing Buildings Act of 1976, as amended ("Act"), 42 U.S.C. 6851 *et seq.*

In the past twelve months, DOE has seen progressive increases in home heating expenditures due to escalating energy prices. These increases may result in considerable hardship for low-income persons, especially the low-income elderly and handicapped. While the need for weatherization has dramatically increased, DOE's program has been plagued by cumulative shortfalls in production. Assistance simply is not being delivered in response to the ever-increasing needs of the low-income. Progress has been hampered since the inception of the program. Between August 1977 and December 1979, approximately 240,000 dwellings were weatherized—considerably short of the original goal which called for 753,000 units to be completed by the end of FY 1979. As of December 1979, $96,000,000 of the $490.5 million appropriated had been expended for weatherization assistance.

DOE has concluded that it is imperative to take necessary steps immediately to improve the current level of progam performance. Low-income persons cannot afford the further delays incident to the normal rulemaking procedure. Immediate action is necessary to ameliorate potential human hardship which may result from further delays in the delivery of weatherization assistance. Strict compliance with informal rulemaking procedures is likely to cause serious harm because it would delay carrying out the changes made by this issuance. Accordingly, DOE has promulgated today's issuance as an interim final rule, effective immediately.

II. Background of the Program

The Act authorized the Federal Energy Administration ("FEA"), which subsequently became part of DOE, to establish a weatherization program to aid low-income people, particularly the elderly and handicapped. Funds are provided to install insulation, storm windows, caulking and weatherstripping, and other improvements to reduce heat loss and conserve energy.

DOE currently makes grants to States, the District of Columbia and Indian tribal organizations. The Governor or his designee applies for, receives and administers the grant funds. The funds are distributed by the States and the District to local governments and non-profit organizations, with a statutory preference being accorded to Community Action Agencies ("CAA's"), to weatherize homes. Indian tribes administer funds and also perform weatherization activities. Funds are allocated by DOE on a formula based on the relative need for weatherization assistance throughout the States. The formula takes into account the number of low-income households in each State and the annual heating and cooling degree days in each State, factored by the percentage of total residential energy used for space heating and cooling.

The Act permits grant funds to be spent for weatherization materials, program, support, administration, some labor and training and technical assistance. Program support includes salaries of on-site supervisors, purchase or lease of equipment and other operating costs such as transportation, rental of warehouse space and insurance of vehicles.

Administrative costs are limited to 5 percent of a grant for grantees and 5 percent of a sub-grant for program operators. The legislation also mandates the use, to the maximum extent practicable, of volunteers and labor funded in accordance with the Comprehensive Employment and Training Act of 1973 ("CETA"), 42 U.S.C 278 *et seq.* To date, approximately 80 to 85 percent of weatherization workers in the program have been paid by CETA.

The program became operational in 1977. Currently, 49 States (except Hawaii) and the District of Columbia have DOE grants which are being

implemented through sub-grants to more than 1,000 local program operators. Appropriations for the program for fiscal years 1977 through 1980 are $490.5 million. Reauthorization of the program for FY 1981 has been requested by the President.

Since August 1979, DOE has issued waivers to permit program operators to hire working supervisors or contractors, if labor funded under CETA is unavailable, and to increase the maximum amount which could be spent per dwelling unit. Despite these efforts, problems persisted. Therefore on January 1, 1980 the Secretary of Energy established a temporary Special Project Office which is charged with correcting the situation.

The Special Project Office has been directed to:

Rapidly expand production;

Assure that labor necessary to install weatherization materials will be available;

Improve program management; and

Decrease the time required to transmit funds to the States and local levels.

Today's issuance is a first step in accomplishing the mission of the Special Project Office.

III. Changes to the Regulation

Today's issuance seeks to improve program performance through certain changes to the regulations which include the following principal modifications:

Permit payment to hire labor or engage contractors, if volunteers and labor funded in accordance with CETA are unavailable;

Increase the maximum allowable expenditure per dwelling unit from $800 to $1,000, which amount may be increased up to $1,600 by the Regional Representative to redress severe shortages of labor;

Allow the use of low cost/no cost energy conservation measures as an interim approach to weatherization;

Instead of retaining the nationwide $240 ceiling on indirect costs, permit a State, with the approval of the Regional Representative, to establish ceilings for the State for weatherization materials, program support and labor;

Establish greater flexibility for weatherizing rental dwelling units in a multifamily building; and

Permit DOE to make tentative allocations among the States and to make adjustments based upon production.

All of the changes are specifically discussed below.

A. Labor

(1) *Summary of Changes.* Until today, use of program funds for installation labor was possible only upon waiver. Under § 440.17 of the rules as amended payments for necessary installation labor not available from other sources will be treated as part of program support and labor costs under § 440.16(a)(1)(ii)(F). Section 440.17(a)(1) permits payments, to the extent permitted by the Department of Labor ("DOL"), to supplement wages paid to training participants and public service employment workers pursuant to CETA. Payments may also be made for labor under § 440.17(a)(2) if the grantee has determined that CETA funded labor and volunteers are unavailable in an area to weatherize dwelling units under the supervision of qualified supervisors. These payments may be made to employ labor, with preference being given to low-income persons eligible to receive training under CETA. Payments may also be made to contractors to install weatherization materials. Preference is to be accorded a non-profit corporation or a business owned by disadvantaged individuals performing weatherization services. Section 440.17(b) authorizes an increase in the per dwelling unit limitation from $1,000 up to $1,600 to cover labor costs where the Regional Representative determines, based upon satisfactory documentation, that volunteers or CETA funded laborers are unavailable.

Section 440.16(b) has been revised to permit payment of labor costs other than those authorized under § 440.17 or for on-site supervisors out of administrative funds. Accordingly, a local program operator may expend administrative funds to hire administrative personnel, including an inventory clerk, a weatherization coordinator or secretary, to support weatherization activities.

(2) *The Program's Problem with Labor Costs.* DOE's position on payment of labor costs has evolved over 3½ years of experience with the program and represents DOE's continuing efforts to provide program resources to respond to demonstrated needs at the State and local levels.

In its original final rule for the program, FEA declined to permit payment for labor costs, other than a limited amount for supervisors and foremen, for the following reasons—

"First, the Act requires that funds be applied to the purchase of materials to the maximum extent practicable; second, the Act requires that labor be provided by volunteers and CETA workers to the maximum extent practicable; third, the Act states that financial assistance under the program should supplement, and not supplant, State or local funds in order to maximize the total amount of funding available for weatherization activities; fourth, allowing labor costs could divert funding from weatherization assistance to a public employment resource and manpower training program. While this latter objective may be independently desirable, the Act does not give FEA a mandate to incorporate it in its weatherization assistance program.

"The determination to prohibit labor as an allowable program expenditure was made only after considerable debate and review. This determination was based in part upon the fact that neither FEA nor the commenters were able to obtain hard data on the number of paid workers needed to supplement volunteers, training participants, and public service employment workers, or firm assurances that adequate CETA positions would be made available to support FEA's weatherization program. Still, the projected availability of large amounts of CETA funds during the period of FEA's weatherization program lends compelling support to the proposition that States will have fully adequate funds to support the installation of the weatherization materials purchased under this regulation. FEA intends to monitor this situation closely during the program year. If FEA determines, after review of ongoing programs and analysis of data regarding the adequacy of manpower, that sufficient volunteers, training participants, and public service employment workers are not available to support this effort, FEA will reconsider this issue, but such reconsideration will necessarily have to include a review of how States used their available CETA funds." 42 FR 27899, 27901 (June 1, 1977).

More than one year later, FEA noted in a proposed rule issued on August 1, 1978, that the lack of sufficient labor to perform weatherization work is one problem which occurred with some frequency in the first year of the program. DOE found these problems could be redressed by "taking actions in areas largely other than modification of the regulations in order to minimize the labor problem." 43 FR 34493 (August 4, 1978). Better coordination between program operators and CETA prime sponsors was the approach recommended by the Comptroller General of the General Accounting Office ("GAO") in a Report to the Congress entitled "Complications in Implementing Home Weatherization Programs for the Poor," HRD–78–149, August 2, 1978, stating:

"We recommend that the Secretaries of Energy and Labor and the Director of CSA jointly establish procedures whereby CETA sponsor program plans are made available to CSA and DOE regional offices for comment before Labor approves them. Such comments will afford Labor direct insight into how well coordinated CETA program sponsors' plans are with national home weatherization program efforts. We also recommend that the Secretaries of Labor and Energy and the Director of CSA establish procedures under the interagency agreement to resolve difficulties that may arise with CETA

program sponsors fulfilling approved planning commitments to support weatherization program efforts." p. 9.

DOE again restated the commitment, in the final rule issued on December 27, 1978, ". . . to monitor the labor situation to determine if changing circumstances and conditions warrant a change in the regulations." 44 FR 31, 32 (January 2, 1979).

Congressional concern for matching CETA funded labor with program requirements was reflected in section 233 of the National Energy Conservation Policy Act ("NECPA"), Pub. L. 95-619, 92 Stat. 324 *et seq.* which tasks DOE, DOL, CSA and others to coordinate labor requirements for the program with support, to the maximum extent practicable, by CETA funded labor. In carrying out the changes mandated by NECPA, DOE noted in a final rule that it planned to continue to use the on-going interagency working agreement to resolve labor problems. 44 FR 31570 (May 31, 1979).

In a report on the program DOE's Office of Inspector General ("OIG") noted the continuation of what had become chronic problems in obtaining labor. Report on Conditions Adversely Affecting the Weatherization Program for Low-Income Persons, IGA 79-3 (June 12, 1979). The Report notes specific problems with the use of CETA funded labor compounded by changes to CETA made effective April 1, 1979, which may make less labor available for weatherization in some areas. p.2. Accordingly, OIG concluded:

"Since this program is so largely dependent on CETA labor, it is important that labor availability be reasonably assured before allocating funds to grantees and subgrantees. Where labor problems exist, there appear to be two management options— (1) target the program to areas of CETA/volunteer labor availability or (2) obtain relief from restrictions on *employing commercial workers.*" p. 17 (emphasis supplied).

By the summer of 1979, the program had entered a critical period. DOE found that changing circumstances warranted a change regarding payment for labor costs. Sizeable recent increases in the cost of home heating fuels, with the adverse impact on the low-income, made immediate changes necessary. DOE established two waiver procedures to permit payment of labor costs. Under DOE Weatherization Assistance Guide ("WAG") #79-25, August 20, 1979, a State, upon approval of the Regional Representative, would be given authority to increase program support expenditures of a sub-grantee by $200 per dwelling unit. Program support expenditures could be used to hire working supervisors or contractors to install insulation. A second waiver procedure was established by WAG #79-27, dated September 25, 1979, whereby the Regional Representative could approve additional expenditures in an area within a State to hire working supervisors or engage contractors, if labor could not be provided through volunteers or CETA.

To date, 44 States have obtained relief under Waiver 1. In 21 of these States, a survey undertaken by DOE indicates that increased expenditures were authorized by the State for approximately 95 percent of the sub-grantees. Waiver 2 has been granted in 85 instances as of January 31, 1980.

(3) *Current Status and Continuing Concerns.* DOE and DOL will continue to monitor use of CETA labor, and DOE is particularly concerned that grantees properly ascertain and document the unavailability of labor under CETA before permitting a program operator to make labor payments under § 440.17(a)(2). If DOE finds that labor sources available under CETA are not being employed by program operators or that program funds are not being used to purchase weatherization materials to the maximum extent practicable, DOE will undertake necessary corrective action. In this connection, the Regional Representative will require adequate documentation and justification before authorizing an expenditure in excess of $1,000 per dwelling unit to pay labor costs under § 440.17(a)(2). DOE expects to provide further guidance concerning the type of information required to obtain this authority.

DOE notes that the "payments to employ labor" referred to in § 440.17 are restricted to on-site personnel who will "install weatherization materials" and therefore do not cover ancillary administrative personnel such as an inventory control person or weatherization coordinator. DOE, however, has decided to provide some additional latitude to pay for certain administrative personnel. Section 440.16(b) has been modified to permit payment of labor costs other than those authorized under § 440.17 or supervisors authorized under § 440.16(a)(ii)(E). Accordingly, payment may now be made for off-site personnel including a weatherization coordinator, inventory clerk or warehouse employee.

DOE also finds that expanded authority to use contractors will require the grantee to provide appropriate control to assure competition for procurements and adequate quality control and to avoid conflicts of interest and self-dealing. DOE expects to provide guidance to grantees on how to establish appropriate procurement controls. DOE is considering establishing a requirement in the future that no procurements may be made with program funds until the State has established appropriate procurement controls approved by the Regional Representative.

B. Allowable Expenditures and Program Support

Section 440.16(a) has been revised to raise the maximum expenditure per dwelling unit from $800 to $1,000, certain labor costs have been added to the list covered by the maximum expenditure limit, and the umbrella for program support costs of $240 per dwelling unit is being deleted. Instead, § 440.16(a)(1)(ii) will now require a grantee to establish, with the approval of the Regional Representative, an amount per dwelling unit for program support and labor costs. Labor costs, in accordance with § 440.17, are now treated as a program support cost under § 440.16(a)(1)(ii)(F). To simplify accounting procedures, storage will no longer be treated as a part of the cost of weatherization materials but will be included as a separate item in program support costs under § 440.16(a)(1)(ii)(G).

Prior to this change program support costs were limited to $240 per dwelling unit. However, DOE has received many letters from members of Congress, State officials and local project directors stating that the $240 ceiling has been too restrictive. DOE's experience indicates that additional funding in the program support category would allow local weatherization projects to expedite the program in their areas by satisfying the need for additional funds for labor and transportation. In many areas, the prevailing hourly wage rate for untrained weatherization laborers is significantly higher than the wage rate for CETA employees. In at least one area, the wage rate for unskilled laborers is 80 percent higher than the wage rate for CETA employees. Likewise the salaries offered to supervisory weatherization workers are not competitive in this area. Many local projects state that they have been unable to attract and retain an adequate labor force to carry out the program. Program support funds must also cover expenditures for transportation, tools and equipment. Rural areas and sparsely populated regions, in particular, have expressed grave concern over rising transportation costs as a component of the program support category. Imbalance between the labor and transportation costs in relation to material expenditures has resulted in serious management problems in the local agencies.

As a result, DOE has decided to raise the per dwelling ceiling by $200 and provided that the Regional Representative should be given the authority to determine, in conjunction with the grantee, the appropriate percentage of the grant funds to be used for program support costs and labor. DOE believes that this method will provide the best means of allocating necessary funds for program support while at the same time maximizing the proportion of grant funds that will be used for the purchase of weatherization materials. In each case, the grantee and the Regional Representative will have to agree that program funds are being used to the maximum extent practicable to purchase weatherization materials.

DOE is also taking this opportunity to include storage as a program support cost rather than a cost associated with the purchase of materials. It was also recommended that liability insurance be included as a program support cost. However, DOE is concerned that such an action may unnecessarily limit the funds available to grantees and sub-grantees for liability insurance. DOE feels that it is of the utmost importance that program participants be fully insured and therefore has chosen to retain the treatment of liability insurance as a separate item, free of any dollar limitations.

DOE has found considerable confusion concerning the $100 limitation on repairs. Repairs refer only to payments made for repair materials or services not otherwise authorized under the regulation. Apparently this point is frequently overlooked. For example, purchase of glass to glaze a window or wood to close a hole in the floor is not subject to the $100 limitation. These items may be treated as weatherization materials because they are materials used as a patch to reduce infiltration through the building envelope. Moreover, in accordance with § 440.17, a contractor could be employed to install these materials. "Incidental repairs" refer to the purchase of goods which are not weatherization materials or services not requiring the installation of a weatherization material. Examples of incidental repairs are replacement of a leaking pipe or unsafe wiring, either of which prevents proper installation of insulation.

Section 415(c)(2) of the Act sets a per dwelling unit limit of $800 on the total of many of the costs to which the $1,000 limit now applies, unless the State policy advisory council requests a greater amount. The DOE believes that present-day circumstances would justify an increase to at least $1,000 in almost every event, rendering wholesale requests by State policy advisory councils for waivers up to the $1,000 amount not worth the effort and extra complexity. Accordingly, § 440.16(d) has been modified to provide that the State policy advisory councils will be deemed to have requested such a waiver, unless they notify the Regional Representative in writing to the contrary by a date certain.

C. Allocation of Funds

DOE has revised § 440.10 to provide for a tentative allocation to each State. The final allocation may be readjusted by DOE. The final allocation may be reduced by an amount which DOE has determined a State cannot be expected to spend during the current budget period to meet production goals in the light of currently unexpended financial assistance already obligated to the State. At the same time, DOE may increase the funds provided to a State where DOE has determined the State can use the funds to weatherize additional dwelling units during the current budget period. An additional technical change has been made to enable the Regional Representative, instead of the Secretary, to notify a State of its tentative allocation.

The program has been plagued by the inability of certain States to expend obligated funds. One option would be to deobligate these funds and seek less support for this program in the future. However, this solution would seriously injure the low-income persons which Congress intended to benefit. A second option would be to provide additional financial assistance from current year funds to a State which can provide additional weatherization services to low-income persons by reallocating, as much as possible, surplus assistance from a State which is not using it. This approach would get more money put to productive use. However, broader coverage in one State would be achieved as a result of decreased potential coverage in another State.

The third option is more effective program manangement by all participants in the program. DOE believes that the third option provides the most appropriate approach. Accordingly, DOE wishes to emphasize its continuing commitment to work with the States to improve program operation. However, DOE notes if improved performance cannot be achieved in this manner, some adjustment of funds may be necessary.

DOE wants to clarify the authority of a State to reallocate financial assistance within the State to meet production goals. A State is required to comply with a State plan adopted in accordance with § 440.14(a). Nevertheless, a State may reserve reallocation authority in its State plan. States may also fund sub-grantees incrementally, and State plans may designate contingent sub-grantees where appropriate. DOE has revised § 440.14(a) to change the reference to the "amount" each sub-grantee will receive to the "tentative amount." This reflects DOE's policy to encourage the States to make tentative allocations to sub-grantees in their State plan and retain flexibility to reallocate. If a State elects to reallocate financial assistance during a budget period, it will have to provide notice and a public hearing under two circumstances:

(1) Where it is necessary to modify the State plan because funding is to be provided to a sub-grantee which is not in accordance with the approved plan; or

(2) Where the State seeks to reallocate funding from a CAA to another sub-grantee in the same area.

DOE has modified § 440.14(d) to clarify the authority of the Governor to suspend a priority or allocation for a CAA at any time if justified, and not just before the annual submission of a State plan. It should be noted that any reallocation by a State will require appropriate modification of the grant document which will be subject to the approval of the Regional Representative.

D. Low Cost/No Cost

DOE has added § 440.18 to permit installation of low cost/no cost weatherization materials as an interim activity. A maximum of 10 percent of the amount to be allocated to a sub-grantee may be used to install low cost/no cost weatherization materials in eligible dwelling units. Installation of these materials will be an interim effort pending more complete weatherization of the dwelling at a later date. The cost per dwelling for low cost/no cost items is limited to $50, but may be increased by the Regional Representative. These costs are now allowable expenditures under § 440.16(a)(4). Only labor not funded by this program can be used to install low cost/no cost items as an interim measure. When installation of low cost/no cost is an interim measure, the one weatherization per dwelling unit restriction of § 440.16(c)(1) and requirement to use Project Retro-Tech in accordance with § 440.19(b) do not apply.

Low cost/no cost covers the installation of a range of inexpensive weatherization materials including water flow controllers, weatherstripping, caulking, glass patching and insulation for plugging

holes. Installation of these materials is primarily directed toward reducing infiltration with the exception of the water flow controller. The items installed in the low cost/not cost effort would probably be installed in any event. Because only items which are weatherization materials may be used, program funds will be used primarily to install materials which have a long term useful life and do not require frequent replacement. Low cost/no cost will provide a quick and inexpensive means for providing relief for low-income persons and conserving energy while the dwelling unit awaits additional weatherization assistance. Although projections of energy savings using only these interim measures are currently unavailable, significant savings are expected from use of the total range of low cost/no cost measures such as reducing the temperature of the hot water heaters, washing laundry in cold water, lowering thermostat settings and effective use of shades and drapes. DOE is conducting studies on energy savings from full weatherization of a dwelling unit and will incorporate estimates from low cost/no cost in these studies.

In many States, the demand for full weatherization far exceeds the State's production capability to weatherize dwellings, and many low-income persons are on waiting lists. Installation of low cost/no cost materials will provide some immediate relief to these people at a small cost. The Department believes that benefits to the low-income individuals far exceed the cost.

The $50 cost per dwelling limit was based on hardware store prices of a typical low cost/no cost materials package and experience in DOE sponsored programs. A valid concern was expressed that $50 would not be sufficient. The concern was addressed by permitting the Regional Representative to increase the limit depending on local conditions. The 10 percent limit on total cost is to insure that the interim low cost/no cost effort will not unduly burden expeditious completion of eligible dwelling units. The restriction upon the use of program funds to pay labor costs to install low cost/no cost materials is intended to limit diversion of resources from more complete weatherization treatment and to maintain the inexpensive feature of low cost/no cost. DOE also notes installation of low cost/no cost is relatively simple and in many cases can be accomplished by inhabitants of the dwelling.

E. Rental Housing

DOE has revised § 440.15(b) to simplify requirements for weatherizing multifamily housing. Instead of a general requirement that benefits accrue primarily to low-income persons, a specific test will be applied: Not less than 66 percent of the dwelling units must be eligible dwelling units or restricted to occupany in the future as eligible dwelling units under a Federal program for rehabilitation or similar improvement of the building. Accordingly, DOE has deleted the reference to weatherizing a vacant dwelling unit previously found in § 440.16(c)(2) and conformed the requirements for an eligible dwelling unit in § 440.20. This change does not permit a vacant building to be weatherized unless weatherization is being performed under a Federal program in accordance with § 440.15(b)(2)(ii). However, a multifamily building containing some vacant dwelling units could be weatherized under § 440.15(b)(2)(i) if 66 percent of the occupied units meet the requirements of an eligible dwelling unit under § 440.20.

The provision of weatherization assistance to occupants of rented housing has long been a problem in this program and the CSA administered weatherization program. In the 1978 GAO Report, "Complications in Implementing Home Weatherization Programs for the Poor", cited above, GAO concluded that "over half the nation's poor who rent rather than own their homes are not benefiting from CSA's weatherization program." The report recommended that CSA take a number of actions to increase assistance to renters, and also recommended that DOE periodically assess the extent of rental weatherization being accomplished under its program. The OIG's Report, cited above, pointed out the lack of emphasis on rental units. The report recommended that DOE establish a position on the priority to be given to rental units.

DOE is limited in the ways it can provide increased flexibility to project operators to deal with rented housing and multifamily buildings. Section 413(b)(2)(B) of the Act requires that "(i) the benefits of weatherization assistance in connection with leased dwelling units will accrue primarily to low-income tenants; (ii) the rents on such dwelling units will not be raised because of any increase in the value thereof due solely to weatherization assistance provided under this part; and (ii) no undue or excessive enhancement will occur to the value of such dwelling units." These requirements increase the difficulty of weatherizing rental dwelling units. For example, program operators have found a significant number of landlords are reluctant to enter into an agreement not to increase rents because of the improvements to a building provided through weatherization assistance.

Furthermore, program operators report difficulties in obtaining a right of entry from the owner or his or her agent before commencing work upon a building. This is a particular problem in large urban areas in the North East where apartment buildings are often owned by absentee landlords, if local law does not provide for an agent who can act in his behalf.

DOE, nevertheless, believes some immediate improvements can be made to increase weatherization of multifamily buildings. DOE initially determined that § 440.15(b)(2) should be amended to allow the weatherization of multifamily buidlings when at least 75 percent of the units are occupied by eligible families. This would be consistent with the requirement that the benefits of weatherization would accrue primarily to low-income tentants. However, it was brought to our attention that this would prevent the weatherization of "triple decker" units in New England if one floor is occupied by an ineligible family. To accommodate this situation, DOE has established the minimum occupany rate at 66 percent. At this level, the benefits of weatherization would still accrue primarily to the low-income tenants. DOE specifically invites comments with regard to further actions it might take to increase the level of assistance to low-income renters.

F. Improvements in Planning

Concurrently with the increased flexibility created by the changes discussed above, DOE seeks to clarify the responsibilities of the State to use these new opportunities for more effective operation of the program. Section 440.12(b)(5) has been revised to require the State to designate first the number of dwelling units to be weatherized during the budget period with financial assistance previously awarded and then the number of additional dwelling units which can be completed using all or portion of the tentative allocation. DOE has modified § 440.12(b)(6) to require a production schedule indicating estimated completions on a monthly basis, instead of quarterly. A new § 440.12(b)(11) has been added. It calls for a management plan showing how labor, program support and materials will be provided by a State to meet the monthly production schedule referred to in subparagraph (b)(6). These changes are

intended to emphasize the key management role of the States.

G. Weatherization Materials

Appendix A has been revised to include "water flow controllers" and "replacement oil burners." The definition of weatherization materials in § 440.3 has been amended to include water flow controllers.

DOE has promulgated the standard for replacement oil burners for the Residential Conservation Service. See 10 CFR Part 456, Subpart G which was issued by DOE as final rule on October 30, 1979, 44 FR 64602 (November 7, 1979). The program is incorporating the DOE standard for replacement oil burners promulgated in this recent DOE rule by reference. DOE has received numerous requests to permit purchase and installation of replacement oil burners as part of weatherization of a dwelling unit. This modification will now permit this to take place. Water flow controllers have been included because of their extensive use as part of a low cost/no cost approach.

H. Miscellaneous Changes

DOE has revised § 440.12(a) and § 440.13(a) to require submission of an application by a State within 90 days after notice is received from the Regional Representative. This change is technical since the earlier formulation required a submission within 90 days of publication of the regulation and did not specifically relate to an annual application cycle.

DOE has revised the nondiscrimination provisions of § 440.15(d) to be consistent to DOE Financial Assistance Regulations, 10 CFR 600.39 and DOE policy in this important area of concern.

DOE has also revised the section on reports, and § 440.23 now makes clear its authority to require reports. There appears to have been some confusion that DOE intended to limit its authority to obtain reports under the Act to quarterly reports. To avoid this misunderstanding, DOE has changed this section to parallel the authority conferred by Congress in the Act. Timely submission of required reports is essential to the orderly and successful operation of the program. DOE will look to the States to meet this requirement. DOE is considering making continued funding contingent upon timely compliance with reporting requirements. This may become necessary where a participant continues to systematically disregard reporting requirements.

IV. Procedural Requirements.

We are soliciting comments and will hold hearings indicated below on this rule at the time and places indicated below. DOE will review the comments and other relevant parts of the record and will determine whether the rule should be continued and whether modifications are appropriate. The specific statutory requirements applicable to emergency rulemakings have been satisfied as follows:

A. Section 553(b) of the Administrative Procedure Act and Section 501 of the DOE Act

Section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) requires that general notice of proposed rulemaking shall be published in the **Federal Register** unless persons subject to it are named and have actual notice of the proposal. Except when notice or hearing is required by statute, the requirement for a notice of proposed rulemaking does not apply when the agency finds (and incorporates the findings and a brief statement of its reasons) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest.

Under section 501(e) of the Department of Energy Organization Act ("DOE Act"), Pub. L. 95–91 DOE may waive the prior notice and hearing requirements of subsections (b), (c) and (d) of section 501 upon our finding that strict compliance with these requirements is likely to cause serious harm or injury to the public health, safety or welfare.

We believe findings waiving the § 553(b) and § 501 requirements can be made. As noted above, today's changes are necessary to ameliorate hardship among low-income persons. In accordance with § 501, we will receive both oral and written comments on this action within a reasonable period after issuance of this rule as provided in the Comment Procedure.

B. Section 553(d) of the Administrative Procedure Act

Section 553(d) of the Administrative Procedure Act requires that a substantive rule will not become effective less than thirty days after its publication. The requirement does not apply to rules which relieve restrictions and also does not apply when the agency promulgating the rule finds good cause to waive this requirement and publishes this finding together with the rule.

The requirement of § 553(d) does not apply. Moreover, the need for immediate adoption of this rule, for the reasons stated above, provides good cause to waive the § 553(d) requirement.

C. Executive Order 12044

The sixty-day advance public comment period and the other procedures required for proposed rulemakings pursuant to Executive Order 12044, entitled "Improving Government Regulations" (43 FR 12661, March 24, 1978) and DOE's implementing procedures, DOE Order 2030.1 (44 FR 1032, January 3, 1979), have been waived by the Under Secretary of Energy for the same reasons that require the rule to be effective immediately.

V. Opportunity for Public Comment

A. Written Comment Procedures.

Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the proposals set forth in this notice to Ms. Joanne Bakos, Office of Conservation and Solar Energy, Room 2221C, Department of Energy, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585.

Comments should be identified on the outside of the envelope and on documents with the designation "Weatherization Assistance for Low-Income Persons Regulations (Docket No. CAS–RM–80–508)." Fifteen copies should be submitted. All comments received by April 28, 1980, before 4:30 p.m., and other relevant information, will be considered by DOE.

Any information or data considered by the person furnishing it to be confidential must be so identified, and one copy submitted in writing. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

B. Public Hearings.

DOE has determined that it will hold hearings in five of the ten DOE Regions. Each of the regional hearings will be held beginning at 10:00 AM., local time, on the dates and at the locations specified below.

Any person who has an interest in this proceeding or who is a representative of a group of persons that has an interest in this proceeding may make a written request for an opportunity to make an oral presentation. Such a request should be directed to DOE at the address given below for the appropriate Region, and in accordance with the "Request Procedures" set forth below. Requests must be received before 4:30 PM., local time on March 10, 1980, for the Chicago

hearing, March 11, 1980, for the Denver and Dallas hearings, March 14, 1980, for the Seattle hearing, and March 17, 1980, for the Boston hearing. Requests should be as for written comments, with the additional notation "Request to Speak."

The person making the request should briefly describe the interest concerned, if appropriate, state why she or he is a proper representative of a group of persons that has such an interest, and give a concise summary of the proposed oral presentation and a phone number where she or he may be contacted through March 13, 1980, for the Chicago hearing, March 14, 1980, for the Denver and Dallas hearings, March 17, 1980, for the Seattle hearing, and March 20, 1980, for the Boston hearing. Each person selected to be heard will be notified by DOE before 4:30 PM. on those dates. Each person selected to be heard must bring fifteen copies of her or his statement to the hearing.

In the event any person wishing to testify cannot provide fifteen copies, alternative arrangements can be made with the appropriate hearing coordinator in advance of the hearing by so indicating in the letter requesting an oral presentation or by calling the appropriate hearing coordinator at the telephone number indicated below.

DOE region	Hearing date	Submit requests to testify to—	Hearing location
I Boston, Mass.	March 27, 1980	Kathy Healy, Department of Energy, 150 Causeway Street, Boston, Mass. 02114, (617) 223-5257.	J. W. McCormack, Post Office and Courthouse, Room 208, Post Office Square, Boston, Mass.
V Chicago, Ill.	March 19, 1980	Thomas Sanders, Department of Energy, 175 West Jackson Blvd., Chicago, Ill. 60604, (312) 886-5161.	Ambassador West Hotel, 1300 North State Parkway, Chicago, Ill.
VI Dallas, Tex.	March 21, 1980	Grace Morrison, Department of energy, P.O. Box 35228, Dallas, Tex. 75235, (214) 767-7736.	Federal Building, Room 7A23, 110 Commerce Street, Dallas, Tex.
VIII Denver, Colo.	March 20, 1980	Tom Stroud, Department of Energy, P.O. Box 26247, Belmar Branch, Lakewood, Colo. 80226, (303) 234-2165.	Post Office Building, Room 269, 1823 Stout Street, Denver, Colo.
X Seattle, Wash.	March 24, 1980	Janet Marcan, Department of Energy, 915 Second Avenue, Seattle, Wash. 98174, (206) 442-7285.	Federal Building, South Auditorium, 915 Second Avenue, Seattle, Wash.

C. Conduct of Hearing

DOE reserves the right to select the persons to be heard at the hearings, to schedule their respective presentations and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearings. These will not be judicial or evidentiary-type hearings. Questions may be asked of speakers only by those conducting the hearings, and there will be no cross-examination of persons presenting statements. Any decision made by DOE with respect to the subject matter of the hearings will be based on all information available to DOE. At the conclusion of all initial oral statements at the hearings, each person who has made an oral statement will be given the opportunity if she or he so desires, to make a rubuttal statement. The rubuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any person wishing to ask a question at the hearings may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

Transcripts of the hearings will be made and the entire record of the hearings, including the transcripts, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Room GA152, 1000 Independence Avenue, S.W., Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the court reporter.

VI. Environmental and Significance Review

Pursuant to section 7(a)(1) of the Federal Energy Administration Act of 1974, as amended, 15 U.S.C. 766(a)(1), a copy of this was submitted to the Administrator of the Environmental Protection Agency ("EPA") for his comments concerning the impact of this proposal on the quality of the environment. The Administrator had the following comments:

"EPA supports the proposed amendments to the weatherization program as a means of addressing the severe hardships resulting from delays in delivery of weatherization assistance to low-income persons, especially the elderly and handicapped. We recognize the economic burdens of rapidly escalating home heating costs which these amendments are intended to alleviate. We also support the weatherization program both as a means of reducing our dependence on foreign oil and as a means for reducing outdoor pollutants associated with energy resource development and consumption.

EPA strongly supports those elements of the program designed to improve energy efficiency and reduce heat loss in buildings; however, we have concerns about the build-up of indoor air pollutants and radon concentrations in residences due to those measures specifically designed to reduce air exchange rates. Unless properly ventilated, the indoor residential environment can become a major contributor to an individual's total exposure to air pollution and radon with potential of adverse health effects. This concern has been recognized by the Department of Energy both in DOE's Environmental Assessment for the Weatherization Assistance Program (issued April 1979) and in the Environmental Impact Statement for the Residential Conservation Service Program (issued November 1979).

We therefore, urge the Department of Energy to be sensitive to the health issue of increased indoor air pollution and radon exposure while at the same time addressing the basic economic and human needs of keeping people warm. Our two agencies are jointly developing a public information program on this issue in conjunction with the Residential Conservation Service Program. Furthermore, where feasible, we would encourage DOE to take advantage of opportunities for sound-proofing and pest-proofing residences as part of the weatherization effort."

Pursuant to the National Environmental Policy Act of 1969, as amended, ["NEPA"], 42 U.S.C. 4321 *et seq.*, DOE published a Notice of Availability of an environmental assessment (EA) of the Grants Program for Weatherization Assistance for Low-Income Persons on April 10, 1979 in the **Federal Register** (44 FR 21323). Based on this EA, DOE determined that the weatherization Assistance Program did not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and that an environmental impact statement (EIS) was not needed to support the action.

DOE has reviewed the environmental impacts of the Weatherization Assistance Program amendments adopted herein. It is DOE's judgment

that the effect of these amendments will be to bring the level of participation in the program up to the levels originally anticipated and originally analyzed in the April 1979 EA. No new or additional environmental impacts are associated with the new amendments, nor do these new amendments require the addition of any new mitigating measures beyond those already contained in the program. It is thus DOE's determination that the environmental impacts of the new Weatherization Assistance Program amendments have been adequately analyzed in the April 1979 EA, and that these impacts are not significant. Hence, no additional EA or EIS is required.

(Energy Conservation in Existing Buildings Act of 1976, as amended, 42 U.S.C. 6851 *et seq.*, Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.)*

In consideration of the foregoing, Part 440 of Chapter II of Title 10, Code of Federal Regulations is amended as set forth below effective February 27, 1980.

Issued in Washington, D.C., February 22, 1980.

C. Worthington Bateman,

Under Secretary (Acting).

10 CFR Part 440 is amended to read as follows:

PART 440—WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS

Sec.

440.1. Purpose and scope.
440.2 Administration of grants.
440.3 Definitions.
440.10 Allocation of funds.
440.11 Native Americans.
440.12 State applications.
440.13 Local applications.
440.14 Administrative requirements.
440.15 Minimum program requirements.
440.16 Allowable expenditures.
440.17 Labor.
440.18 Low cost/no cost weatherization activities.
440.19 Standards and techniques for weatherization.
440.20 Eligible dwelling units.
440.21 Oversight, training, and technical assistance.
440.22 Recordkeeping.
440.23 Reports.
440.30 Administrative review.
Appendix A-Standards for Weatherization Materials.

Authority: Energy Conservation in Existing Buildings Act of 1976, as amended. 42 U.S.C. 6851 *et. seq.;* Department of Energy Organization Act, 42 U.S.C. 1701 *et seq.*

§ 440.1 Purpose and scope.

This part contains the regulations adopted by the Department of Energy to carry out a program of weatherization assistance for low-income persons established by Part A of the Energy Conservation in Existing Buildings Act of 1976, 42 U.S.C. 6861 *et seq.*, enacted as Title IV of the Energy Conservation and Production Act, Pub. L. 94–385, 90 Stat. 1125 *et seq.*, and amended by Title II, Part 2, of the National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3206 *et seq.*

§ 440.2 Administration of grants.

(a) Grant awards under this Part shall be administered in accordance with the following—

(1) Federal Management Circular 73–2, 34 CFR 251, entitled "Audit on Federal Operations and Programs by Executive Branch Agencies;"

(2) Federal Management Circular 74–4, 34 CFR 256 entitled "Cost Principles Applicable to Grants and Contracts with State and Local Governments;"

(3) Federal Management Circular 74–7, 34 CFR 256, entitled "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments;"

(4) Office of Management and Budget Circular A–89, entitled "Catalog of Federal Domestic Assistance;"

(5) Office of Management and Budget Circular A–95, entitled "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects;"

(6) Office of Management and Budget Circular A–97, entitled "Rules and Regulations Permitting Federal Agencies to Provide Specialized or Technical Services to State and Local Units of Government under Title III of the Intergovernmental Coordination Act of 1968;"

(7) Treasury Circular 1082, entitled "Notification to States of Grant-in-Aid Information;"

(8) DOE Assistance Regulations (10 CFR 600); and

(9) Such procedures applicable to this part as DOE may from time to time prescribe for the administration of grants.

(b) Tools and equipment acquired with grant funds provided under this part shall be the property of the grantee, as more particularly provided for by subparagraph (a)(3) of this section.

§ 440.3 Definitions

As used in this part—

"Act" means the Energy Conservation in Existing Buildings Act of 1976, as amended, 42 U.S.C. 6851 *et seq.*

"CAA" means a Community Action Agency.

"CETA" means a the Comprehensive Employment and Training Act of 1973, 42 U.S.C. 2781 *et seq.*

"Community Action Agency" means a private corporation or public agency established pursuant to the Economic Opportunity Act of 1964, Pub. L. 88–452, which is authorized to administer funds received from Federal, State, local or private funding entities to assess, design, operate, finance and oversee antipoverty programs.

"Cooling degree days" means a population-weighted annual average of the climatological cooling degree days for each weather station within a State, as determined by DOE.

"Director" means the Director of the Community Services Administration.

"DOE" means the Department of Energy.

"Dwelling unit" means a house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters.

"Elderly person" means a person who is 60 years of age or older.

"Eligible State" means any of the forty-eight contiguous States, Alaska, or the District of Columbia.

"Family unit" means all persons living together in a dwelling unit.

"Governor" means the chief executive officer of a State, including the Mayor of the District of Columbia.

"Grantee" means the State or other entity named in the Notification of Grant Award as the recipient.

"Handicapped person" means any individual (1) who is a handicapped individual as defined in section 7(6) of the Rehabilitation Act of 1973, (2) who is under a disability as defined in section 1614(a)(3)(A) or 223(d)(1) of the Social Security Act or in section 102(7) of the Developmental Disabilities Services and Facilities Construction Act, or (3) who is receiving benefits under chapter 11 or 15 of Title 38, United States Code.

"Heating degree days" means a population-weighted seasonal average of the the climatological heating degree days for each weather station within a State, as determined by DOE.

"Indian tribe" means any tribe, band, nation or other organized group or community of Native Americans, including any Alaska native village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, Pub. L. 92–203, 85 Stat, 688, which (1) is recognized as eligible for the special programs and services provided by the United States to Native Americans because of their status as Native Americans; or (2) is located on, or in proximity to a Federal or State reservation or rancheria.

"Local applicant" means a CAA or unit of general purpose local government.

"Low income" means that income relation to family size which—

(1) Is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, except that the Secretary may establish a higher level if the Secretary, after consulting with the Secretary of Agriculture and the Director of the Community Services Administration, determines that such a higher level is necessary to carry out the purposes of this part and is consistent with the eligibility criteria established for the weatherization program under section 222(a)(12) of the Economic Opportunity Act of 1964; or

(2) Is the basis on which cash assistance payments have been paid during the preceding 12-month period under Titles IV and XVI of the Social Security Act or applicable State or local law.

"Native American" means a person who is a member of an Indian tribe.

"Number of low-income, owner-occupied dwelling units in the State" means the number of such dwelling units in a State, as determined by DOE.

"Number of low-income, renter-occupied dwelling units in the State" means the number of such dwelling units in a State, as determined by DOE.

"Percentage of total residential energy used for space cooling" means the national percentage of total energy used for space cooling, as determined by DOE.

"Percentage of total residential energy used for space heating" means the national percentage of total energy used for space heating, as determined by DOE.

"Regional Representative" means a Regional Representative of DOE.

"Rental dwelling unit" means a dwelling unit occupied by a person who pays rent for the use of the dwelling unit.

"Repair materials" means items necessary for the effective performance or preservation of weatherization materials. Repair materials include, but are not limited to lumber used to frame or repair windows and doors which could not otherwise be caulked or weatherstripped, and protective materials, such as paint, used to seal materials installed under this program.

"Secretary" means the Secretary of the Department of Energy.

"Separate living quarters" means living quarters in which the occupants do not live and eat with any other persons in the structure and which have either (1) direct access from the outside of the building or through a common hall, or (2) complete kitchen facilities for the exclusive use of the occupants. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

"Single-family dwelling unit" means a structure containing no more than one dwelling unit.

"Skirting" means material used to border the bottom of a dwelling unit to prevent infiltration.

"State" means each of the states and the District of Columbia.

"Sub-grantee" means a weatherization project which receives a grant of funds awarded under this part from a grantee.

"Tribal organization" means the recognized governing body of any Indian tribe, or any legally established organization of Native Americans which is controlled, sanctioned, or chartered by such governing body.

"Unit of general purpose local government" means any city, county, town, parish, village, or other general purpose political subdivision of a State.

"Weatherization materials" mean—

(1) Caulking and weatherstripping of doors and windows;

(2) Furnace efficiency modifications limited to—

(i) Replacement burners designed to substantially increase the energy efficiency of the heating system;

(ii) Devices for modifying flue openings which will increase the energy efficiency of the heating system; and

(iii) Electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

(3) Clock thermostats;

(4) Ceiling, attic, wall, floor, and duct insulation;

(5) Water heater insulation;

(6) Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective window and door materials; and

(7) The following insulating or energy conserving devices or technologies—

(i) Skirting;

(ii) Items to improve attic ventilation;

(iii) Vapor barriers;

(iv) Materials used as a patch to reduce infiltration through the building envelope; and

(v) Water flow controllers.

§ 440.10 Allocation of funds.

(a) DOE shall allocate financial assistance for each State from sums appropriated for any fiscal year, only upon annual application.

(b) DOE shall determine the tentative allocation for each State from available funds as follows—

(1) The first five million dollars appropriated shall be divided equally among the eligible States; an additional one hundred thousand dollars shall be allocated to Alaska.

(2) The percentage of the remaining available funds allocated to each eligible State shall be determined by the following formula—

(i) The square of the number of heating degree-days in a State multiplied by the percentage of total residential energy used for space heating;

(ii) Plus the square of the number of cooling degree-days in the State multiplied by the percentage of total residential energy used for space cooling;

(iii) Multiplied by the sum of the number of low-income, owner-occupied dwelling units in the State and one-half of the number of low-income, renter-occupied dwelling units in the State;

(iv) Divided by the sum of the result produced for all States by the computation outlined in subparagraphs (i), (ii), and (iii) of this paragraph; and

(v) Multiplied by 100.

(c) DOE may reduce the tentative allocation for a State by the amount DOE determines cannot reasonably be expended by a grantee to weatherize dwelling units during the budget period for which financial assistance is to be awarded. In reaching this determination, DOE will consider the amount of unexpended financial assistance currently available to a grantee under this part and the number of dwelling units which remain to be weatherized with the unexpended financial assistance.

(d) DOE may increase the tentative allocation of a State by the amount DOE determines the grantee can expend to weatherize additional dwelling units during the budget period for which financial assistance is to be awarded.

(e) The Regional Representative shall notify each eligible State of the tentative allocation for which that State is eligible to apply.

§ 440.11 Native Americans.

(a) Notwithstanding any other provision of this part, the Regional Representative may determine, after taking into account the amount of funds made available to a State to carry out the purposes of this part, that—

(1) The low-income members of an Indian tribe are not receiving benefits under this part equivalent to the assistance provided to other low-income persons in the State under this part, and

(2) The members of such tribe would be better served by means of a grant made directly to provide such assistance.

(b) In any State for which the Regional Representative shall have made the

determination referred to in paragraph (a) of this section, the Regional Representative shall reserve from the sums that would otherwise be allocated to the State under this part not less than 100 percent, nor more than 150 percent, of an amount which bears the same ratio to the State's allocation for the fiscal year involved as the population of all low-income Native Americans for whom a determination under paragraph (a) of this section has been made bears to the population of all low-income persons in the State.

(c) The Regional Representative shall make the determination prescribed in paragraph (a) of this section in the event a State shall—

(1) Not apply within the 90 day time period prescribed in § 440.12(a);

(2) Recommend that direct grants be made for low-income members of an Indian tribe as provided in § 440.12(b)(10);

(3) File an application which DOE determines, in accordance with the procedures in § 440.30, not to make adequate provision for the low-income members of an Indian tribe residing in the State, or

(4) Have received grant funds, and DOE determines, in accordance with the procedures in § 440.30, that the State has failed to implement the procedures required by § 440.15(a)(7).

(d) Any sums reserved by the Regional Representative pursuant to paragraph (b) of this section shall be granted to the tribal organization serving the individuals for whom the determination has been made, or where there is no tribal organization, to such other entity as the Regional Representative determines is able to provide adequate weatherization assistance pursuant to this part. Where the Regional Representative intends to make a grant to an organization to perform services benefiting more than one Indian tribe, the approval of each Indian tribe shall be a prerequisite for the issuance of a notice of grant award.

(e) Within 30 days after the Regional Representative has reserved funds pursuant to paragraph (b) of this section, the Regional Representative shall give written notice to the tribal organization or other qualified entity of the amount of funds reserved and its eligibility to apply therefor.

(f) Such tribal organization or other qualified entity shall thereafter be treated as a unit of general purpose local government eligible to apply for funds hereunder, pursuant to the provisions of § 440.13.

§ 440.12 State applications.

(a) To be eligible for financial assistance under this part, a State shall submit an application to DOE in conformity with the requirements of § 440.15 not later than 90 days after the date of notice to apply is received from the Regional Representative. The Regional Representative shall review each timely State application and, if the submission otherwise complies with the applicable provisions of this part, approve a final budget and issue a notice of grant award.

(b) Each application shall include—

(1) The name and address of the State agency or office responsible for administering the program;

(2) A copy of the final State plan prepared after notice and a public hearing in accordance with § 440.14(a), except that an application by a local applicant need not include a copy of the final State plan;

(3) A detailed description of the manner in which the minimum program requirements of § 440.15 will be met;

(4) The budget for total funds applied for under the Act which shall include a justification and explanation of any amounts requested for expenditure pursuant to § 440.16;

(5) The total number of dwelling units proposed to be weatherized with grant funds during the budget period for which assistance is to be awarded (i) with financial assistance previously obligated under this part; and (ii) with the tentative allocation to the State;

(6) A production schedule which shall indicate the number of dwelling units which are expected to be weatherized for each month during the budget period;

(7) An estimate of the number of single-family and multi-family dwelling units to be weatherized;

(8) An estimate of the minimum number of dwelling units to be weatherized where elderly persons reside;

(9) An estimate of the minimum number of dwelling units to be weatherized where handicapped persons reside;

(10) An estimate of the minimum number of dwelling units to be weatherized where Native Americans reside, or a recommendation that a tribal organization be treated as a local applicant eligible to submit an application pursuant to § 440.13(b);

(11) A management plan showing how labor, program support and materials will be provided in a timely manner to achieve the production schedule provided in accordance with subparagraph (b)(6) of this section;

(12) Any determination made in accordance with § 440.14(d) not to provide funds and the reasons for such determination, except that an application by a local applicant need not include this information; and

(13) Any further information which the Secretary finds necessary to determine whether an application meets the requirements of this part.

§ 440.13 Local applications.

(a) The Regional Representative shall give written notice to all local applicants throughout a State of their eligibility to apply for financial assistance under this part in the event—

(1) A State, within which a local applicant is situated, fails to submit an application within 90 days after notice in accordance with § 440.12(a); or

(2) The Regional Representative finally disapproves the application of a State pursuant to § 440.30 of this part.

(b) To be eligible for financial assistance, a local applicant shall submit an application pursuant to § 440.12(b) to the Regional Representative within 30 days after receiving the notice referred to in paragraph (a) of this section.

(c) In the event one or more local applicants submit a timely application, the Regional Representative shall combine the hearing on the proposed plan pursuant to § 440.14(a) with a hearing on the intention to deny the timely application of one or more local applicants, as provided in § 440.30, to the maximum extent practicable. Based upon the final plan developed by the Regional Representative, the hearing and information submitted by a local applicant and other interested persons, the Regional Representative shall determine whether or not to award a grant to a local applicant and the amount thereof. The Regional Representative may provide financial assistance to a local applicant to carry out one or more weatherization projects.

§ 440.14 Administrative requirements.

(a) Before submitting an application, a State shall give not less than 10 days notice of hearing, reasonably calculated to inform prospective sub-grantees, and shall conduct one or more public hearings for the purpose of receiving comments on a proposed State plan. The proposed State plan, which shall identify and describe proposed weatherization projects including a statement of proposed sub-grantees and the amount each will receive, shall be published and made available throughout the State prior to the hearing. The notice for the hearing shall specify that copies of the plan are available and how they may be obtained. A transcript of the hearings shall be prepared and

written submission of views and data shall be accepted for the record.

(b) Subsequent to the hearing, the State shall prepare a final plan which shall identify and describe—

(1) Each area to be served by a weatherization project within the State and shall include for each area—

(i) The number of dwelling units to be weatherized;

(ii) The climatic conditions;

(iii) The type of weatherization work to be done;

(iv) The need for weatherization assistance among low-income persons;

(v) The amount of energy to be conserved;

(vi) Mechanisms for providing sources of labor;

(vii) An estimate of the number of eligible dwelling units in which the elderly reside; and

(viii) An estimate of the number of eligible dwelling units in which the handicapped reside.

(2) The manner in which the plan is to be implemented and shall include—

(i) An analysis of the existence and effectiveness of any weatherization project being carried out by a CAA;

(ii) An explanation of the method used to select each area to be served by a weatherization project;

(iii) The extent to which priority will be given to weatherization of single-family dwelling units for the elderly and handicapped;

(iv) The amount of non-Federal resources to be applied to the program;

(v) The amount of Federal resources, other than DOE weatherization grant funds, to be applied to the program;

(vi) The amount of weatherization grant funds allocated to the State under this part;

(vii) The expected average cost per dwelling to be weatherized, taking into account the total number of dwellings to be weatherized and the total amount of funds, Federal and non-Federal, expected to be applied to the program; and

(viii) the number of rental dwelling units to be weatherized by project, if any.

(3) The approach, including a list of measures to weatherize a dwelling unit, developed by the State in accordance with Project Retro-Tech, Conservation Paper Number 28, as revised July 1979, which shall be applied to each dwelling unit by a subgrantee to determine the optimum set of cost-effective measures, within the allowable expenditures prescribed in § 440.16, to be installed in such dwelling unit.

(c) The plan shall insure that funds received under the Act will be allocated to a CAA carrying out a program under Title II of the Economic Opportunity Act of 1964, 42 U.S.C. 2809, as amended, or to other appropriate and qualified entities in the State or geographical area so that—

(1) Funds will be allocated to areas on the basis of the relative need for a weatherization project by low-income persons, taking into account the factors referred to in paragraph (b)(1) of this section; and

(2)(i) Funds allocated to a geographical area served by an emergency energy conservation program carried out by a CAA under section 222(a)(12) of the Economic Opportunity Act of 1964, shall be allocated to the CAA, and (ii) priority in the allocation of funds will be given to the CAA in so much of the geographical area served by it as is not served by the emergency energy conservation program.

(d) Paragraph (c)(2) of this section shall not apply if the Governor, or the Regional Representative acting pursuant to § 440.13(c), determines on the basis of a public hearing which may be part of the hearing provided under paragraph (a) of this Section that an emergency energy conservation program carried out by a CAA—

(1) Has been ineffective in meeting the purpose of the Act; or

(2) Is clearly not of sufficient size and cannot in timely fashion develop the capacity to support the scope of the project to be carried out in the area with funds to be granted under this part.

(e) In making a determination pursuant to paragraph (d) of this section, the Governor, or the Regional Representative acting on behalf of the Governor pursuant to § 440.13(c), shall evaluate the performance of the CAA and shall consider—

(1) The extent to which the emergency energy conservation program being carried out achieves the goals of the program in a timely fashion;

(2) The quality of work performed;

(3) The number, qualifications and experience of staff members; and

(4) The ability to secure volunteers, training participants and public service employment workers, pursuant to CETA.

(f) Any eligible local applicant may request in its application that the Regional Representative determine that the allocation requirement and priority set forth in paragraph (c)(2) of this section shall not be applied. In this event, the Regional Representative shall decide whether to make the determination as part of the notice and public hearing procedure required by § 440.30, which hearing may be consolidated by the Regional Representative with the public hearing required by paragraph (a) of this section.

§ 440.15 Minimum program requirements.

(a) Prior to the expenditure of any grant funds each grantee shall develop, publish and implement procedures to insure that—

(1) No dwelling unit may be weatherized without documentation that the dwelling unit is an eligible dwelling unit as provided in § 440.20;

(2) Priority is given to identifying, and providing weatherization assistance to elderly and handicapped low-income persons and such priority as the applicant determines is appropriate is given to single-family or other, high-energy-consuming dwelling units;

(3) Financial assistance provided under this part will be used to supplement, and not supplant, State or local funds, and, to the maximum extent practicable as determinted by DOE, to increase the amounts of these funds that would be made available in the absence of Federal funds provided under this part;

(4) To the maximum extent practicable, the grantee will secure the services of volunteers, training participants and public service employment workers, pursuant to CETA, to work under the supervision of qualified supervisors and foremen;

(5) The limitations set forth in § 440.14(c) shall be complied with;

(6) To the maximum extent practicable, the use of weatherization assistance shall be coordinated with other Federal, State, local or privately funded programs in order to improve thermal efficiency and to conserve energy;

(7) The low-income members of an Indian tribe shall receive benefits equivalent to the assistance provided to other low-income persons within a State unless the grantee has made the recommendation provided in § 440.12(b)(10); and

(8) The list of measures to weatherize a dwelling unit, developed by the State in accordance with § 440.12(b)(3), after approval by the Regional Representative, is included in copies of Project Retro-Tech which are furnished by the State to subgrantees.

(b) A sub-grantee may weatherize a building containing rental dwelling units using financial assistance for dwelling units eligible for weatherization assistance under § 440.20, where—

(1) The sub-grantee has obtained the written permission of the owner or his agent;

(2) Not less than 66 percent of the dwelling units in the building—

(i) Are eligible dwelling units, or

(ii) Will become eligible dwelling units 180 days, under a Federal program for rehabilitating the building or making similar improvements to the building; and

(3) The grantee has established procedures approved by the Regional Representative, to insure that—

(i) Rents shall not be raised because of the increased value of dwelling units due solely to weatherization assistance provided under this part; and

(ii) No undue or excessive enhancement shall occur to the value of the dwelling units.

(c) Prior to the expenditure of any grant funds, a State policy advisory council shall be established by a State, or by the Regional Representative if a State does not participate in the program, which—

(1) Has special qualifications and sensitivity with respect to solving the problems of low-income persons, including the weatherization and energy conservation problems of these persons;

(2) Is broadly representative of organizations and agencies, including consumer groups, that represent low-income persons, particularly elderly and handicapped low-income persons and low-income Native Americans, in the State of geographical area in question; and

(3) Has responsibility for advising the appropriate official or agency administerting the allocation of financial assistance in the State or area with respect to the development and implementation of a weatherization assistance program.

(d) Recipients of DOE financial assistance awards which are provided under DOE Federal Assistance programs shall comply with Part 1040, Chapter X, Title 10 of the Code of Federal Regulations "Nondiscrimination in Federally Assisted Programs" (proposed rule) (10 CFR Part 1040) as published in the **Federal Register** Volume 43, Number 222, Thursday, November 16, 1978 (pages 53658 through 53676) and when published, as a final rule. 10 CFR Part 1040 provides that no person shall on the ground of race, color, national origin, sex, handicap, or age be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment, where the main purpose of the program or activity is to provide employment or when the delivery of program services is affected by the recipient's employment practices, in connection with any program or activity receiving Federal assistance from the DOE.

§ 440.16 Allowable expenditures

(a) To the maximum extent practicable, the grant funds provided under this part shall be used for the purchase of weatherization materials and related matter described in subparagraph (1). Allowable expenditures under this part include only—

(1) A maximum of $1,000 for any dwelling unit, except as provided in paragraph (d) of this section, for—

(i) The cost of purchase and delivery of weatherization materials;

(ii) The amount per dwelling unit, determined by a grantee and approved by the Regional Representative, for the cost of program support and labor consisting of—

(A) Transportation of weatherization materials, tools, equipment, and work crews to a storage site and to the site of weatherization work;

(B) Maintenance, operation, and insurance of vehicles used to transport weatherization materials;

(C) Maintenance of tools and equipment;

(D) Purchase or annual lease of tools, equipment, and vehicles, except that any purchase of vehicles shall be referred to DOE for prior approval in every instance;

(E) Employment of on-site supervisory personnel;

(F) Labor costs, in accordance with § 440.17; and

(G) Storage of weatherization materials.

(iii) The cost, not to exceed $100 per dwelling unit, of incidental repairs, including repair materials and repairs to the heating source necessary to make the installation of weatherization materials effective.

(2) The cost of liability insurance for weatherization projects for personal injury and for property damage;

(3) Allowable administration expenses under paragraph (b) of this section; and

(4) The cost of carrying out low cost/no cost weatherization activities in accordance with § 440.18.

(b) Not more than 5 percent of each grant made pursuant to this part may be used for the administrative expenses of the grantee, and not more than 5 percent of each amount allocated to a subgrantee under this part may be used for administrative expenses of the subgrantee. Allowable administrative expenses shall include any labor costs other than labor costs in accordance with subparagraphs (a)(1)(ii)(E) and (F) of this section.

(c) No grant funds awarded under this part shall be used for any of the following purposes—

(1) To install or otherwise provide weatherization materials for a dwelling unit weatherized previously with grant funds under sub-paragraph (a)(1) of this section unless such dwelling unit has been damaged by fire, flood, or act of God and repair of the damage to weatherization materials is not paid for by insurance; or

(2) To weatherize a dwelling unit which is designated for acquisition or clearance by a Federal, State, or local program within twelve months from the date weatherization of the dwelling unit would be scheduled to be completed.

(d) The limitation of $1,000 described in paragraph (a) of this section—

(1) Shall not apply if the State policy advisory council requests a greater amount be provided for specific categories of units or materials in the State, and the Regional Representative approves the request; and

(2) Shall be deemed to have been requested and approved under section 415(c)(2) of the Act, unless the State policy advisory council notifies the Regional Representative to the contrary in writing within 30 days of submission of the annual State application.

§ 440.17 Labor.

(a) Payments for labor costs under § 440.16(a)(1)(ii)(F) shall consist of—

(1) Payments permitted by the Department of Labor to supplement wages paid to training participants and public service employment workers pursuant to CETA; and

(2) Payments to employ labor (particularly persons eligible for training under CETA) or engage a contractor (particularly a non-profit organization or a business owned by disadvantaged individuals which performs weatherization services), to install weatherization materials, provided a grantee has determined an adequate number of volunteers and training participants and public service employment workers, assisted pursuant to CETA, are not available to weatherize dwelling units for a subgrantee under the supervision of qualified supervisors.

(b) The Regional Representative may increase the limitation of $1,000 per dwelling unit described in § 440.16(a) to not more than $1,600 per dwelling unit to cover costs referred to in paragraph (a) of this section in an area where the Regional Representative, based upon satisfactory documentation, determines that there are an insufficient number of volunteers and training participants and public service employment workers, assisted pursuant to CETA, available to weatherize dwelling units for a sub-

grantee under the supervision of qualified supervisors.

§ 440.18 Low cost/no cost weatherization activities.

(a) An eligible dwelling unit may be weatherized without regard to the limitations contained in § 440.16(c)(1) or § 440.19(b) from funds designated by the grantee for carrying out low cost/no cost weatherization activities, provided—

(1) Inexpensive weatherization materials are used such as water flow controllers or items which are primarily directed towards reducing infiltration, including weatherstripping, caulking, glass patching and insulation for plugging; and

(2) No labor paid with funds provided under this part is used to install weatherization materials referred to in paragraph (a)(1) of this section.

(b) A maximum of 10 percent of the amount allocated to a sub-grantee and not to exceed $50 per dwelling unit may be expended to carry out low cost/no cost weatherization activities, unless the Regional Representative approves a higher expenditure per dwelling unit.

§ 440.19 Standards and techniques for weatherization.

(a) Only weatherization materials which meet or exceed standards prescribed in Appendix A shall be purchased with funds provided under this part.

(b) A weatherization project shall utilize the approaches to weatherization contained in Project Retro-Tech, Conservation Paper Number 28, as revised July 1979, including the energy conservation techniques therein.

§ 440.20 Eligible dwelling units.

No dwelling unit shall be eligible for weatherization assistance under this part unless it will be occupied in accordance with the provisions of § 440.15(b)(2)(ii) or is occupied by a family unit—

(a) Whose income is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget; or

(b) Which contains a member who has received cash assistance payments under Title IV or XVI of the Social Security Act or applicable State or local law during the 12-month period preceding the determination of eligibility for weatherization assistance.

§ 440.21 Oversight, training, and technical assistance.

(a) The Secretary and the appropriate Regional Representative, in coordination with the Director, shall monitor and evaluate the operation of projects carried out by CAA's receiving financial assistance under this part through on-site inspections, or through other means, in order to insure the effective provision of weatherization assistance for the dwelling units of low-income persons.

(b) DOE shall also carry out periodic evaluations of a program and weatherization projects that are not carried out by a CAA, and that are receiving financial assistance under this part.

(c) The Secretary and the appropriate Regional Representative, the Comptroller General of the United States, and for a weatherization project carried out by a CAA, the Director or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, information, and records of any weatherization project receiving financial assistance under the Act.

(d) Each grantee shall conduct, on an annual basis, an audit of the pertinent records of any sub-grantee receiving financial assistance under this part.

(e) The Secretary may reserve from the funds appropriated for any fiscal year an amount, not to exceed 10 percent, to provide, directly or indirectly training and technical assistance to any grantee or sub-grantee.

§ 440.22 Recordkeeping.

Each grantee or sub-grantee receiving Federal financial assistance under this part shall keep such records as DOE shall require, including records which fully disclose the the amount and disposition by each grantee and sub-grantee of the funds received, the total cost of a weatherization project or the total expenditure to implement the State plan for which such assistance was given or used, the source and amount of funds for such project or program not supplied by DOE and such other records as DOE deems necessary for an effective audit and performance evaluation. Such recordkeeping shall be in accordance with Federal Management Circular 74–7 and any further requirements of this regulation or which DOE may otherwise establish under the terms and conditions of a grant.

§ 440.23 Reports.

DOE may require any recipient of financial assistance under this part to provide, in such form as may be prescribed, such reports or answers in writing to specific questions, surveys or questionnaires as DOE determines to be necessary to carry out its responsibilities or the responsibilities of the Director under this part.

§ 440.30 Administrative review.

(a) If a timely application submitted by a State fails to meet the requirements of this part and the Regional Representative intends to deny the application, the Regional Representative shall return the application to the State together with a written statement of reasons therefore.

(b) The State will have a reasonable period, as determined by the Regional Representative, to amend its application and to resubmit it by a specified date for reconsideration.

(c) The Regional Representative shall give notice to the applicant in the event that the Regional Representative determines that—

(1) Any application resubmitted by a State in accordance with paragraph (b) of this section fails to comply with this regulation;

(2) Any application returned to a State pursuant to paragraph (a) of this section is not timely resubmitted as provided in paragraph (b); or

(3) The Regional Representative intends to deny the application of a local applicant.

(d) The Regional Representative shall give notice to a grantee in the event the Regional Representative finds there is a failure by the grantee to comply substantially with the provisions of the Act or this part.

(e) The Regional Representative shall issue such notice in the form of written notice mailed by registered mail, return receipt requested, to the State, local applicant grantee and other interested parties, including—

(1) A statement of reasons for a determination referred to in paragraph (c) or (d) of this section which the Regional Representative intends to make including an explanation whether any amendments or other actions would result in compliance with the regulation;

(2) The date, place, and time of public hearing to be held by the Regional Representative one subject of which shall be the proposed determination, which hearing shall in no event be later than 15 working days after the receipt of such notice; and

(3) The manner in which views may be presented.

(f) A party which has received notice under paragraph (e) of this section—

(1) May make a written submission of its views with supporting data and arguments to the Regional Representative on or prior to the date of the public hearing; and

(2) Shall be afforded an opportunity to make an oral presentation at the public hearing.

(g) The Regional Representative shall consider all relevant views and data

including arguments and other submissions made at the public hearing. The Regional Representative shall make, not later than 5 working days after the public hearing, a final determination in writing stating the reasons for the determination.

(h) A State or local applicant or grantee may appeal in writing from an adverse final determination made by the Regional Representative under paragraph (g) of this section to the Secretary not later than 10 working days after receipt of the Regional Representative's determination. The Secretary shall have 21 working days to consider the appeal and take any action with respect thereto which he deems appropriate. Any action taken by the Secretary shall be the final determination of DOE. If no action has been taken by the Secretary after the expiration of the 21-working-day period, the Secretary shall be deemed to have approved the determination of the Regional Representative.

(i) Anything herein to the contrary notwithstanding, the public hearing referred to in subparagraph (e)(2) of this section may be combined, at the discretion of the Regional Representative, with any other public hearing in the State conducted pursuant to this part.

(j) Upon issuance of the notice provided in paragraph (d), the Regional Representative may suspend payments to any grantee pending a final determination. If the Regional Representative makes a final determination of failure to comply, the grantee will be ineligible to participate in the program under this part unless and until the Regional Representative is satisfied that there is no longer a failure to comply.

APPENDIX A.—*Standards for Weatherization Materials*

	Standards
Insulation—Mineral fiber, material or product:	
Blanket/batt	Conformance to F.S.[1] HH-I-521E and ASTM C665-70.
Board	Conformance to F.S. HH-I-526C and ASTM C612-70 or C726-72.
Duct material	Conformance to F.S. HH-I-558B.
Loose fill	Conformance to F.S. HH-I-1030A and ASTM C764-73.
Insulation—Mineral cellular:	
Aggregate board	Conformance to F.S. HH-I-529B.
Cellular glass	Conformance to F.S. HH-I-551E and ASTM C552-73.
Perlite	Conformance to F.S. HH-I-574A and ASTM C549-73.
Vermiculite	Conformance to F.S. HH-I-585B and ASTM C516-67.
Insulation—Organic fiber:	
Cellulose—Type I	Conformance to F.S. HH-I-515C and ASTM C739-73 (loose fill).
Cellulose—Type II	Conformance to ASTM C739-73 (loose fill) and fire safety requirements.[2]
Vegetable	Conformance to F.S. HH-I-528B and fire safety requirements.
Board and block	Conformance to F.S. LLL-I-535A and ASTM C208-72 and fire safety requirements.
Insulation—Organic cellular:	
Polystyrene board	Conformance to F.S. HH-I-524B and ASTM C578-69 and fire safety requirements.
Urethane board	Conformance to F.S. HH-I-530A and ASTM C591-69 and fire safety requirements.
Flexible unicellular	Conformance to F.S. HH-I-573B and ASTM C534-70 and fire safety requirements.
Insulation—Air Spaces: Reflective.	Conformance to F.S. HH-I-1252A.
Storm Windows:	
Aluminum frame	Equivalent to ANSI A134.3-1972.
Wood frame	Conformance to Sec. 3 NWMA Industry Standard I.S.2-73.
Rigid Vinyl frame	Conformance to NBS Product Standard PS26-70 and performance guarantee.
Frameless plastic glazing.	Required minimum thickness 6 mil (0.006 in.).
Storm doors:	
Aluminum	Equivalent to ANSI A134.4-1972.
Wood:	
Pine	Conformance to Sec. 3 of NWMA I.S.5-73.
Fir, hemlock, spruce.	Conformance to Sec. 3 of FHDA/5-75.
Hardwood veneered.	Conformance to Sec. 3 of NWMA I.S.1-73.
Rigid vinyl	Conformance to NBS Product Standard PS26-70 and performance guarantee.
Caulks and sealants	Commercial availability.
Weatherstripping	Commercial availability.
Vapor barriers	Commercial availability.
Clock thermostats	Commercial availability.
Skirting	Commercial availability.
Items to improve attic ventilation.	Commercial availability.
Materials used as a patch to reduce infiltration through the building envelope.	Commercial availability.
Water Flow Controllers.	Commercial availability, but not to exceed $5.00.
Replacment Oil Burners.	UL 296/ANSI Z 96.2-1974 "Oil Burners" and ANSI Z 91.2-1976, entitled "Performance Requirements for Automatic Pressure Oil Burners of the Mechnical-Draft Type."

Notes

[1] F.S. means Federal specifications as cited, copies of which may be obtained from Specifications Sales, Building 197, Washington Naval Yard, General Services Administration, Washington, D.C. 20407.

[2] For fire safety requirements, see Sec. 2.1.3.1 of NBSIR 75-795 which may be obtained from DOE.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/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 "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

CONSUMER PRODUCT SAFETY COMMISSION

51211 8–31–79 / Child resistant packaging of acetaminophen preparations

Deadlines for Comments On Proposed Rules for the Week of 3–2 through 3–8–80

AGRICULTURE DEPARTMENT

Commodity Credit Corporation—

1042 1–4–80 / Farmer-Owned Grain Reserve Program; proposed amendments to regulations; comments by 3–4–80

Food and Nutrition Service—

3592 1–18–80 / System for monitoring meal pattern requirements; comments by 3–3–80

Food Safety and Quality Service—

1046 1–4–80 / U.S. standards for grades of frozen brussels sprouts; comments by 3–4–80

Rural Electrification Administration—

7819 2–5–80 / Contract policies and procedures; proposed revision of REA Bulletin 40–6; comments by 3–6–80

BLIND AND OTHER SEVERELY HANDICAPPED, COMMITTEE FOR THE PURCHASE

7276 2–1–80 / Procurement list 1980, proposed additions; comments by 3–5–80

COMMERCE DEPARTMENT

International Trade Administration—

1007 1–4–80 / Petition and hearing procedures for monitoring or export controls; comments by 3–4–80

8289 2–7–80 / Revision of licensing requirements for agricultural exports to the U.S.S.R.; comments by 3–7–80

National Oceanic and Atmospheric Administration—

4366 1–22–80 / Bowhead whales; taking by Indians, Aleuts and Eskimos for subsistence purposes; comments by 3–4–80

1613 1–8–80 / Tanner crab off Alaska; early closure of portion of fishing to U.S. vessels; comments by 3–5–80

ENERGY DEPARTMENT

70390 12–6–79 / Outer Continental Shelf oil and gas leasing; fixed net profit share bidding system; comments by 3–7–80

Conservation and Solar Energy Office—

7498 2–1–80 / Guidelines for energy management in general operations of the Federal goverment; comments by 3–3–80

1298 1–4–80 / Test procedures for furnaces; comments by 3–4–80

ENVIRONMENTAL PROTECTION AGENCY

6960 1–31–80 / Emission control system performance warranty regulations—short test establishment; comment period extended to 3–3–80

[Originally published at 44 FR 23784, Apr. 20, 1980]

928 1–3–80 / Ink formulating—point source category; effluent limitations guidelines, pretreatment standards and new source performance standards; comments by 3–3–80

1429 1–7–80 / Missouri; state implementation plan; comments by 3–7–80

912 1–3–80 / Paint formulating—point source category; effluent limitations guidelines, pretreatment standards, and new source performance standards; comments by 3–3–80

7822 2–5–80 / Proposed exemption from the requirement of a tolerance for the pesticide chemical dimethyl formamide, comments by 3–6–80

7821 2–5–80 / Proposed exemption from the requirement of a tolerance for the pesticide chemical *N*– Methyl pyrrolidone; comments by 3–6–80

7821 2–5–80 / Proposed revision to the New York State implementation plan; comments by 3–6–80

803 1–3–80 / Toxic pollutant list; proposal to add ammonia; comments by 3–3–80

FEDERAL COMMUNICATIONS COMMISSION

59580 10–16–79 / Changes in the rules relating to noncommercial educational FM broadcast stations; reply comments extended to 3–3–80
[Originally published at 43 FR 27682, June 26, 1978]

2069 1–10–80 / Facilitating operation of low power, limited coverage systems in the 22,000–23,000 MHz bands; comments by 3–7–80

2067 1–10–80 / Facilitating authorization of wide-area mobile radio communications systems on frequencies allocated for trunked systems; comments by 3–7–80

3941 1–21–80 / FM assignment to Paxton, Ill.; comments by 3–7–80

3940 1–21–80 / FM assignment to Bloomfield, Iowa; comments by 3–7–80

1924 1–9–80 / Granting of general exemption from certain radiotelegraph requirements of Part II to U.S. cargo vessels of 1600 gross tons and upward navigated solely on domestic voyages along the east, west, or gulf coasts of the U.S.; comments by 3–7–80

3349 1–17–80 / Implementing a system of temporary licensing for multiple licensed mobile relay systems operating in the business radio service; comments by 3–7–80

3086 1–16–80 / Mobile station, control point, and control station authorization procedures for 800 MHz common user systems; comments by 3–7–80

2066 1–10–80 / MTS and WATS market structure; "Industry model"; reply comments by 3–3–80

3941 1–21–80 / Noncommercial educational FM assignment to Lake Havasu City, Ariz.; comments by 3–7–80

70499 12–7–79 / Providing for the amateur-satellite service; reply comments by 3–6–80

69689 12–7–79 / Provisions for operation of tackle paging devices for the deaf, blind, and physically handicapped; reply comments by 3–6–80

3939 1–21–80 / TV assignment to La Grande, Oreg.; comments by 3–7–80

FEDERAL HOME LOAN BANK BOARD

1425 1–7–80 / Renegotiable rate mortgage instruments; comments by 3–4–80

FEDERAL RESERVE SYSTEM

8268 2–6–80 / Electronic fund transfers; documentation; comments by 3–7–80

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Public Health Service—

53 1–2–80 / Confidentiality of alcohol and drug abuse patient records; comments by 3–3–80

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Office of the Secretary—

1109 1–4–80 / Procurement responsibility and authority; comments by 3–4–80

INTERIOR DEPARTMENT

Fish and Wildlife Service—

1110 1–4–80 / Addition of three primates and seven cacti to Appendix I of Endangered Species Convention; comments by 3–4–80

809 1–3–80 / Permits to take Golden Eagle nests; comments by 3–3–80

Indian Affairs Bureau—

8002 2–6–80 / Off-reservation treaty fishing, Great Lakes and connecting waters in Michigan ceded in Treaty of 1836; comments by 3–3–80

Surface Mining Office—

8240 2–6–80 / Permanent regulatory program, comments by 3–7–80

INTERSTATE COMMERCE COMMISSION

3618 1–18–80 / Adoption of Annual Report Form MH–2 for Class II motor carriers of household goods, and reporting revision for dual authority carriers; comments by 3–3–80

3353 1–17–80 / Rail market dominance and related consideration; comments by 3–3–80

JUSTICE DEPARTMENT

Attorney General—

7820 2–5–80 / Exemption of records systems under the Privacy Act; comments by 3–6–80

Parole Commission—

6379 1–28–80 / Voting quorums; additional period for study; comments by 3–5–80

LABOR DEPARTMENT

Employment and Training Administration—

7974 2–5–80 / Federal-State unemployment compensation program; interstate arrangement for combining employment and wages; comments by 3–6–80

Office of the Secretary—

1392 1–4–80 / Regulations preventing discrimination against qualified handicapped individuals in programs receiving or benefitting from Federal financial assistance; comments by 3–4–80

NATIONAL CREDIT UNION ADMINISTRATION

7596 2–4–80 / Public observation of Board meetings; comments by 3–5–80

NUCLEAR REGULATORY COMMISSION

70408 12–6–79 / Licensing procedures for disposal of high level radioactive wastes in geologic repositories; comments by 3–3–80

PERSONNEL MANAGEMENT OFFICE

1040 1–4–80 / Term promotions; return of individual to position of like pay; granting of authority to agencies; comments by 3–4–80

1041 1–4–80 / Law enforcement officer and firefighter "experience" qualification elimination for retirement; comments by 3–4–80

SECURITIES AND EXCHANGE COMMISSION

1627 1–8–80 / Requests for confidential treatment of records obtained by the Commission; comments by 3–5–80

SMALL BUSINESS ADMINISTRATION

7555 2–4–80 / Minority-owned or economically-socially disadvantaged firms; size standards; comments by 3–5–80

TRANSPORTATION DEPARTMENT

Coast Guard—

69308 12–3–79 / Casualty reporting requirements; comments by 3–3–80

72188 12–3–79 / Ocean dumping surveillance system; proposed electronic installation; comments by 3–3–80

National Highway Traffic Safety Administration—

70204 12–6–79 / Federal motor vehicle side impact protection standards; comments by 3–5–80

TREASURY DEPARTMENT

Comptroller of the Currency—

6407 1–28–80 / Eligibility of securities for purchase, dealing in, underwriting and holding by National Banks; comments by 3–7–80

VETERANS ADMINISTRATION

6957 1–3–80 / Increase in institutional awards; comments by 3–3–80

6957 1–31–80 / Medical benefits entitlement for Women's Air Forces Service Pilots; comments by 3–3–80

Deadlines for Comments On Proposed Rules for the Week of 3–9 through 3–15–80

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service—

1622 1–8–80 / Animals destroyed because of tuberculosis; comments by 3–10–80

1615 1–8–80 / Scleroderris canker (European strain); quarantine; comments by 3–10–80

Farmers Home Administration—

2641 1–14–80 / Appraisal of real estate security for rental, cooperative and labor housing loans; redesignation—revision; comments by 3–14–80

Food and Nutrition Service—

3565 1–18–80 / Child nutrition programs; State administrative expense funds; comments by 3–15–80

Food Safety and Quality Service—

2328 1–11–80 / Sales of meat and poultry products; retail exemptions; comments by 3–11–80

8637 2–8–80 / U.S. standards for grades of Fla. tangerines, grapefuit, oranges, and tangelos; comments by 3–10–80

CIVIL AERONAUTICS BOARD

2331 1–11–80 / Foreign carrier charter rights; modernization of regulations; comments by 3–11–80

9747 2–13–80 / International air cargo rate changes; comments extended to 3–10–80

7566 2–4–80 / Insurance requirements for United States and foreign air carriers; comments by 3–12–80

COMMERCE DEPARTMENT

International Trade Administration—

8182 2–6–80 / Antidumping duties; comments by 3–15–80

COST ACCOUNTING STANDARDS BOARD

8677 2–8–80 / Contract coverage and disclosure statement; comments by 3–10–80

1038 1–4–80 / Cost of money as an element of cost of facilities under construction; comments by 3–14–80

ENERGY DEPARTMENT

8920 2–8–80 / Procedures for financial assistance; comments by 3–10–80

Office of Conservation and Solar Energy—

2632 1–11–80 / Energy Conservation Program for consumer products; scope of testing procedures for room air conditioners as applied to packaged terminal air conditioners; comments by 3–11–80

ENVIRONMENTAL PROTECTION AGENCY

8669 2–8–80 / Approval and promulgation of implementation plans—Mass.; comments by 3–10–80

8979 2–11–80 / Food additive regulation for the insecticide *N*-(mercaptomethyl) phthalimide S- (*O*,O-dimethyl phosphorodithioate) in cottonseed oil at 0.2 part per million; comments by 3–12–80

(See also 45 FR 8980, 2–11–80)

9752 2–13–80 / Michigan State Implementation Plan; intended disapproval of administrative order; comments by 3–14–80

9750 2–13–80 / New Hampshire; TSP and SO_2 Attainment Plans for Berlin, NH; approval and promulgation of implementation plans; comments by 3–14–80

8313 2–7–80 / Ohio; approval and promulgation of implementation plans; comments by 3–10–80

9749 2–13–80 / Ohio; approval and promulgation of implementation plans; extension of comment to 3–14–80

9012 2–11–80 / Revision of State Implementation Plan for Kansas; comments by 3–12–80

9749 2–13–80 / South Carolina; variance request from Bowater Carolina Corp. and amendment to South Carolina Air Pollution Control Regulations; comments by 3–14–80

2790 1–14–80 / Standards of performance for new stationary sources; lead-acid battery manufacture; comments by 3–14–80

FEDERAL COMMUNICATIONS COMMISSION

1919 1–9–80 / FM assignment to Greenwood Ark.; reply comments by 3–10–80

1920 1–9–80 / FM assignment to Malahoff, Tex.; reply comments by 3–10–80

1923 1–9–80 / FM assignment to Middletown, Md.; reply comments by 3–10–80

1921 1–9–80 / FM assignment to Petersburg, W. Va.; reply comments by 3–10–80

1922 1–9–80 / FM assignment to Steelville, Mo.; reply comments by 3–10–80

3064 1–16–80 / Policy and rules on rates for competitive common carrier services and facilities authorizations; period for comments on Part XI extended to 3–14–80

[Originally published at 44 FR 67445 Nov. 26, 1979 and corrected at 44 FR 73130, Dec. 17, 1979]

37008 6–25–79 / Radio Frequency devices, biological effects of radiation levels; reply comments by 3–15–80

10384 2–15–80 / Special radio services; digital termination systems; frequency reallocation in 10.55–10.68 GHz band; reply comments by 3–14–80

See also 44 FR 67191, 11—23–79, and 44 FR 74862, 12–18–79]

FEDERAL HOME LOAN BANK BOARD

1916 1–9–80 / Insurance of accounts; director and officer management interlocks; comments by 3–10–80

FEDERAL RESERVE SYSTEM

7819 2–5–80 / Automated clearinghouse items; comments by 3–14–80

GENERAL SERVICES ADMINISTRATION

Federal Property Resources Service—

7260 2–1–80 / Recovery of costs of care and handling of surplus personal property under the control of DOD; comments by 3–15–80

HEALTH, EDUCATION AND WELFARE DEPARTMENT

Food and Drug Administration—

9286 2–12–80 / National Environmental Policy Act; proposed polices and procedures; comments extended to 3–12–80

Originally published at 44 FR 71742, December 11, 1979]

Social Security Administration—

2345 1–111–80 / Federal old-age, survivors, and disability insurance and supplemental security income for the aged; blind, and disabled; experiments to improve the disability hearing process; comments by 3–11–80

INTERNATIONAL COMMUNICATION AGENCY

1638 1–8–80 / Uniform regulation; nondiscrimination on the basis of age in programs or activities receiving Federal financial assistance from the foreign affairs agencies; comments by 3–10–80

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development—

1638 1–8–80 / Unform regulation; nondiscrimination on the basis of age in programs or activities receiving federal financial assistance from the foreign affairs agencies; comments by 3–10–80

INTERSTATE COMMERCE COMMISSION

3912 1–21–80 / Practices of motor common carriers of passengers—checked baggage liability provisions; reply comments by 3–11–80

LABOR DEPARTMENT

Employment Standards Administration—

2528 1–11–80 / Migrant farmworkers; coordination of enforcement activities; comments by 3–11–80

2498 1–11–80 / Services to migrant and seasonal farmworkers; employment service complaint system; monitoring and enforcement; comments by 3–11–80

Office of the Secretary—

1642 1–8–80 / Employees part-time career employment; comments by 3–10–80

INTERIOR DEPARTMENT

Land Management Bureau—

64868 12–4–79 / Land withdrawals, procedural change; comments by 3–3–80

NUCLEAR REGULATORY COMMISSION

1625 1–8–80 / Transient shipments of strategic special nuclear material; comments by 3–10–80

MANAGEMENT AND BUDGET OFFFICE

2586 1–11–80 / Paperwork; Federal government's control of reporting and recordkeeping requirements; comments by 3–11–80

PERSONNEL MANAGEMENT OFFICE

2327 1–11–80 / Training; use of Government or non-Government facilities; comments by 3–11–80

SECURITIES AND EXCHANGE COMMISSION

72606 12–14–79 / Procedures and requirements for national market system plans; comments by 3–14–80

STATE DEPARTMENT

1638 1–8–80 / Nondiscrimination on the basis of age in programs or activities receiving Federal financial assistance from the foreign affairs agencies; comments by 3–10–80

TRANSPORTATION DEPARTMENT

Coast Guard—

5781 1–24–80 / Hopper dredges; load line and stability requirements; comments by 3–10–80

2052 1–10–80 / Standards for offshore crane design, inspection, testing, operation, and operator qualification; comments by 3–10–80

Federal Highway Administration—

Urban Mass Transportation Administration—

2296 1–10–80 / Interstate System withdrawal and substitution; comments by 3–10–80

TREASURY DEPARTMENT

Customs Service—

1633 1–8–80 / Civil aircraft agreement; tariff changes; comments by 3–10–80

Internal Revenue Service—

2349 1–11–80 / Income tax; treatment of partnership organization and syndication fees; comments by 3–11–80

UNITED STATES RAILWAY ASSOCIATION

11141 2–20–80 / Regulations for determination of the attainment by Consolidated Rail Corporation of certain standards relating to the Corporation's stock ownership plan; comments by 3–14–80

VETERANS ADMINISTRATION

9297 2–12–80 / Veterans' benefits; effective date of awards; comments by 3–13–80

Next Week's Meetings:

ACTUARIES, JOINT BOARD FOR ENROLLMENT

8750 2–8–80 / Actuarial Examinations Advisory Committee, Plaines, Ill. (open), 3–6–80

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

9963 2–14–80 / Rulemaking and Public Information Committee, Washington, D.C. (open), 3–7–80

10824 2–19–80 / Forum on improving regulatory process, Washington, D.C. (open), 3–3–80

AGING, FEDERAL COUNCIL

7308 2–1–80 / Senior Services Committee, Washington, D.C. (open), 3–3–80

[Corrected at 45 FR 8719, 2–8–80]

7308 2–1–80 / Social Security Task Force, Washington, D.C. (open), 3–3–80

[Corrected at 45 FR 8719, 2–8–80]

AGRICULTURE DEPARTMENT

Forest Service—

2073 1–10–80 / Lewis and Clark National Forest Grazing Advisory Board, Great Falls, Mont. (open), 3–4–80

6813 1–30–80 / Medicine Bow National Forest Grazing Advisory Board, Laramie, Wyo. (open), 3–6–80

6636 1–29–80 / State Foresters Committee, Albuquerque, N.M. (open), 3–6–80

ARTS AND HUMANITIES, NATIONAL FOUNDATION

8170 2–6–80 / Design Arts Panel (Design Communication), Washington, D.C. (closed), 3–3 and 3–4–80

8170 2–6–80 / Design Arts Panel (Design Demonstration), Washington, D.C. (closed), 3–5 and 3–6–80

10490 2–15–80 / Folk Art Advisory Panel, Washington, D.C. (partially open), 3–6 through 3–8–80

10092 2–14–80 / Humanities Panel Advisory Committee, Washington, D.C. (closed), 3–3, 3–4, 3–6, and 3–7–80

2718 1–14–80 / Media Arts Panel (AFI/Archival), Washington, D.C. (closed), 3–5–80

CIVIL RIGHTS COMMISSION

10830 2–19–80 / California Advisory Committee, Los Angeles, Calif. (open), 3–7–80

10830 2–19–80 / Michigan Advisory Committee; East Lansing, Mich. (open), 3–6–80

10830 2–19–80 / Minnesota Advisory Committee; St. Paul, Minn. (open), 3–7–80

COMMERCE DEPARTMENT

Census Bureau—

10392 2–15–80 / Census Advisory Committee (CAC) of the American Economic Association, CAC of the American Marketing Association, CAC of the American Statistical Association, and the CAC on Population Statistics, Suitland, Md. (open), 3–6–80

International Trade Administration—

8331 2–7–80 / President's Export Council, Washington, D.C. (open), 3–3–80

National Oceanic and Atmospheric Administration—

6135 1–25–80 / Mid-Atlantic Fishery Management Council's Scientific and Statistical Committee, Philadelphia, Pa. (open), 3–6–80

DEFENSE DEPARTMENT

Office of the Secretary—

6425 1–28–80 / Defense Science Board Task Force on ECM, Washington, D.C. (closed), 3–6 and 3–7–80

10842 2–19–80 / Defense Science Board Task Force on MX, San Bernardino, Calif. (closed), 3–6 and 3–7–80

ENERGY DEPARTMENT

Conservation and Solar Energy Office—

5602 1–23–80 / Consideration of energy efficiency standards for heat pumps, Washington, D.C. (open), 3–6–80

Economic Regulatory Administration—

10396 2–15–80 / Gasoline Marketing Advisory Committee, Dallas, Tex. (open), 3–6–80

Office of the Secretary—

7610 2–4–80 / Voluntary Agreement and Plan of Action to Implement Energy Program, Paris, France (closed), 3–4–80

ENVIRONMENTAL PROTECTION AGENCY

9994 2–14–80 / FIFRA Scientific Advisory Panel, Washington, D.C. (open), 3–5–80

9995 2–14–80 / Science Advisory Board Technology Assessment and Pollution Control Advisory Committee, Washington, D.C. (open), 3–5 and 3–6–80

3967 1–21–80 / State FIFRA Issues Research and Evaluating Group (SFIREG), Washington, D.C. (open), 3–3–80

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

10408 2–15–80 / Meeting, Washington, D.C. (open), 3–6–80

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Alcohol, Drug Abuse, and Mental Health Administration—

8358 2–7–80 / Basic Sociocultural Research Review Committee, Chevy Chase, Md. (partially open), 3–6 through 3–8–80

8359 2–7–80 / Cognition, Emotion, and Personality Research Review Committee, Washington, D.C. (partially open), 3–7 and 3–8–80

8358 2–7–80 / Epidemiologic and Services Research, Review Committee, Arlington Va. (partially open), 3–3 through 3–5–80

10031 2–14–80 / Minority Advisory Committee, Rockville Md. (open), 3–3 through 3–5–80

8358 2–7–80 / Minority Group Mental Health Review Committee, Washington, D.C. (partially open), 3–6 through 3–8–80

8358 2–7–80 / Research Scientist Development Review Committee, Washington, D.C. (partially open), 3–6 through 3–8–80

Center for Disease Contol—

2108 1–10–80 / Epidemiologic Study of Portsmouth Naval Shipyard, Cincinnati, Ohio (open), 3–7–80

Education Office—

4472 1–22–80 / Adult Education National Advisory Council, Washington, D.C. (open), 3–6 and 3–7–80

[Rescheduled at 45 FR 9795, 2–13–80]

7626 2–4–80 / Career Education National Advisory Council, Washington, D.C. (open), 3–6 and 3–7–80

Food and Drug Administration—

10446 2–15–80 / Arthritis Advisory Committee, Rockville, Md. (open), 3–6 and 3–7–80

10446 2–15–80 / General Medical Devices Panel, General and Personal Use Devices Section, Washington, D.C. (open), 3–380

10446 2–15–80 / Miscellaneous External Drug Products Panel (open), Rockville, Md., 3–7–80; Bethesda, Md., 3–8–80

Office of the Secretary—

10848 2–19–80 / Financing Elementary and Secondary Education Advisory Panel, Washington, D.C. (open), 3–3 and 3–4–80

National Institutes of Health—

9119 2–11–80 / Cancer Control Grant Review Committee, Bethesda, Md. (partially open), 3–2 through 3–4–80

7007 1–31–80 / Animal Resources Review Committee, Bethesda, Md. (partially open), 3–5–80

7009 1–31–80 / Minority Access to Research Careers Review Committee, Bethesda, Md. (partially open), 3–6 and 3–7–80

7182 1–31–80 / Recombinant DNA Advisory Committee, Bethesda, Md. (partially open), 3–6 and 3–7–80

7010 1–31–80 / Study Sections, various cities in Colorado and Maryland, and Washington, D.C. (partially open), 3–2 through 3–8–80

INTERIOR DEPARTMENT

Land Management Bureau—

8361 2–7–80 / Bakersfield District Grazing Advisory Board, Ridgecrest, Calif. (open), 3–7–80

10042 2–14–80 / Cape Cod National Seashore Advisory Commission, South Wellfleet, Mass. (open), 3–7–80

7889 2–5–80 / National Public Lands Advisory Council, Washington, D.C. (open), 3–7 and 3–8–80

8362 2–7–80 / Paradise-Denio Resource Area; intent to prepare environmental impact statement, Carson City, Nev., 3–4–80 and Humboldt County, Nev., 3–6–80

9122 2–11–80 / Scientific Committee of the Outer Continental Shelf Advisory Board, New Orleans, La. (open), 3–5 through 3–7–80

National Park Service—

10042 2–14–80 / Everglades National Park, draft and acquisition plan, public forum, Everglades National Park, Fla. (open) 3–5 and 3–6–80

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development—

6187 1–25–80 / A.I.D. Research Advisory Committee, Washington, D.C. (open), 3–3 and 3–4–80

LABOR DEPARTMENT

Pension and Welfare Benefit Programs—

10489 2–15–80 / Employee Welfare and Pension Benefit Plans Advisory Committee, Washington, D.C. (open), 3–5–80

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

10490 2–15–80 / NASA Advisory Council, Space Science Advisory Committee (open), Greenbelt, Md., 3–3 and 3–4–80; Washington, D.C., 3–5 and 3–6–80

NATIONAL SCIENCE FOUNDATION

10093 2–14–80 / Advisory Council Task Group No. 10, Washington, D.C. (open), 3–7–80

10093 2–14–80 / Engineering and Applied Science Advisory Committee, Science and Technology to Aid the Handicapped Subcommittee, Washington, D.C. (closed), 3–6 and 3–7–80

10093 2–14–80 / Science and Society Advisory Committee, Washington, D.C. (open), 3–5 and 3–6–80

10094 2–14–80 / Social and Economic Science Advisory Committee, Sociology Subcommittee, Washington, D.C. (closed), 3–6 and 3–7–80

10094 2–14–80 / Social Sciences Advisory Committee, Economics Subcommittee, Washington, D.C. (closed), 3–7 and 3–8–80

NUCLEAR REGULATORY COMMISSION

10491 2–15–80 / Reactor Safeguards Advisory Committee; Babcock and Wilcox Water Reactors Subcommittee, Washington, D.C. (partially open), 3–4–80

10491 2–15–80 / Reactor Safeguards Advisory Committee, Three Mile Island Ad Hoc Subcommittee Unit 2 Accident Bulletins and Orders, Washington, D.C. (partially open), 3–3–80

10989 2–19–80 / Reactor Safeguards, Advisory Committee, Three Mile Island Subcommittee, Unit 2 Accident Implications, Washington, D.C. (open), 3–5–80

10989 2–19–80 / Reactor Safeguards, Advisory Committee, Three Mile Island Ad Hoc Subcommittee, Unit 2 Accident Action Plan, Washington, D.C. (partially open), 3–5–80

9144 2–11–80 / Regional State Liaison Officers, San Francisco, Calif. (open), 3–5 and 3–6–80

STATE DEPARTMENT

Office of the Secretary—

8416 2–7–80 / Shipping Coordinating Committee, Safety of Life at Sea Subcommittee, Washington, D.C. (open), 3–4–80

TRANSPORTATION DEPARTMENT

Federal Aviation Administration—

7667 2–4–80 / Special Aviation Fire and Explosion Reduction Advisory Committee and its Technical Groups, El Segundo, Calif. (open), 3–4 and 3–5–80

National Highway Traffic Safety Administration—

10110 2–14–80 / Biomechanics Advisory Committee, Washington, D.C. (open), 3–5–80

Next Week's Public Hearings

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

9942 2–14–80 / Proceeding on proposed amendments to tentative marketing agreement and order for milk in the Tennessee Valley marketing area, Knoxville, Tenn., 3–4–80

Food Safety and Quality Service—

75990 12–21–79 / Food labeling; tentative positions of agencies, Washington, D.C., 3–4 and 3–5–80

CIVIL AERONAUTICS BOARD

70212 12–6–79 / Former large irregular air service investigation (Pearson Alaska Airlines); Washington, D.C., 3–4–80

6637 1–29–80 / Miami/New Orleans–San Jose, Costa Rica Case, New Orleans, La., 3–4–80

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—

8327 2–7–80 / Fishery conservation and management; coastal migratory pelagic resources (mackerel) plans: Brunswick, Ga., 3–4–80; Savannah, Ga., 3–5–80; Beaufort, S.C., 3–5–80; Charleston, S.C., 3–6–80

COMMISSION ON THE REVIEW OF THE FEDERAL IMPACT AID PROGRAM

6838 1–30–80 / Hearing, Chicago, Ill., 3–7–80

6838 1–30–80 / Hearing, Denver, Colo., 3–6–80

6839 1–30–80 / Hearing, Seattle, Wash., 3–7–80

DEFENSE DEPARTMENT

Navy Department—

7279 2–1–80 / Naval Discharge Review Board: Memphis, Tenn.; Dallas, Tex.; Kansas City, Mo.; all cities 3–3 through 3–14–80 (applicants and representatives will be notified by mail as to place and date of hearing)

ENERGY DEPARTMENT

Conservation and Solar Energy Office—

8462 2–7–80 / Standby Federal Emergency Energy Conservation Plan, Atlanta, Ga., 3–3–80 and New York, N.Y., 3–6–80

ENVIRONMENTAL PROTECTION AGENCY

7758 2–4–80 / Ammonium sulfate manufacture; standards of performance, Research Triangle Park, N.C., 3–6–80

9753 2–13–80 / High-altitude emission regulations for 1982 and 1983 model year light-duty motor vehicles; high-altitude performance adjustment regulations; and high-altitude emission standards for light-duty motor vehicles manufactured during or after the 1984 model year, Denver, Colo., 3–5, 3–6, and 3–7–80

ENVIRONMENTAL QUALITY COUNCIL

9315 2–12–80 / Non-coal minerals mining and reclamation: Atlanta, Ga., 3–3–80; Washington, D.C., 3–5–80

FEDERAL LABOR RELATIONS AUTHORITY

9110 2–11–80 / Negotiability of performance appraisal systems, Washington, D.C., 3–4–80

FEDERAL TRADE COMMISSION

75990 12–21–79 / Food labeling; tentative positions of agencies, Washington, D.C., 3–4 and 3–5–80

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Food and Drug Administration—

75990 12–21–80 / Food labeling; tenative positions of agencies, Washington, D.C., 3–4 and 3–5–80

INTERNATIONAL TRADE COMMISSION

7645 2–4–80 / Anhydrous amonia from the U.S.S.R., Washington, D.C., 3–3–80

6867 1–30–80 / Certain anaerobic impregnating compositions and components; hearing, Washington, D.C., 3–3–80

1950 1–9–80 / Economic impact on domestic industry of termination of import relief against color television receivers and subassemblies, Washington, D.C., 3–5–80

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 February 26, 1980

Documents Relating to Federal Grant Programs

This is a list of documents relating to Federal Grant programs which were published in the Federal Register during the previous week.

RULES GOING INTO EFFECT

10794 2–19–80 / CSA-Summer Youth Recreation Program; funding and application process; effective 3–20–80

DEADLINES FOR COMMENTS ON PROPOSED RULES

11082 2–19–80 / CSA-Community Food and Nutrition Program; comments by 3–20–80

APPLICATIONS DEADLINES

10837 2–19–80 / Commerce/MBDA—Technical and management assistance to minority enterprises; project in Alabama; apply by 3–14–80

10838 2–19–80 / Commerce/MBDA—Technical and management assistance to minority business enterprises; project in South Bronx area, N.Y.; apply by 3–7–80

10838 2–19–80 / Commerce/MBDA—Technical and management assistance to minority business enterprises; project in Chicago Standard Metropolitan Statistical Area; apply by 3–7–80

10839 2–19–80 / Commerce/MBDA—Technical and management assistance to minority business enterprises; project in Standard Metropolitan Statistical Area of Richmond, Va.; apply by 4–1–80

11452 2–20–80 / HEW/HDSO—Child abuse and neglect grants; FY 1980 State grants; apply by 5–31–80

11194 2–20–80 / HEW/HRA—Departments of Family Medicine, FY 1980 grants for establishment; apply by 4–7–80

11535 2–21–80 / HEW/HSA—Sudden Infant Death Syndrome Program; competitive grants; 2 funding cycles; apply by 4–14 and 5–12–80

11913 2–22–80 / HEW/OE—Intent to compromise claim involving grants to local educational agencies serving areas with concentrations of children from low-income families; submit written data, views or arguments by 4–7–80

11532 2–21–80 / HEW/OE—Upward Bound and Special Services for Disadvantaged Students; applications closing date for national demonstration projects (Fiscal Year 1980) extended to 5–30–80

11914 2–22–80 / HEW/Sec'y—Comprehensive Program Final Year Dissemination Competition of the Fund for the Improvement of Secondary Education; apply by 3–7–80

MEETINGS

11196 2–20–80 / HEW/Civil Rights Office—Proposed data collection of compliance information, Washington, D.C. (open), 3–4–80

11194 2–20–80 / HEW/HRA—Health Professions Education National Advisory Council, Hyattsville, Md. (partially open), 3–24 through 3–26–80

11194 2–20–80 / HEW/NIH—Bladder and Prostatic Cancer Review Committee, Bladder Subcommittee, Tucson, Ariz. (partially open), 3–20 and 3–21–80

11195 2–20–80 / HEW/NIH—General Research Support Review Committee, Bethesda, Md. (partially open), 3–20 and 3–21–80

11532 2-21-80 / HEW/OE—Vocational Education, National Advisory Council, Technical Assistance Committee, San Francisco, Calif. (open), 3-14-80

11965 2-22-80 / NFAH—Humanities Panel, Washington, D.C. (closed), 3-10, 3-13 and 3-14-80

11965 2-22-80 / NFAH—Humanities Panel, Washington, D.C. (closed), 3-17 through 3-21-80

11965 2-22-80 / NFAH—Humanities Panel, Washington, D.C. (closed), 3-24 through 3-28-80

11965 2-22-80 / NFAH—Humanities Panel, Washington, D.C. (closed), 4-4-80

11965 2-22-80 / NFAH—Humanities Panel, Washington, D.C. (closed), 4-7 through 4-11-80

11965 2-22-80 / NFAH—Humanities Panel, Washington, D.C. (closed), 4-18-80

11965 2-22-80 / NFAH—Humanities Panel, Washington, D.C. (closed), 4-25-80

OTHER ITEMS OF INTEREST

10882 2-19-80 / HEW/Sec'y—Data acquisition activities involving educational agencies and institutions

10848 2-19-80 / HEW/Sec'y—List of data acquisition activities for school year 1980-81; paperwork control procedures

11448 2-20-80 / HUD/CPD—Urban development action grants; revised minimum standards for physical and economic distress for metropolitan cities and urban counties; effective 2-20-80

11626 2-21-80 / LSC—Grants and contracts; California; comments solicited (3 documents)

11626 2-21-80 / LSC—Grants and contracts; Kansas; comments solicited

11626 2-21-80 / LSC—Grants and contracts; Michigan; comments solicited (6 documents)

11626 2-21-80 / LSC—Grants and contracts; Missouri; comments solicited

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